

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Master-in-Equity

Maite Murphy, Master-in-Equity

Case No. 2009-CP-18-3315

Larry E. Kinard,

Appellant,

v.

Douglas S. Richardson and Julie D. Richardson,

Respondents.

RECORD ON APPEAL

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SC Court of Appeals

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STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)
LARRY E. KINARD,)
Plaintiff,)
vs.)
DOUGLAS S. RICHARDSON,)
JULIE D. RICHARDSON,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

CASE NO: 2009-CP-18-3315

ORDER

HEARING DATE:
TRIAL JUDGE:
ATTORNEY FOR PLAINTIFF:
ATTORNEY FOR DEFENDANTS:

June 7, 2012
Maite D. Murphy
John Polito
P. Brandt Shelbourne

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Clerk of Court
DORCHESTER COUNTY

THIS MATTER came before me for trial on June 7, 2012. Present for the trial was Plaintiff Larry E. Kinard and his attorney John Polito, Esquire and Defendants Douglas S. Richardson and Julie D. Richardson and their attorney P. Brandt Shelbourne, Esquire. After taking testimony and reviewing the evidence submitted by both parties, the Court makes the following findings of fact and conclusions of law:

Prior to the case coming to trial before this Court, The Honorable Edgar W. Dickson ruled on cross Motions for Summary Judgment. Judge Dickson's ruling, filed with the Court on July 12, 2012 is the law of the case as addressed in his Order. The questions of fact that remained in this action were whether the Defendants are or were in compliance with the terms of the applicable covenants and restrictions and which of the restrictions apply.

This Court finds the applicable covenants and restrictions do not prohibit the leasing of property. The Defendants' property is not made subject to the original covenants and restrictions of the neighborhood. The Defendants are in compliance with the Amendment to Restrictions, and said restrictions that are applicable to the Defendants, do not specifically prohibit the conduct complained of by the Plaintiffs.

The testimony established that the Plaintiff's property, comprising of two (2) lots, and the Defendants' property were at one time owned by James M. Barnes and Delene B. Barnes (hereinafter "Barnes"). The Plaintiff purchased his first lot from Barnes on or about January 21, 1998. At that time, Plaintiff's property was subject to Covenants and Restrictions originally recorded by Barnes on September 11, 1997. These Original Restrictive Covenants only covered six (6) lots as described in Exhibit "A" to the original Restrictive Covenants. These original Restrictive Covenants did not cover Defendants' property. Subsequently, Barnes, the declarant, sold all of his remaining interest in the lots subject to the original Restrictive Covenants. Barnes did not retain any interest in the property subject to the original Restrictive Covenants, nor did he amend those original Restrictive Covenants to cover the property Defendants subsequently purchased.

Barnes also owned the property Defendants subsequently purchased. That property was adjacent to the original property subject to the original Restrictive Covenants and not subject to any covenants or restrictions prior to Barnes' sale of the property to Defendants' predecessor. In anticipation of the sale of said property to Defendants' predecessor in interest, Steve Hill, Barnes placed Restrictions on the property entitled "Amendment to Restrictions" signed on February 25, 1998, and recorded on March 18, 1998. In that document, and in the subsequent deed, Barnes also referenced the original

Restrictive Covenants. However, Barnes did not take any steps to amend the original Restrictive Covenants that applied to Plaintiff's property to include this new property within that subdivision, nor did the subdivision vote to amend the original Restrictive Covenants to include this additional piece of property.

The original Restrictive Covenants allow for Amendments under Paragraph 18 only by a "majority of the owners of record of the lots which are subjected hereto." As Barnes was no longer an owner, let alone a majority owner, he did not retain any authority to alter or amend the Covenants. In order to make property subject to these original Restrictive Covenants, it is necessary to amend them. This was not done by Barnes or by a majority of the property owners. Thus, Defendants' property was not brought into the contractual agreement as it applied to the original six (6) lots.

Language in the original Restrictive Covenants that the Declarant Barnes reserved the right to make additional property subject to the original Restrictive Covenants does not obviate the fact that the original Restrictive Covenants must be amended before they apply to additional property. Paragraph one of the original Restrictive Covenants specifically states that a separate legal instrument would be required to bring additional property within the Restrictions. This was never done.

Because Barnes no longer retained any interest in the property subject to the original Restrictive Covenants, which includes Plaintiff's property, he could not amend the original Restrictive Covenants that apply to the original six (6) lots to include Defendants' property within the scope of those Original Restrictive Covenants. Therefore, the document entitled "Amendment to Restrictions" is actually an original restriction on

Defendants' property and does not amend the original Restrictive Covenants that applied to Plaintiff's property.

While Barnes could place the same restrictions on Defendants' property as he placed on Plaintiff's property, he was unable to do so without following the procedure in the original Restrictive Covenants to bring Defendants' property within the contractual reach on the original property owners.

Plaintiff failed to provide any documentation establishing that there was any restriction on Defendants' property prior to Barnes' placement of the "Amendment to Restrictions." The document entitled "Amendment to Restrictions" was the first and only Restriction placed on the property. It does not work to subject Defendants' property to the original Restrictive Covenants. While Barnes had every right to place restrictions on property he sold to Steve Hill, he had no ability to unilaterally bring Defendants' property within the original Restrictive Covenants applicable to Plaintiff's property. Defendants' property is not made subject to the original Covenants and Restrictions of the neighborhood and the homeowners' association.

"Restrictive Covenants are contractual in nature...." Taylor v. Lindsey, 332 S.C. 1, 498 S.E.2d 862 (1998). As such, they can only be enforced by those in privity of contract. The original Restrictive Covenants are between the property owners owning the original six (6) lots. The restrictions on Defendants' property are at most between Defendants and whoever sold them the property. Plaintiff is not in privity of contract with Defendants. Because Barnes did not amend the original Restrictive Covenants to include Defendants' property within the scope of those Covenants while he owned the original property, Plaintiff cannot prevail.

There is no contractual agreement between Plaintiff and Defendants. Plaintiff cannot enforce said Covenants. Essentially, the original lots subject to the original Restrictive Covenants and Defendants' property must be viewed as two (2) separate and distinct properties. The close geographic location of the two is irrelevant. Plaintiff has no more right to enforce Covenants on Defendants' land than he does to enforce Covenants on a homeowner in a completely different geographically separated subdivision.

Barnes as a Declarant and property developer can make property he is developing subject to the identical Restrictive Covenants. He can use the same document for different subdivisions. It does not follow however, that because he uses the same language, property owners in one subdivision can enforce restrictions in another separate subdivision. Further, Barnes could not unilaterally bring in property to an existing covenant encumbered subdivision unless he complies with the existing covenants and restrictions for that subdivision. To hold otherwise, would be to allow Barnes to develop Senrab Farms and then later, after selling off his interest, develop another property of unlimited size and scope and bring that property into Senrab Farms.

Plaintiff also argued that the Defendants' leasing of the property to allow horses to be on Defendants' property violated the covenants that did apply to Defendants' property. Notwithstanding, the aforementioned arguments and the findings of fact and conclusions of law that Plaintiff cannot enforce the restrictions on Defendants' property, there is nothing in either the original Restrictive Covenants or the Amendment to Restrictions that prevents the Defendants' from leasing their property for equine use.

Even if the original Restrictive Covenants did apply to Defendants' property, and even if Plaintiff had the ability to enforce them against Defendants, the fact that the original

Restrictive Covenants state that the property shall be used as single-family residential building lots does not prohibit the leasing of real property or having horses on that leased real property. The original Restrictive Covenants specifically states that horses are permitted on the original six (6) lots. Plaintiff conceded at trial that there was nothing in the original Restrictive Covenants prohibiting the leasing of real property. Further, it is apparent that lots can be leased as is evident from Paragraph 13(j) of the original Restrictive Covenants which permits "For Rent" signs. There is no limitation or restriction in the original Restrictive Covenants that prohibits having horses on leased property.

Further, the Amendment to Restrictions placed on Defendants' lot specifically and expressly allows for property owners to have up to six (6) horses on that property. Assuming for the sake of argument that Plaintiff can even enforce the restrictions on Defendants' property, Defendants are permitted to have up to six (6) horses. Also, there is nothing in the restrictions requiring that those six (6) horses belong to Defendants. There is no prohibition or restriction in the Amendment to Restrictions or the original Restrictive Covenants that prohibits leasing the property to a third party who places horses on the property.

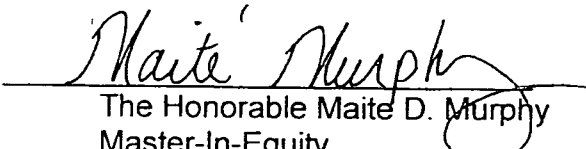
A Restriction will not "be enlarged or extended by construction or implication beyond the clear meaning of its terms...." Taylor, 332 SC at 5, 498 S.E.2d at 864. "It is still the settled rule in this jurisdiction that restrictions as to the use of real property be strictly construed and all doubts resolved in favor of free use of the property..." so long as strict construction does not "defeat the plain and obvious purpose of the instrument." Id. "A restriction on the use of property must be created in express terms or by plain and unmistakable implication, and all such restrictions are to be strictly construed, with all

doubts resolved in favor of the free use of the property.” Id. quoting Hamilton v. CCM, Inc., 274 S.C. 152, 157, 263 S.E.2d 378, 380 (1980). The plain and obvious purpose of the Amendment to Restrictions is, in part, to allow the property owner to have up to six (6) horses on the property. It is not clear or evident from that document, or any other for that matter, that a property owner cannot rent his property for the use of those six (6) horses.

This Court finds that even if Plaintiff had standing to enforce the restrictions on Defendants’ property, the original Restrictive Covenants do not prohibit the leasing of Defendants’ property and Defendants’ lease of that property is not a commercial business operation excluded by the original Restrictive Covenants.

The Restrictions applicable to the Defendants do not specifically prohibit the leasing of Defendants’ property. The Amendment to Restrictions specifically allows the property owner to have up to six (6) horses on the property. The restrictions do not require that the horses belong to the property owner and do not prohibit leasing the real estate to third parties. Indeed, the original Restrictive Covenants recognize that property owners can lease their property. For this Court to prohibit the Defendants from leasing their property for horse grazing and other equine activities would be an overreach of this Court’s authority. This Court will not limit activity which is not prohibited by the applicable restrictions, as to do so would be a violation of the Defendants’ property rights. Therefore, the Plaintiff’s prayer for Declaratory Judgment and for Injunctive Relief is denied.

AND IT IS SO ORDERED!


The Honorable Maite D. Murphy
Master-In-Equity
First Judicial Circuit

Sept. 28, 2012
St. George, South Carolina

Defendants.

FINAL ORDER

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CLERK OF COURT
DOUGHERTER COUNTY

10

2. The Court finds that the Restrictions applicable to the Defendants allow for the leasing of property. This Court cannot rewrite the restrictions to specify what can or cannot be leased. That is a problem created specifically by the wording, or lack thereof, of the applicable Restrictive Covenants.
3. The Plaintiff asserts that because there is a picture of more than six horses on the property at some point in time is a violation of said covenants. The Court finds credible the Defendants argument that they do not keep more than six horses at a time on their property and that nothing in restrictions prevents a neighbor from riding their horse over for a visit. A visit is vastly different from continuous keeping of a horse. The Plaintiff failed to prove otherwise.
4. The Plaintiff argues that because the Defendants served on the Homeowner's Association Board, that they should then be bound by the original restrictions is also without merit. The procedure to amend the restrictions to have included the Defendants was not followed. Senrab Farms may be a neighborhood, but the lots contained within the neighborhood, are subject to different restrictions.
5. The Court finds not credible the Plaintiff's claim that the Defendants keeping of six horses on their property is ruining their quality of life. The Plaintiff settled with the equestrian center in the neighborhood to allow keeping up to ten horses on the property. An active equestrian center would certainly have a greater impact on traffic and activity in the neighborhood, than the Defendants using their property and allowing six horses to graze.
6. The Plaintiff further argued that he was "blind sided" in violation of due process with the Court's finding that the Plaintiff did not have privity of contract to enforce the restrictive covenants with the Defendants. The Court found that Restrictive Covenants are contractual in nature and as such can only be enforced by those in privity of contract. The burden of proof is upon the Plaintiff to establish standing to enforce the Restricted Covenants.

The above findings of fact and conclusions of law are supplemental to the Order filed on September 28, 2012. Plaintiff's Motion in the alternative for a new trial is denied.

AND IT IS SO ORDERED.

Dec. 4, 2012
St. George, SC


The Honorable Maite Murphy
Master-in-Equity for Dorchester County

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)
)
LARRY E. KINARD,)
)
)
Plaintiff,)
)
vs.)
)
DOUGLAS S. RICHARDSON,)
JULIE D. RICHARDSON,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

CASE NO: 2009-CP-18-3315

ORDER ON PLAINTIFF'S AND
DEFENDANTS' MOTIONS FOR
SUMMARY JUDGMENT

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CLERK OF COURT
DORCHESTER COUNTY

HEARING DATE:

August 1, 2011

TRIAL JUDGE:

Edgar Warren Dickson

ATTORNEY FOR PLAINTIFF:

John Polito

ATTORNEY FOR DEFENDANTS:

P. Brandt Shelbourne

THIS MATTER came before me pursuant to cross Motions for Summary Judgment by Plaintiff and Defendants. Present at the hearing were John Polito attorney for the Plaintiff and P. Brandt Shelbourne, attorney for the Defendants. After hearing arguments of counsel, reviewing the memoranda of law filed herein and the evidence submitted, the Court makes the following conclusions of law:

Defendants Douglas and Julie Richardson purchased their property, known as Tract L, on or about December 23, 1998 and subsequently subdivided it into Tracts A and B. The Court finds that Tracts A and B are part of the original Tract L and are subject to any covenants and restrictions that applied to the original Tract L which include the covenants and restrictions known as Amendment to Restrictions filed on March 18, 1998. The Deed conveying Tract L included restrictions that must be followed regardless of the subdivision of the original tract. Restrictive

covenants run with the land and subdividing the land does not release it from those restrictions.

Conflicts between the original Restrictions that apply to the other tracts within the subdivision and the Amendment to Restrictions filed on March 18, 1998, including whether the original restrictions apply to Defendants' Tracts A and B and whether Defendants are or were in compliance with the terms of the applicable covenants and restrictions are questions of fact which much be determined at trial. Therefore, the remaining portions of the parties' Motions for Summary Judgment should be denied.

AND IT IS SO ORDERED!



Edgar Warren Dickson
Presiding Circuit Court Judge
First Judicial Circuit

Dec. 20, 2011
Orangeburg, South Carolina

²/₂ 

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)
LARRY E. KINARD,)
Plaintiff,)
vs.)
DOUGLAS S. RICHARDSON,)
JULIE D. RICHARDSON,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

CASE NO: 2009-CP-18-3315

ORDER ON PLAINTIFF'S MOTION
FOR RECONSIDERATION

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Clerk of Court
DORCHESTER COUNTY

HEARING DATE: February 21, 2012
TRIAL JUDGE: Edgar Warren Dickson
ATTORNEY FOR PLAINTIFF: John Polito
ATTORNEY FOR DEFENDANTS: P. Brandt Shelbourne

THIS MATTER came before me pursuant to Plaintiff's Motion for Reconsideration of this Court's denial of Plaintiff's Motion for Summary Judgment. Present at the hearing were John Polito attorney for the Plaintiff and P. Brandt Shelbourne, attorney for the Defendants. Based upon the arguments of counsel and the evidence submitted to this Court, the Plaintiff's Motion for Reconsideration is denied.

AND IT IS SO ORDERED!


Edgar Warren Dickson
Presiding Circuit Court Judge
First Judicial Circuit

May 24, 2012
Orangeburg, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER) FOR THE FIRST JUDICIAL CIRCUIT
Civil Action Number: 2009-CP-18- 3315

Larry E. Kinard,)
)
Plaintiff,)

vs.)

Town of Summerville, Hoa Van Nguyen,)
Xuan Thi Nguyen and Senrab Farms)
Homeowners Association)
)
Defendants.)

COMPLAINT

Declaratory Judgment Actions (Town)
42 USC Section 1983 (Town)
Breach of Covenants (Nguyens)

(Non-Jury)

CLERK OF COURT
DORCHESTER COUNTY

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The Plaintiff, Larry E. Kinard, complaining of the Defendants, by and through his undersigned attorney, would respectfully show this Court that:

1. Plaintiff Larry E. Kinard is a citizen of Dorchester County, SC and resides at 217 Saddle Trail in Senrab Farms subdivision, near the Town of Summerville, on a two acre parcel known as TMS # 136-00-00-218 (combined Senrab Farms Lots F and G).
2. Hoa Van Nguyen and Xuan Thi Nguyen are citizens and residents of Dorchester County and reside diagonally contiguous to Plaintiff, on the opposite side of the road at 125 Saddle Trail, upon a 5.4 acre parcel known as TMS# 136-00-00-183.
3. Prior to Town of Summerville annexation Ordinance 09-0901 dated October 14, 2009, both 125 Saddle Trail and 217 Saddle Trail were located in Dorchester County within zoning districts that Dorchester County Council had zoned residential.
4. Both 125 Saddle Trail and 217 Saddle Trail share a common grantor and are subject to mutual reciprocal covenants dated October 1, 1992 that their lots "be used

only for residential or agricultural purposes" and that no trailers "be placed, used or allowed on them" (Deed Book 1051, Page 053).

5. In 1992 the common grantors, James and Delene Barnes, commenced the process of carving up their 50 acre farm that had become surrounded on three sides by residential properties. As developers, their initial 1992 division created two lots, Tract A, a 3.6 acre lot containing the old farm house, and Tract B a 1.9 acre tract located behind the house that then contained the farm's only other existing structure, a barn. In 1997 the developers created eleven additional lots to be known as Senrab Farms (Barnes spelled backwards). They filed "single-family residential" restrictive covenants that initially were impressed upon 6 of the 11 lots (Deed Book 1821, Page 331) and a plat of Senrab Farms that included depiction of Tracts A and B (Cabinet J, Slide 28). The grantors commenced selling the 1 to 2 acre Senrab Farms residentially restricted lots in 1997 (Deed Book 1821, Page 342). Later in 1997 and in 1998 the developers filed prepared two additional plats (Cabinet J, Slide 12, Cabinet J. Slide 37) that subdivided land adjacent and east of Tract A and B into an additional six lots impressed with "single-family residential" use restrictions (Deed Book 1915, Page 263 , and Book 1987, Page 112).

6. Plaintiff and his wife purchased and built their retirement home on Senrab Farms Lot F in 1998 and purchased adjacent Lot G in 1999. Hoa Van Nguyen and Xuan Thi Nguyen purchased Tract A and B on March 12, 2003 (Deed Book 3476, Page 210). On February 1, 2005 they filed a corrected deed asserting that "both tracts to be combined and taxed under TMS #136-00-00-183," (Deed Book 4533, Page 268), the

original TMS # for Tract A containing the developer's old farm house.

7. Saddle Trail, the road dividing the Plaintiff and Nguyen's lots, is a private road that was deeded by the common grantor to the Senrab Farms Homeowners Association (HOA) on June 21, 2005 (Deed Bk 5035 Pg 159). Plaintiff is a member of the HOA. The HOA is added as a party Defendant in that it owns ^{Saddle} ~~Senrab~~ Trail and rights of way JRP that Summerville annexation Ordinance 09-0901 purports to have annexed.

8. The Town of Summerville is an incorporated South Carolina municipality within Dorchester County. At all times referenced herein the Town acted through its seven elected Town Council members, Ricky Waring, Walter Bailey, Aaron Brown, Mike Dawson, Kima Garten-Schmidt, Bob Jackson and Dennis Pieper, and its Planning Director, all of whom are citizens and residents of the Town of Summerville.

9. On February 11, 2009, Plaintiff stood before Council and asked Council to end the practice of quasi-secret annexation rezoning. He complained that eight Central Avenue parcels near his home had been annexed and that the annexation ordinances had rezoned Dorchester County's R4 classification to Summerville Town B3 (General Business) without any newspaper notice, without on-site conspicuous notice, without a zoning hearing, and no opportunity to be heard.

10. In February 2009 the Summerville Town Planner told the Summerville Journal Scene that when dealing with an annexation the Town can attach any zoning classification it wants.

11. On February 27, 2009, Plaintiff gave written notice to Lisa L. Wallace, the Assistant Town Administrator, requesting that she "Please place my name on the

mailing list for notification of all requests for zoning changes in my neighborhood.”

12. It is the Town of Summerville's custom and practice to ignore Dorchester County zoning classifications when assigning a Town zoning classification at the time of annexation.

13. It is the Town of Summerville's custom and practice not to require compliance with Town Ordinance Section 32-11, entitled Amendments, when assigning zoning classifications at the time of annexations.

14. It is the Town of Summerville's custom and practice that Town Code Section 32-10, entitled Annexations, is the lone and exclusive zoning related Ordinance which it must follow when assigning a Town zoning classification at the time of annexation.

15. On February 26, 2009 and May 13, 2009, Plaintiff wrote Dorchester County's Zoning Administrator reporting a horse riding, stabling and sales business at 125 Saddle Trail, doing business as Senrab Farms Equestrian Center, upon a lot zoned R4, and demanding enforcement of the County's zoning ordinance. Plaintiff presented photo evidence of riding lesson dust clouds, overgrazed fields filled with birds eating insects from un-removed horse dropping, vehicle and trailer traffic, images of the Center's Internet website boasting that it operates “in the middle of Senrab Farm Subdivision in Summerville, SC,” photos of horses for sale and sold via the Internet, and a satellite view of 125 Saddle Trail's 5.4 acres, showing the Nguyen's 2,500 square foot home, their large front yard, their swimming pool, the barn and what appears to be less than one acre of of pasture land for the 16 horses present on the Nguyen's lot in July 2009.

16. On June 25, 2009, the Dorchester County Zoning Administrator wrote Hoa

Van and Xuan Nguyen notifying them that selling horses and operating a riding lessons business was a violation of 125 Saddle Trail's R-4 zoning classification. They were requested to "immediately cease and desist any further business activity including sales or marketing of horses, riding lessons, ect."

17. On July 8, 2009, Hoa Nguyen filed an appeal. The Nguyen's listed 16 horses present at 125 Saddle Trail, with total July operating expenses of \$5,710 and stabling and riding receipts of \$3,305.

18. The contested appeal was heard before six members of the Dorchester County Board of Zoning Appeals on August 25, 2009. Both the Nguyen's and Plaintiff were present and represented by counsel. The Board found that 125 Saddle Trail (TMS #136-00-00-183) is zoned R4, that the Nguyen's were being paid \$1,400 per month for the use of their barn by an enterprise "being held out on the internet as Senrab Equestrian Center where it advertises horse sales, horse jumping, dressage and horse care services. Appellants also presented testimony that riding lessons were available." It found that of "the ten horses and six ponies located and boarded at the Senrab Equestrian Center, none of the horses or ponies belong to any resident of the subdivision known as Senrab Farms." The Board found "serious health and safety issues" associated with the Center not having a required "permit from the State Livestock-Poultry Health Commission" for a equine sales facility. After hearing the appeal the Board voted unanimously, to affirm the Zoning Administrator's cease and desist request. Its order stated, "Appellants are ordered to immediately cease and desist operating the business upon their real property designated with T.M.S.

#136-00-00-183."

19. The Board of Zoning Appeals written order was signed on September 2, 2009. A certified copy is attached and incorporated by reference. The Board's order was not appealed.

20. By October 14, 2009, all horses and trailers had been removed from 125 Saddle Trail and all business operations had ceased.

21. Unknown to Plaintiff, the Ngyen's filed a Petition for annexation into the Town of Summerville. Although the Petition is dated 8-4-09, it is believed that the correct Petition date is likely 9-4-09, two days after the Board's written order.

22. The Petition sought annexation of 125 Saddle Trail, TMS# 136-00-009-183 and "all adjacent rights-of-way," Senrab Farms HOA did not sign the Petition, and Section 1 of Summerville annexation Ordinance 09-0901 dated October 14, 2009 claims to annex 125 Saddle Trail and "all adjacent rights of way."

23. The Planning Department Staff Report characterizes the lot as being agricultural in character when 3.63 acres (Tract A) is a residential lot. The barn sits upon original Tract B, a 1.85 acre lot that the Annexation Petitioners requested be merged into the residential TMS number in 2005.

24. The Staff Report recommends Agricultural Conservation (AC) zoning. Town Code Section 32-134 reserves AC for "areas" where there is five or more acres of land that is either undeveloped or used for agriculture or farming.

25. The Town's new Comprehensive Plan, adopted by Summerville Town Council on August 12, 2009, indicates that agricultural and forestry classifications should be

reserved for areas of greater than 12 acres per tract (see page 12).

26. Original Tract B, upon which the old barn sits, is only 1.854 acres.

27. AC zoning permits "certain commercial operations" including riding lessons, horse stabling and accessory uses customarily incidental thereto, without imposing any limit upon the number of horses or volume of business traffic.

28. The Staff Report asserts that the "property owners have requested AC zoning designation because they have horses and stables." On September 9, 2009 the Nguyen's did not own any horses and only owned one stable.

29. The Staff Report asserts that the "AC zoning classification is the only zoning classification that allows the use of horses and stables." Section 4-5(b) of the Town Code permits "a private horse pen or horse stable wherein not more than two equines are kept" in any zoning classification within the Town so long as they are not located closer than 60 feet to any residence or within 10 feet of any lot line.

30. The Staff Report notes that a lot beside 125 Saddle Trail is zoned B-3. It does not advise Council that the balance of the lots bordering 125 Saddle Trail are residential.

31. The Staff Report does not disclose that Dorchester County had zoned 125 Saddle Trail residential.

32. The Staff Report asserts that the "property is not a formal part of this development," Senrab Farms. Town Council was not made aware that 125 Saddle Trail and Senrab Farms Subdivision share 1992 mutual reciprocal covenants limiting use to "residential or agricultural purposes."

33. On September 9, 2009 Summerville Town Council gave first reading to the Nguyen's Petition to annex 125 Saddle Trail and all adjacent rights-of-way into the Town, and that the property be Zoned "AC," with second and final reading on October 14, 2009.

34. At no time during the process of annexing and zoning 125 Saddle Trail "AC" did the Town of Summerville publish notice in any newspaper or require that notice be posted on or near 125 Saddle Trail.

35. At no time during the process of annexing and zoning 125 Saddle Trail "AC" did the Town of Summerville adhere to or follow any provision of Dorchester County Ordinance 32-11 entitled Amendments.

36. Summerville Town Code Section 32-11(2)(c) provides that written notice of amendments of the Town's boundaries "must be mailed to all interested groups requesting notice."

37. On November 5, 2009 Plaintiff again wrote Assistant Administrator Wallace reminding her of his February 2009 request. On November 9, 2009, Ms. Wallace replied stating, "According to the Planning and Zoning Department of the Town of Summerville, we do not mail individual notices for notification of requested zoning changes."

38. At no time during the process of annexing and zoning 125 Saddle Trail "AC" did the Town of Summerville provide Plaintiff with notification of the proceedings.

39. Zoning 125 Saddle Trail to "AC" amended the Town of Summerville's zoning map.

FOR A FIRST CAUSE OF ACTION
Declaratory Judgment – Unlawful Annexation

40. Allegations prior to the First Cause of Action are incorporated by reference.

41. Annexations under SC Code Section 5-3-150(3) require a "petition signed by all persons owning real estate in the area requesting annexation." The HOA did not sign the Petition.

42. Minutes from the October 14, 2009 Summerville Town Council meeting assert that Council voted to annex Dorchester County TMS #136-00-00-083, which is the TMS # for 213 Knotty Pine Drive, not 125 Saddle Trail.

43. Town Council was induced to vote for this annexation based upon multiple misrepresentations and failure to disclose the Dorchester County Board of Zoning Appeals order or Petitioner's annexation motivation.

44. The Plaintiff asks for the Court to review this matter and declare Section 1 of Summerville Ordinance 09-0901 unlawful and void, and for such other and further relief as the Court deems proper.

FOR A SECOND CAUSE OF ACTION
Declaratory Judgment – Unlawful Zoning

45. Allegations prior to the First Cause of Action are incorporated by reference.

46. The Town did not follow the notice, planning commission review and public hearing provisions of Town Ordinance 32-11 or of S.C. Code of Laws Section 6-29-760 when assigning 125 Saddle Trail the Town zoning classification "AC."

47. Plaintiff was deprived of his Town zoning ordinance and State statutory rights to notice that the Town was about to zone 125 Saddle Trail, to a hearing and an opportunity to be heard.

48. Plaintiff was deprived of his procedural and substantive due process rights under the S.C. Constitution to notice and an opportunity to be heard.

49. Assigning the Nguyen's lot an Agricultural Conservation zoning classification violates both the Town's zoning ordinance and its comprehensive plan, and constitutes spot zoning of a residential lot located in the heart of a residentially restricted subdivision.

50. Summerville Town Code Section 32-134 reserves an Agricultural Conservation classification for "areas generally of five acres or more that are undeveloped or used for agricultural, farming or conservation."

51. The Nguyen's lot contains their 2,500 square foot home, was zoned residential, and does not contain any five acre area of undeveloped, agricultural, farm or conservation land.

52. Designating the Nguyen's home and residence as undeveloped, farm or agricultural land misrepresents the land use existing at the time of purported annexation and zoning.

53. Both the Town's zoning ordinance and comprehensive plan attempt to protect and preserve residential subdivisions by excluding commercial businesses that would clearly attract significant customer vehicle traffic, including horse trailers, and businesses that could present significant health hazards.

54. The Town replacing Dorchester County's residential zoning classification with its AC classification authorizes a commercial business within a residential zone and constitutes unlawful spot zoning.

55. The AC zoning classification was procured through misrepresentation, concealment and/or mistakes. Critical facts associated with this zoning request were kept hidden from Council. The Petitioners failed to disclose that the Dorchester County Board of Zoning Appeals' order.

56. Plaintiff asks that the Court to review this matter and declare Section 2 of Summerville Ordinance 09-0901 unlawful and void, and for such other and further relief as the Court deems proper.

FOR A THIRD CAUSE OF ACTION
42 United States Code Section 1983

57. Allegations prior to the First Cause of Action are incorporated by reference.

58. The Town of Summerville, acting under color of law, has established a habit, custom and practice of denying Plaintiff and all similarly situated property owners residing adjacent to lands annexed into the Town of Summerville of their due process rights, via the 14th Amendment to the United States Constitution, to notice and an opportunity to be heard prior to changing and affecting the legal use of lands adjacent to their lands.

59. The Town has shown total indifference to the procedural and substantive due process rights guaranteed Plaintiff and all similarly situated citizens of Dorchester County by the United States Constitution.

60. Plaintiff asks that the Court to review Summerville's practice, habit and policy of conducting quasi-secret annexation zoning without providing meaningful notice and an opportunity to be heard.

61. Plaintiff asks the court to declare Summerville to have violated Plaintiff's federal constitutional rights as protected by 42 U.S.C. 1983, to enjoin the Town from continuing a policy and practice that deprives citizens of notice and an opportunity to be heard when zoning or rezoning properties adjoining their property, to award Plaintiff his costs and attorney fees, and for such other and further relief as the Court deems proper.

FOR A FOURTH CAUSE OF ACTION
(Breach of Covenants Against Hoa Van and Xuan Thi Nguyen)

62. Allegations prior to the First Cause of Action are incorporated by reference.

63. Defendants Hoa Van Nguyen and Xuan Thi Nguyen had a legal duty pursuant to Reciprocal Covenants executed by our title predecessors, recorded on October 8, 1992 in Dorchester County RMC Deed Book 1051 at Page 053, that Tracts A and B shall "only be used for residential or agricultural purposes."

64. Defendants Hoa Van Nguyen and Xuan Thi Nguyen have breached their land use agreement by using their land for business purposes.

65. Defendants breach intentionally destroyed the quiet and solitude enjoyed by Plaintiff when he purchased his Senrab Farms lots by causing him to endure:

(a) Disruption of the subdivision's tranquility and the diminished quality of residential life by compelling him to endure substantial business traffic including arrival and departure of a steady stream of horse trailers and lesson riders;

(b) Visual blight at compelling him to live with multiple trailers occupying his front porch vista, some badly rusted, in violation of the reciprocal covenant's prohibition against trailers;

(c) Frequent dust clouds created by horse riding lessons inside Defendant's circular dirt riding ring that kept Plaintiff's home and property covered in dirt; and,

(d) The sight, odors, insects and health risks associated with un-kept and seriously overgrazed fields.

66. Defendants Hoa Van Nguyen and Xuan Thi Nguyen caused a diminution in the value and worth of Plaintiff's retirement home.

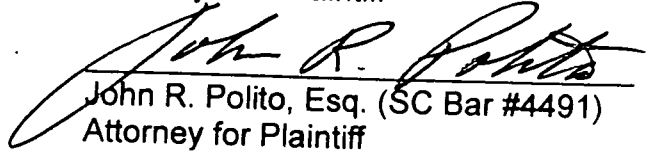
67. Plaintiff seeks damages for Defendant Hoa Van Nguyen and Xuan Thi Nguyen's breach of their covenant to restrict their property use to residential or agricultural and for a temporary and permanent injunction enjoining these Defendants from using their land for business purposes.

WHEREFORE Plaintiff prays that the Court hear and determine his declaratory judgment claims and declare both the Town's annexation and zoning of 125 Saddle Trail unlawful and void; that it hear his 42 USC Section 1983 claim, declare the Town to have engaged in a pattern and habit of violating both Plaintiff's federal constitutional due process rights and the rights of all similarly situated Dorchester County citizens, that it enjoin Summerville from continuing its policy of quasi-secret zoning and award Plaintiff his costs and attorney fees; that it hear Plaintiff's breach of covenant claim against Defendants Hoa Van Nguyen and Xuan Thi Nguyen and award him actual and

consequential damages, and for such other and further relief as the Court shall deem just and proper.

Respectfully submitted,

Attorneys for Plaintiff

A handwritten signature in black ink, appearing to read "John R. Polito", is written over a horizontal line.

John R. Polito, Esq. (SC Bar #4491)

Attorney for Plaintiff

106 Aldrich Place

Goose Creek, SC 29445

Summerville, SC 29445

(843) 797-3234

johnpolito@comcast.net

Goose Creek, South Carolina
December 2, 2009

Although the Zoning Administrator had requested other business records, none were provided or had been provided to him.

7. The prior operator of the Equestrian Center, Charity Filmore, keeps six horses at the Equestrian Center, but is only charged for one horse at the rate of \$315.00 per month. Thus, Charity Filmore benefits directly from her services to the Equestrian Center, inasmuch as she is only required to pay for the care of one horse, although she boards five other horses at the Center.
8. Appellants presented testimony that the members of the Equestrian Center expect the members to pay for the care of their horses boarded there.
9. Those who board their horses at the Senrab Equestrian Center have the choice of either paying the requisite boarding fee in full or working at the Center and receiving a discount for their monthly boarding fees.
10. Of the ten horses and six ponies located and boarded at the Senrab Equestrian Center, none of the horses or ponies belong to any resident of the subdivision known as Senrab Farms.
11. Section 47-11-10, *et. seq.*, Code of Laws of South Carolina, (1976), as amended, requires a permit from the State Livestock-Poultry Health Commission for the operation of a public livestock market or an equine sales facility as is being operated on the Appellants' property. No such permit has been obtained. Failure to obtain such a permit, and the operation of an equine sales facility without the obtaining of the same, raises serious health and safety issues concerning the operation of this facility on the property of the Appellants.
12. Merely because the Senrab Equestrian Center being operated on the property of the Appellants does not make a profit is not determinative of whether or not commercial activity is taking place thereon. The Board notes that many businesses and commercial activities do not make a profit, yet are nonetheless commercial activities and business enterprises.
13. Although the Appellants do not operate the Senrab Equestrian Center, the Center is being operated upon property owned by them, and they are leasing their barn to the Center. Thus the Center is being operated on their property with their knowledge and consent.
14. There is nothing on the Senrab Equestrian Center website which would indicate that it is other than a for profit enterprise. There is no indication on the website that the Center is being operated as a club or a co-op. Rather, all indications from the website indicate that it is a commercial enterprise and business.

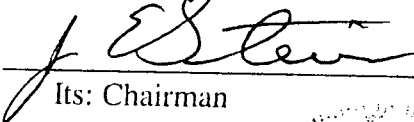
Based upon the foregoing Findings of Fact, the Board makes the following Conclusions of Law:

1. That the Appeal was timely requested by the Appellants.
2. That a quorum of the Zoning Board of Appeals was present for the appeal, inasmuch as six of the seven members of the Board were present to hear the appeal of the Appellants.
3. That the Board has jurisdiction to hear the appeal of the decision of the Zoning Administrator pursuant to the Dorchester County Zone and Land Development Ordinance 04-13 and pursuant to Section 6-29-780, *et. seq.*, Code of Laws of South Carolina, (1976), as amended.
4. That the Appellants' property bearing T.M.S. #136-00-00-183 is zoned R4, and such zoning category does not allow the operation of a business or commercial enterprise.
5. That the operation of the Senrab Equestrian Center upon the property of the Appellants constitutes a business and commercial enterprise, which is prohibited under R4 zoning.
6. That upon motion duly made and seconded, the Board voted unanimously (six in favor, none opposed) to affirm the cease and desist decision of the Zoning Administrator as encompassed in his letter to the Appellants dated June 25, 2009.
7. The Appellants are ordered to immediately cease and desist operating the business upon their real property designated with T.M.S. #136-00-00-183.

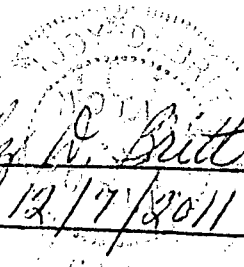
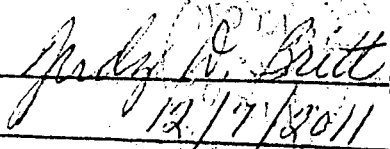
Based upon the foregoing Findings of Fact and Conclusions of Law, it is therefore the final decision and order of the Dorchester County Board of Zoning Appeals that the decision of the Zoning Administrator as more fully contained and set forth in his cease and desist letter of June 25, 2009, is hereby affirmed.

A copy of this decision shall be permanently filed in the office of the Board as a public record, and a copy hereof shall be delivered by certified mail to all interested parties.

Dorchester County Board of Zoning Appeals

By: 
Its: Chairman

Summerville, South Carolina
September 2, 2009



12/17/2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	Civil Action Number: 2009-CP-18-3315

Larry E. Kinard,	)
	)
Plaintiff,	)
	)
vs.	)
	)
Town of Summerville, Hoa Van Nguyen,	)
Xuan Thi Nguyen, Senrab Farm	)
Homeowners Association, Douglas S.	)
Richardson, Julie D. Richardson, and	)
Madeline A. Ingalls, d/b/a Thin Blue Line	)
Stables,	)
	)
Defendants.	)
_____	)

AMENDED COMPLAINT

Declaratory Judgment Actions

(Non-Jury)

2010 FEB 23 AM 11:30
 CLERK OF COURT
 DORCHESTER COUNTY

Pursuant to SCRCP 15(a), Plaintiff, Larry E. Kinard, by and through his undersigned attorney, respectfully Amends the Complaint to show that:

PARTIES

1. Plaintiff Larry E. Kinard (Kinard) is a citizen of Dorchester County, SC and resides at 217 Saddle Trail in Senrab Farm subdivision, near the Town of Summerville, on a two acre parcel known as TMS # 136-00-00-218 (combined Senrab Farm Lots F and G; see plat Exhibit B, incorporated by reference).

2. Hoa Van Nguyen and Xuan Thi Nguyen (Nguyens) are citizens and residents of Dorchester County and reside diagonally contiguous to Plaintiff, on the opposite side of the road at 125 Saddle Trail, upon a 5.4 acre parcel now known as TMS# 136-00-00-183 (see plat Exhibit A, incorporated by reference).

3. Douglas S. and Julie D. Richardson (Richardsons) are citizens and residents of Dorchester County and reside directly across the street from Plaintiff at 124 Saddle Trail upon a 1.18 acre Senrab Farm lot designated TMS# 136-00-00-222. They also own a 5.83 acre undeveloped Senrab Farm lot which sits between their home and the Nguyen's home (see plat Exhibit E, incorporated by reference).

4. On information and belief, in late 2009 Defendant Madeleine A. Ingalls (Ingalls) entered into agreements with the Nguyens to lease four acres of 125 Saddle Trail, including the barn, and an agreement with the Richardsons to lease their adjacent 5.83 acres designated as Tract B, for purposes of operating an equestrian center, doing business within Dorchester County as Thin Blue Line Stables. Pursuant to SCRCF 19(a)(2) Ingalls is added as a party having an interest relating to the subject of the action that could be impaired by its outcome.

5. Both Saddle Trail (the road dividing lands owned by Plaintiff and the Richardsons and Nguyens) and Senrab Blvd. (the subdivision's only exit road) are private roads deeded by the developers and common grantors to the Senrab Farm Homeowners Association (see attached deed Exhibit J, incorporated by reference). The HOA is added as a party pursuant to SCRCF 19(a)(2) in that the Nguyen's annexation petition filed with the Town of Summerville sought annexation of "all adjacent rights-of-way" (see attached petition Exhibit L, incorporated by reference) without making the HOA a party to the annexation, and Summerville annexation Ordinance 09-0901 (see attached ordinance Exhibit N, incorporated by reference) purports to have annexed the HOA's road without its consent. Additionally, the HOA has ownership, private road

rights, road repair maintenance contribution rights and covenant rights that may be impacted or impaired by the outcome of this action.

6. The Town of Summerville is an incorporated South Carolina municipality within Dorchester County. At all times referenced herein the Town acted through its seven elected Town Council members, Ricky Waring, Walter Bailey, Aaron Brown, Mike Dawson, Kima Garten-Schmidt, Bob Jackson and Dennis Pieper, and its Planning Director, all of whom are citizens and residents of the Town of Summerville.

FACTS

7. Prior to Town of Summerville annexation/zoning Ordinance 09-0901 dated October 14, 2009 (Exhibit N), all properties referenced above were located in Dorchester County within zoning districts that Dorchester County Council had zoned residential.

8. In 1992 the land owning party's common grantors, James and Delene Barnes (Barnes), commenced the process of carving up their 49.7 acre farm that had become surrounded on three sides by residential properties. As developers, their initial 1992 division created two lots, Tract A, a 3.6 acre lot containing the old farm house, and Tract B, a 1.9 acre tract located behind the house, that then contained the farm's only other existing structure, a barn (see Exhibit A).

9. On October 1, 1992 the Barnes deeded both Tract A and B to James and Helen Madison (Deed Book 1051, Page 45), while simultaneously executing a lot access easement (see attached "Grant of Easement" Exhibit F, incorporated by reference) and "Reciprocal Covenants" (see attached covenants Exhibit G, incorporated

by reference) .

10. The simultaneous Reciprocal Covenants (Exhibit G) state in relevant part that:

(a) "Purchasers are acquiring Tracts A and B, which shall be subject to the covenants that they be used only for residential or agricultural purposes and that no trailers, mobile homes or manufactured housing, no dog kennels; and no inoperable motor vehicles be placed, used or allowed upon them."

(b) "The covenants burden Tracts A and B for the benefit of the balance of Sellers' 49.7 acre parcel. "

11. The simultaneous Grant of Easement (Exhibit F) impose mutual road repair and maintenance obligations, grant the Barnes the right to relocate the road easement, and stated relevant in part:

(a) "This easement shall be used by Purchasers and their heirs and assigns for access between Tracts A and B and Central Avenue Extension (SR-18-611)."

(b) "Purchasers' rights are non-exclusive, Sellers reserving for themselves and their heirs and assigns, the right to use the easement strip for access to the remaining portions of the 49.7 acre parcel."

(c) "The easement strip is not, however, intended for use as a community road for the benefit of persons owning property not carved out of the Sellers' 49.7 acre parcel, but is an easement solely for the benefit of the property being acquired by the Purchasers."

12. On August 29, 1997. the Barnes filed a plat dated July 5, 1997 entitled, "Plat Showing Eleven Lots of Senrab Farms" (see Exhibit B). Senrab is Barnes spelled backwards. The initial subdivision plat abandoned the 1992 west to east road easement and created an ingress/egress path due north from across Saddle Trail, onto a new exit road Senrab Blvd, the subdivision's only entry/exit path to Central Avenue (Exhibit B).

13. On September 11, 1997 the Barnes filed "single-family residential" restrictive covenants that initially were impressed upon 6 of the plat's 11 lots, including Plaintiff's (see restrictive covenants Exhibit H, incorporated by reference).

14. The 1997 subdivision restrictions contain in part the following relevant provisions:

(a) Paragraph 3. Enforcement of these covenants shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation hereof or to recover damages.

(b) Paragraph 5. "The lots are known and designated and shall be used as single-family residential building lots ..."

(c) Paragraph 13. "No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, and specifically including the following:" "c) It shall be permissible for the owner of any lot to keep up to one (1) horse on that lot so long as the rear portion of the lot is fenced for such purpose and such rear portion contains a minimum area of twenty-five thousand (25,000) square feet." "j) The only signs permitted on the lots are those reading

'For Sale' or 'For Rent' or appropriate signs of the building contractor during the period of construction."

15. The Barnes commenced selling the 1 to 2 acre Senrab Farm residentially restricted lots in 1997 (Deed Book 1821, Page 342).

16. Plaintiff and his wife purchased their retirement home lot on January 21, 1998 (Lot F) and almost immediately commenced construction, and purchased adjacent Lot G in 1999, both of which were later consolidated into a single lot.

17. On January 29, 1998 the Barnes' filed a plat which subdivided the 14.19 acres across the street from Plaintiff's lot into two lots, Tract L a 7 acre lot and Tract M a 6.92 acre lot (see plat Exhibit C, incorporated by reference).

18. On June 18, 1998 the Barnes' filed a plat further subdividing Tract M of "Senrab Farms Subdivision" into 5 additional lots (see plat Exhibit D, incorporated by reference), bringing the total number of Senrab Farms lots identified on plats to seventeen.

19. On December 23, 1998 Douglas S. Richardson and Julie D. Richardson (Richardsons), purchased the seven (7) acre lot known as "Tract L, Senrab Farms" (Deed Book 1915, Page 263), with their deed reciting in part: "SUBJECT TO: Restrictive Covenants and amendments thereto recorded in the RMC Office for Dorchester County in Book 1821, Page 331, Book 1861, Page 95 and in Book 1915, Page 263."

20. Reference to Book 1821, Page 331 made Tract L subject to the original eleven (11) pages of Senrab Farm subdivisions "Restrictive Covenants" dated

September 8, 1997 (Exhibit H). Reference to Book 1915, Page 263 made Tract L subjected to special "Amendments To Restrictions," executed on February 25, 1998 (see amendment to restrictions Exhibit I, incorporated by reference), which applied only Tract L, the subdivision's largest lot.

21. Paragraph 5 of Tract L's 1998 Amendments states in part that:

(a) Paragraph 5: "The property shall be designated and shall be used as a single family residential building tract..."

(b) Paragraph 8: "It shall be permissible for the Purchaser, and his/her successors and assigns, to keep up to six (6) horses on the above described property."

(c) Paragraph 6: "It shall be permissible for the Purchaser to subdivide the property described herein as set out in Paragraph 5 of the restrictive covenants, dated September 9, 1997 and recorded in the RMC Office for Dorchester County in Book 1821, Page 331 in so that such subdivided lot shall be used as a single family residential lot."

22. The Nguyens purchased Tract A and B from Ms. Madison on March 12, 2003 (Deed Book 3476, Page 210). On February 1, 2005, they filed a corrected deed asserting that "both tracts to be combined and taxed under TMS #136-00-00-183," (Deed Book 4533, Page 268), the original TMS # for Tract A, containing the Barnes' old farm house.

23. On April 1, 2003, the Richardsons recorded a plat subdividing Tract L into Tract A, a 1.18 acre lot on which their home at 124 Saddle Trail is located, and Tract B,

the 5.83 acre balance of original Tract L (see plat Exhibit E, incorporated by reference).

24. Richardson's April 1, 2003 subdivision of Tract L destroyed the subdivided lot's amended covenant entitlement to more than one horse.

25. On June 21, 2005. Mr. Barnes' deeded both subdivision private roads - Saddle Trail and Senrab Blvd - to the HOA (see Exhibit J).

26. Over time, vehicle, trailer, horse rider and visitor traffic to the Nguyens property gradually increased, and with it came increased noise, litter, riding dust clouds, and damage to the private roadway.

27. Plaintiff repeatedly voiced concerns to HOA President Doug Richardson. He also complained directly to Mr. Nguyen during a clean-up meeting held on Senrab Blvd. his belief that a business was being operated upon his land.

28. Over time Plaintiff noticed the number of horses on Doug Richardson's lot gradually increasing, with the lot across from his home often filled with horse manure.

29. At least as early as 2007 Plaintiff started reporting to Dorchester County officials his suspicions and beliefs that a business was being operated on the Nguyen's property. County Administrator Ed Carter advised Plaintiff that if he could show that money was changing hands in a residential zoning district that he would shut the business down.

30. On November 25, 2008 the County Zoning Administrator wrote Plaintiff asserting that the county's investigation "found no evidence of money changing hands" and the operation is a "Co-op for the care, maintenance and riding of horses and it was determined not to be a business."

31. In late January 2009 Dorchester County alerted Plaintiff that residential parcels along Central Avenue had been annexed into the Town. Plaintiff discovered that these nearby lots had been rezoned general business by the Town.

32. On February 11, 2009, Plaintiff stood before Summerville Town Council and asked Council to end the practice of quasi-secret annexation rezoning. He complained that eight Central Avenue parcels near his home had been annexed and that the annexation ordinances had rezoned Dorchester County's R4 classification to Summerville Town B3 (General Business) without any newspaper notice, without on-site conspicuous notice, without a zoning hearing, and without an opportunity to be heard.

33. In February 2009, the Summerville Town Planner told the Summerville Journal Scene that when dealing with an annexation the Town can attach any zoning classification it wants.

34. On February 27, 2009, Plaintiff gave written notice to Lisa L. Wallace, the Town Clerk and Assistant Administrator, requesting that she "Please place my name on the mailing list for notification of all requests for zoning changes in my neighborhood."

35. On February 26, 2009 and May 13, 2009, Plaintiff wrote Dorchester County's Zoning Administrator reporting a horse riding, stabling and sales business at 125 Saddle Trail, doing business as Senrab Farms Equestrian Center, upon a lot zoned R4, and demanding enforcement of the County's zoning ordinance. Plaintiff presented photo evidence of riding lesson dust clouds, overgrazed fields filled with birds eating insects from un-removed horse droppings, vehicle and trailer traffic, images of the Center's Internet website boasting that it operates "in the middle of Senrab Farm Subdivision in

Summerville, SC," photos of horses for sale and sold via the Internet, and a satellite view of 125 Saddle Trail's 5.4 acres, showing the Nguyen's 2,500 square foot home, their large front yard, their swimming pool, the barn and what appears to be less than one acre of of pasture land for the 16 horses present on the Nguyen's lot in July 2009.

36. On June 25, 2009, the Dorchester County Zoning Administrator wrote the Nguyens notifying them that selling horses and operating a riding lessons business was a violation of 125 Saddle Trail's R-4 zoning classification. They were requested to "immediately cease and desist any further business activity including sales or marketing of horses, riding lessons, etc."

37. On July 8, 2009, Hoa Nguyen filed an appeal. The Nguyen's listed 16 horses present at 125 Saddle Trail, with total July operating expenses of \$5,710 and stabling and riding receipts of \$3,305.

38. The contested appeal was heard before six members of the Dorchester County Board of Zoning Appeals on August 25, 2009. Both the Nguyens and Plaintiff were present and represented by counsel.

39. The Nguyens argued that the equestrian center was not a business but a club. Doug Richardson spoke in support of the Nguyens, acknowledging that he leased Tract B (Exhibit E) to the equestrian center.

40. Plaintiff presented satellite evidence suggesting less than one acre of pasture land at 125 Saddle Trail for sixteen horses, and raised subdivision health concerns associated with the total waste production by sixteen horses, waste runoff concerns associated with badly overgrazed fields and being in a flood zone, birds and

insects feeding on horse droppings in unkept fields across from Plaintiff's home, health concerns associated with riding lesson dust clouds, and the odors, flies and insects that overgrazing compelled Plaintiff to endure.

41. The Board found that 125 Saddle Trail (TMS #136-00-00-183) is zoned R4, that the Nguyen's were being paid \$1,400 per month for the use of their barn by an enterprise "being held out on the internet as Senrab Equestrian Center where it advertises horse sales, horse jumping, dressage and horse care services. Appellants also presented testimony that riding lessons were available." It found that of "the ten horses and six ponies located and boarded at the Senrab Equestrian Center, none of the horses or ponies belong to any resident of the subdivision known as Senrab Farms." The Board found "serious health and safety issues" associated with the Center not having a required "permit from the State Livestock-Poultry Health Commission" for a equine sales facility. After hearing the appeal the Board voted unanimously to affirm the Zoning Administrator's cease and desist request. Its order stated, "Appellants are ordered to immediately cease and desist operating the business upon their real property designated with T.M.S. #136-00-00-183" (see "Decision and Order of the Dorchester County Board of Zoning Appeals, Exhibit K, incorporated by reference).

42. The Board of Zoning Appeals written order was signed on September 2, 2009. A certified copy was attached to this action's original complaint, which is incorporated by reference (see attached Exhibit K).

43. The Board's order was not appealed.

44. By October 14, 2009, all horses and trailers had been removed from 125

Saddle Trail and all business operations had ceased.

45. Unknown to Plaintiff, the Nguyens filed a Petition for annexation into the Town of Summerville.

46. Although the Nguyens dated the petition August 4, 2009, upon belief, the correct petition date is September 4, 2009, just two (2) days after the Dorchester County Board of Zoning Appeals written order was signed, seven (7) days prior to Summerville Town Council approving first reading of the petition, and eight (8) days shy of the minimum 15 days zoning change notice required by Town Code Section 32-11 and SC Code Section 6-29-760. If the August 4, 2009 date is correct it would mean that the Nguyens filed their Town annexation petition 21 days prior to having their County zoning appeal heard.

47. The Petition sought annexation of 125 Saddle Trail, TMS# 136-00-009-183 and "all adjacent rights-of-way" (Exhibit L). Senrab Farm HOA did not sign the Petition.

48. Section 1 of Summerville annexation Ordinance 09-0901 dated October 14, 2009 claims to annex 125 Saddle Trail and "all adjacent rights of way" (Exhibit N).

49. The Planning Department Staff Report characterizes the lot as being agricultural in character when 3.63 acres (Tract A) is a residential lot (see staff report Exhibit M, incorporated by reference). The report fails to note that the barn sits upon the original Tract B (see Exhibit A), a 1.85 acre lot that the Nguyens, the annexation petitioners, requested be merged into a residential lot and single TMS number in 2005.

50. The Staff Report recommends Agricultural Conservation (AC) zoning (Exhibit M).

51. Town Code Section 32-134 reserves AC for "areas" where there is five or more acres of land that is either undeveloped or used for agriculture or farming.

52. The Town's new Comprehensive Plan, adopted by Summerville Town Council on August 12, 2009, indicates that agricultural and forestry classifications should be reserved for areas of greater than 12 acres per tract (see page 12).

53. Original Tract B, upon which the old barn sits, is only 1.854 acres.

54. AC zoning permits "certain commercial operations" including riding lessons, horse stabling and accessory uses customarily incidental thereto, without imposing any limit upon the number of horses or volume of business traffic.

55. The Staff Report asserts that the "property owners have requested AC zoning designation because they have horses and stables" (Exhibit M).

56. On September 9, 2009 the Nguyen's did not own any horses.

57. The Staff Report asserts that the "AC zoning classification is the only zoning classification that allows the use of horses and stables" (Exhibit M).

58. Section 4-5(b) of the Town Code permits "a private horse pen or horse stable wherein not more than two equines are kept" in any zoning classification within the Town so long as they are not located closer than 60 feet to any residence or within 10 feet of any lot line.

59. The Staff Report notes that a lot beside 125 Saddle Trail is zoned B-3 (Exhibit M). It does not advise Council that the balance of the lots bordering 125 Saddle Trail are residential.

60. The Staff Report does not disclose that Dorchester County had zoned 125

Saddle Trail residential (Exhibit M).

61. The Staff Report fails to advise Council that the Nguyens reside at 125 Saddle Trail upon lands about to be zoned agricultural conservation or that they have a swimming pool, garage and large front yard (see Exhibit A).

62. The Staff Report asserts that the "property is not a formal part of this development," Senrab Farm (Exhibit M).

63. Town Council was not made aware that 125 Saddle Trail and Senrab Farm subdivision share 1992 mutual reciprocal covenants that limit land uses to residential or agricultural, that they share a private road, and share mutual obligations to repair the road.

64. On September 9, 2009, just 7 days after the Dorchester County Board of Zoning Appeals issued its written cease and desist order, Summerville Town Council approved first reading of the Nguyen's Petition to annex 125 Saddle Trail and all adjacent rights-of-way into the Town, and that the property be Zoned "Agricultural Conservation ("AC"), with second and final reading on October 14, 2009.

65. At no time during the process of annexing and zoning 125 Saddle Trail "AC" did the Town of Summerville publish notice in any newspaper or require that notice be posted on or near 125 Saddle Trail.

66. At no time during the process of annexing and zoning 125 Saddle Trail "AC" did the Town of Summerville adhere to or follow any provision of Summerville Town Ordinance 32-11 entitled Amendments.

67. Summerville Town Code Section 32-11(2)(c) provides that written notice of

amendments of the Town's boundaries "must be mailed to all interested groups requesting notice."

68. On November 5, 2009 Plaintiff again wrote Assistant Administrator Wallace reminding her of his February 2009 request. On November 9, 2009, Ms. Wallace replied stating, "According to the Planning and Zoning Department of the Town of Summerville, we do not mail individual notices for notification of requested zoning changes."

69. At no time during the process of annexing and zoning 125 Saddle Trail "AC" did the Town of Summerville provide Plaintiff with notification of the proceedings.

70. Zoning 125 Saddle Trail to "AC" amended the Town of Summerville's zoning map.

FOR A FIRST CAUSE OF ACTION
Declaratory Judgment – Unlawful Annexation

71. Allegations prior to the First Cause of Action are incorporated by reference.

72. Annexations under SC Code Section 5-3-150(3) require a "petition signed by all persons owning real estate in the area requesting annexation."

73. The HOA owns all adjoining rights-of-way (Saddle Trail and Senrab Blvd – see Exhibit J).

74. The HOA did not sign the Petition.

75. Minutes from the October 14, 2009 Summerville Town Council meeting assert that Council voted to annex Dorchester County TMS #136-00-00-083, which is the TMS # for 213 Knotty Pine Drive, not 125 Saddle Trail.

76. Town Council was induced to vote for this annexation based upon multiple misrepresentations, omissions and a failure to disclose to Council that the Dorchester County Board of Zoning Appeals had found the property to be residential and ordered the Nguyens to cease and desist operating a business, or were they advised of the Petitioner's annexation motivation, to run a commercial business within a residential subdivision.

77. Plaintiff prays that the Court inquire into this matter and declare Section 1 of Summerville Ordinance 09-0901 (see ordinance Exhibit N, incorporated by reference) unlawful and void, and should the Town continue to oppose this claim that Plaintiff, a retired disabled veteran, be awarded reasonable attorney fees pursuant to S.C. Code of Laws §15-77-300, costs and such other and further relief as the Court deems proper.

FOR A SECOND CAUSE OF ACTION
Declaratory Judgment – Unlawful Zoning

78. Allegations prior to the First Cause of Action are incorporated by reference.

79. It is the Town of Summerville's custom and practice to ignore Dorchester County zoning classifications when assigning a Town zoning classification at the time of annexation.

80. It is the Town of Summerville's custom and practice not to require compliance with Town Ordinance Section 32-11, entitled Amendments (see Section 32-11 Exhibit P, incorporated by reference), when assigning zoning classifications at the time of annexations.

81. It is the Town of Summerville's custom and practice that Town Code Section

32-10, entitled Annexations (see Section 32-10 Exhibit P, incorporated by reference), is the lone and exclusive zoning related Ordinance which it must follow when assigning a Town zoning classification at the time of annexation.

82. At second and final reading on October 14, 2009 the Town amended its zoning map by adding 125 Saddle Trail as an AC zoned property.

83. The Town did not follow any of the notice, planning commission review and public hearing provisions of Town Ordinance 32-11 (Exhibit P) or of S.C. Code of Laws § 6-29-760 (Exhibit O) when assigning 125 Saddle Trail the Town zoning classification "AC," which provisions are required to be followed any time the Town amends its zoning map.

84. Alternatively, should the Town contend that Town Code Section 32-10 entitled "Annexations" does not require notice when assigning zoning (see Exhibit P), that Section 32-10 violates both notice and hearing provisions of S.C. Code § 6-29-760 (Exhibit O) and adjacent landowner procedural and substantive due process notice and hearing rights as protected by Article 1, Section III of the South Carolina Constitution, and Town Code Section 32-10 is thus both unlawful and unconstitutional.

85. Plaintiff specifically requested actual notice of any zoning changes made in his neighborhood pursuant to both the Town zoning ordinance and the State zoning statute and was denied notice, when the property being zoned was adjacent to Plaintiff.

86. Plaintiff asserts that the Town's failure to provide actual notice was either grossly negligent or intentional. If discovery shows that the denial was purposeful, that Plaintiff gives notice that he will move to amend to file appropriate claims.

87. Summerville Town Code Section 32-134 reserves an Agricultural Conservation classification for "areas generally of five acres or more that are undeveloped or used for agricultural, farming or conservation."

88. The Nguyen's lot contains their 2,500 square foot home, that the County had zoned residential, and does not contain any five acre area of undeveloped, agricultural, farm or conservation land.

89. Assigning the Nguyen's lot an Agricultural Conservation zoning classification violates both the Town's zoning ordinance and its comprehensive plan, and constitutes spot zoning of a residential lot located in the heart of a residentially restricted subdivision.

90. Designating the Nguyen's home and residence as undeveloped, farm or agricultural land misrepresents the land use existing at the time of purported annexation and zoning.

91. Both the Town's zoning ordinance and comprehensive plan attempt to protect and preserve residential subdivisions by excluding commercial businesses that would clearly attract significant customer vehicle traffic, including horse trailers, and businesses that could present significant health hazards.

92. The AC zoning classification was procured through misrepresentation, omissions concealment and/or mistakes. Critical facts associated with this zoning request were kept hidden from Council, including failure to disclose the business cease and desist order of the Dorchester County Board of Zoning Appeals.

93. The Town of Summerville, acting under color of law, has established a habit,

custom and practice of denying Plaintiff and all similarly situated property owners residing adjacent to lands annexed into the Town of Summerville of their statutory and constitutional rights to notice, due process and an opportunity to be heard prior to changing and affecting the legal use (zoning classification) of lands adjacent to their lands.

94. The Town has shown total indifference to the procedural and substantive due process rights guaranteed Plaintiff and all similarly situated citizens of Dorchester County.

95. Plaintiff asks the Court review this matter, make findings and declare that:

(a) The Town of Summerville had a practice, habit and policy of conducting quasi-secret annexation zoning that amended the Town's zoning map without holding an advertised public hearing with at least 15 days newspaper notice, that Town changed the county's zoning classification without posting on-site conspicuous notice, that it did so in passing Ordinance 09-0901 in violation of S.C. Code Section 6-29-760, and constitutionally protected substantive and procedural due process rights; and that the Town be enjoined from violating the state zoning statute and minimum due process guarantees, and that in this instance Section II of Town Ordinance 09-0901 be declared invalid, unlawful and void;

(b) As applied, Town Code Section 32-10 is in violation of minimum due process standards outlined in SC Code Section 6-29-760 and is both unlawful and offends minimum due process guarantees of both the South Carolina and

U.S. Constitutions;

(c) The Town Code Section 32-11(2)(c) requires that zoning change notice be sent to persons requesting notice, and SC Code of Laws Section 6-29-760 declares that when advance notice is requested that it "must" be sent. In that the Town violated the law by failing to notify Plaintiff that his neighbor was seeking zoning authorization to conduct open business operations, Section II of Ordinance 09-0901 is invalid, void and in violation of law.

(d) 125 Saddle Trail is the residence of the Nguyens and does not contain the minimum acreage and use characteristics necessary to qualify for an Agricultural Conservation classification, does not comport with the Town's recently enacted master plan, permits a commercial business operation in the heart of a residential subdivision, constitutes unlawful spot zoning, thus making Section II of Town Ordinance 09-0901 invalid, unlawful and void; and,

(e) Serious and numerous misrepresentations and omissions were made in representing the nature of this annexation/rezoning to the Town, including failure to disclose zoning judicial findings ordered just seven days earlier. Taken as a whole, passage of Town Ordinance 09-0901 was procured through failure to inform Town Council as to foundation, basic and critical facts needed to make an informed decision, in that 125 Saddle Trail, as the residence of the Nguyens, does not contain the minimum acreage and use characteristics necessary to qualify for an Agricultural Conservation classification, and thus Section II of Ordinance 09-0901 is invalid and void.

96. Plaintiff asks that the Court review this matter and declare Section 2 of Summerville Ordinance 09-0901 unlawful and void, enjoin the Town from future annexation rezonings without compliance with due process and the minimum safeguards outlined in SC Code Section 6-29-760, declare the AC zoning classification both in violation of the Town's master plan and illegal spot zoning, award Plaintiff, a retired disabled veteran, reasonable attorney fees pursuant to S.C. Code of Laws § 15-77-300, his costs, and for such other and further relief as the Court deems proper.

FOR A THIRD CAUSE OF ACTION
(Breach of Covenants and Easement Rights Against the Nguyens)

97. Allegations prior to the First Cause of Action are incorporated by reference.

98. The Nguyens had a legal duty pursuant to Reciprocal Covenants executed by their title predecessors, that Tracts A and B shall "only be used for residential or agricultural purposes" (Exhibit G)

99. The Nguyens have breached their land use agreement by using their land for commercial business purposes.

100. Defendants' breach has damaged the quiet and solitude enjoyed by Plaintiff when he purchased his Senrab Farm lots by causing him to endure disruption of the subdivision's tranquility and the diminished quality of residential life by compelling him to endure substantial business traffic including arrival and departure of horse trailers and lesson riders; visual blight at compelling him to live with multiple trailers occupying his front porch vista, some badly rusted, in violation of the reciprocal covenant's prohibition against trailers; frequent dust clouds created by horse riding

lessons inside Defendant's circular dirt riding ring that kept Plaintiff's home and property covered in dirt; the sight, odors, insects and health risks associated with un-kept and seriously overgrazed fields; and having to endure and pick-up litter thrown by Defendants' business customers as they enter or leave Defendants' property.

101. The irreparable harms inflicted include diminution in the value of Plaintiff's home and the worth of his retirement and quality of life.

102. Additionally, Plaintiff is a member of the Senrab Farm's Homeowners Association and the HOA holds title to all Senrab Blvd. Defendants have violated the scope of their Grant of Easement of November 8, 1992 (Exhibit F) by transforming a private subdivision road into a "community road for the benefit of persons owning property not carved out of the Sellers' 49.7 acre parcel."

103. Plaintiff seeks a judicial declaration and finding that commercial horse stabling, grazing and riding lessons within the subdivision are not farming or agriculture and are in violation of the covenants, that the easement forbids the Nguyens from transforming Saddle Trail and Senrab Blvd into public roads in support of t commercial equestrian center business traffic, that they have breached the scope of their easement, and that the Court issue an injunction enjoining use of 125 Saddle Trail for commercial business equestrian operations, or use of their private subdivision easement for commercial business equestrian center traffic.

FOR A FOURTH CAUSE OF ACTION

(Breach of Covenants by Douglas S. Richardson and Julie D. Richardson)

104. Allegations prior to the First Cause of Action are incorporated by reference as well as allegations 100 and 101 above.

105. The Richardsons leased use of their 5.83 acre tract known as Tract B to the operator of Senrab Equestrian Center during 2009, whose equestrian center operations were based upon the Nguyen's lands at 125 Saddle Trail.

106. On information and belief, the Richardsons currently lease Tract B to Madeline A. Ingalls, doing business upon Nguyen lands as Thin Blue Line Stables, in support of equestrian business operations.

107. Both sets of attached Restrictive Covenants (Exhibits H & I) require that the Richardson's lots, including Tract B, "shall be used as single-family residential building lots ..."

108. The leasing of restricted lands in support of commercial business operations violates the express terms of the covenants. Additionally, it threatens a total breakdown, destruction and abandonment of all subdivision restrictions. If lot use is no longer restricted to single-family residential purposes, there is nothing preventing all Senrab lot owners from using their lots for commercial business purposes.

109. The Richardson's receive money in return for leasing Tract B.

110. The leasing of residentially restricted lands for non-residential purposes violates Senrab Farms restrictive covenants requiring that lots only be used for residential purposes (Exhibits H & I).

111. On information and belief, the Richardsons do not own any of the horses that daily occupy Tract B.

112. On information and belief, no Senrab Farms lot owner owns any of the horses that daily occupy Tract B.

113. Paragraph 13(c) of the original 1997 subdivision Restrictive Covenants (Exhibit H) became fully applicable to Tract B after the Richardsons subdivided their lot in 2003 (plat Exhibit E). Paragraph 13(c) states in part: "It shall be permissible for the owner of any lot to keep up to one (1) horses ..."

114. The Richardsons have violated and continue to violate Paragraph 13(c) by often having 6 horses on Tract B and sometimes more.

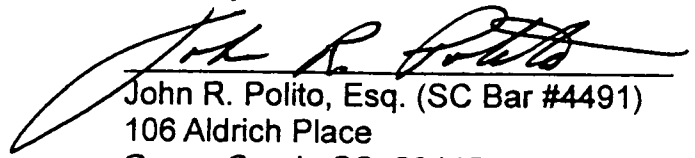
115. Plaintiff requests that the Court inquire into this matter, declare the Richardsons in breach of both subdivision residential land use restrictions and for having more horses than permitted by the covenants, and enjoin the Richardsons from use of Tract B for other than residential purposes, for commercial equestrian purposes, and from having more horses than permitted under the covenants, and for such other and further relief as the court deems proper.

WHEREFORE Plaintiff prays that the Court hear and determine these declaratory judgment claims and declare both the Town's annexation and AC zoning of 125 Saddle Trail unlawful and void; that it declare Town Code Section 32-10 (as applied) in violation of law and unconstitutional, that it enjoin the Town from engaging in quasi-secret annexation zoning without providing the minimum notice and due process safeguards outlined in SC Code Section 6-29-760 and as required by the SC and U.S. constitutions, that Plaintiff be awarded his costs and attorney fees pursuant to S.C. Code of Laws §15-77-300; that it hear Plaintiff's breach of covenant and easement use claims against the Nguyens and Plaintiff's covenant claims against the Richardsons and declare the parties rights and breaches, enjoin use of protected lands for commercial

business purposes, enjoin commercial business equestrian activities, enjoin horse use beyond the covenant's contractual limitations, enjoin use of Senrab Farms private subdivision roads by commercial business traffic traveling to commercial business enterprises within Senrab Farms, for Plaintiff's costs, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

Attorney for Plaintiff

A handwritten signature in black ink, appearing to read "John R. Polito", is written over a horizontal line.

John R. Polito, Esq. (SC Bar #4491)

106 Aldrich Place

Goose Creek, SC 29445

(843) 797-3234

johnpolito@comcast.net

Goose Creek, South Carolina
February 20, 2010

- NOTES:
- 1) AREA WAS DETERMINED BY THE COORDINATE METHOD.
 - 2) THIS PROPERTY IS LOCATED IN BLOCK 2, ZONE C, SEE THE COMMUNITY (55088 0235) D) EFFECTIVE DATE: JANUARY 8, 1982.

LEGEND:

--- DENOTES FROM PREL. SET (1/7 REAM)

--- DENOTES FROM PREL. FOUND

--- DENOTES CONC. MONUMENT SET (7' x 7')

REFERENCE:

PLAT BY H.M. FOSTER, DATED APRIL, 1957 & MARCH 1982 (NOT RECORDED)

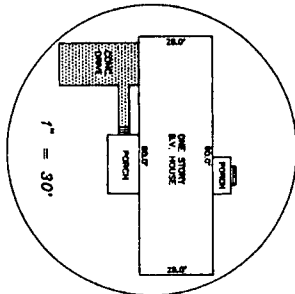
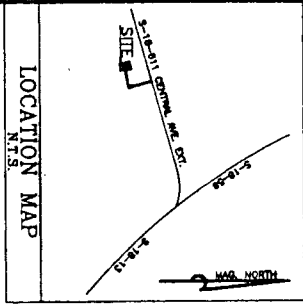
PLAT BY H.M. FOSTER, DATED DECEMBER 28, 1981 (NOT RECORDED)

PLAT BY H.M. FOSTER, DATED APRIL, 1957 & RECORDED IN PLAT BOOK 18, AT PAGE 287.

