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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Bentley D. Price

Case No. 2015-CP-07-02047

Appellant Case No. 2023-000222

James R. Brady.....Respondent.

v.

Hilton Head Homes at Allenwood, LLC,
Village Square Development Company, LLC,
Lancaster Redevelopment Corp. and
Gary Grossman Appellants.

SECOND AMENDED RECORD ON APPEAL
VOLUME II OF II

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1 STATE OF SOUTH CAROLINA
2 IN THE COURT OF COMMON PLEAS
3 COUNTY OF BEAUFORT

4 James R. Brady,

5 Plaintiff,

6 vs.

Transcript of Record
2015-CP-07-02047

7 Hilton Head Homes
8 at Allenwood, et al.

9 Defendant.

10 August 29, 2022
11 Beaufort, South Carolina

12 B E F O R E:

13 The HONORABLE BENTLEY PRICE
14

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18 George Hamlin O'Kelley, Representing the defendant
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1 THE BAILIFF: All rise.

2 THE COURT: Thank you. Be seated.

3 All right.

4 MR. THOMSON: First, I've already wrote
5 the motion, but I can just tell it to you. The
6 rules are cited in there. Basically, the three
7 corporate defendants in this matter, who were
8 defendants from the outset, they found counsel,
9 Mr. Brady, so the counter-claims were dismissed in
10 summary judgment. It went to Court of Appeals.
11 Court of Appeals affirmed. And now that came back
12 with we're eligible for trial here today.

13 We attempted to dismiss those parties.
14 We sent them a stipulation of dismissal, and they
15 refused to consent. So there are our claims.
16 Rule 42 is the rule that says, if the parties
17 don't consent, the judge can dismiss. We'd like
18 to dismiss those parties. We're not prosecuting
19 claims against them.

20 THE COURT: All right. You just don't
21 want to consent for the purposes of the actual --

22 MR. O'KELLEY: No, Your Honor. I think
23 the issue becomes they want to get rid of the
24 corporate defendants in an attempt to just have
25 some case against Mr. Grossman.

1 But what the evidence is going to show is
2 that the only true written contract signed by the
3 plaintiff in this case are with Village Square
4 Development Company, LLC and Hilton Head Homes at
5 Allenwood, LLC. I think they're just trying to
6 somehow bootstrap an argument that says
7 Mr. Grossman is the only liable party in this
8 case. But again, there's no the written contract
9 with Mr. Grossman in this matter. The written
10 contract is with the LLCs of which Lancaster
11 Redevelopment Company at one point was the only
12 member of these two LLCs.

13 So I think this is a way of trying to
14 short-circuit stuff around the jury and get around
15 the actual facts of the case, Your Honor.

16 THE COURT: Well, is Mr. Grossman the
17 owner of all three companies?

18 MR. O'KELLEY: Mr. Grossman was a member
19 and manager of Lancaster Redevelopment
20 Corporation. Lancaster Redevelopment Corporation,
21 at one point, was the only member of Village
22 Square Development and then Hilton Head Homes at
23 Allenwood.

24 There was an assignment made in July of
25 2004 in which the plaintiff agreed, along with a

1 fellow names Arthur Long, agreed to be a member of
2 those two LLCs.

3 So to answer your questions, Mr. Grossman
4 individually was never a member of those LLCs. Those
5 two LLCs.

6 THE COURT: Well, are the LLCs being
7 represented by counsel?

8 MR. O'KELLEY: By me, Your Honor.

9 MR. THOMSON: And, Your Honor, if I may,
10 Mr. O'Kelley took some liberties there. We're not
11 suing over the operating agreements for the LLC.
12 They are trying hard to get us to sue over items
13 that we aren't suing over. We could have sued
14 them for a lot more, but didn't. We kept this
15 simple. We are suing over the amount that's due
16 in this 2007 letter. And the 2007 letter says per
17 our February 2nd, 2004 agreement. We are suing
18 over that February 2nd, 2004 agreement. It's an
19 agreement to build houses.

20 The LLC agreement is an agreement where
21 Rod was just a passive investor. Mr. Grossman
22 took \$200,000 from him to get the right to that
23 six percent interest. That money just got flushed
24 away. And we're not suing over that agreement.

25 There is nothing in either of those LLC

1 agreements that says, hey, you've got to build
2 something or you get an incentive management fee
3 or you get a construction management fee. It's
4 just -- as a matter of law, it's just a very bogus
5 argument. We're not suing over that agreement.

6 And that's -- I'm weaving into our second
7 issue here.

8 THE COURT: All right. What's the second
9 issue?

10 MR. THOMSON: Hamlin showed us a couple
11 of exhibits -- four exhibits this morning he wants
12 to enter, and they just -- they have no relevance
13 to the case.

14 MR. O'KELLEY: Your Honor, they are
15 ultimately relevant to the case. They're signed
16 by the plaintiff. They're the operating
17 agreements for the -- again, the entities that
18 they sued originally, and now they're saying they
19 don't want to sue, they named in their complaint
20 on that Hilton Head Homes at Allenwood, Village
21 Square Development, Lancaster Redevelopment
22 Company. Where did they get those names? From
23 these operating agreements.

24 The only signed document that is going to
25 be presented to the jury with any signatures on it

1 are these operating agreements that have a merger
2 clause that say they're the entire agreement, but
3 now we're going to sue under this letter from
4 2004. That's the contract. I would love for
5 someone to show me that signed letter. Still not
6 signed to this day, Your Honor. That's what
7 they're relying on.

8 It's all extremely relevant because it
9 sets forth what obligations were. Mr. Grossman is
10 going to testify that Mr. Brady spent most of his
11 time sailing with his son.

12 I about fell over this morning when that
13 potential juror -- I don't know if you were here. The
14 juror said, "I know Rod Brady. I take pictures of
15 him. I sail with his son." That's going to come
16 before the jury. He didn't do his job. He doesn't
17 deserve to get paid.

18 The operating agreements also have a very
19 clear demarcation of monies in and monies out.
20 And not only is it relevant. It's the only thing
21 that controls in the case, Your Honor.

22 MR. THOMSON: Your Honor, Hamlin is
23 taking -- that I have respect for. Those are some
24 materials -- it's going to take a few minutes to
25 wrap your mind around it, but basically we are

1 suing over the amount due in this 2007 letter
2 where we have an admission that says per our 2004
3 letter. This letter was written two -- three
4 years after these LLC agreements were drafted.

5 If we were -- if this dispute was about
6 the LLC agreements, why wouldn't they reference
7 that? It's two separate issues.

8 This is for a passive investment, and the
9 February 2nd, 2004 letter is an agreement to
10 construct houses.

11 MR. CAPELL: And, if I could, Your Honor,
12 there's a little bit of confusion with that. But
13 the 2004 agreement, Rod was giving labor in return
14 for profits. The LLC agreements, Rod was giving
15 \$200,000 in return for a six percent profit.
16 Under the labor agreement of 2004, he was giving
17 all of his labor full time for years for
18 50 percent of the profits.

