

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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The Honorable Marvin H. Dukes, III  
Beaufort County  
Trial Court Case No. 2016-CP-07-02712

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APPELLATE CASE NO. 2020-000617

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Beachwalk Hotel & Condominium Association, Inc.  
and Beachwalk Hilton Head, LLC

Appellants,

vs.

The Town of Hilton Head Island and/or The Town  
of Hilton Head Island Board of Zoning Appeals and  
SDC Properties, Inc.,

Respondents.

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**RECORD ON APPEAL – VOLUME VI OF VI**

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**RECEIVED**

**Feb 05 2021**

**SC Court of Appeals**

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**WHEREAS**, the Planning Commission, following a positive recommendation from the Growth Management Task Force, and Public Hearings conducted on October 7, 1992, September 8, 1993, voted to recommend to Town Council that the proposed amendments to Articles II, III and VI of the LMO, as shown in Attachment A, be adopted; and

**WHEREAS**, the Town Council finds that it is in the Town's best interest and welfare to regulate the conditions under which development plans that have prior approvals may be pursued, since development undertaken based upon previously granted approvals may: be inconsistent with the goals and objectives of the Comprehensive Plan; be in conflict with the use provisions of the underlying zoning district; be in conflict with the site regulations, including allowable densities and intensities of use, as established in Article IV of the LMO; not fully adhere to the design and performance standards set forth in Articles VIII and IX of the LMO; create substantial impacts on public facilities and natural resources; and, create a public or private nuisance; and

**WHEREAS**, the Town Council, in amending Article III of the LMO, recognizes and acknowledges that cases may exist where all or a portion of a development plan which has received prior approval has become vested and declares that these amendments to Article III shall not be interpreted as denying such vested rights, where such rights are found to exist; and

**WHEREAS**, the Town Council recognizes the need to enact more detailed administrative procedures for the review and determination of the validity of claims of vested rights.

**NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF HILTON HEAD ISLAND, S.C.; AND IT IS ORDAINED BY THE AUTHORITY OF SAID COUNCIL:**

Section 1 Amendment. That Chapter 7, Land Management Ordinance (LMO) of the Town of Hilton Head Island, of Title 16 of the Municipal Code of the Town of Hilton Head Island, S.C., be, and hereby is amended, a copy of which is attached hereto and incorporated fully herein as Attachment A entitled "Proposed Amendments to Article II, Definition of Terms; Article III, Nonconformities and Prior Approvals; and Article VI, Administration."

Note: Additions to the Municipal Code are shown as **bold and underlined** text and deletions to the Municipal Code are shown as ~~strikeouts~~.

Section 2 Severability. If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 3 Effective Date. This Ordinance shall be effective upon the enactment by the Town Council of the Town of Hilton Head Island.

Passed, approved and adopted by the Council for the Town of Hilton Head Island on this 15th day of November, 1993.

  
\_\_\_\_\_  
Harvey W. Ewing, Jr., Mayor

  
\_\_\_\_\_  
Sandi Santaniello, Town Clerk

Public Hearing: 10-7-92 and 9-8-93  
First Reading : 11-2-92  
Revised First Reading: 8-2-93 and 10-18-93  
Second Reading and Adoption: 11-15-93

Revised 11/09/93

Proposed Ordinance 92-35

Attachment A

"Proposed Amendments to Article II, Definition of Terms;  
Article III, Nonconformities and Prior Approvals; and  
Article VI, Administration."

Add the following definitions to Land Management Ordinance Section 16-7-250.  
Definitions:

Legally established: Any land use, development, building, structure or site, including any lot of record, which was established, constructed, used or recorded pursuant to, and in conformance with all relevant requirements of the Ordinances then in effect.

Legally maintained: As used in this chapter, the phrase "legally maintained" shall mean that any and all conditions, obligations and requirements of any permit, approval or certificate of any description issued by Beaufort County, South Carolina or the Town of Hilton Head Island, shall have been met within the time frame, if any, required by such permit, approval or certificate, or that the permit, approval, or certificate has been fully executed according to its terms.

Legal nonconformity: Any land use, development, building structure or site, including any lot of record which was legally established, but which is not presently in full compliance with the provisions of this chapter as amended.

Nonconforming use: Any legally established activity using land, buildings or structures which was legally established, but which is not permitted on the applicable site by right, as a special exception or as a conditional use pursuant to Article IV of this Chapter.

Nonconforming building or structure: Any building or structure which was legally established, but which is not presently in compliance with the design and performance standards as set forth in Articles VIII, IX and X of this Chapter or with the applicable regulations of the zoning district in which it is located as set forth in Article IV of this Chapter.

Nonconforming site or lot of record: Any site or lot of record which was legally established, but which is not presently in compliance with the applicable zoning district regulations set forth in Article IV and/or with the applicable subdivision regulations set forth in Article VIII, Part C of this Chapter.

ARTICLE III, NONCONFORMITIES AND PRIOR APPROVALS

PART B. PRIOR APPROVALS GRANTED PRIOR TO THE ADOPTION OF THIS CHAPTER

Section 16-7-350. Findings of Fact, ~~and~~ Statement of Intent and Purpose.

This Part B of Article III is adopted in accordance with the 1985 Comprehensive Plan for the Town of Hilton Head Island, as amended, to regulate the conditions under which development plans which were granted approval prior to the adoption of this chapter may be pursued. In addition to the findings and recommendations contained therein, Town Council further finds that a compelling situation exists, and will continue to exist, with regard to the Town's ability to accommodate the impact of ~~the rate of~~ development as more specifically detailed in the said Comprehensive Plan, while at the same time exercising its obligation to minimize any potential danger to the public health, safety and general welfare.

Town Council further finds that, pursuant to the terms of any land development regulations or ordinances the ordinance in effect prior to the adoption of this Chapter, that certain development approvals were granted, including, but not necessarily limited to, namely "preliminary approvals" and "final development permits" issued by Beaufort County or the Town of Hilton Head Island. In adopting this Part B of Article III, it is not the intent of Town Council to deny to any individual who has received a prior development permit or approval, including but limited to, a preliminary approval or a final development permit which has been legally maintained a reasonable opportunity to proceed with development plans based on such prior approvals or permit. It is the intent of Town Council in enacting these provisions to attempt to strike a balance between ~~such development opportunities~~ the provision of a reasonable opportunity to implement development plans which received prior approvals which have been legally maintained and the obligation incumbent upon the governing authority to adopt land use regulations which are consistent with the said Comprehensive Plan and necessary to protect, promote and improve the public health, safety and welfare.