THIS PROPERTY IS ABOUT TO BE CONVERTED TO JAMES J. MADSON, III AND HELEN R. MADSON

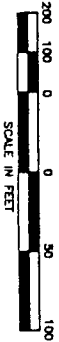
CANE BREAK APARTMENTS
A LIMITED PARTNERSHIP
J.M.S. 186-00-00-118

LINE BEARING DISTANCE
1 N 74°18'47" E 50.00'



PLAT SHOWING THE SUBDIVISION
OF LAND OWNED BY
JAMES M. BARNES &
DELENE B. BARNES
LOCATED NEAR SUMMERVILLE
DORCHESTER COUNTY, SOUTH CAROLINA
JUNE 5, 1992

SCALE: 1" = 100'

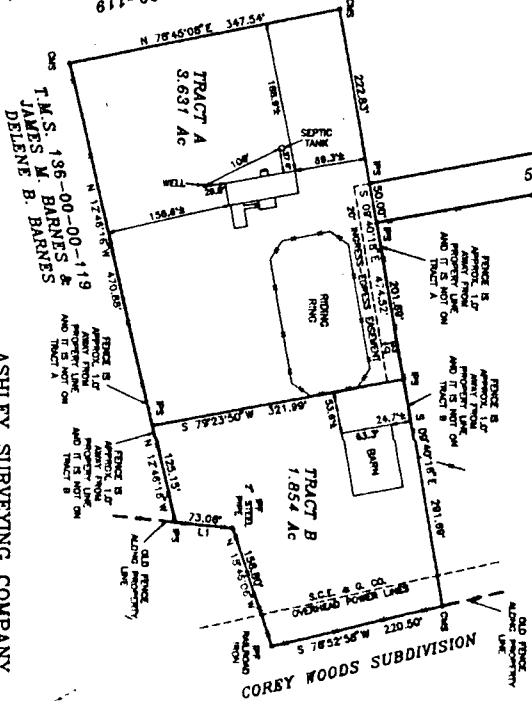


Paul C. Dawson, Jr. S.C. REG. 16571

T.M.S. 186-00-00-119
JAMES M. BARNES &
DELENE B. BARNES

T.M.S. 186-00-00-119
JAMES M. BARNES &
DELENE B. BARNES

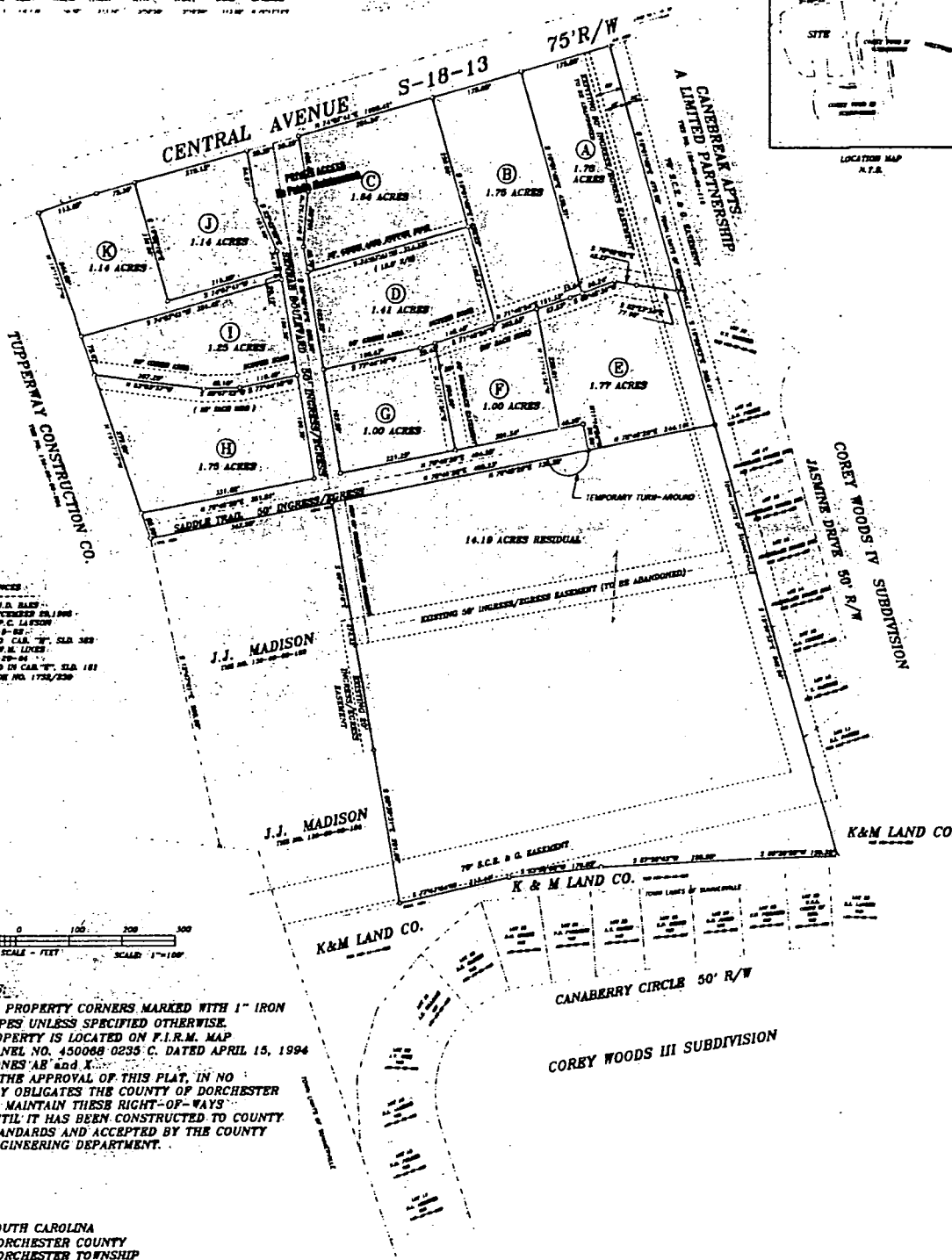
T.M.S. 186-00-00-119
JAMES M. BARNES &
DELENE B. BARNES



CORREY WOODS SUBDIVISION

ASHLEY SURVEYING COMPANY
SURVEYED & PLATTED BY
521 COUNTRY ROAD SUMMERVILLE, SC 29405
PH. (803) 871-4416 FAX. (803) 871-0538
DISK E109, FILE M45

FILED-RECORDED
J-28
MAR 23 1997



- REFERENCES
- 1.) PLAT BY J.A. BATES
DATED DECEMBER 20, 1986
 - 2.) PLAT BY P.C. LASSON
DATED 8-9-88
RECORDED CAR. "M", CLR. 383
 - 3.) PLAT BY P.M. LICKS
DATED 8-29-84
RECORDED IN CAR. "M", CLR. 181
 - 4.) DEED BOOK NO. 1728/229

- NOTES:
- 1.) ALL PROPERTY CORNERS MARKED WITH 1" IRON PIPES UNLESS SPECIFIED OTHERWISE.
 - 2.) PROPERTY IS LOCATED ON F.I.R.M. MAP PANEL NO. 450068 0235 C. DATED APRIL 15, 1994 ZONES AB and X.
 - 3.) BY THE APPROVAL OF THIS PLAT, IN NO WAY OBLIGATES THE COUNTY OF DORCHESTER TO MAINTAIN THESE RIGHT-OF-WAYS UNTIL IT HAS BEEN CONSTRUCTED TO COUNTY STANDARDS AND ACCEPTED BY THE COUNTY ENGINEERING DEPARTMENT.

SOUTH CAROLINA
DORCHESTER COUNTY
DORCHESTER TOWNSHIP
JULY 5, 1997
JOB NO. 97-228

PLAT SHOWING ELEVEN LOTS OF
SENRAB FARMS
A SUBDIVISION OWNED BY
JAMES M. BARNES AND DELENE BARNES

At: George Tupper
PH White Fence
Saville, SC 29483



Handwritten signature and date: 8/1/97

FILED PLAT APPROVED
Landing Field/Field
JULY 15, 1997 (S.E.)
DORCHESTER COUNTY
PLANNING DEPARTMENT
APPROVED 8/2/97

ASSOCIATED SURVEYORS AND ENGINEERS
P.O. BOX 8, SUMMERVILLE, S.C. 29484
59-1061

LOCATION MAP
N.T.S.

TRACT 'N'
ROBERT C.
AND
JUDY M. LUTES
TBS NO.
130-00-00-210

TRACT 'G'
JAMES M. BARNES
AND
DELENE BARNES
TBS NO.
130-00-00-217

TRACT 'F'
JAMES M. BARNES
AND
DELENE BARNES
TBS NO.
130-00-00-218

TRACT 'E'
JAMES M. BARNES
AND
DELENE BARNES
TBS NO.
130-00-00-219

0.17 ACRES
IN 25'
EGRESS-INGRESS
EASEMENT

TRACT 'L'
7.00 ACRES

TRACT 'M'
6.92 ACRES

LOT 18
PERRY
TBS NO.
130-07-04-012

LOT 17
NORTLAKE
TBS NO.
130-11-14-008

LOT 16
NORTLAKE
TBS NO.
130-11-14-008

LOT 15
NORTLAKE
TBS NO.
130-11-14-008

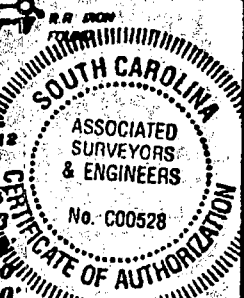
LOT 14
NORTLAKE
TBS NO.
130-11-14-008

LOT 13
NORTLAKE
TBS NO.
130-11-14-008

LOT 12
NORTLAKE
TBS NO.
130-11-14-008

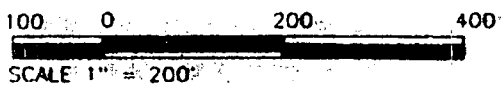
LOT 11
NORTLAKE
TBS NO.
130-11-14-008

COREY WOODS N/S/O



COURSE	BEARING	DISTANCE
L1	N 78°45'26"E	80.83
L2	S 87°28'43"W	10.00
L3	N 78°45'26"E	25.00
L4	S 80°19'42"W	25.00

CURVE	RADIUS	TANGENT	LENGTH	DELTA	DEGREE	CHORD	CLEARANCE
CI	55.85'	100.00'	110.74'	100°53'30"	114°38'30"	88.85'	S 80°18'19"W
CII	55.85'	54.85'	44.84'	53°04'30"	114°38'30"	44.70'	N 37°47'47"W



SOUTH CAROLINA
DORCHESTER COUNTY
DORCHESTER TOWNSHIP

DECEMBER 29, 1997
JOB NO. 97-394

REVISED JANUARY 27, 1998, TO ADD CUL-DE-SAC

PLAT SHOWING OF 14.19 ACRES OF LAND
BEING SUBDIVIDED INTO TRACT 'L' (7.00 AC)
AND TRACT 'M' (7.03 AC)
AS REQUESTED BY THE OWNERS
JAMES M. BARNES AND DELENE BARNES

I, JOHN DAVID BASS, HEREBY STATE TO THE BEST OF
MY KNOWLEDGE, INFORMATION, AND BELIEF, THAT THE
SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE
REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE
PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND

141 White Fence Line
Summer

PLAINTIFF'S
EXHIBIT

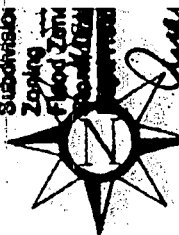
C

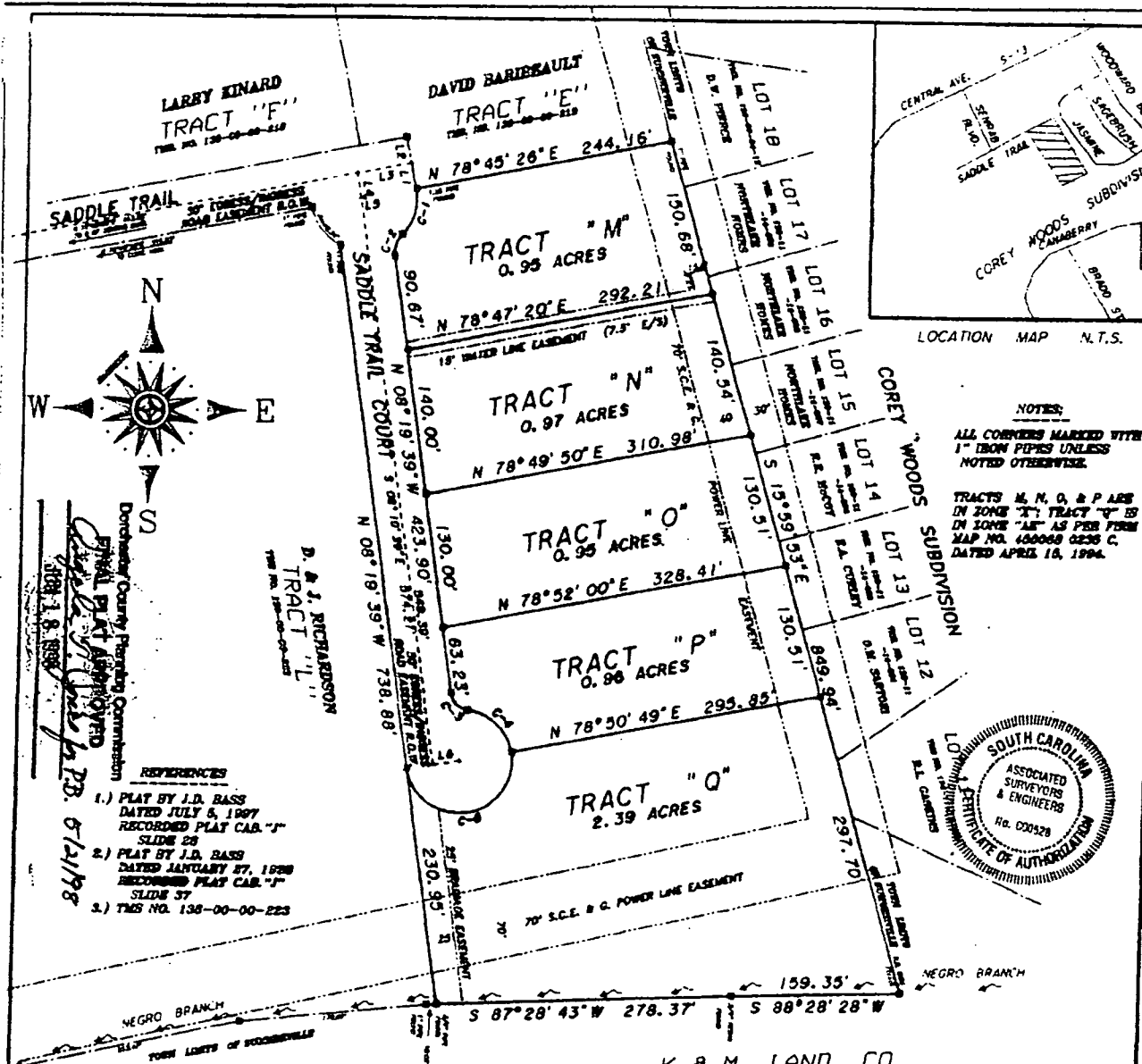
FILED-RECORDED

JAN 29 12 04 PM '98

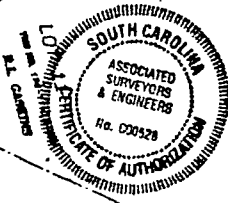
LINDA KESSEY
REGISTERED
MESSENGER
DORCHESTER

Received
(S/O Ord. A
The EXEMPTION
continued to be in
Ordinance
Subdivision
Zoning
Flood Zone
Ordinance
PLANNING BOARD
JAN 28



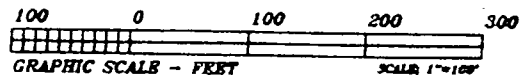


NOTES:
 ALL CORNERS MARKED WITH 1" IRON PIPES UNLESS NOTED OTHERWISE.
 TRACTS M, N, O, & P ARE IN ZONE "A"; TRACT "Q" IS IN ZONE "AB" AS PER PERM MAP NO. 600068 0236 C, DATED APRIL 10, 1996.



- REFERENCES**
- 1.) PLAT BY J.D. BASS DATED JULY 6, 1997 RECORDED PLAT C.A.B. "J" SLIDE 25
 - 2.) PLAT BY J.D. BASS DATED JANUARY 27, 1998 RECORDED PLAT C.A.B. "J" SLIDE 27
 - 3.) TMS NO. 136-00-00-223

CURVE	RADIUS	TANGENT	LENGTH	DELTA	DEGREE	CHORD	CH. BEARING	COURSE	BEARING	DISTANCE
C-1	50.00'	25.31'	47.17'	54°09'18"	114°35'30"	15.44'	S 15°47'08"W	L1	N 11°15'34"W	25.00'
C-2	25.00'	11.26'	22.31'	51°08'24"	228°10'58"	21.58'	S 17°14'33"W	L2	N 11°14'34"W	25.00'
C-3	50.00'	14.91'	23.82'	73°23'34"	298°28'44"	23.00'	S 40°01'36"E	L3	S 78°48'28"W	51.67'
C-4	50.00'	36.36'	61.26'	70°34'22"	114°38'30"	37.77'	S 48°26'28"E	L4	S 01°01'30"E	24.88'
C-5	50.00'	207.37'	129.35'	162°48'32"	114°38'30"	28.97'	S 00°15'35"W	L5	N 81°40'21"E	25.00'



SOUTH CAROLINA
 DORCHESTER COUNTY
 DORCHESTER TOWNSHIP

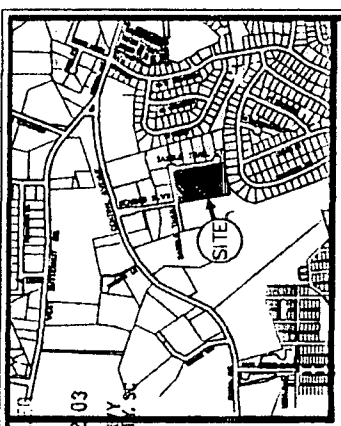
PLAT SHOWING THE SUBDIVISION OF TRACT "M", SENRAB FARMS SUBDIVISION, INTO FIVE TRACTS, AS REQUESTED BY THE OWNERS, JAMES M. BARNES and DELENE BARNES

MAY 5, 1998
 JOB NO. 98-136
 Tupperware Construction
 141 White Fence Lane
 Summerville, SC 29483

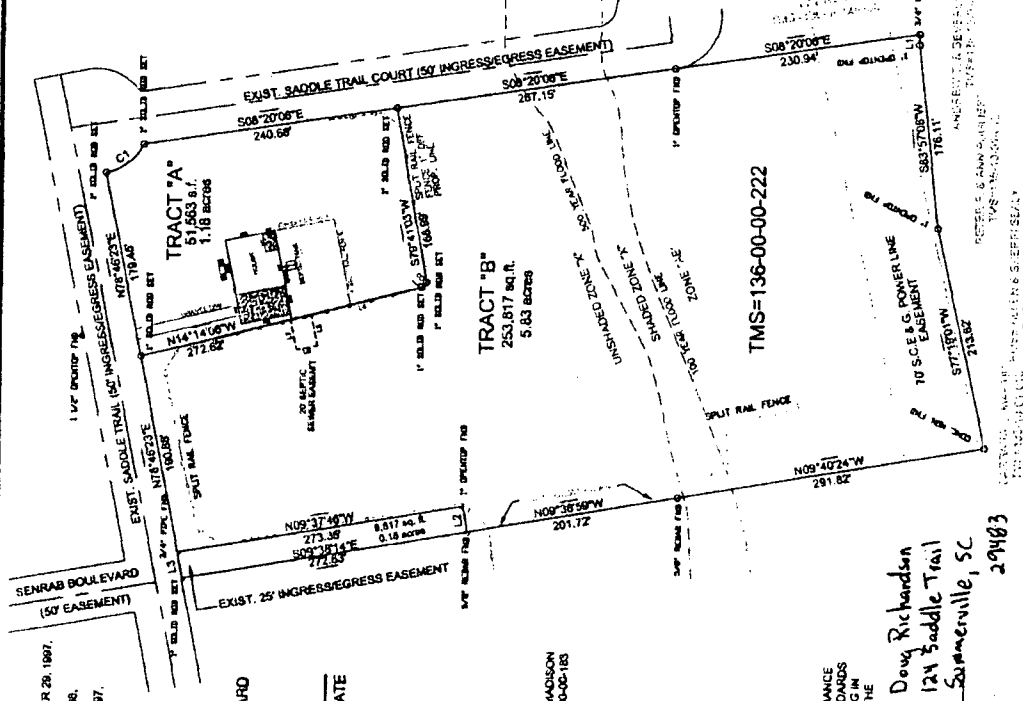
I, JOHN D. BASS, HEREBY STATE TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THAT THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE RECORDING STATUTES, FOR THE PURPOSE OF LAND SURVEYING & ENGINEERING, AND THAT I AM A LICENSED SURVEYOR & ENGINEER IN THE STATE OF SOUTH CAROLINA.

John D. Bass
 J.D. BASS
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K-59



FILED-RECORDED
REC / REG
2003 APR -1 PM 2:03
DORCHESTER COUNTY, SC



LINE TABLE

LINE	LENGTH	BEARING
L1	10.12	S87°27'08\"W
L2	24.95	N80°24'59\"E
L3	25.00	N78°45'23\"E
L4	6.73	N44°37'35\"W

SEPTIC SEWER EASEMENT

LINE	LENGTH	BEARING
L5	10.773	N41°14'00\"W
L6	30.28	S78°20'40\"W
L7	20.00	N01°39'20\"W
L8	29.36	N78°20'40\"E

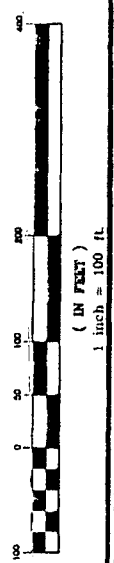
CURVE TABLE

CURVE	RADIUS	LENGTH	TANGENT	CHORD	BEARING	DELTA
C1	50.00	46.34	24.69	44.70	S37°00'35\"E	33°00'10\"

PLAT SHOWING A 7.01 ACRE LOT TO BE SUBDIVIDED INTO TRACT A (1.18 ACRES) AND TRACT B (5.83 ACRES), SURVEYED AT THE REQUEST OF THE OWNERS, DOUGLAS S. & JULIE D. RICHARDSON.

DORCHESTER COUNTY
NEAR SUMMERVILLE
SOUTH CAROLINA

JUNE 8, 2002
UPDATED: MARCH 15, 2003



- REFERENCES:
1. PLAT BY JOHN DAVID BASS, DATED DECEMBER 20, 1997, PLAT CABINET "J", PAGE 37.
 2. PLAT BY JOHN DAVID BASS, DATED MAY 5, 1996, PLAT CABINET "J", PAGE 37.
 3. PLAT BY JOHN DAVID BASS, DATED JULY 5, 1997, PLAT CABINET "J", PAGE 37.

NOTES:
1. THIS PROPERTY IS LOCATED ON FIRM MAP PANEL NO. ANSAR 02A.C. DATED APRIL 15, 1994, AND LIES IN ZONES "A" & "B".
2. PROPERTY ZONED R-1.
3. EXEMPT under Provision of ARTICLE 3 of the DORCHESTER COUNTY PLANNING BOARD ORDINANCES.
4. PAR 3-2-1, 3-2-2, 3-2-3, 3-2-4, 3-2-5, 3-2-6, 3-2-7, 3-2-8, 3-2-9, 3-2-10, 3-2-11, 3-2-12, 3-2-13, 3-2-14, 3-2-15, 3-2-16, 3-2-17, 3-2-18, 3-2-19, 3-2-20, 3-2-21, 3-2-22, 3-2-23, 3-2-24, 3-2-25, 3-2-26, 3-2-27, 3-2-28, 3-2-29, 3-2-30, 3-2-31, 3-2-32, 3-2-33, 3-2-34, 3-2-35, 3-2-36, 3-2-37, 3-2-38, 3-2-39, 3-2-40, 3-2-41, 3-2-42, 3-2-43, 3-2-44, 3-2-45, 3-2-46, 3-2-47, 3-2-48, 3-2-49, 3-2-50, 3-2-51, 3-2-52, 3-2-53, 3-2-54, 3-2-55, 3-2-56, 3-2-57, 3-2-58, 3-2-59, 3-2-60, 3-2-61, 3-2-62, 3-2-63, 3-2-64, 3-2-65, 3-2-66, 3-2-67, 3-2-68, 3-2-69, 3-2-70, 3-2-71, 3-2-72, 3-2-73, 3-2-74, 3-2-75, 3-2-76, 3-2-77, 3-2-78, 3-2-79, 3-2-80, 3-2-81, 3-2-82, 3-2-83, 3-2-84, 3-2-85, 3-2-86, 3-2-87, 3-2-88, 3-2-89, 3-2-90, 3-2-91, 3-2-92, 3-2-93, 3-2-94, 3-2-95, 3-2-96, 3-2-97, 3-2-98, 3-2-99, 3-2-100.

HELEN R. WADSWORTH
TMS-136-00-00-185



I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MEASUREMENT STANDARDS AND THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "A" SURVEY AS SPECIFIED THEREIN.

Doug Richardson
124 Saddle Trail
Summerville, SC 29183
Matthew J. Halter
Matthew J. Halter, P.E., P.L.S.
120 SANDHILL PATH
SUMMERVILLE, SC 29183
843-871-1755

FILED

10-8 92 3464M

1051 051

43897

STATE OF SOUTH CAROLINA
DORCHESTER COUNTY, SC GRANT OF EASEMENT
COUNTY OF DORCHESTER

WHEREAS James M. and Delene B. Barnes (subsequently referred to as Sellers) are the owners of certain property described below, and James J. Madison, III, and Helen R. Madison (Purchasers) are about to purchase two tracts being carved out of the property;

WHEREAS the tracts being acquired by Purchasers do not front on a public road; and

WHEREAS Sellers and Purchasers have agreed on the location, nature, and extent of the access to be provided to Purchasers;

NOW THEREFORE, Sellers, for and in consideration of the premises and the sum of One and no/100 Dollars (\$1.00) to them in hand paid, the receipt and sufficiency of which are hereby acknowledged, do hereby give, grant, and convey unto Purchasers, their heirs and assigns, an easement across Sellers' property shown and designated as "49.7 Ac. Sold to James M. Barnes" on the April 1957 plat by H. H. Foster entitled "A Plat Showing a Tract of Land Owned by James Barry Waring Located in Dorchester County, S.C. Containing 305 Acres," which is recorded in Plat Cabinet B at slide 112 (formerly Plat Book 16 at page 267) in the office of the R.M.C. of Dorchester County, to and for the benefit of Tracts A and B shown on the June 5, 1992, plat by Ashley Surveying Company entitled in part "Plat Showing the Subdivision of Land Owned by James M. Barnes & Delene B. Barnes..." which is recorded in Plat Cabinet H at slide 382. The easement is confined to a strip fifty feet (50') wide running along and inside the eastern boundary of the 49.7 acre parcel and, after cornering, in a generally east-west direction between the eastern boundary of the 49.7 acre parcel and the eastern boundary of Tract A. The easement has the location, dimensions, and butts and bounds shown on the Ashley Surveying Company plat referred to above. This easement shall be used by Purchasers and their heirs and assigns for access between Tracts A and B and Central Avenue Extension (SR-18-611).

The easement strip is subject to the S.C.E.G. easement shown on the Ashley Surveying Company plat and to any covenants, conditions, easements, and other matters affecting the property which are now recorded in the office of the R.M.C. of Dorchester County.

Purchasers' rights are non-exclusive. Sellers reserving for themselves and their heirs and assigns, the right to use the easement strip for access to the remarking portions of the 49.7 acre parcel. An existing dirt driveway is centered in this strip except for such offset of the strip as was necessary to avoid having pasture fence in the strip. Purchasers shall maintain and repair the driveway except to the extent that it is damaged by Sellers' use or the use of Sellers' heirs and assigns, invitees, or purchasers, in which case they shall share in the maintenance and repair expenses in proportion to the wear and tear caused by them. Purchasers may not relocate, widen, or make substantial improvements to the driveway without the prior, written consent of Sellers, their heirs and assigns. Sellers reserve the right to relocate the driveway at their expense so as to facilitate access to the remaining portions of the 49.7 acre tract.

This easement is an easement appurtenant which runs with the land for the benefit and use of Purchasers, their heirs and assigns, and the easement is transferable by them in connection with any transfer or mortgage of their property. The easement strip is not, however, intended for use as a community road for the benefit of persons owning property not carved out of Sellers' 49.7 acre parcel, but is an easement solely for the benefit of the property being acquired by the Purchasers.

TOGETHER WITH all and singular the rights, members, hereditaments, and appurtenances belonging, incident, or appertaining to the premises.

BRUCE A. RUBINSTEIN, P.A.
ATTORNEY AT LAW
12-A CARRIAGE LANE 92-885
P.O. BOX 11459
CHARLESTON, SC 29417-1459
63

PLAINTIFF
EXHIBIT

F
1 of 2

1051 052

TO HAVE AND TO HOLD all and singular the premises unto the Purchasers their heirs and assigns forever, with the limitation stated above that their "assigns" include only transferees and mortgagees of their land for the benefit of which this easement is granted.

AND Sellers do hereby bind themselves and their heirs and assigns to warrant and to forever defend all and singular the premises unto Purchasers, their heirs and assigns as stated above, against themselves and their heirs and all persons whomsoever lawfully claiming or to claim the same or any part thereof.

EXECUTED by the Sellers on October 1, 1992.

WITNESSED BY:

[Signature]

2. [Signature]

[Signature]
James M. Barnes

[Signature]
Debra B. Barnes

THE STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

PERSONALLY appeared before me the first witness who signed above, who made oath that (s)he along with the second witness who signed above, saw the Sellers, as their act and deed, sign and delivery this Grant of Easement.

SWORN to before me on
October 1, 1992.

[Signature] (SEAL)
Notary Public of South Carolina
My commission expires: 7/1/94

R/Ease/E

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
OCT 1 1992
3:46 P.M.
BOOK 1051 PAGE 51
REGISTER OF DEEDS

STATE OF SOUTH CAROLINA
 COUNTY OF DORCHESTER
 REGISTER OF MESNE CONVEYANCES
 DORCHESTER COUNTY, SC

43898

WHEREAS James M. and Delene B. Barnes (subsequently referred to as Sellers) are the owners of certain property described below, and James J. Madison, III, and Helen R. Madison (Purchasers) are about to purchase two tracts being carved out of the property; and

WHEREAS Sellers and Purchasers have agreed to certain limitations on their right to develop their respective properties and desire to evidence their agreement;

NOW THEREFORE, for and in consideration of the mutual benefits flowing to each and the sum of One Dollar (\$1.00) by each to the other paid, the receipt and sufficiency of which are hereby acknowledged, Sellers and Purchasers agree as follows:

1. Property Affected. The property which is affected by these covenants is part of the tract shown and designated as "49.7 Ac. Sold to James M. Barnes" on the April 1957 plat by H. H. Foster entitled "A Plat Showing a Tract of Land Owned by James Barry Waring Located in Dorchester County, S.C. Containing 305 Acres," which is recorded in Plat Cabinet B at slide 112 (formerly Plat Book 16 at page 267) in the office of the R.M.C. of Dorchester County. The 49.7 acre parcel is now being subdivided so as to create Tracts A and B as shown on the June 5, 1992, plat by Ashley Surveying Company entitled in part "Plat Showing the Subdivision of Land Owned by James M. Barnes & Delene B. Barnes....," which is recorded in Plat Cabinet H at slide 382.

2. Covenants on Purchasers' Property. Purchasers are acquiring Tracts A and B, which shall be subject to the covenants that they be used only for residential or agricultural purposes and that no trailers, mobile homes, or manufactured housing; no dog kennels; and no inoperable motor vehicles be placed, used, or allowed on them. Purchasers may refine, elaborate on, and add to these covenants to the extent that any new language does not result in allowing what this document prohibits. These covenants burden Tracts A and B for the benefit of the balance of Sellers' 49.7 acre parcel.

3. Covenants on Sellers' Property. Sellers are retaining all of the 49.7 acre parcel except Tracts A and B. The northernmost 12.138 acres of Sellers' parcel lies between the curving right of way of Central Avenue Extension (SR-18-611) and the centerline of a ditch crossing the 49.7 acre parcel in a generally east-west direction as shown on the December 28, 1983, unrecorded plat by T. R. Dion (a copy of which has been provided to Purchasers), and this 12.138 acre front portion shall not be subject to any covenants, conditions, or restrictions except for the green belt buffer zone requirement set out in this paragraph. The Sellers will not cut the trees along the ditch, but if a sewer or other utility line should be installed in this area by any governmental authority as a result of condemnation, or if fire, disease, storm, or other natural disaster should damage or destroy any trees, Sellers are not obligated to replant.

Sellers' parcel other than the front portion described above shall be subject to the same covenants as those set out in section 2, above, as being applicable to Tracts A and B. Sellers may refine, elaborate on, and add to these covenants to the extent that any new language does not result in allowing what this document prohibits.

These covenants burden the applicable portion of Sellers' property for the benefit of Tracts A and B.

4. Covenants Running with Land. The covenants set out above shall be covenants burdening and running with the land and passing with the title on any transfer. The covenants shall remain in force for a period of thirty

1

BURRIS & BURINSTEIN, P.A.
 ATTORNEYS AT LAW
 12-A CARRIAGE LANE 92-8085
 P.O. BOX 31459
 CHARLESTON, SC 29417-1459

NOTED FOR FILING
 JUNE 11, 1992
 S.C. 29483

(30) years from the date of execution of this document. The covenants may be unilaterally refined, elaborated on, and added to as set above, but if any of the prohibitions agreed upon in this document are to be weakened or eliminated, the amending document shall be consented to by the owners of all affected parcels, and the amending document shall be recorded. At the end of thirty (30) years the term of the covenants may be extended by a document executed and recorded by the owners of all of the affected parcels.

5. Parties Bound. These covenants bind and inure to the benefit of the named parties and their heirs and assigns.

Witness the hands of the parties on OCTOBER 1, 1992.

WITNESSES AS TO ALL:

Rutherford P.C. Smith

James M. Barnes
James M. Barnes
Delene B. Barnes
Delene B. Barnes
James J. Madison
James J. Madison
Helen R. Madison
Helen R. Madison

THE STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

PERSONALLY appeared before me the first witness who signed above and made oath that s(he) with the second witness saw the persons named above sign and deliver this instrument as their act and deed.

SWORN to before me on
OCTOBER 1, 1992.

Rutherford P.C. Smith (SEAL)
Notary Public of South Carolina
My commission expires: 11/1/94

recip/ jh4

STATE OF SOUTH CAROLINA
COUNTY OF DOUGHERTY
Filed for record this 8th
day of Oct., 1992.
at 3:46 P.M.
in Book 1061 Page 53
REGISTER OF DEEDS & CONVEYANCES

SOUTH CAROLINA
1992
10/1/92
SOUTH CAROLINA
20133

FILED-RECORDED

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)

RESTRICTIVE COVENANTS SEP 11 11 09 AM '97

LINDA MESSERVY
 REGISTER
 MESNE CONVEYANCES
 DORCHESTER COUNTY, SC

KNOW ALL MEN BY THESE PRESENTS, that James M. Delete B. Barnes (hereinafter referred to as "Declarant"), the owners of the property described herein or made subject hereto from time to time, hereby covenant and agree on behalf of themselves, their heirs and assigns, with persons who shall hereafter purchase the property described in the attached Exhibit A, as follows:

1. Whenever used herein, the term "Lots" shall refer to lots which are subject hereto, whether by specific reference in this instrument, or to lots made subject to the provisions of this instrument by separate legal instrument recorded in the Dorchester County RMC Office.

2. These covenants are to run with the land and shall be binding on all parties claiming under them for a period of ten (10) years from the date hereof, after which time said covenants shall be automatically extended for successive periods of five (5) years, unless an instrument signed by a majority of the then owners of the lots agreeing to change said covenants in whole or in part has been recorded.

3. Enforcement of these covenants shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation hereof or to recover damages. Violation of any of these restrictions will not result in a reversion.

1

W. BROOKS STYLES
 1316 RIVERS AVE., SUITE A
 NORTH CHARLESTON, SC 29403-6578
 (803) 555-0000

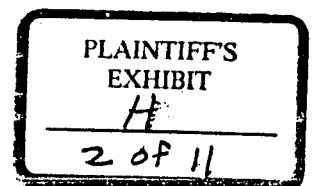
4. Invalidation of any one of these covenants by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

5. The lots are known and designated and shall be used as single-family residential building lots, and no structures shall be erected thereon other than one detached site-built single-family dwelling, not to exceed two and one-half stories in height, or the equivalent thereof in the case of so-called split-level dwellings. The garage or carport shall be of the same outside materials as the main dwelling. In addition to the dwelling, garage or carport, one out-building conforming with the design and finish of the dwelling, for tools, utilities, etc. may be located on each lot. Other buildings may be constructed if approved by the undersigned or their designated representative.

The front of each dwelling house built on the lots must face the street in front of that particular lot.

6. No trailer, basement, tent, garage or other out-building erected on the lots shall at any time be used as a residence, temporarily or permanently, nor shall any structure of any temporary character be used for residential purposes on any of said lots. Trailers and campers may be parked or stored only pursuant to paragraph 13(g) hereof, except that construction trailers and the like may be left on a lot during the construction of the dwelling on that lot.

7. All dwellings and other structures must be completed within nine (9) months after the date of the construction of same



shall have commenced, except where such completion is impossible or would result in great hardship to the owner or builder due to strikes, fires, national emergency, or natural calamity, unless otherwise extended by the undersigned, their heirs and assigns, or their designated representative.

8. Since the establishment of standard inflexible building set-back lines for location of dwellings on lots tends to force construction of dwellings both directly behind and directly to the side of the other neighboring dwellings with detrimental effects on privacy, and preservation of important trees, etc., no specific set-back lines are established by these covenants. In order to assure, however, that the location of dwellings will allow the maximum amount of view and breeze to be available to each dwelling; that the dwellings will be located with regard to the topography of each individual lot, taking into consideration the height of each lot, location of trees, and similar considerations, the undersigned reserves unto themselves, their heirs and assigns, or their designated representative, the right to control absolutely and solely to decide the precise site and location of any dwelling or other structure upon all the lots which are subject hereto. Provided, however, that such locations shall be determined only after reasonable opportunity is afforded the owner of the lot to recommend a specific site, and provided, further, that in the event an agreed location is stipulated in writing in the contract of purchase, the undersigned shall approve automatically such location for a dwelling.

All buildings and their location on the lots must conform with the zoning regulations of Dorchester County.

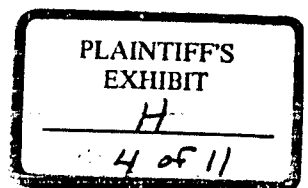
9. No lot shall be resubdivided, into lots having an area of less than one-half (1/2) acre, provided that DHEC shall approve such lot for a septic system. An owner of two contiguous lots may combine two lots to form one building lot for one dwelling, the location of such dwelling to be determined in conformity with paragraph 8 hereof. In the event of the resubdivision by one owner of his two (2) contiguous lots, such owner shall be responsible for having a plat of the same recorded in the RMC Office for Dorchester County showing such resubdivision.

Nothing contained in the foregoing paragraph shall prohibit the owner of a lot from acquiring a contiguous lot and using the same as a side yard.

Nothing contained in this paragraph 9 shall limit the undersigned from replatting the lots if necessary to correct surveying errors or the like.

10. No single story dwelling erected on any lot shall have less than 1500 square feet of floor area, excluding garage, carport, and any out-building. No one and one-half (1/2) story or two-story dwelling erected on any lot shall have less than 1650 square feet of floor area, excluding garage, carport, and any out-building.

11. No fence shall be erected on the front of any lot unless such fence be constructed of wood, brick or iron, such wood, brick or iron fence not to exceed four and one-half (4 1/2) feet in



height. Fences (including chain link fences) may be constructed along the rear lot line of each lot, so long as such rear fence does not exceed six (6') feet in height. Fences (including chain link fences) may be constructed along the side lot lines, so long as such fences along the side lot lines do not exceed six (6') feet in height and do not extend into the front yard of the lot, it being the intent of the undersigned that fences constructed along the side lot line shall run from the back corners of the lot along the side lot line forward toward the front of the lot, said lot line fence to terminate prior to the extension of the same into the area of the front yard, so that there will be no fences on the side lot line extending from an imaginary line on a plane which is roughly parallel to the front of the dwelling (excluding porches and steps) and extended to the side lot lines, out to the front corners of the lot.

12. Easements for the construction, installation and maintenance of utilities and drainage are reserved over, across, under and upon each lot, not to exceed, however, ten (10') feet in width, and any such easement will be along one or more of the boundary lines of each lot, the location of said easements to be finally determined by the topography and configuration of the particular lot, and where the configuration of the particular lot necessitates a different location for utility and drainage easements, the same may be located as such necessity dictates, so long as the same is designated on that lot prior to the construction of the dwelling thereon, and is indicated on a

recorded plat of such lot, so any dwelling can be properly laid out and located thereon without interfering with such easement.

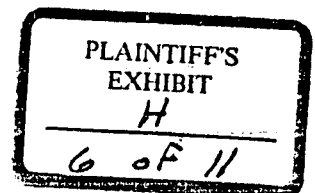
13. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, and specifically including the following:

a) There will be no unsightly accumulation of trash or refuse on any lot; the owner of each lot shall be required to maintain the front yard of the lot in a clean and groomed condition;

b) Pets must be kept quiet, no dangerous dog being permitted unless chained or adequately fenced.

c) It shall be permissible for the owner of any lot to keep up to one (1) horses on that lot so long as the rear portion of the lot is fenced for such purpose and such rear portion contains a minimum area of twenty-five thousand (25,000) square feet. The design of the fence shall be subject to the approval of the undersigned or their designated representative.

d) The sale or storage of fireworks of any kind whatsoever on the lots is prohibited. The use of or discharge of firearms of any kind whatsoever is likewise prohibited. Hunting of any kind, and by any method, including but not limited to firearms, snares, bow and arrows, or manually propelled missiles, is prohibited.



e) No more than two (2) inoperable vehicles shall be permitted on any lot which must be screened from view. No lot shall be used as a storage yard for inoperable vehicles.

f) Swimming pools may be constructed upon the lots so long as no part thereof, except ladders, diving boards and the like, project twelve (12') inches above ground level.

g) No house trailer may be kept permanently or temporarily in the subdivision, and any camper or like equipment may be kept in the back yard behind any dwelling so long as such camper or like equipment is suitably screened or housed;

h) No wash should be hung out to dry, or to air in the portion of any lot facing the street unless appropriately screened.

i) Exposed fuel, gas or oil container shall be permitted on the rear of the lot.

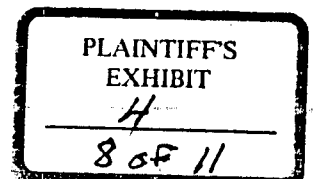
j) The only signs permitted on the lots are those reading "For Sale" or "For Rent", or appropriate signs of the building contractor during the period of construction, or appropriate signs of any real estate dealer who may handle the property. However, in no event can any sign exceed six (6) square feet in area.

k) No truck or commercial vehicle over one (1) ton capacity shall be stored or parked overnight on any street or lot, except within enclosed garages or on the rear of the lot behind an area screened from the road. No tractor trailers to be parked on any lot overnight.

14. The exterior of any dwelling built on a lot shall be of solid brick or brick veneer, wood siding, stucco or vinyl. Any other exterior siding must be approved by the undersigned or their designated representative.

15. No structure of any kind shall be erected, placed or altered on any lot until the plans, specifications, and or plat plans for the same have been approved in writing by the undersigned, their heirs and assigns, or their designated representative, as to conformity and harmony of external design, with existing structures in the subdivision. In the event that the undersigned fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, such approval will be deemed to have been granted.

16. The Declarant does hereby grant to each lot owner, its heirs, successors, agents and invitees, an easement for ingress and egress over and across the road, known as Senrab Boulevard and Saddle Trail as shown on the plat described in Exhibit A. In exchange for said easement each lot owner hereby agrees to pay a pro rata share of the costs of the maintenance of said road and the entrance to the subdivision; said pro rata share to be known as the Road Maintenance Assessment. Each owner of any lot subject hereto is deemed to covenant and agree to pay to the Declarant, its heirs, successors and assigns the Road Maintenance Assessment, which shall be a charge upon the land and shall be a continuing lien upon the property against which assessment is made until paid. Such Road



Maintenance Assessment together with interest, costs and attorney fees shall also be the personal obligation of each lot owner. Any Road Maintenance Assessment not paid within (30) days after the same is billed to each lot owner shall bear interest from the due date at the maximum legal rate. The Declarant may bring legal action against any lot owner for non-payment of the Road Maintenance Assessment or foreclose the lien against the property. Said Road Maintenance Assessment shall be subordinate to the lien of any first mortgage. Any first mortgagee which shall obtain title to a lot by virtue of foreclosure or deed in lieu of foreclosure shall not be responsible for past due assessments but shall be responsible for all assessments arising after the date on which said mortgagee acquires title. The Declarant reserves the right to create an entity composed of lot owners to collect and administer said Road Maintenance Assessment and to assign its rights hereunder to such entity. The Declarant further reserves the right to dedicate the road to Dorchester County.

17. All property owners must use public water if available. All residents must use underground wiring to all building on their lot.

18. These Protective Covenants may be altered, modified, canceled or changed at any time by the written consent of the majority of the owners of record of the lots which are subjected hereto. In the event of the death or disability of any of the undersigned, any approval which may be required hereunder shall be required only by the survivors of the undersigned.

IN WITNESS WHEREOF, the Declarant has caused this instrument
to be executed the 8th day of September, 1997.

WITNESSES:

Pat McManus
[Signature]

James M. Barnes
James M. Barnes
Deleene B. Barnes
Delete B. Barnes

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

PROBATE

PERSONALLY APPEARED before me the undersigned
witness, and made oath that (s)he saw the within named James M.
Barnes and Delete B. Barnes sign, seal and as their act and deed,
sign the within written Restrictive Covenants; and that (s)he with
the other witness witnessed the execution thereof.

Pat McManus

SWORN to before me this
8th day of September, 1997

[Signature]
Notary Public For South Carolina
My Commission Expires: 9-3-03

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

Filed for record this 11th
day of Sept 1997
at 11:09 A. M. and recorded
in book 1821 page 331

LINDA T. MESSERVY
REGISTER OF MESNE CONVEYANCES

10

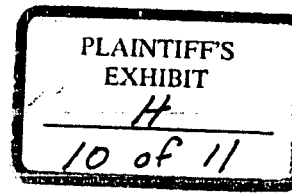


EXHIBIT A

ALL those certain piece, parcel or lots of land, situate lying and being in the County of Dorchester, State of South Carolina shown and designated as Lots D, E, F, G, H, and I on a plat entitled "Plat Showing Eleven Lots of "Senrab Farms" by Associated Surveyors and Engineers dated July 5, 1997, and recorded in the RMC Office for Dorchester County in Plat Book J, Page 28.

BK 1915PG263

L. STANLEY CLAYPOOLE, P.A.
ATTORNEY AT LAW
2155 NORTHPARK LANE
N. CHARLESTON, S.C. 29408

FILED-RECORDED

STATE OF SOUTH CAROLINA)

MAR 18 9 41 AM '98 AGENDAS TO RESTRICTIONS

COUNTY OF DORCHESTER)

LINDA MESSERVY

REGISTER

MESNE CONVEYANCES

DORCHESTER COUNTY, S.C.

KNOW ALL MEN BY THESE PRESENTS, that JAMES M. BARNES and DELENE B. BARNES (Hereinafter referred to as "Declarant") are the Owners of the property described in Exhibit "A" attached hereto and STEVE HILL/HABERSHAM BUILDERS, INC. (Hereinafter referred to as "Purchaser") is about to purchase the property as describe in Exhibit "A" attached hereto; and

WHEREAS, the Declarant and Purchaser have agreed to certain restrictions and limitations on the construction development of the property as described on Exhibit "A" attached hereto and desire to evidence their agreement herein.

NOW THEREFORE, for and in consideration of the mutual benefits flowing to each other and the sum of One dollar (\$1.00) to each to the other paid, the receipt and sufficiency which are hereby acknowledged, the Declarant and Purchaser agree as follows:

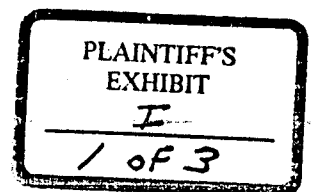
PROPERTY AFFECTED: The property which is affected by these covenants is described as Tract "L" on that certain plat recorded in the RMC Office for Dorchester County in Plat Book J, Page 37 and further described on Exhibit "A" attached hereto.

The property shall be designated and shall be used as a single family residential building tract, and no other structure can be erected thereon other than one detached site built single family dwelling with drive under feature and one two-story detached barn.

It shall be permissible for the Purchaser to subdivide the property described herein as set out in Paragraph 5 of the restrictive covenants, dated September 9, 1997 and recorded in the RMC Office for Dorchester County in Book 1821, Page 331 in so that such subdivided lot shall be used as a single family residential building lot.

It shall be permissible construction of high quality vinyl fencing upon the property along with electric fencing along the rear of the property.

It shall be permissible for the Purchaser, and his/her successors and assigns, to keep up to six (6) horses on the above



described property. Such horses shall be permitted upon the front portion of the property and the rear portion of the property.

It shall be permissible for the Owner of the property to maintain appropriate horse trailers and tractors and other husbandry and farm implementation equipment as necessary.

EXCEPT AS HEREINABOVE MODIFIED AND SET OUT, and by acceptance hereof, undersigned do hereby agree and consent that the property shall be restricted in accordance with the restrictive covenants, dated September 8, 1997 and recorded in the RMC Office for Dorchester County in Book 1821, Page 331.

IN WITNESS THEREOF, the Declarant and the Purchaser have caused this instrument to be executed this February 25, 1998.

WITNESS:

[Signature]
Wendy M. Kuzer

[Signature]
JAMES M. BARNES

[Signature]
DELENE B. BARNES

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
Filed for record this 18th
day of March 1998
at 9:42 a.m. and recorded
in book 1916 page 2103
LINDA T. MESSERVY
REGISTER OF MESNE CONVEYANCES

STEVE HILL/HABERSHAM BUILDERS, INC.

[Signature]
BY: M. STEPHEN HILL, PRESIDENT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

The foregoing instrument was acknowledged before me the undersigned notary and I do hereby certify that the above named James M. Barnes, Delene B. Barnes and Steve Hill/Habersham Builders, Inc. by its duly authorized officer(s) did personally appeared before me this day and that the above named they/it acknowledged the due execution of the foregoing instrument.

SWORN to before me this: February 25, 1998.

[Signature] (SEAL)
Notary Public for South Carolina
My Commission Expires: 10-17-04

EXHIBIT "A"

ALL that certain piece, parcel or lot of land, situate, lying and being in the County of Dorchester, State of South Carolina, being known and designated as Tract "L", Senrab Farms, as shown on that certain plat entitled: "PLAT SHOWING OF 14.19 ACRES OF LAND BEING SUBDIVIDED INTO TRACT 'L' (7.00 AC) AND TRACT 'M' (7.03 AC) AS REQUESTED BY THE OWNERS JAMES M. BARNES AND DELENE BARNES", dated December 29, 1997 and recorded in the RMC Office for Dorchester County in Plat Book J, Page 37. Said lot having such size, shape, dimensions, buttings and boundings more or less as will by reference to said plat more fully and at large appear.

STATE OF SOUTH CAROLINA) TITLE OF REAL ESTATE
)
 COUNTY OF DORCHESTER) TITLE NOT EXAMINED

KNOW ALL MEN BY THESE PRESENTS, that James M. Barnes, (hereinafter whether singular or plural the "Grantor") in the State aforesaid, for and in consideration of the sum of Five and 00/100 (\$5.00), and subject to the Restrictions, Exceptions, and Limitations as set forth hereinafter, to the Grantor paid by Senrab Farm Homeowners Association, (hereinafter whether singular or plural the "Grantee") have granted, bargained, sold and released, and, by these presents, do grant, bargain, sell and release unto the said Senrab Farm Homeowners Association, its Successors and Assigns, the following described real property, to-wit:

ALL that piece, parcel or tract of land, situate, lying and being in the County of Dorchester, State of South Carolina, and designated as SENRAB BOULEVARD - 50' Ingress/Egress and SADDLE TRAIL 50' Ingress/Egress shown on a plat entitled, "Plat Showing Eleven Lots of Senrab Farms A Subdivision Owned by James M. Barnes and Delene Barnes", said plat being recorded in Plat Cabinet J, Page 28 Dorchester County RMC.

ALSO

ALL that piece, parcel or tract of land, situate, lying and being in the County of Dorchester, State of South Carolina, and designated as SADDLE TRAIL 50' Ingress/Egress Road Easement R.O.W. and SADDLE TRAIL Court 50' Ingress/Egress Road Easement R.O.W. on a plat entitled, "Plat Showing the Subdivision of Tract "M", Senrab Farms Subdivision into Five Tracts as Requested by the Owners, James M. Barnes and Delene Barnes", and begin recorded in Plat Cabinet J, Page 112 Dorchester County RMC.

SUBJECT TO any and all restrictive covenants recorded in the RMC Office for Dorchester County; also subject to any and all other easements or rights of way heretofore granted affecting the property above described and recorded in the Office aforesaid.

BEING the same property conveyed unto James M. Barnes and Delene D. Barnes by deed of James B. Waring recorded March 22, 1963 in Book 131, Page 347 Dorchester County RMC. Subsequently James M. Barnes was devised the property by deed of distribution of Delene B. Barnes recorded in Book 4527, Page 163 records aforesaid.

TMS Number: 136-00-00-119

Grantees' Address: 231 Saddle Trail
 Summerville, SC 29483

DORCHESTER COUNTY

SC Deed Rec Fee _____

Der Co Deed Rec Fee _____

Filing Fee 10.00

Exemption # 1

MARGARET L. BAILEY
 Register of Deeds

Together with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

FILED - RECORDED
 RMC / ROD

2005 NOV 17 AM 11:39

MARGARET L. BAILEY
 DORCHESTER COUNTY, SC

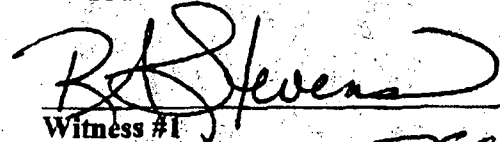
P. BRANDT STEINBOCK
 ~Attorney At Law~
 131 E. Richardson Ave.
 Summerville, SC 29483

TO HAVE AND TO HOLD all and singular in and to the aforesaid premises unto the said Grantees, Senrab Farm Homeowner Association, its Successors and Assigns forever.

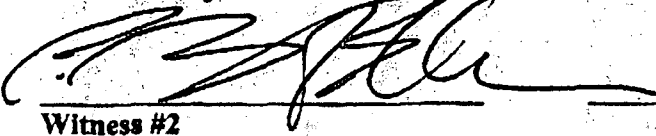
And the Grantor does hereby bind the Grantor and the Grantor's Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said Grantees hereinabove named and the Grantee's Successors and Assigns against the Grantor and the Grantor's Heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS my hand and seal this 21st day of June, 2005.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:


Witness #1

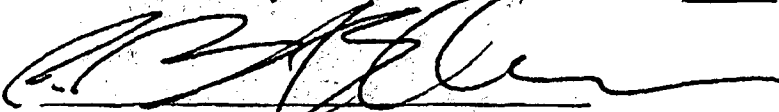
Thomas R. Dixon, Power of Attorney
James M. Barnes for James M. Barnes


Witness #2

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

I, P. Brandt Shelbourne, a Notary Public for the State of South Carolina, do hereby certify that the within named James M. Barnes, Grantor, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 21st day of June, 2005.


Notary Public for South Carolina
My Commission Expires: 12/18/05

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
Filed for record this 21st
Day of June, 2005
at 11:39 A.M. M and recorded
in book 5035 page 139
MARGARET L. BAILEY
REGISTER OF DEEDS

RE: APPEAL OF MR. AND MRS. HOA NGUYEN

The Dorchester County Board of Zoning Appeals met on August 25, 2009, after notice to all interested parties, to consider the appeal of Mr. and Mrs. Hoa Nguyen from a cease and desist letter issued by the Dorchester County Zoning Administrator, dated June 25, 2009.

1. By letter dated June 25, 2009, the Dorchester County Zoning Administrator issued his cease and desist letter to Mr. and Mrs. Nguyen, requiring that they cease business activities upon property owned by them with a street address of 125 Saddle Trail, Summerville, South Carolina, bearing T.M.S. #136-00-00-183.
2. The Appellants, Nguyen, timely filed an Appeal by letter dated July 8, 2009.
3. The property of the Appellants, bearing T.M.S. #136-00-00-183 is zoned R4 (multi-family residential). The Appellants, in their appeal letter dated July 8, 2009, denied that they operate a business, but instead assert that the enterprise being conducted upon the property is a "loosely organized cooperative" and that there is no attempt to make a profit.
4. The Appellants presented a balance sheet attached to their appeal letter indicating that they receive \$1,400.00 per month in rent for their barn which is located on the property. The enterprise being conducted on the Appellants' property is being held out on the internet as Senrab Equestrian Center where it advertises horse sales, horse jumping, dressage, and horse care services. Appellants also presented testimony that riding lessons were available.
5. Appellants' attorney argued that the enterprise being conducted on the Appellants' property was actually a club.
6. Appellants' July budget for the Senrab Equestrian Center, which is being operated on the property of the Appellants, claims expenses of \$5,390.00 and income of \$3,305.00, which results in a monthly loss of \$2,085.00.

Although the Zoning Administrator had requested other business records, none were provided or had been provided to him.

7. The prior operator of the Equestrian Center, Charity Filmore, keeps six horses at the Equestrian Center, but is only charged for one horse at the rate of \$315.00 per month. Thus, Charity Filmore benefits directly from her services to the Equestrian Center, inasmuch as she is only required to pay for the care of one horse, although she boards five other horses at the Center.
8. Appellants presented testimony that the members of the Equestrian Center expect the members to pay for the care of their horses boarded there.
9. Those who board their horses at the Senrab Equestrian Center have the choice of either paying the requisite boarding fee in full or working at the Center and receiving a discount for their monthly boarding fees.
10. Of the ten horses and six ponies located and boarded at the Senrab Equestrian Center, none of the horses or ponies belong to any resident of the subdivision known as Senrab Farms.
11. Section 47-11-10, *et. seq.*, Code of Laws of South Carolina, (1976), as amended, requires a permit from the State Livestock-Poultry Health Commission for the operation of a public livestock market or an equine sales facility as is being operated on the Appellants' property. No such permit has been obtained. Failure to obtain such a permit, and the operation of an equine sales facility without the obtaining of the same, raises serious health and safety issues concerning the operation of this facility on the property of the Appellants.
12. Merely because the Senrab Equestrian Center being operated on the property of the Appellants does not make a profit is not determinative of whether or not commercial activity is taking place thereon. The Board notes that many businesses and commercial activities do not make a profit, yet are nonetheless commercial activities and business enterprises.
13. Although the Appellants do not operate the Senrab Equestrian Center, the Center is being operated upon property owned by them, and they are leasing their barn to the Center. Thus the Center is being operated on their property with their knowledge and consent.
14. There is nothing on the Senrab Equestrian Center website which would indicate that it is other than a for profit enterprise. There is no indication on the website that the Center is being operated as a club or a co-op. Rather, all indications from the website indicate that it is a commercial enterprise and business.

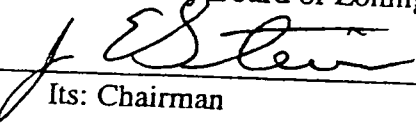
Based upon the foregoing Findings of Fact, the Board makes the following Conclusions of Law:

1. That the Appeal was timely requested by the Appellants.
2. That a quorum of the Zoning Board of Appeals was present for the appeal, inasmuch as six of the seven members of the Board were present to hear the appeal of the Appellants.
3. That the Board has jurisdiction to hear the appeal of the decision of the Zoning Administrator pursuant to the Dorchester County Zone and Land Development Ordinance 04-13 and pursuant to Section 6-29-780, *et. seq.*, Code of Laws of South Carolina, (1976), as amended.
4. That the Appellants' property bearing T.M.S. #136-00-00-183 is zoned R4, and such zoning category does not allow the operation of a business or commercial enterprise.
5. That the operation of the Senrab Equestrian Center upon the property of the Appellants constitutes a business and commercial enterprise, which is prohibited under R4 zoning.
6. That upon motion duly made and seconded, the Board voted unanimously (six in favor, none opposed) to affirm the cease and desist decision of the Zoning Administrator as encompassed in his letter to the Appellants dated June 25, 2009.
7. The Appellants are ordered to immediately cease and desist operating the business upon their real property designated with T.M.S. #136-00-00-183.

Based upon the foregoing Findings of Fact and Conclusions of Law, it is therefore the final decision and order of the Dorchester County Board of Zoning Appeals that the decision of the Zoning Administrator as more fully contained and set forth in his cease and desist letter of June 25, 2009, is hereby affirmed.

A copy of this decision shall be permanently filed in the office of the Board as a public record, and a copy hereof shall be delivered by certified mail to all interested parties.

Dorchester County Board of Zoning Appeals

By: 

Its: Chairman

Summerville, South Carolina
September 2, 2009

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

PETITION

Your Petitioner respectfully shows:

I. That the following Petitioners, Hoa Van Nguyen and Xuan Thi Nguyen are the sole owners of certain property also known as Dorchester County TMS# 136-00-00-183 (formerly TMS#s 136-00-00-183 - Tract A and -282 - Tract B now combined) located at 125 Saddle Trail and containing 5.485 acres and herewith fully described and contiguous with the Town of Summerville, and the Petitioners are desirous of having said property and all adjacent rights-of-way annexed into the Town of Summerville, pursuant to Section 5-3-150, Code of Laws of South Carolina (1976).

II. That the property to be annexed is described as follows: "All that certain piece, parcel, or tract of land situate, lying and being west of the town of Summerville in the Knightsville area of Dorchester County, South Carolina, shown and designated as Tract A* on the June 5, 1992 plat by Ashley Surveying Co., entitled in part "Plat Showing The Subdivision of Land Owned by James M. Barnes and Delene B. Barnes..." recorded in Plat Cabinet H at slide 382 in the office of the R.M.C. of Dorchester County. The property has the location, dimensions, and butts and bounds shown on the plat.

*and Tract B.

This property is subject to the 20' Ingress/Egress Easement along the inside its eastern boundary for the benefit of the adjacent Tract B, all shown on the plat referred to above.

BEING the same property conveyed to James J. Madison, III and Helen R. Madison by deed of James M. Barnes and Delene B. Barnes dated October 1, 1992 and recorded in the RMC Office for Dorchester County, South Carolina in Book 1049 at Page 159; being further conveyed to Helen R. Madison by Quit Claim Deed of James J. Madison, III dated June 2, 1998 and recorded in the RMC Office aforesaid in Book 1990 at Page 174 and recorded September 25, 1998 in Book 2043 at Page 241."

Said property is subject to all applicable covenants, conditions, restrictions, limitations, obligations and easements of record.

III. The Petitioner requests that said property be Zoned "AC" Agricultural Conservation District under the Zoning Ordinance and designated as such on the zoning map of the Town of Summerville and further that the property continue to be subject to any appropriate restrictive covenants applicable to the property as recorded in the office of the Clerk of Court for Dorchester County.

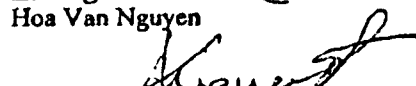
WHEREFORE, the Petitioner prays that this Honorable Council approve the annexation of the said property into the Town of Summerville and enact an Ordinance declaring said property annexed to the Town of Summerville.

Respectfully submitted,



Hoa Van Nguyen

8-4-09
Date



Xuan Thi Nguyen

ANNEXATION REQUEST

TMS#136-00-00-183

(125 Saddle Trail)

STAFF REPORT

September 8, 2009

The property owners have requested for the above referenced parcel to be annexed into the Town and be zoned AC, Agricultural Conservation district.

This property is located at 125 Saddle Trail and contains approximately 5.485 acres. Saddle Trail is off of Central Avenue. Saddle Trail is off of Senrab Road which is the roadway that enters into the Senrab Farms development although this property is not a formal part of this development, only adjacent to it. The property is adjacent to properties already in the Town that are zoned B-3, General Business and PUD (White Gables).

The property owners have requested the AC zoning designation because they have horses and stables. The AC zoning classification is the only zoning classification that allows the use of horses (livestock) and stables.

The Planning Department recommends approval of this request.

09-0901

ORDINANCE

TO ANNEX TO, AND INCORPORATE WITHIN THE CORPORATE LIMITS OF THE TOWN OF SUMMERVILLE, THAT AREA OWNED BY HOA VAN NGUYEN AND XUAN THI NGUYEN, ADJACENT TO THE BOUNDARY LINE OF THE TOWN, AS DESCRIBED ON THE DEED AND PREPARED PLAT ATTACHED HERETO AND INCORPORATED BY REFERENCE:

WHEREAS, the owner of the real estate designated as Dorchester County TMS #136-00-00-183 (formerly TMS #s 136-00-00-183 Tract A and -282 Tract B now combined) located at 125 Saddle Trail and containing 5.485 acres, as described on the attached plat, has petitioned the Town Council of the Town of Summerville to annex to the Town of Summerville.

NOW, THEREFORE BE IT ORDAINED by the Mayor and Members of Town Council duly assembled;

SECTION I. That the described land on the attached deed and prepared plat and all adjacent rights-of-way, contiguous to the boundary of the Town of Summerville is hereby annexed to, taken into and made a part of the Town of Summerville.

SECTION II. That the property above described and hereby annexed shall be Zoned AC "Agricultural Conservation" and be classified as AC "Agricultural Conservation" under the Zoning Ordinance of the Town of Summerville.

Ratified this 14th day of Oct. 2009 A.D.

Berlin G. Myers
Berlin G. Myers, Mayor

Lisa Wallace
Lisa Wallace, Clerk to Council

FIRST READING: Sept. 9, 2009
SECOND READING: October 14, 2009

**6-29-760. Procedure for enactment or amendment of zoning regulation or map;
notice and rights of landowners; time limit on challenges.**

ARTICLE 5. LOCAL PLANNING -- ZONING

(A) Before enacting or amending any zoning regulations or maps, the governing authority or the planning commission, if authorized by the governing authority, shall hold a public hearing on it, which must be advertised and conducted according to lawfully prescribed procedures. If no established procedures exist, then at least fifteen days' notice of the time and place of the public hearing must be given in a newspaper of general circulation in the municipality or county. In cases involving rezoning, conspicuous notice shall be posted on or adjacent to the property affected, with at least one such notice being visible from each public thoroughfare that abuts the property. If the local government maintains a list of groups that have expressed an interest in being informed of zoning proceedings, notice of such meetings must be mailed to these groups. No change in or departure from the text or maps as recommended by the local planning commission may be made pursuant to the hearing unless the change or departure be first submitted to the planning commission for review and recommendation. The planning commission shall have a time prescribed in the ordinance which may not be more than thirty days within which to submit its report and recommendation on the change to the governing authority. If the planning commission fails to submit a report within the prescribed time period, it is deemed to have approved the change or departure. When the required public hearing is held by the planning commission, no public hearing by the governing authority is required before amending the zoning ordinance text or maps.

(B) If a landowner whose land is the subject of a proposed amendment will be allowed to present oral or written comments to the planning commission, at least ten days' notice and an opportunity to comment in the same manner must be given to other interested members of the public, including owners of adjoining property.

(C) An owner of adjoining land or his representative has standing to bring an action contesting the ordinance or amendment; however, this subsection does not create any new substantive right in any party.

(D) No challenge to the adequacy of notice or challenge to the validity of a regulation or map, or amendment to it, whether enacted before or after the effective date of this section, may be made sixty days after the decision of the governing body if there has been substantial compliance with the notice requirements of this section or with established procedures of the governing authority or the planning commission.

Summerville Town Code Sections 32-10 & 32-11

Sec. 32-10. Annexations.

All territory which may hereafter be annexed by the town shall be classified in the zoning district which most closely corresponds to its use at the time of annexation unless a different classification is recommended by the zoning and annexation committee of town council, or unless the petition for annexation requests a specific zoning classification. Such recommendation or request may be considered but the final designation of a zoning classification rests with the town council. (Ord. No. 2001-0601, § 20-13, 6-1-2001)

Sec. 32-11. Amendments.

The regulations, restrictions and boundaries set forth in this chapter may from time to time be amended, supplemented, changed or repealed; provided, however, that no such action may be taken until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard.

(1) *Application to town.*

a. Any proposed amendments, changes or supplements to the zoning map or ordinance may be initiated by the town council or the planning commission or an application signed by the owner of the property. All proposed amendments, changes, supplements or applications for rezoning must first be submitted to the planning director for review.

b. The application form, together with the application fee for zoning amendment, shall be filed with the planning director. The planning director shall review the application as to proper form. Within 15 working days of receipt, the applicant shall receive written notice from the planning director of review and notice of the proposed meeting date, or if additional information is required due to the application being incomplete.

c. Upon receipt of a complete application, the planning director shall then transmit the application to the planning commission within 15 days.

d. Required information. The applicant shall set forth a detailed description of the amendment of an application provided by the planning director. When the amendment involves a change in the zoning map, the applicant shall submit the following information:

1. A legal description and street address of the subject property, together with a property boundary map if subject property is not explicitly delineated on the zoning map.
2. Name, address and phone number of the applicant.
3. Name of the property owner and applicant's interest in the property (if not the owner) in fee simple title.
4. Filing date of the application.
5. The applicant's and property owner's signature.

Summerville Town Code Section 32-11 (continued)

(2) *Notice.*

- a. Newspaper notice: A notice shall be placed in a newspaper of general circulation in the town at least 15 days prior to the hearing. The notice must list the hearing time and place.
- b. Posting property: In rezoning cases, conspicuous notices shall be posted on or adjacent to the affected property. One notice must be visible from each public street that borders the property. Such signs shall be posted at least 15 days prior to the public hearing.
- c. Mail notice: Written notice must be mailed to all interested groups requesting notice.

(3) ***Planning commission review.*** All proposed amendments must be submitted to the town planning commission for its review and recommendation. The planning commission shall have 30 days within which to submit its report. If the planning commission fails to submit a report within the 30-day period, it shall be deemed to have recommended approval of the requested amendment. In reviewing any petition for a zoning amendment, the planning commission shall identify and evaluate all factors relevant to the petition. These facts should include, but not be limited to, the following:

- a. Whether or not the requested zoning change is justified by a change in conditions since the original ordinance was adopted or by an error in the original ordinance.
- b. Whether or not the requested zoning change is consistent with the comprehensive plan.
- c. The precedents, and the possible effects of such precedents, which might result from approval or denial of the petition.
- d. The capability of the town or other government agencies to provide any services, facilities and/or programs that might be required if the petition were approved.
- e. Effect of the approval of the petition on the condition and/or value of property in the town.
- f. Effect of the approval of the petition on adopted plans and policies of the town.

(4) ***Public hearings.*** The planning commission shall conduct a public hearing. The town council shall review the planning commission report and comments made at the public hearing before taking action to either adopt or reject the ordinance.

(5) ***Limit on reapplication.*** Except for requests which are continued with the mutual consent of the applicant and the planning commission, a property owner shall not initiate action for a zoning amendment affecting the same parcel of property or any part thereof, more than once every 12 months.

(6) ***Adoption by ordinance.*** After the required public hearing and planning commission review, the amendment or rezoning is submitted to the town council for consideration of adoption. Adoption of the amendment or rezoning must be by ordinance. After adoption, the planning director shall make the necessary changes to this chapter's text and the official map.

(Ord. No. 2001-0601, § 20-14, 6-1-2001)

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)
)
LARRY E. KINARD,)
)
Plaintiff,)
)
vs.)
)
TOWN OF SUMMERVILLE,)
HOA VAN NGUYEN, XUAN THI)
NGUYEN and SENRAB FARM)
HOMEOWNERS ASSOCIATION,)
DOUGLAS S. RICHARDSON,)
JULIE D. RICHARDSON and)
MADELINE A. INGALLS d/b/a)
THIN BLUE LINE STABLES,)
)
Defendants.)
)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

CASE NO: 2009-CP-18-3315

ANSWER OF DOUGLAS S.
RICHARDSON and JULIE D.
RICHARDSON TO PLAINTIFF'S
AMENDED COMPLAINT

CERTIFIED
2010 APR 19 AM 10:07
CLERK OF COURT
DORCHESTER COUNTY

Defendants Douglas S. and Julie D. Richardson (hereinafter collectively referred to as "Defendants Richardson") by and through their undersigned attorney, hereby answer the Amended Complaint as follows:

1. Unless otherwise admitted, Defendants Richardson deny each and every allegation contained in Plaintiff's Amended Complaint and demands strict proof thereof.
2. Defendants Richardson lack sufficient information in which to admit the allegations of Paragraphs 1 and 2 and therefore deny the same and demand strict proof thereof.
3. Defendants Richardson admit the allegations of Paragraph 3 but qualify that admission stating that they also live on the allegedly undeveloped 5.3 acre lot and use that property.

4. Defendants Richardson admit the allegations contained Paragraph 4 only to the extent that they have an existing lease with Defendant Ingalls individually for the fenced pasture and deny the remaining allegations contained in Paragraph 4 and demand strict proof thereof.

5. Defendants Richardson are without sufficient information to admit or deny the allegations contained in Paragraph 5 and therefore deny the same and demand strict proof thereof.

6. In response to Paragraph 6, Defendants Richardson admit the Town of Summerville is an incorporated municipality but have no information as to the Town acting through selected Town members and therefore deny the same and demand strict proof thereof.