19 So those two things don't have anything
20 to do with each other. They don't overlap at all.
21 And they're all handled in the 2007 letter that
22 Hamlin's client wrote that refers to the 2004
23 agreement. So they can't, years later, say this
24 '04 agreement doesn't exist when they themselves
25 are the ones that referred to it, both of them.

1 So it's hard for them --
2 it's disingenuous for them to say these LLCs have
3 nothing to do with it when the 2004 letter
4 controls and they say it controls.

5 MR. O'KELLEY: The 2007 letter, Your
6 Honor -- and just for the record, my last name is
7 O'Kelley, not Hamlin, just so we can keep it
8 straight. The.

9 2007 letter that they're now grasping
10 onto is from Lancaster Redevelopment. It's not
11 from Mr. Grossman individually. It's not -- it's
12 just not -- it's signed by the treasurer of that
13 LLC.

14 MR. CAPELL: It says, Your Honor, right
15 here, "Under our February 2, 2004 letter of
16 agreement ...". Well, what's the letter on the
17 2004 agreement? Gary Grossman, individually.
18 It's on here individually. And the evidence will
19 show that he agreed to it. He even wrote an email
20 referring to this. And I asked him in his
21 deposition, "Did you sign this?" "Yeah, it's
22 possible I signed it." The only copy you've got
23 was an unsigned one. It's the only one that
24 exists.

25 MR. THOMSON: There's no proof that this

1 was ever signed by anyone. And, of course, under
2 the statute of frauds, you've got to have a signed
3 contract to be charged against it, Your Honor. So
4 this is -- you know, it's funny to change the
5 entire take of the case the morning of trial,
6 Your Honor.

7 MR. CAPELL: Don't need prove of it
8 because he admits it right here that it
9 controls.

10 MR. O'KELLEY: Again, that 2007 letter is
11 from Lancaster Redevelopment Corporation. It's
12 not from Mr. Grossman.

13 MR. THOMSON: One last point, Your Honor.
14 This is going to take a little bit of getting into
15 the weeds.

16 MR. O'KELLEY: Too late.

17 MR. THOMSON: I wrote on that sheet some
18 scratch notes. They -- in that 2007 letter when
19 they're calculating how much is due, they're
20 basically subtracting six percent and not
21 including it in their accounting of how much he's
22 due.

23 The reason they're doing that is because
24 he's entitled to six percent under this separate
25 LLC agreement that we are not suing over. It's

1 too complex. Too much accounting. Frankly, it's
2 just not relevant to this case. We're not suing
3 over -- suing over -- keeping this case simple.
4 They're going to waste the jury's time.

5 Let me bring up another thing. Who
6 signed this operating agreement? Gary Grossman
7 only in his capacity as Lancaster Redevelopment
8 Corporation. And they're trying to say that this
9 agreement supersedes the 2004 agreement, the
10 construction agreement. Rod wasn't even a party
11 to this agreement.

12 MR. CAPELL: In 2007, Gary Grossman --
13 this is an email from Mr. Grossman himself to Rod.
14 And it says, "It looks to me that she," referring
15 to this 2007 letter, "has accurately accounted for
16 the various forms of compensation that's laid out
17 in," quote, "our February 2, 2004 letter
18 agreement." Three years after the LLC agreements,
19 Gary's telling Rod, "You're owed the money, and
20 I'm confirming your 2007 agreement."

21 MR. O'KELLEY: Your Honor, just for the
22 record, I want to make sure that Your Honor knows
23 that the assignment of interest in the two LLCs,
24 Village Square Development Company and Hilton
25 Homes at Allenwood, they were assignments of

1 partnership, LLC interest. Mr. Brady's signature
2 is on both of those.

3 This was after -- this was July of 2004,
4 after the letter in early 2004, that says this is
5 their entire agreement. What is the entire
6 agreement? The Village Square Operating
7 Agreement. His signature. Not my client's,
8 Your Honor.

9 MR. THOMSON: Now, this assignment does
10 override something. It overrides the agreement --
11 the original operating agreement that Mr. Brady
12 was not a party to. They amended this, this
13 assignment. They gave him a six percent share.
14 Mr. Brady paid \$200,000 for that. And that
15 amended this agreement, but this agreement was
16 never signed by Mr. Brady to begin with. It has
17 nothing to do with the 2004 agreement to build
18 homes.

19 MR. CAPELL: And the reason why we know
20 that, Your Honor, is you look at the subject
21 agreements. One agreement, the '04 agreement, is,
22 "I will provide you labor. You give me half the
23 profits." The operating agreement said, "I will
24 give you \$200,000 cash. You give me six percent
25 interest in the company." Those are two different

1 subject matters, two different things. And so
2 that's why they can't be merged. They're not one.
3 They're not related at all to each other.

4 MR. O'KELLEY: And, of course, we
5 disagree, Your Honor. I'm happy to pass it up,
6 but I want to read Section 9.5 into the record.
7 It says the entire agreement. "This assignment
8 constitutes the entire agreement between the
9 parties pertaining to its subject matter and it
10 supersedes all prior and contemporaneous
11 agreements, representations, and understandings of
12 the parties. No supplement, modification, or
13 amendment of this assignment will be binding
14 unless executed in writing by all parties."
15 That's it.

16 MR. CAPELL: And Hamlin kind of glossed
17 over that phrase, the most important phrase of
18 all, "pertaining to this subject matter." These
19 are two different subject matters.

20 MR. O'KELLEY: I didn't gloss over
21 anything.

22 THE COURT: What was that subject matter,
23 then?

24 MR. CAPELL: That subject matter was, "I
25 gave you \$200,000 cash. I want six percent of the

1 company." That's what happened. That's all that
2 subject matter was about.

3 MR. O'KELLEY: What we're suing for over
4 today is a separate agreement. It says, "You
5 build these homes for me. This will be your
6 compensation for building those homes." That is
7 what we're suing over. This is an LLC operating
8 agreement. Smoke and mirrors.

9 MR. CAPELL: And they're estopped from
10 claiming that the LLCs controlling have a merger
11 clause when in 2007 both Gary and his bookkeeper
12 are referring to the 2004 agreement. How can they
13 say the '04 operating agreement controls, and then
14 somehow this letter, this 2004 letter, is
15 extinguished when they're the ones that raised it
16 three years after the fact? They're estopped from
17 doing that.

18 MR. O'KELLEY: Who raised it, Your Honor?
19 Lancaster Redevelopment Corporation.

20 MR. CAPELL: Also the email from Gary.

21 MR. O'KELLEY: Not Gary Grossman, Your
22 Honor. That is signed by the treasurer of that
23 company, not by my client Mr. Grossman. Gary
24 Grossman confirmed that via email our 2004 --
25 who -- again, Your Honor, I'm just telling you what's

1 on the plain face of your blow-up document that they
2 have been, you know, talking about the last 15
3 minutes. It's signed by Ginger Griffith, the
4 treasurer, not by Gary Grossman. It's signed on
5 behalf of Lancaster Redevelopment Corporation.