The purpose of this Part B of Article III is to regulate the conditions under which development plans that have prior approvals may be pursued, consistent with the findings and intent of this section. Development proposed to be undertaken pursuant to prior approvals may be: inconsistent with the goals and objectives of the Comprehensive Plan; in conflict with the use provisions of the underlying zoning district; be in conflict with the site regulations, including allowable densities and intensities of use, as established in Article IV of this chapter; and/or not fully compliant with the design and performance standards set forth in Articles VIII and IX of this chapter. Further, such development may create substantial impacts on public facilities and natural resources or may create a public or private nuisance.

Section 16-7-352. Status Expiration of Previously Issued Prior Final Development Permits.

- (a) Any final development permit granted approval prior to the effective date of this chapter shall remain valid for the life of such permit or until December 31, 1994, whichever shall occur first, subject to such conditions as may have been required pursuant to the granting of such permit and subject to the requirements of Part B of Article VII of this chapter.

- (b) The following shall not be construed to extend the life of a final development permit beyond December 31, 1994:
- (1) Completion of a phase or a portion of a phase, whether or not designated in the final development permit.
  - (2) Completion of infrastructure for a phase or a portion of a phase, whether or not designated in the final development permit.
  - (3) Obtaining a building permit, certificate of compliance or certificate of occupancy for a phase or a portion of a phase, whether or not designated in the final development permit.
- (c) Any final development permit granted approval prior to the effective date of this chapter for which a vested rights or equitable estoppel determination has been made pursuant to the procedures provided for in Section 16-7-698 shall remain valid for the length of time and under such conditions as provided for in the vested rights determination.

Section 16-7-354. Expiration of Prior Final Development Permit.

~~Any final development permit granted prior to the effective date of this chapter shall become invalid upon its expiration.~~

Section 16-7-356. Status Expiration of Previously Approved Prior Preliminary Approvals.

- (a) Any preliminary approval which was granted prior to the effective date of this chapter shall remain valid for the life of such approval or until December 31, 1994, whichever shall occur first, and shall be consistent with the terms of the ordinance in effect at the time such approval was granted, and subject to such conditions as may have been required pursuant to the granting of such approval.
- (b) Any application filed pursuant to the requirements of this chapter for Planning Commission review and/or development plan

review, based upon such a prior approval, but submitted after the effective date of this chapter, shall be subject to applicable requirements and procedures of Articles VI and VII of this chapter. In the granting of a development plan approval pursuant to such application, the Planning Commission or Administrator shall require conformance to the greatest degree practical with applicable site regulations set forth in Article IV and design and performance standards set forth in Articles VIII and IX. Any or all parcels of a tract granted prior preliminary approval for unspecified commercial use shall conform to the permitted commercial uses in Article IV for the specific zoning district within which it is located.

(c) The following shall not be construed to extend the life of a development plan which was granted preliminary approval prior to the effective date of this chapter beyond December 31, 1994:

- (1) Obtaining a final development permit or development plan approval for a plan or a phase or a portion of a phase, whether or not designated in the preliminary approval.
- (2) Completion of a phase or a portion of a phase, whether or not designated in the preliminary approval.
- (3) Obtaining a building permit, certificate of compliance or certificate of occupancy for a phase or a portion of a phase, whether or not designated in the preliminary approval.

(d) Where a PUD master plan, which was granted approval prior to the effective date of this chapter, has been incorporated into the official town zoning map pursuant to Section 16-7-435 of this chapter, the provisions of that section shall govern the implementation of such PUD master plan.

(e) Any preliminary approval which was granted prior to the effective date of this chapter for which a vested rights or equitable estoppel determination has been made pursuant to the procedures provided for in Section 16-7-698 shall remain valid for the length of time and under such conditions as provided for in the vested rights determination.

(Ord. No. 87-23, 9-16-87)

Section 16-7-358. Expiration of Prior Preliminary Approval.

~~Any preliminary approval granted prior to the effective date of this chapter, or any applicable amendment hereto, shall become invalid upon the expiration of such approval unless a development plan application for such proposed development, or any phase thereof, is filed in completed form prior to such expiration.~~

PART C. APPEALS

Section 16-7-360. Appeal to Board of Adjustment.

~~Any person aggrieved by a determination made pursuant to the provisions of this article shall have the right to appeal to the Board of Adjustment consistent with the procedures and requirements set forth in Article VI of this chapter.~~

Section 16-7-350. Determination of Vested Rights.

Determinations of claims of vested rights pursuant to a prior preliminary approval or prior final development permit shall be made in accordance with the provisions of section 16-7-698 of this chapter.

ARTICLE VI. ADMINISTRATION

PART J. Vested Rights Determinations

Section 16-7-698. Procedures for the Determination of Vested Rights.

In order to provide for the fair and equitable determination of vested rights pursuant to any approval previously granted pursuant to this chapter, or any approval granted prior to the adoption of this chapter, the Town Council shall adopt, by resolution, administrative procedures for the determination of vested rights.

## **PROCEDURE FOR DETERMINATION OF VESTED RIGHTS**

### **Section 1 Purpose and Intent:**

- (A) The purpose and intent of these Vested Rights Determination Procedure provisions are:
- (1) To implement the requirements of the State and Federal Constitutions, Statutes of South Carolina and Common Law of South Carolina that limit the application of comprehensive plans and land use ordinances and regulations with respect to property owners with vested rights;
  - (2) To recognize that development projects for which vested rights have been obtained must be accounted for in the comprehensive plan and land use ordinances and regulations of the Town of Hilton Head Island, South Carolina;
  - (3) To provide a method for determining and quantifying the number of projects, development projects, and land uses, now non-conforming, or which may become non-conforming due to subsequent amendments to the land management ordinances and regulations of the Town of Hilton Head Island, South Carolina, but which are vested, so that such projects, development projects and land uses can be accounted for in the existing and future Comprehensive Plans and land use ordinances and regulations of the Town of Hilton Head Island, South Carolina;
  - (4) To establish uniform and non-burdensome procedures and specific criteria for the determination of Vested Rights and claims of Equitable Estoppel in order to aid in the accomplishment of sound and orderly planning;
  - (5) To protect legitimate investment-backed expectations;
  - (6) To protect the planning and plan implementation processes;
  - (7) To settle potential disputes and to minimize costly and protracted litigation;
  - (8) To facilitate implementation of goals, objectives and policies set forth in the Town of Hilton Head Island Comprehensive Plan of 1991 and the Land Management Ordinance (§ 16-7-100, *et. seq.*, *Code of the Town of Hilton Head Island*, (1983)); and
  - (9) To ensure that all applicable legal standards and criteria are utilized in the determinations to be made hereunder.