7. Defendants Richardson deny the allegations in Paragraph 7 of said Amended Complaint and aver that prior to the October 14, 2009 ordinance, Dorchester County rezoned Defendants Richardson's and other properties from R-4 to RA (Residential Agriculture) at the request of the majority of homeowners.

8. With regard to Paragraphs 8 and 9, Defendants Richardson state that they have no independent knowledge as to the allegations contained therein and therefore deny the same and demand strict proof thereof.

9. In response to Paragraphs 10 and 11, Defendants Richardson state that the documents speak for themselves.

10. In response to Paragraph 12, Defendants Richardson state that the allegations contained therein are legal conclusions to which Defendants Richardson are not required to respond but to the extent they are, deny the same and demand strict proof thereof.

11. In response to Paragraphs 13, 14, and 15 Defendants Richardson are without sufficient information to form a belief as to the allegations therein, and therefore deny the allegations and demand strict proof thereof. Furthermore, to the extent the allegations refer to public records, Defendants Richardson aver that the documents speak for themselves.

12. Defendants Richardson are without sufficient information to form a belief as to the allegations contained in Paragraph 16 and therefore deny the same and demand strict proof thereof.

13. Upon information and belief, Defendants Richardson admit the allegations contained in Paragraph 17 of Plaintiff's Amended Complaint.

14. In response to Paragraphs 18, 19, and 20, Defendants Richardson admit to the authenticity of the documents referenced in the allegations but to the extent the allegations contain any information that deviates from those allegations, they would deny the same and demand strict proof thereof. Further, Defendants deny any assumptions made in contrary to the clear language of those documents and demand strict proof thereof.

15. In response to Paragraph 21, Defendants Richardson admit that the documents speak for themselves and therefore would deny any allegations outside that response and demand strict proof thereof.

16. In response to Paragraph 22, Defendants have no independent knowledge as to the allegations contained therein and therefore deny the same and demand strict proof thereof.

17. In response to Paragraph 23 of the said Complaint, Defendants Richardson admit that the plat marked as Exhibit "D" to the Amended Complaint was recorded on or about April 1, 2003. Defendants Richardson is without sufficient information to form a belief as to whether it was a subdivision of the property and therefore deny the same and demand strict proof thereof.

18. The allegations in Paragraph 24 are conclusions of law and therefore Defendants Richardson are not required to respond to same, but to the extent they are, Defendants Richards deny the same and demand strict proof thereof.

19. In response to Paragraph 25, Defendants Richardson admit to the authenticity of the publicly recorded documents and states the deeds speak for themselves.

20. Defendants Richardson deny the allegations contained in Paragraphs 26, 27, and 28 and demand strict proof thereof.

21. In response to Paragraphs 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, Defendants Richardson do not have sufficient information to form a belief as to allegations contained therein and therefore denies the same and demand strict proof thereof.

22. In response to Paragraph 41, Defendants Richardson have insufficient information to form a belief as to the allegations therein and therefore denies the same and demands strict proof thereof.

23. In response to Paragraph 42, Defendants Richardson admit to the authenticity of Exhibit "A" but is without sufficient information to form a belief as to the remaining allegations and therefore deny the same and demand strict proof thereof.

24. Defendants Richardson are without sufficient information to form a belief as

to the allegations of Paragraphs 43, 44, 45, 46, and 47 and therefore deny the same and demand strict proof thereof.

25. Defendants Richardson are without sufficient information to form a belief as to the allegations contained in Paragraph 48 and therefore demand strict proof thereof. Further, Defendants Richardson state that said allegations are legal conclusions to which Defendants Richardson are not obligated to reply and therefore deny the same and demand strict proof thereof.

26. Defendants Richardson deny the allegations of Paragraph 49 and demand strict proof thereof.

27. Defendants Richardson are without sufficient information to form a belief as to the allegations of Paragraph 50 and therefore deny the same and demand strict proof thereof.

28. Defendants Richardson are without sufficient information to form a belief as to the allegations contained in Paragraphs 51 and 52 and therefore deny the same and demand strict proof thereof.

29. Defendants Richardson are without sufficient information to form a belief as to the allegations contained in Paragraph 53 and therefore deny the same and demand strict proof thereof.

30. In response to Paragraph 54, Defendants Richardson state the allegations set forth a legal conclusion to which a response is not required, but to the extent a response is required, Defendants Richardson deny the same and demand strict proof thereof.

31. Defendants Richardson are without sufficient information to form a belief as to the allegations contained in Paragraphs, 55, 56, and 57 and therefore deny the same and demand strict proof thereof.

32. Paragraph 58 calls for a response to a legal conclusion which Defendants Richardson are not required to respond, but to the extent a response is required, Defendants Richardson deny the allegations and demand strict proof thereof.

33. Defendants Richardson have insufficient information to form a belief as to the allegations contained in Paragraphs 59, 60, 61, 62, 63, 64, 65, and 66 and therefore deny the same and demand strict proof thereof.

34. In response to Paragraph 67, Defendant Richardson state that the document speaks for itself and therefore deny any allegations that differ from the said Code.

35. Defendants Richardson have insufficient information to form a belief as to the allegations contained in Paragraphs 68, 69 and 70 and therefore deny the same and demand strict proof thereof.

36. In response to Paragraph 71, Defendants Richardson repeat each and every allegation above as if set out fully verbatim herein.

37. In response to Paragraph 72, Defendants Richardson state that the allegations Set forth a particular section of the SC Code which speaks for itself and to which Defendants Richardson are not required to respond. To the extent a response is required, Defendants Richardson deny the same and demand strict proof thereof.

38. Upon information and belief, Defendants Richardson admit the allegations of Paragraph 73 of said Complaint.

39. In response to Paragraphs, 74, 75, 76, 77 Defendants Richardson lack sufficient information to form a belief and therefore deny the same and demand strict proof thereof.

40. In response to Paragraph 78, Defendants Richardson repeat each and every allegation above as if set out fully verbatim herein.

41. Defendants Richardson lack sufficient information to form a belief as to the Allegations of Paragraph 79, 80, 81, 82, and 83 and therefore deny the same and demand strict proof thereof.

42. Defendants Richardson deny the allegations of Paragraphs 84 and 85 and demand strict proof thereof.

43. Defendants Richardson lack sufficient information to form a belief as to the allegations of Paragraph 86 and therefore must deny the same and demand strict proof thereof.

44. In response to Paragraph 87, Defendants Richardson state that that Code Section speaks for itself and therefore no response is required. To the extent a response is required, Defendants Richardson deny same and demand strict proof thereof.

45. Defendants Richardson lack sufficient information to form a belief as to the allegations contained in Paragraph 88 and therefore deny the same and demands strict proof thereof.

46. Defendants Richardson deny the allegations of Paragraphs 89, 90, 91, 92, 93, 94, 95 and 96 of said Complaint and demand strict proof thereof.

47. In response to Paragraph 97, Defendants Richardson reallege each and every allegation above as if set out fully verbatim herein.

48. Defendants Richardson deny the allegations of Paragraph 98 and demands strict proof thereof.

49. In response to Paragraphs 99, 100, 101, 102, and 103 of said Complaint, Defendants Richardson is without sufficient information to form a belief as to the allegations contained therein and therefore deny the same and demands strict proof thereof.

50. In response to Paragraph 104, Defendants Richardson repeat each and every allegation above as if set out fully verbatim herein.

51. Responding to Paragraph 105, Defendants Richardson would admit only so much of the allegations contained therein to the extent that the lease was with Charity Fillmore, as an individual who, upon information and belief, is the operator of Senrab Equestrian Center but denies any inference that said lease was with Senrab Equestrian Center in 2009 as well as the remaining allegations contained therein and demands strict proof thereof.

52. Defendants Richardson deny the allegations of Paragraph 107 on the grounds that it calls for a legal interpretation and legal conclusions to which Defendants Richardson are not required to respond.

53. Defendants Richardson deny the allegations of Paragraph 108 and demands strict proof thereof.

54. Defendants Richardson admit the allegations contained in Paragraph 109 of said Amended Complaint and further allege in connection therewith that Defendants Richardson receive money from Defendant Ingalls as an individual in return for leasing Tract B.

55. Defendants Richardson deny the allegations of Paragraph 110 and demand strict proof thereof.

56. Defendants admit the allegations of Paragraph 111 of said Amended Complaint.

57. Defendants Richardson are without sufficient information to form a belief as to the allegations contained in Paragraph 112 of said Amended Complaint and therefore deny the same and demand strict proof thereof.

58. Paragraph 113 calls for a legal conclusion to which Defendants Richardson are not required to respond but to the extent they are, Defendants Richardson deny the same and demand strict proof thereof.

59. Defendants deny the allegations of Paragraphs 114 and 115 and demand strict proof thereof.

AS AND FOR A SECOND DEFENSE
(Unclean Hands)

60. Defendants Richardson repeat each and every allegation above as if set out fully verbatim herein.

61. Plaintiff comes into this Court having engaged in misconduct regarding Defendants Richardson and as a consequence is barred from seeking recovery or relief under the equitable doctrine of unclean hands.

62. Plaintiff is guilty of unclean hands and therefore under the principals of equity, cannot and should not be allowed to recover damages.

AS AND FOR A THIRD DEFENSE
(Statute of Limitations)

63. Defendants Richardson repeat each and every allegations above as if set out fully verbatim herein.

64. Plaintiffs have violated the Statute of Limitations and therefore Plaintiff should be barred from prosecuting this action and Plaintiff's complaint should be dismissed.

WHEREFORE, Defendants Richardson pray unto this Court as follows:

- a) All Plaintiff's claims be dismissed;
- b) Judgment be entered in favor of Defendants Richardson in an amount to be determined by the trier of fact;
- c) Order awarding Defendants Richardson reasonable attorney's fees and costs; and
- d) For such other and further relief as the Court deems just and proper.

By: _____

P. Brandt Shelbourne, Esquire

Melanie A. Maes, Esquire

131 E. Richardson Avenue

Summerville, SC 29483

(843) 871-2210

ATTORNEYS FOR DEFENDANTS

DOUGLAS S. and JULIE D.

RICHARDSON

Summerville, South Carolina
April 12, 2010

Certificate of Service

The undersigned hereby certifies that a true copy of the foregoing pleading has been served upon Plaintiff's counsel by mailing a copy properly addressed with sufficient postage affixed thereto this 12 day of April, 2010.

Rebecca A. Stevens, Paraiegal

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)
LARRY E. KINARD,)

Plaintiff,)

vs.)

TOWN OF SUMMERVILLE,)
HOA VAN NGUYEN, XUAN THI)
NGUYEN and SENRAB FARM)
HOMEOWNERS ASSOCIATION,)
DOUGLAS S. RICHARDSON,)
JULIE D. RICHARDSON and)
MADELINE A. INGALLS d/b/a)
THIN BLUE LINE STABLES,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

CASE NO: 2009-CP-18-3315

AMENDED ANSWER OF DOUGLAS S.
RICHARDSON and JULIE D.
RICHARDSON TO PLAINTIFF'S
AMENDED COMPLAINT

2010 APR 29 PM 2:46
FILED
CLERK OF COURT
JUDICIAL CIRCUIT
SOUTH CAROLINA

TO PLAINTIFF AND HIS ATTORNEY OF RECORD:

Defendants Douglas S. and Julie D. Richardson (hereinafter collectively referred to as "Defendants Richardson") by and through their undersigned attorney, hereby answer the Amended Complaint as follows:

1. Unless otherwise admitted, Defendants Richardson deny each and every allegation contained in Plaintiff's Amended Complaint and demands strict proof thereof.
2. Defendants Richardson lack sufficient information in which to admit the allegations of Paragraphs 1 and 2 and therefore deny the same and demand strict proof thereof.
3. Defendants Richardson admit the allegations of Paragraph 3 but qualify that admission stating that they also live on the allegedly undeveloped 5.3 acre lot and use that property.

4. Defendants Richardson admit the allegations contained Paragraph 4 only to the extent that they have an existing lease with Defendant Ingalls individually for the fenced pasture and deny the remaining allegations contained in Paragraph 4 and demand strict proof thereof.

5. Defendants Richardson are without sufficient information to admit or deny the allegations contained in Paragraph 5 and therefore deny the same and demand strict proof thereof.

6. In response to Paragraph 6, Defendants Richardson admit the Town of Summerville is an incorporated municipality but have no information as to the Town acting through selected Town members and therefore deny the same and demand strict proof thereof.

7. Defendants Richardson deny the allegations in Paragraph 7 of said Amended Complaint and aver that prior to the October 14, 2009 ordinance, Dorchester County rezoned Defendants Richardson's and other properties from R-4 to RA (Residential Agriculture) at the request of the majority of homeowners.

8. With regard to Paragraphs 8 and 9, Defendants Richardson state that they have no independent knowledge as to the allegations contained therein and therefore deny the same and demand strict proof thereof.

9. In response to Paragraphs 10 and 11, Defendants Richardson state that the documents speak for themselves.

10. In response to Paragraph 12, Defendants Richardson state that the allegations contained therein are legal conclusions to which Defendants Richardson are not required to respond but to the extent they are, deny the same and demand strict proof thereof.

11. In response to Paragraphs 13, 14, and 15 Defendants Richardson are without sufficient information to form a belief as to the allegations therein, and therefore deny the allegations and demand strict proof thereof. Furthermore, to the extent the allegations refer to public records, Defendants Richardson aver that the documents speak for themselves.

12. Defendants Richardson are without sufficient information to form a belief as to the allegations contained in Paragraph 16 and therefore deny the same and demand strict proof thereof.

13. Upon information and belief, Defendants Richardson admit the allegations contained in Paragraph 17 of Plaintiff's Amended Complaint.

14. In response to Paragraphs 18, 19, and 20, Defendants Richardson admit to the authenticity of the documents referenced in the allegations but to the extent the allegations contain any information that deviates from those allegations, they would deny the same and demand strict proof thereof. Further, Defendants deny any assumptions made in contrary to the clear language of those documents and demand strict proof thereof.

15. In response to Paragraph 21, Defendants Richardson admit that the documents speak for themselves and therefore would deny any allegations outside that response and demand strict proof thereof.

16. In response to Paragraph 22, Defendants have no independent knowledge as to the allegations contained therein and therefore deny the same and demand strict proof thereof.

17. In response to Paragraph 23 of the said Complaint, Defendants Richardson admit that the plat marked as Exhibit "E" to the Amended Complaint was recorded on or about April 1, 2003. Defendants Richardson is without sufficient information to form a belief as to whether it was a subdivision of the property and therefore deny the same and demand strict proof thereof.

18. The allegations in Paragraph 24 are conclusions of law and therefore Defendants Richardson are not required to respond to same, but to the extent they are, Defendants Richards deny the same and demand strict proof thereof.

19. In response to Paragraph 25, Defendants Richardson admit to the authenticity of the publicly recorded documents and states the deeds speak for themselves.

20. Defendants Richardson deny the allegations contained in Paragraphs 26, 27, and 28 and demand strict proof thereof.

21. In response to Paragraphs 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, Defendants Richardson do not have sufficient information to form a belief as to allegations contained therein and therefore denies the same and demand strict proof thereof.

22. In response to Paragraph 41, Defendants Richardson have insufficient information to form a belief as to the allegations therein and therefore denies the same and demands strict proof thereof.

23. In response to Paragraph 42, Defendants Richardson admit to the authenticity of Exhibit "K" but is without sufficient information to form a belief as to the remaining allegations and therefore deny the same and demand strict proof thereof.

24. Defendants Richardson are without sufficient information to form a belief as to the allegations of Paragraphs 43, 44, 45, 46, and 47 and therefore deny the same and demand strict proof thereof.

25. Defendants Richardson are without sufficient information to form a belief as to the allegations contained in Paragraph 48 and therefore demand strict proof thereof. Further, Defendants Richardson state that said allegations are legal conclusions to which Defendants Richardson are not obligated to reply and therefore deny the same and demand strict proof thereof.

26. Defendants Richardson deny the allegations of Paragraph 49 and demand strict proof thereof.

27. Defendants Richardson are without sufficient information to form a belief as to the allegations of Paragraph 50 and therefore deny the same and demand strict proof thereof.

28. Defendants Richardson are without sufficient information to form a belief as to the allegations contained in Paragraphs 51 and 52 and therefore deny the same and demand strict proof thereof.

29. Defendants Richardson are without sufficient information to form a belief as to the allegations contained in Paragraph 53 and therefore deny the same and demand strict proof thereof.

30. In response to Paragraph 54, Defendants Richardson state the allegations set forth a legal conclusion to which a response is not required, but to the extent a response is required, Defendants Richardson deny the same and demand strict proof thereof.

31. Defendants Richardson are without sufficient information to form a belief as to the allegations contained in Paragraphs, 55, 56, and 57 and therefore deny the same and demand strict proof thereof.

32. Paragraph 58 calls for a response to a legal conclusion which Defendants Richardson are not required to respond, but to the extent a response is required, Defendants Richardson deny the allegations and demand strict proof thereof.

33. Defendants Richardson have insufficient information to form a belief as to the allegations contained in Paragraphs 59, 60, 61, 62, 63, 64, 65, and 66 and therefore deny the same and demand strict proof thereof.

34. In response to Paragraph 67, Defendant Richardson state that the document speaks for itself and therefore deny any allegations that differ from the said Code.

35. Defendants Richardson have insufficient information to form a belief as to the allegations contained in Paragraphs 68, 69 and 70 and therefore deny the same and demand strict proof thereof.

36. In response to Paragraph 71, Defendants Richardson repeat each and every allegation above as if set out fully verbatim herein.

37. In response to Paragraph 72, Defendants Richardson state that the allegations Set forth a particular section of the SC Code which speaks for itself and to which Defendants Richardson are not required to respond. To the extent a response is required, Defendants Richardson deny the same and demand strict proof thereof.

38. Upon information and belief, Defendants Richardson admit the allegations of Paragraph 73 of said Complaint.

39. In response to Paragraphs, 74, 75, 76, 77 Defendants Richardson lack sufficient information to form a belief and therefore deny the same and demand strict proof thereof.

40. In response to Paragraph 78, Defendants Richardson repeat each and every allegation above as if set out fully verbatim herein.

41. Defendants Richardson lack sufficient information to form a belief as to the Allegations of Paragraph 79, 80, 81, 82, and 83 and therefore deny the same and demand strict proof thereof.

42. Defendants Richardson deny the allegations of Paragraphs 84 and 85 and demand strict proof thereof.

43. Defendants Richardson lack sufficient information to form a belief as to the allegations of Paragraph 86 and therefore must deny the same and demand strict proof thereof.

44. In response to Paragraph 87, Defendants Richardson state that that Code Section speaks for itself and therefore no response is required. To the extent a response is required, Defendants Richardson deny same and demand strict proof thereof.

45. Defendants Richardson lack sufficient information to form a belief as to the allegations contained in Paragraph 88 and therefore deny the same and demands strict proof thereof.

46. Defendants Richardson deny the allegations of Paragraphs 89, 90, 91, 92, 93, 94, 95 and 96 of said Complaint and demand strict proof thereof.

47. In response to Paragraph 97, Defendants Richardson reallege each and every allegation above as if set out fully verbatim herein.

48. Defendants Richardson deny the allegations of Paragraph 98 and demands strict proof thereof.

49. In response to Paragraphs 99, 100, 101, 102, and 103 of said Complaint, Defendants Richardson is without sufficient information to form a belief as to the allegations contained therein and therefore deny the same and demands strict proof thereof.

50. In response to Paragraph 104, Defendants Richardson repeat each and every allegation above as if set out fully verbatim herein.

51. Responding to Paragraph 105, Defendants Richardson would admit only so much of the allegations contained therein to the extent that the lease was with Charity Fillmore, as an individual who, upon information and belief, is the operator of Senrab Equestrian Center but denies any inference that said lease was with Senrab Equestrian Center in 2009 as well as the remaining allegations contained therein and demands strict proof thereof.

52. Defendants Richardson admit the allegations contained in Paragraph 106 of said Amended Complaint.

53. Defendants Richardson deny the allegations of Paragraph 107 on the grounds that it calls for a legal interpretation and legal conclusions to which Defendants Richardson are not required to respond.

54. Defendants Richardson deny the allegations of Paragraph 108 and demands strict proof thereof.

55. Defendants Richardson admit the allegations contained in Paragraph 109 of said Amended Complaint and further allege in connection therewith that Defendants Richardson receive money from Defendant Ingalls as an individual in return for leasing Tract B.

56. Defendants Richardson deny the allegations of Paragraph 110 and demand strict proof thereof.

57. Defendants admit the allegations of Paragraph 111 of said Amended Complaint.

58. Defendants Richardson are without sufficient information to form a belief as to the allegations contained in Paragraph 112 of said Amended Complaint and therefore deny the same and demand strict proof thereof.

58. Paragraph 113 calls for a legal conclusion to which Defendants Richardson are not required to respond but to the extent they are, Defendants Richardson deny the same and demand strict proof thereof.

60. Defendants deny the allegations of Paragraphs 114 and 115 and demand strict proof thereof.

AS AND FOR A SECOND DEFENSE
(Unclean Hands)

61. Defendants Richardson repeat each and every allegation above as if set out fully verbatim herein.

62. Plaintiff comes into this Court having engaged in misconduct regarding Defendants Richardson and as a consequence is barred from seeking recovery or relief under the equitable doctrine of unclean hands.

63. Plaintiff is guilty of unclean hands and therefore under the principals of equity, cannot and should not be allowed to recover damages.

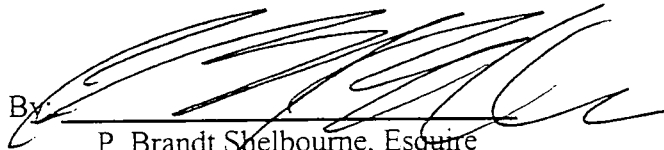
AS AND FOR A THIRD DEFENSE
(Statute of Limitations)

64. Defendants Richardson repeat each and every allegations above as if set out fully verbatim herein.

65. Plaintiffs have violated the Statute of Limitations and therefore Plaintiff should be barred from prosecuting this action and Plaintiff's complaint should be dismissed.

WHEREFORE, Defendants Richardson pray unto this Court as follows:

- a) All Plaintiff's claims be dismissed;
- b) Judgment be entered in favor of Defendants Richardson in an amount to be determined by the trier of fact;
- c) Order awarding Defendants Richardson reasonable attorney's fees and costs; and
- d) For such other and further relief as the Court deems just and proper.

By: 

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DOUGLAS S. and JULIE D.
RICHARDSON

Summerville, South Carolina
April 23, 2010

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
: FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER) CASE NO.: 09-CP-18-3315

LARRY E. KINARD,

Plaintiff,

-versus-

DOUGLAS S. RICHARDSON and JULIE
D. RICHARDSON,

Defendants.

TRANSCRIPT OF

PROCEEDINGS

HEARING

DATE: June 7, 2012
TIME: 10:38 a.m. - 4:09 p.m.
LOCATION: Dorchester County Courthouse
5200 East Jim Bilton Boulevard
St. George, South Carolina
HELD BEFORE: Maite Murphy, Master-in-Equity

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HEARING - JUNE 7TH, 2012

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HEARING - JUNE 7TH, 2012

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REPORTER'S NOTE: (Original exhibits were retained
by the Court and not available to the Court
Reporter during transcription)

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1 This cause came on to be heard on the 7th day
2 of June, 2012, at the Dorchester County Courthouse
3 located at 5200 East Jim Bilton Boulevard, St.
4 George, South Carolina, before the Honorable Maite
5 Murphy, Master-in-Equity.

6 (PLAINTIFF'S EXHIBITS NO. 1 THROUGH
7 38 PREMARKED FOR IDENTIFICATION)

8 (The Court having been duly opened, the
9 following proceedings were had, to-wit:)

8 10 THE COURT: Are the parties ready to
11 proceed?

8 12 MR. POLITO: We are, Your Honor.

8 13 THE COURT: All right, sir.

8 14 MR. SHELBOURNE: Defendants ready.

8 15 THE COURT: Mr. Polito, do the parties
16 care to make a brief opening? I see this is
17 a thick file, and I haven't had a chance to
18 look through it.

8 19 MR. POLITO: Sure.

8 20 THE COURT: If you could run down the
21 allegations contained in your Complaints.

8 22 MR. POLITO: Are you ready, Your
23 Honor?

8 24 THE COURT: Yes, sir. I'm ready.

9 25 MR. POLITO: Briefly, for the record,

1 the crux of -- this is a declaratory judgment
2 action. It started off as a big suite, and
3 we're down to just these parties is all we
4 have left. It's over at Senrab Farms
5 subdivision, which is off Central Avenue.
6 It's an eighteen-lot subdivision where the
7 smallest lot is about an acre, and the
8 Defendant owns the largest lot. Well, there
9 are two lots now that have a combined acreage
10 of seven acres.

10:39 11 The crux of this case is a phrase in
12 the covenants that states the lots are known
13 and designated and shall be used as single-
14 family residential building lots. Three
15 different times, Your Honor. They're known
16 and designated and shall be used as single-
17 family residential building lots. Mr. Kinard
18 is a Korean War veteran. He bought his
19 retirement home there with his wife, who's
20 here, Mrs. Kinard. The Defendant bought a
21 bit later, decided to -- bought a seven-acre
22 lot and decided that because the covenants
23 allowed him to have horses that they could
24 open a horse business. And on that business,
25 what he does is he grazes horses on the land

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1 inside this residential subdivision. He lets
2 people ride on -- on the land. They park
3 their cars on the land. Horses have been
4 sold from the land. And we're here today to
5 ask you to put a stop to that.

o 6 What they're hoping you'll do is
7 declare that that covenant, the language I
8 just read to you, the lots are known and
9 designated and shall be used as single-family
10 residential building lots, doesn't mean what
11 it says. And if we pull this out from under
12 this subdivision, this is the only language
13 in their covenants they have that make them a
14 residential subdivision and requires
15 residential use of the property. That's it.
16 There's nothing else in there. So that's the
17 crux of the case.

o 18 Also, the original covenants in the
19 subdivision allowed each lot owner to have up
20 to one horse, to keep. That was what -- they
21 can keep up to one horse, incidental to use
22 of the property. The lot that the Defendant
23 purchased, prior to him purchasing it, his
24 predecessor in interest negotiated with the
25 developers to amend the covenants, to amend

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1 the covenants so as to allow on that lot six
2 more horses than anybody else, five more
3 horses, up to six horses. And they did that
4 in violation of the covenants' amendment
5 clause which required the developer to own a
6 majority of the lots then subject to the
7 covenants before they could take and amend
8 them. At the time, the developer amended the
9 covenants to permit a non-uniform covenant,
10 which is highly unusual in any subdivision
11 anyway, and allow six horses. They owned
12 none. They didn't own any of the lots that
13 were then subjected to the covenants.
14 There's six, and we'll walk through that.
15 I'll walk through the documents, and I'll
16 show you the language in it and let you see.
17 So that -- that's the second fallback.

10:42 18

19 The first one is are they violating
20 this residential use policy by having a
21 commercial enterprise operating in a
22 residential subdivision. And the Defendant
23 basically admits to operating a commercial
24 enterprise. What they want the Court to
25 believe is that this is like leasing a house.
They're leasing the land so people can ride

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1 on it or -- or have their cars there or park
2 cars there or to have their horses there or
3 to sell horses from the land is like leasing
4 a house. That's what they're going to try to
5 get you to believe.

2 6 There's one other interesting --
7 there's one other thing we'll ask the Court
8 to do in that non-uniform covenants, there's
9 no law in South Carolina of non-uniform
10 covenants. There's law in the rest of the
11 nation that I cited to you in a brief I
12 prepared on the law, and in other states,
13 you -- a subdivision cannot have non-uniform
14 covenants. When it has a master plan, you
15 can't go later changing it because everybody
16 else bought into that subdivision thinking
17 that this deed are the rights they're going
18 to get. So the developer can't go changing
19 the rules later and create a non-uniform
20 covenant for one lot.

3 21 And I'm going to present law. It's
22 just a novel thing. It's -- it's secondary.
23 The primary crux of the case, though, is
24 are -- it's the old are they violating the
25 residential restrictions and covenants. And

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1 that's what our case is about.

10:43 2 THE COURT: Thank you, Mr. Polito.
3 Mr. Shelbourne.

10:43 4 MR. SHELBOURNE: Your Honor,
5 Mr. Polito mischaracterizes not only the
6 status of the case but also my client's
7 position, basically building a strawman
8 argument and then he wants to shoot it down.
9 what he's telling you is what he believes the
10 evidence will show Your Honor this case is.

10:43 11 Judge Dixon has already ruled on part
12 of this case, Your Honor, on a cross-motion
13 that he filed. There's an order from the
14 Court that he filed a motion for
15 reconsideration, which was denied. The
16 Court -- Judge Dixon's order dated January
17 12th, 2012, specifically says the Court finds
18 that Tracts A and B are part of the original
19 tract, L, that's my clients' property, and
20 are subject to any covenants and restrictions
21 that apply to the original Tract L, which
22 include the covenants and restrictions known
23 as amendment to restrictions filed on
24 March 18th, 1998.

0:44 25 That March 18th, 1998, amendment to

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1 restrictions -- and that's the title of it --
2 is what Judge Dixon found applied to my
3 clients' property, and that's what
4 specifically says we can have up to six
5 horses on this piece of property. That's
6 what the law of this case is. It is not --
7 so Mr. Polito's argument that somehow he's
8 had more horses than he should or anything
9 like that don't -- that ship has sailed, and
10 that's the law that's the crux. And the
11 court went on to say the conflicts between
12 the original restrictions that apply to the
13 other tracts of the subdivision and the
14 amendments filed, including whether it's --
15 including -- and this is important -- whether
16 the original restrictions apply to the
17 Defendants' Tract A and B and whether
18 Defendants are or were in compliance with
19 those are questions of fact.

20 So one of the issues, and Mr. Polito
21 has actually raised this in his pleadings, is
22 that Mr. Barnes, who sold this property to my
23 client -- excuse me -- to Mr. Hill, Steve
24 Hill was the builder, who my client had a
25 contract with to build a house, Hill

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1 basically said I'll buy you a house -- I'll
2 build your house, but I'm going to buy the
3 property and then build it and then sell it
4 back to you. That property was not subject
5 to the original covenants and restrictions,
6 and they're, I believe, additionally estopped
7 from arguing that Mr. Barnes had the
8 authority to make -- to amend the original
9 covenants. We would agree with them. That's
10 their position. They've already taken that
11 position in court in their motion for summary
12 judgment, and I believe that judicial
13 estoppel prohibits them now from saying, oh,
14 well, he can change. Because he can't, and
15 it never was done, and, therefore, we don't
16 have covenants.

10:46 17

18 What we have on my clients' property
19 are restrictions, and we would agree that we
20 have restrictions on the property, but
21 they're not the same as the covenants. A
22 covenant is an agreement, a contract between
23 the parties to enforce those covenants.
24 Mr. Kinard is not a party to the covenants on
25 my clients' property. He's not a party to
that. He belongs to the subdivision.

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6 1 And if you'll look at the original
2 covenants, which are included in the
3 exhibits, you'll see that they list several
4 lots, and there's a plat in their exhibits,
5 which we don't object to, that lists those
6 lots. It's not my clients' property. It's
7 not in there. There is no amendment to any
8 of those covenants whereby my clients'
9 property is brought into those -- that
10 subdivision. There's no phase 2 designated
11 on their property. There's no future
12 development listed on their property. It's
13 just -- now, because of that, they're, I
14 think, estopped from taking the position that
15 they now have some authority or right to
16 grant my client.

7 17 When I bought my home, the people we
18 bought it from could have said, you know
19 what, we're going to make your house -- my
20 house -- your house, Brandt, you're buying
21 subject to the covenants for Newington. They
22 could have. We could have said, yes, we
23 agree, or, no, we don't agree. But that
24 doesn't give the people in Newington
25 authority to come make a decision on my

1 property any more than if we were developing
2 a five-hundred-lot subdivision and said we're
3 going to make this lot, this subject to the
4 covenants that are for Senrab Farms, and
5 therefore, now all those five hundred lots
6 are part of Senrab Farms. They can't outvote
7 it. You've got to be subject to the
8 agreement to be covered. So we don't think
9 there's jurisdiction -- excuse me -- standing
10 for Mr. Kinard to even bring this action.

10:48 11

12 We also think, Your Honor, that the
13 covenants and restrictions allow for the
14 leasing of property. So, even if they do
15 apply, we don't think we're in violation
16 because they opt to lease their property.
17 And South Carolina law is very explicit in
18 stating that you have to expressly prohibit
19 the act or it has to be clearly established
20 from the language of the covenants and
21 restrictions, and that's not the case in this
22 case. Because, clearly, horses are allowed;
23 clearly, leasing of property is allowed, and,
24 in fact -- and even if -- so even if those --
25 we get past those two, which we don't think
they can, then there's the equitable issue.

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8 1 The Court has routinely said or
2 consistently that said the equitable issues
3 must be addressed before you restrict
4 someone's property. And in this case, what
5 are the equitable issues? You will hear,
6 Your Honor, that Mr. Kinard bought his
7 property in 1998, in January of 1998, that
8 there were horses on this property. It was a
9 fenced -- part of it was fenced and there
10 were horses on this property.

9 11 You will hear that when Mr. Richardson
12 bought his property -- excuse me -- when
13 Steve Hill bought the property in March of
14 '98, and then when Mr. Richardson went out
15 and he brought it in December of 1998, he
16 then began erecting a horse fence and that he
17 discussed this with Mr. Kinard, and there was
18 no question that they knew there were going
19 to be horses on this property. And then,
20 about three years later, the fence took
21 awhile to build, when this was completed --
22 we're talking 2001, 2002, there were horses
23 on this property. There have been horses on
24 this property that aren't Mr. Richardson's
25 since early 2002. This case wasn't brought

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1 against them until 2010, nearly seven years
2 later. And so we've got a huge statute of
3 limitations problem. We've also got
4 equitable issues that Mr. -- and so we think
5 that the equitable issues alone would
6 encourage or allow us to prevail. So that's
7 what you're going to hear from our testimony.

10:50 8 We -- we vehemently dispute that we
9 are operating a business, a horse business.
10 We vehemently dispute that we have been
11 selling horses or anything like that. We
12 don't argue that there are horses on the
13 property that aren't ours and that some of
14 them may have been sold, but we're not doing
15 it, and we're not even allowing it to go on.
16 If it's gone on and you'll -- I think there
17 will be an attempt to introduce evidence that
18 we would have done that. We believe that
19 without a proper foundation, which we're
20 going to object to, Your Honor, all that's
21 irrelevant to this issue. So there are clear
22 questions of fact in this case that needs to
23 be heard.

10:51 24 THE COURT: Thank you. Mr. Polito,
25 did you have something else?

1 1 MR. POLITO: Yeah. Your Honor,

2 just -- you want me to just read the issues
3 that are before the Court? He brought up the
4 Judge's order. Counsel was beside me when we
5 argued the motion to reconsider before the
6 Judge. The only thing this decides is there
7 are conclusions of law here. There is no --
8 there are no conclusions of fact. He says I
9 make the following conclusions of law.
10 That's how he starts it off, and the only one
11 he makes is that the covenants run the land.
12 That's it. And he reserves everything else
13 for trial.

14 Counsel was there when we went to a
15 motion to reconsider. I argued before him
16 that the covenants were invalid, and -- and I
17 said, Judge, you know, we're sitting here
18 looking at this, you didn't rule on that, are
19 they valid or are they not, and he, in the
20 motion to reconsider, he just denied it flat
21 out. So he didn't even address it. He
22 didn't say it wasn't. He didn't say this
23 included it. So I think counsel is
24 stretching things a bit to stand before the
25 Court and suggest that the Judge has already

130

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1 ruled on those issues.

10:52 2 THE COURT: well, I'll have it. I'm
3 sure it's in the record, so I'll have it.

10:52 4 MR. POLITO: Do you have a copy of
5 that order?

10:52 6 THE COURT: I'm -- it should be part
7 of the court record, I'm sure, if it was
8 filed.

10:52 9 MR. POLITO: Okay.

10:52 10 THE COURT: If it's not, I will
11 certainly get it.

10:52 12 MR. POLITO: Thank you, Your Honor.

10:52 13 MR. SHELBOURNE: I'm just reading -- I
14 can read to you what it said. I'm not making
15 any stretches of what it said.

10:52 16 THE COURT: Let's proceed. Ready to
17 call your first witness?

10:52 18 MR. POLITO: Yes. I will call my
19 first witness, Mr. Larry E. Kinard.

10:52 20 THE COURT: Mr. Kinard, if you'd
21 please come around over here?

10:52 22 MR. POLITO: Your Honor, may I
23 approach? These are exhibits for the Court
24 and an index for the exhibits, and counsel
25 has the same thing.

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2 1 THE COURT: Any objection to these
2 exhibits?

2 3 MR. SHELBOURNE: Yes, Your Honor.
4 We're not objecting to the first eleven, but
5 we're objecting to the following documents
6 subject to them establishing the proper
7 foundation and relevance.

3 8 THE COURT: So, as we get to these,
9 you will --

3 10 MR. POLITO: Yeah. The first eleven,
11 though, are stipulated as admitted into
12 evidence, Your Honor.

3 13 THE COURT: Okay.

3 14 MR. POLITO: We did that yesterday.
15 (PLAINTIFF'S EXHIBITS NO. 1 THROUGH
16 11 RECEIVED IN EVIDENCE)

17 LARRY E. KINARD,
18 (the Plaintiff, called as a witness on behalf
19 of the Plaintiff, having been first duly
20 sworn, was examined and testified as
21 follows:)

3 22 MR. POLITO: Your Honor, I need to be
23 handing Mr. Kinard a lot of documents, so
24 should I --

3 25 THE COURT: Wherever you're

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1 comfortable.

10:53 2 MR. POLITO: Thank you.

3 DIRECT EXAMINATION

4 BY MR. POLITO:

10:53 5 Q Mr. Kinard, state your name, please.

10:53 6 A Larry Eugene Kinard.

10:53 7 Q Where do you reside, Mr. Kinard?

10:53 8 A 217 Saddle Trail in Senrab Farms off
9 of Central Avenue?

10:53 10 Q Who lives there with you?

10:53 11 A My wife, Patricia.

10:53 12 Q Is she in the courtroom today?

10:53 13 A Yes, she is.

10:53 14 Q Where is Senrab farms located?

10:54 15 A It's near Butternut. It's in
16 Summerville or just outside of Summerville towards
17 Knightsville near Butternut Road.

10:54 18 Q How long have you and Ms. Kinard lived
19 at 217 Saddle Trail in Senrab Farms?

10:54 20 A Since 1990 -- 1998.

10:54 21 Q Why did you pick Senrab Farms
22 subdivision?

10:54 23 A Because of its solitude and quietness,
24 its farm atmosphere, and it's just a quiet place.

10:54 25 Q When you purchased there, were there

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1 any buildings there when you bought your lot?

4 2 A Not that I remember any buildings.

4 3 Q Within the subdivision, itself?

4 4 A Just an old farm towards the back of
5 it, but that wasn't part of our subdivision.

4 6 Q So what was there?

4 7 A So, to me, it was just an agricultural
8 farm, and the other part of this subdivision, there
9 was nothing out there.

s 10 Q Mr. Kinard, were you shown a plat of
11 Senrab Farms prior to purchasing in there?

s 12 A Yes, I was.

s 13 Q I'll hand you Plaintiff's Exhibit 1.
14 Can you identify that plat?

s 15 A Yes, sir. This looks like the plat.

s 16 Q Is your lot the lot that you purchased
17 on there?

s 18 A Yes, it is. It's the lot F, here, is
19 my lot.

s 20 Q All right.

s 21 A Or one of my lots.

s 22 Q And you say "one of my lots." Did you
23 end up --

s 24 A I -- subsequently, I bought Lot G.
25 Previously, I bought Lot F. when I first moved there.

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0:55 1 Q So you now own Lots F and G?

10:55 2 A Yes.

10:55 3 Q And where is your home located?

10:56 4 A It's on Saddle Trail.

10:56 5 Q I mean on which one of those lots?

10:56 6 A F.

10:56 7 Q And what do you do on Lot G?

10:56 8 A Well, I just planted some fruit trees
9 out there, have a grape arbor, and we have some
10 fruit trees. We have some pears and apples and
11 things of that nature.

10:56 12 MR. POLITO: Your Honor, again,
13 Exhibits 1 through 11 have already been
14 admitted into evidence.

10:56 15 Q Now, looking back at this again -- I'm
16 sorry -- Exhibit 1, how do people get into Senrab
17 Farms?

10:56 18 A They come in through Senrab Boulevard,
19 which comes in from Central Avenue, and they make --
20 most of them make a left onto Saddle Trail, but that
21 goes in both directions. And then, at the
22 turnaround, which is not on this, they have
23 additional houses now, but looking at this, it just
24 goes to the turnaround.

0:57 25 Q What traffic control device, if any,

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1 is at the end of Senrab Boulevard and Saddle Trail
2 where your Lot G is?

7 3 A We have a stop sign, and we've
4 installed some speed bumps to slow people down.

7 5 Q The plat shows your road, Saddle
6 Trail, ending in what's called the temporary
7 turnaround?

7 8 A Yes.

7 9 Q And the land across from Lot F labeled
10 as 14.19 acres residual. Where on this plat is the
11 land owned by the Defendants, Mr. and Mrs.
12 Richardson?

7 13 A On that 14.19 residual area.

7 14 Q Thank you. I hand you Plaintiff's
15 Exhibit 2, Mr. Kinard. Do you recognize that
16 document?

7 17 A Sure do.

7 18 Q What is that?

7 19 A This is our restricted covenants.

8 20 MR. POLITO: Your Honor, there are
21 only a handful of provisions relevant to the
22 lawsuit in this. I'm going to go through
23 those right now, if I could, in Plaintiff's
24 Exhibit 2, which has been admitted. With the
25 Court's permission?

(10:58 1

THE COURT: Certainly.

10:58 2

MR. POLITO: The subdivision

3

developers are seen at the top as Gene and

4

Delene Barnes. Ms. Barnes' name is

5

misspelled. They've got her down as Delete

6

(ph) Barnes. The name, Senrab, is Barnes

7

spelled backwards, so they took their farm

8

and actually named it after themselves when

9

they created a subdivision.

10:58 10

The subdivision developers -- excuse

11

me -- please note the opening paragraph, the

12

developers reserve the right to make

13

additional property subject to the covenants

14

from time to time, but that the only lots

15

subject to the original covenants when

16

created were those listed in Exhibit A.

17

Exhibit A is attached, and that was mentioned

18

by counsel in his opening statement. It's

19

attached to the last page. If you just

20

glance at that, it's page 11 of Plaintiff's

21

Exhibit 2. The only lots initially impressed

22

with these restrictions were D, E, F, G, H,

23

and I as shown on Plaintiff's Exhibit 1. So

24

we had six lots, and that was the only ones

25

that are initially impressed.

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9 1 Numbered paragraph 1 states, quote,
2 lots shall refer to lots which are subject to
3 2, whether by specific reference in this
4 instrument or to lots made subject to the
5 provisions of this instrument by separate
6 legal instrument recorded in the Dorchester
7 County RMC Office. Glancing at the final
8 page of Exhibit A, which we just did, we see
9 those six lots again are D, E, F, G, H, and
10 I. On page 1, paragraph, 3, at the bottom,
11 it says enforcement shall be -- enforcement
12 of these covenants shall be by proceedings at
13 law or in equity against person or persons
14 violating or attempting to violate any
15 covenants either to restrained -- to restrain
16 violation hereof or to recover damages, and
17 that's what Mr. Kinard has done here.
18 He is not seeking damages, Your Honor.

o19 **MR. SHELBOURNE:** Your Honor, I'm going
20 to object to the oral argument. I don't mind
21 him asking questions, but I can't respond to
22 him just making statements to the Court.

o23 **THE COURT:** Mr. Polito, if you would
24 please just rephrase that --

o25 **MR. POLITO:** Sure.

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11:00 1 THE COURT: -- in the form of --

11:00 2 MR. SHELBOURNE: We can stipulate that
3 the language in the restrictive covenants is
4 the language in the restrictive covenants.

11:01 5 THE COURT: Okay. That's fine.

11:01 6 MR. POLITO: Thank you. On page 2,
7 Your Honor, paragraph 5, it's the heart of
8 the suit, Your Honor.

11:01 9 MR. SHELBOURNE: Your Honor, I'm going
10 to object to him making arguments --

11:01 11 MR. POLITO: I'm not making arguments.
12 I'm -- I'm just reading -- I'm telling you
13 why --

11:01 14 THE COURT: I understand. Maybe ask
15 your witness, you know, how it's relevant to
16 the question.

11:01 17 MR. POLITO: I won't make a comment.
18 I'll just read the provisions in here, if I
19 can, Your Honor, that are relevant since it's
20 already been admitted into evidence.

11:01 21 THE COURT: well, if you'd like to
22 just do that in your closing, but if you're
23 going to have the witness up here to testify,
24 just ask him question.

11:01 25 MR. POLITO: well, I think I can have

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1 him read it if you want me to.

1 2 THE COURT: I'm not going to tell you
3 how to try your case, but just ask him a
4 question rather than testifying.

1 5 MR. POLITO: Right. But this is --
6 this is -- this is the covenants. These have
7 been admitted into evidence. This is what
8 the case is, and unless I -- I thought we
9 were here to educate the Judge and --

1 10 THE COURT: And I appreciate that. I
11 just want to make sure that procedurally that
12 rather than you testifying that your witness
13 testifies.

1 14 MR. POLITO: Right. I won't make any
15 more testimony, Your Honor. Your Honor, I'll
16 just read the relevant provision, if that's
17 okay.

2 18 THE COURT: Ask your client the
19 relevant provision, if he knows.

20 BY MR. POLITO:

2 21 Q Mr. Kinard, could you turn to
22 paragraph 5?

2 23 A Yes.

2 24 Q And what use -- what use could be made
25 of these covenants -- of the land and the lots

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1 within Senrab Farms subdivision?

11:02 2 A The lots are known and designated and
3 shall be used as single-family residential building
4 lots.

11:02 5 Q Thank you. Mr. Kinard, you testified
6 you have a number of fruit trees on the lot that is
7 adjacent that you purchased?

11:02 8 A True.

11:02 9 Q Do the covenants -- do these covenants
10 in your hand prohibit you from having true fruit
11 trees?

11:03 12 MR. SHELBOURNE: Objection. Leading.

1:03 13 MR. POLITO: That's not a leading
14 question. I asked him if the --

11:03 15 A No.

11:03 16 MR. POLITO: -- covenants prohibited
17 him from having fruit trees?

11:03 18 THE COURT: Just whether or not. I'll
19 allow it.

20 BY MR. POLITO:

11:03 21 Q Do they prohibit you from having fruit
22 trees?

11:03 23 A No, sir.

11:03 24 Q In your reading of the covenants, does
25 the language prohibit you from having a pick-and-pay

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1 fruit stand on your land?

3 2 A Yes, it does.

3 3 Q What language in the covenants
4 prohibit you from having a pick-and-pay fruit stand?

3 5 A The same article 5. The lots are
6 known and designated and shall be used as single-
7 family residential building lots.

3 8 Q Does any covenant in the restrictive
9 covenants limit the number of vehicles you can have,
10 Mr. Kinard?

3 11 A No, sir.

3 12 Q Does any covenant prohibit you from
13 opening a parking lot or used-car lot on your
14 property?

3 15 A Same section 5, the lots are known and
16 designated and shall be used as single-family
17 residential building lots.

4 18 Q Is there any language in the covenants
19 prohibiting you from having a party and serving
20 alcohol?

4 21 A No, sir.

4 22 Q Is there any language that prohibits
23 you from opening a liquor store and having a bar on
24 your land?

4 25 A Yes, sir.

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11:04 1 Q What is that?

11:04 2 A The same article, the lots are known
3 and designated and shall be used as single-family
4 residential building lots.

11:04 5 Q Mr. Kinard, I direct your attention to
6 page 4 -- page 4, covenant 4, section 9 of page 4 of
7 the covenants, the section No. 9.

11:04 8 A Uh-huh.

11:04 9 Q It says in the event of the
10 subdivision of one or more or two contiguous lots,
11 such lot owner shall be responsible for having a
12 plat of the same recorded. And the next one down
13 says nothing contained in the foregoing paragraph
14 shall prohibit the owner of the lot from acquiring a
15 contiguous and using the same as a side yard?

11:05 16 A That's exactly what I did.

11:05 17 Q What did you do? Did you consolidate
18 your lots?

11:05 19 A Yes, I did.

11:05 20 Q You didn't subdivide them?

11:05 21 A No, sir.

11:05 22 Q You consolidated them?

11:05 23 A Yes, I did.

11:05 24 MR. SHELBOURNE: Objection, Your
25 Honor. This is all leading, and it is also

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1 irrelevant.

5 2 THE COURT: Mr. Polito, try not to
3 lead your witness, please.

4 BY MR. POLITO:

5 5 Q Mr. Kinard, I turn your attention to
6 page 6, paragraph 13. Do the covenants allow
7 homeowners within Senrab Farms to keep a horse?

6 8 A The original covenants allowed one
9 horse per lot.

6 10 Q Okay. Can you share that provision
11 for us from the covenants?

6 12 A It shall be permissible for the owner
13 of the lot to keep up to one horse on that lot so
14 long as the rear portion of the lot is fenced for
15 that purpose and such purpose for that -- I'm
16 sorry -- so long as the rear portion of that lot is
17 fenced for such purpose and such rear portion
18 contains a minimum area of 25,000 square feet. The
19 design of the fence shall be subject to the approval
20 of the undersigned or the designated representative.

7 21 Q To your knowledge, Mr. Kinard, has
22 anyone in Senrab Farms subdivision lot ever kept a
23 horse on their lot other than the Richardsons?

7 24 A Not one soul, to my knowledge.

7 25 Q To your knowledge, does anybody in

H E A R I N G - J U N E 7 T H , 2 0 1 2

1 somebody Senrab Farms even own a horse, including
2 the Richardsons?

11:07 3 A No.

11:07 4 Q The covenants page 9, section 18,
5 Mr. Kinard, can these covenants be amended?

11:08 6 A They can be amended by the majority of
7 the homeowners of record with their permission.

11:08 8 Q And is there a clause in the covenants
9 that says that?

11:08 10 A Yes. Clause 18.

11:08 11 Q Could you read that for us, please?

11:08 12 A These protective covenants may be
(13 altered, modified, cancelled or changed at any time
14 by the written consent of the majority of the owners
15 of record of the lots which are subject to hereto.

11:08 16 Q Thank you. Mr. Kinard, I'm a little
17 bit out of order, but I'm going to hand you
18 Plaintiff's Exhibit 8. Can you identify that
19 document?

11:09 20 A This is the amendment to restrictive
21 covenants, and it applies only to
22 Mr. Richardson's --

11:09 23 Q No. Take --

11:09 24 A It's the amendment to restrictive
25 covenants.

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9 1 Q Okay. But does that relate to
2 Mr. Richardson's land?

9 3 A Yes.

9 4 Q Take a look closer, please.

9 5 MR. SHELBOURNE: Your Honor, I'm going
6 to object to leading.

9 7 MR. POLITO: Well, I just want him to
8 look at the document, Your Honor.

9 9 A I'm sorry, this is the fence. It
10 applies to everybody on the fence.

9 11 Q What is it you have in your hand?

9 12 A This is a fence amendment to
13 restrictive covenants.

9 14 Q And what date is that fence amendment
15 to restrictive covenants?

0 16 A The date recorded is 2 December '97.

0 17 MR. SHELBOURNE: May I ask what
18 exhibit number that is?

0 19 MR. POLITO: No. 8.

0 20 A I thought why are you handing me this.
21 It's Richardsons' amendment.

0 22 Q So those are -- these exhibit
23 amendments entitled Amendment to Restrictive
24 Covenants, Plaintiff's Exhibit 8, you say relates to
25 the vinyl fence and applies to all covenants?

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11:10 1 A Yeah.

11:10 2 Q Do you know who that was signed by?

11:10 3 A James and Delene Barnes, the owners of
4 the property.

11:10 5 MR. POLITO: Your Honor, I would -- I
6 -- I -- that's already in evidence. Your
7 Honor, I just direct the Court's attention to
8 Plaintiff's Exhibit 3.

11:11 9 THE COURT: All right, sir.

11:11 10 MR. POLITO: And it's labeled on the
11 index as four deeds on the exhibit list.
12 Excuse me, five, five deeds. And what I'd
13 just like -- I don't want to waste the
14 Court's time. If counsel wants me to go
15 through it or we can try and fumble through
16 it, all we need to know is all these deeds
17 were executed after the date. The vinyl
18 fence amendment we saw was --

11:11 19 THE WITNESS: Through these.

11:11 20 THE COURT: And the documents will
21 speak for themselves.

11:11 22 MR. POLITO: Yes.

11:11 23 THE COURT: And they're filed in the
24 Court.

25 BY MR. POLITO:

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2 1 Q Mr. Kinard, would you please read from
2 Exhibit 8, the first whereas clause?

2 3 A Whereas, heretofore, on September
4 11th, 1997, the undersigned as declarant did receive
5 as restrictive covenants on a portion of the
6 subdivision known as Senrab Farms. Said restrictive
7 covenants being recorded in the RMC Office for
8 Dorchester County in Book 1821, Page 331.

2 9 Q And the next whereas clause, please?

2 10 A Whereas, paragraph 18 of said
11 restrictive covenants provides that the same may be
12 altered or modified by written consent by a majority
13 of the owners of the lots subject to thereto. And
14 whereas, the undersigned were the owners of the
15 majority of the lots which by --

2 16 Q That's good enough. Thank you,
17 Mr. Kinard. Well, they amended the covenants --

2 18 A They amended the covenants, but they
19 didn't own the -- the property.

2 20 Q No. That -- they did own the property
21 there.

2 22 MR. SHELBOURNE: Objection, Your
23 Honor. He's not allowed to testify or
24 correct his client's testimony. He can ask
25 questions, but not answer for him.

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(1:12 1

THE COURT: Sustained.

11:12 2

Q Mr. Kinard, that, what we just looked

3

at was for the vinyl fence; correct?

11:12 4

A Yes.

11:12 5

Q Mr. Kinard, I hand you Plaintiff's

6

Exhibit No. 4. Do you recognize that document?

11:12 7

A This is my title.

11:12 8

Q Your title?

11:12 9

A Yes.

11:12 10

Q For what?

11:12 11

A Lot M.

11:12 12

Q would you please read from the third

(13

paragraph of your deed?

11:12 14

A This conveyance is made subject to

15

those certain restrictive covenants recorded in the

16

RMC Office for Dorchester County in Book 1821 at

17

Page 331 and as amended from time to time.

11:15 18

Q Thank you. I hand you Plaintiff's

19

Exhibit No. 5. Do you recognize that?

11:15 20

A It appears to be Richardsons' Plat L

21

and M.

11:15 22

Q which -- which tract do the

23

Richardsons own?

11:15 24

A L.

1:15 25

Q L, okay. Thank you. Now the

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1 Richardsons' Tract L, where is that located in
2 relation to your home?

5 3 A It's directly across from my house and
4 my extra lot.

6 5 Q I hand you Plaintiff's Exhibit 6. Do
6 you know what that is?

6 7 A It appears to be Mr. Richardson's deed
8 to Tract L.

6 9 Q And who is that -- on the front page,
10 who is the deed made out to, from who to who?

6 11 A From James and Delene Barnes to Steve
12 Habersham Builders.

6 13 Q And that's Plaintiff's Exhibit 6?

6 14 A Yes.

6 15 Q Please turn to the final -- the final
16 page of the deed entitled Exhibit A. Does it
17 identify in there what the land is?

7 18 A Known and designated as Tract L Senrab
19 Farms.

7 20 Q Senrab Farms?

7 21 A Yes.

7 22 Q I direct your attention to the third
23 paragraph immediately following the words subject
24 to. Do you see that? Could you read that?

7 25 A Restrictive covenants dated September

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1 the 8th, 1997, and recorded in the RMC Office for
2 Dorchester County in Book 1831, Page 331.

11:17 3 Q And is that the same reference that
4 appears in your deed?

11:17 5 A It appears, sir, the deed is subject
6 to my restrictive covenants.

11:18 7 Q Could you also read the very next
8 paragraph?

11:18 9 A Amendment to restrictive dated
10 February 25, 1998, and recorded simultaneously
11 therewith or herewith.

11:18 12 Q Okay. Thank you. I hand you
13 Plaintiff's Exhibit No. 8. Have you seen that
14 document before?

11:18 15 A That's the amendment to the
16 restrictions. That's apparently Mr. Richardson's
17 amendments which are amending the original
18 covenants.

11:18 19 Q Who's that document signed by?

11:19 20 A James and Delene Barnes.

11:19 21 Q And what is the date it's signed?

11:19 22 A 25 February 1998.

11:19 23 Q 25 February 1998?

11:19 24 A That's when it was before the Notary.

25 Hold on just a minute. You're asking me the date of

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1 signature?

9 2 Q Yeah. Just the date it was signed.
3 That's fine, Mr. Kinard.

9 4 A It looks like March 18th, 1998, before
5 the RMC.

0 6 Q Turning back to the first page of the
7 deed, Mr. Kinard --

0 8 A Yes.

0 9 Q -- could you read the -- the fifth
10 paragraph starting with the words the property?

0 11 A The property shall be designated and
12 shall be used as a single-family residential
13 building tract.

0 14 Q Thank you. Could you read the next
15 paragraph, please, it shall be permissible?

1 16 A It shall be permissible for the
17 purchaser to subdivide the property described herein
18 as set out in paragraph 5 of the restrictive
19 covenants dated September the 9th, 1997, and
20 recorded in the RMC Office for Dorchester County in
21 Book 1821, Page 331, and so that sub -- subdivided
22 lot shall be used as a single-family residential
23 building lot.

1 24 Q Thank you, Mr. Kinard. And the final
25 paragraph on that page, would you read, please?

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(1:21 1 A It shall be permissible for the
2 purchaser and his or her successors and assigns to
3 keep up to six horses on the above-described
4 property. Such horses shall be permitted upon the
5 front portion of the property and the rear portion
6 of the property.

11:22 7 Q Okay. And -- and I think the last one
8 we need to go into is the second full paragraph
9 starting with the paragraph except as.

11:22 10 A Except as herein above and modified
11 and set out and by the acceptance hereof,
12 undersigned do hereby agree and consent that the
(13 property should be restricted in accordance with the
14 restrictive covenants dated September the 8th, 1997,
15 and recorded in the RMC Office for Dorchester County
16 in Book 1821, Page 331.

11:22 17 Q Is that the same reference that
18 appears in your deed?

11:22 19 A Yes, sir.

11:22 20 Q Mr. Kinard, did you sign this, these
21 amendments? Is your signature on there?

11:23 22 A No, sir.

11:23 23 Q Were you an owner of Lot F?

11:23 24 A Across the street, my lots, F and G.

1:23 25 Q F and G. Did anybody tell you they

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1 were amending the covenants?

3 2 A Not a whisper. No notice legally or a
3 whisper that they were going to be amended. And to
4 my knowledge, no one else was notified.

3 5 Q I'm going to hand you -- we've already
6 looked at Plaintiff's Exhibit 8. That was the vinyl
7 amendment. I'm going to hand you Plaintiff's
8 Exhibit 9. Do you recognize that?

3 9 A Yes, I do.

4 10 Q What is that you're looking at?

4 11 A It's the continuation of the
12 subdivision Tract M, N, O. P, and Q down to the
13 cul-de-sac from the turnaround.

4 14 Q Thank you. And it does show what
15 happened to the temporary turnaround that was
16 identified on your original plat?

4 17 A Yes. It showed that it was extended.

4 18 Q Are all the lots consecutively
19 numbered or lettered, excuse me?

4 20 A Yes.

4 21 Q Does that include the Defendant's lot
22 being consecutively lettered within the subdivision,
23 Tract L?

4 24 A I don't see it.

4 25 Q It's not on that, is it?

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(1:24 1 A No.

11:24 2 Q I'm handing you Plaintiff's Exhibit 5.

3 Is it consecutively lettered there?

11:25 4 A No.

11:25 5 Q You don't see Tract L on there?

11:25 6 A I see Tract L, but you're asking me

7 consecutively.

11:25 8 Q Are the letters going A, B, C, D, E,

9 F, G, H, I? Is there a letter missing? And also,

10 I'll hand you Plaintiff's Exhibit 1, which is the

11 original one. Has there any letter been skipped in

12 the numbering -- in the lettering of these lots?

(1:25 13 A E, F, G, H -- I'm sorry -- M, N, O, P.

14 Q. I can barely make out Tract L on this Exhibit 9.

11:26 15 Q Do you see any letter that's been

16 missing up to Q?

11:26 17 A I'm at a loss.

11:26 18 Q All right. That's fine.

11:26 19 A I'm sorry.

11:26 20 Q That's fine. How old are you,

21 Mr. Kinard?

11:26 22 A Seventy-eight.

11:26 23 Q Seventy-eight. I'm handing you

24 Plaintiff's Exhibit 10 and ask if you can identify

25 that?

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6 1 A It appears to be the title to Doug and
2 Julie's real estate.

6 3 Q And who deeded them that real estate?
4 Does it tell you?

6 5 A Yes. Steve Habersham Builders.

7 6 Q What date was that deeded on?

7 7 A It was deeded on -- it's filed and
8 recorded December the 29th, 1998.

7 9 Q Is there a date on that shows you the
10 date it was recorded on? I mean, the date it was
11 executed on?

7 12 A 23 December 1998.

7 13 Q Thank you. Look at the bottom of the
14 very first page. Does it indicate -- does it
15 describe -- does it give a description of the
16 property? Does it tell us what's being deed?

7 17 A Tract L, Senrab Farms, 120 Saddle
18 Trail.

7 19 Q Senrab Farms?

7 20 A Yes, sir.

7 21 Q And turn to the third page, Exhibit A,
22 if you would, Mr. Kinard. Does it also describe
23 there the property that's being deeded.

8 24 A Plat J, Page 37, Tract L, Senrab
25 Farms.

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1:28 1 Q Again Senrab Farms?

11:28 2 A Yes.

11:28 3 Q Down to subject to clause, down to the
4 subject to clause, could you read the first
5 paragraph after the subject to clause?

11:28 6 A Restrictive covenants and amendments
7 thereto recorded in the RMC Office for Dorchester
8 County Book 1821, Page 331; Book 1861, Page 95, and
9 in Book 1915, Page 263.

11:28 10 Q Does that reference Book 1841 (sic),
11 Page 331, is that the same reference that appears in
12 your deed?

1:29 13 A Yes, sir.

11:29 14 Q Do you know what the reference to Book
15 1861, Page 95 is to?

11:29 16 A I would think it would be to the
17 fence.

11:29 18 Q When we went over the vinyl fence?

11:29 19 A Yes, sir.

11:29 20 Q And what is the reference Book 1915,
21 263, if you know?

11:29 22 A I don't know.

11:29 23 Q All right. I hand you Plaintiff's
24 Exhibit 11. Could you identify that?

1:29 25 A This appears to me to be Doug

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1 Richardson's Lot A and B after he subdivided Tract
2 L.

9 3 Q Okay. And he subdivided it into how
4 many lots?

0 5 A Two lots, Tract A and Tract B.

0 6 Q What's on Tract A?

0 7 A His home.

0 8 Q Where is that home located in relation
9 to your house?

0 10 A Right across from my house.

0 11 Q And Tract B, where is Tract B located
12 in relation to your property?

0 13 A Also right across from my property.

0 14 Q Mr. Kinard, please tell the Court
15 briefly about your relationship with the Defendants.
16 Do you have a relationship with Mr. Richardson?

0 17 A At this time, very little. Other than
18 the homeowners' meeting or something of that nature.

0 19 Q How did you get to know him?

0 20 A At the homeowners' meetings. If I
21 remember, he was president of the homeowners'
22 association for Senrab Farms.

1 23 Q Did you ever have occasion to come to
24 him and share any concerns you had going on with
25 Senrab Farms?

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1:31 1 A Yes, I did. On several occasions, at
2 the meetings, I brought it up to him about the
3 noise, the traffic, the trailers in and out, and the
4 numerous amount of horses, and nothing was ever
5 taken seriously.

11:31 6 Q And is that while he was president of
7 the HOA?

11:31 8 A Yes, sir.

11:31 9 Q What was his reaction to it when you
10 would tell him these things?

11:31 11 A It was more or less passed over. It
12 was brushed off.

1:31 13 Q At some point, did you develop
14 concerns the Defendants might be using their own
15 land for --

11:31 16 MR. SHELBOURNE: Objection. It's
17 leading.

11:31 18 MR. POLITO: I'm just starting out a
19 new area of questioning, Your Honor. I've
20 got to get him there.

11:31 21 THE COURT: Just try not to lead.

11:31 22 MR. POLITO: I understand.

23 BY MR. POLITO:

11:32 24 Q At some point, did you develop
25 concerns that Defendants might be using their own

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2 1 THE WITNESS: Okay.

2 2 THE COURT: The attorney is in charge
3 of making sure he asks the questions.

2 4 THE WITNESS: Okay.

5 BY MR. POLITO:

2 6 Q Mr. Kinard, is there anything else you
7 would like to tell us about your relationship with
8 Mr. Richardson?

2 9 A It hadn't been very cordial at all
10 after I brought all this out.

3 11 Q Well, what happened to it? Just tell
12 us how it evolved. What happened next?

3 13 A As my attorney, we worked on this
14 situation together trying to be fair and equitable.
15 You brought to my attention the fact that on the web
16 page of horses were being bought and sold, and we
17 visited that website together and looked at it, and
18 we saw that things were going on that we weren't
19 aware of what was going on; that the Richardsons'
20 tract was being used to supplement the farm area.

3 21 And I really don't think he was aware
22 of what was going on on his property. There were
23 all types of things. There were children with golf
24 carts chasing horses. There were people chasing
25 horses with buggy whips. They would fence the

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1 horses in a particular area and then stampede them
2 out of there, and we're talking small children. I
3 think a lot of things were going on that
4 Mr. Richardson was not aware of going on on his
5 property, and it concerned me, also.

11:34 6 Q When we visited that website, was that
7 the first time you learned --

11:34 8 A At that point, it was the first time
9 that I learned that horses were being bought and
10 sold off the website.

11:34 11 Q Well, what did you --

11:34 12 A And that Mr. Richardson didn't own
13 those horses.

11:34 14 Q Let me hand you Plaintiff's Exhibits
15 12, 13, 14, and 15 and ask if you can identify
16 those?

11:34 17 A Yes, I can.

11:34 18 MR. SHELBOURNE: Your Honor, I would
19 object to all the labeling, unless it's being
20 offered for the truth of the matter asserted.

11:34 21 THE COURT: Right now, he's asking if
22 he can identify it.

11:34 23 MR. SHELBOURNE: Just saying if he can
24 identify it.

1:34 25 THE COURT: well, he can identify it.

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1 BY MR. POLITO:

5 2 Q Can you identify those exhibits?

5 3 A Yes. These were the Senrab Equestrian
4 Center horse people that we found on the Internet
5 together. This particular one happens to be
6 Mr. Richardson's lot, and it's identified, if I
7 remember correctly, as the gelding pasture as
8 advertised on the lot.

5 9 MR. SHELBOURNE: Your Honor, again,
10 I'm going to object to his testimony as to
11 what these things are. I mean, he's reading
12 something. Unless he has first-hand
13 knowledge of what they are --

5 14 MR. POLITO: Your Honor, he's online.

5 15 MR. SHELBOURNE: -- this is hearsay.

5 16 THE COURT: He can -- hold on a
17 second. Yeah, he can testify as to what he
18 saw. He can't characterize it as to what he
19 thinks it is, but it speaks for itself. He
20 can speak that he saw it.

5 21 A I know what this is. I don't have
22 to --

5 23 Q What is that in your hand?

5 24 A This is Mr. Richardson's house and his
25 lot behind it. It was advertised on the web as a

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1 gelding pasture.

11:36 2 Q As part of the Senrab Equestrian
3 Center?

11:36 4 A Yes.

11:36 5 MR. POLITO: Your Honor, we move to
6 admit these. This is a picture -- these are
7 photographs online of the Defendants' land
8 being part of the business that's labeled
9 Senrab Equestrian Center.

11:36 10 THE COURT: Are you talking Exhibits
11 12 through 15?

11:36 12 MR. POLITO: Yes, ma'am.

(1:36 13 THE WITNESS: That's directly across
14 the street from me.

11:36 15 MR. SHELBOURNE: Your Honor, we object
16 to it. Your Honor, there has to be no doubt
17 that it's our client's documents. There has
18 to be no doubt that our client had anything
19 to do with it other than the fact there's a
20 picture of his house in it. That's the only
21 testimony that would have to do with this
22 case.

11:36 23 THE COURT: well, I don't think that
24 will affect the admissibility of it. That
25 may affect the weight of the evidence and

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7 1 MR. SHELBOURNE: Thank you.

2 (PLAINTIFF'S EXHIBITS NO. 12, 13, 14,
3 AND 15 RECEIVED IN EVIDENCE)

4 BY MR. POLITO:

7 5 Q Mr. Kinard, what did you see when you
6 looked at the screen from Plaintiff's Exhibit 12?

7 7 A This, as best I can describe it, it
8 was one of the ladies that used to run the horses
9 over there and she was riding one of the horses.

8 10 Q What did that page tell you was
11 happening on the land adjacent to Mr. Richardson's?

8 12 A That they were offering a variety of
13 top quality horses for sale.

8 14 MR. SHELBOURNE: Objection, Your
15 Honor. Hearsay.

8 16 THE COURT: Overruled.

8 17 MR. SHELBOURNE: Your Honor, if I
18 could have a standing objection to that, then
19 I won't have to keep standing up.

8 20 THE COURT: That's fine.

21 BY MR. POLITO:

8 22 Q And what did Exhibit 13 show?

8 23 A It shows that one of the horses has
24 been sold and they identify that horse online for
25 the public.

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(1:38 1 Q Plaintiff's Exhibit 14 off the website
2 that you visited, could you read for us what you
3 read on that screen there?

11:38 4 A Senrab is located on fifteen acres in
5 the middle of the Senrab Farms subdivision in
6 Summerville, South Carolina. Senrab has a large
7 jumping arena with a variety of fence types and
8 twenty-by-forty M dressage area. We have two large
9 grass pastures and a small private pad. We feed
10 Triple Crown grain, grain -- pulpbeet, and a mixture
11 of alfalfa and coastal hay two times daily. The
12 horses are well watched over and are on a strict
(13 worming and ferrier schedule.

11:39 14 Q Mr. Kinard, do all four of these
15 pictures fairly and accurately portray what you saw
16 on the day that you visited that website?

11:39 17 A They do.

11:39 18 Q Did you change or modify these in any
19 way?

11:39 20 A No, sir.

11:39 21 Q Thank you. And the gelding pasture
22 that you spoke of, where is that --

11:40 23 A Be Lot L directly across from me and
24 adjacent to Mr. Richardson's house.

1:40 25 Q And is that -- which of the four

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1 exhibits is that pictured on?

o 2 A 15.

o 3 Q So what are we seeing on 15,
4 Plaintiff's Exhibit 15?

o 5 A You're seeing the back lot of his
6 house being used as a padlock for horses.

o 7 Q What was your reaction, Mr. Kinard,
8 when I showed you that website and you realized that
9 you had a business next to you and you saw the
10 pasture of your neighbor shown on that website?

o 11 A I felt vindicated because I had been
12 trying all along to bring this out to Dorchester
13 County, and it appeared to be -- the word, chagrin,
14 comes to my mind that Mr. Richardson uses in his
15 testimony, like it was all a big joke, that there
16 was nothing going on.

1 17 MR. SHELBOURNE: Your Honor,
18 objection. That's all speculation as to what
19 my client thinks. He doesn't know.

1 20 THE COURT: Sustained. Mr. Kinard,
21 just what you know.

1 22 THE WITNESS: I'm sorry.

1 23 A This -- the word, chagrin, was in
24 Mr. Richardson's testimony. I was shocked that that
25 business was actually being conducted over there and

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1 advertised.

11:41 2 Q On seeing that photo, was there any
3 doubt in your mind that the Defendants' land was
4 being used as part of the equestrian center?

11:41 5 MR. SHELBOURNE: Objection.

11:41 6 A Not at all.

11:41 7 MR. SHELBOURNE: This is purely
8 leading, Your Honor.

11:41 9 A Not at all.

11:41 10 MR. POLITO: Mr. Polito, don't lead
11 your witness; okay?

11:42 12 Q Mr. Kinard, is the Nguyens' property
(13 the property immediately west of the Defendants?

11:42 14 A Yes, sir.

11:42 15 Q The old farmhouse and barn, is that
16 part of Senrab Farms subdivision?

11:42 17 A They're in a different -- their
18 covenants are different. They have an agriculture
19 covenants and we have a residential covenants.

11:42 20 Q Okay.

11:42 21 THE COURT: Can you repeat that?
22 which property did you just refer to?

11:42 23 MR. POLITO: Yeah. The property
24 immediately shown on -- I'm sorry, Your
25 Honor. I keep forgetting that you're new to

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1 the case.

3 2 Q Plaintiff's Exhibit 1, Mr. Kinard, the
3 lots -- the two lots to the west --

3 4 A Are shown with J. J. Madison.

3 5 Q Shown with J. J. Madison?

3 6 A That's now the Nguyens' property.

3 7 Q That's the old farmhouse and barn?

3 8 A (Witness does not respond).

3 9 Q Mr. Kinard, I direct your attention
10 to -- this will help -- Plaintiff's Exhibit 16, I'm
11 sorry. What is document entitled?