6 MR. THOMSON: Your Honor, I'll tell you
7 this: We are suing over this contract today and
8 nothing else. If they show you that that
9 agreement supersedes it, there is not nothing to
10 litigate here. That would be an absurd, absurd
11 position.

12 MR. O'KELLEY: Then it's obviously
13 relevant that it comes in to explain the course of
14 dealings between the parties, Your Honor.

15 MR. THOMSON: Rule 403, it's likely to
16 lead to confusion, it's going to waste the court's
17 time, and it's not materially relevant -- it's not
18 relevant to any material fact that's at issue in
19 this matter.

20 MR. O'KELLEY: It absolutely is, Your
21 Honor. It shows the course of dealings between
22 the parties. What the jury is going to hear is
23 that my client, Mr. Grossman and Mr. Brady, have
24 known each other forever. At one point,
25 Mr. Grossman was asked to be the guardian for

1 Mr. Brady's children. They have a long history.
2 These documents are part of that history.

3 I'm sorry that the recession came in. It
4 ruined a lot of business relationships for a lot
5 of people. But that's what happened here. This
6 is nothing nefarious. But these documents do come
7 in under the fact that this is a relevant,
8 concrete, signed document by the plaintiff who now
9 wants to say these don't matter. He can't have it
10 both ways when they're pointing to an unsigned
11 document and saying, "This is our copy."

12 MR. THOMSON: The words "incentive
13 management fee," "construction management fee,"
14 all the terms in that letter, not a one of them
15 are mentioned in that operating agreement or the
16 assignment. If you're confused right now,
17 Your Honor, you know what they're trying to do.
18 They think they can confuse the jury.

19 MR. O'KELLEY: Absolutely not, Your
20 Honor.

21 MR. THOMSON: There's no integrity to
22 what they're arguing now. I'm just going to rest
23 with that.

24 MR. O'KELLEY: Again, Your Honor, I don't
25 know whose notes these are on this letter, but

1 this shouldn't be an exhibit if it's --

2 MR. THOMSON: It's not an exhibit. I gave
3 that to you, Judge, prior so you can, kind of, get in
4 the weeds to figure out what exactly it is they're
5 doing here. It takes a few minutes to let it sink in,
6 but --

7 MR. CAPELL: And, Your Honor, Hamlin doesn't
8 get to control our claim. Our claim is breach of
9 contract, quantum meruit, conversion by Mr. Rod Brady,
10 individually against Mr. Gary Grossman, individually.
11 Our claim does not have anything to do with the LLCs
12 and those LLC agreements, and we have the documents
13 that back up the claim.

14 MR. THOMSON: They're begging us to sue
15 for things that we're not suing over. I got hopes
16 on that deal, too. We didn't plead it. We didn't
17 make it part of this case. It's just
18 irrelevant.

19 THE COURT: All right. What other
20 motions do you have?

21 MR. THOMSON: The third one is a lot more
22 easy.

23 THE COURT: Okay.

24 MR. THOMSON: We're just asking you to
25 take judicial notice of a simple fact that neither

1 Hilton Head Homes at Allenwood or Village Square
2 Development, LLC were involved in any foreclosure
3 actions prior to the year 2009.

4 This litigation is about homes that
5 Mr. Brady completed and sold. The LLCs had
6 already sold them, put the money in their checking
7 accounts, and it was owed to Rod. And instead of
8 paying it to Rod, they used it to pay their other
9 debts.

10 And so there were some foreclosures two
11 years after Rod was done with the project. Again,
12 there's houses he didn't finish that he should
13 have been paid for that we're not suing in this
14 matter. But all the houses we are suing for in
15 this matter were completed and finished as of
16 2007. There were some foreclosures in 2009.

17 When you don't have any good defenses,
18 you pick the best thing you can come up with.
19 They're trying to allude to these foreclosures as
20 evidence that, you know, there wasn't any money to
21 pay them, and, therefore, they're excused. That's
22 fine. They can talk about them. I'm not trying
23 to keep it out.

24 But if they do, we want you to take
25 judicial notice of the fact that there were no

1 foreclosures prior to 2009 so we can establish
2 that fact without going through the
3 authentication.

4 THE COURT: Do you have any objection to
5 the authentication of these documents so we don't
6 have to call the clerk up and ask them?

7 MR. O'KELLEY: Your Honor, this is from
8 Miss Dawson's office. It's fine.

9 THE COURT: All right. What's next?

10 MR. O'KELLEY: Your Honor, one issue of
11 housekeeping. Mr. Grossman has diabetes, and he
12 has -- the clerk's been gracious enough to allow
13 him to bring his phone so he can monitor his blood
14 sugar. If he starts sinking, I'm going to have to
15 signal you to take a break for that reason.

16 THE COURT: We're going to go over all
17 that in a second, so we'll be good to go.

18 Anything else?

19 MR. THOMSON: That's it.

20 THE COURT: I want to take about a
21 ten-minute break to look at some of this stuff.
22 Let me caution you-all real quickly. I know most
23 of you are passionate attorneys, but we're not
24 going to talk over each other, all right? If you
25 have an objection, state your objection. Stand

1 up. I'll give a ruling. We'll sit back down.

2 If you-all can stipulate to anything or
3 you can't stipulate to anything, or everything,
4 then let me know and I'll be taking a look at it
5 while you-all are doing your opening statements.

6 How we're going to move forward here,
7 they're going to come in around 2:00. Around
8 2:15, we'll get them in and we'll go ahead and do
9 opening statements and just see how far we get.
10 I'll make a ruling prior to the opening statements
11 so you know what you can refer to.

12 MR. O'KELLEY: Your Honor, our four
13 exhibits are the two operating agreements and
14 assignments, which I know Your Honor is going
15 to -- would you like to take them back to look at
16 them?

17 THE COURT: Give them to Haley and I'll
18 take a look at them.

19 (Off the record.)

20 THE BAILIFF: All rise.

21 THE COURT: All right. For the record,
22 I've taken a look at everything. And regardless
23 of the arguments, I think the plaintiff, to some
24 extent, is a hundred percent correct, but I'm
25 going to split the baby a little bit. The

1 plaintiff can sue whoever they want for whatever
2 they want. That's their decision. They can
3 dismiss parties, causes of action, whatever they'd
4 like to do at any time. It's their case and their
5 case to try. So I'm going to allow them to do it.

6 I'm going to be very lenient with the
7 admission of some of these documents, but I'm not
8 going to allow them just yet, the operating
9 agreements. But I am going to allow you to talk
10 about it a little bit, because, obviously, I think
11 they're somewhat germane to the defense and to the
12 underlying causes -- of the defense of the case.
13 So that's my ruling as of right now.

14 Anything else before we get started?

15 MR. THOMSON: No, Your Honor.

16 MR. O'KELLEY: Your Honor, do you want me
17 to take those back?

18 THE COURT: Yes, except for this one.

19 All right. Bring them out.

20 THE BAILIFF: The jury is entering the
21 courtroom, Your Honor.

22 THE COURT: All right.

23 (Jury enters the courtroom at 2:06 p.m.)