**Section 2 Definitions:**

(A) The words or phrases used herein shall have the meaning prescribed in § 16-7-250, *Code of the Town of Hilton Head Island*, (1983), except as otherwise indicated herein. In the case of any conflict between the definitions set forth in § 16-7-250, *Code of the Town of Hilton Head Island*, (1983), and herein, the definitions set forth herein shall apply to matters arising under these Regulations:

- (1) Administrator means the Director of Community Development for the Town of Hilton Head Island, South Carolina.
- (2) Aggrieved Person means and refers to any person who has an immediate and substantial pecuniary interest in the outcome of any application for a Categorical Exemption or Vested Rights Determination.
- (3) Applicant means and refers to a property owner, or duly designated agent of the property owner, who makes an application for a Categorical Exemption Certification or for a Vested Rights Determination pursuant to these Regulations.
- (4) Board of Adjustment means and refers to the Board of Adjustment for the Town of Hilton Head Island, South Carolina.
- (5) Building Permit means and refers to a Building Permit issued by the Town Of Hilton Head Island, South Carolina, authorizing commencement of any construction or other improvement to real property, in accordance with the Building Code then in effect and the Land Management Ordinance.
- (6) Categorical Exemption or Categorically Exempt means and refers to a parcel, development project or any phase or portion thereof, which has been declared to be exempt from the application of all or any portion of the existing Land Management Ordinance, or any future amendments thereof, pursuant to these Regulations.
- (7) Categorical Exemption Certificate means and refers to the written document issued by the Administrator upon a Final Determination that a given parcel, development project or any portion thereof is Categorically Exempt.
- (8) Deliver and Delivery mean and refer to the deposit of any written notification required by these Regulations into the United States Mail, to the mailing address of the Applicant as shown on the

Application for Categorical Exemption Certificate or Vested Rights Determination, with first class postage affixed thereto; or by personal, hand delivery to the Applicant.

- (9) Development and/or Development Project shall mean and refer to any form of construction or other improvement, including site improvements, to real property, and shall further mean and refer, without limitation, to subdivisions, Planned Unit Developments, commercial or other non-residential building or structure, or any other form of planned improvements to real property. In these Regulations, this definition is intended to be all-encompassing, and to cover any form of rights to use or improve real property claimed by an Applicant.
- (10) Equitable Estoppel means and refers to a state of facts where it would be inequitable for the Town of Hilton Head Island, South Carolina to enforce all or any portion of the existing Land Management Ordinance, or amendments thereto, with respect to a particular parcel, development project or portion or phase thereof because an Applicant or and Applicant's predecessor in interest has: (1) relied in good faith (2) upon conduct, representations or silence of the Town of Hilton Head Island, South Carolina, amounting to a mis-representation or concealment of facts, (3) where the Applicant was without reasonable means of obtaining knowledge of the truth of the disputed matters, and (4) has made substantial improvements to his property, or has incurred substantial obligations as a result of such reliance. The terms Vested Rights and Equitable Estoppel are sometimes used interchangeably throughout these Regulations and a reference to one shall mean and include a reference to the other.
- (11) Final Decision or Final Determination means and refers to the decision of the Administrator on an application for a Categorical Exemption or on an Application for a Vested Rights Determination.
- (12) Land Management Ordinance means and refers to § 16-7-100, *et seq.*, *Code of the Town of Hilton Head Island*, (1983) and any amendments thereto.
- (13) Notice of Completeness means and refers to a written notice by which an Applicant for Vested Rights Determination or Categorical Exemption is notified that an application is complete.
- (14) Notice of Incompleteness means and refers to a written notice by which an Applicant for Vested Rights Determination or Categorical Exemption is notified that an application is incomplete, and specifying the item or items which are missing.

- (15) Notice of Dismissal means and refers to a written notice which notifies an Applicant that he has failed to respond to the Notice of Incompleteness within the time frame established by these Regulations, and which further notifies the Applicant that his Application is dismissed.
- (16) Town means and refers to the Town of Hilton Head Island, South Carolina.
- (17) Town Council means and refers to the Town Council of the Town of Hilton Head Island, South Carolina.
- (18) Valid or Validly-Issued Final Development Permit means and refers to Final Development Permit or any other authorization, including, without limitation: Development Plan approval [subject to the provisions of § 16-7-666, *Code of the Town of Hilton Head Island*, (1983)]; variances; "comfort letters" issued by the Town of Hilton Head Island, South Carolina; agreements between any agency of the Town of Hilton Head Island, South Carolina, and any third party; settlement agreements entered into to resolve litigation between the Town of Hilton Head Island and any other party, provided that such was legally issued; was issued by an individual or agency of the Town of Hilton Head Island, South Carolina possessing the requisite authority to issue the same; was not issued by mistake; which has not expired, lapsed, or been abandoned, revoked or canceled; or is not subject to expiration, lapse, abandonment or revocation by the passage of time or the conduct of the Applicant or the Applicant's predecessors in interest. All conditions of approval set forth in any such Valid Final Development Permit must have been satisfied by the Applicant or the Applicant's predecessor in interest.
- (19) Verified Copy means and refers to a copy of an original document submitted by an Applicant to the Town, pursuant to these Regulations, which copy bears (or is accompanied by) a sworn statement from the Applicant that the copy is a true and correct copy of the entire original document.
- (20) Vested Rights means and refers to the rights of an Applicant to be exempt from the application of all or any portion of the existing Land Management Ordinance, or any amendment thereto, to a particular parcel, development project or portion or phase thereof because the Applicant or the Applicant's predecessor in interest has: (1) performed substantial work or incurred substantial obligations; (2) in good faith reliance; (3) on any Final Development Permit or Building Permit issued by the Town of Hilton Head Island, South Carolina. The terms Vested Rights and Equitable Estoppel are sometimes used interchangeably throughout these regulations and a reference to one shall mean and include a reference

to the other.