4 12 A Reciprocal covenants.

4 13 Q And who is it between?

4 14 A Delene Barnes and James Barnes and
15 Ellen and James Madison.

4 16 Q All right. What is the year that
17 document was executed, the signature page?

4 18 A It's very hard to read. 1992.

4 19 Q 1992?

4 20 A Yes.

4 21 Q What year was Senrab Farms created, to
22 your memory?

4 23 A I'm thinking somewhere in '98.

4 24 Q Okay. Mr. Kinard, could you look at
25 the first full paragraph in which the Barnes recited

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1 they're about to sell two tracts to -- excuse me,
2 I'm sorry. Here, the first full paragraph, the
3 whereas clause.

11:45 4 A Would you like to me to read it?

11:45 5 Q Yes, sir, I would.

11:45 6 A Whereas James M. and Delete Barnes,
7 subsequently referred to as sellers, are the owners
8 of certain property described below, and James J.
9 Madison, III and Helen R. Madison, purchasers, are
10 about to purchase two tracts being carved out of the
11 property and --

11:45 12 Q Okay. Look down to the second
13 numbered paragraph starting with covenants and
14 purchaser's property rights.

11:45 15 A Covenants and purchaser's property,
16 purchasers are acquiring Tract A and B, which shall
17 be subject to the covenants that they be used only
18 for residential and agricultural purposes, and that
19 no trailers, mobile homes, manufactured housing, dog
20 kennels, no inoperable motor vehicles be placed,
21 used or around on them. The purchase may refine or
22 elaborate on or add to these covenants to the extent
23 that any new language does not result in allowing
24 what this document prohibits. These covenants
25 burden Tracts A and B for the benefit of the balance

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1 of sellers 49.7-acre parcel.

6 2 Q Mr. Kinard, in any document you've
3 seen regarding Senrab Farms subdivision, have you
4 ever seen the Barnes grant anybody a right to
5 agricultural use?

6 6 A No.

6 7 MR. POLITO: Your Honor, I would move
8 to admit Plaintiff's Exhibit 16 into
9 evidence.

7 10 MR. SHELBOURNE: No objection.

7 11 THE COURT: So admitted.

12 (PLAINTIFF'S EXHIBIT NO. 16

13 RECEIVED IN EVIDENCE)

14 BY MR. POLITO:

7 15 Q One more thing about 16. Mr. Kinard,
16 look at the last page. Do you see a plat there?

7 17 A Yes.

7 18 Q Could you describe for us what's on
19 there? What are we looking at?

7 20 A We're looking at a riding ring next to
21 the barn and the home of the -- what's now the
22 Nguyens, but at the time, it was the Madisons' lot.

7 23 Q Is the -- where is the home? Is that
24 the thing up on Tract A?

7 25 A Yes, it is. It's a home up front, the

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(1 riding ring behind it, and the barn to the rear of
2 that.

11:48 3 Q And this is on the lands west of the
4 Richardsons?

11:48 5 A Yes, it is.

11:48 6 Q Okay. I hand you Plaintiff's Exhibit
7 17 and ask if you can identify that?

11:48 8 A That's the same that we just looked
9 at. This is an aerial photo of it.

11:48 10 Q Where on there is the barn?

11:48 11 A The barn appears to be hidden in the
12 trees, back toward the rear of the lot.

(11:48 13 Q And what is this building up front?

11:48 14 A This is the home of now the party that
15 owns it, Nguyens.

11:48 16 Q Has anything changed on that lot that
17 you can see? Is this image substantially similar to
18 what's there now?

11:48 19 A It's similar.

11:48 20 Q Where on that lot would the horses
21 have grazed on the Nguyens' land?

11:49 22 A There's only about one acre to the
23 left.

11:49 24 Q To the left of what?

1:49 25 A Facing this exhibit is to the left of

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1 the house or west of the house. The rest is riding
2 area, which would provide no substantial nourishment
3 to the horses.

9 4 Q Approximately how much grazing area do
5 they have there on their land?

9 6 A It appears to be one acre.

9 7 Q Just about an acre of land?

9 8 A Yeah.

9 9 MR. POLITO: Your Honor, I move to
10 admit Plaintiff's Exhibit 17 into evidence.

9 11 MR. SHELBOURNE: No objection.

9 12 THE COURT: Admitted.

13 (PLAINTIFF'S EXHIBIT NO. 17
14 RECEIVED IN EVIDENCE)

15 BY MR. POLITO:

9 16 Q I hand you Plaintiff's Exhibit 18.
17 Can you identify that?

9 18 A Yes. This is a subdivision.

9 19 MR. POLITO: Your Honor, this is a big
20 picture of it.

9 21 MR. SHELBOURNE: Your Honor, I'm
22 objecting to publishing that before --

0 23 MR. POLITO: Oh, I'm sorry.

0 24 Q What is that a picture of?

0 25 A It's an aerial appraisal (sic) of our

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(1 housing area, the Senrab Farm area now.

11:50 2 Q Did we label that?

11:50 3 A You're saying "we"?

11:50 4 Q Well, your lawyer.

11:50 5 A Yes.

11:50 6 Q Did your lawyer label that?

11:50 7 A Yes.

11:50 8 Q Are the labels accurate?

11:50 9 A From what I see, they're accurate,

10 yes.

11:50 11 Q Is there anything on that image that's

12 different now that you know of than when that

(13 satellite view was taken?

11:50 14 A No.

11:50 15 Q Does it fairly and accurately portray

16 Senrab Farms?

11:50 17 A Yes, it does.

11:50 18 Q Will it help the Court to understand

19 this case?

11:50 20 A Yes, it should.

11:50 21 MR. POLITO: Your Honor, I move to

22 admit Plaintiff's Exhibit 18 into evidence.

11:50 23 MR. SHELBOURNE: Your Honor, I have no

24 objection to the photograph coming, but I do

25 object to some of the language that he's put

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1 1 MR. POLITO: I don't know how I would
2 do that. It's a photograph.

1 3 MR. SHELBOURNE: I've got a black pen.

2 4 MR. POLITO: Oh, a black Magic Marker.
5 You're just objecting to that part?

2 6 THE COURT: Is that all right,
7 Mr. Shelbourne?

2 8 MR. SHELBOURNE: Just that part, the
9 characterization, right.

2 10 MR. POLITO: Am I going to need the
11 same black marker?

2 12 MR. SHELBOURNE: I have no idea.

13 (PLAINTIFF'S EXHIBIT NO. 18
14 RECEIVED IN EVIDENCE)

15 BY MR. POLITO:

2 16 Q Mr. Kinard, disregard -- I actually
17 have blacked out where it says Lot G, our lot, and
18 our house, Lot F. Are those marking on that image
19 accurate?

2 20 A Yes.

2 21 Q Okay. Does that image show the
22 Nguyens' property which is -- on which agricultural
23 uses are permitted?

3 24 A Yes, it does.

3 25 Q Does it show that the Defendants'

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1 property on which residential uses are permitted?

11:53 2 A Yes, it does.

11:53 3 Q Thank you. Mr. Kinard, I hand you
4 Plaintiff's Exhibits 19, 20, 21, and 22. Do you
5 recognize those photographs?

11:54 6 A Yes, I do.

11:54 7 Q Where do those photographs come from?

11:54 8 A From me.

11:54 9 Q You took those photographs?

11:54 10 A Yes, I did. And they're accurate
11 depictions of what I saw across the street from me.

11:54 12 Q Did you alter them in any way?

1:54 13 A No, sir.

11:54 14 Q And what are those photographs of?

11:54 15 A They're of crowds of cars coming into
16 the Nguyens' property and parking across the street
17 from my property, and there are unsightly trailers,
18 and there are people apparently from not in our
19 subdivision.

11:54 20 Q Looking at --

11:54 21 MR. POLITO: Your Honor, I'd move
22 Plaintiff's Exhibits 19, 20, 21, and 22 into
23 evidence.

11:54 24 MR. SHELBOURNE: It's irrelevant, Your
25 Honor. He's testified it's the Nguyens'

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1 Mr. Kinard is seventy-five years old, Your
2 Honor.

5 3 MR. SHELBOURNE: Seventy-eight.

5 4 MR. POLITO: Seventy-eight.

5 BY MR. POLITO:

5 6 Q Does that photograph shows the
7 Defendants' land?

5 8 A Yes, it does.

5 9 Q Is that easement that those cars are
10 going on, whose land is that on?

5 11 A (Witness indicated).

5 12 Q It's the Defendants' land?

5 13 A Yes.

5 14 Q And whose land did those cars park on?

5 15 A That individual's land.

6 16 Q Who's that individual?

6 17 A Mr. Richardson's.

6 18 Q Well, why did you just testify that
19 they were going into the Nguyens' hands?

6 20 A It was an error.

6 21 MR. POLITO: Your Honor, we would move
22 them into evidence.

6 23 THE COURT: Any objection?

6 24 MR. SHELBOURNE: Yes, Your Honor.
25 Same objection I had before.

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1 THE COURT: I think he's clarified
2 that; so I would allow the photographs in.
3 (PLAINTIFF'S EXHIBITS NO. 19, 20, 21
4 AND 22 RECEIVED IN EVIDENCE)

5 BY MR. POLITO:

11:56 6 Q Mr. Kinard, in Plaintiff's 17, it
7 shows a mailbox, 217?

11:56 8 A That's my mailbox.

11:56 9 Q That's your mailbox?

11:56 10 A Yes, it is. And I put it in there for
11 a reason, to identify the properties involved.

11:56 12 Q And is this road, Saddle Trail, is
13 that a public road?

11:56 14 A No. It's a private road.

11:56 15 Q Who maintains Saddle Trail?

11:56 16 A The homeowners' association.

11:56 17 Q And it's ROC rock, or what's it made
18 of? Am i wrong there?

11:57 19 A It's some type of ROC, gravel that we
20 bring in and then squash with a bulldozer.

11:57 21 Q In Plaintiff's Exhibit 21, what are we
22 looking at?

11:57 23 A We're looking at the stop sign and
24 speed bumps that we had to install in the area.
25 we're looking on the right, the Nguyens' property;

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1 on the left, Mr. Richardson's property, and that's
2 the easement property that the vehicles are parked
3 on, Mr. Richardson's side.

7 4 Q And whose side of the easement are the
5 cars parked on?

7 6 A Mr. Richardson's side.

7 7 Q Thank you. Also, in 22, Plaintiff's
8 Exhibit 22, we're looking at looks like some
9 vehicles in there. You live there. What are we
10 looking at?

7 11 A We're looking at a lot of unsightly
12 rusty trailers and horses on Mr. Richardson's land,
13 and there has at times been up to eight horses from
14 what I've seen.

8 15 Q And those horses are parked along the
16 fence?

8 17 A Yes, on Mr. Richardson's land.

8 18 MR. SHELBOURNE: You're referring to
19 22?

8 20 MR. POLITO: Yes, sir.

8 21 Q I hand you Plaintiff's Exhibit 23 and
22 24 and ask if you can identify them?

8 23 A It's also Mr. Richardson's property.
24 In 23, it's the front of his home. It's his
25 driveway and it's the grazing land that he allowed a

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1 lot of horses to come onto from the property in the
2 distance.

11:58 3 Q Just for my edification, on
4 Plaintiff's Exhibit 23, I see a fence right there?

11:58 5 A Yes.

11:58 6 Q What's that? Is that fence on
7 Mr. Richardson's property or not on his property,
8 the first one?

11:59 9 A It's on his property.

11:59 10 Q And what is it dividing?

11:59 11 A It divides his home from the grazing
12 area and the gelding pasture that was identified.

11:59 13 Q Plaintiff's Exhibit 24, what are we
14 looking at? Whose property is that?

11:59 15 A Mr. Richardson's property.

11:59 16 Q And why did you take that picture?

11:59 17 A Because it shows how many horses are
18 on there and it shows the trailers in the
19 background, plus the overgrowth of the grazing area.
20 It also shows various amounts of horse droppings.

11:59 21 Q Mr. Kinard, do these pictures fairly
22 and accurately portray what you saw?

11:59 23 A Yes, sir.

11:59 24 Q Did you change them in any way?

1:59 25 A No, sir.

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9 1 Q Who told you to take these pictures?

9 2 A I took them on my own.

9 3 MR. POLITO: Your Honor, I'd move
4 Plaintiff's 23 and 24 into evidence.

0 5 THE COURT: Any objection?

0 6 MR. SHELBOURNE: The same objection,
7 Your Honor, in that they're irrelevant as to
8 what the covenants prohibited. They're not
9 pertinent.

0 10 THE COURT: I'll overrule that one.

0 11 MR. SHELBOURNE: Thank you.

12 (PLAINTIFF'S EXHIBITS NO. 23 AND 24
13 RECEIVED IN EVIDENCE)

14 BY MR. POLITO:

0 15 Q Mr. Kinard, I'll hand you Plaintiff's
16 Exhibit 25 and 26 and ask if you can identify those?

0 17 A Yes. Twenty-five is the amount of
18 droppings from the horses that were on
19 Mr. Richardson's property, the white gate being part
20 of his property, and it shows why I encountered so
21 many insects and flies. And the bottom part shows
22 apparently two, four, six -- maybe eight horses with
23 the rest -- with the horses attempting to graze on
24 the land. It shows his driveway in the foreground
25 and his fence.

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(2:01 1 Q How many -- even under the purported
2 amendments to restrictions, what's the maximum
3 number of horses Mr. Richardson was permitted?

12:01 4 A Six on the amendment.

12:01 5 Q Thank you. And the dust cloud -- or
6 why is the sky white in Plaintiff's Exhibit 26?

12:01 7 A Because the horses were being ridden
8 and stirring up sometimes little tornados of dust
9 over there that eventually drifted over to me.

12:01 10 Q And where do those horses graze; do
11 you know?

12:01 12 A Those horses were brought into that
(13 area, into Mr. Richardson's area.

12:01 14 Q Thank you. Do these photographs
15 fairly and accurately portray what you saw?

12:01 16 A Uh-huh.

12:01 17 Q Did you alter them in any way?

12:01 18 A No.

12:01 19 MR. POLITO: Your Honor, I move to
20 admit Plaintiff's Exhibits 25 and 26 into
21 evidence.

12:02 22 THE COURT: Mr. Shelbourne?

12:02 23 MR. SHELBOURNE: Same objection, Your
24 Honor, relevance. Especially 26 when it says
25 picture of dust on Mr. Nguyen's property. It

1 has nothing to do with my client's property.

2 2 MR. POLITO: Mr. Kinard testified,
3 Your Honor, that those horses graze upon his
4 yard, Mr. Richardson's land, and they
5 wouldn't have been there if he hadn't been
6 leasing his land for grazing.

2 7 MR. SHELBOURNE: well, he didn't
8 testify to that.

2 9 MR. POLITO: No, he doesn't, but I'm
10 just saying that's the inference that can be
11 drawn.

2 12 MR. SHELBOURNE: That's pure
13 speculation as to whether that's -- in light
14 of what he's already agreed to, Your Honor,
15 we think that's completely misleading, so we
16 object, Your Honor, on -- but saying all
17 that, Your Honor, I'm happy just to move on,
18 very well.

2 19 THE COURT: They're admitted into
20 evidence.

2 21 MR. POLITO: Thank you, Your Honor.

22 (PLAINTIFF'S EXHIBITS NO. 25 AND
23 26 RECEIVED IN EVIDENCE)

24 BY MR. POLITO:

2 25 Q I hand you Plaintiff's Exhibit 27,

H E A R I N G - J U N E 7 T H , 2 0 1 2

(1 Mr. Kinard. Can you identify that?

12:02 2 A Yes.

12:02 3 Q What are they looking at?

12:02 4 A That's Saddle Trail and Senrab

5 Boulevard and the corner of Mr. Richardson's

6 property in the background. This particular picture

7 was taken because of the amount of debris that was

8 tossed over on my side.

12:03 9 Q Do we see some of your land on there?

12:03 10 A Yes, you do.

12:03 11 Q Where is your land?

12:03 12 A My land is the stake -- just to the

(13 left of the stake that's highlighted by a glow-in-

14 the-dark piece of tape.

12:03 15 Q And how common was litter on your

16 land?

12:03 17 A Enough for me to complain about it,

18 but Mr. Richardson said I couldn't prove whose trash

19 it was. But was brought to his attention.

12:03 20 Q You took this picture?

12:03 21 A Yes, I did.

12:03 22 Q Does it fairly and accurately portray

23 what you saw?

12:03 24 A Yes, it does.

2:03 25 MR. POLITO: Your Honor, I move

1 Plaintiff's 27 into evidence.

3 2 MR. SHELBOURNE: Same objection, Your
3 Honor. It's irrelevant.

3 4 THE COURT: I'll allow it.

5 (PLAINTIFF'S EXHIBIT NO. 27
6 RECEIVED IN EVIDENCE)

7 BY MR. POLITO:

3 8 Q Mr. Kinard, I'll hand you Plaintiff's
9 Exhibit 28. Did you take that?

4 10 A Yes, sir.

4 11 Q Does it fairly and accurately portray
12 what you saw?

4 13 A Yes, sir.

4 14 Q Did you change it in any way?

4 15 A No, sir.

4 16 Q Just for the record, the dates we see
17 on the photographs, how did the dates get on those
18 photographs?

4 19 A From my camera.

4 20 Q Your camera puts them on automatically
21 or --

4 22 A I have to make sure the date is
23 correct to keep it from going back to a particular
24 date.

4 25 Q How many horses do you see in that

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(1 photograph, Mr. Kinard?

12:04 2 A Looks like seven and a small horse.

12:04 3 MR. POLITO: Your Honor, I'd move

4 Plaintiff's Exhibit 28 into evidence.

12:04 5 THE COURT: Mr. Shelbourne?

12:04 6 MR. SHELBOURNE: Same objection.

7 Irrelevant, Your Honor.

12:04 8 THE COURT: Overruled. I'll allow it.

9 (PLAINTIFF'S EXHIBIT NO. 28

10 RECEIVED IN EVIDENCE)

11 BY MR. POLITO:

12:04 12 Q I'll hand you Plaintiff's Exhibit 29

(13 and 30 and ask if you can identify those? Did you

14 take those?

12:04 15 A Yes, I did.

12:04 16 Q Do they fairly and accurately portray

17 what you saw?

12:05 18 A Yes, sir, exactly.

12:05 19 Q And what did do they show us?

12:05 20 A They show people riding on

21 Mr. Richardson's property.

12:05 22 Q Any doubt in your mind that that's

23 Mr. Richardson's property?

12:05 24 A None at all.

2:05 25 Q And was it common or uncommon, or how

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1 frequently did you see people riding horses on
2 Mr. Richardson's property?

5 3 A Occasionally --

5 4 Q Occasionally?

5 5 A -- I'll state.

5 6 MR. POLITO: Your Honor, I move
7 Plaintiff's 29 and 30 into evidence.

5 8 THE COURT: Same objection?

5 9 MR. SHELBOURNE: Yes, Your Honor. I'm
10 going to say the same objection to all the
11 photos, but I won't keep on objecting. That
12 way, we can move on.

5 13 THE COURT: Thank you.

14 (PLAINTIFF'S EXHIBITS NO. 29 AND 30
15 RECEIVED IN EVIDENCE)

16 BY MR. POLITO:

5 17 Q Mr. Kinard, I hand you Plaintiff's
18 Exhibit 31 and ask you if you can identify that?

6 19 A Yes, I can. I took the picture. I
20 personally took it, purposely took it because people
21 are riding on private roads, people that don't live
22 in our housing area, and it appears to be one of
23 Mr. Richardson's tenants.

6 24 Q How do you know that's one of
25 Mr. Richardson's tenants?

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(12:06 1 A This appears to me to be the lady that
2 brings the check to his front door.

12:06 3 Q Fairly and accurately depict what you
4 saw?

12:06 5 A Yes, sir.

12:06 6 Q You alter it in any way?

12:06 7 A No, sir.

12:06 8 MR. POLITO: Your Honor, I move it
9 into evidence.

12:06 10 THE COURT: Subject to
11 Mr. Shelbourne's objection, admitted.

12 (PLAINTIFF'S EXHIBITS NO. 31

13 RECEIVED IN EVIDENCE)

14 BY MR. POLITO:

12:06 15 Q Mr. Kinard, I hand you Plaintiff's
16 Exhibits 34 and 35, photographs, and ask you if you
17 can identify those?

12:06 18 A Yes, sir. I took them. It's a
19 warning of equine injury or death that was posted on
20 Mr. Richardson's fence in both 34 and 35. And I
21 might mention that the covenants state that signs
22 can't be posted originally other than signs for sale
23 or something of that nature, or by a contractor.

12:07 24 Q Can you read the print on that sign?

2:07 25 A Yes, I can.

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7 1 Q If you can, that would be great.

7 2 A Under South Carolina law, an equine
3 activity sponsor or equine professional is not
4 liable for an injury to or the death of a
5 participant in equine activities resulting from
6 inherent risk of equine activities pursuant to
7 Article 7, Chapter 9 of Title 47 (ph) Code of Laws
8 of South Carolina 1976.

7 9 Q Thank you. And do these fairly and
10 accurately portray what you saw?

8 11 A Yes, sir.

8 12 Q Do you believe the dates were entered
13 by your camera?

8 14 A Yes, sir.

8 15 Q Did you alter these photographs in any
16 way?

8 17 A No, sir.

8 18 Q Any doubt in your mind that these
19 signs are on Mr. Kinard's fence?

8 20 A On Mr. Richardson's.

8 21 Q Mr. Richardson's fence?

8 22 A Yes, sir.

8 23 MR. POLITO: Your Honor, I'd move to
24 admit Plaintiff's Exhibits 34 and 35.

8 25 THE COURT: Subject to the same

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1 objections, they're admitted.

2 (PLAINTIFF'S EXHIBIT NO. 34 AND 35
3 RECEIVED IN EVIDENCE)

4 BY MR. POLITO:

12:08 5 Q Mr. Kinard, I hand to you Exhibits 32
6 and 33 and ask if you can identify those?

12:08 7 A Yes, I can.

12:08 8 Q Who took those?

12:08 9 A Those are pictures that I took.

12:08 10 Q What do they show?

12:08 11 A When we first build our home, we were
12 laying out the foundation, these are trees and limbs
13 that I was bringing out of my woods. I show a barn
14 in the background and the foundation for my home. I
15 also in Exhibit 33 see the road from the turnaround
16 on Saddle Trail going down to the cul-de-sac with
17 what eventually would be Mr. Richardson's property
18 on the right.

12:09 19 Q Thank you. The barn that you see in
20 Plaintiff's 32 that you mentioned, is that the same
21 barn that stands now on the Nguyens' property?

12:09 22 A Yes, it is.

12:09 23 Q And the wood little pieces in the
24 middle, what is that wood that we're seeing between
25 where you're standing and the barn? It looks like

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1 sticks coming up out of the ground, this stuff.

9 2 A I don't see it.

9 3 Q Right there.

9 4 A That's -- oh, that's metal pieces that
5 attached my house to the foundation.

9 6 Q So you were building your home
7 already?

0 8 A Yes. I was building that when this
9 picture was taken.

010 Q And that's --

011 A That's the straps that are required by
12 Code --

013 Q Got you?

014 A -- to append your house to the
15 foundation.

016 Q And Mr. Richardson's home isn't there
17 yet?

018 A No, sir.

019 Q There's no horses in the field?

020 A No, sir.

021 MR. POLITO: Your Honor, I'd move
22 Plaintiff's 32 and 33 into evidence?

023 THE COURT: Same objection.

024 MR. SHELBOURNE: Your Honor, I don't
25 object to those.

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2:10 1 THE COURT: Okay. Those are admitted.
2 (PLAINTIFF'S EXHIBITS NO. 32 AND 33
3 RECEIVED IN EVIDENCE)

4 BY MR. POLITO:

12:10 5 Q Mr. Kinard, I hand you Plaintiff's
6 Exhibit 36 and ask you if you identify that?

12:10 7 A This appears to be the commercial
8 lease between Madeline Ingalls and the D. J.
9 Richardson Realty, Incorporated, which was at 124
10 Saddle Trial, right across the street from me.

12:11 11 Q Where did we get that document from?

12:11 12 A It was brought in by Mr. Richardson at
13 the last deposition, to the best of my recollection.

12:11 14 MR. POLITO: Your Honor --

12:11 15 Q Excuse me, Mr. Kinard, on page 1
16 there, it says address. What is the address of this
17 commercial lease?

12:11 18 A I brought it out already. It's 124
19 Saddle Trial.

12:12 20 Q What's in front of that those?

12:12 21 A Six acres.

12:12 22 Q Six acres. And is there a tax map
23 reference given?

12:12 24 A 1360000285, Summerville, South
25 Carolina.

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2 1 Q If you could turn to page 3 for me of
2 the lease, paragraph 4, where it says use of
3 premises, could you read the first two sentences?

2 4 A Use of premises, tenant agrees not to
5 abandon or vacate the premise and to use entire
6 leased property for horse's pasture, no more than
7 five horses slash ponies at one time. No lessons.

2 8 Q Thank you. Have you read that lease
9 over, Mr. Kinard?

3 10 A Not all of it.

3 11 Q Okay. That's fine.

3 12 A I think this is why I brought up the
13 fact that Mr. Richardson was not aware of what was
14 going on on this property, and things like this
15 indicate five horses, and we show pictures of up to
16 eight.

3 17 MR. POLITO: Your Honor, I move to
18 admit Plaintiff's Exhibit 36 into evidence.

3 19 THE COURT: Any objection?

3 20 MR. SHELBOURNE: Your Honor, I don't
21 object to it. No, I don't object.

3 22 THE COURT: Thank you.

23 (PLAINTIFF'S EXHIBIT NO. 36

24 RECEIVED IN EVIDENCE)

25 BY MR. POLITO:

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1 don't think -- I'm not saying he can't get it
2 in. He just doesn't get it in through this
3 witness, and we'd object.

12:18 4 THE COURT: I'll sustain your
5 objection.

12:18 6 MR. POLITO: Thank you, Your Honor.

7 BY MR. POLITO:

12:18 8 Q Mr. Kinard, I'll hand you Plaintiff's
9 Exhibit 38 and ask if you can identify it?

12:18 10 A This is a letter that was sent by you
11 to Mr. and Ms. Richardson in regards to the
12 enforcement of Senrab Farms' restrictive covenants,
13 the fact that his property was limited to six horses
14 and there were numerous days when there were more
15 than six horses. And you brought out the covenants
16 to his attention at that time.

12:19 17 Q Did you direct me to write that
18 letter?

12:19 19 A Yes, I did.

12:19 20 Q On your behalf?

12:19 21 A Yes, sir.

12:19 22 Q And you are my client?

12:19 23 A Yes, I am.

12:19 24 Q Can you read the "Re" to it on there,
25 under "Re"?

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9 1 A Re: Violations of Senrab Farms
2 restrictive covenants and a cease and desist
3 request. We were basically asking him to stop.

9 4 Q Just to stop?

9 5 A Yeah.

9 6 Q That's all, just to stop?

0 7 A Yeah.

0 8 MR. POLITO: Your Honor, I move to
9 admit Plaintiff's Exhibit 38 into evidence.

0 10 THE COURT: Any objection?

0 11 MR. SHELBOURNE: Yes, Your Honor.

12 Mr. Polito is putting himself as a witness.
13 I'm happy to call him as a witness. But by
14 introducing a letter they wrote to my client
15 before my client was represented, before any
16 proof of anything is -- it doesn't prove
17 anything other than he might have written a
18 letter, which is fine if he wants to do that,
19 but then he's subject to cross examination
20 and I certainly will cross-examine him on the
21 allegations that he puts forth in the letter.

0 22 THE COURT: well -- and certainly, I
23 think it goes to the timing of what is
24 relevant in this action, and he stated -- he
25 testified that he did direct his attorney to

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(12:21 1 MR. POLITO: We're not, Your Honor.
2 Just notice.

12:21 3 THE COURT: -- just that notice that
4 he asked him to stop is my understanding of
5 what the proposed --

12:21 6 MR. SHELBOURNE: Alleged notice.

12:21 7 THE COURT: Correct.

12:21 8 MR. SHELBOURNE: Okay. That's all.
9 Thank you.

10 (PLAINTIFF'S EXHIBIT NO. 38
11 RECEIVED IN EVIDENCE)

12 BY MR. POLITO:

(12:21 13 Q Mr. Kinard, what are you asking the
14 Court to do? What's most important to you here?

12:22 15 A Excuse me, to cease and desist the
16 businesses across the street and bringing in people
17 that don't belong in our housing area, which has
18 other consequences that -- they just don't belong
19 there and they treat us like we're second-class
20 citizens. In fact, one of my neighbors was told to
21 get off the road.

12:22 22 MR. SHELBOURNE: Your Honor, hearsay.
23 Objection.

12:22 24 THE COURT: I'll sustain that. You
25 just make your testimony as to what you know,

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1 not what other people say.

2 2 A I'm just trying to have the businesses
3 discontinued. I'm also having -- trying to have the
4 amended restrictions declared null and void because
5 we didn't have the majority of the homeowners' at
6 that time, written permission to amend the
7 covenants, and they should have been aware of that.
8 And there's just little excuse for not reading the
9 covenants in the homeowners' association before you
10 attempt to amend them and you don't have other
11 people's permission to amend those. I'm just asking
12 that the amendments be overturned, the amendments to
13 the restrictive covenants be overturned, and that
14 that individual be allowed one horse for his lot the
15 same way as anybody else is allowed. The fact that
16 you have more money or more property doesn't
17 invalidate the covenants that were originally there,
18 and the fact that people come in and use our housing
19 area like they own the place is very disheartening
20 to me.

421 Q Thank you. Mr. Kinard, in regard to
22 being fair and equitable, for the Court to do what
23 you just said, why would it be fair to declare that
24 Mr. Richardson's land can't be used for agriculture
25 purposes?

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12:24 1 MR. SHELBOURNE: Objection.

2 Speculation.

12:24 3 MR. POLITO: He has his own reasons.

12:24 4 THE COURT: He can say what he thinks
5 his opinion is fair. I think that's
6 reasonable.

7 BY MR. POLITO:

12:24 8 Q In your opinion, what is fair?

12:24 9 A In my opinion, it would be fair for
10 Mr. Richardson to fall under the original covenants
11 and abide by them just like the rest of us do in
12 that none of us are allowed to run businesses. And
13 if you do away with -- if you allow businesses to
14 come in, you're doing away with our whole housing
15 area and this restrictive covenant. We no longer
16 have any restrictive covenants. One person gets by
17 with it, then the dominoes start to fall, and then
18 the next person, well, why can't I have a business,
19 he's got one across the street, he's bringing in
20 people and money, why can't I do it? So it
21 invalidates all of our covenants, and I'm just
22 asking for everybody to play by the same rules.

12:25 23 MR. POLITO: Thank you. Your Honor, I
24 have no further questions for Mr. Kinard at
25 this time.

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CROSS EXAMINATION

BY MR. SHELBOURNE:

Q Mr. Kinard, why don't your covenants and restrictions apply to my house? why don't they? why aren't they my problems? why can't you come and make me stop doing whatever I want to do on my house?

MR. POLITO: Objection, Your Honor.
That's not relevant.

MR. SHELBOURNE: It's cross examination.

THE COURT: I'll allow it.

A I'm thinking that's not really the --

THE COURT: Mr. Kinard --

THE WITNESS: I know it's not my job to say that.

THE COURT: All right, sir. You can answer the question, Mr. Kinard.

A Because you don't live in Senrab Farms.

Q Because your covenants and restrictions aren't on my property, are they? There's no covenant or restriction that applies to your property that's on my property; correct?

MR. POLITO: That calls for Mr. Kinard

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1 to conclude, Your Honor. He doesn't know
2 what restrictions and covenants are on
3 counsel's property.

12:26 4 THE COURT: We'd have to know where
5 you live, Mr. Shelbourne.

12:26 6 A I don't even know where the man lives.

12:26 7 Q Let me ask you this, Mr. Kinard. When
8 Mr. Hill bought the property from Mr. Barnes, prior
9 to that signing of that deed, what restrictions were
10 on Mr. Barnes' Lot L that he was selling to
11 Mr. Hill; what restrictions?

12:27 12 A How do you expect me to know that,
13 counsel?

12:27 14 Q Well, you're bringing the case.
15 You're the one that said there were restrictions
16 on -- on --

12:27 17 A I didn't even know Mr. Hill.

12:27 18 Q Well, you know what lot is Lot L,
19 don't you?

12:27 20 A Sir, I don't mind answering your
21 questions, but please don't be ridiculous.

12:27 22 MR. SHELBOURNE: Your Honor --

12:27 23 THE COURT: All right. Hold on a
24 second, gentlemen.

2:27 25 Mr. Kinard, if you don't know an

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1 answer, all you have to say is I don't know;
2 okay? And then, if he has a document to show
3 you that might explain it, but let's
4 everybody be respectful of each other.

5 **BY MR. SHELBOURNE:**

7 6 Q Your Honor -- or Mr. Kinard --

7 7 A Yes.

7 8 Q -- the restrictions that you've
9 introduced as Exhibit 2 apply to which lots? Look
10 at Exhibit A to the restrictions.

8 11 A D, E, F, G, H, and I.

8 12 Q I, okay. Which ones do you own?

8 13 A E and F.

8 14 Q And which ones did Mr. Richardson buy
15 of those lots?

8 16 A None.

8 17 Q None? So that restriction doesn't
18 apply to his Lot L, does it?

8 19 **MR. POLITO:** Objection, Your Honor.
20 We just -- he's countering the evidence. We
21 already put into evidence that it does apply
22 through his deeds.

8 23 **THE COURT:** Well, he can cross-
24 examine him on it.

8 25 A I don't know.

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(2 : 3 2 1 A Yes.

1 2 : 3 2 2 MR. POLITO: Object. He -- counsel
3 just read to Mr. Kinard and he improperly
4 read it --

1 2 : 3 2 5 MR. SHELBOURNE: Your Honor --

1 2 : 3 2 6 MR. POLITO: -- and he --

1 2 : 3 2 7 MR. SHELBOURNE: -- he needs to make
8 an objection, not a speaking objection.

1 2 : 3 2 9 MR. POLITO: He improperly read it to
10 Mr. Kinard.

1 2 : 3 2 11 THE COURT: The document will speak
12 itself. Just make sure to ask the question
(13 as a question.

14 BY MR. SHELBOURNE:

1 2 : 3 2 15 Q Mr. Kinard, does this document,
16 Exhibit 7, state that Steve Hill is about to
17 purchase the property as described in Exhibit A?

1 2 : 3 2 18 A Yes. From what I can determine.

1 2 : 3 3 19 Q Right. And Exhibit A is the same
20 property that Mr. Richardson subsequently bought?

1 2 : 3 3 21 A Yes, sir.

1 2 : 3 3 22 Q Now prior to this document -- and this
23 document was signed on February 25th, 1998; correct?
24 Look at the bottom of the second page.

2 : 3 3 25 A That's when it was notarized.

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3 1 Q Look at the top. Look at the third
2 full paragraph down where it says in witness
3 thereof.

3 4 A 18 March '98.

3 5 Q No. Look -- that's when it's stamped;
6 right, with the RMC? Look at where it says in
7 witness thereof.

3 8 A Yes.

3 9 Q You see that?

3 10 A Yes.

3 11 Q Go ahead and read that for me.

3 12 A February the 25th, 1998.

3 13 Q It says that's when it was signed? It
14 was executed February 25th, 1998?

4 15 A Yes.

4 16 Q Any doubt that that's when it was
17 done?

4 18 A I don't have any reason to doubt the
19 document.

4 20 Q Okay. And prior to February 25th,
21 1998, what, if any, document do you have that shows
22 there was a -- that Tract L was subject to the
23 covenants and restrictions of Senrab Farms?

4 24 A I don't have anything.

4 25 Q And you would agree that a property

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1 owner who owns property can put a restriction on his
2 own property?

1 2 : 3 4 3 A No.

1 2 : 3 4 4 Q You wouldn't agree to that?

1 2 : 3 5 5 A No.

1 2 : 3 5 6 Q why? why can't he put a restriction
7 on his own property?

1 2 : 3 5 8 A If he was within the Senrab Farms
9 subdivision, he should be abiding by the restrictive
10 covenants of that subdivision.

1 2 : 3 5 11 Q Sure.

1 2 : 3 5 12 A In my opinion.

1 2 : 3 5 13 Q But when did he become part of Senrab
14 Farms subdivision?

1 2 : 3 5 15 A After these covenants.

1 2 : 3 5 16 Q After which covenant?

1 2 : 3 5 17 A The original restrictive covenants.

1 2 : 3 5 18 Q when? when, specifically? Because
19 we've already established that Lot L is not part of
20 the original covenants?

1 2 : 3 5 21 A I don't know.

1 2 : 3 5 22 Q You don't have any documents to show
23 when he became part of that property, do you?

1 2 : 3 5 24 A I don't have his deed in front of me.

1 2 : 3 6 25 Q In fact, you don't even have it in the

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1 courtroom, do you, or you don't know?

6 2 A I don't know.

6 3 Q Now that document that was signed
4 February 25th, 1998, that says it's been signed
5 with -- Steve Hill is about to purchase the
6 property?

6 7 A Yes.

6 8 Q It says at the bottom it shall be
9 permissible for the purchaser and his or her --
10 excuse me -- successors and assigns to keep up to
11 six horses on the above-described property; correct?

6 12 A Yes.

6 13 Q Are you aware of Judge Dixon's order
14 that says that the Court finds Tracts A and B are
15 part of the original Tract L and are subject to any
16 covenants and restrictions that apply to the
17 original Tract L which include the covenants and
18 restrictions known as the amended restrictions filed
19 on March 18th, '98; are you aware of that?

7 20 A The only order I'm aware of is the
21 covenants run with the lands.

7 22 Q So you haven't seen this part? Let me
23 show it to you. Let me show you the highlighted
24 portion. Have you seen that portion of the order?

7 25 THE COURT: This is the order filed

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1 January 12th?

12:37 2 MR. SHELBOURNE: Yes, Your Honor.

12:37 3 A I believe I've seen this before.

12:37 4 Q Okay. And see where it says
5 restrictions known as amendment to restrictions
6 filed on March 18th, '98? That's this amendment to
7 restriction, isn't it? Isn't that March 18th when
8 it's filed?

12:38 9 A Yes.

12:38 10 Q The same thing we're calling the
11 amendment to restriction; right?

12:38 12 A It's called amendment to restrictions.

(2:38 13 Q Right. But there weren't any
14 restrictions already there, were there? That were
15 before, were they?

12:38 16 A Then how could be amendment to it?

12:38 17 Q Right. Correct. Good question.
18 Okay.

12:38 19 Now let's talk about you buying the
20 property. You bought your property because you
21 wanted to be in a farm-like atmosphere?

12:38 22 A Yes.

12:38 23 Q And you knew when you bought your
24 property that the Madisons had a barn across the
25 across the street from you in the back?

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8 1 A Yes.

8 2 Q And they had horses there?

8 3 A They had a couple of little ponies.

9 4 Q Okay.

9 5 A The lady that owned them used them for
6 show horses.

9 7 Q Is that the Madisons?

9 8 A No. It was a different lady. The
9 Madisons leased their property out to someone who
10 owned some show horses or miniature ponies. She
11 didn't want me to call them ponies, but they were
12 small enough to put in the back of a car.

9 13 Q And, in fact, there was a wire fence
14 going across the back of what is now the back of the
15 Richardsons' property which the horses used to come
16 over there; are you aware of that fence, the wire
17 fence?

9 18 A There was a fence there during that.

9 19 Q And some of the horses from the
20 Madisons' property would come across in that fence
21 area. There were some blackberries in the front; is
22 that correct?

9 23 A There was only a couple of little
24 horses, miniature ponies. I didn't see any large
25 horses.

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(2:40 1 Q Now the property that the Madisons
2 owned, that subsequently sold to the Nguyens; right?

12:40 3 A Yes.

12:40 4 Q Okay. And you sued the Nguyens in
5 this case?

12:40 6 A Yes.

12:40 7 Q And then you agreed with them that
8 they could have up to ten horses on their property?

12:40 9 A Yes. The reason being I agreed with
10 them to that because they don't have but one acre of
11 grazing land. I didn't think that they could put
12 that many horses on one acre.

(2:40 13 THE COURT: Just for clarification,
14 Nguyens is spelled N-g-u-y-e-n?

12:40 15 MR. SHELBOURNE: Correct, Your Honor.

12:40 16 THE COURT: Okay. I just wanted to
17 make sure we were all talking about the same
18 thing.

12:40 19 MR. POLITO: We did get it pronounced
20 differently.

12:40 21 MR. SHELBOURNE: In talking to
22 Mr. Nguyen, I understand that's the way to
23 pronounce it. There's probably a little bit
24 of an accent in there, but it's --

2:40 25 THE COURT: I just wanted to make sure

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1 we were talking about the same person.

0 2 MR. SHELBOURNE: Yeah. Wynn (ph) is
3 N-g-u-y-e-n, I believe.

0 4 THE COURT: I just wanted to make
5 sure.

6 BY MR. SHELBOURNE:

1 7 Q You signed the amendment of reciprocal
8 covenants with them; is that correct?

1 9 A What was the question?

1 10 Q You agreed -- you and the Nguyens
11 agreed to dismiss your claims against each other in
12 this lawsuit in that the phrase, agriculture use,
13 shall include the raising of crops and keeping and
14 raising of farm animals; you agreed to that, didn't
15 you?

1 16 A They had agriculture covenants. We
17 have different covenants.

1 18 Q Right. You agreed that they could use
19 their property -- that they could lease the property
20 to individuals wishing to board their personal
21 horses upon their property? I'm talking about the
22 Nguyen property.

1 23 A You're reading the document.

1 24 Q Well, you read it. Tell me what it
25 says. Why don't you read it out loud to the Court?

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(2:42 1 A The phase, agriculture use, as used
2 above shall include the raising of crops and the
3 keeping and raising of farm animals.

12:42 4 Q And it goes on to say may be leased
5 solely to individuals wishing to board their
6 personal horses upon their property, that the
7 property shall not accommodate more than ten horses
8 at any one time, and that no riding lessons, horse
9 sales, or horse rental or other form of commercial
10 use shall be permitted or conducted upon the
11 property?

12:42 12 A And they agreed to that.

(2:42 13 Q They did, and this is a copy, isn't
14 it?

12:42 15 A Appears to be.

12:43 16 Q Okay.

12:43 17 MR. SHELBOURNE: Your Honor, we'd have
18 that be marked as Defendants' Exhibit No. 1.

12:43 19 THE COURT: Any objection?

12:43 20 MR. POLITO: No objection, Your Honor.

12:43 21 THE COURT: And are you introducing
22 it?

12:43 23 MR. SHELBOURNE: Yes.

24 (DEFENDANTS' EXHIBIT NO. 1

25 RECEIVED IN EVIDENCE)

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1 BY MR. SHELBOURNE:

2 Q The people that are going in and out
3 of the property that you represent in those
4 pictures, they're going to horses that are stabled
5 at the Nguyens' property; correct?

6 A Yes.

7 Q And they're not -- they're not stabled
8 on the Richardsons' property because they don't own
9 a barn on their property, do they?

10 A But they graze on the Richardsons'
11 property.

12 Q Oh, I understand that. The horses
13 come over and eat the grass; correct?

14 A Yeah.

15 Q There's nothing in the covenants that
16 prohibits -- that apply to your property that
17 prohibit horses eating grass, is there? And grazing
18 in a field, is there? And I'll let you talk about
19 whether they can --

20 A I would like to explain that to you,
21 sir.

22 Q Answer my question. Then I'll be
23 happy to do so. Is there anything --

24 A I don't see anything in my covenant
25 that says that a horse can't eat grass.

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(2 : 4 5 1 Q On some of the property?

1 2 : 4 5 2 A I don't see anything in there.

1 2 : 4 5 3 Q Okay. Go ahead and explain.

1 2 : 4 5 4 A They're coming from the barn onto
5 Mr. Richardson's property for purposes of to
6 generate money. It's a business. And the covenants
7 in paragraph 5 state the lots are known and
8 designated and shall be used as single-family
9 residential building lots.

1 2 : 4 6 10 Q Right. And your Lot G is not being
11 used as a building lot, is it? Is it?

1 2 : 4 6 12 A It's part of my home lot.

(2 : 4 6 13 Q But it's used to grow crops? You grow
14 figs?

1 2 : 4 6 15 A I'm not running a business on my lot.

1 2 : 4 6 16 Q I understand. Answer my question. Do
17 you grow figs?

1 2 : 4 6 18 A Yes.

1 2 : 4 6 19 Q Pears?

1 2 : 4 6 20 A Yes.

1 2 : 4 6 21 Q Apples.

1 2 : 4 6 22 A Yes.

1 2 : 4 6 23 Q Grapes?

1 2 : 4 6 24 A Yes.

2 : 4 6 25 Q And you don't sell them is what you're

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1 saying?

6 2 A No.

6 3 Q Now the property in Senrab Farms
4 that's subject to these covenants and restrictions
5 can be leased, can't it?

6 6 A The home, itself, can be leased.

7 7 Q Where does it say only the home can be
8 leased?

7 9 A The lots shall be known and shall be
10 used as single-family residential building lots.

7 11 Q But you're not using all your lots for
12 single-family residential; you're using it for a
13 yard, aren't you?

7 14 A I have combined that, and that's a
15 side yard.

7 16 Q Sure. Are all of the lots in the
17 Senrab Farms have houses on them.

7 18 A Not all of them. Some haven't even
19 sold yet.

7 20 Q You suing them?

7 21 A For not selling their lot?

7 22 Q No. For not having a house on it.

7 23 A They have that option open.

7 24 Q In fact, Mr. Kinard, paragraph J of
25 paragraph 13 on page 7 of the covenants and

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(1 restrictions says you can put a for rent sign up on
2 the lot, doesn't it?

12:48 3 A The only signs permitted on the lots
4 are those reading for sale or for rent or
5 appropriate signs of the building contractor during
6 the period of construction.

12:48 7 Q Right. So the contractor can have his
8 sign up while he's building the house?

12:48 9 A Yes.

12:48 10 Q Or you can have a for sale sign up or
11 a for rent sign up on the lot; isn't that what it
12 says?

(2:48 13 A Yeah.

12:48 14 Q So people can rent the property in
15 Senrab Farms?

12:48 16 A They can rent their homes but not the
17 land.

12:48 18 Q Well, where does it say you can't rent
19 the land? I missed that, and if you could show me
20 where it says that?

12:48 21 A The lots are known and designated and
22 shall be used as residential single-family building
23 lots.

12:49 24 Q There's no question that you can have
25 horses in the subdivision; correct?

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9 1 A Yes.

9 2 Q In fact, when you drive into Senrab
3 Farms, on the sign, it has a horse on the sign and
4 horseshoes on the sign, pictures of it; correct?

9 5 A Yes.

9 6 Q And that sign was up when you bought
7 your property?

9 8 A As far as I can remember. It may have
9 been added later.

9 10 Q Mr. Kinard, if Mr. Barnes owned
11 property somewhere else, if he owned, say, twenty
12 acres down the street, down on Central Avenue
13 somewhere, and he decided to make that part of
14 Senrab Farms, could he have done that after he had
15 sold you your lot?

0 16 A I'm not an attorney, sir. I don't
17 know that.

0 18 Q Well, you've testified as to what
19 covenants and restrictions apply here and what your
20 thought is on that. Do you think that he could?

0 21 MR. POLITO: He's asked and answered,
22 Your Honor.

0 23 THE COURT: Well, he rephrased it. If
24 he knows, he knows. If he doesn't know, he
25 doesn't know.

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1 homeowners. He would probably have that answer.

12:51 2 Q Do you know when it was voted to bring
3 them in?

12:51 4 A You're asking me when those lots were
5 voted into the homeowners' association?

12:52 6 Q No. I'm asking you when did the HOA
7 vote to bring in additional properties into the
8 homeowners' association; do you know?

12:52 9 A I don't know.

12:52 10 Q And you agree with me, and I think
11 you've testified as such, to paragraph 18 of the
12 covenants that to alter, modify, cancel, or change
13 them you've got to have written consent of the
14 majority of the owners?

12:52 15 A That's true.

12:52 16 Q And y'all have taken the position that
17 Mr. Barnes, because he didn't own a majority of the
18 lots after he sold the last lot, couldn't make any
19 changes to them; correct?

12:53 20 MR. POLITO: Objection, Your Honor.
21 We read into evidence earlier that Mr. Barnes
22 had reserved the right to take and add
23 additional properties to the covenants from
24 time to time. I've read -- that is the very
25 first thing we read into the record.

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3 1 THE COURT: Well --

3 2 MR. SHELBOURNE: Your Honor --

3 3 THE COURT: -- that's not the
4 question. I mean, I understand what your
5 testimony was, but I will allow --

3 6 MR. SHELBOURNE: Your Honor, I would
7 ask for the record that Mr. Polito not make
8 speaking objections that inform his client as
9 to, perhaps, how he needs to answer. That's
10 absolutely inappropriate.

3 11 THE COURT: Mr. Polito, when you do
12 object, just state the basis for your
13 objection without further argument until it's
14 requested.

3 15 MR. POLITO: Yes, Your Honor.

16 BY MR. SHELBOURNE:

3 17 Q These protective covenants that apply
18 to your lots, the lots that are listed in Exhibit A
19 from Exhibit 2, when did those members vote, if at
20 all, to bring in any other properties into that
21 subdivision, if you know?

4 22 A I don't know.

4 23 Q Okay. Is it your position that
24 Mr. Barnes after he sold the last lots in the
25 eleven-lot subdivision could affect that, however

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(1 unilaterally, by doing something by himself, or did
2 he need the vote of the majority of the others?

12:54 3 A I'm going by what's in the restrictive
4 covenants, sir.

12:54 5 Q Okay. And the restrictive covenants
6 say you've got to have the majority vote; right?

12:54 7 A That's true.

12:54 8 Q Now you've testified about horses
9 being sold in the Senrab Equestrian Center, that
10 Senrab Equestrian, and you've testified that
11 Mr. Richardson, you didn't think, was aware that
12 that was going on; true?

(2:55 13 A Please rephrase your question. I'm
14 not understanding you.

12:55 15 Q Let me change it around a little bit.
16 Did Mr. Richardson have any knowledge, to your
17 knowledge, or any involvement with Senrab Equestrian
18 Center?

12:55 19 A well, it appears he had a lease with
20 them.

12:55 21 Q Do you have a copy of that lease?

12:55 22 A A Greener Pastures was just shown to
23 me.

12:55 24 Q who's Greener Pastures?

2:55 25 A Mr. Richardson's.

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5 1 Q Who was the lease with?

5 2 A I don't remember off the top of my
3 head because it's changed. It could have been
4 Madeline Ingalls.

6 5 Q Right.

6 6 A It could have been --

6 7 Q That's it. Good memory.

6 8 MR. POLITO: Can he please just
9 answer, please, Your Honor?

6 10 THE COURT: Pardon?

6 11 MR. POLITO: He was answering the
12 question when counsel --

6 13 THE COURT: Oh, if you hadn't
14 finished, you can finish answering the
15 question.

16 BY MR. POLITO:

6 17 Q Let me hand you a copy. You say it
18 was Madeline Ingalls?

6 19 A D. J. Richardson with Madeline
20 Ingalls, so there apparently was some connection.

6 21 Q Well, who's Madeline Ingalls?

6 22 A She was the caretaker, I guess, of the
23 horses.

6 24 Q She's the Senrab Farms Equestrian
25 Center; is that what you're saying?

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(2:56 1 A She had a -- she went by a different
2 name, but there was a lady before her that had
3 Senrab Farms Equestrian Center. She's the lady that
4 put the advertisements up. I am trying to think of
5 her name, but I can't. It escapes me.

12:56 6 Q But the lease, as far as you know, the
7 only lease you've seen is the one with Ms. Ingalls?

12:57 8 A Yes.

12:57 9 Q And you have no firsthand knowledge
10 that Mr. Richardson had anything to do with -- other
11 than, perhaps, leasing the property to some entity,
12 that he had anything to do with the equestrian
(13 center? I mean, he wasn't selling the horses, was
14 he?

12:57 15 A I don't know what he was doing.

12:57 16 Q You don't know. And you're objecting
17 to go him, though -- to horses being sold out of the
18 Nguyens' barn; correct?

12:57 19 A On the Internet.

12:57 20 Q Sure.

12:57 21 A I don't know where they came from.
22 They could have came from the gelding pasture. They
23 could have came from the paddock or they came from
24 the riding ring. I don't know where the horses came
25 from. All I know is they were advertised for sale.

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7 1 Q Right. And you've actually agreed
2 that the Nguyens could sell horses out of their
3 barn? Or, no, you said they couldn't?

8 4 A There's no business to be conducted
5 over there, sir.

8 6 Q No horses? Well, you said they could
7 lease the property? They could lease --

8 8 A I said there was no business to be
9 conducted over there in the settlement.

8 10 Q But leasing is different than
11 business; is that your testimony?

8 12 A Leasing is a business.

8 13 Q Well, you said that in your agreement
14 that they may be leased solely to individuals
15 wishing to board their personal horses on the
16 property. So you agreed that the Nguyens could
17 lease their property to people wishing to board
18 their horses?

8 19 A They have an agriculture covenant.

8 20 Q This was done as a result of a lawsuit
21 that you brought?

8 22 A Yes.

8 23 Q Correct?

8 24 A Yes.

8 25 Q And they agreed to put this covenant

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1 on their property in exchange for you dropping your
2 lawsuit against them?

12:58 3 A Yes.

12:58 4 Q And you agreed that they could lease
5 their property to have up to ten horses on their
6 property?

12:59 7 A Yes.

12:59 8 Q Now what is the zoning for
9 Mr. Richardson's property?

12:59 10 MR. POLITO: Objection, Your Honor.
11 Relevance.

12:59 12 A I have no idea.

12:59 13 THE COURT: If he knows.

12:59 14 A I have no idea.

12:59 15 Q what's the zoning for your property?

12:59 16 A I have no idea.

12:59 17 Q You don't know what the zoning to your
18 property is?

12:59 19 A I don't want to admit to any zoning or
20 knowing the zoning.

12:59 21 Q well, do you know what the zoning is?

12:59 22 A Not at this point, I don't.

12:59 23 Q Do you remember telling me it was zone
24 R4 when you gave your deposition?

2:59 25 A I don't remember.

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9 1 Q So, if Mr. Richardson testifies as to
2 what your property is zoned and what his property is
3 zoned, you don't have any way to dispute that
4 because you don't know?

9 5 A I don't know. It's all changed so
6 much I don't know.

0 7 Q The six horses that the February 25th,
8 1998, restriction refers to, are they saying no
9 matter when -- you could never have more than six
10 horses on that property, or you can't keep more than
11 six horses on that property?

0 12 A It shall be permissible for the
13 purchaser and his or her successors and assigns to
14 keep up to six horses on the above-described
15 property.

1 16 Q In your covenants and restrictions, it
17 says you can only have up to one horse per property;
18 correct?

1 19 A Yes.

1 20 Q Does the covenants and restrictions
21 prohibit if you had -- if you had homeowners with
22 those horses? And I realize there aren't any
23 homeowners in those lots with horses, but if you
24 did, would it prohibit them from riding one horse
25 over to visit their neighbor, to have two horses on

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(1 the property at one time?

01:01 2 A I don't know.

01:01 3 Q And the Senrab Farms Equestrian

4 Center, that's located at 125 -- is it saddle --

5 what's it? saddle -- saddle Trail? The equestrian

6 center, that's at 125; correct?

01:01 7 A The Nguyens, I don't know their

8 address.

01:02 9 Q We know the Richardson's address is

10 124; correct?

01:02 11 A Correct.

01:02 12 Q And the Nguyens' property is right

(13 next door?

01:02 14 A Yes. It's west.

01:02 15 Q Now you bought your property in 1998.

16 In fact, you closed in January of 1998; is that

17 correct?

01:02 18 A Could have been January or August.

19 I'm not sure for some reason.

01:02 20 Q well, let's be sure. Let's look at

21 the deed. Does that refresh your recollection?

01:02 22 A Yes.

01:03 23 Q January 22nd, 1998?

01:03 24 A That's when it was filed, yes, sir.

1:03 25 Q So you closed maybe a couple days

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1 before?

3 2 A Yes, sir.

3 3 Q And then you moved in. When did you
4 move into your house?

3 5 A As soon as I could get in it.

3 6 Q How long did that take?

3 7 A As soon as the building was completed.

3 8 Q Take about a year?

3 9 A No. August.

3 10 Q Okay. August of '98?

3 11 A Yes.

3 12 Q And do you know when the Richardson's
13 house -- when they moved in?

3 14 A It was after mine, but I don't know
15 when.

3 16 Q When did he start building his house?

3 17 A Sometime much later.

4 18 Q Couple years later?

4 19 A Possibly, yes.

4 20 Q The year, 2001?

4 21 A I don't know.

4 22 Q When did he finish it?

4 23 A I don't know.

4 24 Q When did you first start seeing horses
25 in that pasture after they finished the fence?

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1:04 1 A I can't give you a date on that.

01:04 2 Q But pretty soon after he had the fence
3 up, he started having horses there; right?

01:04 4 A Possibly, yes.

01:04 5 Q And you brought suit against
6 Mr. Richardson in 2010; correct?

01:04 7 A I don't have a photo memory, sir. I
8 just can't remember every date that you're asking
9 me. I'll let the record speak for itself.

01:05 10 Q well, if I told you that the amended
11 complaint in this action that lists Mr. Richardson
12 and Julie Richardson, his wife, is dated
13 February 23rd, 2010, it's stamped that date and has
14 your attorney's signature on February 20th, 2010,
15 would you disagree with me?

01:05 16 A No.

01:05 17 Q Eleven years after you bought your
18 property. Let's -- let's talk about photographs.
19 The photographs in this case show traffic going to
20 the Nguyens' property; correct? And those people
21 weren't going -- driving and visiting?

01:06 22 A I don't know what photograph you're
23 referring to, sir.

01:06 24 Q All of them. Do any of these
25 photographs that you put into evidence show people

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1 driving over to use the Richardson's property?

6 2 A That they're parked over on the
3 Richardson's property.

6 4 Q Oh, I understand. They're parked on
5 the easement for the Nguyens' property, too; right,
6 the easement for the Nguyens' property?

6 7 A I have photographs showing them using
8 the Richardsons' property.

6 9 Q Okay. Which people?

6 10 A Which people? Do you -- I --

6 11 Q You mean the ones with the riders on
12 them?

6 13 A Yes.

6 14 Q Any prohibition about riding horses on
15 your property? I mean, isn't that why you have a
16 horse, to ride it?

6 17 A There are different circumstances when
18 you wouldn't ride a horse on my property, sir.

7 19 Q Well, sir --

7 20 A Especially after the cable company
21 came in and left holes.

7 22 Q Right.

7 23 A You wouldn't want a horse to break a
24 leg.

7 25 Q The covenants and restrictions that

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1 apply to your property allow one horse per lot;
2 correct?

01:07 3 A Yes.

01:07 4 Q And you would agree that the
5 implication is that people could ride those horses
6 if they, in fact, chose to have a horse on their
7 lot?

01:07 8 A Yes.

01:07 9 Q And they'd be allowed to let other
10 people to ride the horses? Nothing says that you
11 could be the only one to ride that horse; correct?

01:07 12 A I don't know.

1:07 13 Q You don't know? It doesn't say, does
14 it?

01:07 15 A That calls for a legal conclusion,
16 sir.

01:07 17 Q well, it doesn't say --

01:07 18 A It has to do with someone getting hurt
19 on your property.

01:07 20 Q But it doesn't say, for instance, if
21 you had a horse on your property, you could let one
22 of your grandkids ride a horse on your property if
23 it was your horse?

01:08 24 A If I had a horse.

01:08 25 Q You could let a friend ride it;

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1 correct?

8 2 A Yeah.

8 3 Q In fact, you could keep someone else's
4 horse on your property as long as it was only one
5 horse; right? It doesn't say it's got to be your
6 horse? Does it say it has to be your horse,
7 Mr. Kinard?

8 8 A Sir, you're asking for something
9 that's not quite apparent.

8 10 Q Right.

8 11 A You're -- you're getting money for
12 putting a horse on your property, you're running a
13 business, and that's not allowed under the
14 covenants.

8 15 Q So you're now comfortable making legal
16 conclusions, yourself, but you weren't earlier; is
17 that right?

8 18 A Well, you seem to want to preclude me
19 from saying anything but --

8 20 Q No. I'd like you to answer my
21 question.

8 22 A -- at the same time, you want an
23 honest opinion and an honest answer --

8 24 Q No. I don't want an honest opinion.

8 25 A -- and I can't give you that the way

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1 you're asking me questions.

01:09 2 THE COURT: Mr. Kinard, if you don't
3 know how to answer a particular question,
4 just say so. If you know the answer, answer
5 it. If you need to explain, explain it.

01:09 6 THE WITNESS: Yes, ma'am.

01:09 7 MR. SHELBOURNE: Thank you, Your
8 Honor.

9 BY MR. SHELBOURNE:

01:09 10 Q Mr. Kinard, is there anything in those
11 covenants and restrictions in Exhibit 2 requires
12 that the horse on your lot be owned by the property
13 owner?

01:09 14 A Yes, sir.

01:09 15 Q Okay. What does it say?

01:09 16 A The lots are known and designated and
17 shall be used as single-family residential building
18 lots.

01:09 19 Q What does that have to do -- what does
20 that say about using -- that the horses that you're
21 allowed to have that on that property be owned by
22 the homeowner? I'm not talking about whether they
23 made money. I'm not talking about that. I'm just
24 talking about ownership.

1:09 25 A I don't know.

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9 1 Q Because it says you can have a horse
2 on your property and it says you can -- it doesn't
3 say it has to be your horse, just as long as it's
4 not more than one; right?

o 5 A I don't know. It's quite true the
6 covenants left a lot to be desired, sir.

o 7 Q They do. I agree with you.

o 8 A But in a layman's term or a layman's
9 view, there's a lot to be desired. It doesn't come
10 right out and specify that the horse has to be
11 yours, your cousin's or your grandmother's.

o 12 Q Right. And in your opinion, it
13 should, though, because that would help things out?

o 14 A Yeah.

o 15 Q It would make it clearer?

o 16 A Yes.

o 17 Q It's not very clear the way it is, is
18 it?

o 19 A No. In certain terminologies, it's
20 not.

o 21 MR. SHELBOURNE: If I could beg the
22 Court's indulgence for a second, Your Honor.

o 23 Q Mr. Kinard, would you agree that if
24 one of the members of the subdivision wanted to
25 leave the subdivision, have their property no longer

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1 be under that subdivision covenant, that they
2 couldn't do that without a full majority vote of the
3 subdivision?

01:11 4 A I don't know.

01:12 5 Q Now, if you lease your -- someone
6 leases a house in the subdivision, they can get
7 money for it, can't they, if they lease the house?

01:12 8 A I would think so.

01:12 9 Q Right. That's why you lease it. You
10 expect to get paid; right?

01:12 11 A Yes.

01:12 12 Q And you would agree that that's not a
13 violation of the covenants?

01:12 14 A I would think not.

01:12 15 Q When Mr. -- now you talked to
16 Mr. Richardson about the cars driving in and out to
17 the Nguyens' barn. At some point, did speed bumps
18 get put in?

01:12 19 A Speed bumps were put in, yeah, after
20 one of the homeowners' meetings.

01:13 21 Q That was to slow the traffic down;
22 right?

01:13 23 A To my knowledge, yes.

01:13 24 Q And you indicated that you were --
25 about your relationship with Mr. Richardson wasn't

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1 very good. Prior to you filing a lawsuit against
2 him, you would bring him figs and apples and other
3 crops from your land; correct?

3 4 A I do that to everyone.

3 5 Q Just didn't get paid for it?

3 6 A Sir?

3 7 Q You just don't get paid for it?

3 8 A No. I do it as a favor.

3 9 Q Are there stop signs at the corner of
10 Saddle Trail and Senrab Farms Boulevard?

3 11 A Yeah. I think that was put in when
12 Mr. Richardson was president of the homeowners'
13 association.

4 14 MR. SHELBOURNE: That's all I have,
15 Your Honor. Thank you.

4 16 THE COURT: John, it's about 1:20. I
17 think you probably have some redirect. I
18 think it's probably time for us to take our
19 lunch break for a little bit. Is an hour
20 sufficient time?

4 21 MR. SHELBOURNE: That will be fine.

4 22 THE COURT: We'll do an hour.

23 (Whereupon, a luncheon recess was taken from
24 1:14 p.m. until 2:36 p.m.)

6 25 THE COURT: It looks like Mr. Kinard

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1 was still on the witness stand. Do you want
2 to --

02:36 3 MR. POLITO: Yes, sir. I just have a
4 couple of redirect questions.

02:36 5 THE COURT: Come on back up, Mr.
6 Kinard. Just remember you're still under
7 oath.

8 REDIRECT EXAMINATION

9 BY MR. POLITO:

02:36 10 Q Mr. Kinard, when did you first
11 believe -- when did you first have reason to believe
12 that the Defendants were leasing their land for
13 commercial business purposes?

02:36 14 MR. SHELBOURNE: Objection, Your
15 Honor. It's leading and also assuming facts
16 not in evidence.

02:36 17 MR. POLITO: I didn't suggest an
18 answer.

02:36 19 THE COURT: Maybe just rephrase the
20 question.

21 BY MR. POLITO:

02:37 22 Q Mr. Kinard, did you come to believe --
23 at some point, did you come to believe that the
24 Defendants were leasing their land for commercial
25 business purposes?

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7 1 A Yes. Sometime in 2009.

7 2 Q In 2009?

7 3 A Yes, sir.

7 4 Q And what event, what happened then in
5 2009 that you had reason to believe that they were
6 leasing their land for commercial business purposes?

7 7 A I believe that's when you provided me
8 the website.

7 9 Q Thank you. And when did you first
10 learn that the developers didn't own any of the
11 lots, any of the six lots on February 25th, 1998,
12 the date upon which Mr. and Mrs. Barnes purport to
13 have amended the restrictive covenants so as to
14 allow Tract L six horses?

7 15 A During the lawsuit.

7 16 Q During the lawsuit?

7 17 A Yes.

7 18 Q You didn't know prior to then?

8 19 A No.

8 20 Q Did you have any reason to go digging
21 into Mr. Richardson's chain of title?

8 22 A No.

8 23 Q Do you recall Mr. Shelbourne asking
24 you the question when did the six lot owners vote to
25 add Tract L and make it subject to the covenants?

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(2:38 1 A I recall.

02:38 2 Q I'll ask to you look at Plaintiff's
3 Exhibit 2 with me, if you would. At the very first
4 paragraph, it says James M. Barnes and Delete (sic)
5 B. Barnes hereafter referred to as declarants, the
6 owners of the property described herein, were made
7 subject from time to time hereby covenant and agree
8 on behalf of themselves, their heirs assigns, with
9 persons who shall hereafter purchase the property
10 described in the attached Exhibit A as follows.
11 where, in those words, does it say that Mr. and Mrs.
12 Barnes need to have a vote, vote to change the
(13 covenants if they, from time to time, subject
14 additional properties to the covenants?

02:39 15 A It doesn't.

02:39 16 Q In the next paragraph, it says
17 whenever used herein, the term, lots, shall refer to
18 lots which are subject hereto, whether by specific
19 reference in this instrument or to lots made subject
20 to the provisions of this instrument by separate
21 legal instrument recorded in the Dorchester County
22 RMC Office. Again, Mr. Kinard, where, in those
23 words, does it say that they have to -- this power
24 that they granted themselves, they now have to go
25 and have it voted on by the homeowners for them to

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1 take and add to subject additional properties to the
2 covenants?

9 3 MR. SHELBOURNE: Your Honor, I object
4 to the form. It's extremely leading. The
5 whole paragraph is leading.

9 6 THE COURT: He did the paragraph and
7 he said where and then does it say, so
8 that's -- that's not leading.

o 9 A It doesn't say.

o10 Q Okay. I turn your attention to the
11 page 9, paragraph 18, which is the amendment clause,
12 and it says, quote, these protective covenants may
13 be altered, modified, cancelled, or changed at any
14 time by the written consent of the majority of the
15 owners of record. How is adding additional --
16 additional -- can you explain to us, Mr. Kinard, how
17 adding Tract L to this in any way changes any of the
18 covenants that we have here?

o19 A I don't see how it does.

o20 MR. POLITO: I have no further
21 questions. Thank you.

o22 MR. SHELBOURNE: May I, Your Honor,
23 briefly?

o24 THE COURT: Sure.

25 RE CROSS EXAMINATION

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1 BY MR. SHELBOURNE:

02:41 2 Q Mr. Kinard, when you and I talked, I
3 asked you whether Mr. Barnes -- well, let me ask you
4 this. If Mr. Barnes, if he were alive, had bought
5 twenty acres in Knightsville to say that it refers
6 to the -- bound by the covenants and restrictions
7 that apply to your property and then it becomes part
8 of your homeowners' association, you testified that
9 he couldn't do that because it wouldn't be fair;
10 right?

02:41 11 A This started off, sir, when you were
12 making a statement and now you're asking a question.

02:41 13 Q That's right. I'm asking you a
14 question.

02:41 15 A I don't understand the question.

02:41 16 Q You don't understand the question.

02:41 17 A No, I don't.

02:41 18 Q If Mr. Barnes were still alive, if he
19 were to buy, say, twenty acres in Knightsville and
20 make it into, say, twenty lots and subject them to
21 the covenants and restrictions that apply to Senrab
22 Farms, would those people then be governed under
23 your homeowners' association?

02:42 24 A Sir, I think you're asking me to come
25 up with a legal conclusion --

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2 1 Q No. I'm asking in your opinion --
2 2 A -- which I'm not qualified to do.
2 3 Q -- do you know whether or they would?
2 4 A I don't know.
2 5 Q You just --
2 6 A I don't know --
2 7 Q Okay. Well, you just --
2 8 A I don't know.
2 9 Q -- testified -- okay. You don't know.
10 You just testified --
2 11 A I don't know.
2 12 Q -- Mr. Kinard -- all right. Listen to
13 my question, sir, and stop interrupting me. Will
14 you please do that? Is that an agreement? I'll ask
15 questions and you give answers; is that okay?
2 16 A Understood.
2 17 Q Thank you. Isn't it true, Mr. Kinard,
18 that Mr. Barnes didn't have any -- didn't own any of
19 those lots, original lots when he sold the property
20 to Mr. Hill, Lot L?
2 21 A I don't know.
2 22 Q All right. Look at the deeds and see.
23 Look at the date. When did he sell it to Mr. Hill;
24 do you know? Does March 1998 sound about right?
25 Exhibit 3, your attorney says are the deeds. Are

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(1 any of those done after March 1998?

02:43 2 A Here's a deed prior to '98.

02:43 3 Q And those are all the lots in the

4 original -- under the original covenants; correct?

02:43 5 A If you say so.

02:44 6 Q Well, no. I'm asking you. Are they?

02:44 7 A It will take a little while going

8 through this, sir, and -- to make sure.

02:44 9 Q It's your exhibit, Mr. Kinard. If you

10 need to take some time to go through it, please go

11 through it. And I will state to you that you

12 already identified it as those documents, but if you

(13 need to refresh your recollection, by all means, do

14 so.

02:44 15 THE COURT: Mr. Kinard, take your

16 time.

02:44 17 THE WITNESS: May I have my pad?

02:44 18 MR. POLITO: Sure. Do you mind if he

19 writes down the dates?

02:44 20 MR. SHELBOURNE: That's fine.

02:44 21 MR. POLITO: He's trying to remember

22 five different dates.

02:44 23 MR. SHELBOURNE: That's fine. If you

24 want to stipulate that they are, that's fine.

2:44 25 MR. POLITO: We can stipulate to that,

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1 Larry. You don't need to -- he's right.

2 MR. SHELBOURNE: That's fine. We can
3 move on.

4 BY MR. SHELBOURNE:

5 Q So Mr. Barnes didn't own any of those
6 original lots when he sold the property to Mr. Hill
7 in March 1998?

8 A Yes, sir.

9 Q Okay. Just like he didn't own any of
10 those properties if he owned any more properties
11 somewhere else in some other part of the county. Do
12 you have any documents showing that Mr. Barnes
13 brought this property, Lot L, into the subdivision
14 prior to putting the restriction on the property
15 saying you could have six horses?

16 A No.

17 Q Because he did that first; right?

18 A What's that?

19 Q He said -- he limited the property to
20 having six horses before he sold it to Mr. Hill?

21 MR. POLITO: Object, Your Honor. I
22 believe the document says they were
23 simultaneous. It's actually stated in the
24 document, not before or after.

25 THE COURT: If it's in the document,

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1 BY MR. SHELBOURNE:

02:47 2 Q You testified just now on redirect
3 that you didn't know that they were -- he was
4 leasing the property to whoever was using this
5 property until 2009?

02:47 6 A Thereabouts.

02:47 7 Q When you complained at the homeowners'
8 association meeting in the early 2000s about the
9 traffic and the noise -- do you remember that?

02:47 10 A Yes.

02:47 11 Q Isn't it true that Mr. Richardson then
12 went to the owners of the horses and the people in
13 the barn, and in fact, told you he would go talk to
14 them about trying to slow the traffic?

02:47 15 A I don't know what he did, sir.

02:47 16 Q Isn't it true that he told you that he
17 would go talk to the people?

02:47 18 A No.

02:47 19 Q Didn't you bring it up at a
20 homeowners' association meeting?

02:47 21 A Yes.