24 THE CLERK: Could the jury please rise and
25 raise your right hand? Do you solemnly swear or

1 affirm that you shall well and truly try the issues
2 joined in this case and a true verdict give according
3 to the evidence, so help you God?

4 THE JURORS: I do.

5 THE CLERK: Thank you. You can be
6 seated.

7 THE COURT: All right. Well, as I
8 indicated, we'd start at 2:00, and I appreciate
9 you-all being on time. I hope you enjoyed your
10 lunch. And we are going to go ahead and proceed
11 with the trial. We've been here working on some
12 things.

13 Let me just preliminarily, kind of,
14 discuss how everything goes along. What I meant
15 by we were working on some things is that, I am
16 the sole judge of the law, and so I determine what
17 evidence is relevant, what comes in and what
18 doesn't come in. You're going to hear some
19 objections and some other things.

20 I oftentimes will, like you see on TV --
21 but we don't do it like on TV. I don't let them
22 just sit up there and scream and argue about their
23 case, because they're giving you information that
24 you're not entitled to, all right? So I have to
25 ask you-all to leave. So you're going to get your

1 steps in. So you'll be going back and forth a
2 lot, but don't worry about it. I usually work
3 pretty quickly and I can make a decision pretty
4 quickly.

5 But if you hear an objection and I say
6 "Ladies and gentlemen, there's a matter that we
7 need to take up out of the presence of you," it's
8 a matter of law. All right? You are the sole and
9 exclusive triers of the facts, all right? At the
10 end of the case, I will give you the law. You
11 will meld the two together, the facts with the
12 law, and determine who's proved their case.
13 That's what we're here to do. All right?

14 Second thing is, obviously, you were just
15 sworn in. Mr. Foreman, the only other task that I
16 would make sure that you do is, throughout this
17 entire process, when we do take those breaks I
18 just mentioned, please make sure that nobody talks
19 about the case. All right?

20 If somebody wants to discuss the case
21 with somebody else, please just ask them to
22 refrain from doing that. If you have any issues,
23 just bring it to my attention. All right? Simply
24 just write a letter, give it to the fine bailiff.
25 They'll bring it to me, and I'll resolve the

1 situation. All right? So you don't have to be
2 the bad guy. I will be.

3 In a couple moments, just to kind of let
4 you know, I'm going to give allow the attorneys to
5 give what's called an opening statement. That is
6 simply just a statement, not to be considered as
7 anything other than what they believe the evidence
8 is going to show. It's not to be considered
9 evidence by yourselves. All right?

10 And after that, I'm going to allow them
11 to call their first witness, and we'll see how far
12 we get today. Then we'll adjourn, like I said,
13 maybe a little bit early. We'll come back in the
14 morning and continue the case. All right?

15 Just a couple little quick tidbits.
16 First of all, you already had the chance to meet
17 our fine bailiffs. You've seen our deputies.
18 They're here to protect us as well. You've met
19 everyone else. This is Sharon. She's new. You
20 didn't see her this morning. The other court
21 reporter was sick and didn't want to stay. So
22 Sharon drove from Charleston to come be with us.
23 She's our court reporter. If you hear me say
24 "Slow down," it's for her benefit. Because she
25 has to do this all day long. All right? She's

1 taking and transcribing everything.

2 These are our two wonderful clerks, Karen
3 and the new clerk is -- your name again?

4 THE CLERK: Bunny.

5 THE COURT: Today's Bunny's first day. So
6 she's just watching.

7 And this fine young lady over here is one
8 of our local magistrates. Well, not local. She's
9 in the 14th Circuit. And one of the requirements
10 is that they watch trials. So she's here. If you
11 see her, she's just watching the trial.

12 This is Haley. She's my new law clerk.
13 This is her first day. You will see her and I
14 talk a lot. We'll pass a lot of notes a lot of
15 times. You'll see us Skype a lot of times. There
16 is a zero percent chance it has any bearing on
17 this case whatsoever, because I have no idea about
18 any of the facts of this case and it's not my job.
19 So not until they jump up and object do I have to
20 start paying attention. All right? Fair enough?

21 So I'm just kidding. I'm always going to
22 be paying attention the whole time.

23 But my point is, I don't want you to
24 think about her leaving, me telling her to go do
25 something. She gets up and she gets down a lot.

1 All right? So that has nothing to do with the
2 case. So if something dramatic happens, Haley
3 just hops up, it wasn't dramatic. She was hungry
4 or she wanted to go to the restroom or get a snack
5 or something. It's nothing ever exciting.

6 But apart from that, I do need to let
7 you-all know, you-all have asked to utilize notes.
8 So when one asks, everybody gets them. The only
9 thing I caution you about that is, anytime you're
10 taking a note, you're not paying attention to the
11 witness on the witness stand. So just be very
12 quick or be very concise about what you're going
13 to try to keep notes with. All right?

14 At the end, I'll give you a charge just
15 saying that if your notes don't jive with somebody
16 else, it's your recollection that counts, not the
17 notes. All right? But certainly if you want
18 them, do it.

19 The last two things I'll tell you is just
20 about us, the attorneys and myself. This is an
21 open courtroom. I saw some of the jurors whenever
22 I was leaving. I tell them and they know to
23 ignore you-all because we can't have any
24 communication that's outside the presence of the
25 court, all right, for the time being. When the

1 case is over, they can talk to you all they want.
2 But for the time being, I've instructed them not
3 to interact with the jury, obviously, because
4 you-all have a job to do and so do they.

5 So if you see them in the hall, you see
6 them outside, you see them at lunch, they're not
7 being rude, okay? Trust me. I've instructed them
8 -- I've ordered them not to have any communication
9 or interaction with jurors. All right?

10 Myself, I'll see you-all back there.
11 Sometimes I will say a funny joke. That's all. I
12 don't ever talk about the trial. Just laugh at
13 the jokes, okay?

14 The last thing is you saw them stand up.
15 That's out of respect for the job and task that
16 you are here to do. They'll probably stand up
17 every time you leave and go. I'm not being
18 disrespectful. I just don't have to stand up.
19 Fair enough?

20 Let's go.

21 MR. CAPELL: Thank you, Your Honor.

22 Your Honor, I'd like to reserve a couple
23 minutes for rebuttal, also.

24 THE COURT: Absolutely.

25 MR. CAPELL: Good afternoon, ladies and

1 gentlemen. My name is Glynn Capell. You saw me
2 earlier this morning. I, along with my
3 co-counsel, Charlie Thomson here, represent the
4 plaintiff, Rod Brady.

5 This is Mr. Rod Brady behind me.

6 First, I want to firstly thank each of
7 you for your time today. It means a lot to us to
8 help us resolve this dispute. The good news for
9 you-all is, and you-all have heard some of this
10 this morning already, this isn't a long,
11 complicated matter. We're not going to be here
12 for a week. We don't have a lot of documents to
13 go over, anything like that. It's a short and
14 simple case.

15 In fact, there are probably only three
16 witnesses you're going to hear from today, and
17 there's just really three documents that you have
18 to look at to determine this case.