- (21) **Vested Rights Determination** means and refers to the Final Decision of the Administrator, pursuant to which a parcel, development project or any portion or phase thereof is deemed to have Vested Rights or a valid claim of Equitable Estoppel against the Town, thereby exempting the parcel, development project or any portion or phase thereof from all or any portion of the Land Management Ordinance, or any amendment thereto.

**Section 3 General Provisions and Applicability:**

(A) **Term of these Regulations:** These regulations shall remain in effect unless and until repealed, amended or modified by Resolution of the Town Council in accordance with applicable State Law and local ordinances and procedures.

(B) **Quarterly Report:** The Administrator shall provide a report to Town Council on a quarterly basis, which report shall provide a summary of:

- (1) The number of applications filed for Categorical Exemptions during the quarter, and the status and/or disposition of such applications; and,
- (2) The number of applications filed for Vested Rights Determinations during the quarter, and the status and/or disposition of such applications.

(C) **Annual Review:** At least once every year prior to adoption of the Annual Budget and Capital Improvements Program, the Administrator shall prepare a report to the Town Council on the subject of Vested Rights which shall include:

- (1) Recommendations on amendments, if appropriate, to these Regulations;
- (2) The number of applications filed for Categorical Exemptions during the preceding year, the disposition of such applications and the number of dwelling units by type and square footage of non-residential development represented by such Categorical Exemptions.
- (3) The number of applications filed for Vested Rights Determinations during the preceding year, the disposition of such applications and the number of dwelling units by type and square footage of non-residential development represented by such determinations;
- (4) The location of Categorically Exempt parcels, developments and development projects, including the zoning district in which they are located;
- (5) The location of parcels, developments and development projects where it has been determined that Vested Rights apply, including the zoning district in which they are located;
- (6) The number, identification and location of applications for Categorical Exemptions and Vested Rights Determinations which are denied;
- (7) Other data, analysis or recommendations which the Administrator may deem appropriate, or as may be

requested by the Town Council.

(D) **Effect of Annual Review:** This annual review may, in whole or in part, form the basis for Town Council action to repeal, amend or modify these Regulations; provided, however, that the Town Council may cite and the Town Council may rely upon such other data, information, reports, analyses and documents relevant to any such decision as may be available to the Town Council.

(E) **Amendments:** Changes to these regulations must be made by Resolution of the Town Council. Nothing herein precludes the Town Council or limits the discretion of the Town Council to amend these Regulations at such other times as the Town Council may deem to be necessary or desirable.

(F) **Affected Area:** These regulations shall apply within the boundaries of the Municipal Limits of the Town of Hilton Head Island, South Carolina.

(G) **Applicability:** These Regulations shall apply to all claims for Categorical Exemptions and Vested Rights Determinations, except as otherwise set forth below.

(H) **Inapplicability:** These Regulations shall not apply to nor shall the procedures for obtaining a Categorical Exemption or Vested Rights Determination be available to claims for Vested Rights or Categorical Exemptions based only upon existing zoning of property.

**Section 4 Categorical Exemptions:**

(A) **Categorical Exemptions:** The following are Categorical Exempt if an application for Categorical Exemption is filed by the Applicant pursuant to this Section 4 and a Categorical Exemption Certificate is issued by the Town:

- (1) Parcels, developments or any portion or phase thereof, which are the subject of a valid Vested Rights Determination issued by the Town pursuant to these Regulations.
- (2) Parcels, developments or any portion or phase thereof, which are the subject of any Final Development Permit issued prior to the adoption of these Regulations, and which Final Development Permit has not expired, lapsed, been abandoned, revoked or otherwise declared invalid;
- (3) Owners of parcels, developments, or any portion or phase thereof, as defined in Subsections one (1) and two (2) above, wherein a valid Building Permit has been obtained by the owner, or the owner's predecessor in interest, shall not be required to obtain a Categorical Exemption Certification unless the construction is abandoned, or the Building Permit pursuant to which construction is taking place lapses, expires or is waived.

(B) **Procedure for obtaining a Categorical Exemption Certificate:**

- (1) **Application:** Any person wishing to obtain a Categorical Exemption Certificate shall file an "Application for a Categorical Exemption Certificate" as set forth herein.
- (2) **Submission of Application:** An Applicant shall file a complete "Application for Categorical Exemption Certificate" with the Administrator no later than December 31, 1994, or within one year of the date of the adoption of any amendment to the Land Management Ordinance from which the Applicant believes he is Categorical Exempt. Failure to submit a complete application within the time frames set forth herein shall be deemed to constitute a waiver and abandonment of the alleged right to obtain a Categorical Exemption.
- (3) **Submission Requirements:** An application for a Categorical Exemption Certificate shall be made on a form established for such purpose by the Town and shall, at a minimum, contain the following information:

- (a) Name and current mailing and street address of the Applicant;
- (b) A description of the development for which the Categorical Exemption is sought, including current survey showing site improvement and copies of relevant deeds;
- (c) Location of development for which the Categorical Exemption is sought, including the Zoning District;
- (d) Total land area of the development for which the Categorical Exemption is sought;
- (e) Total area of impervious surface and open space, of the development for which the Categorical Exemption is sought;
- (f) Number of residential dwelling units, by type, within the development for which the Categorical Exemption is sought;
- (g) Type and amount of non-residential square footage, of the development for which the Categorical Exemption is sought;
- (h) Phases of the development, or portions of the development for which the Categorical Exemption is sought, if applicable;
- (i)
  - (i) a verified copy of any valid Vested Rights Determination issued by the Town pursuant to these Regulations; or
  - (ii) a verified copy of a valid Final Development Permit including any plans, drawings and/or narrative associated with or relating to the Final Development Permit issued by the Town prior to the effective date of these Regulations.
- (j) A sworn narrative statement from the Applicant setting forth the Applicant's basis for his claim of Categorical Exemption.
- (k) A filing fee in the amount of One Hundred and no/100 (\$100.00) Dollars.
- (l) A sworn statement, in a form prescribed by the Town, and signed by the Applicant, attesting that:
  - (i) any Valid Final Development Permits, contracts, appraisals, reports, or any other documents or materials submitted are valid as of the date of the submission and that the Applicant has not assigned, sold or otherwise transferred his interest in and

to the rights described in the said documents;

- (ii) setting forth the names and addresses of any party known to the Applicant to have any pecuniary interest in the outcome of the Categorical Exemption Application;
- (iii) that there are no prior adverse final Administrative determinations of the Town or any federal, state or other local governmental agency affecting the Applicant's Categorical Exemption claim;
- (iv) that there are no prior adverse orders of any state or federal court affecting the Applicant's Categorical Exemption claim;
- (v) that there is no pending administrative action or court proceeding in which the Applicant's Categorical Exemption claim will be affected by the outcome; and,
- (vi) that the Applicant is aware of no other information or document, not submitted with his application, disclosure of which would potentially have a negative impact on his application.