02:47 22 Q Didn't he and Mr. Nguyen say, hey,
23 they'd talk to the people?

02:47 24 A Mr. Nguyen wasn't at this particular
25 homeowners' meeting. It was a -- later homeowners'

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1 meetings that Mr. Nguyen was at, and when I brought
2 it up to him, personally, his words were I'll sell
3 it if I can't have horses. That was the response I
4 got. Very adamant that he would sell the whole
5 spiel (sic).

8 6 Q But you settled it?

8 7 A Well, this was at a later time.

8 8 Q Correct. But you subsequently settled
9 it so he can have horses on his property?

8 10 A Yes.

8 11 MR. SHELBOURNE: That's all I have,
12 Your Honor.

8 13 MR. POLITO: Can I just one quick
14 question?

8 15 THE COURT: Yes, sir.

16 REDIRECT EXAMINATION

17 BY MR. POLITO:

8 18 Q Mr. Kinard, just to turn your
19 attention to the Plaintiff's Exhibit No. 1, that
20 turnaround on the -- it's marked as a turnaround at
21 the end of Saddle Trail?

8 22 A I see it.

8 23 Q When you bought your home there, what
24 were your thoughts about what was going to happen
25 across the street?

(2:49 1

MR. SHELBOURNE: Objection. It's way
outside my scope of redirect.

02:49 3

MR. POLITO: He just --

02:49 4

THE COURT: I'll sustain it. That is
not what was within the realms of --

02:49 6

MR. POLITO: Your Honor, counsel was
asserting that -- or suggesting that there
was no plans for his property to come into
the subdivision. We've got a master plan and
lots of evidence that shows that the
developer was -- had him -- planned ahead,
even though documents hadn't been given --

(2:49 13

THE COURT: I understand, but that
exceeds the scope of the redirect.

02:49 15

MR. POLITO: Okay. Thank you.

02:49 16

THE COURT: You may step down. Thank
you.

02:49 18

THE WITNESS: Thank you, ma'am.
(Whereupon, the witness was dismissed)

02:49 20

MR. POLITO: I call Douglas
Richardson, Your Honor.

02:49 22

THE COURT: Mr. Richardson.

23

DOUGLAS SCOTT RICHARDSON,

24

(a Defendant, called as a witness on behalf
of the Plaintiff, having been first duly

25

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1 sworn, was examined and testified as
2 follows:)

3 THE COURT: Would you state your name,
4 please?

5 THE WITNESS: Douglas Scott
6 Richardson.

7 MR. POLITO: Mr. Polito.

8 DIRECT EXAMINATION

9 BY MR. POLITO:

o10 Q Mr. Richardson, where do you reside?

o11 A 124 Saddle Trail, Summerville.

o12 Q And is that located in Senrab Farms
13 subdivision?

o14 A It is.

o15 Q Do you live in Senrab Farms
16 subdivision?

o17 A I live in the back.

o18 Q Have you been the president of the
19 association?

o20 A Yes.

o21 Q And how long were you president of the
22 association?

o23 A I'm not sure. I was the original.

o24 Q You were the original president?

o25 A Yes.

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(2:50 1 Q Is your wife currently an officer in
2 the homeowners' association?

02:50 3 A Yes.

02:50 4 Q And what position does she hold?

02:50 5 A Treasurer.

02:50 6 Q Treasurer. Mr. Richardson, is it your
7 desire to continue leasing horses -- leasing grazing
8 rights to your lot?

02:50 9 A Yes the.

02:50 10 Q Did you subdivide your seven-acre lot
11 in 2003 so that you could have agricultural use of
12 5.8 acres?

(2:50 13 A Yes.

02:50 14 Q And by agriculture use, did you mean
15 the grazing of horses?

02:51 16 A I did.

02:51 17 Q Did you continue -- okay. You just
18 stated that. Did you incorporate a business entity
19 which you named Greener Pastures?

02:51 20 A I did.

02:51 21 Q And was Greener Pastures income and
22 expense associated with the horse-grazing operations
23 conducted from your five-plus-acre Senrab Farms
24 tract known as Tract B?

2:51 25 A We did not do the leases -- in one

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1 year, we filed under Greener Pastures. The other
2 times, we filed under farm income.

1 3 Q So what year did --

1 4 A I don't --

1 5 Q I'm sorry, go ahead.

1 6 A I'm sorry. I don't remember which
7 year it was, but I think that is the document I gave
8 you was the one that was Greener Pastures, LLC, but
9 the rest were done under farming income.

1 10 Q I'll hand you Plaintiff's Exhibit 37
11 and ask if you can identify it?

1 12 A Yes.

1 13 Q What is that?

1 14 A It's a farm income.

1 15 Q And for what year is it?

1 16 A 2009.

1 17 Q And was that filed on behalf of
18 Greener Pastures by Doug and Julie Richardson.

1 19 A I'm looking for Greener Pastures on
20 this document.

2 21 Q At the very top, sir.

2 22 A Oh, underneath, yes, it is.

2 23 Q Could you look at the following pages
24 attached to the Plaintiff's Exhibit 37 and read the
25 caption for us?

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(2:52 1 A Yes. Greener Pastures, LLC.

02:52 2 Q And underneath that?

02:52 3 A Income and expenses, detailed report
4 from 01/01/2002, 04/04/2008.

02:52 5 Q So does the data under that reflect
6 income and expenses for Greener Pastures for those
7 years?

02:52 8 A Six, no. It's -- the rent is for 2003
9 and through 2005.

02:52 10 Q Could you turn the page, sir?

02:52 11 A I am.

02:52 12 Q And what years is on the next page?

(2:52 13 A The same at the top, 01/01/2002 to
14 2008. So this is a document that was prepared by my
15 accountant, and the purpose was to try to make sure
16 we were tracking the expenses and whether we were
17 going to expense or capitalize some of these things.

02:53 18 Q Is there any income or expense on the
19 sheets shown there before you that was not earned or
20 incurred as part of Tract B, Senrab Farms?

02:53 21 A No. This is all from that. Right,
22 from 2003 to 2010, I reported all my income.

02:53 23 Q To the best of your knowledge, are
24 those figures accurate?

(2:53 25 A To the best of my knowledge.

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3 1 MR. POLITO: Your Honor, I'd move for
2 submission into evidence Plaintiff's Exhibit
3 37.

4 4 THE COURT: Any objection?

4 5 MR. SHELBOURNE: No objection, Your
6 Honor.

4 7 THE COURT: Admitted.

8 (PLAINTIFF'S EXHIBIT NO. 37
9 RECEIVED IN EVIDENCE)

10 BY MR. POLITO:

4 11 Q How many leases did you have,
12 Mr. Richardson for track B in which you leased the
13 land and derived income from it?

4 14 A Three, at lease three that I can
15 recall.

4 16 Q And how many of those leases were in
17 writing?

4 18 A They were in writing.

4 19 Q And when we requested documents from
20 you, how many of those leases were you able to
21 produce for us?

4 22 A One.

4 23 Q One. And which lease was it?

4 24 A Madeline Ingalls.

4 25 Q I'll hand you Exhibit 36. Is that the

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1 lease you produced for us in discovery?

02:54 2 A Yes.

02:54 3 Q And is that lease complete?

02:54 4 A Well, it's missing signatures and
5 initials because I printed it off the front. I
6 guess it's got signatures on the back. It's not
7 initialed on every page.

02:55 8 Q And does anywhere in that lease
9 prohibit the riding of horses on those premises that
10 you leased?

02:55 11 A The riding of horses, no, I don't
12 believe so.

02:55 13 Q Does it limit the type of riding that
14 can occur?

02:55 15 A It says no lessons.

02:55 16 Q What does that mean, no lessons?

02:55 17 A That means not to be teaching riding
18 on my property.

02:55 19 Q Is there a greater liability
20 associated with riding lessons?

02:55 21 A I wouldn't know.

02:55 22 Q Is there a reason why you choose just
23 lessons?

02:55 24 A This one is dated January 2010, so, by
25 then, I was in receipt of your letter from 2009, so

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1 I'm sure that had an influence on it, what I wrote.

5 2 Q And the date of that commercial lease
3 with Madeline Ingalls is?

5 4 A January 10th, 2010.

5 5 Q Did you happen to visit the Senrab
6 Farms Equestrian Center website?

5 7 A After I saw it in the lawsuit.

6 8 Q So you weren't aware of that website
9 prior to?

6 10 A I was not.

6 11 Q Is there a reason why Mr. Kinard
12 should have been aware of it when you weren't?

6 13 A He had someone telling him that's
14 where they can get that.

6 15 Q That's right. I found it?

6 16 A So you didn't call me. You called
17 him.

6 18 Q So you weren't aware they were
19 advertising horses for sale?

6 20 A I was not.

6 21 Q Are there any horses that went onto
22 the Nguyens property that didn't also come onto your
23 property for grazing?

6 24 A I don't know that answer.

6 25 Q Well, in your deposition, you said you

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1 thought they all came?

02:56 2 A I would think that they were being
3 rotated through, but I can't say for certain --

02:56 4 Q And how many -- how -- I'm sorry.

02:56 5 A -- every single horse came through.

02:56 6 Q How many horse did you allow on your
7 property at one time?

02:56 8 A Five.

02:56 9 Q Were there times when there were more
10 than that?

02:56 11 A Yes.

02:56 12 Q What was the most horses you've ever
(13 seen on your property?

02:56 14 A Seven, I'd say, was my count.

02:56 15 Q Do you have any records of the names
16 or numbers of horses that grazed on Tract B over the
17 years?

02:57 18 A No. The names of the horses?

02:57 19 Q Yes, sir.

02:57 20 A Certainly not.

02:57 21 Q Do you have any idea how many horses
22 in a one-week period would be rotated through your
23 property?

02:57 24 A No. I would think that that barn is
25 holding ten, so, again, I would think the maximum

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1 number would be ten coming through.

7 2 Q well, during the hearing we had before
3 the Dorchester County Zoning Board, wasn't there
4 twenty horses, twenty-one horses identified?

7 5 A Twenty-one horses?

7 6 Q Yes, sir. A list of twenty-one horses
7 put before the board?

7 8 A I can't recall that list. I don't
9 know where you'd put twenty-one horses in that barn.

7 10 Q And do you have any idea of the number
11 of horses that grazed upon Tract B since 2003 that
12 were for sale while they were grazing upon your
13 land?

7 14 A I don't.

7 15 Q You have no idea whether the horse was
16 for sale or not?

8 17 A I don't.

8 18 Q Is it possible that the number of
19 horses since 2003 that were for sale could have been
20 more than one hundred?

8 21 A More than one hundred?

8 22 Q Yes, sir.

8 23 A Since 2003?

8 24 Q If you don't know, that's fine.

8 25 A I don't.

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(2:58 1 Q Did people tell in you passing that
2 they thought their particular horse might be worth
3 \$10,000?

02:58 4 A Yes.

02:58 5 Q Has it been your practice to request a
6 vet certificate as to the horse's health before
7 allowing it to graze in Senrab Farms upon Tract L?

02:58 8 A No, no vet certificate.

02:58 9 Q Did you stay abreast of the illnesses
10 that horses had?

02:58 11 A No.

02:58 12 Q Do you know what illnesses the horses
(13 had? Were you ever advised of it?

02:58 14 A I was not.

02:58 15 Q Did a horse die there at the very end
16 on your land?

02:58 17 A Yeah, I believe.

02:58 18 Q What did that horse die from?

02:58 19 A I don't know.

02:58 20 Q You don't know?

02:58 21 A I remember -- I remember the horse
22 being down and the upset that it caused.

02:58 23 Q Did any other horses die since 2003?

02:58 24 A What I remember was the one.

02:58 25 Q But you don't know the cause of death?

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9 1 A I don't.

9 2 Q Have you ever owned a horse in South
3 Carolina?

9 4 A We lived in Charlotte and we had a
5 horse, but I guess we were in North Carolina, so,
6 no, not in South Carolina.

9 7 Q You went to Chapel Hill?

9 8 A I did.

9 9 Q Graduated there?

9 10 A I did.

9 11 Q And you're a realtor?

9 12 A Yes.

9 13 Q How long have you been a licensed
14 realtor?

9 15 A I've been a licensed realtor since
16 2002.

9 17 Q In the photographs -- you've already
18 seen these photographs, but we'll look at them
19 again. I believe I showed them to you during your
20 deposition, but in these photographs, can you
21 identify any of the people who were riding horses
22 upon your land?

9 23 A I think that is right here.

9 24 Q Plaintiff's Exhibits 29 and 30, I am
25 handing you.

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2:59 1 A No.

03:00 2 Q Do you know the names of the horses
3 there?

03:00 4 A I don't.

03:00 5 Q Can you give us ten names of horses
6 that have grazed upon your hand since 2003?

03:00 7 A I can't.

03:00 8 Q How about five?

03:00 9 A I didn't know the horses. I didn't
10 take care of the horses.

03:00 11 Q You didn't know the names of any of
12 the horses that came on your land?

3:00 13 A I didn't take care of the horses. I
14 didn't ride the horses.

03:00 15 Q In the commercial lease you -- excuse
16 me -- in the commercial lease you executed with
17 Madeline Ingalls in January of 2010, did you lease
18 one hundred percent of Tract B for grazing?

03:00 19 A Since I define it by the TMS and not
20 by the fenced area, I think that would be a true
21 statement.

03:01 22 Q Have you ever had a lease that forbids
23 the riding of horses upon Tract L, other than the
24 Ingalls' lease forbidding giving riding lessons?

3:01 25 A For giving riding lessons?

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1 1 Q Yes, sir.

1 2 A No.

1 3 Q Do you know how frequently horses are
4 ridden upon Tract B?

1 5 A On a regular basis, weekly.

1 6 Q Did your lease provide for customer
7 parking?

1 8 A Yes. It's defined in page 3,
9 paragraph 7.

1 10 Q And where were customers to park?

1 11 A Outside of the fenced pastures on the
12 barn side of the fence.

1 13 Q What arrangements did you have for
14 removing horse dung from your lot, from Tract B?

1 15 A It was meant to be spread, not
16 removed, not -- not gathered. To -- to -- well,
17 Clemson Extension Service gave me the advice the
18 best management for the fly eggs was to spread.

2 19 Q Tell us about the fly eggs.

2 20 A My understanding, that's where the
21 flies lay their eggs in.

2 22 Q So Clemson's advice, it's best to
23 spread it, not to remove it?

2 24 A Spread it because you're trying to
25 get -- the best agent you can get to it is sunshine.

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1 So the idea is not to leave it in a pile but spread
2 it.

03:02 3 Q And when did you commence that
4 practice of spreading, not removing the manure?

03:02 5 A I don't recall the specific date.

03:02 6 Q How about the year?

03:02 7 A Well, there was a earlier time when we
8 were collecting at the barn and actually trying to,
9 you know, compost it. So it was done both ways.
10 Sometimes, it was being collected and composted, and
11 sometimes, it was being spread. I don't recall the
12 specific dates.

3:02 13 Q Were there times when the fields were
14 neglected and a large amount of dung accumulated?

03:03 15 A There's certainly is a lot of horse
16 manure in our pasture, yes.

03:03 17 Q Did Mr. Kinard complain to the
18 Dorchester County Code Enforcement about too many
19 horses on your lot?

03:03 20 A I don't know if he complained, but I
21 know they showed up at my door.

03:03 22 Q Did you assume it was him?

03:03 23 A He said it was a neighbor. He didn't
24 use Mr. Kinard's name.

3:03 25 Q And when did that happen?

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3 1 A I don't recall the date.

3 2 Q Was that in 2008 or 2009?

3 3 A I'm sorry, I don't remember. I don't
4 recall the date. I remember standing on the porch
5 with the officer.

3 6 Q Were you involved in trying to keep
7 litter picked up that was at least in part due to
8 equestrian activities?

3 9 MR. SHELBOURNE: Objection, Your
10 Honor. Calls for speculation and assuming
11 facts not in evidence.

3 12 THE COURT: If he knows.

3 13 MR. POLITO: I'll be happy to rephrase
14 the question, Your Honor.

3 15 Q Was there litter inside Senrab Farms
16 subdivision that you believe to be related to
17 equestrian activities?

4 18 A I wouldn't know.

4 19 Q You didn't know?

4 20 A I would not know.

4 21 Q Did you make efforts to try to keep
22 the litter cleaned up.

4 23 A At the front of the subdivision, I was
24 involved on a regular basis, not on Mr. Kinard's
25 property.

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(03:04 1 Q Down Senrab Boulevard now?

03:04 2 A Nope.

03:04 3 Q You never picked up along Senrab
4 Boulevard?

03:04 5 A (Witness moves head from side to
6 side).

03:04 7 Q Did Mr. Kinard complain to you at the
8 HOA about the litter at times?

03:04 9 A Yes.

03:04 10 Q Did Mr. Kinard complain to you about
11 the traffic and the horse traffic going into and
12 tearing up the streets?

(3:04 13 A Back up. We put the speed bumps in
14 because of his complaints and a stop sign on Senrab
15 Boulevard and a stop sign on the one his driveway is
16 to stop the traffic on Saddle Trail, and those
17 things were done based on his feedback.

03:04 18 Q So there was no traffic control device
19 at the intersection prior to Mr. Kinard's bringing
20 that up?

03:05 21 A Either side. We added both, and we
22 added the bumps.

03:05 23 Q During all times that Mr. Kinard
24 complained to you, did you ever once tell him that
25 you didn't own any horses on your land, any of the

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1 horses that were on your land?

5 2 A When he complained, I said I would
3 talk to the owners at the barn about their horses.
4 He complained about them riding on the road, all of
5 that, and I said I would go talk to the owners at
6 the barn. That's what I told him.

5 7 Q Mr. Richardson, don't you feel that
8 your six acres helped facilitate an awful lot of
9 that traffic by giving those horses a place to roam
10 and graze?

5 11 A I think it facilitated -- I'm sorry,
12 ask the question again.

5 13 Q Do you feel that your use of Tract B
14 and allowing horse to graze helped facilitate
15 traffic by making the entire site more popular,
16 available, better to use as a horse owner?

6 17 A Yes. It was definitely better for the
18 horses to have pasture from.

6 19 Q Did you ever tell Mr. Kinard that you
20 were running a grazing enterprise?

6 21 A Not in those words, but I certainly
22 told him I'd go talk to the owners of the horses
23 when he was complaining.

6 24 Q Have you ever told anyone residing
25 within Senrab Farms -- did you ever tell anyone

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1 residing within Senrab Farms subdivision that you
2 created a business in 2003 known as Greener Pasture?

03:06 3 A I don't think I would have talked
4 about it by name. I certainly talked about
5 representing the pasture to neighbors.

03:06 6 Q So just one neighbor?

03:06 7 A No. I would say it was not a -- it
8 was not something I was keeping secret. They never
9 saw me on the horses. They'd ask whose horses they
10 were, and I told them they weren't mine.

03:07 11 Q You told them they were not yours?

03:07 12 A They've never seen me ride one,
13 they've never seen me feed one, water one. The time
14 I came in contact with those horses was when one got
15 out. It was with the group that would help catch it
16 and bring it back.

03:07 17 Q Mr. Kinard, who lived across the
18 street from you, gave you proof and complained about
19 traffic, you never told him, did you?

03:07 20 A I told people when they complained --
21 when he complained, I told him I'd go talk to the
22 horse owners at the barn. So I think that tells him
23 that those aren't my horses. He knew the people by
24 name. He'd say would you go talk to Charity, her
25 dog is in my yard, they're riding on the road, so he

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1 was sending me by name to the horse owner. So I'd
2 say, yes, he knew they weren't my horses.

8 3 Q Because you told him that you were
4 going to go talk to --

8 5 A No. He told me the names to go talk
6 to.

8 7 Q But he didn't -- I mean, why would he
8 think they were your horses? Why would he think
9 that your horses were involved? How would he know
10 that?

8 11 MR. SHELBOURNE: Objection, Your
12 Honor. Calls for speculation.

8 13 THE COURT: He's asking him how he
14 would know that. He can answer.

8 15 A How? Okay. Let me just make sure I
16 understand the question.

8 17 Q Sure. I'll say it again.

8 18 A Okay.

8 19 Q How -- how -- how would Mr. Kinard
20 know, because there's horses -- horses are going
21 down that road across from Senrab back to the barn
22 and parking along that fence, that the horses --
23 that were grazing on your land weren't yours?

8 24 A Did he see me riding them, lead them,
25 clean them, touch them? I would think for somebody

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1 that was so observant of all the activity on my
2 property, I would have thought he would have seen
3 that.

03:08 4 Q So people cleaned the horses on your
5 tract?

03:08 6 A I'm sure --

03:08 7 Q Did anyone clean a horse on Tract B?

03:08 8 MR. SHELBOURNE: Your Honor, if he
9 could let him finish his answer before he
10 interrupts him.

03:08 11 Q Excuse me. I'm sorry if I
12 interrupted. Go on.

(3:09 13 A They were not cleaning. They were
14 walking a horse after a bath. They were walking
15 down this way. They would walk in the pasture.
16 They would walk the horses. So it's the other way
17 around. I don't know why he would have ever thought
18 they were mine. Believe me, I would have been on
19 their backs.

03:09 20 Q But they were on your land, weren't
21 they?

03:09 22 A They were.

03:09 23 Q Did you ever ask Senrab Farms
24 homeowners' association for permission to use their
25 private road for your commercial horse-grazing

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1 business?

9 2 MR. SHELBOURNE: Objection, Your
3 Honor. Assumes facts not in evidence. It's
4 also a compound question by saying it's a
5 commercial business, assuming that it's a
6 commercial business. We haven't conceded --

9 7 MR. POLITO: The lease says commercial
8 on top of it, Your Honor.

9 9 THE COURT: well, how about just
10 rephrase the question and you don't put your
11 label on it. He can characterize it as he
12 sees it.

13 BY MR. POLITO:

9 14 Q I'll ask to you look at Plaintiff's
15 Exhibit 32. Could you tell me what that lease says
16 at the very top?

9 17 A Commercial lease.

9 18 Q Thank you very much. Did you ever ask
19 the HOA's permission to allow the patrons who were
20 grazing under your commercial lease if they could
21 use your private road?

0 22 A No.

0 23 MR. POLITO: One second. Let me see
24 if my client has any more.

0 25 Thank you, Your Honor. That's all we

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1 have.

03:10 2 THE COURT: Mr. Shelbourne?

03:10 3 MR. SHELBOURNE: Your Honor, I'd like
4 to hold my questions until such time as to
5 put Mr. Richardson up as direct in my case.

03:10 6 THE COURT: That's fine. You may step
7 down Mr. Richardson. Thank you.

8 (Whereupon, the witness was dismissed)

03:10 9 MR. POLITO: Your Honor, Plaintiff
10 would close and move to conform the pleadings
11 to the evidence.

03:11 12 THE COURT: Mr. Shelbourne?

(3:11 13 MR. SHELBOURNE: Your Honor, we would
14 go on record that if he wants to talk about
15 by conforming the pleadings to the evidence,
16 rather than just generally saying conform the
17 pleadings together because I'm not sure what
18 he's talking about.

03:11 19 MR. POLITO: Well, specifically it's
20 is. Because we started out this lawsuit
21 believing that there were extra horses on
22 there; that there were -- that the lease,
23 itself, under the amended covenants allowed a
24 maximum of six. We've got photographic
25 evidence of seven, maybe eight. As we got

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1 into summary judgment, we discovered that the
2 lease, itself -- I mean, that the amended
3 covenants, themselves, didn't have the
4 required votes to amend it. So that sort of
5 changed it. You know, now, you're looking at
6 instead of saying wait a minute, you've got
7 too many horses, you shouldn't have any
8 horses. You should have the same as
9 everybody else because those covenants aren't
10 valid.

11 So what we did, all the evidence we
12 put in today showed that in our primary -- in
13 our secondary argument after our primary
14 argument, which is it's a residential use and
15 you've got to stick to that, and you're doing
16 an agricultural use, what is -- the amended
17 covenants, themselves, are not valid. And
18 that is -- that's the amendment we would do,
19 and that's all I'm asking is just to amend
20 that. They were given notice of it. I've
21 got statements here.

22 Last year, I sent him an email. We
23 talked about this. We argued this at summary
24 judgment. We argued before the Judge. I
25 tried to get the Judge to rule on it. I

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1 couldn't get the Judge to rule on it. I made
2 a motion to reconsider. I asked the Judge, I
3 said, Judge, you haven't ruled on whether the
4 covenants were valid. He says he denied my
5 motion to reconsider and stuck with his
6 original holding only determining that the
7 covenants ran with the land. Thank you.

03:12 8 THE COURT: Mr. Shelbourne?

03:12 9 MR. SHELBOURNE: I think I understand
10 now specifically what he's talking about. We
11 don't object to his amending the pleadings
12 that the six covenants that are what are
13 listed as amended restrictions I think what
14 he's saying is don't apply or are invalid.

03:12 15 MR. POLITO: Invalid.

03:12 16 MR. SHELBOURNE: I'm just trying to
17 get an understanding of what he is trying to
18 amend. So if that's all, I don't have any
19 objection to that motion. I do have some
20 responses to the proof and the allegations
21 that he's proved his case, so I'm going to
22 have to go forward with that. I think it
23 would be appropriate now at this time.

03:13 24 THE COURT: Go ahead.

03:13 25 MR. SHELBOURNE: Your Honor, I move

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1 for a directed verdict as to all claims of
2 the Defendant -- of the Plaintiff.

3 Judge Dixon's order that Mr. Polito --
4 Your Honor, I don't understand quite what's
5 going on other than he's not wanting to
6 address the fact that the express explicit
7 language of Judge Dixon said the Court finds
8 that Tracts A and B are part of the original
9 Tract L because Mr. Kinard -- Mr. Kinard and
10 Mr. Polito argued that the subdivision of
11 Tracts A and B voided those covenants and
12 restrictions that were applied. That's the
13 position they took. And we argued, Your
14 Honor, in our motion for summary judgement
15 that the restrictions did apply to our
16 property, that six-horse limit, and we argued
17 on it. And the Court goes on to find Tracts
18 A and B are part of the original Tract L and
19 are subject to any covenants and restrictions
20 that apply to the original Tract L.

21 Mr. Polito would be right if that's
22 all it says, but it says which include the
23 covenants and restrictions known as amendment
24 to restrictions filed on March 18th, 1998.
25 Judge Dixon expressly found and ordered that

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1 those restrictions -- that the covenant and
2 restrictions known as amendment to
3 restrictions filed on March 18th are covered
4 in the original Tract L. In fact, Mr. Kinard
5 admits that, that they originally did. His
6 argument was that they subsequently dropped
7 off. To -- to argue now against the law of
8 the case is completely inappropriate, and,
9 Your Honor, I don't understand what Judge
10 Dixon's order would have meant but for that.

03:15 11 Further, Your Honor, Mr. Kinard has
12 not established a scintilla of evidence that
13 Mr. Barnes, who owned the property that was
14 sold to Mr. Hill, which was subsequently sold
15 to Mr. Richardson and Mrs. Richardson, had
16 any covenants on it and restrictions on it
17 prior to the property being sold to them.
18 And, in fact -- to Mr. Hill. In fact, he
19 testified I don't know that. And there's
20 nothing in the record that shows there were
21 any restrictions on that Tract L prior to it
22 being sold to Mr. Hill.

03:15 23 And, Your Honor, I would point out
24 this. There is an important distinction
25 between restriction and covenant. A covenant

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1 is an agreement. It's a contract of law and
2 is replete; whereas, covenants are -- are an
3 agreement, they are contractual by nature.
4 And the parties to the original covenants and
5 restrictions where the lot owners of these
6 two lots expressively listed and that the
7 property subsequent that Mr. Barnes sold off
8 those properties and then he's no longer a
9 party to that contract. The only parties to
10 that contract are the homeowners, the
11 original homeowners in that subdivision. He
12 puts a restriction on subsequent property he
13 owns. He puts what he calls a covenant on
14 that subsequent property.

615 But the same argument -- they want to
16 have their cake and eat it, too. They want
17 to say, well, he can't put the restriction
18 on. He can't put a restriction on property
19 he owned outright a hundred percent that
20 isn't part of that subdivision because it
21 wasn't. Clearly, there was no restriction on
22 it. And then say, okay, now I'm bringing it
23 into that subdivision and say but you've got
24 to take that one restriction you put on off
25 before it comes in, and that's just crazy.

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And to rule otherwise, Your Honor, would set up a precedent that would be unfounded in anywhere in the country. It would establish that a developer could develop a subdivision and then drive down the road a mile, develop another subdivision, reference the covenants and restrictions that are on the previous subdivision and say, hey, now that second subdivision is part of the first.

Now, theoretically, that could happen if there's a provision for it in the original declarations, but there's no provision for that. It has to be properly recorded, properly executed. The covenants, themselves, say you've got to -- paragraph 18 -- you've got to have a majority vote. You can't amend it. You can't even change it. And to add -- add property -- and Mr. Kinard agreed, to add property in -- you can't take it out without everybody agreeing and you can't put it in without everybody agreeing. Otherwise, Your Honor, you would have -- I mean, theoretically, I could say I want to be part of the Ashborough Homeowners'

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1 Association. So I live on Richardson Avenue
2 and say now my property is subject to the
3 covenants and restrictions of Ashborough;
4 therefore, I get to join and use their pool
5 and their facilities. That's ludicrous
6 because there's nothing to be reserved here.

8 7 And so, Your Honor, I think we're
8 entitled to -- absolutely to a directed
9 verdict as to the fact that there are no
10 covenants on this property that Mr. Kinard
11 can enforce. I do believe there are
12 restrictions on Mr. Richardson's property. I
13 do believe that they apply to covenants, but
14 they're notwithstanding. They're not part of
15 that original agreement any more than I'm
16 saying I want to apply those covenants to my
17 property, which I could do. I could
18 reference them on my deed and they would
19 apply to anyone I sold the property to
20 because I would be in contract with them.

9 21 Even if they are applicable, Your
22 Honor, even if they are applicable, the case
23 law says the Court will not limit a
24 restriction. A restriction cannot be
25 enlarged or extended by construction of

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1 implication beyond the clear meaning of its
2 terms, even to accomplish what may be thought
3 the parties would have desired and had a
4 situation which may have developed been
5 foreseen by them at the time when the
6 restriction was written. It is still a set
7 of rule in this jurisdiction that restriction
8 as to the use of real estate should be
9 strictly construed and all doubts resolved in
10 favor of the free use of the property. A
11 restriction on the use of the property must
12 be created in express terms by claiming an
13 unmistakeable implication. Well, Mr. Kinard
14 admitted that these really weren't drafted
15 very well and they weren't very clear. That
16 being the case, the case law says you've got
17 to go with the non-restricted use.

03:20

18 So then the question, Your Honor,
19 comes in whether or not the original
20 covenants -- we don't believe the original
21 covenants apply; however -- and Mr. Kinard
22 has stated they do; however, if they do, we
23 argue, Your Honor, that we're entitled to a
24 directed verdict on the grounds that he's not
25 violated them. The covenants specifically

1 allow for renting of the property. They
2 specifically allow for horses to be on the
3 property. Nowhere does it prohibit the
4 leasing of the property for horses to be on
5 there. We're not selling the horses. We're
6 not even operating a business other than the
7 fact that he's getting paid rent for the use
8 of the property, and getting rent for the use
9 of the property is not prohibited.

110 Again, Your Honor, the covenants have
11 to prohibit it. They don't have to establish
12 that it allows it. They have to prove that
13 it prohibits it, and they haven't established
14 it. There's nothing that prohibits, that
15 says you may not rent the property for horses
16 or you may not rent the property for dirt or
17 for any use.

118 Now I would agree that if he's got a
19 business that falls outside of horses for a
20 residence, that that would be a problem; that
21 he shouldn't be able to rent the property to
22 have a tractor-trailer yard or something like
23 that. But the covenants clearly anticipate
24 horses on the property. They clearly
25 anticipate multiple horses. They clearly

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1 anticipate the ability to rent the property.
2 You've got to have a for rent sign out there
3 for the lot. Therefore, we don't think we're
4 violating it, Your Honor, and that would be
5 our position.

03:22

6 Even if you find for them under the
7 equities of this case, Your Honor, the court
8 law, case law requires that even if there's a
9 violation, it is not a knee-jerk reaction to
10 say that he violated the covenants. You've
11 got to look at that. And the equities in
12 this case, Your Honor, are 2003, when that
13 fence was completed, and 2003, when the
14 horses started being on it. They were
15 already on it before when Mr. Richardson
16 owned it. 2003 is about when he started
17 doing it. So four, five, six, seven, eight,
18 nine, ten -- seven years later they were
19 sued. Seven years, they were sued for having
20 horses, said stop having -- you're not
21 allowed to have this many horses. There's no
22 testimony that suddenly he popped in and
23 started renting to horses. He says I didn't
24 know that they were for lease. But, again,
25 that -- the problem is the number of horses;

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1 otherwise, he's just disgruntled because he's
2 getting rent for a piece of property, which
3 he's clearly allowed to do.

3 4 And so we're looking at the equities,
5 Your Honor, and I think he's entitled to it
6 no matter how you read it. So that's our
7 motion for a directed verdict prior to
8 Mr. Richardson testifying.

3 9 THE COURT: Mr. Polito.

3 10 MR. POLITO: I guess we start back at
11 the beginning of Judge Dixon's order.
12 Counsel correctly stated that Judge Dixon --
13 we've got to look at that order and what was
14 being argued before the Court. There was an
15 argument made that wasn't made here today,
16 and counsel brought it up. We were arguing
17 that the subdivision of the Richardsons' lot
18 by -- made the covenants -- excuse me -- the
19 subdivision lot destroyed the covenants
20 because the lot no longer exists. Those
21 covenants were created for Tract L.
22 Richardson subdivided Tract L into lots A and
23 B, and Judge Dixon picked up on the hearing
24 and said, well, Mr. Polito, doesn't -- did
25 they run with the land, and he asked counsel

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1 that. That's where the run with the land
2 came in. That's the nexus of the Judge's
3 holding, and counsel brought that up so the
4 Court could hear it.

03:24 5 I just wanted you to hear that
6 argument because we haven't brought it up
7 because it's already been ruled upon. I
8 wasn't going to argue something the Judge
9 ruled upon today. That's what's in the
10 Judge's order. He's reserved everything else
11 for you to decide. I went back before him on
12 a motion to reconsider. That's in the
13 record. It shows that we argued to him,
14 Judge. He didn't rule on whether or not
15 the -- the amended covenants were valid
16 because -- and we raised everything. We
17 asked him -- because it's non uniform, also
18 because there weren't sufficient votes, and
19 he just let his prior order stand. That's
20 where we are.

03:25 21 As for the having our cake and eat it,
22 too, counsel argues there's not a scintilla
23 of evidence that we want him in there or we
24 don't want him in there. What counsel is
25 missing in his argument -- what's missing

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1 from his entire argument is that South
2 Carolina law, which tells us that a developer
3 must reserve the right to both amend, if he
4 wants to amend by themselves, and also the
5 right to add additional properties to the
6 scheme, those two powers don't require the
7 covenants to be amended in order to exercise
8 them.

5 9 And if I could, counsel seems to imply
10 that since the way the original covenants
11 added six tracts, the six lots, that that had
12 to be done that way again. If we look at the
13 language, itself, of the original covenants,
14 they say -- and it says right here. It's on
15 page 1. It says whenever used herein the
16 term lot shall refer to lots which are
17 subject hereto whether by specific reference
18 in this instrument, and that's six, or to
19 lots made subject to provisions of this
20 instrument by separate instrument recorded in
21 the Dorchester County RMC. A deed is a
22 separate instrument.

6 23 What this developer did throughout --
24 and I can pull those all out. We can put
25 them in the record, if you like, but a lot of

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1 times what he did was he just recited as he
2 did in the tract for Lot L, B from the Barnes
3 to Mr. Hill. He put in there that the
4 original covenants apply, and guess what?
5 These amended ones apply. So he put them
6 both in there. But in either set of those,
7 it says you have to keep a residential use,
8 the lot must be used for residential use.
9 Mr. Richardson's admitted that he wanted to
10 use that lot for agriculture purposes. There
11 is no residential use of that lot at all. In
12 violation of either his -- he can't have it
13 both ways, his cake and eat it, too. His
14 covenants, the amended ones, if they're
15 legal, say he can't do it, and the original
16 set, which is also cited in his deed, say he
17 can't do it, and yet, he's -- now they've
18 moved for a directed verdict. That's having
19 their cake and eating it, too, Your Honor.

03:27 20 And as for the law, I think, trying to
21 get Mr. Kinard -- the deeds in this file that
22 are in evidence -- and the covenants speak
23 for themselves. Mr. Kinard, on the stand, a
24 seventy-eight-year-old man, trying to get him
25 to say what they mean or what they don't

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1 mean, these documents speak for themselves.
2 And we're the trained professionals here and
3 it's our job to let them control in the case.

7 4 And I thank you, Your Honor.

7 5 THE COURT: Thank you, gentlemen.

7 6 Mr. Shelbourne, instead of ruling for
7 the non-moving party, I'm going to deny your
8 motion for a directed verdict. I think there
9 has been sufficient evidence that there is a
10 question of fact for the Court to decide. So
11 I'll deny your motion.

8 12 MR. SHELBOURNE: Thank you. I call
13 Mr. Richardson to the stand.

14 THE COURT: Okay. And I would remind
15 you you're still under oath.

16 THE WITNESS: Thank you, Your Honor.

17 DOUGLAS S. RICHARDSON,
18 (a Defendant, called as a witness on behalf
19 of the Defendant, having been previously duly
20 sworn, was examined and testified as
21 follows:)

22 DIRECT EXAMINATION

23 BY MR. SHELBOURNE:

8 24 Q What do you do for a living?

8 25 A I'm a realtor.

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(3:28 1 Q You have a broker's license?
03:28 2 A I do.
03:28 3 Q When did you get that?
03:28 4 A In 2011.
03:28 5 Q Just last year?
03:28 6 A Right.
03:28 7 Q And are you married?
03:28 8 A I am.
03:28 9 Q And your wife, Julie, is here with
10 you?
03:28 11 A She is.
03:28 12 Q And how many children do you have?
3:28 13 A Two, two sons.
03:28 14 Q What are their names?
03:28 15 A Connor and Austin.
03:28 16 Q Prior to moving to Summerville, where
17 did you live?
03:28 18 A We moved down here from Charlotte, and
19 before that, it was Greer.
03:28 20 Q And why did you move to Summerville?
03:28 21 A I came to work for Lucreuset.
03:28 22 Q Making the pots and pans?
03:29 23 A Exactly, the French cast-iron company.
03:29 24 Q And why did you buy this property
25 here, out here in Knightsville?

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9 1 A To -- to have horses. We had horses
2 when we first got married, and we wanted to have
3 horses into retirement.

9 4 Q And were you hoping to some day retire
5 if the real estate market picks up?

9 6 A Sometime.

9 7 Q And you intend to have horses at some
8 point?

9 9 A I do.

9 10 Q And so what, if anything, did you do
11 to anticipate having horses at your home?

9 12 A So we wanted to -- I wanted to stop
13 spending four hours bush-hogging, and so I built a
14 fence. It took me two years to build 2200 feet of
15 fence.

9 16 Q Did you build it yourself?

9 17 A Yes, I did, with the help of a hired
18 teenager.

9 19 Q Tell me, when you buy your property?

o 20 A In '98, December 23rd.

o 21 Q And how did you come to buy it? Did
22 you just stumble upon a house already built, or how
23 did it happen?

o 24 A No. We looked for quite awhile. We
25 came in '97 and we could not find the combination of

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1 house and land we wanted, so we went looking just
2 for the land.

03:30 3 Q Did you subsequently find the land?

03:30 4 A We did. And it wasn't listed, but the
5 agent here working with us at the time figured out
6 that there was a little piece back there.

03:30 7 Q And which piece were you interested in
8 buying?

03:30 9 A Right. Right. They tried to sell us
10 all fourteen. We couldn't afford to buy all
11 fourteen.

03:30 12 Q So that wasn't listed for sale?

3:30 13 A It wasn't in MLS. It was negotiated
14 through the developer, George Tupper.

03:30 15 Q Jorge Tupper?

03:30 16 A George, Big George.

03:30 17 Q And at some point in time, then did
18 you enter into negotiations with a Steve Hill,
19 Habersham Builders?

03:31 20 A We did. I think we signed the
21 contract in December of '97 to both finalize the lot
22 and build the house on it.

03:31 23 Q As a result, you signed the contract
24 with Steve Hill?

3:31 25 A We purchased the seven acres the

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1 following February, March, couple months later.

1 2 Q And what, if anything, did he do on
3 that property?

1 4 A And then he built the house that we
5 specified.

1 6 Q He built your plan?

1 7 A Yes.

1 8 Q He didn't just do it, himself?

1 9 A No, no. We had very specific
10 requirements.

111 Q Are you pleased with it?

112 A I am. I am very much.

113 Q And so that was about '98, December of
14 '98?

115 A Right.

116 Q How soon after that did you start
17 building your fence?

118 A Within eighteen, twenty-four months.

119 Q So around 2000?

120 A Yes.

121 Q Describe the fence.

122 A It is a three-board fence with four-
23 by-four posts that are all set in twenty pounds of
24 concrete. When we get to the corners, there are
25 six-by-sixes, and they're done at a 45-degree angle

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1 so the horses won't get trapped. And then, in every
2 corner, there is electric tape on the inside of this
3 dark-green-stained fence so that visibly the horses
4 see it in good light, bad light. It's meant to be
5 environmentally friendly and meant to be a horse-
6 friendly pasture.

03:32 7 Q So the vertical posts are
8 four-by-four?

03:32 9 A Four-by-four until you get to the
10 corners, and then they're six-by-six.

03:32 11 Q And each one of those are set in
12 twenty-pound concrete?

3:32 13 A Twenty pounds, until you get to the
14 corners, and then they're forty-five.

03:32 15 Q How many rails?

03:32 16 A Three.

03:32 17 Q And one of those rails has?

03:32 18 A Electric tape on the top. It keeps
19 them from cribbing and it just keeps them off the
20 top.

03:32 21 Q what is cribbing?

03:32 22 A Cribbing is when a horse chews on a
23 fence. It sucks air. It grabs the top of the fence
24 and sucks. It can destroy a fence.

3:32 25 Q Definitely a horse fence?

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2 1 A Yes.

2 2 Q You use it for anything else?

2 3 A It's really not built for -- it's not
4 the kind of fence you would have -- well, my
5 experience with horses, so I don't think so. I had
6 them take down the cow pasture fence because I
7 wasn't happy with it.

3 8 Q Before you brought the property, what
9 was on that property?

3 10 A The back half had round poles with
11 three-and-a-half, four-foot square wire -- I call it
12 a cow fence -- that ran along the back half. And
13 then the front was just mostly blackberry bushes,
14 just chock full of blackberry bushes.

3 15 Q You got rid of the blackberry bushes?

3 16 A Not completely, there's still some
17 there.

3 18 Q And you got rid of the fence?

3 19 A We did. That was one of the
20 requirements before closing because, during the
21 building, we would go out there, and they had the
22 little horses and they also had a gray mare, and I
23 wasn't happy with a horse in a cow pasture fence
24 that's fully enclosed. So, before we closed, there
25 were two things that had to be done. One was to

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(1 take down the fence completely and to bury the
2 utilities lines. They were above ground, and, you
3 know, the agreement was to have underground
4 utilities. So, just before we closed, within a
5 month of closing, they did both of those things
6 to -- and all during construction as well to try to
7 protect the gray mare.

03:34 8 Q You were trying to protect the gray
9 mare?

03:34 10 A Yeah. She was head shy. I don't
11 think she had been treated very well.

03:34 12 Q And where did those horses live?

(3:34 13 A In the barn.

03:34 14 Q On your property?

03:34 15 A No. Well, at the time, it was
16 Madeline's.

03:34 17 Q Were they of benefit to the property?

03:34 18 A I don't believe so. I believe she
19 leased her barn because she was not a horse person.

03:34 20 Q And do you have any knowledge as to
21 how they had permission to be on the property that
22 Mr. Barnes was selling to Mr. Hill?

03:34 23 A No, not directly.

03:34 24 Q So there was an established fence
25 there?

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4 1 A Right. There was, right. There was a
2 rectangular pasture.

4 3 Q It wasn't hidden?

4 4 A No, no. It was probably about half of
5 this -- half of this here. From the woods to the
6 road, about half of that.

4 7 Q About half of your lot?

4 8 A Right.

5 9 Q And subsequent to the -- you moved
10 onto the property, you built that there, what, if
11 any -- was Mr. Kinard's house there?

5 12 A Yes. He was -- he was across the
13 street. I believe he was -- not counting the
14 original brick home from decades before, it was
15 Edward Tucker's house on the corner and then the
16 Kinards and then us.

5 17 Q Let me show you this.

5 18 MR. SHELBOURNE: May I approach, Your
19 Honor?

5 20 THE COURT: Sure.

5 21 Q This Tract L is your tract?

5 22 A Yes.

5 23 Q Tract F is Mr. Barnes' house?

5 24 A Mr. Kinard.

5 25 Q Mr. Kinard's?

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(3 : 3 5 1 A Yes.

0 3 : 3 5 2 Q And then Tract G is?

0 3 : 3 5 3 A His side yard now.

0 3 : 3 5 4 Q Side yard, but that was a separate

5 lot?

0 3 : 3 5 6 A Yes, it was.

0 3 : 3 5 7 Q And your house is right approximately

8 here where --

0 3 : 3 5 9 A Yes. In the upper right-hand corner.

0 3 : 3 5 10 Q Now -- and in kind of this area back

11 in here was where the field is?

0 3 : 3 5 12 A Yes. It's a L-shaped pasture.

(3 : 3 6 13 Q And would the fence go right around

14 here, the old fence?

0 3 : 3 6 15 A A little higher because it's a little

16 1.2 something, maybe 1.2-something acres with the

17 house, and then the boundary is over here. So,

18 yeah, a --

0 3 : 3 6 19 Q Right before --

0 3 : 3 6 20 A Yeah. The house is almost square in

21 dimension in the upper right.

0 3 : 3 6 22 Q What about the original fence?

0 3 : 3 6 23 A The original fence, right, would have

24 cut maybe above the word, Tract L.

3 : 3 6 25 Q About right here?

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6 1 A About right t here.

6 2 Q Did it go all the way over here?

6 3 A It did, but when they cut the road --
4 and when they cut the road, they brought the fence
5 across.

6 6 Q This here?

6 7 A No. It would have come down from that
8 cul-de-sac into between --

6 9 Q This right here?

6 10 A Right. When they bought that down,
11 they had to cut off the fences.

6 12 Q So that was before you bought the
13 property?

6 14 A Right.

6 15 Q So, when you bought the property and
16 Mr. Kinard had the property, there was a fence here
17 with horses back here?

6 18 A All the way across. When it was
19 fourteen acres and unlisted and we came to see it
20 the first time, it was all the way across.

6 21 Q And they would trot over here to the
22 barn that was over here?

7 23 A Yes.

7 24 MR. SHELBOURNE: Your Honor, I would
25 move to mark this as Exhibit 2.

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3:37 1 MR. POLITO: No objection.

03:37 2 THE COURT: Admitted.

3 (DEFENDANTS' EXHIBIT NO. 2

4 RECEIVED IN EVIDENCE)

5 BY MR. SHELBOURNE:

03:37 6 Q Now, while you were building your
7 horse fence, any conversations with Mr. Kinard?

03:37 8 A Yes.

03:37 9 Q Tell me about those.

03:37 10 A Well, as often would happen, because I
11 would spend four or five hours at a time putting the
12 fence up, neighbors would stop by because I was a
13 captive here and talk. So we would certainly talk
14 about what I was doing, building it for horses and
15 why the 45-degree angle and why the cement.

03:37 16 Q Did you have those conversations with
17 Mr. Kinard?

03:37 18 A Sure.

03:37 19 Q And you subsequently finished the
20 fence, about?

03:38 21 A In 2003.

03:38 22 Q How soon after that did you have
23 horses on the property?

03:38 24 A A month or two. They were --
25 actually, the folks in the barn were pushing me to

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1 get it done sooner.

8 2 Q And at that point in time, did you
3 start receiving income for rent?

8 4 A Yes. That was the first year, was
5 2003.

8 6 Q You were renting the property?

8 7 A Yes.

8 8 Q And you rented the property for
9 horses?

8 10 A Yes.

8 11 Q To be grazed on it?

8 12 A Yes.

8 13 Q What, if any, business did you run on
14 that property other than leasing it for rent?

8 15 A That's what we did. We leased it for
16 grazing and riding.

8 17 Q Are you aware of anyone else in the
18 neighborhood running, doing any kind of hobby work
19 or business out of their property in Senrab Farms,
20 the original lots?

8 21 A In the original phase?

8 22 Q Yeah.

8 23 A Not in the new one that's coming?

8 24 Q Yeah.

8 25 A No, not in that first -- not in that

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1 first phase.

03:38 2 Q Since that time, have some other
3 people done some hobbies?

03:39 4 A They do -- you know, there's somebody
5 that fixes up Mustangs and sells them.

03:39 6 Q He does that on his lot, on his
7 property?

03:39 8 A Yeah.

03:39 9 Q Who is that?

03:39 10 A Kip Crawford (ph).

03:39 11 Q So he buys Mustangs?

03:39 12 A He buys Mustangs and fixes them up.

03:39 13 Q And then does, what?

03:39 14 A And then sells them.

03:39 15 Q Are you aware of any other lawsuits
16 brought by Mr. Kinard to stop the commercial work or
17 use of the property?

03:39 18 A I don't think he's sued for that. I
19 think there was a report to DHEC by one of my
20 neighbors about using the kitchen for commercial
21 use.

03:39 22 Q Is that Mr. Kinard?

03:39 23 A Yes.

03:39 24 Q You mean that reported it?

3:39 25 A Yes. That's my understanding.

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9 1 Q what, if anything, about Edward
2 Tupper?

9 3 A And then Edward Tupper is at that far
4 end, and that, I believe, was a lawsuit about his
5 property across the street on Central Avenue.

9 6 Q what happened to that; do you know?

9 7 A He wanted it to be -- it is today
8 commercial property, and he objected to that being
9 commercial. That's not inside the neighborhood.
10 It's across the street from the neighborhood.

o11 Q When you contracted this, what, if
12 any, contracts did you have with Steve Hill? You
13 had a contract?

o14 A We did.

o15 Q When you contracted with Steve Hill,
16 had you already discussed buying the property to
17 Mr. Barnes?

o18 A Not -- not directly, no.

o19 Q Who --

o20 A Because our agent, I believe, was
21 talking with George Tupper, who was Mr. Barnes'
22 agent.

o23 Q And what, if anything, would you have
24 done if you could not have six horses on the
25 property?

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(3:40 1 A We wouldn't have closed. It wasn't --
2 you know, there's a lot more than six horses. It's
3 six horses. It's a bigger secondary structure that
4 you can have. It's trailers. It's farm equipment.
5 The amendment we put in, we had tried to anticipate
6 the kind of property we had when we first got
7 married.

03:41 8 Q So the restriction, the amended
9 restriction, what, if anything, did you have to do
10 with the way that was drafted and the way the
11 language was in it?

03:41 12 A You know, I didn't draft it, myself,
(13 but I certainly edited and sent back changes to make
14 sure it had exactly what we wanted.

03:41 15 Q If you hadn't gotten that, would you
16 have bought the property?

03:41 17 A No.

03:41 18 Q At the time Mr. Barnes was selling the
19 property to Mr. Hill, are you aware of any
20 restrictions on that property prior to that?

03:41 21 A No.

03:41 22 Q would that have concerned you if there
23 had been something?

03:41 24 A Depending on the nature of the
25 restrictions, true.

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2 1 Q why did you subdivide the property?

2 2 A For tax benefits.

2 3 Q what do you mean?

2 4 A I could take the pasture and had it
5 for agriculture use. It doesn't change the zoning,
6 but it's an assessment of agricultural use.

2 7 Q what is your property zoned?

2 8 A Now, it's SR. It's gone through a
9 couple of zoning changes since we've owned it.

2 10 Q So what is it now?

2 11 A S4.

2 12 Q Are you allowed to have horses on it?

2 13 A We are.

2 14 Q You are?

2 15 A Yes, under that zone.

2 16 Q Do you know Mr. Kinard's -- Mr. Kinard
17 couldn't remember what his property was. Do you
18 know?

2 19 A R4.

2 20 Q what does that mean?

2 21 A That means it could be multifamily.

2 22 Q But for any covenants that may exist?

2 23 A Obviously, other things would control.

2 24 Q And are both your properties, SR, both
25 the house lot and the --

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3:42 1 A Yeah.

03:43 2 Q Now in order to -- what, if anything,
3 are you required to do with that agriculture
4 property in order to maintain the tax advantages of
5 that property?

03:43 6 A Right. You have to show that you're
7 making an attempt to generate income. So I believe
8 the last time I had to do it, it was a thousand
9 dollars over a three-year period.

03:43 10 Q So in order to get that tax --

03:43 11 A Right. Dorchester County actually
12 asked me for this, right, to prove the case, to make
13 sure that the assessment -- they came by and
14 actually called me about the pasture and -- yes.

03:43 15 Q And the zoning allows for agricultural
16 use; is that correct?

03:43 17 A Yes.

03:44 18 Q The lease that you have -- you had
19 with Madeline Ingalls, is that the lease you have in
20 front of you?

03:44 21 A Yes.

03:44 22 Q Why did you use that lease?

03:44 23 A I tried to be careful in my practice
24 in real estate not to practice law without a
25 license, so I used preapproved forms.

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4 1 Q what do you mean? Is that a
2 preapproved form?

4 3 A It is.

4 4 Q where did you get it?

4 5 A It comes off a SCAR-approved site --

4 6 Q what's SCAR-approved?

4 7 A South Carolina Association of
8 Realtors.

4 9 Q And that was a form, and why did you
10 pick one that said commercial lease?

4 11 A You know, we have other rental
12 property in North Charleston, and I used the
13 residential leases because it applies for people
14 with houses and all the things that go with that.
15 There's so many parts of that lease that don't apply
16 that this was a much, much better version to use.

5 17 Q Do you consider yourself running a
18 business on this property?

5 19 A No. No more than renting my two
20 townhouses.

5 21 Q And do you -- you talked about the
22 ones in North Charleston?

5 23 A Yes.

5 24 Q Now what is Senrab Farms Equestrian
25 Center?

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(3:45 1 A It's the name of the entity that
2 Charity Fillmore (ph) had while she had the barn
3 rented from the Nguyens.

03:45 4 Q Ever operated on your property of?

03:45 5 A No. No. I had a lease with Charity.

03:45 6 Q Individually?

03:45 7 A Yes.

03:45 8 Q Did you ever have a lease with any
9 corporation or entity?

03:45 10 A No. Just individuals. We called them
11 the coordinators because it wasn't always their
12 horses.

(3:46 13 Q If you had to move today, would you
14 try to lease your property?

03:46 15 A My house?

03:46 16 Q Yeah. I mean if you couldn't sell it?

03:46 17 A If I couldn't sell it, sure.

03:46 18 Q Would that include leasing the field?

03:46 19 A Sure. Sure.

03:46 20 Q Any -- any covenant or restriction
21 that you're aware of that would prohibit you from
22 doing that?

03:46 23 A No.

03:46 24 Q Have you seen any covenants or
25 restrictions that requires that the horses on your

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1 property be yours?

6 2 A No.

6 3 Q Any covenant or restrictions that from
4 that has anything do with whose -- of ownership of
5 the horses?

6 6 A No.

6 7 Q What, if anything, have you done to
8 hide the fact that the horses were not yours?

6 9 A I haven't.

6 10 Q Now we were discussing -- when was it
11 that Mr. Kinard complained about the traffic, first
12 started complaining about traffic?

7 13 A Well, we -- I'd have to go back and
14 look at the records, but the speed bumps were put in
15 in the mid 2000s, so that would have been a reaction
16 to those.

7 17 Q They were after he complained?

7 18 A Right. Speed bumps and the stop
19 signs.

7 20 Q As a result of him complaining, what,
21 if anything, did you tell him that you would do?

7 22 A That I'd go talk to the owners in the
23 barn, the horse owners at the barn, to talk to them
24 about don't ride in the road. There was an issue of
25 a dog that was coming from the barn to their

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1 property. And often, he would direct me to, can't
2 you go talk to those people.

03:47 3 Q Any doubt in your mind that he knew
4 those horses weren't yours?

03:47 5 A No.

03:47 6 Q You believe he knew they weren't
7 yours?

03:47 8 A Absolutely.

03:48 9 MR. SHELBOURNE: I have no other
10 questions.

03:48 11 THE COURT: Mr. Polito?

03:48 12 MR. POLITO: I've only got a couple,
13 Your Honor. Just a second, please.

14 CROSS EXAMINATION

15 BY MR. POLITO:

03:48 16 Q Tell me, Mr. Kinard, you testified
17 about a kitchen, Mr. Kinard knew something about a
18 kitchen. Tell us what you know about Mr. Kinard
19 knew about a kitchen.

03:48 20 A That, I believe --

03:48 21 Q I don't want to know what you believe.
22 I want to know what you know.

03:48 23 MR. SHELBOURNE: Your Honor, let him
24 answer the question.

3:48 25 A That there were multiple trash cans in

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1 front of my neighbor's house that -- that, I believe
2 started it, and then I know my neighbor moved to a
3 space after DHEC came.

9 4 Q And this -- you talked about a guy
5 who's repairing and rebuilding cars over there that
6 Mr. Kinard's supposed to have -- what's Mr. Kinard
7 supposed to have done there? You said some fellow's
8 fixing up old cars?

9 9 A Oh. That was complaining about where
10 the cars were being offered for sale. So he
11 complained that they were out in front of the
12 neighborhood, and at an HOA meeting, it was moved
13 that it was not a good precedent to effect because
14 of one person sells a car up there, everybody is
15 going to want to do that, and so we had him pull it
16 back.

9 17 Q So that was a good thing Mr. Kinard
18 brought that up; is that what you're saying?

9 19 A Yes.

9 20 Q Because it sounded from your testimony
21 you thought the whole subdivision should go
22 commercial.

9 23 MR. SHELBOURNE: Your HONor,
24 objection.

9 25 MR. POLITO: well, that was the

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1 impression I got.

03:49 2 MR. SHELBOURNE: Do you have a
3 question?

03:49 4 THE COURT: Your objection is
5 sustained. Rephrase your question, please.

6 BY MR. POLITO:

03:50 7 Q And you say you're a real estate
8 broker. This case has nothing to do with zoning,
9 does it?

03:50 10 A The only issue with zoning is the
11 number of horses per acre, which that's what it
12 would have something to do with.

03:50 13 Q This case, in this lawsuit that
14 Mr. Kinard has brought against you, has nothing to
15 do with zoning; correct?

03:50 16 A well, I already had to testify about
17 Code Enforcement coming, so that is the enforcement
18 of zoning, so, yes, absolutely, it has something to
19 do with zoning by your client's report.

03:50 20 Q And you said this has no more to do
21 with being a business than the townhouses that you
22 lease; did I say that right?

03:51 23 A Right. What I've noted is that I've
24 asked before in both North Charleston and in
25 Dorchester County will I need a business license,

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1 and I was told no.

1 2 Q Well, the townhouses that you lease,
3 do people get to come and go all the time and bring
4 their cars?

1 5 A Bring their cars?

1 6 Q Yeah.

1 7 A Yes. And have guests, absolutely.

1 8 Q Every day?

1 9 A Do they have the right to, yes.

1 10 Q And do they ride horses through these
11 houses?

1 12 A No, they do not. That would be a big,
13 big pet fee.

1 14 Q Let me just ask you this. In your
15 covenants, you're not denying that your covenants
16 contain a clause say that your both -- that both the
17 original covenant and the amended covenant apply to
18 your lot?

1 19 A Both the original restriction -- my
20 lot is restricted, yes, by both of those things.

1 21 Q By both of them. And do you also
22 agree that both of those documents say that you can
23 only use Tract B if Tract B hall be used and shall
24 be known and shall be designated as a single-family
25 residential building lot?

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(3:52 1 A No.

03:52 2 Q They both say that?

03:52 3 A No. I don't agree with that.

03:52 4 Q You don't agree with that?

03:52 5 A No.

03:52 6 Q Do you agree that the restricted
7 covenants, Plaintiff's Exhibit 2, apply to your lot
8 and are referenced in your deed?

03:52 9 MR. SHELBOURNE: Your Honor, he's
10 calling for Mr. Richardson to testify as to a
11 legal conclusion. We object to that.

03:52 12 THE COURT: Can you repeat your
(13 question?

03:52 14 MR. POLITO: I asked Mr. Richardson if
15 the restricted covenants on Plaintiff's
16 Exhibit 2 are referenced in his deed.

03:52 17 MR. SHELBOURNE: No. He asked if they
18 applied to his deed.

03:52 19 MR. POLITO: Well, let's just see if
20 they're referenced in his deed first; okay?

03:52 21 MR. SHELBOURNE: I would stipulate
22 that they are.

03:52 23 MR. POLITO: Well, I'd like to hear
24 from the witness.

25 BY MR. POLITO:

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2 1 Q Are those in your deed?

2 2 A These restrictions are in my deed.

3 3 Q Would you read the first two sentences
4 of section 5 on page 2, please?

3 5 A The lots are known and designated and
6 shall be used as single-family residential building
7 lots and no structure shall be erected thereon other
8 than one detached, site-built, single-family
9 dwelling not to exceed two and a half stories in
10 height or the equivalent thereof in the so-called
11 split-purpose lots.

3 12 Q Are you saying that that's not in your
13 deed?

3 14 A It is, along with the amendment that
15 allows me to build a two-story barn in the back
16 of -- on Lot B. Lot B, I can build a two-story
17 barn, have farm equipment, have a trailer, and have
18 six horses, so that's not a residential use.

3 19 Q You're saying it's not -- what's not a
20 residential use?

4 21 A My two-story barn, farm equipment,
22 trailers, and six horses.

4 23 Q Are those things not ancillary to a
24 residential use?

4 25 A I wouldn't let them in my house,

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1 either.

03:54 2 Q So you're saying that language doesn't
3 apply to you?

03:54 4 A I'm saying I have an amendment that
5 allows the use of horses, two-story barn, equipment,
6 and trailers.

03:54 7 Q I hand you Plaintiff's Exhibit 7
8 entitled amendment to restrictions. Are you saying
9 this is the one you helped draft? The document you
10 helped draft?

03:54 11 A No. This is a -- I call it vinyl
12 fencing.

03:54 13 Q I'm sorry.

03:54 14 A No. I did not help draft that
15 document. I did not.

03:55 16 MR. SHELBOURNE: I think that's
17 Exhibit 7.

03:55 18 MR. POLITO: Which one?

03:55 19 MR. SHELBOURNE: Exhibit 7.

03:55 20 MR. POLITO: That what's I handed him
21 is 7. He said that was the vinyl fencing.

03:55 22 THE WITNESS: Is this not it? It says
23 vinyl fencing?

03:55 24 MR. POLITO: No, sir, it does not.

25 BY MR. POLITO:

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5 1 Q Could you take a look at that again,
2 Plaintiff's Exhibit 7, please? Is that the document
3 you helped draft?

5 4 A One two-story -- right. I remember
5 one two-story detached one.

5 6 Q You helped draft that document?

6 7 A Yes.

6 8 Q I ask that you read the paragraph here
9 beginning paragraph one, two, three, four -- five,
10 beginning with the property shall be.

6 11 A Shall be designated and shall be used
12 as a single-family residential building tract and no
13 other structure shall be erected thereon other than
14 one detached, site-built, single-family dwelling
15 with drive-under feature and one two-story detached
16 barn.

6 17 Q So does not this -- these covenants
18 also limit your property use to residential?

6 19 A If you considered a detached barn a
20 residential structure.

6 21 Q I'm just saying that language --

6 22 A I'm just asking is a two-story
23 detached barn a residential structure?

6 24 Q It's ancillary to it.

6 25 A If it would be for the housing of the

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(1 horses, then I'm allowed to have it.

03:56 2 Q Right.

03:56 3 A Correct.

03:56 4 Q But it says the lot shall be used for

5 residential?

03:56 6 A The horses don't come in my house.

7 They come in the barn.

03:56 8 Q Well, the horses don't come into your

9 house. You're right. You've subdivided. Now the

10 horses enjoy a lot all by themselves; correct?

03:57 11 A Uh-huh.

03:57 12 Q Is there any residential structure on

(13 that property?

03:57 14 A No.

03:57 15 Q Are you using it for residential

16 purposes?

03:57 17 A No.

03:57 18 Q Does that covenant say you should be

19 using it for residential purposes?

03:57 20 A No. There are vacant lots in my

21 neighborhood right now. They don't all have houses.

03:57 22 Q It's not vacant. You're using it?

03:57 23 A No. It's vacant right now. There's

24 cars around it.

3:57 25 Q Well, you put cars on it; right?

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7 1 A Right now.

7 2 Q And people ride on it, don't they?

7 3 A They could.

7 4 Q How is that vacant?

7 5 A It's allowed to have a two-story barn
6 with six horses.

7 7 MR. POLITO: I have no further
8 questions of this witness, Your Honor.

7 9 THE COURT: Anything else,
10 Mr. Shelbourne?

11 REDIRECT EXAMINATION

12 BY MR. SHELBOURNE:

7 13 Q Exhibit 7, which Mr. Polito was just
14 discussing with you, it has in the first paragraph
15 language that says that those restrictions are being
16 done because Steve Hill is about to purchase the
17 property described in Exhibit A?

7 18 A Correct.

7 19 Q And really, what I'm asking you, I
20 guess, is what comes first, the chicken or the egg?
21 Did these restrictions come on the property before
22 the purchase, or were they done after the purchase?

8 23 A It had to be within days, if not
24 simultaneously according to --

8 25 Q Well, this -- this document

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(1 specifically says it's in anticipation; correct?

03:58 2 A Right.

03:58 3 Q In anticipation of Mr. Hill buying it
4 from Mr. Barnes?

03:58 5 A Yes.

03:58 6 Q And Mr. Barnes and Mr. Hill are going
7 to allow --

03:58 8 MR. POLITO: Objection to leading the
9 witness, Your Honor.

03:58 10 THE COURT: Sustained.

03:58 11 Q What, if anything, were Mr. Barnes and
12 Mr. Hill agreeing to doing with regard to six
(13 horses?

03:58 14 A They were agreeing to allow this
15 property to have more horses on it than the rest of
16 the neighborhood.

03:58 17 Q Let me ask you this. Isn't this a
18 restriction on your property?

03:58 19 A Yes.

03:58 20 Q How many acres do you have?

03:58 21 A I have seven.

03:58 22 Q And the original restrictions allow
23 you to subdivide your seven acres?

03:58 24 A Right.

3:58 25 Q And the original restrictions allow

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1 one horse per lot?

9 2 MR. POLITO: Objection, Your Honor.

3 He's testifying.

9 4 THE COURT: Rephrase.

9 5 Q So what, if anything, do the original
6 covenants and restrictions say about how many horses
7 per lot can be on it?

9 8 A One.

9 9 Q And how many lots could you get out of
10 your property according to the original covenants?

9 11 A It would take some figuring because
12 you have to have 25,000 square feet to have the
13 horse, so, you know, it's 43,000 per acre, so you
14 could get at least seven.

9 15 Q So this is actually a restriction on
16 what -- if you were to divide this property, which
17 you could?

9 18 A Yes.

9 19 Q You could subdivide it into whatever
20 the codes would allow?

9 21 A Right.

9 22 Q And put houses on it?

9 23 A Correct.

9 24 Q And under the original covenants, if
25 they apply, eight people could have horses if they

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1 could get the square footage?
03:59 2 A Right.
03:59 3 Q Assuming the zoning; right?
03:59 4 A Correct.
03:59 5 Q Would which would exceed our six?
03:59 6 A Correct.
03:59 7 Q And it would bring more traffic in
8 because there would be more houses there; right?
04:00 9 A Correct.
04:00 10 MR. SHELBOURNE: No further questions.
04:00 11 THE COURT: Anything further,
12 Mr. Polito?

13 MR. POLITO: Just one.

14 RECROSS EXAMINATION

15 BY MR. POLITO:

04:00 16 Q Which takes precedence on a piece of
17 property, the covenants or the zoning?
04:00 18 A The covenants can be more restrictive,
19 than the zoning, but the covenants, if they're in
20 violation of the zoning -- I guess that is a legal
21 question. The covenants could certainly be more
22 restrictive than the zoning.

04:00 23 MR. POLITO: Thank you. No further
24 questions.

25 THE COURT: You may step down, sir.

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1 Thank you.

2 (Whereupon, the witness was dismissed)

o 3 MR. SHELBOURNE: We would rest at this
4 point, and we would also renew our motion for
5 a directed verdict. Without having to
6 restate that lengthy statement again, but if
7 I could have that for the record, if the
8 Court so desires; otherwise, I want to
9 preserve -- we would make the same argument
10 that we made before.

o 11 THE COURT: Certainly. That's fine.
12 I have no objection to that same argument
13 that you used.

1 14 MR. SHELBOURNE: Thank you, Your
15 Honor.

1 16 MR. POLITO: Your Honor, we would make
17 a motion for a directed verdict, as well, at
18 this time.

1 19 The Defendant admits that he leases
20 his land for commercial purposes. He started
21 a business, a corporation to run his money
22 through. We've got the income into the
23 record. He uses the land for letting people
24 ride in a residential subdivision. They park
25 cars in a residential subdivision. They --

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1 and graze land on it. He acts like he wants
2 to divorce himself because somebody else
3 brings all this on here and I don't have any
4 fault. My business is to allow other -- I
5 don't -- I don't deal directly with the
6 individual horse owner, I deal with this
7 other person, so I don't -- I'm out of the
8 loop, I don't have a business.

04:01 9 He doesn't even know who the people
10 are or who the horses are. We've got health
11 issues. We've got -- the evidence showed a
12 whole lot of -- a whole host of issues. The
13 birds and insects, he's spreading dung out.
14 I mean, he's had a number of horses coming
15 through. There aren't just the ones that
16 graze upon it, but as fast as they can rotate
17 them through to reach his maximum numbers.

04:01 18 So we've got a piece of land there.
19 They've got a whole lot of livestock going
20 through it. It's for business purposes
21 inside a residential subdivision and -- I
22 mean, it's clear. What I just heard
23 counsel -- what I just heard Mr. Richardson
24 say was that, well, gee, I helped draft this
25 document, but I guess that word, residential,

1 really doesn't mean anything, it's a mistake.
2 It can't be a mistake. It's there to protect
3 everybody. It's there twice. They're not
4 just there in his deed through the amended
5 covenants that he didn't pull out and he
6 said, well, I've got a barn so that can't
7 mean that. Well, it's an ancillary use
8 These other people are entitled to one horse.
9 That doesn't make them agricultural. They
10 have an ancillary use to ride on a one-acre
11 lot, to have one horse. He's got an
12 ancillary right in a residential zone to have
13 up to six horses.

14 The Nguyens or Wynns next door,
15 whatever we want to call them, they had an
16 agriculture right under the covenants with
17 the Barnes. The Barnes knew how to give an
18 agriculture right if they wanted to, and they
19 certainly didn't give one to him. They could
20 have used the word, agricultural. They
21 didn't. They kept -- they said, listen, you
22 can have horses here, you can keep them. And
23 the word, keep, is somewhat loose, but it's
24 standard throughout the nation. People can
25 keep dogs and people can keep cats, but it

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1 doesn't say they can have a cat boarding
2 studio or they can have a dog kennel. In
3 fact, in the agricultural section next door,
4 it said you can't have a dog kennel, and
5 you've read that. It's in the record under
6 the Nguyens' covenant.

04:03 7 So we'd just ask for a directed
8 verdict at this time on the sole issue, on
9 the easy issue that will end this case and we
10 won't have to go any further, that
11 Mr. Richardson has used his lot in violation
12 of the covenant that said it has to be
13 used -- known and used as a residential
14 building lot.

04:03 15 Thank you.

04:03 16 THE COURT: Thank you. All right,
17 Mr. Shelbourne.

04:03 18 MR. SHELBOURNE: Your Honor,
19 Mr. Polito is not entitled to a directed
20 verdict on a nuisance claim because he's
21 admitted in all the arguments about the
22 noise, about the -- that applies are about
23 the cars and the trucks, all that's a
24 nuisance claim, Your Honor, which, clearly,
25 is an actual claim that -- there is -- there

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1 is no nuisance claim on there. This is only
2 a declaratory judgement action. While for
3 the Court to declare that Mr. Richardson is
4 in violation of these covenants, there is
5 no -- taking of the facts as it pertains to
6 my client, there's no evidence that he's
7 violated an expressed term of the covenant.
8 It is a jump to say that the covenants and
9 restrictions -- and I'm not able to argue
10 whether they are or whether they apply, but
11 they don't -- or that he has the standing to
12 make that argument because, again, a covenant
13 is an agreement. If I buy a piece of
14 property in a subdivision that has covenants
15 and restrictions, my property is restricted
16 and I am coveted by agreeing with the
17 neighbors not to do anything in violation of
18 those restrictions. But it's between the
19 people that are subject to them. I'm not
20 coveting with the neighbor who is outside of
21 that property at all, and Mr. Richardson is
22 outside of it.

s23 So but I'm not arguing -- well, I am
24 arguing, but I'm not arguing for purposes of
25 responding to the directed verdict. The

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1 covenants that he says apply do not prohibit
2 the use of this property for renting it for
3 having horses on it. I would agree that if
4 he's running a business, if he has horses on
5 it and says who wants to buy this horse, come
6 and check this out, we're selling these
7 horses here or we're selling cars -- let's
8 say he's selling cars on it, that would be a
9 business. That would inappropriate to be
10 selling cars, even selling horses off of it.
11 He's not even doing that. He's not even
12 allowing it. We find that, you know, that
13 would be inappropriate to selling horses.
14 He's not selling horses. He is simply
15 leasing his property. And there is no
16 language in the covenants and restrictions
17 that prohibits that. You've got to have that
18 prohibition.