19 The case started as a real estate
20 development on Hilton Head Island. I referred to
21 some of that in the beginning. Mr. Brady has
22 lived on Hilton Head and been a contractor for
23 over 35 years in the local area. Mr. Brady met
24 the defendant, Mr. Grossman, the gentleman that's
25 sitting at the table over there, at a national

1 home builders show. They have those around the
2 country for home builders to go to.

3 So he met Mr. Grossman in the early
4 2000s, around there. Mr. Grossman lived in
5 Pennsylvania, still does, and was a real estate
6 developer.

7 Rod and Gary soon became friends and
8 started talking about finding a project that would
9 work. Maybe a development on Hilton Head or
10 something like that. And shortly thereafter, Rod
11 did find a possible piece of land that could be
12 developed on Hilton Head.

13 So Rod told Gary about it and Gary came
14 down from Pennsylvania to look at it. That
15 development was named Allenwood. You're going to
16 hear that name a lot today. That was the name of
17 the entire development.

18 It had two pieces of it, two components:
19 One was single-family homes and one was
20 townhouses; four townhouses in one building, and
21 then you have the group of single-family homes.
22 So that's what Allenwood was made of, those two
23 areas.

24 What happened next is why we are here.
25 We will show you three documents in this case and

1 let the witnesses go through them. The first
2 document we will show you -- I'm just going to sit
3 this over here so you-all can see what I'm talking
4 about when I discuss it. It's got a little yellow
5 sticker on here. That's for the exhibit for the
6 court.

7 The first document that we're going to go
8 through in this trial is we're going to show you
9 this agreement between Rod and Gary. It's dated
10 February 2, 2004. You can see the date on there.
11 And it is on Gary Grossman's personal letterhead.
12 You can see his name at the top of the letterhead.
13 The evidence will show that this agreement was for
14 two mains things, and we'll go through that in the
15 letter about those two mains things.

16 One was -- the first main thing was that
17 Rod was going to manage the construction of the
18 buildings and he was going to do the sales and
19 marketing for the project.

20 The second main thing was Rod was also
21 going to get an incentive management fee. That's
22 an important phrase in this case, incentive
23 management fee. It's used in the letter. And he
24 was going to get a 50 percent incentive management
25 fee. So those were the two things that you guys

1 will see that are part of this letter of agreement
2 between Rod and Gary.

3 The other thing in this letter is Gary
4 was going to receive 500 basis points for his
5 guaranty. Basis points are a fancy way of getting
6 interest. You get 500 basis points. So Gary
7 himself individually, as you'll see in this
8 letter, was going to make interest on this
9 project. So Gary was providing financing, Rod was
10 providing labor to get this neighborhood and
11 development built.

12 This second document you're going to
13 see in a moment -- that document is three pages.
14 This one is four. I'm going to sit this right
15 here so you-all can look at it while I'm talking
16 about it. The second document we'll show you is
17 an accounting of how much Rod Brady is owed on the
18 Allenwood project under those two components that
19 we talked about earlier.

20 This letter is dated September 13, 2007.
21 It's from the treasurer of LRC, Lancaster
22 Redevelopment Company. Lancaster Redevelopment
23 Company is a document -- or is a company that Gary
24 owns in Pennsylvania.

25 You're probably going to hear some

1 references to some other companies in this case.
2 You may. Like most real estate developers, they
3 set up companies to run different things. So
4 remember when I told you about the townhomes and
5 the single-family homes? They may have something
6 to do with that.

7 So the evidence will show, though, that
8 the incentive management fee is related to this
9 2004 letter. And so the 2007 letter was a letter
10 done by LRC, which is Gary's Pennsylvania company.
11 We'll talk about that. But that's why it has this
12 Lancaster Redevelopment Company corporation name
13 at the head of it.

14 And at the end of it, you'll see a
15 signature -- we'll talk about this -- Ginger
16 Griffith, Treasurer. So she's the treasurer of
17 LRC and the author of this September 13, 2007
18 letter.

19 Now, the bad news is Ginger Griffith
20 lives in Pennsylvania, so she couldn't be here
21 today. We took her videotaped deposition, though.
22 We videotaped it a couple years ago, and we'll
23 play that for you-all on the big TV up here. The
24 good news is it's only about 45 minutes. So it
25 won't take long. But you'll get to hear her talk

1 about this letter. That will be the purpose of
2 her testimony.

3 Ginger will talk to you about these
4 calculations in this letter. You will see that --
5 how these calculations were made. And that under
6 the evidence shown in that letter, it will show
7 that Rod worked at Allenwood for two plus years.
8 The evidence will show that Ginger calculated that
9 Rod was owed this incentive management fee as of
10 September 13, 2007 from the words you'll see she
11 uses in that letter. And you will see that the
12 conclusion of her 2007 letter is that Rod was due
13 a total amount of \$711,027 as of
14 September 13, 2007 for that incentive management
15 fee.

16 Now, when I talk about this, I'm just
17 going to say \$711,000. So when I say that,
18 you-all will just know that's what I mean.

19 And the third document that they're going
20 to talk about, I don't have that one up here.
21 It's an email from Gary to Rod. And you'll see
22 it. You'll get to see that document. You'll get
23 to hear Rod testify about it. You'll probably get
24 to hear Gary testify about it.

25 And in that email, you will see evidence

1 that Gary has reviewed this September 13, 2007
2 letter, that Gary agrees that Ginger's letter is
3 accurate, and most importantly, Gary says it
4 accounts for the compensation due Rod, quote, "as
5 laid out in our February 2, 2004 letter of
6 agreement," which is this first document I showed
7 you.

8 So it seems pretty simple so far. Rod
9 and Gary had a February 2, 2004 agreement. Rod
10 would work at Allenwood for over two years.
11 Ginger Griffith and Gary himself agree Rod's owed
12 \$711,000.

13 So you're probably wondering why we're
14 here. It's so simple, what's the dispute? That's
15 a good question.

16 You're probably going to hear some excuse
17 from Gary on why Rod hasn't been paid. Maybe
18 Gary's defense is the economy was bad. Maybe it's
19 Gary's defense that he has some out-of-business
20 company that owes the money instead of him
21 individually.

22 However, no defense that you will hear
23 from Gary can change the facts contained in these
24 three documents.

25 So I'm asking you here today on behalf of

1 Rod to please return a verdict that Rod Brady is
2 owed \$711,000 from Gary Grossman, not one of
3 Gary's close-down companies. Gary Grossman,
4 himself, owes Rod Brady \$711,000.

5 I want to thank you again for your time.
6 We look forward to sharing the evidence we have
7 with you today. We look forward to hearing from
8 you at the end of this case. Thank you.

9 THE COURT: Thank you, sir.

10 MR. O'KELLEY: May it please the Court?

11 THE COURT: Yes, sir.

12 MR. O'KELLEY: Ladies and gentlemen, I'm
13 Hamlin O'Kelley. We met earlier during our jury
14 qualification. Much like Mr. Capell, I'm indebted
15 to you for your service today. You've heard
16 Judge Mullen (sic). You've now heard my
17 opponents. Thank you. And I will be the last to
18 thank you for being here today. It has been long,
19 hard slog with COVID and everything not having
20 this process go forward. So thank you very much
21 for being here.