(4) **Review of Application for Completeness:**

- (a) The Administrator shall review the application within ten (10) days of submission and inform the Applicant, in writing, as to whether or not the application is complete. If complete, the Administrator shall proceed to review the application as set forth herein.
- (b) If the Administrator determines that the application is incomplete, a Notice of Incompleteness shall be Delivered to the Applicant.
- (c) The Administrator shall take no further action on an incomplete application until the deficiencies are corrected and the application is resubmitted. If a complete application is not resubmitted within fifteen (15) days from the date of Delivery of the Notice of Incompleteness to the Applicant, the application shall be dismissed; a Notice of Dismissal shall be delivered to the Applicant, and all fees paid shall be retained by the Town. A dismissal pursuant to this subsection shall be without prejudice to the Applicant's right to refile a complete application, subject, however, to the time frames set forth in Section 4 (B)(2) herein.
- (d) A determination of completeness shall only constitute a determination that the application is in

compliance with the submission requirements of these Regulations and shall not imply compliance with the substantive requirements of these Regulations nor shall it indicate that the information submitted is accurate or has been verified.

(5) **Public Hearing on Application:**

- (a) At the same time that the Administrator delivers the Notice of Completeness to the Applicant, the Administrator shall also notify the Applicant of the time and place for a public hearing on the Application. Said public hearing shall be no more than fifteen (15) days following the delivery of the Notice of Completeness.
- (b) At the public hearing, the Applicant shall be given the opportunity to make an oral presentation on the facts and applicable law in support of the Application to the Administrator, and the Administrator shall be given the opportunity to ask questions of the Applicant concerning the materials submitted hereunder and the presentation of the Applicant.
- (c) While the hearing will be open to the public, comments from the public concerning the application shall not be taken at the hearing.

(6) **Issuance or Denial of Categorical Exemption Certification:**

- (a) Following review by the Administrator and the public hearing, the Administrator shall issue his Final Decision, issuing or denying the Application for Categorical Exemption Certification for all, or a portion of, the applicable development.
- (b) If granted, the Categorical Exemption Certification shall be specific as to the development, or portion thereof, which is Categorically Exempt; large-scale, multi-phase development may be determined to be Categorically Exempt in part, but not as a whole.
  - (i) The Categorical Exemption Certification may specify any Land Management Ordinance provisions to which the exemption will or will not apply.
  - (ii) The Categorical Exemption Certification shall also specify that the Categorical Exemption Certification shall be valid for a period of five (5) years from the date of said Categorical Exemption Certification unless another time period is stated therein and the Administrator documents the reasons for the alternate time period; and

that after the expiration of the Categorical Exemption Certification, the affected property shall be subject to all provisions of the then existing Land Management Ordinance.

- (c) If the Application for Categorical Exemption is denied, the Administrator shall specify his reasons therefore, in writing.
- (7) **Delivery of Final Determination:** The Administrator shall Deliver his Final Determination to the Applicant within sixty (60) days of the public hearing , unless the Administrator and the Applicant agree, in writing, to extend the deadline.
- (8) **Denial is without Prejudice to certain other rights:** A denial of an Application for a Categorical Exemption Certificate shall not prejudice the right of the Applicant to seek a Vested Rights Determination based upon the same facts and/or documentation, subject, however, to the time limits set forth in Section 5(B), infra.

**Section 5 Procedures for Vested Rights Determinations:**

(A) **Necessity for Application:** All development other than that which is determined to be Categorically Exempt pursuant to these Regulations shall be presumed to be subject to the existing Land Management Ordinance, and any amendments thereto, unless the Applicant demonstrates, by a preponderance of the evidence, that Vested Rights have been acquired pursuant to South Carolina law or that the Town is Equitably Estopped from enforcing all or portions of the Land Management Ordinance with respect to all or portions of the development.

(B) **Submission of Application:** An Applicant shall file a complete "Application for Vested Rights Determination" with the Administrator no later than December 31, 1994, or within one year of the date of the adoption of any amendment to the Land Management Ordinance which the Applicant believes affects or involves any Vested Right of the Applicant. Failure to submit a complete application within the time frames set forth herein shall be deemed to constitute a waiver and abandonment by the Applicant of any alleged Vested Rights.

(C) **Submission Requirements:** An application for a Vested Rights Determination shall be made by the Applicant on a form established for such purpose and provided by the Town, and, at a minimum, shall contain the following information:

- (1) All of the information required by Section 4(b)(3) supra;
- (2) Verified Copies of all Final Development Permits, contracts, appraisals, reports, or any other documents or materials upon which the applicant's claim of Vested Rights or Equitable Estoppel is based;
- (3) A sworn narrative statement from the Applicant setting forth the basis for the Applicant's claim of Vested Rights. To the extent applicable, the narrative statement should address the criteria for a determination of Vested Rights or Equitable Estoppel set forth in Section 6 infra.
- (4) A filing fee in the amount of Five Hundred and no/100 (\$500.00) Dollars.
- (5) A sworn statement, in a form prescribed by the Town, and signed by the Applicant, attesting that:
  - (a) any Valid Final Development Permits, contracts, appraisals, reports, or any other documents or materials submitted are valid as of the date of the submission and that the Applicant has not assigned, sold or otherwise transferred his interest in and to the rights described in the said documents;

- (b) setting forth the names and addresses of any party known to the Applicant to have any pecuniary interest in the outcome of the Vested Rights Determination;
- (c) there are no prior adverse final Administrative determinations of the Town or any federal, state or other local governmental agency affecting the Applicant's Vested Rights claim;
- (d) there are no prior adverse orders of any state or federal court affecting the Applicant's Vested Rights claim;
- (e) there is no pending administrative action or court proceeding in which the Applicant's claim of Vested Rights will be affected by the outcome; and
- (f) the Applicant is aware of no other information or document, not submitted with his application, disclosure of which would potentially have a negative impact on his application.