04:05 19 There are prohibitions in the
20 covenant. There are things that clearly you
21 can't do this, you can't do that, but leasing
22 the property is not one of them. It says you
23 can put a for sale sign up or you can put a
24 for rent sign. So Mr. Richardson puts a for
25 rent sign up in front of his property and

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1 says it's for rent, who wants to rent my
2 property. Well, I'll rent it. why? Because
3 I would like to have horses in it. Okay.
4 You can horses in it, but you can't put more
5 than -- now he says five in the lease because
6 that is the zoning issue, but the
7 restrictions put on there by the owners was
8 no more than six.

6 9 And so, that -- he has a right -- and
10 he relied on that when he bought the
11 property, and he relied on that when he built
12 his fence because he was having horses on it.
13 And he relied on that when he built his house
14 so he could do that, retire there and have a
15 home that he'd be allowed to have horses at.
16 He relied on those representations.

6 17 For Mr. Kinard now to come in and make
18 some crazy argument that contrary to Judge
19 Dixon's express language that expressly
20 states that the restriction for six horses
21 applies to this lot is -- I've never
22 encountered anything like it. And I would
23 state, Your Honor, for the record, that Judge
24 Dixon in court asked Mr. Polito specifically,
25 Mr. Polito, if a title search had been done

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1 on this property prior to it being sold to
2 Mr. Hill, would it have shown any
3 restrictions, and Mr. Polito candidly said it
4 would not have exceeded restrictions. Just
5 like Mr. Richardson -- Mr. Kinard said there
6 weren't any restrictions. There weren't any
7 restrictions on this property until
8 Mr. Barnes put that restriction on there.
9 And he specifically said I'm putting this
10 restriction on there in anticipation of it
11 being sold. That -- he called it an amended
12 restriction, and that commences the confusion
13 here because I don't think it amends anything
14 because there wasn't any restrictions on it
15 to amend in the first place. They've
16 conceded that in open court that there
17 weren't any restrictions. So, now, to jump
18 in and say, oh, well, it -- it's improper to
19 do, I think it's erroneous, and I think it's
20 also prohibited by res judicata under the
21 case -- I think also the condition of
22 estoppel. There are replete arguments as to
23 why Mr. Kinard -- Mr. Richardson is not
24 violating the covenants and restrictions.

4 : 0 8 25

So we would leave it with the Court

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1 with that.

2 MR. POLITO: A quick rebuttal, Your
3 Honor?

4 THE COURT: Sure.

5 MR. POLITO: Everything counsel just
6 told you just divorced itself from one
7 reality, and that is that the covenants, both
8 the original covenants and the amended
9 covenants, restrict the use of that land to
10 residential -- as a residential building lot.
11 There is no residential use on that land,
12 Your Honor. And that's all I'm asking.
13 That's really, really easy. He can't --
14 everything he said he can't get around. And
15 I didn't go into some wild argument. I just
16 said the easy way to resolve this case, to
17 me, is just would be to take and rule on what
18 he's already admitted; that he's using that
19 land for commercial purposes. He's making
20 economic gain from it, income from it. And
21 listen, he's riding -- he's leasing that land
22 so people can ride horses inside a
23 residential subdivision. He's admitted that
24 on the stand. The photos show that. I just
25 don't know how we can get around it.

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(4:09 1

Thank you.

04:09 2

THE COURT: Thank you, gentlemen. And instead of ruling for the non-moving party, I am going to deny your motion for a directed verdict. I think the covenants, they're obviously not very clear. I think there is a question of fact and sufficient evidence for the Court to decide. And I will take the matter under advisement and advise you shortly of a decision.

04:09 11

Thank you.

12

(Whereupon, the hearing was adjourned)

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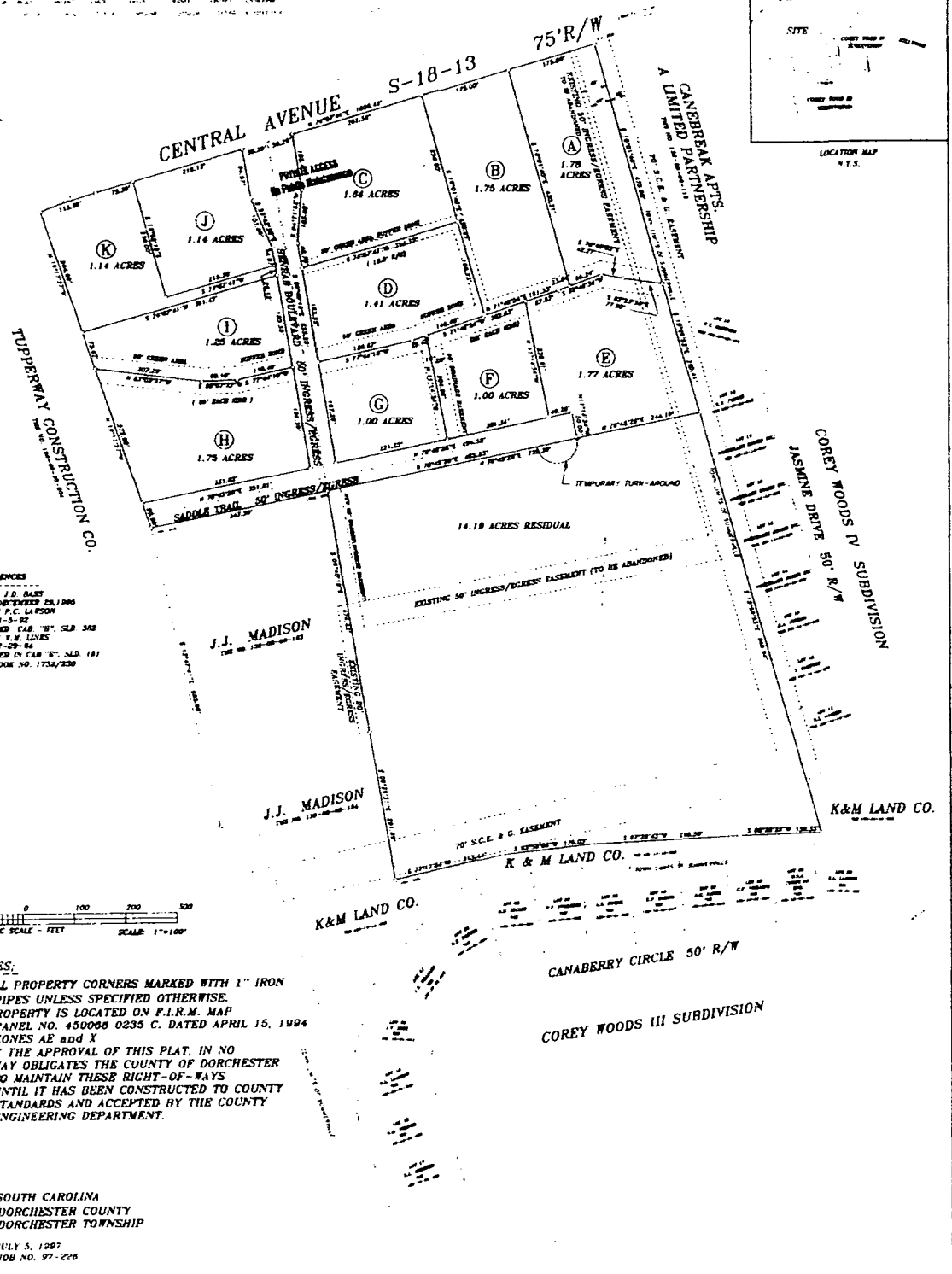
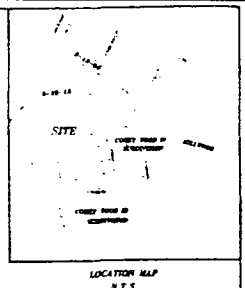
1 STATE OF SOUTH CAROLINA)
2 COUNTY OF DORCHESTER) C-E-R-T-I-F-I-C-A-T-E

3 I, Stacey S. Conaway, Professional
4 Court Reporter and Notary Public, certify that I did
5 report in machine shorthand the above-styled
6 proceedings held before me at 10:38 a.m. at the
7 Dorchester County Courthouse, 5200 East Jim Bilton
8 Boulevard, St. George, South Carolina, on the 7th
9 day of June, 2012; that the foregoing pages
10 constitute a true and accurate transcript of the
11 proceedings given at said time and place.

12 I certify that the same was reduced
13 to typewritten form from my original stenograph
14 notes by computer-aided transcription. I further
15 certify that I am not of counsel or kin to any of
16 the parties to this cause of action, nor am I
17 interested in any manner in its outcome.

18 IN WITNESS WHEREOF I have hereunto
19 set my hand and seal this the 9th day of November,
20 2012.

21 
22 Stacey S. Conaway, Court Reporter
23 Notary Public, South Carolina
24 My Comm. Expires October 28, 2014.
25



- REFERENCES**
- 1.) PLAT BY J.D. BARNES DATED DECEMBER 25, 1990
 - 2.) PLAT BY P.C. LAYSON DATED 6-6-92 RECORDED IN CAR "B", SLD 342
 - 3.) PLAT BY J.M. LINES DATED 8-29-94 RECORDED IN CAR "B", SLD 181
 - 4.) DEED BOOK NO. 1734/230



- NOTES:**
- 1.) ALL PROPERTY CORNERS MARKED WITH 1" IRON PIPES UNLESS SPECIFIED OTHERWISE.
 - 2.) PROPERTY IS LOCATED ON P.I.R.M. MAP PANEL NO. 450066 0235 C. DATED APRIL 15, 1994 ZONES AE and X
 - 3.) BY THE APPROVAL OF THIS PLAT, IN NO WAY OBLIGATES THE COUNTY OF DORCHESTER TO MAINTAIN THESE RIGHT-OF-WAYS UNTIL IT HAS BEEN CONSTRUCTED TO COUNTY STANDARDS AND ACCEPTED BY THE COUNTY ENGINEERING DEPARTMENT.

SOUTH CAROLINA
DORCHESTER COUNTY
DORCHESTER TOWNSHIP
JULY 5, 1997
JOB NO. 97-226

PLAT SHOWING ELEVEN LOTS OF
SENRAB FARMS
A SUBDIVISION OWNED BY
JAMES M. BARNES AND DELENE BARNES



Attest George Tupper
Plat Clerk
July 5, 1997

[Signature]
JAMES M. BARNES

FINAL PLAT APPROVED
[Signature]
JULY 14, 1997
DORCHESTER COUNTY
PLANNING DEPARTMENT
APPROVED

ASSOCIATED SURVEYORS AND ENGINEERS
P.O. BOX 6, SHIMMELVILLE, S.C. 29484
803-873-1061



FILED-RECORDED

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

RESTRICTIVE COVENANTS

SEP 11 11 09 AM '97

LINDA HESSERVY
REGISTER
MESNE CONVEYANCES
DORCHESTER COUNTY, SC

KNOW ALL MEN BY THESE PRESENTS, that James M. Delete B. Barnes (hereinafter referred to as "Declarant"), the owners of the property described herein or made subject hereto from time to time, hereby covenant and agree on behalf of themselves, their heirs and assigns, with persons who shall hereafter purchase the property described in the attached Exhibit A, as follows:

1. Whenever used herein, the term "Lots" shall refer to lots which are subject hereto, whether by specific reference in this instrument, or to lots made subject to the provisions of this instrument by separate legal instrument recorded in the Dorchester County RMC Office.

2. These covenants are to run with the land and shall be binding on all parties claiming under them for a period of ten (10) years from the date hereof, after which time said covenants shall be automatically extended for successive periods of five (5) years, unless an instrument signed by a majority of the then owners of the lots agreeing to change said covenants in whole or in part has been recorded.

~~3. Enforcement of these covenants shall be by~~
proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation hereof or to recover damages. Violation of any of these restrictions will not result in a reversion.



4. Invalidation of any one of these covenants by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

5. The lots are known and designated and shall be used as single-family residential building lots, and no structures shall be erected thereon other than one detached site-built single-family dwelling, not to exceed two and one-half stories in height, or the equivalent thereof in the case of so-called split-level dwellings. The garage or carport shall be of the same outside materials as the main dwelling. In addition to the dwelling, garage or carport, one out-building conforming with the design and finish of the dwelling, for tools, utilities, etc. may be located on each lot. Other buildings may be constructed if approved by the undersigned or their designated representative.

The front of each dwelling house built on the lots must face the street in front of that particular lot.

6. No trailer, basement, tent, garage or other out-building erected on the lots shall at any time be used as a residence, temporarily or permanently, nor shall any structure of any temporary character be used for residential purposes on any of said lots. Trailers and campers may be parked or stored only pursuant to paragraph 13(g) hereof, except that construction trailers and the like may be left on a lot during the construction of the dwelling on that lot.

7. All dwellings and other structures must be completed within nine (9) months after the date of the construction of same

shall have commenced, except where such completion is impossible or would result in great hardship to the owner or builder due to strikes, fires, national emergency, or natural calamity, unless otherwise extended by the undersigned, their heirs and assigns, or their designated representative.

8. Since the establishment of standard inflexible building set-back lines for location of dwellings on lots tends to force construction of dwellings both directly behind and directly to the side of the other neighboring dwellings with detrimental effects on privacy, and preservation of important trees, etc., no specific set-back lines are established by these covenants. In order to assure, however, that the location of dwellings will allow the maximum amount of view and breeze to be available to each dwelling; that the dwellings will be located with regard to the topography of each individual lot, taking into consideration the height of each lot, location of trees, and similar considerations, the undersigned reserves unto themselves, their heirs and assigns, or their designated representative, the right to control absolutely and solely to decide the precise site and location of any dwelling or other structure upon all the lots which are subject hereto. Provided, however, that such locations shall be determined only after reasonable opportunity is afforded the owner of the lot to recommend a specific site, and provided, further, that in the event an agreed location is stipulated in writing in the contract of purchase, the undersigned shall approve automatically such location for a dwelling.

All buildings and their location on the lots must conform with the zoning regulations of Dorchester County.

9. No lot shall be resubdivided, into lots having an area of less than one-half (1/2) acre, provided that DHEC shall approve such lot for a septic system. An owner of two contiguous lots may combine two lots to form one building lot for one dwelling, the location of such dwelling to be determined in conformity with paragraph 8 hereof. In the event of the resubdivision by one owner of his two (2) contiguous lots, such owner shall be responsible for having a plat of the same recorded in the RMC Office for Dorchester County showing such resubdivision.

Nothing contained in the foregoing paragraph shall prohibit the owner of a lot from acquiring a contiguous lot and using the same as a side yard.

Nothing contained in this paragraph 9 shall limit the undersigned from replatting the lots if necessary to correct surveying errors or the like.

10. No single story dwelling erected on any lot shall have less than 1500 square feet of floor area, excluding garage, carport, and any out-building. No one and one-half (1/2) story or two-story dwelling erected on any lot shall have less than 1650 square feet of floor area, excluding garage, carport, and any out-building.

11. No fence shall be erected on the front of any lot unless such fence be constructed of wood, brick or iron, such wood, brick or iron fence not to exceed four and one-half (4 1/2) feet in

height. Fences (including chain link fences) may be constructed along the rear lot line of each lot, so long as such rear fence does not exceed six (6') feet in height. Fences (including chain link fences) may be constructed along the side lot lines, so long as such fences along the side lot lines do not exceed six (6') feet in height and do not extend into the front yard of the lot, it being the intent of the undersigned that fences constructed along the side lot line shall run from the back corners of the lot along the side lot line forward toward the front of the lot, said lot line fence to terminate prior to the extension of the same into the area of the front yard, so that there will be no fences on the side lot line extending from an imaginary line on a plane which is roughly parallel to the front of the dwelling (excluding porches and steps) and extended to the side lot lines, out to the front corners of the lot.

12. Easements for the construction, installation and maintenance of utilities and drainage are reserved over, across, under and upon each lot, not to exceed, however, ten (10') feet in width, and any such easement will be along one or more of the boundary lines of each lot, the location of said easements to be finally determined by the topography and configuration of the particular lot, and where the configuration of the particular lot necessitates a different location for utility and drainage easements, the same may be located as such necessity dictates, so long as the same is designated on that lot prior to the construction of the dwelling thereon, and is indicated on a

recorded plat of such lot, so any dwelling can be properly laid out and located thereon without interfering with such easement.

13. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, and specifically including the following:

a) There will be no unsightly accumulation of trash or refuse on any lot; the owner of each lot shall be required to maintain the front yard of the lot in a clean and groomed condition;

b) Pets must be kept quiet, no dangerous dog being permitted unless chained or adequately fenced.

c) It shall be permissible for the owner of any lot to keep up to one (1) horses on that lot so long as the rear portion of the lot is fenced for such purpose and such rear portion contains a minimum area of twenty-five thousand (25,000) square feet. The design of the fence shall be subject to the approval of the undersigned or their designated representative.

d) The sale or storage of fireworks of any kind whatsoever on the lots is prohibited. The use of or discharge of firearms of any kind whatsoever is likewise prohibited. Hunting of any kind, and by any method, including but not limited to firearms, snares, bow and arrows, or manually propelled missiles, is prohibited.

e) No more than two (2) inoperable vehicles shall be permitted on any lot which must be screened from view. No lot shall be used as a storage yard for inoperable vehicles.

f) Swimming pools may be constructed upon the lots so long as no part thereof, except ladders, diving boards and the like, project twelve (12') inches above ground level.

g) No house trailer may be kept permanently or temporarily in the subdivision, and any camper or like equipment may be kept in the back yard behind any dwelling so long as such camper or like equipment is suitably screened or housed;

h) No wash should be hung out to dry, or to air in the portion of any lot facing the street unless appropriately screened.

i) Exposed fuel, gas or oil container shall be permitted on the rear of the lot.

j) The only signs permitted on the lots are those reading "For Sale" or "For Rent", or appropriate signs of the building contractor during the period of construction, or appropriate signs of any real estate dealer who may handle the property. However, in no event can any sign exceed six (6) square feet in area.

k) No truck or commercial vehicle over one (1) ton capacity shall be stored or parked overnight on any street or lot, except within enclosed garages or on the rear of the lot behind an area screened from the road. No tractor trailers to be parked on any lot overnight.

14. The exterior of any dwelling built on a lot shall be of solid brick or brick veneer, wood siding, stucco or vinyl. Any other exterior siding must be approved by the undersigned or their designated representative.

15. No structure of any kind shall be erected, placed or altered on any lot until the plans, specifications, and or plat plans for the same have been approved in writing by the undersigned, their heirs and assigns, or their designated representative, as to conformity and harmony of external design, with existing structures in the subdivision. In the event that the undersigned fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, such approval will be deemed to have been granted.

16. The Declarant does hereby grant to each lot owner, its heirs, successors, agents and invitees, an easement for ingress and egress over and across the road, known as Senrab Boulevard and Saddle Trail as shown on the plat described in Exhibit A. In exchange for said easement each lot owner hereby agrees to pay a pro rata share of the costs of the maintenance of said road and the entrance to the subdivision; said pro rata share to be known as the Road Maintenance Assessment. Each owner of any lot subject hereto is deemed to covenant and agree to pay to the Declarant, its heirs, successors and assigns the Road Maintenance Assessment, which shall be a charge upon the land and shall be a continuing lien upon the property against which assessment is made until paid. Such Road

Maintenance Assessment together with interest, costs and attorney fees shall also be the personal obligation of each lot owner. Any Road Maintenance Assessment not paid within (30) days after the same is billed to each lot owner shall bear interest from the due date at the maximum legal rate. The Declarant may bring legal action against any lot owner for non-payment of the Road Maintenance Assessment or foreclose the lien against the property. Said Road Maintenance Assessment shall be subordinate to the lien of any first mortgage. Any first mortgagee which shall obtain title to a lot by virtue of foreclosure or deed in lieu of foreclosure shall not be responsible for past due assessments but shall be responsible for all assessments arising after the date on which said mortgagee acquires title. The Declarant reserves the right to create an entity composed of lot owners to collect and administer said Road Maintenance Assessment and to assign its rights hereunder to such entity. The Declarant further reserves the right to dedicate the road to Dorchester County.

17. All property owners must use public water if available. All residents must use underground wiring to all building on their lot.

18. These Protective Covenants may be altered, modified, canceled or changed at any time by the written consent of the majority of the owners of record of the lots which are subjected hereto. In the event of the death or disability of any of the undersigned, any approval which may be required hereunder shall be required only by the survivors of the undersigned.

IN WITNESS WHEREOF, the Declarant has caused this instrument
to be executed the 8th day of September, 1997.

WITNESSES:

Pat McManus
[Signature]

James M. Barnes
James M. Barnes
Delete B. Barnes
Delete B. Barnes

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

PROBATE

PERSONALLY APPEARED before me the undersigned
witness, and made oath that (s)he saw the within named James M.
Barnes and Delete B. Barnes sign, seal and as their act and deed,
sign the within written Restrictive Covenants; and that (s)he with
the other witness witnessed the execution thereof.

Pat McManus

SWORN to before me this
8th day of September, 1997

[Signature]
Notary Public For South Carolina
My Commission Expires: 8-31-03

10

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
Filed for record this 17th
day of Sept 1997
at 11:09 A. M. and recorded
in book 1821 page 331
LINDA T. MESSERVY
REGISTER OF MESNE CONVEYANCES

EXHIBIT A

ALL those certain piece, parcel or lots of land, situate lying and being in the County of Dorchester, State of South Carolina shown and designated as Lots D, E, F, G, H, and I on a plat entitled "Plat Showing Eleven Lots of "Senrab Farms" by Associated Surveyors and Engineers dated July 5, 1997, and recorded in the RMC Office for Dorchester County in Plat Book J, Page 28.

FILED-RECORDED

SEP 11 11 09 AM '97

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)

TITLE TO REAL ESTATE
 LINDA MESSERVY
 REGISTER
 MESNE CONVEYANCES
 DORCHESTER COUNTY, SC

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, THAT We, James M. BARNES and DELENE B. BARNES ("Grantor") in the State aforesaid for/and in consideration of the sum of Twenty Four Thousand Five Hundred and 00/100 (\$24,500.00) Dollars, to US in hand paid at and before the sealing of these presents by ROBERT C. LUTES and JUDY M. LUTES ("Grantee") in the State aforesaid and the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto the said ROBERT C. LUTES and JUDY M. LUTES, their heirs and assigns, the following described real property, to-wit:

ALL that certain lot, piece, parcel or tract of land, situate, lying and being in Dorchester County, South Carolina, known and designated as LOT H, 1.75 Acres, SENRAB FARMS SUBDIVISION, as shown on a plat prepared by John David Bass, PLS, dated July 5, 1997, and entitled "Plat Showing Eleven Lots of Senrab Farms, a Subdivision Owned by James M. Barnes and Delene Barnes", and recorded in the RMC Office for Dorchester County in Plat Cabinet J, Slide 28. Said parcel of land having such size, shape, dimensions, buttings and boundings, more or less, as will more fully appear by reference to the aforesaid plat.

THIS conveyance is made subject to those certain Restrictive Covenants recorded in the RMC Office for Dorchester County simultaneously herewith.

THIS being a portion of the same property conveyed to the Grantors herein by deed of James Barry Waring dated March 22, 1963, and recorded in the RMC Office for Dorchester County in Book 131, at Page 347.

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

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Grantees, their heirs and assigns forever.

TMS # 136 - 00 - 00 - 215

Grantees Address: 14 Francesca Avenue
 Hanahan, SC 29406

W. BROOKS STYLES
 1314 RIVERS AVE., SUITE A
 NORTH CHARLESTON, SC 29403-0278
 (803) 563-3060

DORCHESTER COUNTY
 3C Deed Rec Fee 63.70
 Onr Co Deed Rec Fee 26.95
 Filing Fee 10.00
 Exemption #

LINDA T. MESSERVY
 Register of Mesne Conveyances



And We do hereby bind ourselves and our heirs and assigns, executors and administrators, to warrant and forever defend, all and singular, the said Premises unto the said Grantees, their heirs and assigns, against ourselves and our heirs and assigns, and all persons whomsoever lawfully claiming, or to claim the same or any part thereof.

Witness Our hand and seal, this 8th day of September in the year of our Lord One Thousand Nine Hundred Ninety-seven and in the Two Hundred and Twenty-second year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered
in the Presence of:

Pat McManus
[Signature]

James M. Barnes (Seal)
JAMES M. BARNES
Delene B. Barnes (Seal)
DELENE B. BARNES

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

Personally appeared before me Pat McManus and made oath that (s)he saw the within named James M. Barnes and Delene B. Barnes sign, seal and as their act and deed, deliver the within written Deed, and that (s)he with W. Brooks Styles witnessed the execution thereof.

Pat McManus

Sworn to before me this
8th day of September, 1997.

[Signature] (Seal)
Notary Public for South Carolina
My Commission Expires: 8-31-03

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
Filed for record this 11th
day of Sept 19 97
at 11:09 a M and recorded
in book 1821 page 342
LINDA T. MESSERVY
REGISTER OF MESNE CONVEYANCES

FILED-RECORDED

TITLE NOT EXAMINED BY
W. BROOKS STYLES, ESQUIRE

DEC 2 3 23 PM '97

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

LINDA MESSERVY
REGISTER
MESNE CONVEYANCES
DORCHESTER COUNTY, SC
TITLE TO REAL ESTATE

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, THAT We, JAMES M. BARNES and DELENE B. BARNES ("Grantor") in the State aforesaid for/and in consideration of the sum of Eighteen Thousand Seven Hundred Fifty and 00/100 (\$18,750.00) Dollars, to US in hand paid at and before the sealing of these presents by MARC P. DESCHENES ("Grantee") in the State aforesaid and the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto the said MARC P. DESCHENES, his heirs and assigns, the following described real property, to-wit:

ALL that certain lot, piece, parcel or tract of land, situate, lying and being in Dorchester County, South Carolina, known and designated as LOT I, 1.25 Acres, SENRAB FARMS SUBDIVISION, as shown on a plat prepared by John David Bass, PLS, dated July 5, 1997, and entitled "Plat Showing Eleven Lots of Senrab Farms, a Subdivision Owned by James M. Barnes and Delene Barnes", and recorded in the RMC Office for Dorchester County in Plat Cabinet J, Slide 28. Said parcel of land having such size, shape, dimensions, buttings and boundings, more or less, as will more fully appear by reference to the aforesaid plat.

THIS conveyance is made subject to those certain Restrictive Covenants recorded in the RMC Office for Dorchester County in Book 1821, at Page 331, and as amended from time to time.

THIS being a portion of the same property conveyed to the Grantors herein by deed of James Barry Waring dated March 22, 1963, and recorded in the RMC Office for Dorchester County in Book 131, at Page 347.

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

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Grantee, his heirs and assigns forever.

DORCHESTER COUNTY
SC Deed Rec Fee 49.40
Dor Co Deed Rec Fee 20.90
Filing Fee 10.00
Exemption # _____

1

W. BROOKS STYLES
2310 REVERB AVE., SUITE A
NORTH CHARLESTON, SC 29405-0270
(803) 553-2980

LINDA T. MESSERVY
Register of Mesne Conveyances

And We do hereby bind ourselves and our heirs and assigns, executors and administrators, to warrant and forever defend, all and singular, the said Premises unto the said Grantee, his heirs and assigns, against ourselves and our heirs and assigns, and all persons whomsoever lawfully claiming, or to claim the same or any part thereof.

Witness Our hand and seal, this 25th day of November in the year of our Lord One Thousand Nine Hundred Ninety-seven and in the Two Hundred and Twenty-second year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered
in the Presence of:

Pat McManus
WMSJ

James M. Barnes (Seal)
JAMES M. BARNES
Delene B. Barnes (Seal)
DELENE B. BARNES

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

Personally appeared before me the undersigned witness and made oath that (s)he saw the within named James M. Barnes and Delene B. Barnes sign, seal and as their act and deed, deliver the within written Deed, and that (s)he with W. Brooks Styles witnessed the execution thereof.

Pat McManus

Sworn to before me this
25th day of November, 1997.

WMSJ (Seal)
Notary Public for South Carolina
My Commission Expires: 8-31-03

TMS # 136-00-00-214

Grantees Address: 827 Travelers Blvd.
Summerville, SC 29485

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
Filed for record this 2nd
day of Dec 1997
at 3:23 P. M. and recorded
in book 1861 page 97
LINDA T. MESSERVY
REGISTER OF MESNE CONVEYANCES

FILED-RECORDED

Dec 1 11 25 AM '97

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)

TITLE TO REAL ESTATE **LINDA MESSERVY**
 REGISTER
 MEANS CONVEYANCES
 DORCHESTER COUNTY, SC

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, THAT We, **James M. BARNES and DELENE B. BARNES** ("Grantor") in the State aforesaid for/and in consideration of the sum of **Seventeen Thousand Five Hundred and 00/100 (\$17,500.00)** Dollars, to US in hand paid at and before the sealing of these presents by **H. B. MIMS and ALICE F. MIMS** ("Grantee") in the State aforesaid and the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto the said **H. B. MIMS and ALICE F. MIMS**, their heirs and assigns, the following described real property, to-wit:

ALL that certain lot, piece, parcel or tract of land, situate, lying and being in **Dorchester County, South Carolina**, known and designated as **LOT G, 1.00 Acres, SENRAB FARMS SUBDIVISION**, as shown on a plat prepared by **John David Bass, PLS**, dated **July 5, 1997**, and entitled "**Plat Showing Eleven Lots of Senrab Farms, a Subdivision Owned by James M. Barnes and Delene Barnes**", and recorded in the **RMC Office for Dorchester County in Plat Cabinet J, Slide 28**. Said parcel of land having such size, shape, dimensions, buttings and boundings, more or less, as will more fully appear by reference to the aforesaid plat.

THIS conveyance is made subject to those certain Restrictive Covenants recorded in the **RMC Office for Dorchester County in Book 1821, at Page 331**, and as amended from time to time.

THIS being a portion of the same property conveyed to the Grantors herein by deed of **James Barry Waring** dated **March 22, 1963**, and recorded in the **RMC Office for Dorchester County in Book 131, at Page 347**.

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

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Grantee, his heirs and assigns forever.

TMS # 136-00-00-217

Grantees Address: 15 N Basilica Avenue
 Hanahan, SC 29406

1

DORCHESTER COUNTY
 SC Deed Rec Fee 45.50
 Dor Co Deed Rec Fee 19.25
 Filing Fee 10.00
 Exemption # _____

LINDA T. MESSERVY
 Register of Means Conveyances

Woody Lawton

And We do hereby bind ourselves and our heirs and assigns, executors and administrators, to warrant and forever defend, all and singular, the said Premises unto the said Grantees, their heirs and assigns, against ourselves and our heirs and assigns, and all persons whomsoever lawfully claiming, or to claim the same or any part thereof.

Witness Our hand and seal, this 25th day of November in the year of our Lord One Thousand Nine Hundred Ninety-seven and in the Two Hundred and Twenty-second year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered
in the Presence of:

Maria S. Jones
[Signature]

James M. Barnes (Seal)
JAMES M. BARNES

Deleene B. Barnes (Seal)
DELENE B. BARNES

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

Personally appeared before me the undersigned witness and made oath that (s)he saw the within named James M. Barnes and Delene B. Barnes sign, seal and as their act and deed, deliver the within written Deed, and that (s)he with the other witness above subscribed, witnessed the execution thereof.

Maria S. Jones

Sworn to before me this
25th day of November, 1997.

[Signature] (Seal)
Notary Public for South Carolina
My Commission Expires: 2-03-2003

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
Filed for record this 1st
day of Nov 1997
at 11:25 A.M.
in book 1859 page 326
LINDA T. MESSERVY
REGISTER OF MESNE CONVEYANCES

FILED-RECORDED

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Dorchester)
 971-1275 TMS # 136-00-00-219

Dec.
 GENERAL WARRANTY DEED 15 12 18 PM '97

LINDA HESSERVY
 REGISTER
 MESNE CONVEYANCES
 DORCHESTER COUNTY, SC

KNOW ALL MEN BY THESE PRESENTS, THAT

James M. Barnes and Delene B. Barnes

in the State aforesaid for and in consideration of the sum of Thirty Thousand Four Hundred Eighty Seven Dollars & No/100ths (\$30,487.00) to us in hand paid at and before the sealing of these presents by

David S. Baribeault and Georgia A. Baribeault
 305 Canaberry Circle, Summerville, SC 29483

in the State aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released by these Presents do grant, bargain, sell and release unto the said David S. Baribeault and Georgia A. Baribeault, their Heirs and Assigns Forever, the following described property to wit:

ALL that certain piece, parcel or tract of land, situate, lying and being in Dorchester County, South Carolina and being shown and designated as Lot E containing 1.77 acres, more or less, and being delineated on a plat entitled, "Plat Showing Eleven Lots of Senrab Farms, A Subdivision Owned by James M. Barnes and Delene Baranes," prepared by Associated Surveyors and Engineers recorded August 29, 1997 and recorded in the RMC Office for Dorchester County in Plat Book J, at Page 28. Said tract having such size, shape, dimensions, buttings and boundings as will more fully appear by reference to said plat.

SUBJECT TO covenants, restrictions, easements of record and taxes for the current year.

BEING a portion of the same property conveyed to grantors herein by deed of James Barry Waring dated March 22, 1963 and recorded in the RMC Office for Dorchester County in Book 131 at page 347.

DORCHESTER COUNTY

SC Deed Rec Fee 79.30
 Dor Co Deed Rec Fee 33.55
 Filing Fee 10.00
 Exemption # _____

P. GARRETT WYCKOFF
 ATTORNEY AT LAW
 810 T. ... SUITE G2
 SUMMERVILLE, SC 29485

LINDA T. HESSERVY
 Register of Mesne Conveyances

THIS Deed was prepared in the Law Office of P. Garrett Wyckoff,
810 Travelers Blvd., Suite G-2, Summerville, SC 29485.

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 unto the said David S. Baribeault and Georgia
A. Baribeault, their Heirs and Assigns forever.

AND, we do hereby bind ourselves and our Heirs, Executors and
Administrators, to warrant and forever defend, all and singular the
said premises unto the said David S. Baribeault and Georgia A.
Baribeault as hereinabove described their Heirs and Assigns, against
us and our Heirs, and all persons whomsoever lawfully claiming, or to
claim the same or any part thereof.

WITNESS our Hands and Seals, this 11th day of December
in the year of our Lord One Thousand Nine Hundred and Ninety-seven
and in the Two Hundred and Twenty-second year of Sovereignty and
Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Julius H. Henry
Witness No. 1

Allen P. Eubank
Witness No. 2 (Notary)

James M. Barnes
James M. Barnes

Delene B. Barnes
Delene B. Barnes

STATE OF SOUTH CAROLINA

COUNTY OF Dorchester

PERSONALLY appeared before me, the undersigned witness, and made
oath that (s)he saw the within named James M. Barnes and Delene B.
Barnes, sign, seal, and as their act and deed, deliver the within
written Deed, and that (s)he with, the undersigned Notary Public,
witnessed the execution thereof

Julius H. Henry
(Signature of 1st witness,
same as above)

Sworn to and subscribed before me this
December 11, 1997

Allen P. Eubank
Notary Public
State of South Carolina

My Commission Expires: 7/2/06

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
Filed for record this 15th
day of Dec. 19 97
at 12:18 P M and recorded
in book 1868 page 8
LINDA T. MESSERVY
REGISTER OF MESNE CONVEYANCES

FILED-RECORDED

THE STATE OF SOUTH CAROLINA,
COUNTY OF DORCHESTER DEC 16 2 39 PM '97 TITLE TO REAL ESTATE

LINDA MESSERVY
REGISTER
MESNE CONVEYANCES
DORCHESTER COUNTY, SC

NOW, KNOW ALL MEN BY THESE PRESENTS, THAT James M. Barnes and Delene B. Barnes in the State aforesaid for/and in consideration of the sum of TWENTY FOUR THOUSAND SIX HUNDRED SEVENTY FIVE AND NO/100 (\$24,675.00) DOLLARS to them in hand paid at and before the sealing of these presents by James D. Vaughan, Jr. and Candace H. Vaughan in the State and County aforesaid subject to all matters of record, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto the said James D. Vaughan, Jr. and Candace H. Vaughan, the following-described property, to-wit:

ALL that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being in the County of Dorchester, State of South Carolina, and being designated as Lot D (1.41 Acres) Senrab Farms Subdivision on a plat by John David Bass, dated July 5, 1997 and recorded August 29, 1997 in the RMC Office for Dorchester County in Plat Book J, Slide 28, entitled, " Plat Showing Eleven Lots Of Senrab Farms A Subdivision Owned By James M. Barnes and Delene Barnes". Said lot having such size, shape, buttings boundings and dimensions as will more fully appear by reference to the aforesaid plat.

SUBJECT to any and all restrictive covenants recorded in the RMC Office for Dorchester County; also subject to any and all other easements or rights-of-way heretofore granted affecting the property above described and recorded in the Office aforesaid.

BEING a portion of the property conveyed unto the Grantors herein by Deed of James Barry Waring dated

James D. Vaughan, Jr.
Candace H. Vaughan

1

ANTON W. SIERBA
ATTORNEY AT LAW
P. O. BOX 968
SUMMERVILLE, SC 29484-0968

DORCHESTER COUNTY

ed Rec Fee 65.00
Deed Rec Fee 27.50
Fee 10.00
ation #

LINDA T. MESSERVY
Register of Mesne Conveyances

March 22, 1963 and recorded April 12, 1963 in the RMC
Office for Dorchester County in Book 131, Page 347.

GRANTEE'S ADDRESS: 101 Tanager St.
Summerville SC 29483

TMS #: 136-00-00-216

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

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said James D. Vaughan, Jr. and Candace H. Vaughan, their Heirs and Assigns forever. AND we do hereby bind ourselves and our Heirs, Assigns, Executors and Administrators, to warrant and forever defend, all and singular, the said Premises unto the said James D. Vaughan, Jr. and Candace H. Vaughan, their Heirs and Assigns, against us and our Heirs, and all persons whomsoever as may be lawfully claiming, or to claim the same or any part thereof.

WITNESS my hand and seal this 15 day of December in the year of our Lord one thousand nine hundred and ninety-seven and in the two hundred twenty-second year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered
in the presence of:

L. J. Chittwood
Arthur W. Starks

James M. Barnes L.S.
James M. Barnes
Delene B. Barnes L.S.
Delene B. Barnes

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)

PERSONALLY appeared before me the above witness and made oath that (s)he saw the within named Grantors sign, seal, and as their act and deed, deliver the within written Deed, and that (s)he with the other witness, witnessed the execution thereof.

SWORN to before me this 15
 day of December, 1997.

L. J. Chitwood

Antonia W. Stebbins (Seal)
 Notary Public for South Carolina
 My Commission Expires: 4/22/2001

STATE OF SOUTH CAROLINA
 COUNTY OF DORCHESTER
 Filed for record this 16th
 day of Dec. 1997
 at 2:39 P M and recorded
 in book 1868 page 348
 LINDA T. MESSERVY
 REGISTER OF MESNE CONVEYANCES

FILED-RECORDED

JAN 22 10 23 AM '98

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)

TITLE TO REAL ESTATE LINDA MESSERVY
 REGISTER
 MESNE CONVEYANCES
 DORCHESTER COUNTY, SC

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, THAT We, James M. BARNES and DELENE B. BARNES ("Grantor") in the State aforesaid for/and in consideration of the sum of Seventeen Thousand Five Hundred and 00/100 (\$17,500.00) Dollars, to US in hand paid at and before the sealing of these presents by LARRY E. KINARD and PATRICIA A. KINARD ("Grantee") in the State aforesaid and the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto the said LARRY E. KINARD and PATRICIA A. KINARD, their heirs and assigns, the following described real property, to-wit:

~~ALL that certain lot, piece, parcel or tract of land, situate,~~
 lying and being in Dorchester County, South Carolina, known and designated as LOT F, 1.00 Acres, SENRAB FARMS SUBDIVISION, as shown on a plat prepared by John David Bass, PLS, dated July 5, 1997, and entitled "Plat Showing Eleven Lots of Senrab Farms, a Subdivision Owned by James M. Barnes and Delene Barnes", and recorded in the RMC Office for Dorchester County in Plat Cabinet J, Slide 28. Said parcel of land having such size, shape, dimensions, buttings and boundings, more or less, as will more fully appear by reference to the aforesaid plat.

THIS conveyance is made subject to those certain Restrictive Covenants recorded in the RMC Office for Dorchester County in Book 1821, at Page 331, and as amended from time to time.

THIS being a portion of the same property conveyed to the Grantors herein by deed of James Barry Waring dated March 22, 1963, and recorded in the RMC Office for Dorchester County in Book 131, at Page 347.

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

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Grantee, his heirs and assigns forever.

TMS #136-00-00-218

Grantees Address: 7744 Barclay Ave.
 Charleston, SC 29418

DORCHESTER COUNTY

SC Deed Rec Fee 45.50

Dor Co Deed Rec Fee 19.25

Filing Fee 10.00

Exemption #

LINDA T. MESSERVY
 Register of Mesne

W. Brooks Styles, Atty.

349

349 PLAINTIFF'S
 EXHIBIT
 2

And We do hereby bind ourselves and our heirs and assigns, executors and administrators, to warrant and forever defend, all and singular, the said Premises unto the said Grantees, their heirs and assigns, against ourselves and our heirs and assigns, and all persons whomsoever lawfully claiming, or to claim the same, any part thereof.

Witness Our hand and seal, this 21st day of January in the year of our Lord One Thousand Nine Hundred Ninety-eight and in the Two Hundred and Twenty-second year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered
in the Presence of:

Emily Upakum
WMSJ

James M. Barnes (Seal)
JAMES M. BARNES
Delene B. Barnes (Seal)
DELENE B. BARNES

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

Personally appeared before me the undersigned witness and made oath that (s)he saw the within named James M. Barnes and Delene B. Barnes sign, seal and as their act and deed, deliver the within written Deed, and that (s)he with the other witness above subscribed, witnessed the execution thereof.

Emily Upakum

Sworn to before me this
21st day of January, 1998.

WMSJ (Seal)
Notary Public for South Carolina
My Commission Expires: 8-31-03

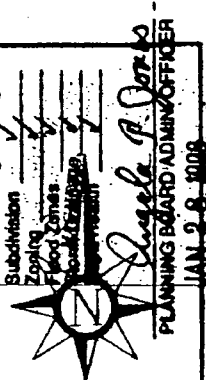
STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
Filed for record this 22nd
day of Jan. 19 98
at 10:23 A. M and recorded
in book 1884 page 211
LINDA T. MESSERVY
REGISTER OF MESNE CONVEYANCES



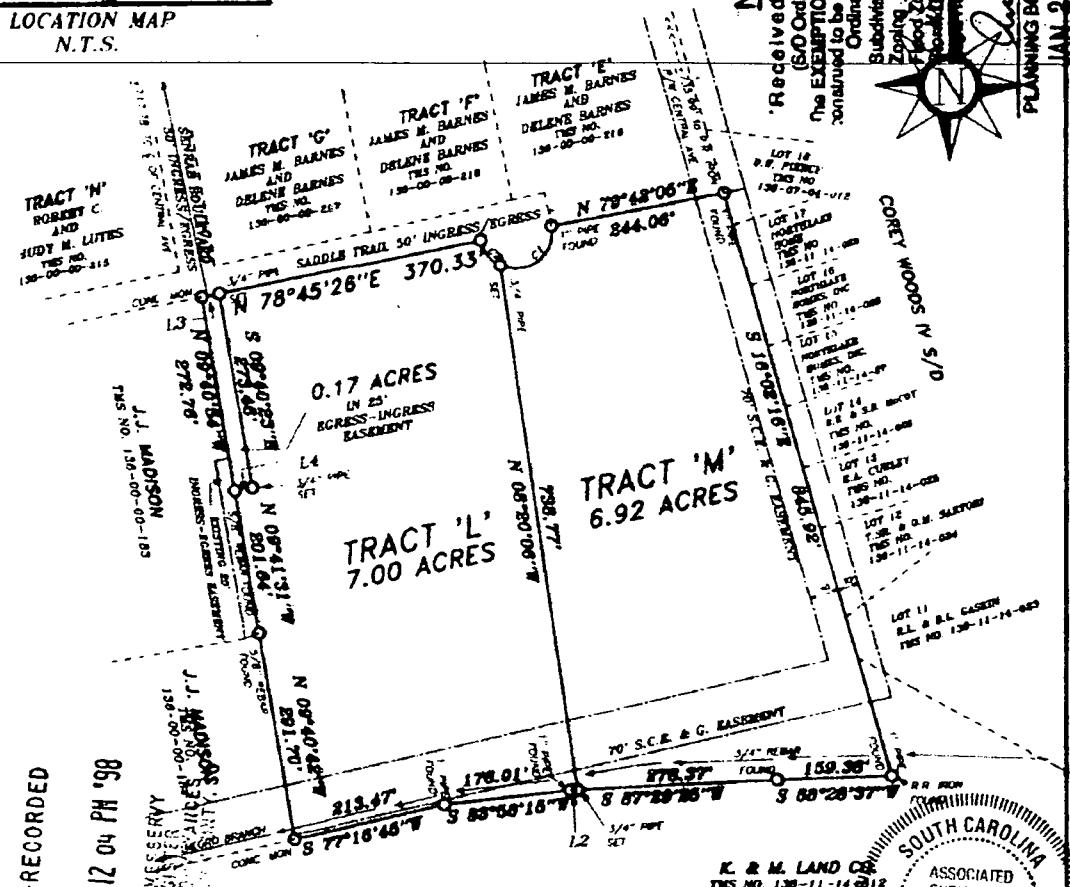
1.) PLAT BY JOHN DAVID BASS
DATED JULY 5, 1997
RECORDED CABINET 'J', SLIDE 28
2.) TMS NO. 138-00-00-219

NOTICE

Received as Information
(SO Ord. An IV Par. 122)
The EXEMPTION of this plat is NOT to be construed to be in compliance with County Ordinances governing:



TRAINING BOARD ADMIN/OFFICER
JAN 28 2008



FILED-RECORDED

86. Ad 21 62 WJ

LINDA MESSERVY
REGISTRATION UNIT
HESKE COUNTY AIDES ON STAFF
DORCHESTER COUNTY

SOUTH CAROLINA
DORCHESTER COUNTY
DORCHESTER TOWNSHIP

DECEMBER 29, 1997
JOB NO. 97-394

REVISED JANUARY 27, 1998. TO ADD CUL-DE-SAC

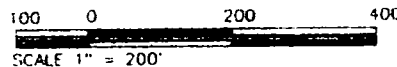
**PLAT SHOWING OF 14.19 ACRES OF LAND
BEING SUBDIVIDED INTO TRACT 'L' (7.00 AC)
AND TRACT 'M'(7.03 AC)
AS REQUESTED BY THE OWNERS
JAMES M. BARNES AND DELENE BARNES**

1. JOHN DAVID BASS, HEREBY STATE TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THAT THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARD MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS "A" SURVEY AS SPECIFIED THEREIN. THERE ARE NO VISIBLE ENCUMBRANCES OR PROJECTIONS OTHER THAN THOSE NOTED ABOVE.

THIS PROPERTY IS LOCATED IN FLOOD ZONE 'AE' AND 'X'
AS PER F.J.R.M. MAP NO. 450068 0233 C

COURSE	BEARING	DISTANCE
L1	N 78°45'26"E	80.5
L2	S 87°28'43"W	10.0
L3	N 78°45'26"E	25.0
L4	S 80°19'42"W	25.0

CURVE	RADIUS	TANGENT	LENGTH	DELTA	DEGREE	CHORD	CH. BEARING
C1	30.00'	108.05'	170.74'	186°53'29"	114°35'38"	88.45'	S 68°12'19" W
C2	60.00'	216.09'	341.48'	373°06'58"	114°35'38"	176.90'	N 27°47'47" E



141 White Fence Lane
Summerville, SC 29483

John D. Smith, Jr. 7/27/78
JOHN SMITH, JR. P.I.B.
S.C. DEPT. OF. 15628

ASSOCIATED SURVEYORS AND ENGINEERS
P. O. BOX 6, TUSKEGEEVILLE, S.C. 29424
803-673-1081

RETURN TO:

J. STANLEY CLAYPOOLE, P.A.
ATTORNEY AT LAW
2155 NORTHPARK LANE
N. CHARLESTON, S.C. 29406

98-004 JSC/lde

FILED-RECORDED
 MAR 3 10 38 AM '98
 LINCOLN COUNTY
 MESSENGER
 DORCHESTER

STATE OF SOUTH CAROLINA)
 COUNTY OF DORCHESTER)

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, THAT

JAMES M. BARNES and DELENE B. BARNES

hereinafter referred to as GRANTOR(S) in consideration of the sum of:

EIGHTY THOUSAND and 00/100-----(\$80,000.00) ----DOLLARS

to us in hand paid at and before the sealing of these presents by:

STEVE HILL/HABERSHAM BUILDERS, INC.

hereinafter referred to as GRANTEE(S) in the State aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto the said GRANTEE(S) the following described property to wit:

See Attached Exhibit "A"

Tract "L"/Senrab Farms

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

DORCHESTER COUNTY
 SC Deed Rec Fee 208.00
 Dor Co Deed Rec Fee 88.00
 Filing Fee 11.00
 Exemption # _____

LINDA T. MESSERVY
 Register of Mesne Conveyances

352



TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Grantee(s) their successors and assigns forever.

AND we do bind ourselves, and our Heirs, Executors and Administrators, to warrant and forever defend, all and singular, the Premises unto the said Grantee(s), its successors and Assigns, against us and our Heirs, and all persons whomsoever lawfully claiming, or to claim the same or any part thereof.

WITNESS my Hand(s) and Seal(s) this February 25, 1998.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

[Signature]

James M. Barnes (L.S.)
JAMES M. BARNES

Wendy M. Kizer

Deleane B. Barnes (L.S.)
DELENE B. BARNES

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

The foregoing instrument was acknowledged before me the undersigned notary and I do hereby certify that the above named Grantor(s) personally appeared before me this day and that the above named Grantor(s) acknowledged the due execution of the foregoing instrument.

SWORN to before me this: February 25, 1998

Wendy M. Kizer (SEAL)
Notary Public for South Carolina
My Commission Expires: 10-17-04

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
Filed for record this 3rd
day of March 1998
at 10:38 a. M and recorded
in book 1906 page 113
LINDA T. MESSERVY
REGISTER OF MESNE CONVEYANCES

EXHIBIT "A"

ALL that certain piece, parcel or lot of land, situate, lying and being in the County of Dorchester, State of South Carolina, being known and designated as Tract "L", Senrab Farms, as shown on that certain plat entitled: "PLAT SHOWING OF 14.19 ACRES OF LAND BEING SUBDIVIDED INTO TRACT 'L' (7.00 AC) AND TRACT 'M' (7.03 AC) AS REQUESTED BY THE OWNERS JAMES M. BARNES AND DELENE BARNES", dated December 29, 1997 and recorded in the RMC Office for Dorchester County in Plat Book J, Page 37. Said lot having such size, shape, dimensions, buttings and boundings more or less as will by reference to said plat more fully and at large appear.

ALONG WITH an easement for ingress and egress over and across the road known as Senrab Boulevard and Saddle Trail as shown on that certain plat recorded in the RMC Office for Dorchester County in Plat Book J, page 28

SUBJECT TO:

Restrictive Covenants dated September 8, 1997 and recorded in the RMC Office for Dorchester County in Book 1821, Page 331.

Amendment to restrictions dated February 25, 1998 and recorded simultaneously herewith.

Amendment to restrictions dated November 25, 1997 and recorded in the RMC Office for Dorchester County in Book 1861, Page 95.

Right of Way to Right of Way to South Carolina Electric & Gas recorded in the RMC Office for Dorchester County in Book 1870, Page 296.

Right of Way to Right of Way to South Carolina Electric & Gas recorded in the RMC Office for Dorchester County in Book 278, Page 133.

Seventy (70') foot easement to South Carolina Electric & Gas along the rear lot line and forty (40') feet along the side lot line as shown on that certain plat recorded in the RMC Office for Dorchester County in Plat Book J, Page 37.

BEING a portion of the premises conveyed to the grantors herein by deed of James Barry Waring, dated March 22, 1963 and recorded in the RMC Office for Dorchester County in Book 131, Page 347.

TMS# 136-00-00-222

Grantee's Address: 1661 N. Main St.
Summerville, SC 29483

FILED-RECORDED

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

Mar 18 9 41 AM '99 AGENDAS TO RESTRICTIONS

LINDA MESSERVY
 REGISTER
 MEANS CONVEYANCES
 DORCHESTER COUNTY, SC

KNOW ALL MEN BY THESE PRESENTS, that JAMES M. BARNES and DELENE B. BARNES (Hereinafter referred to as "Declarant") are the Owners of the property described in Exhibit "A" attached hereto and STEVE HILL/HABERSHAM BUILDERS, INC. (Hereinafter referred to as "Purchaser") is about to purchase the property as describe in Exhibit "A" attached hereto; and

WHEREAS, the Declarant and Purchaser have agreed to certain restrictions and limitations on the construction development of the property as described on Exhibit "A" attached hereto and desire to evidence their agreement herein.

NOW THEREFORE, for and in consideration of the mutual benefits flowing to each other and the sum of One dollar (\$1.00) to each to the other paid, the receipt and sufficiency which are hereby acknowledged, the Declarant and Purchaser agree as follows:

PROPERTY AFFECTED: The property which is affected by these covenants is described as Tract "L" on that certain plat recorded in the RMC Office for Dorchester County in Plat Book J, Page 37 and further described on Exhibit "A" attached hereto.

The property shall be designated and shall be used as a single family residential building tract, and no other structure can be erected thereon other than one detached site built single family dwelling with drive under feature and one two-story detached barn.

It shall be permissible for the Purchaser to subdivide the property described herein as set out in Paragraph 5 of the restrictive covenants, dated September 9, 1997 and recorded in the RMC Office for Dorchester County in Book 1821, Page 331 in so that such subdivided lot shall be used as a single family residential building lot.

It shall be permissible construction of high quality vinyl fencing upon the property along with electric fencing along the rear of the property.

It shall be permissible for the Purchaser, and his/her successors and assigns, to keep up to six (6) horses on the above

described property. Such horses shall be permitted upon the front portion of the property and the rear portion of the property.

It shall be permissible for the Owner of the property to maintain appropriate horse trailers and tractors and other husbandry and farm implementation equipment as necessary.

EXCEPT AS HEREINABOVE MODIFIED AND SET OUT, and by acceptance hereof, undersigned do hereby agree and consent that the property shall be restricted in accordance with the restrictive covenants, dated September 8, 1997 and recorded in the RMC Office for Dorchester County in Book 1821, Page 331.

IN WITNESS THEREOF, the Declarant and the Purchaser have caused this instrument to be executed this February 25, 1998.

WITNESS:

[Signature]
Wendy M. Kuzer

[Signature]
JAMES M. BARNES

[Signature]
DELENE B. BARNES

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

Filed for record this 18th
day of March 1998
at 9:42 a.m. and recorded
in book 1915 page 263
LINDA T. MESSERVY
REGISTER OF MESNE CONVEYANCES

STEVE HILL/HABERSHAM BUILDERS, INC.

[Signature]
BY: M. STEPHEN HILL, PRESIDENT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

The foregoing instrument was acknowledged before me the undersigned notary and I do hereby certify that the above named James M. Barnes, Delene B. Barnes and Steve Hill/Habersham Builders, Inc. by its duly authorized officer(s) did personally appeared before me this day and that the above named they/it acknowledged the due execution of the foregoing instrument.

SWORN to before me this: February 25, 1998.

[Signature] (SEAL)
Notary Public for South Carolina
My Commission Expires: 10-17-04

EXHIBIT "A"

ALL that certain piece, parcel or lot of land, situate, lying and being in the County of Dorchester, State of South Carolina, being known and designated as Tract "L". Senrab Farms, as shown on that certain plat entitled: "PLAT SHOWING OF 14.19 ACRES OF LAND BEING SUBDIVIDED INTO TRACT 'L' (7.00 AC) AND TRACT 'M' (7.03 AC) AS REQUESTED BY THE OWNERS JAMES M. BARNES AND DELENE BARNES", dated December 29, 1997 and recorded in the RMC Office for Dorchester County in Plat Book J, Page 37. Said lot having such size, shape, dimensions, buttings and boundings more or less as will by reference to said plat more fully and at large appear.

FILED-RECORDED

Dec 2 3 23 PM '97

LINDA MESSERVY
REGISTER
MESHE CONVEYANCES
DORCHESTER COUNTY, SC

STATE OF SOUTH CAROLINA)
) AMENDMENT TO RESTRICTIVE COVENANTS
COUNTY OF DORCHESTER)

WHEREAS, heretofore on September 11, 1997, the undersigned as Declarant did record Restrictive Covenants on a portion of a Subdivision known as Senrab Farms, said Restrictive Covenants being recorded in the RMC Office for Dorchester County in Book 1821, Page 331, and

WHEREAS, paragraph 18 of said Restrictive Covenants provides that the same may be altered or modified by the written consent of the majority of the owners of the lots subjected thereto, and

WHEREAS, the undersigned are the owners of the majority of the lots described in said Restrictive Covenants and desire to amend the same to provide for vinyl fencing;

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that for valuable consideration, James M. Barnes and Delene B. Barnes, as the owner of the majority of lots in Senrab Farms do hereby amend the Restrictive Covenants dated September 8, 1997, and recorded in the RMC Office for Dorchester County in Book 1821, Page 331 in the following manner:

1. Paragraph 11 is hereby amended so that after amendment it shall read as follows:

No fence shall be erected on the front of any lot unless such fence be constructed of wood, brick, or a vinyl threeboard rail fence, such wood, brick, iron, or vinyl threeboard rail fence not to exceed four and one-half (4 1/2) feet in height. Fences (including chain link fences) may be constructed along the rear lot line of each lot, so long as such rear fence does not exceed six (6') feet in height. Fences (including chain link fences) may be constructed along the side lot lines, so long as such fences along the side lot lines do not extend into the front yard of the lot, it being the intent of the undersigned that fences constructed along the side lot line shall run from the back corners of the lot along the side lot line forward toward the front of the lot, said lot line fence to terminate prior to the extension of the same into the area of the front yard, so that there will be no fences on the side lot line extending from an imaginary line on a plane which is roughly parallel to the front of the dwelling (excluding porches and steps) and extended to the side lot lines, out to the front corners of the lot.



2. Paragraph 16 is hereby amended by adding the following to the end of said paragraph :

"In the event said road is dedicated to Dorchester county, the Road Maintenance Assessment shall be converted to an Entry Statement Maintenance Assessment thereby requiring all lot owners to contribute on a pro rata basis for the maintenance of the entryway to Senrab Farms"

3. Except as amended hereby said Restrictive Covenants shall remain in full force and effect.

IN WITNESS WHEREOF the undersigned have set their hands and seals this 25th day of Nov., 1997.

WITNESSES

Pat McManus
[Signature]

James M. Barnes
James M. Barnes
Delene B. Barnes
Delene B. Barnes

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that he/she saw the within named James M. Barnes and Delene B. Barnes sign, seal, and as their act and deed, deliver the within written Amendment to Restrictive Covenants, and that he/she with the other witness witnessed the execution thereof.

SWORN to before me this
25th day of November, 1997
[Signature]
Notary Public of South Carolina
My Commission Expires: 8-31-03

Pat McManus

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
Filed for record this 2nd
day of Dec, 1997
at 3:23 P. M. and recorded
in book 1861 page 25
LINDA T. MESSERVY
REGISTER OF MESNE CONVEYANCES

LARRY KINARD
TRACT "F"
TMS. NO. 136-00-00-218

DAVID BARIBEAULT
TRACT "E"
TMS. NO. 136-00-00-218

TRACT "M"
0.95 ACRES

TRACT "N"
0.97 ACRES

TRACT "O"
0.95 ACRES

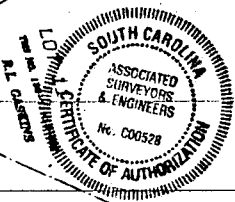
TRACT "P"
0.98 ACRES

TRACT "Q"
2.39 ACRES

COREY WOODS SUBDIVISION

NOTES:
ALL CORNERS MARKED WITH
1" IRON PIPES UNLESS
NOTED OTHERWISE.

TRACTS M, N, O, & P ARE
IN ZONE "T"; TRACT "Q" IS
IN ZONE "AE" AS PER FIRM
MAP NO. 450068 0235 C,
DATED APRIL 18, 1994.

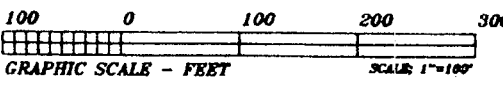


Dorchester County Planning Commission
Final Plat Approved
5/18/98

- REFERENCES
- 1.) PLAT BY J.D. BASS
DATED JULY 5, 1987
RECORDED PLAT CAR. "J"
SLIDE 28
 - 2.) PLAT BY J.D. BASS
DATED JANUARY 27, 1988
RECORDED PLAT CAR. "J"
SLIDE 37
 - 3.) TMS NO. 136-00-00-223

K B M LAND CO.
TMS. NO. 136-11-14-912

CURVE	RADIUS	TANGENT	LENGTH	DELTA	DEGREE	CHORD	CH. BEARING	COURSE	BEARING	DISTANCE
C-1	50.00'	29.51'	47.17'	54°03'19"	114°35'30"	45.44'	S 15°47'08"W	L1	N 11°14'34"W	29.00'
C-2	25.00'	11.99'	22.31'	31°08'24"	228°10'58"	21.58'	S 17°14'33"W	L2	N 11°14'34"W	29.00'
C-3	50.00'	14.91'	25.62'	73°23'34"	298°26'44"	25.90'	S 43°01'36"E	L3	S 78°45'26"W	51.87'
C-4	50.00'	30.38'	61.98'	70°34'22"	114°35'30"	57.77'	S 48°28'22"E	L4	S 08°18'30"E	24.88'
C-5	50.00'	2087.37'	156.33'	182°48'32"	114°35'30"	99.97'	S 80°15'35"W	L5	N 81°40'21"E	29.00'



SOUTH CAROLINA
DORCHESTER COUNTY
DORCHESTER TOWNSHIP

PLAT SHOWING THE SUBDIVISION OF TRACT "M", SENRAB FARMS SUBDIVISION,
INTO FIVE TRACTS, AS REQUESTED BY THE OWNERS,
JAMES M. BARNES and DELENE BARNES

MAY 5, 1998
JOB NO. 98-136
Tupperware Construction
141 White Fence Lane
Summersville, SC 29883

I, JOHN DAVID BASS, HEREBY STATE TO THE BEST OF
MY KNOWLEDGE, INFORMATION, AND BELIEF, THAT THE
SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE
STANDARDS OF THE SURVEYING PROFESSION, AND THAT THE
PRACTICE OF LAND SURVEYING IS AN ETHICAL AND
HONORABLE OCCUPATION, AND THAT I AM A MEMBER OF THE
SOUTH CAROLINA ASSOCIATION OF SURVEYORS AND ENGINEERS.

John David Bass 5/7/98
JOHN DAVID BASS, P.E.
S.C. REG. T. NO. 15568

ASSOCIATED SURVEYORS AND ENGINEERS
P.O. BOX 6, SUMMERVILLE
29404
843-873-1081

FILED-RECORDED
JUN 18 10 49 AM '98
LINDA HESSERLY
REGISTERED
MEASURE CONVEYANCES
DORCHESTER COUNTY, SC

PLAINTIFF'S
EXHIBIT

RETURN TO:

J. STANLEY CLAYPOOLE, P.A.
ATTORNEY AT LAW
2155 NORTHPARK LANE
N. CHARLESTON, S.C. 29405

SK-210570017

98-1215 JSC/lda

FILED-RECORDED

Dec 29 10 59 AM '98

STATE OF SOUTH CAROLINA)

) TITLE TO REAL ESTATE

COUNTY OF Dorchester)

LINDA T. MESSERVY
REGISTER
MESHE CONVEYANCES
DORCHESTER COUNTY, SC

WHEREAS, at a Meeting of the Board of Directors of Steve Hill/Habersham Builders, Inc. it was duly resolved that the below-described property be sold to the within named grantee(s) and that M. Stephen Hill, its President execute the Deed for said Corporation.

KNOW ALL MEN BY THESE PRESENTS, THAT

STEVE HILL/HABERSHAM BUILDERS, INC.

(hereinafter referred to as grantor(s) in the State aforesaid for/and in consideration of the sum of:

TWO HUNDRED NINETY SEVEN THOUSAND ONE HUNDRED FIFTY and
00/100------(297,150.00)-DOLLARS

to us in hand paid at and before the sealing of these presents by:

DOUGLAS S. RICHARDSON and JULIE D. RICHARDSON

hereinafter referred to as GRANTEE(S) in the State aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto the said GRANTEE(S) their heirs and assigns the following described property to wit DORCHESTER COUNTY

See Attached Exhibit "A"

Tract L, Senrab Farms
124 Saddle Trail, Summerville, SC 29483

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

SC Deed Rec Fee 173.50

Dor Co Deed Rec Fee 327.25

Filing Fee 11.00

Exemption # _____

LINDA T. MESSERVY
Register of Meshe Conveyances

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Grantee(s) their heirs and assigns forever.

AND it does hereby bind itself and its successors, assigns, Executors and Administrators, to warrant and forever defend, all and singular, the Premises unto the said Grantee(s), their Heirs and Assigns, against it and its successors, assigns, Executors and Administrators, and all persons whomsoever lawfully claiming, or to claim the same or any part thereof.

WITNESS its Hand(s) and Seal(s) this December 23, 1998

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

STEVE HILL/HABERSHAM BUILDERS, INC.

M. Stephen Hill (L.S.)

By: M. Stephen Hill

ITS: President

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

The foregoing instrument was acknowledged before me the undersigned notary and I do hereby certify that the above named STEVE HILL/HABERSHAM BUILDERS, INC. by M. Stephen Hill, its President being the Grantor(s) herein did personally appear before me this day and that the above named Grantor(s) by its duly authorized Officer(s), acknowledged the due execution of the foregoing instrument on behalf of the Corporation.

SWORN to before me this December 23, 1998.

J. Heckman (SEAL)
Notary Public of SOUTH CAROLINA
My Commission Expires: 4-22-02

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
Filed for record this 23rd
day of December 1998
at 2:05 PM and recorded
in book 2105 page 17
LINDA T. MESSERVY
REGISTER OF MESNE CONVEYANCES

Exhibit "A"

ALL that certain piece, parcel or lot of land, situate, lying and being in the County of Dorchester, State of South Carolina, being known and designated as Tract "L", Senrab Farms, as shown on that certain plat entitled: "PLAT SHOWING OF 14.19 ACRES OF LAND BEING SUBDIVIDED INTO TRACT 'L' (7.00 AC) AND TRACT 'M' (7.03 AC) AS REQUESTED BY THE OWNERS JAMES M. BARNES AND DELENE BARNES", dated December 29, 1997 by Associated Surveyors and Engineers and recorded in the RMC Office for Dorchester County in Plat Book J, Page 37. Said lot having such size, shape, dimensions, buttings and boundings more or less as will by reference to said plat more fully and at large appear.

ALONG WITH A right of ingress and egress over and across the road known as Senrab Boulevard and Saddle Trail as shown on that certain plat recorded in the RMC Office for Dorchester County in Plat Book J, Page 28.

SUBJECT TO:

Restrictive Covenants and amendments thereto recorded in the RMC Office for Dorchester County in Book 1821, Page 331, Book 1861, Page 95, and in Book, 1915, Page 263.

Right of Way to South Carolina Electric and Gas Company recorded in the RMC Office for Dorchester County in Book 1870, Page 296 and in Book 278, Page 233.

Seventy (70') foot easement to South Carolina electric & Gas along the rear lot line and forty (40') feet along the side lot line as shown on that certain plat recorded in the RMC Office for Dorchester County in Plat Book J, Page 37.

BEING the same premises conveyed to the grantor herein by deed of James M. Barnes and Delene B. Barnes, dated February 25, 1998 and recorded in the RMC Office for Dorchester County in Book 1906, Page 113.

TMS# 136-00-00-222

Grantee's Address: 124 Saddle Trail
Summerville, SC 29483

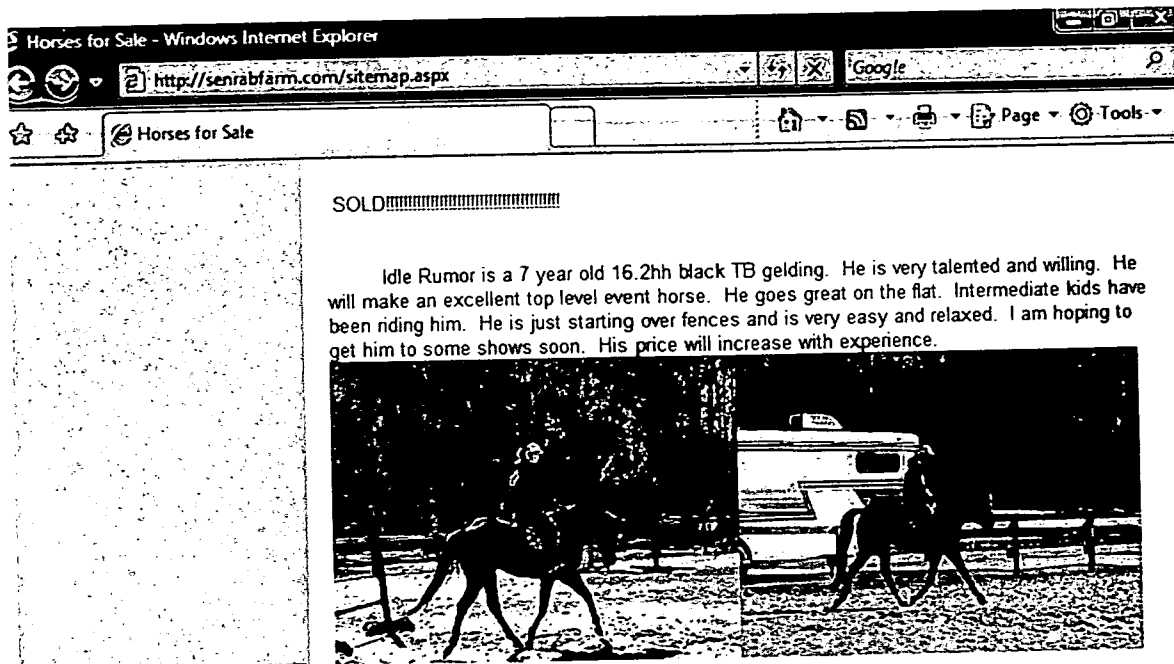
www.legalsystem.com No. 7021

**PLAINTIFF'S
EXHIBIT**

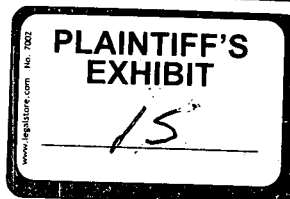
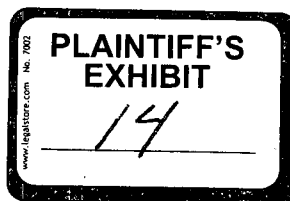
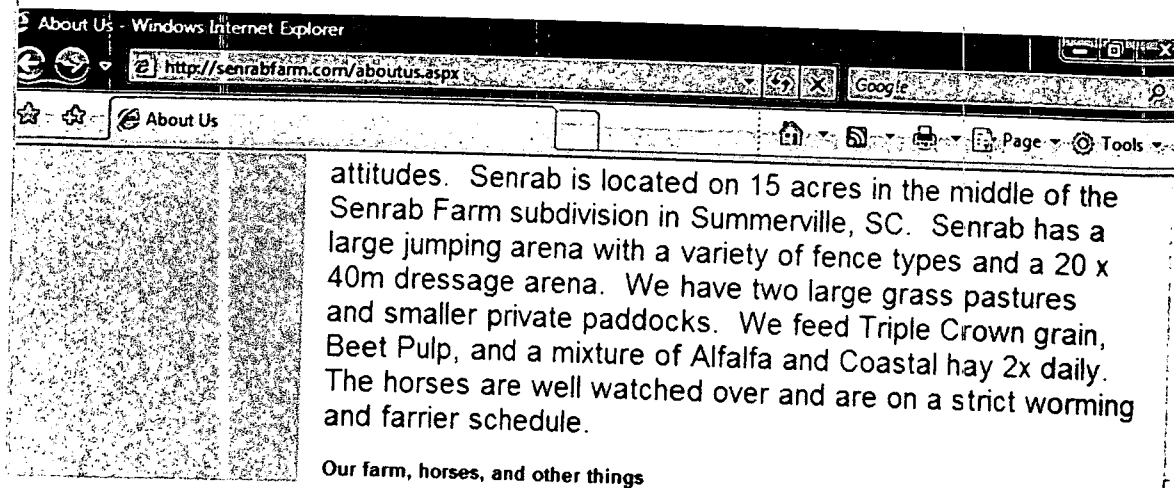


Racehorses

12



13



STATE OF SOUTH CAROLINA
REGISTER OF MESNE CONVEYANCES
COUNTY OF DORCHESTER DORCHESTER COUNTY, SC

43898

WHEREAS James M. and Delene B. Barnes (subsequently referred to as Sellers) are the owners of certain property described below, and James J. Madison, III, and Helen R. Madison (Purchasers) are about to purchase two tracts being carved out of the property; and

WHEREAS Sellers and Purchasers have agreed to certain limitations on their right to develop their respective properties and desire to evidence their agreement;

NOW THEREFORE, for and in consideration of the mutual benefits flowing to each and the sum of One Dollar (\$1.00) by each to the other paid, the receipt and sufficiency of which are hereby acknowledged, Sellers and Purchasers agree as follows:

1. Property Affected. The property which is affected by these covenants is part of the tract shown and designated as "49.7 Ac. Sold to James M. Barnes" on the April 1957 plat by H. H. Foster entitled "A Plat Showing a Tract of Land Owned by James Barry Waring Located in Dorchester County, S.C. Containing 305 Acres," which is recorded in Plat Cabinet B at slide 112 (formerly Plat Book 16 at page 267) in the office of the R.M.C. of Dorchester County. The 49.7 acre parcel is now being subdivided so as to create Tracts A and B as shown on the June 3, 1992, plat by Ashley Surveying Company entitled in part "Plat Showing the Subdivision of Land Owned by James M. Barnes & Delene B. Barnes...." which is recorded in Plat Cabinet H at slide 382.