22 I'm sure you-all have heard the phrase no
23 good deed goes unpunished. Mr. Grossman, my
24 client, is that gentleman I introduced to you
25 earlier.

1 Stand up and wave.

2 Mr. Grossman has, indeed, known Mr. Brady
3 a very long time. What the evidence is going to
4 show you is that back in 2004, Mr. Brady had a
5 development called Cypress Harbour. That
6 development was circling the drain, and he pulled
7 Mr. Brady's fat out of the fire, proverbially.
8 Mr. Grossman, not individually, even though
9 there's a letter that says Gary L. Grossman, the
10 full text of this letter will show you this letter
11 was never signed by Mr. Grossman.

12 What it will show you is that
13 Mr. Grossman made an offer to work with Mr. Brady.
14 How did they know each other? Mr. Capell is
15 correct. They've known each other because they
16 were both part of the National Association of Home
17 Builders. They became great friends. At one
18 point, and the evidence will show you, a copy of
19 the friendship. They were more than just casual
20 acquaintances. They became business partners.

21 What did they become business partners
22 in? This letter that they pointed to from 2004
23 will show you that Mr. Grossman's entities, two
24 entities, Village Square and Hilton Head Homes at
25 Allenwood, were always the intended parties to the

1 agreement. Not Mr. Grossman individually.

2 What the letter will show you is that
3 they intended to enter into these two limited
4 liability companies, LLCs, which they did finally
5 enter. And at one point after this agreement in
6 February of 2004, in July of 2004, Mr. Brady
7 became what's called a member of those LLCs and
8 received a certain portion of that company.

9 An analogous relationship would be if you
10 own a certain amount of stock in IBM or Coca-Cola.
11 This is a limited liability company which
12 Mr. Brady became a member of. And they financed a
13 lot of deals. They did these developments. The
14 developments, unfortunately, did go belly-up
15 during the recession. We'll show that to you.

16 What we'll also show to you is that the
17 agreements state very clearly how people were
18 supposed to be paid. What Mr. Capell neglected to
19 tell you, and what my client will share with you,
20 is that Mr. Brady got paid over \$600,000 for the
21 work he did. What he will also show you,
22 Mr. Grossman when he takes the stand, is the way
23 the companies functioned; what was supposed to
24 come in first, what debts were supposed to be paid
25 first, and what gets paid last was Mr. Brady.

1 You can't get blood out of a turnip. And
2 basically, that's what the plaintiff's counsel
3 wishes you to do; get blood out of a turnip.

4 The evidence is going to show you that
5 Mr. Grossman is not personally liable for anything
6 to Mr. Brady. This document here, the second
7 blow-up, you'll notice it's from a company called
8 Lancaster Redevelopment Corporation.

9 We will be handing you the operating
10 agreement for the two LLCs, and you will see that
11 the member of that LLC was actually Lancaster
12 Redevelopment Corporation. And, of course, we say
13 Lancaster in South Carolina, but that's Lancaster,
14 Pennsylvania, just to make it clear. That's where
15 he's from.

16 Mr. Grossman is going to explain to you
17 the way things actually work vis-a-vis these LLCs.
18 The agreements, we're going to be able to hand you
19 for you to review. The operating agreements for
20 Village Square Development Company, the assignment
21 in which Mr. Brady has interest in Village Square,
22 the operating agreement for Hilton Head Homes at
23 Allenwood, and the assignment which Mr. Brady got
24 his share of that company. And it's all set forth
25 in these documents which are actual contracts

1 signed by the parties, not just in a letter.

2 So I thank you for being here. I thank you
3 for listening. We're pretty sure you're going to
4 return a verdict in my client's favor. Thank you,
5 ladies and gentlemen.

6 THE COURT: Anything in brief response?

7 MR. CAPELL: Yes, Your Honor. Thank you.

8 Ladies and gentlemen, I won't take too much
9 more of your time. But those excuses I warned you
10 about, you just heard them. I heard can't get blood
11 out of a turnip. You hear that excuse all the time.
12 It's okay. Rod's heard those excuses for years from
13 him.

14 So what I'm going to ask you to do is
15 whenever you hear one of those excuses, this
16 document, that document, Gary said this, just come
17 back to these three documents. The three
18 documents are the key to this case. So every time
19 you hear one of those, that's what I'm going to
20 ask you to do in this case, is refer to the three
21 documents that I've shown you. Because the answer
22 is in those three. That's where you'll see what
23 goes on in this case.

24 So you will see that no matter what
25 excuse Gary gives, he cannot overcome the facts

1 contained in this document. Thank you.

2 THE COURT: Call your first witness.

3 MR. THOMSON: Your Honor, the plaintiffs
4 call James R. Brady.

5 THE CLERK: Do you solemnly swear or
6 affirm that the testimony you give to the Court in
7 this trial shall be the truth, so help you God?

8 THE WITNESS: Yes, I do.

9 THE CLERK: If you'll have a seat.

10 If you could speak loudly into the mic so
11 everybody can hear you and state your name and spell
12 your last name for the record, please.

13 THE WITNESS: James R. Brady, B-r-a-d-y.

14 WHEREUPON:

15 JAMES R. BRADY,
16 after having been sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. THOMSON:

19 Q Rod, I'm going to stand back here. Because I know
20 if I can hear you, the jury can. Please direct your
21 answers to them rather than me.

22 You said your name is James R. Brady. You go
23 by Rod, don't you?

24 A Yes, I do.

25 Q Just in case that comes up so it won't be a point

1 of confusion.

2 Will you tell me a little about yourself,
3 like just general background. We'll start with what
4 cities you've lived in over the course of your life.

5 A I was born in Chicago, Illinois. My father's
6 work carried him to Princeton, New Jersey, and
7 then to Norwalk, Connecticut. And then after my
8 college years, I moved down to Hilton Head
9 Island.

10 Q All right. And what is your educational
11 background?

12 A I have a college level education, a B.A. in
13 economics and management.

14 Q Okay. If could you, please, take us through your
15 career background.

16 What have you done for work over the course
17 of your adult life?

18 A Well, 35 plus years in construction. And
19 that has been -- the only thing I've done has been
20 construction-related.

21 Q Where all have you been a builder?

22 A Just in Beaufort County.

23 Q Okay. How many homes have you built over the
24 years, roughly? I'm sure you don't know it exactly.

25 A Oh, hundreds. Probably 400 plus

1 single-family homes, lots of remodeling
2 projects.

3 Q Okay. Can you tell the jury about your community
4 involvement as a builder?

5 A I've -- when I first got into building, I
6 wanted to learn as much as possible about
7 improving business, as much about construction. I
8 got involved with the local home builders
9 association in Hilton Head. I got involved on
10 committees. Rose up to the board. I got asked to
11 matriculate to the higher part of the board and
12 ended up becoming president of the home builders
13 association. That also put me on the board of the
14 realtors association. I did various other
15 committees such as the ACE, Academy for Career
16 Excellence. I served on those boards. I was
17 youth group leader at our church. I was involved
18 on everything for, you know, community and
19 business.