(D) **Review of Application for Completeness:**

- (1) The Administrator shall review the Application for Vested Rights Determination within fifteen (15) days of submission and inform the Applicant, in writing, as to whether or not the application is complete. If complete, the Administrator shall proceed to review the application as set forth herein.
- (2) If the Administrator determines that the application is incomplete, a Notice of Incompleteness shall be Delivered to the Applicant.
- (3) The Administrator shall take no further action on an incomplete application until the deficiencies are corrected and the application is resubmitted. If a complete application is not resubmitted within twenty (20) days from the date of Delivery of the Notice of Incompleteness to the Applicant, the application shall be dismissed; a Notice of Dismissal shall be delivered to the Applicant, and all fees paid shall be retained by the Town. A dismissal pursuant to this subsection shall be without prejudice to the Applicant's right to refile a complete application, subject, however, to the time frames set forth in Section 5(13) herein.
- (4) A determination of completeness shall only constitute a determination that the application is in compliance with the submission requirements of these Regulations and shall not imply compliance with the substantive requirements of these Regulations nor shall it indicate that the information submitted is accurate or has been verified.

(E) **Public Hearing on Application:**

(1) At the same time that the Administrator delivers the Notice of Completeness to the Applicant, the Administrator shall also notify the Applicant of the time and place for a public hearing on the Application. Said public hearing shall be no more than fifteen (15) days following the delivery of the Notice of Completeness.

(2) At the public hearing, the Applicant shall be given the opportunity to make an oral presentation on the facts and applicable law in support of the Application to the Administrator, and the Administrator shall be given the opportunity to ask questions of the Applicant concerning the materials submitted hereunder and the presentation of the Applicant.

(3) While the hearing will be open to the public, comments from the public concerning the application shall not be taken at the hearing.

(E) **Issuance or Denial of Vested Rights Determination:**

(1) Following review by the Administrator and the public hearing, the Administrator shall issue his Final Decision, issuing or denying the Application for Vested Rights Determination.

(2) The Final Decision shall contain the Administrator's findings of fact and conclusions of law with regard to the Application for Vested Rights Determination, and shall, at a minimum, contain the following:

(a) Whether the Applicant has been found to have acquired Vested Rights or has a valid claim of Equitable Estoppel and the basis for such finding;

(b) If the proposed Determination includes findings and a conclusion that Vested Rights or a valid claim of Equitable Estoppel exists, then the Final Decision shall further state the geographic scope of the determination in relation to the total area of the development site; the specific buildings or uses to which the determination applies; the substantive scope of the Vested Rights determined to have been acquired and the limitations applicable thereto, if any, including, but not limited to, the applicability of impact fees and building permit allocations; any other appropriate conditions, consistent with the rights of the applicant, which are needed to ensure consistency with the Comprehensive Plan and Land Management Ordinance.

(c) The Vested Rights Determination shall also specify that the Vested Rights Determination shall be valid for a period of five (5) years from the date of said Vested Rights Determination unless

another time period is expressly stated therein and the Administrator documents their reasons for the alternate time period; and that after the expiration of the Vested Rights Determination, the affected property shall be subject to all provisions of the then existing Land Management Ordinance.

(F) **Delivery of Final Determination:** The Administrator shall Deliver his Final Determination to the Applicant within sixty (60) days of the public hearing, unless the Administrator and the Applicant agree, in writing, to extend the deadline.

(G) **Withdrawal of Application:** An Applicant may withdraw an application for a Vested Rights Determination at any time by submitting a written request to the Administrator. Withdrawal of an application for a Vested Rights Determination shall result in the forfeiture of all administrative fees paid by the applicant for the processing of the application. Withdrawal of an Application under this subsection shall be without prejudice to the rights of the Applicant to re-file an Application for Vested Rights Determination, subject to the time limitations set forth in Section 5(B) herein.

**Section 6 Standards and Criteria for Issuance of Vested Rights Determinations:**

(A) General Requirements for Common Law Vested Rights:

- (1) The Applicant has the duty and responsibility to demonstrate by a preponderance of the evidence that a Vested Right to proceed with the proposed development without being subject to specific requirements of the existing Land Management Ordinance, and any amendments thereto, has been legally established and/or to demonstrate that the Town is Equitably Estopped from applying specific provisions of the existing Land Management Ordinance, and any amendments thereto, to the proposed development.
- (2) The applicable legal requisites to establish a claim of Vested Rights to initiate or complete development which does not conform to the existing Land Management Ordinance or amendments thereto are:
  - (a) that the Applicant has made a substantial change of position or has incurred substantial obligations and expenses with respect to the land affected by the permit;
  - (b) acting in good faith and in reasonable reliance on a valid, unexpired approval or act of the Town; or,
  - (c) that the Applicant has, in good faith, applied for an approval or permit to initiate development or construction based upon the existing zoning ordinances prior to any amendment thereto being legally pending; provided, however, that the mere filing of an application will not be sufficient to establish a claim of vested rights, unless said application is Legally Maintained, as defined in § 16-7-250, *Code of the Town of Hilton Head Island*, (1983).
- (3) The applicable legal standards for a determination that the Town is Equitably Estopped from enforcing the provisions of the existing Land Management Ordinance, or amendments thereto are:
  - (a) that the Applicant has, in good faith, relied upon conduct, representations or silence of the Town of Hilton Head Island, South Carolina, amounting to a concealment or mis-representation of facts;
  - (b) in circumstances where the Applicant was without knowledge of the true state of facts, and was without reasonable means of determining the true state of facts;
  - (c) the Applicant has relied, to his detriment upon such affirmative act, representation or omission, and has made substantial improvements or incurred substantial obligations with respect to the

land;

(d) it would be unjust or inequitable to subject the proposed development or construction to the requirements of the Land Management Ordinance, given the totality of the circumstances.

(4) If the applicant is determined to have acquired Vested Rights, or if the Town is determined to be Equitably Estopped from applying certain specified provisions of the existing Land Management Ordinance, or amendments thereto, to the proposed construction or development, the Applicant shall be granted a Vested Rights Determination.

(B) **Specific Criteria:** The following specific criteria shall guide both the Applicant in submitting evidence and the Administrator in considering the evidence so that all relevant facts are reviewed and so that an adequate record is made for further administrative or judicial review. The specific criteria are not intended to limit either the Administrator or the Applicant in applying the common law of Vested Rights or Equitable Estoppel, and the Administrator may, in any particular case, consider all such applicable law.