2. Covenants on Purchasers' Property. Purchasers are acquiring Tracts A and B, which shall be subject to the covenants that they be used only for residential or agricultural purposes and that no trailers, mobile homes, or manufactured housing; no dog kennels; and no inoperable motor vehicles be placed, used, or allowed on them. Purchasers may refine, elaborate on, and add to these covenants to the extent that any new language does not result in allowing what this document prohibits. These covenants burden Tracts A and B for the benefit of the balance of Sellers' 49.7 acre parcel.

3. Covenants on Sellers' Property. Sellers are retaining all of the 49.7 acre parcel except Tracts A and B. The northernmost 12.138 acres of Sellers' parcel lies between the curving right of way of Central Avenue Extension (SR-18-611) and the centerline of a ditch crossing the 49.7 acre parcel in a generally east-west direction as shown on the December 28, 1983, unrecorded plat by T. R. Dion (a copy of which has been provided to Purchasers), and this 12.138 acre front portion shall not be subject to any covenants, conditions, or restrictions except for the green belt buffer zone requirement set out in this paragraph. The Sellers will not cut the trees along the ditch, but if a sewer or other utility line should be installed in this area by any governmental authority as a result of condemnation, or if fire, disease, storm, or other natural disaster should damage or destroy any trees, Sellers are not obligated to replant.

Sellers' parcel other than the front portion described above shall be subject to the same covenants as those set out in section 2, above, as being applicable to Tracts A and B. Sellers may refine, elaborate on, and add to these covenants to the extent that any new language does not result in allowing what this document prohibits.

These covenants burden the applicable portion of Sellers' property for the benefit of Tracts A and B.

4. Covenants Running with Land. The covenants set out above shall be covenants burdening and running with the land and passing with the title on any transfer. The covenants shall remain in force for a period of thirty

1

PHILIP A. RUBINSTEIN, P.A.
ATTORNEYS AT LAW
12A CARRIAGE LANE 92-8085
P.O. BOX 11459
CHARLESTON, SC 29417-1459

NOTED FOR FILE
FILED
S.E. 1
JUN 10 1992
S.C. 20183

367

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EXHIBIT

16(a)

5. Parties Bound. These covenants bind and inure to the benefit of the named parties and their heirs and assigns.

Witness the hands of the parties on OCTOBER 1, 1992.

WITNESSES AS TO ALL:

Rutherford P.C. Smith


James M. Barnes


Delene B. Barnes


James J. Madison


Helen R. Madison

THE STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

PERSONALLY appeared before me the first witness who signed above and made oath that s(he) with the second witness saw the persons named above sign and deliver this instrument as their act and deed.

SWORN to before me on
OCTOBER 1, 1992.

Rutherford P.C. Smith (SEAL)
Notary Public of South Carolina
My commission expires: 9/11/94

recip/jh4

STATE OF SOUTH CAROLINA
COUNTY OF DECHSTER
Filed for record this 8th
day of Oct. 1992
at 3:46 P. M.
in Book 1061 Page 58
REGISTER OF DEEDS CHRISTOPHER S. WATKINS

1) AREA WAS DETERMINED BY THE COORDINATE METHOD.
 2) THIS PROPERTY IS LOCATED IN R1000 ZONE C.
 SITE FROM COMMUNITY (450008 0235 8) EFFECTIVE DATE: JANUARY 6, 1982.

LEGEND:
 DASHED LINE FROM PINE SET (1/2" NEAR)
 DASHED LINE FROM PINE, FOUND
 DASHED LINE FROM PINE, FOUND SET (4" x 4")

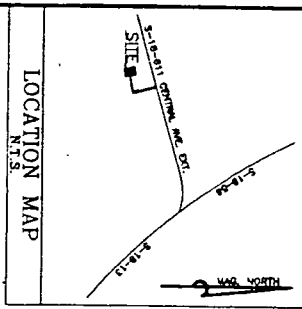
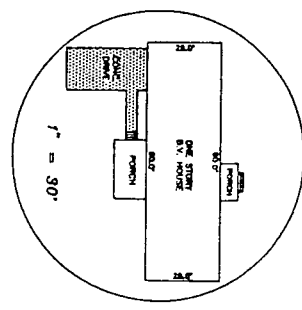
REFERENCE:
 PLAT FOR THE FOREST DATED APRIL 1987 & MARCH 1988 (NOT RECORDED)
 PLAT BY H.H. FOSTER DATED APRIL 1987 & RECORDED IN PLAT BOOK 16, AT PAGE 207.
 THIS PROPERTY IS ABOUT TO BE CONNECTED TO
 JAMES M. BARNES, II AND KELLY M. BARNES

CANE BREAK APARTMENTS
 A LIMITED PARTNERSHIP
 T.M.S. 196-00-00-118

LINE BEARING DISTANCE
 1 N 74°18'00" E 50.00'

S-18-611 CENTRAL AVE. EXT.

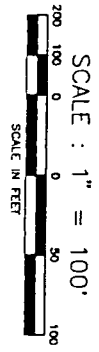
50' INGRESS EGRESS EASEMENT
 50' S.C.E. & G. EASEMENT 3.00' 100.00'



"I HEREBY STATE TO THE BEST OF MY KNOWLEDGE AND BELIEF, THAT THE INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT, AND THAT I AM A duly Licensed Surveyor in the State of North Carolina."

Paul C. Lawrence
 Paul C. Lawrence, Inc., S.C. REG. NO. 1419

PLAT SHOWING THE SUBDIVISION
 OF LAND OWNED BY
 JAMES M. BARNES &
 DELENE B. BARNES
 LOCATED NEAR SUMMERVILLE
 DORCHESTER COUNTY, SOUTH CAROLINA
 JUNE 5, 1992



Plan, Deeds, & 20-92

11-30-92

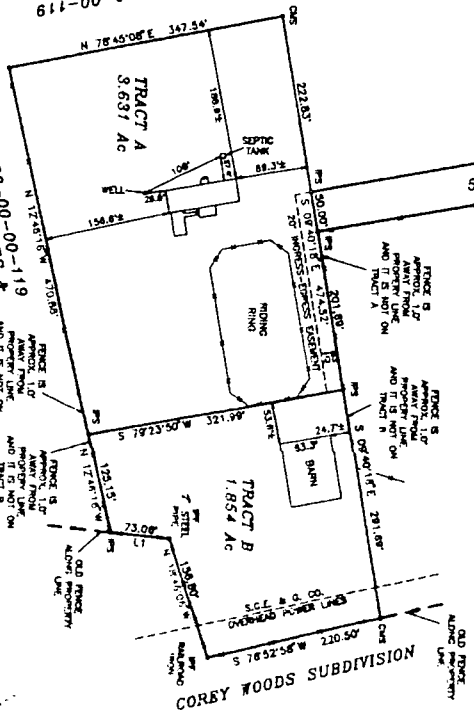
T.M.S. 196-00-00-119
 JAMES M. BARNES &
 DELENE B. BARNES

T.M.S. 196-00-00-119
 JAMES M. BARNES &
 DELENE B. BARNES

50' INGRESS EGRESS EASEMENT

T.M.S. 196-00-00-119
 JAMES M. BARNES &
 DELENE B. BARNES

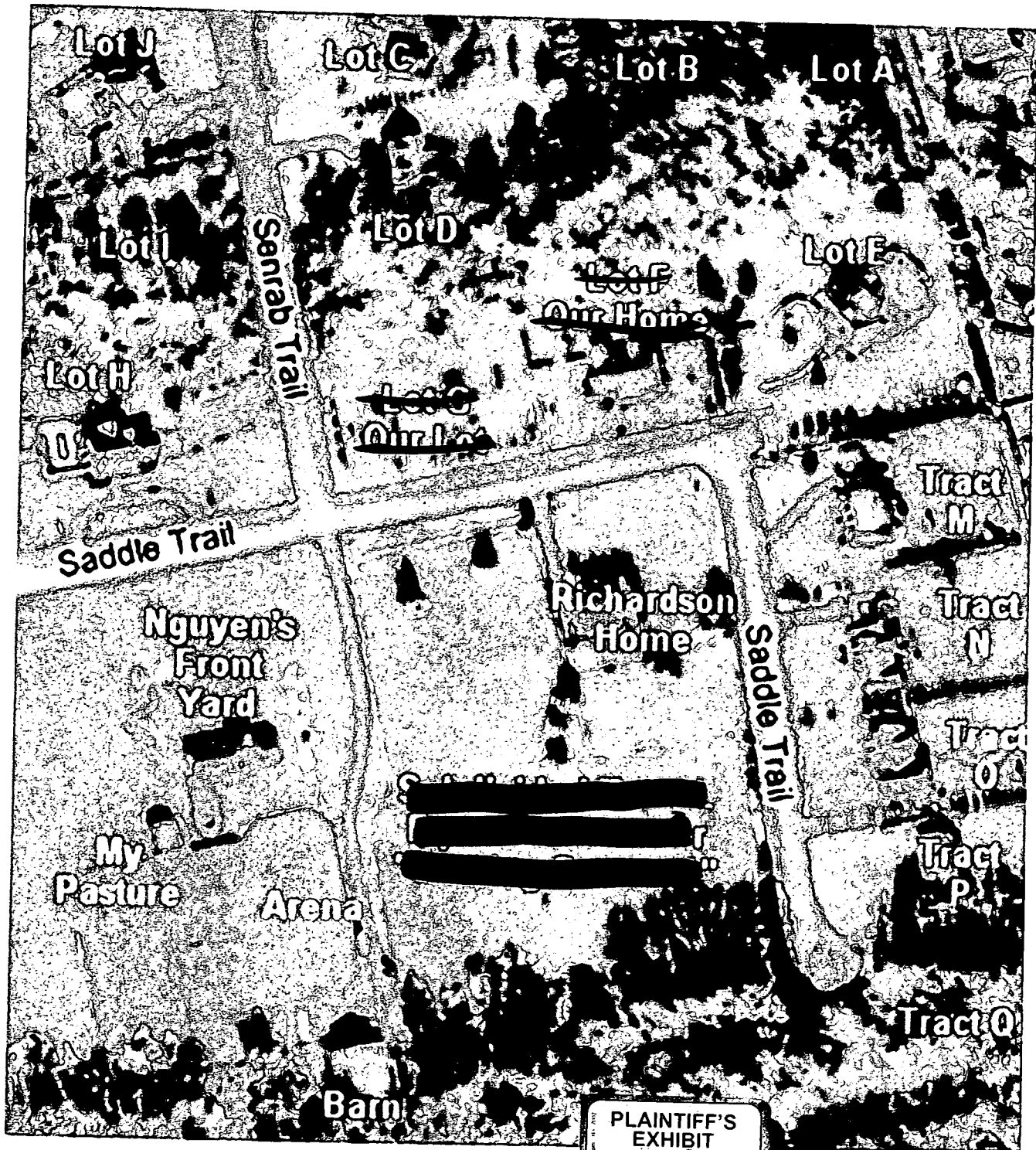
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 JAMES M. BARNES &
 DELENE B. BARNES



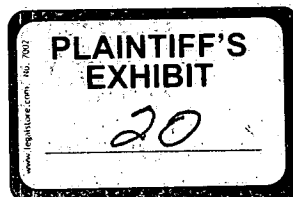
ASHLEY SURVEYING COMPANY
 321 COUNTRY ROUND SUMMERVILLE, SC 29405
 PH: (803) 571-4414 FAX: (803) 571-9555
 DSK E108, FILE 435

201
 8 1/2 x 11





PLAINTIFF'S
EXHIBIT
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PLAINTIFF'S
EXHIBIT

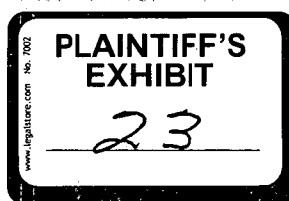
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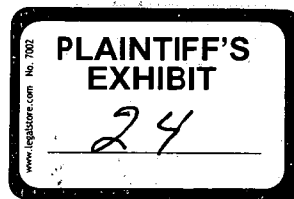
PLAINTIFF'S
EXHIBIT

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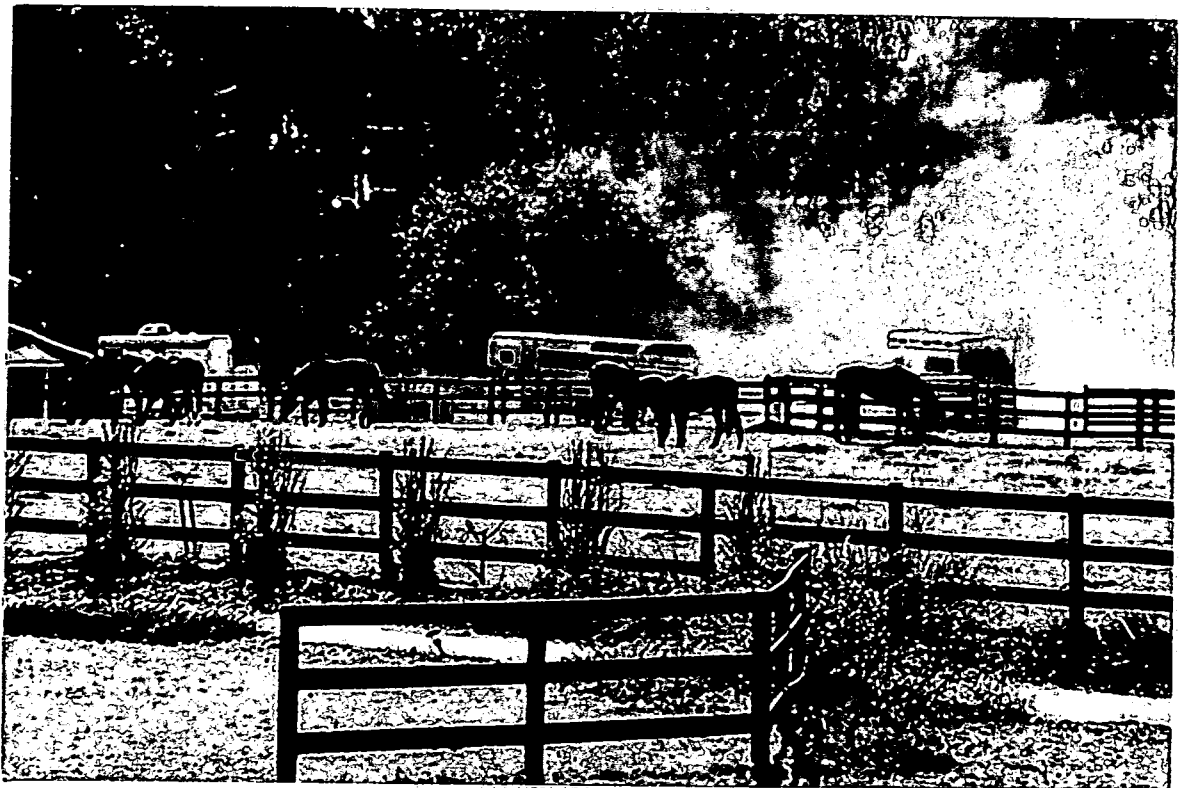


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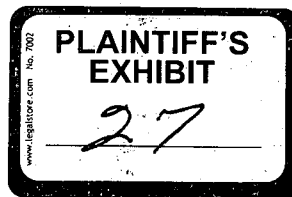
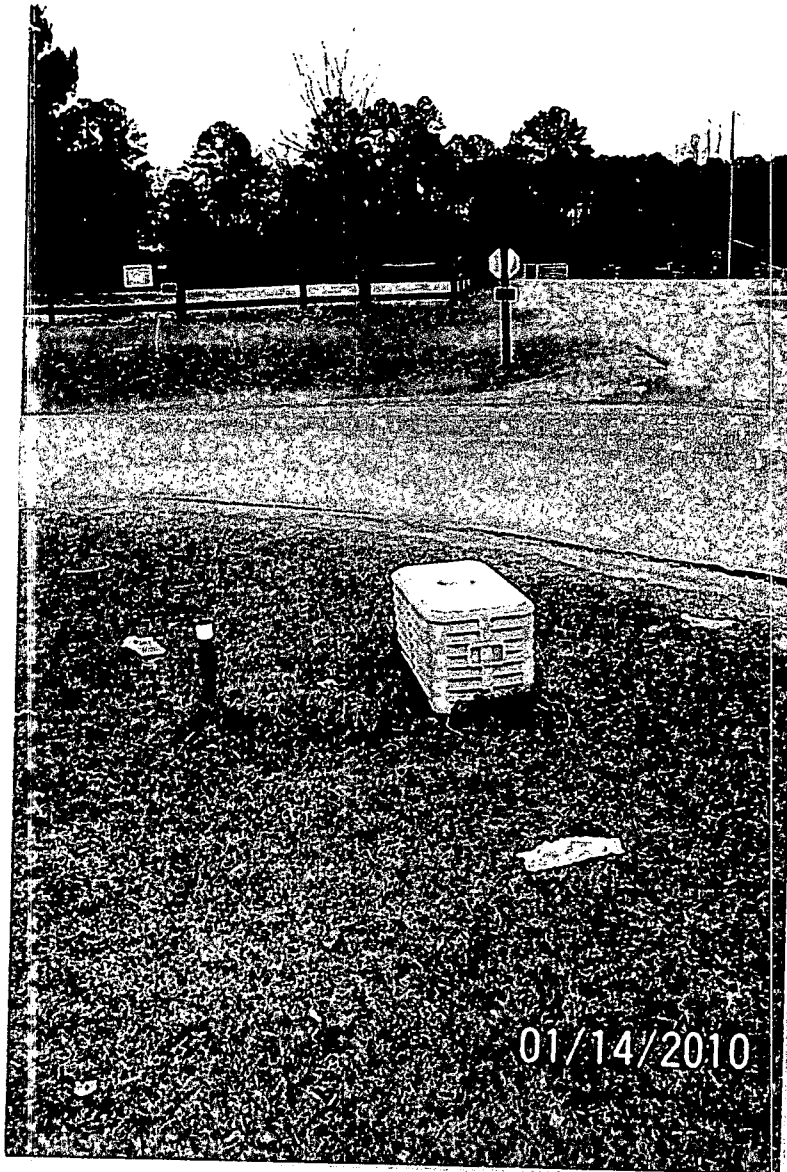




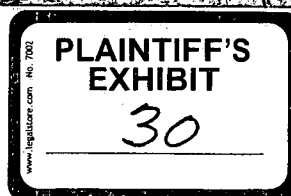
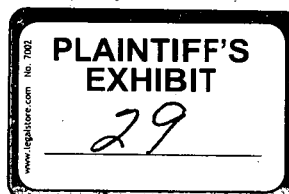
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PLAINTIFF'S
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25



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EXHIBIT
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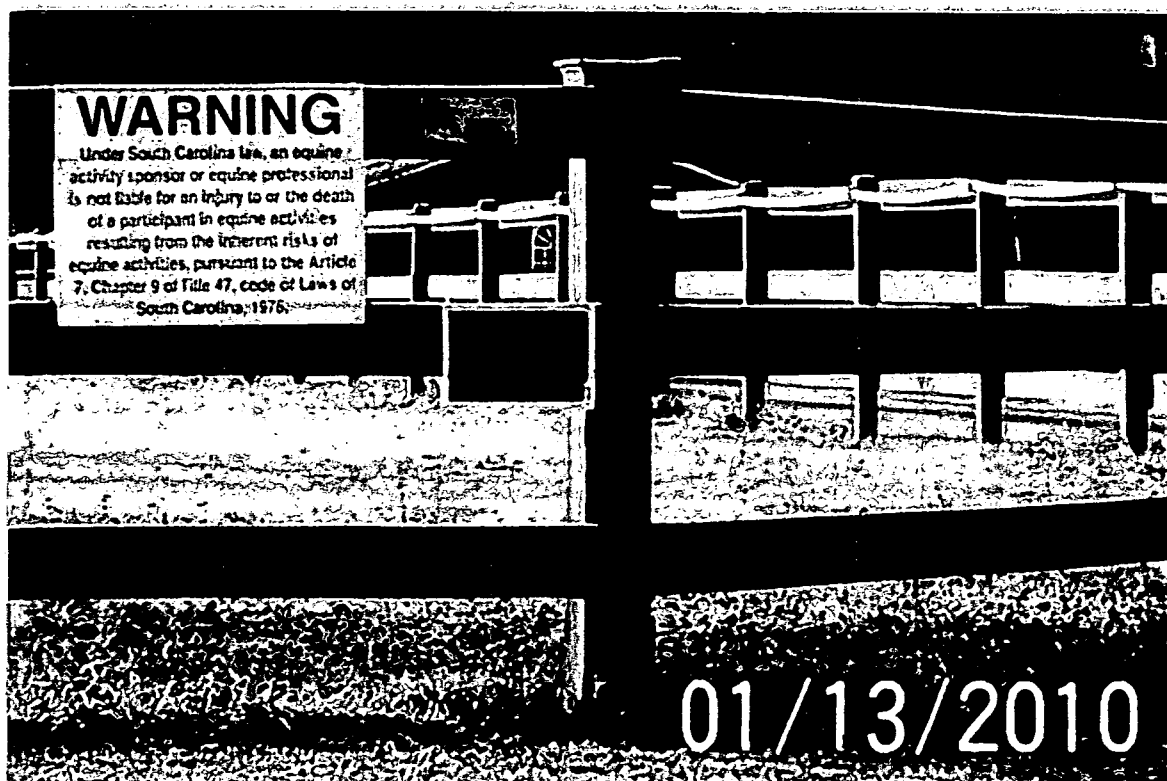
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COMMERCIAL LEASE



In consideration of the covenants herein contained, Madeline Incalls, hereinafter called "Tenant" and DJR Richardson Realty Inc, Landlord, or Agent for the Landlord, hereinafter called "Landlord", agree as follows:

For the period of time beginning on January 10, 2010, and ending at midnight on December 31, 2010, Landlord hereby grants to Tenant the sole and exclusive right to lease the real property known as:

Lot _____ Block _____ Section _____ Subdivision Senrab Farms

Address 6 a/c at 124 Saddle Trail

Tax Map # 136-00-00-285 City Summerville Zip 29483

County of Dorchester, State of South Carolina.

THE LANDLORD ☐ TENANT IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE.

1. RENT. Tenant shall pay to the Landlord, a Monthly Base Rental and Additional Rent as follows:
 - (a) MONTHLY BASE RENTAL. Tenant shall pay a Monthly Base Rental to Landlord for each month during the term of this lease or any renewal thereof, in advance on or before the 5th day of each month during the term of this Agreement. The amount of the Monthly Base Rental for the first year of this Agreement shall be Three Hundred Fifty Dollars (\$ 350.00).
 - (b) The rental for the first month of this lease shall be paid at the date of execution thereof. The Monthly Base Rental shall be increased as follows: N/A
 - (c) ADDITIONAL RENT. In addition to the Monthly Base Rental and any accumulative adjustments, Tenant shall pay Additional Rent as indicated herein below (check all that apply):
 - ☐ 1. PROPERTY TAXES (choose one):
 - ☐ TAX INCREASE. Tenant shall pay annually a sum equal to any increase in real estate taxes (ad valorem, special assessments and any other government charges to include any solid waste disposal user fees) over those assessed for the year of _____, on a pro rata basis. Presentation of copies of tax bills shall constitute sufficient evidence of additional rent due and shall be payable within fifteen (15) days after receipt thereof. Tenant shall be charged additional rent only for the portion of the calendar year during which this lease was in effect.
 - ☐ NET LEASE. Tenant shall pay annually the real estate taxes (ad valorem, special assessments and any other government charges) upon presentation by the Landlord of tax bills on the property. These charges shall be payable by the Tenant within fifteen (15) days after receipt thereof. So long as Tenant shall not be in default, Tenant shall be responsible for the portion of the calendar year during which this lease was in effect.
 - ☐ 2. PERCENTAGE OF GROSS SALES. Tenant shall pay annually a sum equal to _____ % of gross sales, as herein defined, in excess of _____ Dollars (\$ _____), in any lease year. Gross sales as used herein shall be the amount of the gross sales as indicated on the Tenant's South Carolina Tax Report (Form ST-3). Tenant shall deliver to Landlord a certified copy of each

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monthly report within ten (10) days after report is due to the South Carolina Tax Commission. Lease year as used herein shall be the period of one year's duration commencing on the effective day of the lease and each successive period of one full year commencing on the anniversary of said effective date. Tenant shall deliver to Landlord within days following the end of each lease year written statement signed and certified by Tenant to be a true and correct statement of the amount of gross sales during the proceeding lease year. Tenant shall at the same time pay the amount of Additional Rent due (if any) as a percentage of the excess over the amount herein stated.

☐ 3. ~~COMMON AREA MAINTENANCE~~ Tenant shall pay on the first day of each month, in advance, a fee equal to the Tenant's pro rata share of the cost of maintaining common areas. Tenant's common area maintenance fee for the remaining portion of the calendar year in which this lease became effective shall be _____

Dollars (\$ _____) per month. Said fee shall be adjusted at the end of each calendar year to reflect any increase in cost during said year. Common areas include all areas used in common with the other Tenants of the property of which the Premises is a part, for the convenience or welfare of all tenants' customers collectively. Common area maintenance shall mean and include all amounts paid or incurred by Landlord for operating, managing and maintaining the Property, including the buildings, improvements and common area facilities of the Property in a manner deemed by Landlord reasonable and appropriate and for the best interest of the Property, including, without limitation, all costs and expenses of 1) operating, repairing, lighting, cleaning, painting and securing the Property and the common areas of the Property, and water and sewer charges; 2) paying all personnel employed on a part time basis or full time basis in the operation, maintenance, or repair of the Property, including the common areas; 3) removing rubbish and debris from the Property; 4) repair and maintenance of walkway, landscaping, and lighting facilities, other than such costs and expenses of a capital nature; 5) management fees paid to the property management firm to manage the Property; 6) planting, replanting and replacing flowers, shrubbery, and planters and the supplies required therefore; 7) all utilities used in connection with the operation of the common area facilities; 8) seasonal decorations, including installation and removal thereof and electricity therefore; 9) leasing or renting equipment used in connection with the operation and maintenance of the common areas; 10) fountain maintenance and repairs, when applicable; 11) security, fire and crime prevention services; 12) utility charges for the common area including without limitation, storm water, sewer and pollution control fees.

☒ 4. ~~INSURANCE~~ Landlord shall keep the Premises adequately insured at a reasonable rate as indicated below (choose one):

☒ ~~INSURANCE INCREASE~~ Tenant shall pay annually a sum equal to any increase in insurance premium for the year of 2010, on a pro rata basis. Presentation of copies of insurance bills shall constitute sufficient evidence of additional rent due and shall be payable within fifteen (15) days after receipt thereof. Tenant shall be charged additional rent only for the portion of the calendar year during which this lease was in effect.

☐ ~~NET LEASE~~ Tenant shall pay annually the insurance premium upon presentation by the Landlord of bill on the property. These charges shall be payable by the Tenant within fifteen (15) days after receipt thereof. So long as Tenant shall not be in default, Tenant shall be responsible for the portion of the calendar year during which this lease was in effect.

☐ 5. ~~PRORATION OF CHARGES~~ If the Premises described herein are less than the entire property, the increases in Monthly Base Rental adjustments, Additional Rent and all other charges required by this lease shall be determined by proration on the same ratio that the rentable floor area of the Premises bears to the rentable floor areas of the entire property. Landlord and Tenant hereby deem that the Premises contains approximately _____ square feet of rentable area of the entire property which is approximately _____ square feet, resulting in a percentage ratio factor of _____ percent (_____ %).

☐ 6. ~~ADDITIONAL CHARGES~~ Any charges due Landlord by Tenant, including but not limited to, damage to Premises, legal fees, cost of default remedies, and past due charges for utilities, insurance, cleaning, maintenance and repairs, etc. or for work done on the Premises by order of Tenant, shall be considered as Additional Rent due (in addition to all other rent payable) and shall be included in any lien

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for rent. In the event any documentary stamp tax, or tax levied on rental or leasing of the Premises is required, the cost shall be paid by tenant upon demand. The cost of the credit report on the Tenant which may be requested at the Landlord's option shall be paid by the Tenant.

☒ 7. LATE RENT. If rent is not paid within 10 days after due date, the Tenant is subject to a one-time late fee of _____ (_____ %) percent of all rents due at that time.

2. SECURITY DEPOSIT. Upon execution of the lease by the Tenant, the Tenant shall pay to Landlord a Security Deposit in the amount of (\$ _____) _____ Dollars.

Any security deposit required by Landlord and paid by Tenant shall be retained as security (interest free) for the faithful performance by Tenant of all terms, covenants and conditions herein. Landlord may at any time apply said deposit or any part thereof against any default by Tenant of any of the terms, covenants and conditions of this lease. In such event, Tenant shall upon demand deposit with Landlord the amount so applied that Landlord shall have the full amount of the deposit on hand at all times during the terms of this lease. Upon the expiration of this lease the Tenant shall surrender possession of the Premises as required in paragraph 24 herein. Landlord is given permission to deduct from said security deposit the cost of any unusual cleaning or repairs to the property, upon vacating of Tenant. Security deposit is not a part of the rental and subsequently cannot be deducted from the rent of the last month of this tenancy. Security deposit or any remaining portion will be returned within 30 days after the termination of this Agreement or completion of the repairs necessitated by Tenant's misuse of the Premises. In the event the security deposit is not sufficient to pay all charges due, Tenant shall pay said charges within three days after receiving written notice from the Landlord or Agent.

3. TENANTS UTILITIES. Tenant shall pay all charges or bills for the utility and services used by the Tenant, EXCEPT: Tenant responsible for all water and electric bills and the installation and maintenance of a solar fence charger.

4. USE OF PREMISES. Tenant agrees not to abandon or vacate the Premises and to use entire leased Property for horse pasture - no more than 5 horses/ponies at 1 time; no lessons and for no other purposes without the express written consent of the Landlord. Pets, animals or birds may not be kept on the Premises without the landlord's permission. These Premises may not be used for sleeping quarters or apartments, immoral conduct or any illegal activity.

5. EXAMINATION OF PREMISES. Tenant has examined the Premises and is familiar with their present condition. Tenant, relying solely on said examination, agrees to accept Premises in their present "as is" condition, unless otherwise agreed to in writing by Tenant and Landlord.

6. DELAY OF POSSESSION. If Landlord is unable to deliver possession of Premises on the effective date of this lease, by reason of the holding over of a prior Tenant or for any other reason, this lease shall not be affected or impaired in any way and landlord shall not be liable to Tenant for any loss or damage resulting therefrom. The effective date of this lease however, shall not begin until the delivery of possession. If Landlord, however, is unable to deliver possession of the Premises to Tenant by _____, and if Tenant in fact shall not have accepted possession of the Premises, and if Tenant shall not be in default, Tenant shall have the right to cancel this lease upon written notice delivered to Landlord and upon such cancellation Landlord and Tenant shall each be released and discharged from all liability under this lease. In such case any deposit or prepaid rent shall be promptly returned to Tenant.

7. TENANT'S PARKING. Parking of vehicles owned or operated by Tenant or Tenant's employees is hereby limited, restricted or prohibited, as follows: Outside of the fenced pasture, on the barn side of the fence.

8. LIABILITY INSURANCE. Tenant shall not carry any stock of goods or do anything in or about the Premises which will in any way restrict or invalidate any insurance coverage of the Premises. Tenant agrees to pay upon demand as

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Greenlee Pastures

additional rent any increase in premiums of insurance carried by the Landlord on the Premises resulting from the Tenant's occupancy or improvements. Tenant shall keep in full force and effect, at Tenant's expense, insurance for plate glass, personal property, trade fixtures, and property damages, as well as a public liability policy in which both Tenant and Landlord shall be named as the insured with the following minimum coverage:

Single Limit \$ 500,000.00

Aggregate \$ 1,000,000.00

A certificate of insurance showing the Landlord and Landlord's Agent as an additional insured shall be provided to the landlord not later than the commencement date of this lease and prior to the expiration of such insurance policy during the term of this lease.

9. **MAINTENANCE AND REPAIRS.** Landlord shall repair and maintain the foundation, roof, outer walls and structural members of the Premises. Tenant shall, at Tenant's sole expense make all other repairs necessary to maintain the Premises, both interior and exterior, ordinary and extraordinary including window glass, plate glass, storefronts, doors, windows, screens, awnings, locks, keys, weather stripping and thresholds, as well as all interior walls, floors, ceilings, and floor coverings. Tenant's responsibility to maintain the Premises shall also include the servicing, repair and maintenance of plumbing, electrical, heating, ventilating and air conditioning systems, including all pipes, wiring, fixtures, filters, equipment, machinery, boilers, furnaces, compressors and appliances, and for the replacement of any of the aforementioned systems if their failure is due to Tenant's neglect. Notwithstanding anything contained in this Lease to the contrary, during the term of this Lease, Landlord shall warrant the major components of the heating, ventilating, and air conditioning (HVAC) equipment servicing the Premises, to include the compressors, condensing units, and air handlers, which warranty shall be contingent upon Tenant maintaining the HVAC equipment and ductwork by entering into a contract with a reputable HVAC services company approved in writing by Landlord. Said contract shall include a minimum of monthly filter changes, routine testing for Freon leakage, cleaning, and other customary periodic maintenance. In the event a major component shall need replacement and Tenant is unable to provide written documentation to the Landlord of the required maintenance as set for in this paragraph, Tenant shall be responsible for the replacement of said component at Tenant's sole cost and expense. Tenant shall also repair and be responsible for any caused by stoppage, breakage, leakage, overflow, discharge or freezing of plumbing pipes, soil lines, or fixtures. If any part of the Premises is damaged by the Tenant, or Tenant's employees, agents or invitees, Tenant shall provide Landlord with immediate written notification of all damages to the property. After notification and approval of the Landlord, repairs shall be made promptly at Tenant's expense so as to restore said Premises to its previous condition. If Tenant refuses or neglects to commence necessary repairs within ten (10) days after written demand, or does not complete such repairs within a reasonable time thereafter, Landlord may make said repairs without liability to Tenant for any loss or damage that may accrue to Tenant's stock, business or fixtures by reason thereof and if Landlord makes such repairs, Tenant shall pay to Landlord, on demand, as Additional Rent, the cost thereof. Tenant's failure to pay shall constitute a default of this lease. Repairs that are the Landlord's responsibility shall be made within a reasonable time after written notice from the Tenant. Tenant's failure to give or unreasonable delay in giving notice of needed repairs or defects shall make Tenant liable for any loss or damage resulting from delay of needed repairs.

10. **REGULATIONS AND SANITATION.** Tenant shall keep the Premises clean, safe, sanitary, and in compliance with laws, ordinances and requirements of any legally constituted public authority. Tenant shall keep broom clean all areas in and around Premises that are not included in Common Area Maintenance, such as front sidewalks and area behind building. Cleaning includes removing of any trash or refuse deposited on the lease Premises or adjacent public area by Tenant, Tenant's customers', invitees, or agents. In the event of non-compliance by Tenant, Landlord shall have the right to have said areas cleaned, trash and refuse removed and charge the expense to Tenant as Additional Rent which shall be due and payable upon demand. Nonpayment of which shall constitute default of this Agreement. Tenant shall not allow loitering on Premises. Tenant shall employ if Landlord determines it is necessary, a reputable pest extermination company at regular intervals.

11. **ALTERATIONS.** Tenant shall make no alterations, additions, improvements, or rewiring in or to the Premises without the written consent of Landlord. All additions, or improvements to the Premises including carpeting, tile, other floor covering, wall covering, ceiling tile, etc., made with or without Landlord's written consent shall become part of the Premises, and the property of Landlord upon installation. Trade fixtures and office furniture shall be installed so as to be readily removable without injury to the Premises and any injury caused by said removal shall be repaired forthwith at Tenant's expense. Said trade fixtures shall be removed from the Premises before the end of this lease or shall become part of the Premises and the property of Landlord. Tenant shall not install or maintain any equipment, partitions, furniture, etc. which the weight or operation thereof would tend to injure, or be detrimental to the Premises or would unreasonably annoy or disturb other Tenants.

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Grocery Pastures

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12. **ASSIGNMENT OR SUBLEASE.** Tenant shall not, without written consent of Landlord, in each case, assign, transfer, mortgage, pledge or otherwise encumber or dispose of this lease, or sublet the Premises or any part thereof or permit the Premises to be occupied by other persons. Such consent shall not be unreasonably withheld, conditioned, or delayed. If this lease be assigned, or if the Premises or any part thereof be sublet or occupied by any other person, firm, office or corporation with or without written permission of Landlord, it will not relieve Tenant of any obligations under the terms of this lease, and if sublet, assigned or occupied without the Landlord's permission, this lease may, at the option of the Landlord, be terminated by a seven day written notice. In the event Tenant shall sublease the Premises in accordance herewith for rentals in excess of those rentals payable hereunder, Tenant shall pay to Landlord monthly in advance as Additional Rent hereunder, one-half of all such excess rent. Any proposed assignee or sublessee that proposes to assume Tenant's obligations hereunder shall execute a satisfactory assumption or sublease agreement before consent shall be given. Other provisions of this Paragraph to the contrary notwithstanding, Landlord shall have the right in its absolute and sole discretion to withhold consent to any sublease or assignment if Tenant shall be in default or breach of this Agreement or if the proposed assignee or sublessee or its business will cause Landlord to incur any costs of whatever kind or nature.

13. **SIGNS OR AWNINGS.** Tenant shall place no signs, notices, pictures, or advertising matter upon the exterior of the lease Premises except with the written consent of the Landlord. Any and all signs placed on the Premises by Tenant shall be maintained in compliance with rules and regulations governing such signs. The Tenant shall be responsible to Landlord for any damages by installation, use, maintenance or removal of said signs. Any electrical service needed for signs shall be installed at the Tenant's expense. Tenant shall, at Tenant's expense, remove signs at the expiration of the Agreement.

14. **WAIVER OF RIGHTS.** No failure of Landlord to exercise any power given Landlord hereunder, or to insist upon Tenant's strict compliance with Tenant's obligation hereunder and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of Landlord's right to demand exact compliance with the terms of this Agreement at a future time. The rights and remedies created by this Agreement are cumulative and the use of one remedy shall not be taken to exclude the right to the use of another.

15. **RULES AND REGULATIONS.** Landlord reserves the right at any time to make further rules and regulations as in Landlord's judgment that may be necessary for the safety, care, appearance, and cleanliness of the Premises and the entire property, and the preservation of good order herein, and such other rules and regulations shall be binding upon the parties hereto with the same force and effect as if they had been contained herein at the time of execution hereof.

16. **RIGHT OF ENTRY.** Landlord, without being liable for trespass or damages, shall have the right to enter Premises during reasonable hours, with reasonable prior notice, to examine same or to make repairs, additions, or alterations as Landlord may deem necessary for the safety, comfort, appearance, or preservation thereof or to exhibit said Premises. Entry shall also be allowed to post "FOR RENT" notice, during the 90 days before the expiration of this lease. Said right of entry shall likewise exist for the purpose of removing placards, signs, fixtures, alterations or additions which do not conform to this Agreement. In accordance with this right, Tenant shall give Landlord a key to any and all locks, security systems and burglar alarms. Tenant shall not change or install new locks or security systems without the written consent of Landlord.

17. **LIENS.** Tenant shall not create or allow to be created any liens for labor or materials against Landlord's interest in the Premises. All persons contracting with the Tenant for the erection, installation, alteration, repair or demolition of any building or other improvements on the Premises, and all material suppliers, contractors, mechanics, and laborers are hereby charged with notice that they must look to the Tenant and to the Tenant's interests only in the Premises to secure the payment of any bill for work done or material furnished during the rental period created by this Agreement. In the event that liens are placed on record against the Premises by contractors, mechanics, laborers, material suppliers, etc., of Tenant it will constitute a default of this Agreement. The Tenant shall indemnify, hold harmless, and defend the Landlord from any liens and encumbrances arising out of any work performed or materials furnished by or at the direction of the Tenant. Such indemnity shall include, without limitation, all attorney's fees and costs incurred by the Landlord due to the filing of such mechanic's lien or notice thereof. In the event that the Tenant, within twenty (20) days following the imposition of any such lien, shall not cause such lien to be released of record by payment or posting of a proper bond, in addition to all other remedies provided herein and by law, the Landlord shall have the right (but not the obligation) to cause the same to be released by such means as it shall deem proper, including bonding or payment of the claim giving rise to such lien. All such sums paid by the Landlord and all expenses incurred by it in connection therewith, including attorney's fees and costs shall be payable to the Landlord by the Tenant on demand with interest at the rate of eighteen (18%) percent per annum.

☐ TENANT, ☐ TENANT, AND ☐ LANDLORD HAVE READ THIS PAGE.

18. **DAMAGE OR DESTRUCTION OF PREMISES.** If Premises are totally destroyed by fire or other casualty, this lease shall terminate as of the date of such destruction and rental shall be accounted for as between Landlord and Tenant as of that date. If Premises are damaged but not wholly destroyed by fire or other casualty, rental shall abate in such proportion as use of Premises has been lost to the Tenant. Landlord shall restore Premises to substantially the same condition as prior to damage as speedily as practicable, whereupon full rental shall commence. Insurance proceeds, if paid to Tenant, shall be assigned to Landlord to restore Premises and replace any covered contents owned by Landlord.
19. **DAMAGE TO PERSONAL PROPERTY.** All personal property, merchandise, fixtures and equipment placed or moved into the Premises shall be at the risk of Tenant or the owners thereof and Landlord shall not be liable for any damages, loss or theft of said personal property, merchandise, fixtures, or equipment, from any cause whatsoever.
20. **CONDEMNATION.** If the whole of the Premises, or such portion thereof as will make said Premises unusable for the purpose herein leased, be condemned by any legally constituted authority, this lease shall terminate on the date when possession thereof is taken by public authorities, and rental shall be accounted for as between Landlord and Tenant as of that date. Such termination, however, shall be without prejudice to the rights of either Landlord or Tenant to recover from the public authority compensation for damage caused by condemnation. Neither the Tenant nor Landlord shall have any rights in any award made to the other by any condemnation authority. In the event only such portion of the Premises is acquired by condemnation as will leave the remaining Premises, after alteration and repairs, in condition suitable for use by Tenant, the monthly rental payments from the day of such acquisition to the end of the original or any extended term of this lease shall be reduced in proportion to the resulting loss of use of Premises by Tenant. In the event of such partial acquisition and reduction in rent, Landlord shall make promptly at Landlord's expense, all necessary alterations and repairs that shall be required, to restore the Premises to a safe and usable condition.
21. **INDEMNITY AND LIABILITY.** Tenant shall indemnify and save Landlord harmless from any and all claims, damages, costs and expenses, including reasonable attorney's fees, arising from the management of the business conducted by Tenant on the Premises. Landlord shall not be liable, and Tenant waives all claims for damage to person or property sustained by Tenant, its employees or agents, resulting from the condition of the Premises, or any equipment, or such as may result from any accident in or about the Premises or which may result directly or indirectly from any act of neglect of any other Tenant of the property of which the Premises is a part.
22. **HOLDOVER.** Tenant shall surrender to Landlord, at the end of the term of this lease or upon cancellation of this lease, said Premises broom clean and in as good condition as the Premises were at the beginning of the term of this lease, ordinary wear and tear and damage by fire and windstorm or other acts of God excepted, or Tenant will pay to Landlord all damages that Landlord may suffer because of Tenant's failure to do so. Tenant will indemnify and save Landlord harmless from and against all claims made by any succeeding Tenant of said Premises against Landlord because of delay in delivering possession of Premises, so far as such delay is occasioned by failure of Tenant to so surrender Premises. If Tenant remains in possession of the Premises or any part thereof after the expiration of the Agreement, such holdover places the Tenant in default and the Monthly Base Rental shall be increased to one hundred fifty percent (150%) of the last month's Monthly Base Rental unless given a month to month tenancy in writing from the Landlord.
23. **EFFECTIVE DATE OF LEASE.** This Agreement shall become effective as a binding agreement only upon the execution and delivery thereof by both Landlord and Tenant. If this Agreement is signed by one party and submitted to the other party, then it shall constitute an offer to lease which is subject to revocation at any time prior to execution by the other party and delivery of a fully executed copy of the submitting party.
24. **NOTICES.** Tenant hereby appoints as Tenant's agent to receive service of all notices required under this Agreement as well as all dispossessory distraint notices, the person in charge of Premises or occupying said Premises, at the time notice is delivered. A copy of all notices under this Agreement shall also be sent via certified mail, return receipt requested, or via recognized overnight delivery company, to Tenant's and Landlord's last known address as follows (or to such other address as either party may specify by written notice):

Tenant Address: Madeline Ingalls

Landlord Address: DJR Richardson Realty Inc 1530 Trolley Road, Summerville, SC 29485

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25. **BANKRUPTCY.** If Tenant shall be adjudicated bankrupt or as insolvent or take the benefit of any Federal reorganization or make a general assignment or take the benefit of any insolvent law, or if a Trustee in bankruptcy or a receiver be appointed or elected for Tenant, under Federal or State law, this Agreement at the option of the Landlord shall expire and end seven (7) days after Landlord gives Tenant written notice, UNLESS, the Tenant's Trustee immediately cures any default of Tenant hereunder and provides (in compliance with Federal and State laws) adequate assurance of future performance of Tenant's obligations hereunder.

26. **BEYOND LANDLORD'S CONTROL.** None of the acts, promises, covenants, or obligations on the part of the Tenant to be kept, performed or not performed as the case may be, nor the obligation of the Tenant to pay Monthly Base Rental. Additional Rent or other charges or payments shall be in anywise waived, excused or affected by reason of the Landlord being unable at any time during the term of this Agreement, to supply, or to delay in supplying heat, light, elevator service or any other service expressed or implied on the part of the Landlord to be supplied; or by reason of the Landlord being unable to make any alteration, repairs, or decorations, or to supply any equipment or fixtures, or any other promise, covenant, or obligations on the part of the Landlord to be performed, if the Landlord's inability or delay is caused by circumstances or events beyond the Landlord's control.

27. **KEYS.** Landlord shall provide Tenant with one key per lock, and the Tenant is responsible for accounting for all keys provided or duplicated and shall return all keys of Premises to the Landlord upon termination or cancellation of this Agreement and/or Tenant vacating said Premises. Landlord shall have the right, if in the Landlord's sole judgment it is necessary, to require the Tenant at Tenant's expense to replace locks, and to supply Landlord with one key to the new locks. The Landlord shall retain a master key or pass key to the Premises, including all security locks and systems. Tenant shall not change or install new locks or security systems without written approval from Landlord.

28. **ESTOPPEL.** Tenant shall from time to time, within ten days following written notice from Landlord, execute, acknowledge and deliver to the Landlord a written statement certifying that this Agreement is in full force and effect. This statement should also state whether or not the Landlord is in default in performance of any covenant or condition of this Agreement or other such reasonable terms required by the Landlord, purchaser, or lender for either. The failure of the Tenant to execute, acknowledge and deliver to the Landlord a statement in accordance with this covenant shall constitute an acknowledgment by the Tenant that this lease is unmodified and in full force and effect, and shall constitute a waiver of any defaults by the Landlord which may have existed prior to the date of such notice.

29. **PEACEFUL POSSESSION.** Subject to the terms, covenants and conditions of this lease, the Tenant shall have, hold and enjoy possession of the Premises, subject to the rights of the holders of any mortgage which now covers said Premises or which may hereafter be placed on Premises by Landlord. Tenant's rights are also subject to any underlying lease now or later covering the entire property of which the leased property is a part. Tenant shall execute any necessary lease subordination agreement at the Landlord's request.

30. **DEFAULT.** If Tenant fails to pay Monthly Base Rental including Additional Rent on or before the due dates as herein stated (TIME IS OF THE ESSENCE) this Agreement shall be in default. If Tenant fails to cure such default within five (5) days after written notice from Landlord; or if Tenant shall be in default in performing any of the terms, covenants and conditions of this Agreement, other than the provision requiring the payment of Monthly Base Rental and Additional Rent, and fails to cure such default within thirty (30) days after the receipt of written notice of default from Landlord; or if Premises shall be abandoned or deserted for fifteen (15) days, or if this Agreement is assigned to any other person, firm, office or corporation, without the permission of Landlord as required in Paragraph 15 herein, this lease at the Landlord's option shall expire and terminate seven (7) days after Landlord delivers written notice to Tenant of such condition or default and Tenant shall immediately quit and surrender said Premises to Landlord. In the event of any such default or breach of performance, the Landlord without any further notice or demand of any kind to the Tenant, may terminate this lease and re-enter and forthwith repossess the entire Premises and without being liable for trespass or damage shall re-let, lease or demise the Premises to another Tenant without any hindrance or prejudice to Landlord's right to distrain for any past due rent, Additional Rent, and rent from the time of such default or termination until the Premises were leased or rented to another Tenant.

31. **ASSIGNMENT OF CHATTELS.** Tenant hereby pledges and assigns to Landlord all the furniture, fixtures, goods, equipment and chattels of Tenant which shall or may be brought or put on said Premises as security for the payment of said rent, and tenant agrees that said lien may be enforced by distraint or foreclosure, at the election of Landlord. It is understood and agreed that any merchandise, fixtures, furniture, or equipment left in the Premises when Tenant vacates

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Greener Pastures

shall be deemed to have been abandoned by Tenant and by such abandonment, Tenant relinquishes any right or interest therein and Landlord is authorized to sell, dispose of or destroy same.

32. ATTORNEY'S FEE. In the event Landlord successfully defends any action by the Tenant, or if it is necessary for Landlord to employ an attorney for the collection of rent or any other sum due hereunder, or to enforce any covenant of this lease, or the termination of this lease, or for the possession of the Premises or any part thereof the Tenant shall pay all costs, including reasonable attorney's fees.

33. AGENT. Tenant acknowledges that DJR Richardson Realty Inc is the leasing/management agent for the Landlord of the Premises. Tenant shall pay all rent payable under this lease to said agent. The right to collect said rentals shall be governed by the written agreement between Landlord and agent for the management of the Premises and shall terminate with the expiration of said management agreement or any renewal thereof.

34. SUBORDINATION, ATTORNMENT, AND NON-DISTURBANCE: Tenant agrees that this Agreement shall be subject and subordinate to any mortgages, deeds of trust or any ground lease now or hereafter placed upon the Premises and to all modifications thereto, and to all present and future advances made with respect to any such mortgage or deed of trust; provided however, that such mortgagee or ground lessor agrees not to disturb Tenant in its possession of the Premises so long as Tenant shall not be in breach or default under any of the terms and conditions of this Agreement. Tenant agrees to attorn to the mortgagee, trustee, or beneficiary under any such mortgage or deed of trust, and to the purchaser at a sale pursuant to the foreclosing thereof, and to the lessor in the event of a termination of any such ground lease.

35. DEFINITIONS. "Landlord" as used in this Agreement shall include the owner or owners of the property and/or the aforementioned managing agent as well as the Landlord's heirs, representatives, assigns and successors in title to Premises. "Tenant" shall include Tenant, Tenant's heirs and representatives, and if this lease shall be assigned or sublet, shall include also Tenant assignees or subleases, as to Premises covered by such assignment or sublease. "Agent" shall include agent, agent's successors, assigns, heirs and representatives. "Landlord," "Tenant," and "Agent," including male and female, singular and plural, corporation, partnership or individual, as may fit the particular parties. "Property" is defined as the land, lots, building improvements, and common areas as may be further defined herein, in which the Premises is included.

36. ENVIRONMENTAL MATTERS. Tenant represents, warrants and covenants to Landlord throughout the Term of this Agreement as follows that Tenant is and agrees to remain in compliance with all applicable federal, state and local laws relating to protection of the public health, welfare, and the environment ("Environmental Law") with respect to Tenant's use and occupancy of the Premises. Tenant agrees to cause all of its employees, agents, contractors, sublessees, assignees, and any other persons occupying or present on the Premises ("Occupants") to comply with all Environmental Laws applicable to their activities in and around the Premises.

37. AMERICANS WITH DISABILITIES ACT. Any other provision of this Agreement notwithstanding, the parties hereby agree that the Premises may be subject to the terms and conditions of the Americans with Disabilities Act of 1990 (hereinafter the "ADA"). The parties further agree and acknowledge that it shall be the sole responsibility of Tenant to comply with any and all provisions of the ADA, as such compliance may be required to operate the Premises. Tenant further agrees to indemnify, defend and hold Landlord harmless against any claims, which may arise out of Tenant's failure to comply with the ADA. Such indemnification shall include, but not necessarily be limited to reasonable attorney's fees, court costs and judgments as a result of said claims. Within ten (10) days after receipt, Tenant shall advise the Landlord in writing and provide with copies of (as applicable), any notices alleging violation of the Americans with Disabilities Act of 1990 ("ADA") relating to any portion of the Property of the Premises, any claims made or threatened in writing regarding noncompliance with the ADA and relating to any portion of the Property or of the Premises, or any governmental or regulatory actions or investigations instituted or threatened regarding noncompliance with the ADA and relating to any portion of the Property or of the Premises.

38. SPECIAL STIPULATIONS. Insofar as the following stipulations conflict with any of the provisions herein, the following stipulations shall control (use addendum if necessary): Tenant agrees to hold harmless and indemnify the landlord and property owners for any injuries or damages to persons, horses or property. Tenant will add Landlord to liability policy.

39. SOUTH CAROLINA LAW TO GOVERN. Tenant and Landlord agree that South Carolina law will govern the interpretation and enforcement of this Agreement.

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40. **ENTIRE AGREEMENT.** This lease contains the entire agreement between the parties hereto and all previous negotiations leading thereto, and it may be modified only by a dated written agreement signed by both Landlord and Tenant. No surrender of the Premises or of the remainder of the term of this lease shall be valid unless accepted by Landlord in writing. **TIME IS OF THE ESSENCE WITH REGARD TO ALL TERMS AND CONDITIONS IN THIS AGREEMENT.**

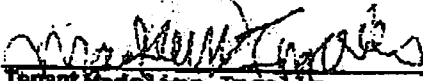
41. **FACSIMILE.** The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax and the signatures, initials, and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

42. **MEGAN'S LAW.** The Tenant and Landlord agree that the Property Manager or Real Estate Broker representing Tenant or Landlord and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry. The Tenant and Landlord agree that no course of action may be brought against the Property Manager or Real Estate Broker representing Tenant or Landlord and all affiliated agents for failure to obtain or disclose any information contained in the South Carolina Sex Offender Registry. The Tenant agrees that the Tenant has the sole responsibility to obtain any such information. The Tenant understands that Sex Offender Registry information may be obtained from the local sheriff's department or other appropriate law enforcement officials.

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

THE UNDERSIGNED HEREBY WARRANT THAT THEY OWN THE PROPERTY AND/OR HAVE THE AUTHORITY TO EXECUTE THIS AGREEMENT. THIS IS A LEGALLY BINDING AGREEMENT. OWNER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. OWNER ACKNOWLEDGES RECEIPT OF A COPY OF THIS AGREEMENT. OWNER AGREES TO RECEIVE COMMUNICATIONS FROM BROKER AT THE EMAIL ADDRESS, PHONE AND FAX NUMBER LISTED BELOW.

IN WITNESS WHEREOF, this agreement has been duly executed by the parties.

 11-10-10
Tenant Madeline Ingalls Date 11-10-10 Witness to Tenant _____
Tenant's Email Address: _____
Phone: _____ Fac: _____

Tenant _____ Date _____ Witness to Tenant _____
Tenant's Email Address: _____
Phone: _____ Fac: _____

 11-10-10
Landlord Dr. Richardson Realty, Inc Date 11-10-10 Witness to Landlord _____
Landlord's Email Address: drichardson@carolinarealty.com
Phone: (843) 419-1034 Fac: (843) 202-2940
LANDLORD'S AGENT AND COMPANY _____
TENANT'S AGENT AND COMPANY _____

Form **4835**Department of the Treasury
Internal Revenue Service (99)**Farm Rental Income and Expenses**
(Crop and Livestock Shares (Not Cash) Received by Landowner (or Sub-Lessor))
(Income not subject to self-employment tax)

▶ Attach to Form 1040 or Form 1040NR. ▶ See instructions.

Greener Pastures

OMB No. 1545-0072

2009Attachment
Sequence No. **37**

Your social security number

Employer identification number (EIN), if any

Douglas S & Julie D RichardsonA Did you actively participate in the operation of this farm during 2009 (see instructions)? ☒ Yes ☐ No**Part I Gross Farm Rental Income – Based on Production.** Include amounts converted to cash or the equivalent.

1	Income from production of livestock, produce, grains, and other crops	1	
2a	Cooperative distributions (Form(s) 1099-PATR)	2a	
2b	Taxable amount	2b	
3a	Agricultural program payments (see instructions)	3a	
3b	Taxable amount	3b	
4	Commodity Credit Corporation (CCC) loans (see instructions):		
a	CCC loans reported under election	4a	
b	CCC loans forfeited	4b	
4c	Taxable amount	4c	
5	Crop insurance proceeds and federal crop disaster payments (see instructions):		
a	Amount received in 2009	5a	
5b	Taxable amount	5b	
c	If election to defer to 2010 is attached, check here ☐	5d	Amount deferred from 2008
5d		5d	
6	Other income, including federal and state gasoline or fuel tax credit or refund (see instructions)	6	3,050.
7	Gross farm rental income. Add amounts in the right column for lines 1 through 6. Enter the total here and on Schedule E (Form 1040), line 42	7	3,050.

Part II Expenses – Farm Rental Property. Do not include personal or living expenses.

8	Car and truck expenses (see Schedule F instructions). Also attach Form 4562	8	
9	Chemicals	9	
10	Conservation expenses (see instructions)	10	
11	Custom hire (machine work)	11	
12	Depreciation and section 179 expense deduction not claimed elsewhere	12	0.
13	Employee benefit programs other than on line 21 (see Schedule F instructions)	13	
14	Feed	14	
15	Fertilizers and lime	15	
16	Freight and trucking	16	
17	Gasoline, fuel, and oil	17	
18	Insurance (other than health)	18	
19	Interest		
a	Mortgage (paid to banks, etc)	19a	
b	Other	19b	
20	Labor hired (less employment credits) (see Schedule F instructions)	20	
21	Pension and profit-sharing plans	21	
22	Rent or lease:		
a	Vehicles, machinery, and equipment (see instructions)	22a	
b	Other (land, animals, etc)	22b	
23	Repairs and maintenance	23	50.
24	Seeds and plants	24	150.
25	Storage and warehousing	25	
26	Supplies	26	75.
27	Taxes	27	11.
28	Utilities	28	
29	Veterinary, breeding, and medicine	29	
30	Other expenses (specify):		
a	HOA	30a	125.
b		30b	
c		30c	
d		30d	
e		30e	
f		30f	
g		30g	
31	Total expenses. Add lines 8 through 30g (see instructions)	31	411.
32	Net farm rental income or (loss). Subtract line 31 from line 7. If the result is income, enter it here and on Schedule E, line 40. If the result is a loss, you must go to line 33	32	2,639.
33	If line 32 is a loss, check the box that describes your investment in this activity (see instructions)	33a	All investment is at risk
c	You may have to complete Form 8582 to determine your deductible loss, regardless of which box you checked (see instructions). If you checked box 33b, you must complete Form 6198 before going to Form 5582. In either case, enter the deductible loss here and on Schedule E, line 40	33b	Some investment is not at risk
		33c	

BAA For Paperwork Reduction Act Notice, see instructions.

FD-21101

Form 4835 (2009)

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Greener Pastures, LLC

Income and Expense Detailed Report from 01/01/2002 to 04/04/2008

	<u>Amount</u>
<u>Income</u>	
Rent	
Land	
01/25/2004	\$1,500.00
Jan-June @ \$250/mo	
12/01/2004	\$1,650.00
Jul-Dec \$275/mo	
01/15/2005	\$250.00
02/15/2005	\$250.00
03/15/2005	\$250.00
04/15/2005	\$250.00
05/15/2005	\$250.00
06/15/2005	\$250.00
07/15/2005	\$275.00
08/15/2005	\$275.00
09/15/2005	\$275.00
10/15/2005	\$275.00
11/25/2005	\$275.00
Ck# 2392,2393	<u>\$275.00</u>
Sub total for Land:	\$6,025.00
None	
06/05/2003	\$150.00
Reduced Rent	
07/10/2003	\$150.00
Reduced Rent	
08/15/2003	\$250.00
Rent	
09/05/2003	<u>\$250.00</u>
Rent	<u>\$800.00</u>
Sub total for None:	\$6,825.00
Total Rent:	<u>\$6,825.00</u>
<u>Total Income:</u>	<u>\$6,825.00</u>

Account owner: Doug Richardson

Printed on Friday, April 4, 2008

Greener Pastures, LLC

Income and Expense Detailed Report from 01/01/2002 to 04/04/2008

<u>Expenses</u>	<u>Amount</u>
Chemicals	
None	
05/07/2004	
Sprayer and weed control	\$30.58
Sub total for None:	\$30.58
Total Chemicals:	\$30.58
Equestrian	
Dues	
01/01/2004	
	\$25.00
Sub total for Dues:	\$25.00
None	
03/11/2004	
Ck# 1279	\$133.35
Epicureans Auction Meals	
Sub total for None:	\$133.35
Total Equestrian:	\$158.35
Insurance	
None	
04/19/2004	
Goetz	\$523.00
Sub total for None:	\$523.00
Total Insurance:	\$523.00
Landscaping	
None	
11/04/2004	
5 Tons Limestone (LowContry Dirt & Landscape	\$201.60
07/19/2005	
Ck# 1386	\$219.42
Gravel for driveway	
Sub total for None:	\$421.02
Total Landscaping:	\$421.02
Legal	
Gov't fees	
03/12/2003	
LLC Filing	\$110.00
03/12/2003	
LLC Name Reservation	\$25.00
Sub total for Gov't fees:	\$135.00
Total Legal:	\$135.00

Account owner: Doug Richardson

Printed on Friday, April 4, 2008

Greener Pastures, LLC

Income and Expense Detailed Report from 01/01/2002 to 04/04/2008

<u>Expenses</u>	<u>Amount</u>
Survey	
None	
10/03/2002	
Ck# 1004	\$550.00
Resurvey of 124 Saddle Trail	
Sub total for None:	<u>\$550.00</u>
Total Survey:	<u>\$550.00</u>
Taxes	
County	
01/18/2005	
2004	\$495.33
12/21/2005	
Ck# 1478	\$558.35
2005	
Sub total for County:	<u>\$1,053.68</u>
Total Taxes:	<u>\$1,053.68</u>
<u>Total Expenses:</u>	<u>\$2,871.63</u>
<u>Total Net Income:</u>	<u>\$3,953.37</u>

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John R. Polito
Attorney at Law

(843) 797-3234

106 Aldrich Place
Goose Creek, SC 29445

johnpolito@comcast.net

July 2, 2009

Douglas S. and Julie D. Richardson
124 Saddle Trail
Summerville, SC 29483

Personal & Confidential

Re: Three Violations of Senrab Farms Restrictive Covenants
Tract B Cease and Desist Request

Dear Mr. & Mrs. Richardson:

I represent Larry E. Kinard in regard enforcement of Senrab Farms Restrictive Covenants mandating that Tract L "shall be used as a single family residential building tract." We have discovered that Tract B, a 5.83 acre portion of original subdivision Tract L, with the subdivision plat being recorded on April 1, 2003, has been advertised on the Internet in photographs as being part of Senrab Equestrian Center (see photos at <http://senrabfarm.com/>).

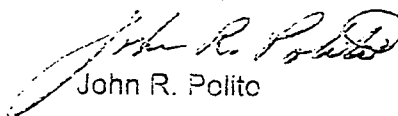
Additionally, Tract L's original covenants limited the tract to 6 horses. There have been numerous days where a greater number of horses were counted.

Additionally, when Tract L was subdivided in 2003, it was required to be done in accordance with the original restrictive covenants dated September 9, 1997, which destroyed all additional horse rights granted to Tract L on February 25, 1998, as Tract L no longer existed. Thus, Tract A and Tract B are like any other Senrab lots and subject to Paragraph 13(c), which limits horse ownership to one (1) horse.

We respectfully request that you cease and desist in using residentially restricted Tract B as an equestrian center and that you comply with Senrab Farm Restrictive Covenants as to the number of horses allowed on any subdivided lot. Please also take note that Dorchester County zoning places limits on the number of horses on residential lots, and those limits are also being exceeded.

If you have questions, I'm available to discuss this matter with either of you or your attorney.

Sincere regards,


John R. Polito

JRP/wp

cc: Mr. Larry E. Kinard

Enclosures: Original (11 pages) and Amended (3 pages) Restrictive Covenants

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FILED/RECORDED
November 10, 2010
DORCHESTER COUNTY
REGISTER OF DEEDS

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

AMENDMENT OF RECIPROCAL COVENANTS

WHEREAS, a dispute arose regarding the meaning of the term "agricultural purposes" as used in numbered paragraph 2 of the Reciprocal Covenants signed by James M. Barnes, Delene B. Barnes, James L. Madison, III and Helen R. Madison, dated October 1, 1992 and recorded in Dorchester County RMC Office in Book 1051, Page 053 (hereafter "Reciprocal Covenants");

WHEREAS, Larry E. Kinard, a Senrab Farms lot owner and partial successor in interest to James M. Barnes and Delene B. Barnes commenced Dorchester County Civil Action No.: 2009-CP-18-3315 against Hoa Van Nguyen and Xuan Thi Nguyen, as successors in interest to all lands encumbered by paragraph 2 of the Reciprocal Covenants, which suit in part alleged breach of the "Reciprocal Covenants";

WHEREAS, Hoa Van Nguyen and Xuan Thi Nguyen answered and counterclaimed alleging slander of title and abuse of process;

WHEREAS, the counterclaims precipitated the insurance coverage declaratory judgment questions presented in Owners Insurance Company vs. Larry E. Kinard, Town of Summerville, Hoa Van Nguyen, Xuan Thi Nguyen, et al, filed in United States District Court in the Charleston Division as C.A. No: 2:10-CV-1681;

WHEREAS, Daniel Buerge, a second Senrab Farms lot owner filed Dorchester County Civil Action Number 2010-CP-18-844, which in part alleged breach of the Reciprocal Covenants by Hoa Van Nguyen and Xuan Thi Nguyen, as successors in interest to all lands encumbered by paragraph 2;

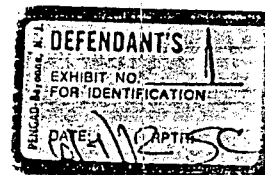
WHEREAS the parties have reached agreement as to the meaning of "agricultural purposes" within Reciprocal Covenants paragraph 2, and to dismissal of all claims between them;

NOW THEREFORE, for and in consideration of each party above named having agreed through their attorneys to dismiss all claims against each other, with each bearing their own expenses, costs and attorney's fees, and in further consideration of Larry E. Kinard having agreed not to seek reimbursement or contribution from Hoa Van Nguyen or Xuan Thi Nguyen for any attorney fees or costs associated with Owners Insurance Company vs. Larry E. Kinard, Town of Summerville, Hoa Van Nguyen, Xuan Thi Nguyen, et al, filed in United States District Court in the Charleston Division as C.A. No: 2:10-cv-1681, and in further consideration of the sum of One Dollar (\$1.00), by each to the other paid, the receipt and sufficiency of which is hereby acknowledged, Hoa Van Nguyen and Xuan Thi Nguyen (Declarants), hereby amend numbered paragraph 2 of the Reciprocal Covenants by adding the following language to the end of the paragraph:

Turn To:

John R. Polito, Esq.
106 Aldrich Place
Goose Creek, SC 29445

396



The phrase "agricultural use," as used above, shall include the raising of crops and the keeping and raising of farm animals. Specifically in regard to horses (which shall include ponies), "agricultural" shall mean that the barn, stable and pasture at 125 Saddle Trail, Summerville, South Carolina, TMS # 136-00-00-183 (above referred to as Tracts A and B but now combined into a single lot herein referred to as the "Property") may be leased solely to individuals wishing to board their personal horses upon the Property, that the Property shall not accommodate more than ten (10) horses at any one time, and that no riding lessons, horse sales or horse rental, or any other form of commercial activity shall be permitted or conducted upon the Property.

The balance of the original Reciprocal Covenants shall remain unchanged.

TMS # 136-00-00-183
125 Saddle Trail, Summerville SC 29483

Being an amendment clarifying and imposing additional limitations to the original Reciprocal Covenants executed on October 1, 1992 and recorded in the RMC Office for Dorchester County in Book 1051 Page 053, which shall bind the Declarants, their heirs and assigns.

Witness the Declarants' hands and seals this 17th day of November, 2010.

WITNESSES:

Mary J. Lent
[Signature]

DECLARANTS:

[Signature]
Hoa Van Nguyen
[Signature]
Xuan Thi Nguyen

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

PERSONALLY appeared before me the first witness who signed above and made other that s(he) with the second witness saw the Declarants named above sign and deliver this instrument as their act and deed.

SWORN to before me on 17th
November, 2010

[Signature]
Notary Public for South Carolina
My commission expires: 4-13-2011

Mary J. Lent



Recording Date: 11/30/2010

Instrument: 3

Book: 7719 Page: 8-10

FILED-RECORDED

RMC / ROD

2010 Nov 30 AM 9:53:19

DORCHESTER COUNTY

SC Deed Rec Fee: .00

Dor Co Deed Rec Fee: .00

Filing Fee: 10.00

Exemption #:

MARGARET L. BAILEY

Register of Deeds



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ANY OTHER PURPOSE.

REGISTER OF DEEDS
DORCHESTER COUNTY SOUTH CAROLINA
MARGARET L. BAILEY, REGISTER
POST OFFICE BOX 38
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843-563-0181 or 843-832-0181

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
) CERTIFIED FOR THE FIRST JUDICIAL CIRCUIT
)
 COUNTY OF DORCHESTER) Civil Action Number: 2009-CP-18-3315
)
) 2012 OCT -9 AM 9: 39

Larry E. Kinard,

Charles H. Kinard
)
) CLERK OF COURT
) DORCHESTER COUNTY)
) Plaintiff)

vs.

Douglas S. Richardson & Julie D. Richardson,

Defendants.

) NOTICE OF MOTION AND MOTION
) TO RECONSIDER AND ALTER
) OR AMEND ORDER OF JUDGMENT
) OR ALTERNATIVELY A NEW TRIAL
)
)
)
)

TO: Douglas S. Richardson and Julie D. Richardson, by and through their attorney P. Brandt
 Shelbourne, Esquire:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, by and through his undersigned attorney, will and does hereby move the Honorable Matie D. Murphy pursuant to SCRCP 59(a) and 59(e) to open, amend and/or alter the Master's Judgment dated September 28, 2012 and received October 1, 2012 for the reasons stated below, and alternatively for a new trial, as the Order relies heavily upon the unpled affirmative defense of lack of privity of contract. This Motion shall be heard before the Dorchester County Master-In-Equity at the Courthouse in St. George, on the tenth (10th) day after the filing of this Motion, or as soon thereafter as Plaintiff may be heard. This motion will be supported by memorandum, applicable law, argument if permitted, affidavits, and any other materials properly submitted to the Court. This Motion has been timely filed.

Plaintiff's Declaratory Judgment action alleges that Senrab Farm restrictive covenants state that the lots shall be known, designated and used as single-family residential building lots, that the Richardsons leased subdivided Tract B for equestrian center operations, that leasing of restricted lands in support of commercial business operations violates the express

terms of the covenants, and Defendants have also violated the covenants by having 6 horses on Tract B and sometimes more. Plaintiff sought a declaration of breach of covenants and an injunction against "use of Tract B for other than residential purposes, for commercial equestrian purposes, and from having more horses than permitted under the covenants."

Respectfully, Plaintiff contends that the Master's Order errs in the following regards:

1. **Equestrian Center a Residential Use:** In alternatively holding that although "the original Restrictive Covenants state that the property shall be used as single-family residential building lots, [the Covenants do] not prohibit the leasing of real property or having horses on that leased real property" (Pg. 6, Ln 1-3), that this residential use restriction [which is also stated in paragraphs 5 and 6 of the Amendments to Restrictions] does not prohibit "Defendants from leasing their property for equine use" (Pg. 5, Ln 1-3), including "horse grazing and other equine activities" (Pg. 7, Ln. 15-17).