20 Q Okay. We've heard earlier you met Gary Grossman
21 at a builders show.

22 Can you give us a little more details on how
23 you met Gary Grossman?

24 A Yes. I remember it was in -- the show that
25 year was in Dallas. And I was looking, as always

1 when I go to shows, for different products that
2 may be available that I wasn't aware of. The
3 National Association of Home Builders shows
4 offered lots of seminars to improve your business.

5 So, you know, I was looking for a variety of
6 things. One of the things I wanted to do was see what
7 the demand on labor and -- you know, on Hilton Head,
8 is there a way to, you know, do more efficient
9 building.

10 So in a very large exhibit hall, I came
11 across a building systems booth. It was not an
12 individual company. It was made up of several
13 companies and several aspects of building systems.

14 One was log homes, one was modular homes, and
15 one was panelized. I was familiar with modular homes
16 because that is a turnkey product. Panelized, I
17 needed to know more about. And log homes wasn't a fit
18 for Hilton Head.

19 So I walked into this booth, looked around,
20 and a gentleman stepped up in front of me. When you
21 go to these shows, you have a name tag hanging there
22 with your name in big print. That was while I was
23 president of the Hilton Head Island Home Builders
24 Association. So I had all kind of ribbons for being a
25 president and how many spikes, which is bringing new

1 members into the home builders association. And Gary
2 approached me, and that's how the first introduction
3 started.

4 Q Okay. Before we get into the Allenwood project,
5 can you take me through your dealings with
6 Mr. Grossman from when you met? Was it around 2002 or
7 so up until the time you started to make this deal?

8 A Well, after that initial introduction, I
9 don't remember if I went up to Pennsylvania first
10 or he came to South Carolina. I explained to him
11 that I was there and I'd just gotten involved with
12 a development and was trying to figure it out,
13 didn't know yet about the development side. My
14 experience was always in construction.

15 And he asked several questions and narrowed
16 down that, you know, "Not only do I have a panelized
17 product, and a manufacturing plant to produce that
18 product, but I also have seminars and trained builders
19 and a builder network and teach them how to do
20 developments."

21 And I thought that was, wow, I was looking
22 for product motivation, and now I found out that I've
23 got business guidance. And so that was the intrigue
24 from both sides. He knew that I had, you know,
25 interest in doing development, knew that I was

1 committed to the building industry by, you know,
2 knowing that I was the current president of the home
3 builders association. I was eager to go up and learn
4 more about the panelized process. See his plant. And
5 so that's what -- it started like that.

6 And every visit back and forth between us, we
7 did grow closer. We enjoyed each other's time, not
8 only in the business setting, but also outside of the
9 business setting. Something that was important to
10 both of us is that we got to know a little bit more
11 about each other than just the business.

12 And so if I went to Pennsylvania, not always,
13 but frequently I stayed at his house. When he came to
14 South Carolina, he would stay at my house. Our wives
15 would start to join us on the trips and subsequently
16 stay at the houses.

17 So, yes, this relationship evolved both
18 business and as a friendship.

19 Q What kind of involvement did Gary have with any
20 other builders in Hilton Head? Were there
21 presentations or anything like that?

22 A No, no. I was the only one, you know, over
23 the years. As appropriate, I would introduce
24 various people to Gary that would be networks,
25 such as, you know, bankers, realtors, you know,

1 whatever was appropriate and who we came across,
2 you know, just as more comfort and knowledge level
3 for him on the Hilton Head area.

4 Q All right. So take me up to the time when you
5 started to matriculate the Allenwood deal. Right
6 before you got this letter that Mr. Capell was talking
7 about on February 2nd, 2004, what were your opinions
8 of Mr. Grossman and his companies at that time?

9 A Well, as I mentioned --

10 MR. O'KELLEY: Your Honor, if I may, I'm
11 going to object. He's asking for an opinion.

12 THE COURT: Ask what he felt his
13 reputation was.

14 BY MR. THOMSON:

15 Q What did you think about Mr. Grossman and his
16 company's reputation?

17 A Well, going to the seminars, you know, it
18 would be a large room. There would be anywhere
19 from, you know, 10 to 25, 30 different companies
20 represented by either one or multiple people from
21 those companies. You went on a tour of a
22 manufacturing plant. You got to see how his
23 product was put together. He had something that I
24 had never seen before, which was the ability --
25 most of the panelization and so-called trusses

1 that I dealt with got dropped off at the site.
2 They'd come out on a truck. The truck would roll
3 up. They'd come off. Some would get broken, be
4 in the weather.

5 Mr. Grossman's operation had trucks that
6 would deliver the product from his plant to the site,
7 and they had a crane on the back of the truck. And so
8 the driver was able to operate a remote control system
9 that pulled the panels out of the truck and put them
10 down onto the foundation. The windows were in the
11 walls. It was a system that certainly made the
12 contractor life more efficient, less dependent on
13 labor.

14 And so I'd never seen that before. And, you
15 know, so that, you know, was something that I could
16 tell he had worked through a lot of things to make,
17 you know, builders and builder developers, you know,
18 want to be attracted to him, his operation, and buy
19 his product.

20 Q All right. Let's get into the matter we're here
21 for today, this Allenwood deal. Would you please turn
22 to Exhibit 1 in your notebook.

23 (PLF. EXH. 1, Letter from Grossman to Brady;
24 2004, was marked for identification.)

25 BY MR. THOMSON:

1 Q Mr. Brady, I show you Plaintiff's Exhibit 1. If
2 you could, as briefly as possible -- we'll get into
3 the details later. As briefly as possible, tell me
4 what that document is.

5 A This is an email from Gary Grossman to me
6 that is the structure and basis for us doing
7 business together at Allenwood.

8 Q Okay. You called it an email. You're referencing
9 this, right?

10 A Yes.

11 Q Mr. Brady, is that a truthful and accurate version
12 of the letter you received in 2004?

13 A Yes, it is.

14 Q How do you know this to be true?

15 A I received it.

16 MR. THOMSON: Your Honor, I'd like to
17 move to enter Plaintiff's Exhibit 1 into
18 evidence.

19 THE COURT: Any objection?

20 MR. O'KELLEY: No, sir.

21 THE COURT: Without objection.

22 (PLF. EXH. 1, Letter from Grossman to Brady;
23 2004, was entered into evidence.)

24 BY MR. THOMSON:

25 Q Mr. Brady, I'll show you Plaintiff's Exhibit 1A.

1 (PLF. EXH. 1A, Letter from Grossman to
2 Brady; 2004, was marked for identification.)

3 BY MR. THOMSON:

4 Q Is this an exact replica of Plaintiff's
5 Exhibit 1?

6 A Yes, it is.

7 Q Okay.

8 MR. THOMSON: We'd move to put
9 Plaintiff's Exhibit 1A into evidence.

10 MR. O'KELLEY: I thought Exhibit 1 was
11 all the pages of this letter. So however they
12 want to do it is fine.

13 MR. THOMSON: All three pages.

14 MR. O'KELLEY: That's fine.

15 THE COURT: Without objection.

16 (PLF. EXH. 1A, Letter from Grossman to
17 Brady; 2004, was received into evidence.)