(1) **Good Faith.** Acting in good faith may mean, and consideration may be given to, the degree to which the Applicant has made diligent efforts in a timely fashion toward completion of the subject development. Diligent efforts shall require reasonable and timely pursuit of all necessary governmental approvals, certifications and permits, financing, and marketing, together or in a sequence customary to the industry.

(a) The Administrator may find good faith has not been shown:

(i) where the Applicant has not made diligent efforts to pursue all reasonable means to remedy or avoid the factors preventing him from commencing or continuing with the proposed development; or

(ii) where all permits, approvals, and certifications which should reasonably be obtained are not obtained and have not been delayed by factors beyond the Applicant's control;

(iii) where delays are occasioned by the actions of any person holding a legal or equitable interest in the property, its agents, contractors, or employees acting on behalf of the Applicant;

(iv) where there is a discontinuation of attempts to obtain all necessary governmental

approvals, certifications and permits; financing; and marketing, together, or in a sequence customary to the industry.

(b) Recognizing that land development is a complex process involving a series of governmental approvals which must be obtained over time, the following factors may be considered where relevant:

- (i) The marketing practices associated with the proposed development, e. g., whether the entire development is being marketed for sale as a whole or whether only individual lots or dwelling units are being marketed;
- (ii) The reasonable development time line for a development of the type and size being proposed;
- (iii) The number and type of contractors, engineers, consultants, tradesman, and professionals working on the proposed development, and the nature of their respective activities;
- (iv) Whether the Final Development Permit (if any) was issued in compliance with then current Land Management Ordinance or the Development Standards Ordinance;
- (v) Whether the Applicant was on notice that active or documented efforts were being pursued by the Town to adopt the current Land Management Ordinance at the time that the Valid Final Development Permit was issued; to establish that active and documented efforts had been undertaken, the Administrator must find that there was more than circumstantial notice of a change in the regulations. Comments by Town personnel shall not be deemed sufficient to establish notice of a change in the Land Management Ordinance.
- (vi) Whether the Applicant has inquired and conferred with the appropriate Town officials as to the use to which the property may be put and the conditions and requirements applicable to such use.
- (vii) With regard to claims of Vested Rights arising from an Application for an approval or permit for development which has been made in reliance on existing zoning,

whether or not any amendment to the existing zoning was legally pending prior to the submission of the application.

(2) **Detrimental Reliance:** In determining whether the Applicant has reasonably and substantially relied on an alleged governmental approval, act or omission, the following factors may be considered:

- (a) The type of approval, act or omission, relied upon;
- (b) The regulatory system in effect at the time the approval, act or omission occurred;
- (c) Whether the approval, act or omission was formal or informal;
- (d) The point in the sequence of required regulatory approvals when the relied upon approval, act or omission occurred. A determination that a development approval claimed by the Applicant as giving rise to Vested Rights or Equitable Estoppel is the final act required (or which was required under the existing land use ordinances) to authorize development shall weigh in favor of making a Vested Rights Determination.
- (e) The level of detail included in the approval issued by the Town or the act or omission relied upon.

(3) **Substantial Improvements, Expenses or Obligations:** In determining whether the Applicant has made a substantial change of position or has incurred substantial obligations or expenses, the following factors may be considered:

- (a) The extent to which contributions have been made by the Applicant for public infrastructure for the proposed development, taking into account the relative significance of such contributions as compared to the size, value, and density of the project, and whether performance is complete;
- (b) The total amount of direct costs of development incurred by the Applicant as compared to the total project cost; provided, however, that costs incurred prior to the Town act or approval upon which the owner relied shall not be considered;
- (c) The extent to which surveys, design plans, engineering plans, plats, building plans and specifications have been prepared in reliance on a valid Final Development Permit, and the total amount of money reasonably spent thereon relative to the size of the development;
- (d) The professional fees incurred for the development;

- (e) The nature of any expenditures allegedly made in reliance upon reasonable investment-backed expectations, the company to whom such expenditures were paid, and the business relationship or any familiar or other relationship of the recipient of such expenditures to the Applicant;
- (f) The reasonableness of the total expenditures as compared to customary development practices for a development of similar size and scale on Hilton Head Island, South Carolina;
- (g) The then-present intent of the Applicant to develop a specific project at the time the reliance was deemed to have occurred, as opposed to a tenuous, contingent, speculative, distant or non-existent intent;
- (h) Whether the parcel of land was purchased contingent upon the issuance of the specific Valid Final Development Permit, and whether the Town knew that the Applicant was relying upon the issuance of the Valid Final Development Permit. The existence in a Vested Rights Determination Application of written evidence in the records of the Town of such knowledge shall weigh in favor of the determination.
- (i) The extent to which irrevocable contracts or agreements have been negotiated and executed by the Applicant to pursue the proposed development.

(C) **Equity of Applying Land Management Ordinance to Applicant:** In determining whether it would be inequitable to apply the current Land Management Ordinance to the Applicant, the following factors may be considered:

- (1) The terms of any agreement by and between the Town and the Applicant, or the Applicant's predecessor in interest, executed in conjunction with a development approval;
- (2) The conditions of development approval and the level of, or progress of the Applicant toward, fulfillment of such conditions;
- (3) the number, frequency and timing of Town approvals or acts relied upon by the Applicant;
- (4) Whether and for how long the subject parcel was developable prior to the applicability of the current Comprehensive Plan and Land Management Ordinance, and the type and extent of development that could have occurred when the Applicant acquired the property, incurred substantial obligations or expenditures, or substantially changed his position;
- (5) The reasonableness and good faith of any alleged reliance on governmental approvals, acts or omissions.

given the totality of the circumstances;

- (6) Whether the Applicant had obtained financing or a loan commitment prior to the effective date of these Regulations;
- (7) The use to which the Applicant intended to put the land prior to the effective date of these regulations;
- (8) Whether a capacity reservation, or similar agreement reserving utility or other infrastructure capacity, has been maintained by the Applicant and the requirements for continuing to maintain such capacity; and
- (9) Whether the project is in separate ownerships, and the number of owners and size of parcels in the project under separate ownership (projects shall be considered as a whole).