On its face, this holding contradicts the clear meaning and intent of the residential use restriction. Moreover, when the Covenants are read as a whole, the right to "keep" a horse is clearly ancillary to and dependent upon lots being used as single-family residential building lots. The Defendants admit to not owning any horses. The entirety of Tract B was leased for use as part of Senrab Equestrian Center (Plaintiff's Exhibits 12-15), and subsequently leased as "~6 acs at 124 Saddle Trail" under a "Commercial Lease" dated January 19, 2010 (Plaintiff's Exhibit 36).

2. **Compliance Declaration:** In alternatively holding that "The Defendants are in compliance with the Amendment to Restrictions, and said restrictions that are applicable to the Defendants, do not specifically prohibit the conduct complained of by the Plaintiff" (Pg. 2, Ln 2-5), that "Defendants' lease of that property is not a commercial business operation excluded

by the original Restrictive Covenants” (Pg. 7, Ln 6-9). This holding is contrary to the undisputed evidence at trial indicating: (1) that Defendants incorporated Greener Pastures, LLC and used the LLC to make income and expense tax deductions from 2002 through 2009; (2) that Defendants' residentially restricted lot was pictured and advertised on the Internet as a grass pasture for Senrab Equestrian Center where horses were being sold [Plaintiff's Exhibits 12-15]; (3) that a “Commercial Lease” of Defendants' subdivided 6 acre was executed on January 10, 2010 granting horse grazing and customer parking rights, and impliedly granting horse riding rights for purposes other than riding lessons.

3. **Missing Findings:** In failing to make findings as to: (a) the specific uses which occurred on Tract B (creation of Green Pastures LLC for farm income and tax deductions, Internet advertising of Tract B being part of Senrab Equestrian Center with advertised horse sales, and entering into a commercial lease which allowed grazing, riding and customer parking); (b) the impact of those uses upon Plaintiff (traffic, noise, odors, insects, dust and litter); and (c) whether the seven (7) horses pictured in photos submitted into evidence violate the restrictions. Findings that enable balancing of the equities would diminish risk of remand.

4. **Unpled Affirmative Defense:** In blind-siding and depriving Plaintiff of fundamental due process by reliance upon an unpled and unargued affirmative defense that was not raised during trial, that Plaintiff cannot enforce the covenants”(Pg 5, ¶1) due to the Court finding that “Plaintiff is not in privity of contract with Defendants” (Pg 4, Ln. 20) because the developers (the Barnes) “did not take any steps to amend the original Restrictive Covenants that applied to Plaintiff's property to include this new property within that subdivision” (Pg 3, Ln 1-4).

The evidence presented by Plaintiff at trial was aimed at the issues pled. Contrary to any suggestion that the Defendants' lot is not part of Senrab Farm subdivision, Mr. Richardson

testified at trial that he is a past-president of Senrab Farm HOA and that his wife Julie Richardson is currently an officer, and Exhibit 37 indicates payment of the HOA Assessment.

Plaintiff respectfully requests that the Court alter and/or amend the judgment so that the Court's primary holding is not rooted in an unpled affirmative defense. Alternatively Plaintiff would request an opening of the judgment and a hearing of evidence on the affirmative defense, as this ruling will effectively destroy the eighteen (18) lot residential subdivision known as Senrab Farm. If granted and allowed, Plaintiff will introduce deeds showing that subsequent to imposing the Restrictive Covenants upon the initial six lots (D, E, F, G, H, and I) on September 8, 1997 (Plaintiff's Exhibit 2, Pg. 11), that it was the developers (the Barnes) practice, as with the Richardsons' deed, to make subsequently deeded lots subject to the Restrictive Covenants by deed not amendment.

If allowed to stand, this Judgment effectively proclaims that subsequent Senrab Farm lot owners are not part of Senrab Farm and need not comply with the original restrictions recited in their deed because the Barnes did not amend the Restrictive Covenants so as to make their lot subject to them. Plaintiff would also present evidence that Senrab Farm streets are private roads, that Saddle Trail is unpaved, that title to the subdivision roads and common area (subdivision entrance) remained in the Barnes until after the final subdivision lot was sold, and that Section 16 of the Restrictive Covenants creates lot owner Road Maintenance Assessment payment obligations. This holding effectively declares that only the original six lots are responsible for paying to maintain the private roads, that they lack standing to enforce the Road Maintenance Assessment against subsequent lot purchasers, stripping subsequent lot purchasers of the maintenance burden, including the burden of paying for road wear attributable to the Richardsons' equestrian center patrons and customers.

5. **Blue Penciling Defendants' Deeds:** In blue penciling the original Restrictive Covenants

from Defendants' chain of title by holding that "Defendants' property is not made subject to the original covenants and restrictions of the neighborhood" (Pg 2, Ln 2-3; also see Pg 4, Ln 13-15) as stated in Defendants' deed, that "the original Restrictive Covenants must be amended before they apply to the additional property," that "[p]aragraph one of the original Restrictive Covenants specifically states that a separate legal instrument would be required to bring additional property within the Restrictions," that "[t]his was never done" (Pg 3, Ln 13-18).

Numbered paragraph 1 of the Restrictive Covenants (Plaintiff's Exhibit 2) states in part that "the term 'Lots' shall refer to ... lots made subject to the provisions of this instrument by separate legal instrument recorded in the Dorchester RMC Office." Both Defendants' predecessor's deed (Plaintiff's Exhibit 6) and Defendants' Deed (Plaintiff's Exhibit 10): (a) declare each deed to be an "instrument" (see Exhibit 6, Pg 2: "The forgoing instrument ..."); (b) indicate RMC Office recording; (c) recite in Exhibit "A" attached to Defendants' predecessor's deed that the conveyance is "SUBJECT TO: Restrictive Covenants dated September 8, 1997 and recorded in the RMC Office for Dorchester County in Book 1821, Page 331" [the original Restrictive Covenants – Plaintiff's Exhibit 2] and "Amendment to restrictions dated February 25, 1998 and recorded simultaneously herewith"; and (d) each deed twice indentifies the property being conveyed as "Tract L, **Senrab Farms.**" Defendants' deed also recites being subject to the restrictive covenants recorded in Book 1821, Page 331 (the original Restrictive Covenants) and Book 1915, Page 263 (Amendment to Restrictions).

6. **Blue Penciling an Admittedly Invalid Amendment:** In holding that "the document entitled 'Amendment to Restrictions' is actually an original restriction on the Defendants' property" (Pg. 3, last 2 lines through Pg. 4, Ln. 1-2). The Court correctly holds that the Barnes' lacked the majority lot ownership interests necessary to "unilaterally" amend the Restrictive Covenants pursuant to Section 18 (see the six original deeds at Plaintiff's Exhibit 3, each

dated prior to purported amendment). But it is error of law to rewrite, blue pencil and transform what is acknowledged to be an invalid amendment (that also creates non-uniform and thus unlawful subdivision restrictions) into valid single-owner subdivision restrictions, which Senrab Farm lot owners lack privity of contract to enforce.

Moreover, the Court's holding does more than simply blue pencil the instrument's "Amendment to Restrictions" title. Respectfully, it erases from the failed amendment language stating that: (a) "**EXCEPT AS HEREINABOVE MODIFIED AND SET OUT**, and by acceptance hereof, undersigned do hereby agree and consent that the **property shall be restricted in accordance with** the restrictive covenants, dated September 8, 1997 and recorded in the RMC Office for Dorchester County in **Book 1821, Page 331**"; (b) "It shall be **permissible** for the Purchaser to **subdivide** the property described herein **as set out in Paragraph 5** of the **restrictive covenants**, dated September 9, 1997 and recorded in the RMC Office for Dorchester County in **Book 1821, Page 331** in **so that such subdivided lot shall be used as a single family residential building lot**" and (c) erases the fact that Exhibit "A" identifies the "Property Affected" as "Tract L, **Senrab Farms**" (emphasis added).

Defendants' subdivided Tract "L" (Plaintiff's Exhibit 5) into Tracts A and B on or about March 15, 2003 (Plaintiff's Exhibit 11). Their deed (Plaintiff's Exhibit 10) was expressly made subject to the original Restrictive Covenants. Paragraph 5 of those Covenants expressly authorized Defendants' March 15, 2003 subdivision. Still, both the original restrictions and purported amendment forbid any subdivided lot from being used for any purpose other than as a single family residential building lot.

7. **Amendment Was Only Restriction:** In holding that "[t]he document entitled 'Amendment to Restrictions' was the first and only Restriction placed on the property" (Order, Pg. 4, Ln. 9-10) when both Defendants and their predecessor's deeds recite that each deed is

"subject to" the restrictive covenants recorded in RMC Office for Dorchester County in "Book 1821, Page 331" (Plaintiff's Exhibit 2: original Restrictive Covenants).

8. **Blue Penciling Original Restrictions:** In finding that Barnes "can make property he is developing subject to identical Restrictive Covenants" ... [but] ... "[i]t does not follow however, that because he uses the same language, property owners in one subdivision can enforce restrictions in a separate subdivision." This attempt to justify Defendants' deed stating that it is "SUBJECT TO" the original Restrictive Covenants requires substantial blue penciling of the original covenants, including Plaintiff's right as an owner of Lot F to enforce them.

9. **Number of Horses:** In holding that the Amendment to Restrictions expressly allow up to 6 horses, and "Defendants are permitted to have up to six (6)" (Order Pg. 6, ¶2), when either Defendants' subdivision of Tract L or the invalid amendment limit Tract B to 1 horse, and when Plaintiff's Exhibits 26 and 28 clearly show 7 horses upon Defendants' subdivided lot.

The Restrictive Covenants allow lot owners to keep up to 1 horse (Exhibit 2, ¶13c). While declaring the attempt to amend invalid, the court blue pencils survival of the right to keep up to 6 horses, while failing to declare 7 a breach. Even if the purported Amendment was valid, Paragraph 6 allows the "Purchaser to subdivide the property described herein as set out in Paragraph 5 of the restrictive covenants ... recorded in ... Book 1821, Page 331." Defendants chose to subdivide Tract L into Tract "A", their home site, and Tract "B", which was leased as an equestrian center. The intent of Paragraph 6 is clear. Subdivision must be in accordance with the original restrictions, which only permit 1 horse per lot. To rule otherwise would allow Defendants 6 horses on Tract "A" and 6 on Tract "B", with 6 additional horses with each additional subdivision.

Respectfully submitted,

Attorney for Plaintiff Larry E. Kinard

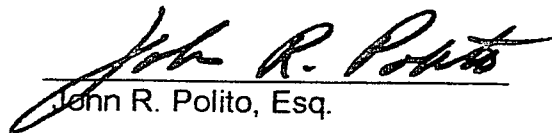

John R. Polito, Esq. (SC Bar #4491)
106 Aldrich Place
Goose Creek, SC 29445
(843) 797-3234
johnpolito@comcast.net

Goose Creek, South Carolina
October 9, 2012

Certificate of Service

I, John R. Polito, hereby certify that I have this 9th day of October, 2012 served a copy of Plaintiff's above Motion to Reconsider upon Defendants by depositing a copy of the same in the U.S. Mail, postage prepaid, addressed to their attorney of record at the following address:

**P. Brandt Shelbourne, Esquire
131 E. Richardson Avenue
Summerville, SC 29483**


John R. Polito, Esq.

Goose Creek, South Carolina
October 9, 2012

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER) FOR THE FIRST JUDICIAL CIRCUIT
Civil Action Number: 2009-CP-18-3315

Larry E. Kinard,

Plaintiff,

vs.

Douglas S. Richardson & Julie D. Richardson,

Defendants.

**MEMORANDUM OF LAW IN
SUPPORT OF PLAINTIFF'S MOTION
TO RECONSIDER AND ALTER
OR AMEND ORDER OF JUDGMENT
OR ALTERNATIVELY A NEW TRIAL**

Plaintiff Larry E. Kinard submits the following Memorandum of Law in support of his motion to reconsider and alter or amend the Master's Order dated September 28, 2012, or alternatively for a new trial. The below numbered points correspond to the errors outlined in Plaintiff's Motion

1. **Equestrian Center Not a Residential Use:** The original Restrictive Covenants state that the "lots are known and designated and shall be used as single-family residential building lots" (Exhibit 2, ¶5). The Amendment to Restrictions states that "[t]he property shall be designated and shall be used as a single family residential building tract" (Exhibit 7, ¶5) and that the purchaser may subdivide the property as described in Paragraph 5 of the original Restrictive Covenants, "in so that each subdivided lot shall be used as a single family residential building lot" (Exhibit 7, ¶6).

Respectfully, Your Honor correctly cites Taylor v. Lindsey, 332 S.C. 1, 498 S.E.2nd 862 (1998) for the general rule that the "clear meaning" of a restriction controls, and then stands both Taylor and the residential use restriction on its head in using non sequitur to hold that because the restrictions do not prohibit the leasing of real property or the keeping of horses on

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DORCHESTER COUNTY

leased property (Pg. 6, Ln 1-3), that they do not prohibit “Defendants from leasing their property for equine use” (Pg. 5, Ln 1-3), including “horse grazing and other equine activities” (Pg. 7, Ln. 15-17).

“The court may not limit a restriction in a deed, nor, on the other hand, will a restriction be enlarged or extended by construction or implication beyond the clear meaning of its terms.” Forest Land Co. v. Black, 216 S.C. 255 at 262, 57 S.E.2d 420 at 424 (1950).

A restriction on the use of the property must be created in express terms or by plain and unmistakable implication. Hardy v. Aiken, 369 S.C. 160 at 166, 631 S.E.2d 539 at 542 (2006). Restrictions on the use of property will be strictly construed with all doubts resolved in favor of free use of the property; however the rule of strict construction should not be used to defeat the plain and obvious purpose of the restrictive covenants. Taylor v. Lindsey, 332 S.C. 1, 4, 498 S.E.2d 862, 863 (1998). The language of a restrictive covenant is to be construed according to the plain and ordinary meaning attributed to it at the time of execution. Id.

The phrase “lots are known and designated and shall be used as single-family residential building lots” is clear and unambiguous. The word “known” means “recognized” or “understood,” the word “designate” means “to set apart for a purpose or duty,” and the word “use” means the “state of being employed.” Black's, Fifth Edition.

Common usage of the word “residential” means: (1) “used as a residence or by residents”; (2) “restricted to or occupied by residences, a residential neighborhood”; and (3) “of or relating to residence or residences.” Merriam-Webster.com. The word “building” means a “structure or edifice inclosing a space within its walls ...” Black's, Fifth Edition.

The word “shall” makes compliance mandatory, that lots must be used as single-family residential building lots.

The March 15, 2003 plat of Defendants' land (Plaintiff's Exhibit 11) shows seven acre Tract L being subdivided into Tract "A", a 1.18 acre lot upon which Defendants' home is located, and Tract "B", a 5.83 acre undeveloped lot. The Commercial Lease dated January 10, 2010 leases the entirety of Tract "B" in describing it as "~ 6 acs at 124 Saddle Trail." As seen on Plaintiff's Exhibits 14, 15, 18, 23- 30, 34, 35, there is no residential building on Tract B. Tract B is not being used as a single-family residential building lot. It is being leased and used exclusively for commercial equestrian activities that include horse grazing, horse riding, horse sales and customer parking.

The clear and obvious intent of the covenants is that the right to "keep" horses is ancillary to and predicated upon lots being used as a single-family residential building lots. While the covenants contain no prohibition upon leasing a lot, the uses made under the lease must be ancillary to use of the lot as a single-family residential building lot. For example, while the covenants permit lot owners to keep cars, clearly the residential use restriction protects the neighborhood against use of a lot as an automobile dealership or commercial parking lot.

Also, Your Honor declares that Defendants may engage in "other equine activities." With due respect, is Your Honor declaring that Tract "B" can be used as a horse riding school, for horse auctions, for equestrian jumping competitions or as a packing plant for horsemeat?

2. Compliance Declaration: Your Honor holds that "Defendants' lease of that property is not a commercial business operation excluded by the original Restrictive Covenants" (Pg. 7, Ln 6-9). While Plaintiff is only required to show is that Defendants' use of Tract B is other than as a single-family residential building lot, Defendants incorporated Greener Pastures, LLC and used the LLC to report "Farm Rental Income and Expenses" tax deductions from 2002 through 2009 (Plaintiff's Exhibit 37). Tract B was advertised on the Internet as a grass pasture for Senrab Equestrian Center where horses were being sold (Plaintiff's Exhibits 12-15). The

entirety of Tract B was leased under a "Commercial Lease" that granted horse grazing and customer parking rights, and impliedly granted horses riding rights for purposes other than riding lessons (Plaintiff's Exhibit 36).

"Commercial" is defined as "relates to or is connected with trade and traffic or commerce in general." Black's, Fifth Edition. "Business" is defined as "commercial activity engaged in for gain or livelihood. Activity or enterprise for gain, benefit, advantage or livelihood." Black's, Fifth Edition.

A farm is a business, an LLC is a business, and a "commercial lease" is obviously commercial. Defendants openly admit to owning no horses and to receiving income in exchange for horse grazing, riding and vehicle parking rights. Whether simply viewed as trading grazing rights for money, the use is commercial, not residential. Additionally, Defendants' tax returns show a net "Greener Pastures LLC" gain from 2002 through 2009 (Plaintiff's Exhibit 37).

As lot owners, clearly Defendants are not only accountable for their commercial lease but all activities that their lease of Tract B expressly or impliedly allows.

3. Missing Findings: As noted in Plaintiff's Motion, the Court has failed to make findings as to: (a) the specific uses which occurred on Tract B, (b) the impact of those uses upon parties so as to permit balancing of the equities; (c) whether the seven horses pictured in photos submitted into evidence violate the restrictions. Additionally, in light of the Court's holding, the Court failed to make findings as to the subdivision interests owned and held by the developers (the Barnes) on February 25, 1998 (title to all roads and the common area as stated in the original restrictions, and residual property subdivided and sequentially lettered as subdivision lots on December 29, 1997, as shown on Plaintiff's Exhibit 5), the date Tract L was

deeded.

SCRCP Rule 52(a) states that "the court shall find the facts specifically and state separately its conclusions of law thereon ..." Failure to make basic and fundamental findings such as the uses Defendants made of Tract B and the impact of those uses upon the Plaintiff denies the appellate court of the foundation facts needed to test the validity of the Master's conclusions or to balance the equities between the parties.

"Proper appellate review is extremely difficult, if not impossible, where a lower court order omits specific findings of fact to support its legal conclusions." "[W]e believe that strict compliance with the rule promotes the administration of justice at every judicial level. We echo the sentiments of the court in Atkinson, and recognize that a trial courts specific findings of fact and conclusions of law are critical to meaningful appellate review. We do not intend to unnecessarily increase our trial courts substantial existing burdens, but instead our goal is to seek greater efficiency in the "administration of justice" by facilitating proper appellate review." See fn 3 in In re Care and Treatment of Corley, 365 S.C. 252, 616 S.E.2d 441 (S.C.App. 2005).

4. **Unpled Defenses:** As noticed in Plaintiff's Motion, Plaintiff has been blind-sided and deprived of due process by Your Honor's finding and reliance upon an unpled and unargued defense not raised during trial, that Plaintiff cannot enforce the covenants"(Pg 5, ¶1) due to the Court finding that "Plaintiff is not in privity of contract with Defendants" (Pg 4, Ln. 20) because the developers (the Barnes) "did not take any steps to amend the original Restrictive Covenants that applied to Plaintiff's property to include this new property with that subdivision" (Pg 2, Ln 1-4). This after Mr. Richardson testified at trial that he is a past-president of Senrab Farm HOA and that his wife Julie Richardson is currently an officer.

Rule 8(c), SCRCP states, "In pleading to a preceding pleading, a party shall set forth affirmatively the defenses ... and any other matter constituting an avoidance or affirmative defense. Rule 12(b), SCRCP states that "Every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in a responsive pleading thereto if one is required ..."

Whether the Court's order is construed as finding a lack of privity or a lack of standing, neither was raised by Defendants as either a defense or affirmative defense, and both are contrary to Defendant Julie Richardson's current standing as a Senrab Farm HOA officer. Douglas Richardson never once asserted or contended while testifying that his property was not a part of Senrab Farms.

This finding by Your Honor is rooted in the underlying error of fact that the only way to make lots subject to the Restrictive Covenants is by formal amendment (see Plaintiff's Exhibit 2, ¶1), and an error of law that lots cannot be made subject to the covenants via recorded deed, contrary to Martin v. Floyd, 282 S.C. 47, 317 S.E.2d 133 (Ct. App. 1984) and Santoro v. Schulthess, 384 S.C. 250, 681 S.E.2d 897 (S.C.App. 2009).

In McDonald v. Welborn, 220 S.C.10, 66 S.E.2nd 327 (1951) the developer failed to sign, witness or probate a declaration of restrictive covenants prior to recording them, but referenced the recorded restrictions in deeds subsequently conveyed. There, citing 16 Am.Jur., Sec. 273, Page 593, the Court held that, "[h]ere the restrictive covenants contained in a separate instrument, specifically referred to in defendants' deed and easily to be found of record, were just as fully and effectually a part of defendant's deed as if copied therein." McDonald at 220 S.C. 16, 66 S.E.2nd 330.

As noticed, Plaintiff respectfully requests that the Court alter and/or amend the

judgment so that the Court's primary holding is not rooted in an unpled defense, and alternatively grant a new trial, as this ruling will effectively destroy the eighteen (18) lot residential subdivision known as Senrab Farm, in that after the initial 6 lots subsequent properties were brought into the subdivision via deed not amendment. At rehearing, in addition to the evidence recited in Plaintiff's Motion (subsequent deeds private roads, title to roads and common area still in developers), Plaintiff would also present evidence of the general development scheme, properties within the general scheme owned by the Barnes at the time of deeding Tract L, Defendants' payment of annual road maintenance assessments, Doug Richardson's years of service as HOA president and a failed attempt by Defendants to amend the Restrictive Covenants prior to the filing of this action.

5. Rewriting Defendants' Deeds to Remove it From the Subdivision: As noticed by Mr. Kinard's motion, Your Honor's order errs in holding that the Richardsons' land is not part of Senrab Farms subdivision in that the original covenants were not formally amended to bring Tract L into Senrab Farms subdivision. The Court's holding effectively rewrites the Richardsons' two chain-of-title deeds so as to remove Tract L from Senrab Farms, thus, under the Court's reasoning, depriving Mr. Kinard of the right to enforce the restrictions.

The holding that original Tract L is not part of Senrab Farms ignores: (1) a total of four express assertions in Defendants' and their predecessor's deeds that Tract L is in Senrab Farms; (2) the express assertion in Exhibit "A" to the Amendments to Restrictions that it is in Senrab Farms; (3) the fact that Defendants' lot was sequentially lettered in line with other subdivision lots as shown by comparing Exhibits 1 and 5, and (4) ignores the fact that the survey of Defendants' original Tract L showing sequential subdivision lettering was recorded on January 29, 1998 (see Exhibit 5), nearly a month prior to execution of the February 25, 1998 Amendment to Restrictions (Exhibit 7) and original deed to Tract L (Exhibit 6).

The Court effectively blue pencils the original Restrictive Covenants from Defendants' two deeds, together with four references to the property being located in Senrab Farms. Your Honor does so in holding that "Defendants' property is not made subject to the original covenants and restrictions of the neighborhood" (Pg 2, Ln 2-3; also see Pg 4, Ln 13-15). This is predicated upon the Court's underlying error that "the original Restrictive Covenants must be amended before they apply to the additional property," that "[p]aragraph one of the original Restrictive Covenants specifically states that a separate legal instrument would be required to bring additional property within the Restrictions," that "[t]his was never done" (Pg 3, Ln 13-18).

As noted in the Motion, ¶1 of the Restrictive Covenants state in part that "the term 'Lots' shall refer to ... lots made subject to the provisions of this instrument by separate legal instrument recorded in the Dorchester RMC Office." Both Defendants' predecessor's deed (Plaintiff's Exhibit 6) and Defendants' Deed (Plaintiff's Exhibit 10):

(a) Declare each deed to be an "instrument" (see Exhibit 6, Pg 2: "The forgoing instrument ...");

(b) Indicate RMC Office recording;

(c) Recite in Exhibit "A" attached to Defendants' predecessor's deed that the conveyance is "SUBJECT TO: Restrictive Covenants dated September 8, 1997 and recorded in the RMC Office for Dorchester County in Book 1821, Page 331" [the original Restrictive Covenants – Plaintiff's Exhibit 2] and "Amendment to restrictions dated February 25, 1998 and recorded simultaneously herewith"; and

(d) Each deed twice indentifies the property being conveyed as "Tract L, **Senrab Farms.**" Defendants' deed also recites being subject to the restrictive covenants recorded in Book 1821, Page 331 (the original Restrictive Covenants) and Book 1915, Page 263

(Amendment to Restrictions).

"The most common means of creating restrictive covenants are by deed, declaration and by implication from a general plan or scheme of development." Queen's Grant II Horizontal Property Regime v. Greenwood Development Corp., 368 S.C. 342 at 362, 628 S.E.2d 902 at 913 (S.C.App. 2006). "The earliest method of creating restrictive covenants was by deed." 17 S.C. Jur. *Covenants* §61. Additionally, specifically referencing already recorded restrictions in a deed makes them "just as fully and effectually a part of defendant's deed as if copied therein." McDonald v. Welborn, 220 S.C.10, 16, 66 S.E.2nd 327, 330 (1951).

In Santoro v. Schulthess the master found that while the "subdivision's restrictive covenants as originally filed did not apply to Schulthess's triangular lot because it was not one of the specifically enumerated lots listed as being covered by the covenants," that "the language in a deed in Schulthess's chain of title made his triangular lot subject to the restrictive covenants" Santoro v. Schulthess, 384 S.C. 250, at 270-271, 681 S.E.2d 897 at 907 (S.C.App. 2009). The Court of Appeals construed the deed and found that it evidenced four separate conveyances. In reversing the master the court held that "the language of the deed in question makes only one of its four conveyances subject to the subdivision's restrictive covenants." Santoro, 384 S.C. at 274, 681 S.E.2d at 909.

Instead of following McDonald, Santoro and the cases cited at 17 S.C. Jur. *Covenants* §§61-62, in holding that Defendants' original Tract L was made subject to the original Restrictive Covenants by those covenants being recited in their deeds, the Court erases from those two deeds a total of four references to the Richardsons' property being located in "Senrab Farms," and effectively deletes the reference within each deed that Tract L is subject to the original Restrictive Covenants recorded in Book 1821, Page 331.

The Court's opinion in Poynter Investments v. Century Builders, 387 S.C. 583, 694 S.E.2d 15 (S.C. 2010) suggests that judicial "blue-penciling" is dead in South Carolina. As noted by the S.C. Court of Appeals last year, "we interpret the supreme court's holding in Poynter to mean that (1) a court may not "blue pencil" the restrictions contained in a non-competition provision by inserting or subtracting terms not agreed to by the parties in order to make it valid and enforceable." Team IA, Inc. v. Lucas, 395 S.C. 237, 717 S.E.2d 103 (S.C.App. 2011).

6. **Rewriting an Admittedly Invalid Amendment:** The above cited blue penciling authority applies with equal weight to Your Honor's judicial rewriting of the document entitled "Amendment to Restrictions" in declaring it to be "an original restriction on the Defendants' property" (Pg. 3, last 2 lines to Pg. 4, Ln 1-2). After correctly holding that the Barnes' lacked the majority lot ownership interests necessary to "unilaterally" amend the Restrictive Covenants pursuant to Section 18 (see the six original deeds at Plaintiff's Exhibit 3, each dated prior to purported amendment), the Court transforms an invalid amendment into valid single-owner subdivision restrictions, which, it declares, other Senrab Farm lot owners lack privity to enforce.

As noted, the Court does more than simply blue pencil the "Amendment to Restrictions" title, it erases language stating that:

(a) **"EXCEPT AS HEREINABOVE MODIFIED AND SET OUT, and by acceptance hereof, undersigned do hereby agree and consent that the property shall be restricted in accordance with the restrictive covenants, dated September 8, 1997 and recorded in the RMC Office for Dorchester County in Book 1821, Page 331"** [emphasis added];

(b) "It shall be **permissible** for the Purchaser to **subdivide** the property described

herein **as set out in Paragraph 5 of the restrictive covenants**, dated September 9, 1997 and recorded in the RMC Office for Dorchester County in **Book 1821, Page 331** in **so that such subdivided lot shall be used as a single family residential building lot**" [emphasis added]; and,

(c) Erases the fact that Exhibit "A" identifies the "Property Affected" as "Tract L, **Senrab Farms**" [emphasis added].

As noted, Defendants' subdivided Tract "L" (Plaintiff's Exhibit 5) into Tracts A and B on or about March 15, 2003 (Plaintiff's Exhibit 11). Their deed (Plaintiff's Exhibit 10) was expressly made subject to the original Restrictive Covenants. Paragraph 5 of those Covenants expressly authorized Defendants' March 15, 2003 subdivision of Tract L. Still, both the original restrictions and purported amendment forbid any subdivided lot from being used for any purpose other than as a single family residential building lot.

7. Amendment Was Only Restriction: As noticed, respectfully, Your Honor has erred in holding that the document entitled "Amendment to Restrictions" was the first and only Restriction placed on the property" (Order, Pg. 4, Ln. 9-10). Both Defendants' and their predecessor's deeds expressly recite that each deed is "subject to" the restrictive covenants recorded in RMC Office for Dorchester County in "Book 1821, Page 331" (Plaintiff's Exhibit 2: original Restrictive Covenants).

As noted above, this error is predicated upon Your Honor's holding, contrary to McDonald, Santoro and the cases cited at 17 S.C. Jur. *Covenants* §§61-62, that restrictive covenants cannot be imposed via deed, when, as here, the developer has expressly reserved the right to make additional lots subject to the restrictions via separate recorded instruments.

8. Blue Penciling Original Restrictions: Our Supreme Court's ban on judicial rewriting of

restrictions as declared in Poynter Investments applies to Your Honor's substantial rewrite of the original Restrictive Covenants as they apply to Defendants' property. That rewrite is necessitated by the finding that Barnes "can make property he is developing subject to identical Restrictive Covenants" ... [but] ... "[i]t does not follow however, that because he uses the same language, property owners in one subdivision can enforce restrictions in a separate subdivision" (Order Pg 5, ¶2).

While Page 4, Lines 9-10 of the Order expressly states that "[t]he 'document entitled 'Amendment to Restrictions' was the first and only Restriction placed on the property", the second paragraph on Page 5 asserts that the original Restrictive Covenants apply too, but with zero ties to the Senrab Farms ("He can use the same document for different subdivisions"). This effectively results in the Court's 3rd real estate document rewrite, here the original "Restrictive Covenants," at least as they apply to Defendants' land. This final rewrite includes deleting reference to the original six Senrab Farms lots, including reference to "Senrab Farms," thus destroying Mr. Kinard's ability to enforce them.

Respectfully, the Court's holding rewrites and invites additional litigation regarding §16's lot "Road Maintenance Assessment" provisions in that according to §1 the term lots refers to "lots made subject to the provisions of this instrument." If allowed to stand, not only does this order effectively destroy an 18 lot residential subdivision, arguably Mr. Kinard will be responsible for paying for private road wear and tear caused by commercial equestrian center traffic to the Richardsons' Tract B.

9. Number of Horses: Mr. Kinard respectfully requests that Your Honor recount the number of horse pictured in Plaintiff's Exhibits 26 and 28. While the Amendment to Restrictions allow up to 6 horses, and the Order recites that "Defendants are permitted to have

up to six (6)" (Order Pg. 6, ¶2), either subdivision of Tract L into Tracts A and B, or declaring the February 25, 1998 Amendment to Restrictions invalid limit Tract B to 1 horse.

The original Restrictive Covenants allow lot owners to keep up to 1 horse (Exhibit 2, ¶13c). While declaring the attempt to amend invalid, the court blue pencils survival of the right to keep up to 6 horses, while failing to declare 7 a breach. Even if the purported Amendment was valid, Paragraph 6 allows the "Purchaser to subdivide the property described herein as set out in Paragraph 5 of the restrictive covenants ... recorded in ... Book 1821, Page 331." Defendants chose to subdivide Tract L into Tract "A", their home site, and Tract "B", which was leased as an equestrian center. The intent of Paragraph 6 is clear. Subdivision must be in accordance with the original restrictions, which only permit 1 horse per lot. To rule otherwise would mean that Defendants are now entitled to 6 horses on Tract "A," 6 on Tract "B," and 6 additional horses with each additional lot subdivision.

Plaintiff's Exhibit 38 is Mr. Kinard's July 2, 2009 Tract B cease and desist letter to the Richardsons. Paragraph 3 alerts the Richardsons that subdivision of original Tract L was required to be done in accordance with the original restrictions, which limit the number of horses upon each lot to one.

While Plaintiff reserves all appeal rights associated with Judge Dickson's December 20, 2011 Summary Judgment Order, he only ruled that Tracts A and B were created out of Tract L and subject to any covenants that applied to the original Tract L. Although requested, Judge Dickson did not rule upon the validity of the Amendments to Restrictions nor upon their operation or effect. He simply ruled that "[r]estrictive covenants run with the land and subdividing the land does not release it from those restrictions," including the restriction that subdivision be conducted in accordance with the original restrictions.

Clearly, the declarant's intent controls. In construing a deed, the intention of the grantor must be ascertained and effectuated, unless that intention contravenes some well settled rule of law or public policy. In determining the grantor's intent, the deed must be construed as a whole and effect given to every part if it can be done consistently with the law, and the intention of the grantor must be found within the four corners of the deed. Windham v. Riddle, 381 S.C. 192, 672 S.E.2d 578 (S.C. 2009) (citations omitted).

Your Honor, ¶13 of the "Restrictive Covenants" (Exhibit 2) defines "noxious or offensive" activities as violating the section's eleven listed restrictions, "a)" through "k)." Section 13c permits up to one horse per lot so long as the lot otherwise qualifies. As shown by the original Senrab Farms subdivision plat, the original 11 lots ranged in size from 1.14 to 1.78 acres (Plaintiff's Exhibit 1). Amendment validity aside, in limiting 7 acre Tract L (Exhibit 5) to six horses (Exhibit 7), while permitting subdivision of Tract L pursuant to paragraph 5 of the original restrictive covenants (Exhibit 7, paragraph 6), in light of a greater number of horses than originally permitted constituting a noxious or offensive activity, clearly it was the developer's intent that horse rights after subdivision would be governed by the original covenants which were also recited in the Richardsons' deeds.

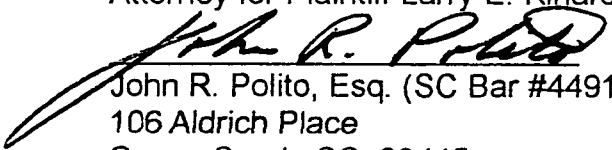
Your Honor, Mr. Kinard respectfully requests that the Court reconsider and declare that the Richardsons keeping more than 6 horses upon Tract B to has been in violation of the covenants and also either that the Amendments are invalid or that their operation and effect limits subdivided lots to only 1 horse.

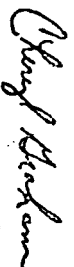
Additionally, Mr. Kinard ask the Court to consider the above facts, arguments and legal authority and alter or amend the judgment accordingly, or in the alternative to grant Mr. Kinard a new trial so that he may introduce the limited evidence recited. As sought in the Amended

Complaint, Mr. Kinard asks that after finding that the Richardsons have violated the restrictions that the court balance the equities and enjoin the Defendants from further violations.

Respectfully submitted,

Attorney for Plaintiff Larry E. Kinard


John R. Polito, Esq. (SC Bar #4491)
106 Aldrich Place
Goose Creek, SC 29445
(843) 797-3234
johnpolito@comcast.net


CLERK OF COURT
DORCHESTER COUNTY

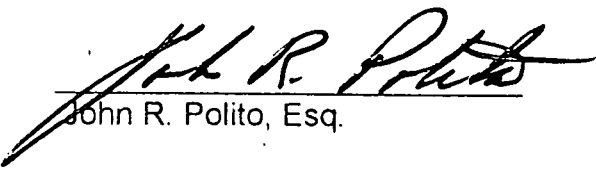
CERTIFIED COPY
2012 OCT 29 AM 11:09

Goose Creek, South Carolina
October 29, 2012

Certificate of Service

I, John R. Polito, hereby certify that I have this 29th day of October, 2012 served a copy this Memorandum of Law in Support of Plaintiff's Motion to Reconsider upon Defendants by (1) emailing a copy to brandt@shelbournelaw.com, (2) by depositing a copy of the same in the U.S. Mail, postage prepaid, addressed to their attorney of record at the following address, and by hand delivering a copy to the following address:

P. Brandt Shelbourne, Esquire
131 E. Richardson Avenue
Summerville, SC 29483


John R. Polito, Esq.

Goose Creek, South Carolina
October 29, 2012

Larry E. Kinard,)
)
) Plaintiff,)
)
)
) vs.)
)
)
) Douglas S. Richardson & Julie D. Richardson,)
)
) Defendants.)
)

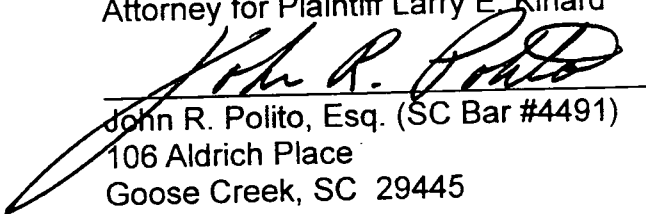
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NOTION FOR
JUDGMENT
CLERK OF COURT
DORCHESTER COUNTY

422

quoted language is clear, Defendants admit to both leasing their vacant lot for horse grazing and riding, and to keeping more than one (1) horse upon it, and Plaintiff is entitled to judgment as a matter of law. This Motion shall be supported by affidavits, recorded real estate titles, recorded restrictive covenants and surveys, deposition testimony, photographs, and a Memorandum of Law which will hereinafter be submitted.

Respectfully submitted,

Attorney for Plaintiff Larry E. Kinard



John R. Polito, Esq. (SC Bar #4491)
106 Aldrich Place
Goose Creek, SC 29445
(843) 797-3234
johnpolito@comcast.net

Goose Creek, South Carolina
May 6, 2011

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)
LARRY E. KINARD,)
Plaintiff,)
vs.)
DOUGLAS S. RICHARDSON,)
JULIE D. RICHARDSON,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

CASE NO: 2009-CP-18-3315

NOTICE OF MOTION AND
MOTION FOR SUMMARY
JUDGMENT

CERTIFIED COPY
2011 MAY 11 PM 12:36
DORCHESTER COUNTY
CLERK OF COURT

TO: PLAINTIFF AND HIS ATTORNEY OF RECORD:

YOU WILL PLEASE TAKE NOTICE that ten (10) days after the service of this Notice upon you or as soon thereafter as counsel may be heard, the undersigned attorney for the Defendants Douglas Richardson and Julie Richardson will move before the Presiding Judge of the Dorchester Court of Common Pleas for Summary Judgment pursuant to South Carolina Rules of Civil Procedure 56 on the grounds that taking all facts in a light most favorable to the nonmoving party, Defendants are entitled to summary judgment. This motion shall be supported by affidavits, deposition testimony and such other memoranda of law as may be filed.

Respectfully submitted,

SHELBOURNE LAW FIRM

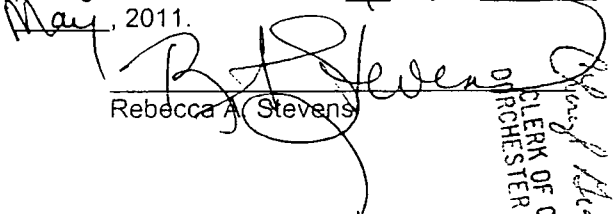
By:

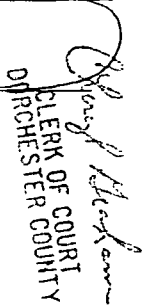

P. Brandt Shelbourne
Melanie A. Maes
131 E. Richardson Avenue
Summerville, SC 29483
(843) 871-2210
Attorneys for Defendant

Summerville, South Carolina
May 4, 2011

Certificate of Service

The undersigned hereby certifies that a true copy of the foregoing has been served upon opposing counsel by mailing a copy properly addressed with the sufficient postage affixed thereto this 4 day of May, 2011.


Rebecca A. Stevens


JOSEPH HICKMAN
CLERK OF COURT
DORCHESTER COUNTY

CERTIFIED COPY
2011 MAY 11 PM 12:37

From: John R. Polito [johnpolito@comcast.net]
Sent: Monday, July 18, 2011 7:10 PM
To: Becky Stevens; Brandt Shelbourne
Cc: john@whyquit.com; Carolyn Ayer
Subject: Re: Amendment of Plaintiff's Notice of Motion/Summary Judgment Kinard vs Richardson" 2009-CP-18-3315
Attachments: 970908 Deed Lot H.tif; 971125 Deed Lot G.tif; 971125 Deed Lot I.tif; 971211 Deed Lot E.tif; 971215 Deed Lot D.tif; 980121 Deed Lot F.tif

Note to Carolyn Ayer: If you would please print a copy of this email and attach it to Plaintiff's Motion for Summary Judgment I'd be greatly appreciative. By way of a copy of this email I'm sending it to opposing counsel and his law clerk. Thanks. John

To: Brandt Shelbourne, attorney for Defendants Richardson
From: John R. Polito, attorney for Plaintiff Larry E. Kinard
Date: July 18, 2011
Re: **Revised Summary Judgment Notice to Include Argument that Developer's February 25, 1998 Attempt to Amend Restrictions was Invalid**

Dear Brandt,

I tried reaching you by phone today but was unsuccessful. I wanted to alert you ASAP that we are hereby updating Plaintiff's Notice to Motion for Summary Judgment and give notice that we are moving to amend the pleadings to conform to the evidence in that today I stumbled upon facts suggesting invalidity of the developer's February 25, 1998 attempt to amend Senrab Farm's restrictive covenants as applied to Tract L.

Brandt, in order for the developer's February 25, 1998 Amendment to Restrictions (Bk 1915, Pg 263) to have been valid, under SC case law the developer had to have expressly reserved authority to amend them. I'm sure you'd agree that such authority would need to be in the original Restrictive Covenants (Bk 1821, Pg 331).

There, paragraph 18 on page 9 expressly states that they may be altered, modified or changed at "any time by the written consent of the majority of the owners of record of the lots which are subjected thereto."

As you know, the page one intro paragraph makes the covenants applicable to the property described "in the attached Exhibit A" and Exhibit A only identifies six lots, Lots D, E, F, G, H and I. What I discovered today is that by February 25, 1998 the developer has sold all six lots. I can find no argument by which the Developer was the owner of a majority of lots.

Brandt, in that we've already stipulated as to the authenticity to all deeds and plats indicating recording in the Dorchester RMC office, please find attached copies of the Developer's deeds to Lots D, E, F, G and H, each of which was executed prior to the purported February 25, 1998 amendment. Please let me know ASAP if you question the authenticity of any of the attached deeds. As you know each are available and can be verified at the Dorchester RMC's website.

My memo is about complete and I'll hand deliver it in the next day or so. Are you planning to get anything to me. If so, I'd appreciate at least four working days to respond. I won't surprise you with

any new documents other than what's already been produced, except for Mr. Kinard's Affidavit which won't contain any surprises. Promise! Just facts, law and argument.

Sincere regards,

John

John R. Polito, Esq.
Attorney at Law
106 Aldrich Place
Goose Creek, SC 29445
(843) 797-3234

**IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
Civil Action No.: 2009-CP-18-3315**

PLAINTIFF'S SUMMARY JUDGMENT MEMORANDUM

(A) Concise Summary of the Nature of the Case

¹ Plaintiff's Exhibit 1, Affidavit of Larry E. Kinard, July 20, 2011, ¶¶ 3 and 12

second issue, on 07/18/11 counsel discovered and gave notice that the Developers could not have amended the covenants on February 22, 2008 because recorded deeds show that Developers owned no restricted lots at the time of amendment, and the original covenants required a majority vote of lot owners in order to amend.²

(B) Statement of Undisputed Facts

The parties have stipulated as to the authenticity of all deeds and plats which indicate recording within the Dorchester County RMC Office, and all deeds and plats referenced below indicate recording.

Senrab Farms subdivision was established when a plat dated July 5, 1997 entitled "Plat Showing Eleven Lots of Senrab Farms, a Subdivision Owned by James M. Barnes and Delene Barnes" (hereafter referred to as Developers), was recorded on August 29, 1997.³ The subdivision's original eleven (11) pages of "Restrictive Covenants" dated September 8, 1997 were recorded in Book 1821, Page 331 on September 11, 1997.⁴ Paragraph 5 on page 2 of the "Restrictive Covenants" states in part:

"The lots are known and designated and shall be used as single-family residential building lots ..." (emphasis added)

² Plaintiff's Exhibit #2, Restrictive Covenants, Page 9 of 11, ¶18, which states that "These Protective Covenants may be altered, modified, canceled or changes at any time by the written consent of the majority of the owners of record of the lots which are subjected hereto."

³ Plaintiff's Exhibit #3, "Plat Showing Eleven Lots of Senrab Farms," dated 07/05/97, and recorded in Book .

⁴ Plaintiff's Exhibit #2, Eleven (11) pages of "Restrictive Covenants," dated September 8, 1997 and recorded September 11, 1997.

Additionally, paragraph 13 and subparagraph c) on page 6 states as follows:

"13. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, and specifically including the following:

c) It shall be permissible for the owner of any lot to keep up to one (1) horses on that lot so long as the rear portion contains a minimum area of twenty-five thousand (25,000) square feet."

Regarding amendment of the covenants, paragraph 18 on page 9 states in part that:

"These Protective Covenants may be altered, modified, canceled or changes at any time by the written consent of the majority of the owners of record of the lots which are subjected hereto."

The opening un-numbered paragraph on page 1 of the Restrictive Covenants imposes the restrictions upon **"the property described in the attached Exhibit A."** The only property expressly mentioned in "Exhibit A" are six Lots, **"Lots, D, E, F, G, H and I on a plant entitled "Plat Showing Eleven Lots of "Senrab Farms ..."**

Developers completed executing lot owner deeds to all six "Exhibit A" restricted lots by January 21, 1998,⁵ including Developers' deed to Plaintiff Larry E. Kinard and his wife to Lot F on January 21, 1998, expressly making use conditioned upon "Restrictive Covenants" recorded in RMC Book 1821, Page 331.⁶

On January 29, 1998, Developers recorded a survey dated December 29, 1997 showing a new 7 acre labeled Tract "L" across the street from Plaintiff's Lot F, and an

⁵ Plaintiff's Exhibit #4, Developer's lot owner deeds to Lots D, E, F, G, H showing the following deed execution dates: Lot D 12/15/97, Lot E 12/11/97, Lot F 01/21/98, Lot G 11/25/97, Lot H 09/08/97 and Lot I 11/25/97

⁶ Plaintiff's Exhibit #5, Plaintiff's Deeds to Lots F and G, see "Lot F, 1.00 ACRES, SENRAB FARMS SUBDIVISION" to Larry E. Kinard and Patricia A. Kinard dated 01/21/98.

adjacent 6.92 acre parcel labeled Tract "M."⁷

On February 25, 1998, Developers executed both a three page instrument entitled "Amendment to Restrictions"⁸ and a deed to Tract L from Developers to Defendants' predecessor in title, Steve Hill/Habersham Builders, Inc.⁹ The deed to Tract "L" expressly conditiond use upon the subdivision's original Restrictive Covenants recorded in Book 1821, Page 331,¹⁰ to a two page November 25, 1997 instrument entitled "Amendment to Restrictive Covenants" recorded in Book 1861, Page 095 dealing with fence restrictions and maintenance assessments,¹¹ and to the simultaneously executed "Amendment to Restrictions," to be recorded in Book 1915 at Page 263.¹²

Four provisions of the February 25, 1998 "Amendment to Restrictions" are relevant to this action:

⁷ Plaintiff's Exhibit 6, Plat recorded on 01/29/98, dated 12/29/97 entitled "Plat Showing of 14.19 Acres of Land Being Subdivided into Tract 'L' (7.00 AC) and Tract 'M' (7.03 AC) as Requested by the Owners James M. Barnes and Delene Barnes"

⁸ Plaintiff's Exhibit 7, Amendment to Restrictions dated 02/25/98

⁹ Plaintiff's Exhibit 8, 02/25/98 deed of Tract L from Developers to Hill/Habersham Builders, Inc.

¹⁰ Plaintiff's Exhibit 2, 09/08/97 "Restrictive Covenants"

¹¹ Plaintiff's Exhibit 9, 11/25/97 Amendment to Restrictive Covenants. These covenants are not at issue in this action and are noted only to show that they did not impose the restrictions upon any additional lots and to show that on the day of their execution that the Developers still held title to all six (6) restricted lots referenced in Exhibit A, with the first two subdivision deeds being executed simultaneously with this 11/25/97 Amendment, the deeds to Lots G and I.

¹² Plaintiff's Exhibit 7, 02/25/98 "Amendment to Restrictions" for Tract L only

1. **"The property which is affected by these covenants is described as Tract 'L' on that certain a plat recorded in the RMC Office for Dorchester County in Plat Book J, Page 37 ..."**

2. **"The property shall be designated and shall be used as a single family residential building tract ..."**

3. **"It shall be permissible for the Purchaser and his/her successors and assigns, to keep up to six (6) horses on the above described property."**

4. **"It shall be permissible for the Purchaser to subdivide the property described herein as set out in Paragraph 5 of the restrictive covenants dated September 9, 1997 and recorded in the RMC Office for Dorchester County in Book 1821, Page 331 in so that such subdivided lot shall be used as a single family residential building lot."**

The Developers' final plat evidencing their final Senrab Farms subdivision was in subdividing Tract M into five lots as shown on a plat recorded June 18, 1998 and dated May 5, 1998.¹³

On December 23, 1998 Steve Hill/Habersham Builders, Inc. deeded Tract L, Senrab Farms to Defendants.¹⁴

On September 14, 1999, Larry E. Kinard and his wife purchased the vacant lot adjacent to their retirement home, Lot G, from H.B and Alice Mims.¹⁵

On April 1, 2003, Defendants recorded a March 15, 2003 survey subdividing original Tract L, entitled "Plat showing 7.01 acre lot to be subdivided into Tract A (1.18

¹³ Plaintiff's Exhibit #10, dated 05/05/98 plat recorded 09/18/98, and entitled "Plat Showing the Subdivision of Tract "M", Senrab Farms Subdivision, into Five Tracts, as Requested by the Owners, James M. Barnes and Delene Barnes."

¹⁴ Plaintiff's Exhibit #11, 12/23/98 deed of Tract L into Defendants

¹⁵ Plaintiff's Exhibit #5, Larry E. Kinard's deeds to Lots F and G; see deed of "Lot G, 1.00 ACRES, SENRAB FARMS SUBDIVISION" to Larry E. Kinard and Patricia A. Kinard dated 09/14/99.

acres) and Tract B (5.83 acres).¹⁶ Mr. Richardson testified at deposition that the survey was made in order to make "agricultural use for that 5 acres" for the "grazing of horses."¹⁷ Mr. and Mrs. Richardson do not own any horses and have not owned any since moving to South Carolina.¹⁸

During 2003, Defendants began leasing Tract B for horse grazing purposes¹⁹ using an LLC they named Greener Pastures,²⁰ for which Tract B was the only land associated with Greener Pastures.²¹ Defendants Federal Tax Schedule E forms show Greener Pastures receiving \$1,800 in rental income during 2003 with total expenses of \$13,326, 2004 rental income of \$3,150, and federal tax forms 4835 show farm rental income of \$2,875 in 2005, \$2,595 in 2006, \$3,600 in 2007, \$3,300 in 2008 and \$3,050 in 2009, together with four monthly rental income receipts during 2010 for \$350 each.²²

Mr. Richardson testified that following Greener Pastures, that management and rental income were handled by his S corporation DJ Richardson Realty Inc.²³ The most recent lease was executed on January 10, 2010, entitled "Commercial Lease," in which

¹⁶ Plaintiff's Exhibit #12, 03/15/03 pat showing the original 7.01 acre Tract L subdivided into Tract "A" and Tract "B"

¹⁷ Plaintiff's Exhibit 16, Depo. Douglas S. Richardson, Pg. 15, Ln. 4-23

¹⁸ Plaintiff's Exhibit 16, Depo. Douglas S. Richardson, Pg 36, Ln. 14-24

¹⁹ Plaintiff's Exhibit 16, Depo. Douglas S. Richardson, Pg 20, Ln. 6-9

²⁰ Plaintiff's Exhibit 16, Depo. Douglas Richardson, Pg 15, Ln 24 to Pg16, Ln 1-3

²¹ Plaintiff's Exhibit 16, Depo. Douglas Richardson, Pg 19, Ln. 22 to Pg. 20 Ln. 5

²² Plaintiff's Exhibit #13 - Defendants Income & Expense Records, Supplemental Response to Plaintiff's Requests for Production of Documents dated 10/13/10: 12 pgs

²³ Plaintiff's Exhibit 16, Depo. Douglas S. Richardson, Pg 16 Ln.12 to Pg 17 Ln 6

Madeline Ingalls was granted a one year term in exchange for monthly rental income of \$350, and permitted use of Defendants' six acres as "horse pasture - no more than 5 horses/ponies at 1 time, no lessons," and provided that tenant parking would be "Outside of the fenced pasture, on the barn side of the fence."²⁴

Mr. Richardson testified that the entirety of Tract B was leased under the "Commercial Lease," that none of the land was reserved,²⁵ that aside from prohibiting riding lessons that the lease did not forbid horse riding on Tract B,²⁶ and that he was aware by the first quarter of 2010 that Madeline Ingalls was doing business as Thin Blue Line Stables.²⁷

Prior to the Ingalls lease, the Defendants leased Tract B to Charity Fillmore, whom Mr. Richardson knew to be operating under the trade name "Senrab Equestrian."²⁸ Mr. Richardson visited the Senrab Equestrian Center website after learning of its existence and saw his 5.8 acre Tract B advertised as being part of Senrab Equestrian Center and referred to as the Center's "gelding pasture."²⁹

Plaintiff's Exhibit O from Defendant Douglas Richardson's deposition is signed by Defendant and is a satellite view showing the 18 lots of Senrab Farms, including

²⁴ Plaintiff's Exhibit #14, nine (9) page "Commercial Lease" of 6 acres at 124 Saddle Trail, cited provisions from pages 1 and 3.

²⁵ Plaintiff's Exhibit 16, Depo. Douglas S. Richardson, Pg 41, Ln 2-7.

²⁶ Plaintiff's Exhibit 16, Depo. Douglas S. Richardson, Pg 46, Ln 17-25.

²⁷ Plaintiff's Exhibit 16, Depo. Douglas S. Richardson, Pg 41, Ln 8-17.

²⁸ Plaintiff's Exhibit 16, Depo. Douglas S. Richardson, Pg 24, Ln 5-10.

²⁹ Plaintiff's Exhibit 16, Depo. Douglas Richardson, Pg 25 Ln 18 to Pg 29, Ln 23.

Plaintiff's home, Defendant's home, and subdivided Tract L, with Tract B labeled Equestrian Center "Gelding Pasture."³⁰ Between the area labeled Arena and Barn, Defendant has drawn a black line showing the location of the path and gate used when horses are moved between the Nguyen's land to the west and Richardson's Tract B.³¹

The paved access road which divides the Richardson's Tract B from the Nguyen's land is an unnamed access easement owned by the Richardsons.³² The Nguyen's lot is about five acres³³ The Nguyen's land is not part of the master deed and not subject to the restrictive covenants cited in Defendant's deed.³⁴

Mr. Richardson explained during deposition that "I'm approached by people that have horses at my neighbors, and they lead their horses through that gate," that the person leasing the land "coordinated those efforts within the barn. And so one person brings me a check."³⁵ According to Mr. Richardson, "any of the horses in the Nguyen's barn would have been allowed on Tract B."³⁶

The Senrab Equestrian Center website advertised "top quality horses for sale."³⁷ Mr. Richardson does not know the number of horses that grazed upon Tract B since

³⁰ Plaintiff's Exhibit 16, Depo. Douglas S. Richardson, Exhibit O

³¹ Plaintiff's Exhibit 16, Depo. Douglas Richardson, Pg 28, Ln 17 to Pg 30 Ln 24

³² Plaintiff's Exhibit 16, Depo. Douglas Richardson, Pg 29, Ln 24 to Pg 30, Ln14

³³ Plaintiff's Exhibit 16, Depo. Douglas S. Richardson, Pg 26, Ln 22-25

³⁴ Plaintiff's Exhibit 16, Depo. Douglas S. Richardson, Pg 55, Ln 7-16

³⁵ Plaintiff's Exhibit 16, Depo. Douglas S. Richardson, Pg 32, Ln1-16

³⁶ Plaintiff's Exhibit 16, Depo. Douglas S. Richardson, Pg 34. Ln 21-24

³⁷ Plaintiff's Exhibit 16, Depo. Douglas S. Richardson, Exhibit N

2003 that were for sale while grazing there.³⁸

Mr. Richardson was shown deposition photos dated 3/7/10 and 2/28/10 showing people riding horses on Richardson's Tract B.³⁹ Mr. Richardson did not recognize any of the people, nor could he identify any of the horses.⁴⁰ The photo dated 3/7/10 also shows vehicles parked between the Nguyen's lot and Richardson's Tract B. Mr. Richardson testified that at least two of the vehicles are parked on his side of the drive.⁴¹ The last page of Mr. Kinard's Affidavit, page 14, shows a photo of vehicles parked on Mr. Richardson's side of the drive.⁴²

Mr. Richardson testified that there have been occasions where there have been too many vehicles to accommodate on the barn side of the fence and vehicles were forced to park along Saddle Trail, across from Mr. Kinard's property.⁴³ Page 7 of Mr. Kinard's Affidavit shares a photo of vehicles parked across from his land.⁴⁴

Mr. Richardson testified that Mr. Kinard complained to Mr. Richardson when he was HOA president about litter, and about traffic and horse traffic tearing up speed bumps.⁴⁵ Again, Mr. Kinard concurs in paragraph 11 of his Affidavit.

³⁸ Plaintiff's Exhibit 16, Depo. Douglas S. Richardson, Pg 38, Ln 16-19

³⁹ Plaintiff's Exhibit 16, Depo. Douglas S. Richardson, photo Exhibits P and Q

⁴⁰ Plaintiff's Exhibit 16, Depo. Douglas Richardson, Pg 47, Ln 24 to Pg 48, Ln 19

⁴¹ Plaintiff's Exhibit 16, Depo. Douglas Richardson, Pg 48, Ln 20 to Pg 49 Ln 6

⁴² Plaintiff's Exhibit 1, 07/20/11 Affidavit of Larry E. Kinard, Pg 14.

⁴³ Plaintiff's Exhibit 16, Depo. Douglas S. Richardson, Pg 51, Ln 17-22

⁴⁴ Plaintiff's Exhibit 1, 07/20/11 Affidavit of Larry E. Kinard, Pg 7

⁴⁵ Plaintiff's Exhibit 16, Depo. Douglas S. Richardson, Pg 53, Ln 8-17

Mr. Richardson cannot recall telling any Senrab Farm homeowner on the master deed that he created a business in 2003 known as Greener Pastures.⁴⁶

Mr. Kinard's Affidavit states that each time he would mention heavy horse trailer traffic, visitor traffic, riding competitions, noise or litter that Mr. Richardson would change the subject.⁴⁷ Mr. Daniel Buerge also complained to Mr. Richardson about business traffic going into the Nugyens property.⁴⁸

Mr. Richardson testified that he posted a sign on Tract B during 2010 containing the South Carolina equestrian facility liability verbiage.⁴⁹ A photo of the fence sign can be seen on Page 10 of Mr. Kinard's Affidavit.⁵⁰

Mr. Richardson testified that Dorchester County Code Enforcement told him that he had too many horses on his property after Mr. Kinard complained.⁵¹

Mr. Kinard's Affidavit states that he directed his attorney to send Mr. & Mrs. Richardson a cease and desist letter on July 2, 2009,⁵² five months prior to this action. The one page letter is attached as Plaintiff's Exhibit 17.

Mr. Kinard's deposition includes numerous photos which he took including photos showing Internet inclusion and marketing of Tract B as being part of The Senrab

⁴⁶ Plaintiff's Exhibit 16, Depo. Douglas S. Richardson, 10/27/10, Pg 56, Ln 1-6

⁴⁷ Plaintiff's Exhibit 1, 07/20/11 Affidavit of Larry E. Kinard, ¶ 11

⁴⁸ Plaintiff's Exhibit 16, Depo. Douglas S. Richardson, 10/27/10, Pg 58, Ln 4-8

⁴⁹ Plaintiff's Exhibit 16, Depo. Douglas S. Richardson, 10/27/10, Pg 47, Ln12-23

⁵⁰ Plaintiff's Exhibit 1, 07/20/11 Affidavit of Larry E. Kinard, Page

⁵¹ Plaintiff's Exhibit 16, Depo. Douglas Richardson, Pg 43, Ln 24 to Pg 44, Ln3

⁵² Plaintiff's Exhibit 1, 07/20/11 Affidavit of Larry E. Kinard, ¶20

Equestrian Center (Pgs 2-4), the Internet sale of horses (Pg 3), of Tract L being marketed as a "Gelding Pasture (Pg 4), vehicle and horse trailer traffic (Pgs 7, 8, 9, 11, 12, 13 & 14), dust clouds associated with riding (Pg 8), birds among horse dung on Tract B (Pg 8), horse riders riding on Tract B (Pg 9) and also riding down Plaintiff's street (Pg 10), photos of the limited liability equine facility sign posted on Defendants' fence (Pgs 10 & 11), of litter on Plaintiff's land (Pg 13) and photos of more than six horses grazing upon Tract B (Pgs 8, 11, 12).⁵³

(C) Concise Argument

Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law. Rule 56(c), SCRCP. In determining whether any triable issues of material fact exist, 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. Fleming v. Rose, 350 S.C. 488 at 493-94, 567 S.E.2d 857 at 860 (SC 2002).

"A restriction on the use of property must be created in express terms or by plain and unmistakable implication, and all such restrictions are to be strictly construed, with all doubts resolved in favor of the free use of property." Taylor, 332 S.C. at 5, 498 S.E.2d at 864. Still, restrictive covenants will be enforced unless they are indefinite or contravene public policy. Sea Pines Plantation Co. v. Wells, 94 S.C. 266, 270, 363 S.E.2d 891, 894 (1987).

"Words of a restrictive covenant will be given the common, ordinary meaning

⁵³ Plaintiff's Exhibit 1, 07/20/11 Affidavit of Larry E. Kinard

attributed to them at the time of their execution." Taylor v. Lindsey, 332 S.C. 1, 4, 498 S.E.2d 862, 863 (1998). "Restrictive covenants are contractual in nature, so that the paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document." *Id.* at 4, 498 S.E.2d at 863-64.

When "the language imposing restrictions upon the use of property is unambiguous, the restrictions will be enforced according to their obvious meaning." Shipyards Prop. Owners' Ass'n v. Mangiaracina, 307 S.C. 299, 308, 414 S.E.2d 795, 801 (Ct. App. 1992).

1. Lot Use Other than as a Single Family Residential Building Lot

The Court is being asked to declare Defendants' leasing of Tract B for grazing and riding to be in violation of Paragraph 5 of the subdivision's "Restrictive Covenants" which states: "The lots are known and designated and shall be used as single family residential building lots ..."⁵⁴

The word "shall" is mandatory and the above quoted language is clear and unambiguous in requiring that restricted lots be used exclusively as single family residential building lots.

Defendants admit to subdividing Tract L so that they could lease it out for grazing, to incorporating Greener Pastures LLC to initially handle leasing, to leasing it using a "Commercial Lease," and their tax records detail eight years of leasing income and expenses.

As expressly stated in the "Amendments to Restriction" applicable only to Tract L,

⁵⁴ Plaintiff's Exhibit 2, Restrictive Covenants, Pg 2 of 11, ¶5.

Defendants' right to subdivide Tract L expressly limited the use they could make of the new lots following subdivision, in stating, "It shall be permissible for the Purchaser to subdivide the property described herein as set out in Paragraph 5 of the restrictive covenants dated September 9, 1997 and recorded in the RMC Office for Dorchester County in Book 1821, Page 331 **in so that such subdivided lot shall be used as a single family residential building lot**" (Exhibit 7).

While all subdivision lot owners are likely car owners and the covenants contain provisions allowing up to one horse per lot, those permitted uses do not entitle any owner to circumvent the residential use restriction in leasing any subdivided lot as a used car lot or a horse grazing lot. "Restrictive Covenants ¶ 5 and Amendment to Restrictions un-numbered ¶ 6 are the only protections the covenants afford Senrab Farms homeowners in protecting the value of their homes and the residential character of their subdivision. To allow commercial or business use of any lot would result in destruction of the fundamental purpose of the restrictions: to insure that lots are used only for residential purposes.

There is no genuine material fact in dispute and as a matter of law the leasing of Tract B for grazing and incidental riding is using it for purposes other than as a single family residential building lot, in clear violation of Restrictive Covenants Paragraph 5.

2. Subdivision of Tract L Destroyed Right to Six Horses

Since subdividing original Tract L, the uncontested evidence shows that up to seven horses have at one time been kept on Tract B. While the subdivision's original 1997 "Restrictive Covenants" limited each lot to a maximum of one horse, the

developers executed and recorded an "Amendment to Restrictions" purportedly granting original Tract L the unique and exclusive right to keep up to six (6) horses.⁵⁵

Defendants' voluntarily 2003 subdivision of Tract L into Tracts A and B destroyed Tract L, extinguishing the right to have more horses than the one horse per lot permitted under Restrictive Covenants paragraph 13(c). To rule otherwise would be rule that Tract A is entitled to six horses too, allowing a total of twelve horse, when the Developers provided no covenant language or guidance indicating that each subdivided lot could have up to 6 horses or providing guidance or a formula for determining a lesser number of horses.

To the contrary, paragraph 6 of the "Amendments to Restrictions" (Exhibit 7) gave clear notice that any subdivision had to be in accordance with the subdivision's original "Restrictive Covenants" in stating:

"It shall be permissible for the Purchaser to subdivide the property described herein as set out in Paragraph 5 of the restrictive covenants dated September 9, 1997 and recorded in the RMC Office for Dorchester County in Book 1821, Page 331 in so that such subdivided lot shall be used as a single family residential building lot."

Book 1821, Page 331 is an express reference to the subdivision's original "Restrictive Covenants" (Exhibit 2). No other guidance is given as to what restrictions will be imposed upon newly divided lots other than this reference back to the original Restrictive Covenants applicable to all other subdivision lots.

⁵⁵ Plaintiff's Exhibit 7, Amendment to Restrictions, Pg 1 of 3, final ¶.

Additionally, although subdivision destroyed and extinguished the existence of Tract L, Defendants' original deed to Tract L (Exhibit 11) expressly imposed all of the original "Restrictive Covenants (Exhibit 2) upon Tract L without limitation in stating:

**"SUBJECT TO: Restrictive Covenants ... recorded in the RMC Office for
Dorchester County in Book 1821, Page 331 ..."**

Defendants subdivided and destroyed Tract L. The Developer's instructions on dividing Tract L clearly note that the "Restrictive Covenants" in Book 1821, Page 331 not only survive subdivision but apply to newly subdivided lots. There is no ambiguity. As a matter of law Restrictive Covenant 13c applies to Tracts A and B, and limits Defendants "to a maximum of one (1)" horse on each new lot.⁵⁸

3. Amendments to Restrictions Dated 2/25/98 Were Invalid and Void

Plaintiff presents newly discovered alternative facts that the Court may wish to consider in declaring that the Defendants do not have a right to more than one horse on either Tract A or Tract B. As outlined in a July 18, 2011 e-mail to Defendants attorney (Plaintiff's Exhibit 17), on July 18 while preparing for this Motion Plaintiff's attorney discovered that when the Developers executed the February 25, 1998 "Amendment to Restrictions" allowing Tract L up to six horses (Exhibit 7) that the Developers did not own any lot upon which the original "Restrictive Covenants" had been imposed.

Original "Restrictive Covenants" (Exhibit 2) paragraph 18 on page 9 states in part that:

"These Protective Covenants may be altered, modified, canceled or

⁵⁸ Plaintiff's Exhibit 2, Restrictive Covenants, Page 6 of 11, ¶13c.

changes at any time by the written consent of the majority of the owners of record of the lots which are subjected hereto."

The only lots then subject to the Restrictive Covenants were, in accordance with un-numbered paragraph on Page 1, "the property described in the attached Exhibit A."

The only property expressly mentioned in "Exhibit A" are six Lots, "Lots, D, E, F, G, H and I on a plat entitled "Plat Showing Eleven Lots of "Senrab Farms ..."

Developers completed executing lot owner deeds to all six "Exhibit A" restricted lots by January 21, 1998,⁵⁷ including Developers' deed to Plaintiff Larry E. Kinard and his wife to Lot F on January 21, 1998. There are no facts and no evidence showing that the Developers retained ownership to any lot then subjected to the restrictions on February 25, 1998 when they executed the "Amendment to Restrictions" (Exhibit 7).

Thus, in applying the unambiguous language of the covenants to the facts, as a matter of law the Developers had no right to amend the subdivision's restrictions so as to allow Tract L to have more horses than permitted on the six lots already deeded. As a matter of law the Developer's unilateral attempt to amend the covenants on February 25, 1988 was invalid and is void.

(D) Statement of Material Facts in Dispute

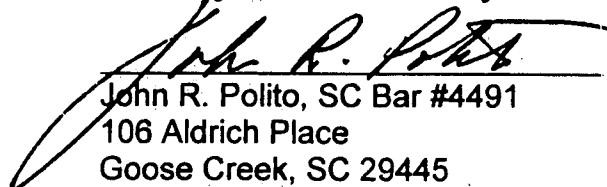
No material facts are in dispute. Despite agreeing that Greener Pastures, LLC is a business, twelve pages of income and expense records, and Defendants lease to Madeline Ingalls labeled "Commercial Lease," Defendants are understandably reluctant

⁵⁷ Plaintiff's Exhibit 4, Developer's lot owner deeds to Lots D, E, F, G, H showing the following deed execution dates: Lot D 12/15/97, Lot E 12/11/97, Lot F 01/21/98, Lot G 11/25/97, Lot H 09/08/97 and Lot I 11/25/97

to admit that they were engaged in operating a business within Senrab Farms.

HAVING SHOWN THAT there is no genuine issue of material fact but that Defendants have used their restricted land for non-residential commercial purposes, and have permitted more horses than the up to one horse permitted by the Restrictive Covenants, and alternatively that the Developer had no authority to execute the Amendment to Restrictions dated February 22, 1998, Plaintiff requests a declaration that the Defendants have violated the Restrictive Covenants and that they be enjoined from leasing their land for grazing, and from keeping more than one horse upon Tract B.

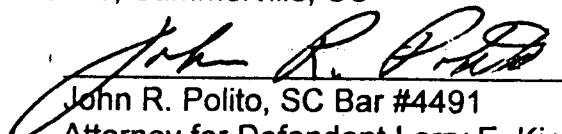
Attorney for Plaintiff Larry E. Kinard


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(843) 797-3234
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Goose Creek, South Carolina
July 20, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have this 20th day of July 2011 hand delivered a copy of Plaintiff's Summary Judgment Memorandum to the office of Defendants' attorney Brandt Shelbourne at 131 East Richardson Avenue, Summerville, SC


John R. Polito, SC Bar #4491
Attorney for Defendant Larry E. Kinard

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Master-in-Equity

Maite Murphy, Master-in-Equity

Case No. 2009-CP-18-3315

Larry E. Kinard,

Appellant,

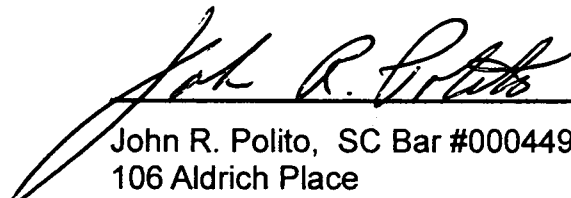
v.

Douglas S. Richardson and Julie D. Richardson,

Respondents.

CERTIFICATE OF APPELLANT

I, John R. Polito attorney for Appellant hereby certify in accordance with Rule 210(g), SCACR that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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Attorney for Appellant

Goose Creek, South Carolina

June 13, 2013

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Master-in-Equity

Maite Murphy, Master-in-Equity

Case No. 2009-CP-18-3315

Larry E. Kinard,

Appellant,

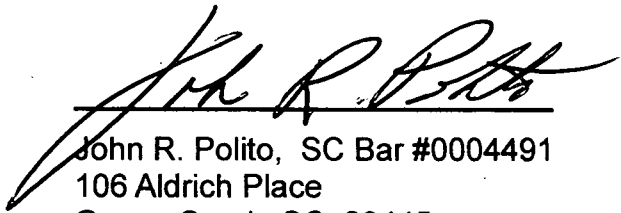
v.

Douglas S. Richardson and Julie D. Richardson,

Respondents.

PROOF OF SERVICE

I, John R. Polito attorney for Appellant hereby certify in accordance with Rule 210(a), SCACR I served a copy of the Record on Appeal upon Respondents Douglas S. Richardson and Julie D. Richardson by depositing a copy of the same in the U.S. Mail at the Summerville, SC Post Office on Friday, June 14, 2013, postage prepaid and addressed to Respondents' attorney at P. Brandt Shelbourne, Esq., 131 E. Richardson Ave, Summerville, SC 29483.



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June 14th, 2013

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SC Court of Appeals