**(D) Standards and Criteria Inapplicable to a Vested Rights Determination:**

The following standards may not be relied upon by the applicant and shall not be applicable to a Vested Rights Determination:

- (1) Actions of the Applicant taken after the effective date of the existing Land Management Ordinance, or any amendment thereto; provided, however, that activities of the Applicant which are underway, or which are the next step in a development process, and which are continuing to a reasonable completion of the development project, and which cannot be halted without substantial harm and loss of investment, may be considered;
- (2) Real Property Taxes paid by the Applicant;
- (3) Appraised value of the land as set by the Beaufort County Appraiser;
- (4) Acts or approvals which are not specific to the subject parcel or proposed development;
- (5) Conceptual approvals, informal approvals or encouragement by the Town or any of its staff or officials unless the Town Official has express authority to authorize the specific action;
- (6) Rezoning which are not accomplished in conjunction with a specific plan of development;
- (7) Development that has occurred outside of the boundaries of the proposed development; and,
- (8) A Valid Final Development Permit that is superseded by a subsequent Valid Final Development Permit; or which is abandoned by the Applicant in pursuit of a different development plan.
- (9) Applications to initiate development or construction based upon existing zoning where an amendment to the existing zoning is legally pending prior to the filing of the application.

**Section 7      Effect of Categorical Exemptions and Vested Rights Determinations:**

(A)    **Effect on Land Management Ordinance:**    Issuance of a Categorical Exemption or a Vested Rights Determination shall relieve the Applicant from being subject to only those provisions of the existing Land Management Ordinance, and amendments thereto, as are set forth in the Categorical Exemption or Vested Rights Determination. A Categorical Exemption or a Vested Rights Determination shall have no effect on other applicable governmental requirements.

(B)    **Amendment of Final Development Permits with accompanying Categorical Exemptions or Vested Rights Determination:**

          The granting of a Categorical Exemption or a Vested Rights Determination shall not be construed as a limitation on the Applicant or a successor in interest from seeking an amendment of any Final Development Permit; provided, however that any material change in the proposed development and any increased impact resulting from such amendment shall cause the proposed development to be subject to the then current Land Management Ordinance, any Categorical Exemption or Vested Rights Determination notwithstanding.

(C)    **Sale of Lots or Parcels:**    Nothing herein shall preclude the sale of a parcel of land or a lot with a Categorical Exemption or a Vested Rights Determination.

(D)    **Geographic Scope:**    The Categorical Exemption or Vested Rights Determination shall apply only to the particular parcel(s) of land for which application was made for the Categorical Exemption or Vested Rights Determination.

(E)    **Reconsideration/Revocation of Vested Rights Determination:**    A Categorical Exemption or a Vested Rights Determination may be reconsidered and revoked by the Administrator, notwithstanding any other provision of these Regulations, if the Administrator determines that the Final Determination on a Categorical Exemption or on a Vested Rights Determination was based on materially inaccurate or incomplete information and that correct and complete information was reasonably obtainable by the Applicant.

**Section 6 Appeals:**

(A) **Appeal from the Final Decision of the Administrator:** An appeal from any Final Decision of the Administrator pursuant to these Regulations, including, but not limited to, issuance or denial of a Categorical Exemption or Vested Rights Determination shall be to the Court of Common Pleas for Beaufort County, South Carolina, pursuant to the provisions of S. C. Code Ann. § 6-7-750 (Supp. 1992).

**Section 9 Administration:**

(A) **Rules and Regulations:** The Town may adopt by Resolution any other rules, administrative guidelines, forms, work-sheets and processes as are necessary to efficiently and fairly administer and implement these Regulations.

(B) **Administrative Fees:** The Town may establish and modify by Resolution a fee schedule for each of the administrative procedures, determinations, approvals and certifications required by these Regulations.

**Section 10 Conflict and Severability:**

(A) **Conflict:** In the event of any conflict between other regulations and these Regulations, the more restrictive is deemed to be controlling. These Regulations are not intended to amend or repeal any existing Town Ordinance.

(B) **Severability:** If any section, phrase, sentence or portion of these Regulations is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such section, phrase, sentence or portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining sections, phrases, sentences or portions thereof.

**PASSED AND ADOPTED** by the Town Council of the Town of Hilton Head Island, South Carolina, at a special meeting of said Town Council held on the 2nd day of December, 1993.

  
\_\_\_\_\_  
Harvey W. Ewing, Jr., Mayor

**ATTEST:**

  
Sandi Santaniello, Clerk

Ex. B

3/10/99

BEAUFORT COUNTY, S.C.  
RECORDING FEES COLLECTED  
TRANSFER FEES \$ 800.00  
COUNTY \$ 352.00 STATE \$ 828.00  
GENERAL WARRANTY DEED 942

STATE OF SOUTH CAROLINA )  
COUNTY OF BEAUFORT )

39611

KNOW ALL MEN BY THESE PRESENTS, THAT, POPE AVENUE ASSOCIATES, a South Carolina Partnership, together with its successors and assigns ("Grantor") for and in consideration of the sum of Three Hundred Twenty Thousand and no/100 Dollars (\$320,000.00) to Grantor in hand paid at and before the sealing of these presents by SCD PROPERTIES, INC., a Utah Corporation ("Grantee") of Post Office Box 6899, Hilton Head Island, South Carolina 29938-6899, the receipt of which is hereby acknowledged, has granted, bargained, sold and released and by these presents does grant, bargain, sell and release unto SDC Properties, Inc., a Utah Corporation, its successors and assigns forever, the property described on Exhibit "A" ("Property") attached hereto.

TOGETHER WITH ALL AND SINGULAR, the rights, members, hereditaments and appurtenances to the said Property belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the Property before mentioned unto SDC Properties, Inc., a Utah Corporation, its successors and assigns forever.

AND GRANTOR DOES hereby bind itself, its successors and assigns, to warrant and forever defend, all and singular, the Property unto SDC Properties, Inc., a Utah Corporation, its successors and assigns, against Grantor, its successors and assigns, and all persons whomsoever lawfully claiming or to claim the same or any part thereof.

IN WITNESS WHEREOF, Grantor has caused these presents to be executed this 14th day of July, 1999.

Signed, sealed and delivered in the presence of:

POPE AVENUE ASSOCIATES, a South Carolina Partnership

Karen B. Murphy  
[Signature]

By: [Signature]  
Richard A. McGinty  
Its: General Partner

55  
R550-18-202



**Certificate of Counsel**

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

**RECEIVED**

**Feb 05 2021**

**SC Court of Appeals**

s/Kathleen McDaniel

---

Kathleen McDaniel, Esq.

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**ATTORNEY FOR APPELLANTS  
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ASSOCIATION, INC.  
AND BEACHWALK HILTON HEAD, LLC**