18 BY MR. THOMSON:

19 Q Mr. Brady, whose letterhead is at the top of that
20 letter?

21 A Gary Grossman.

22 Q Do you recognize the address that's on the top of
23 that, on the letterhead?

24 A Yes. That's his home.

25 Q What was the purpose of this letter?

1 A To establish the deal for Allenwood. He
2 created this and I performed on it.

3 Q Okay. How does the letter compare to prior
4 conversations with Mr. Grossman about Allenwood?

5 A It was entirely consistent. We had been
6 looking to try to do this for a while. An
7 opportunity came up. It's not easy to find larger
8 chunks of property on Hilton Head. And so when
9 the opportunity came up, we went at it with, you
10 know, all sincere efforts.

11 Q Okay. I'm going to ask you to do a little bit of
12 math here. You don't have to get it exact.

13 But do you know, roughly, how many times the
14 word "I" is used in that letter?

15 A 20, 21.

16 Q Who does "I" refer to?

17 A Well, that's Gary referring to himself.

18 Q In what capacity did Gary send you this letter?
19 And by that question, I mean, was it in his individual
20 capacity? In the capacity of one of his companies?
21 What capacity did he send that letter to you?

22 A Oh, individually.

23 Q Okay. How do you know that to be true?

24 A Well, our conversations had been going on for
25 quite some time for this project. And it's what

1 we had to discussed, and he put it in print.

2 Q Again, what letterhead did he use?

3 A Gary Grossman.

4 Q All right. Whose name is in the signature
5 block?

6 A Gary Grossman.

7 Q What qualifications did he use as to whether he
8 was sending this on behalf of the business in the
9 signature block?

10 A None.

11 Q All right. I'm going to go to the last paragraph
12 of Page 2 in that exhibit. It begins with -- will you
13 just read those first couple lines or so to the jury.

14 A "In addition to the sales and construction
15 management fees as described, I would like to pay
16 you an incentive management fee of 50 percent of
17 pre-tax profits after a one percent per month
18 interest on cash investment to Lancaster
19 Redevelopment Corporation."

20 Q What does that sentence mean to you?

21 A It's a -- what the description is. It's a
22 fee that if I either save money, increase sales.
23 It's an incentive to, you know, do a good job.

24 Q Okay. Who is making you an offer in that
25 sentence?

1 A Gary is.

2 Q In what capacity?

3 A Personally.

4 Q Is there any different interpretation you can
5 possibly fathom?

6 A No.

7 MR. O'KELLEY: Your Honor, I'm going to
8 object to that. Speculation.

9 THE COURT: He can testify as to what he
10 perceived it to be, so I'll overrule the
11 objection.

12 MR. O'KELLEY: Thank you.

13 BY MR. THOMSON:

14 Q How did you accept this offer, if you did?

15 A Well, again, this offer didn't come as a
16 surprise. We probably -- we had previously agreed
17 to this type of setup. He put it in print. So I
18 agreed to it verbally, and thought it was
19 something that was -- we were familiar with it,
20 you know, previous to this letter.

21 Q Also, did you do the work?

22 A Yeah, I did the work. I mean, I performed
23 everything that was on that business plan and
24 incentive.

25 Q All right. I'm going to direct you to another

1 sentence on that document, and it's the second full
2 paragraph of Page 2. It's starts with the words, "I
3 would like ..." Please read that. It's a really long
4 sentence, but just read the beginning of that, please.

5 A "I would like to proceed with both
6 transactions in separate limited liability
7 companies wherein Lancaster Redevelopment
8 Corporation owns a hundred percent of the
9 companies, but engages you and Joy Walker as
10 independent contractors under the following terms
11 and conditions ..."

12 Q All right. Gary mentioned several companies in
13 that letter. Which one of those companies -- is any
14 of those companies making you an offer in this letter?

15 A No. Gary is.

16 Q Okay. What language in that sentence tells you
17 Gary is the one making the offer?

18 A It starts with, "I would like ..."

19 Q Okay. Let's walk through the details of the fees
20 that Gary is offering you here.

21 If you could please tell the jury, what is
22 the sales and marketing fees? What are those for?
23 We're moving down to the bullets points here
24 discussing what Mr. Brady is being compensated for
25 under the agreement.

1 A "We do our own sales and marketing through
2 you and Joy Walker and offer a three percent
3 co-broker commission on all products," which we
4 did.

5 Q Okay. Was it successful, the work you were doing
6 there?

7 A Very much so.

8 Q Roughly, how many houses did you build that were
9 actually sold?

10 A It was in the 40s. Forty-four.

11 Q Are you suing over any houses that weren't
12 completed or already sold to owners?

13 A No.

14 Q Okay. The bullet points then go on to talk about
15 construction management fees. Can you explain that to
16 the Court -- to the jury, please.

17 A The next paragraph down?

18 Q One of the bullet points it's roughly halfway
19 through.

20 A "We pay you a flat fee construction
21 management fee of \$5,000 for each single-family
22 home and 1,250 per unit for each townhouse as and
23 when homes are settled as per sales compensation."

24 Q Okay. Explain, if you could, to the jury in plain
25 language what you're getting the fee for in that

1 bullet point.

2 A Well, we get paid every time a home is sold
3 and closes.

4 Q Okay. And again, you're not suing over any home
5 that wasn't sold and closed here today?

6 A No.

7 Q Okay. Earlier, we talked about incentive
8 management fees and then we talked about the
9 construction sales and marketing as a group.

10 Those are -- how would you categorize those
11 two? On one block we have construction management and
12 sales and marketing, and the other block we have
13 incentive managements fees. How would you
14 characterize the first block, construction sales and
15 marketing?

16 A That would be supervision, you know, a
17 designated factor for each individual house what
18 it would take, supervisory management.

19 Q How long -- did you work on -- what other projects
20 did you work on during the time you were building
21 houses for Allenwood?

22 A I gave up everything else I was doing to
23 focus on this project.

24 Q So any income you would be receiving during that
25 time period would be based on work on this project?

1 A Or developing any new business.

2 Q Would the sales and marketing fees and the
3 construction management fees, would you categorize
4 that as your income during that time?

5 A Yes.

6 Q Okay. And then the incentive management fee, how
7 would you categorize that?

8 A That was more like a performance formula.
9 You know, if you produce something more
10 efficiently. If you produced more than what you
11 had, you know, projected to do. In other words,
12 the sales and the construction went faster. Or if
13 you, you know, increased sales and made more
14 money, made more profit.

15 Q Okay. I'm back to the incentive management fee
16 clause again. And it states, "In addition to the
17 sales and construction management fees as described, I
18 would like to pay you an incentive management fee of
19 50 percent of pre-tax profits."

20 Did that term ever get more formalized than
21 what's in this letter?

22 A No. That was what we based our whole
23 agreement on.

24 Q You mentioned earlier that your houses were sold
25 and great profits were made. If we wanted to

1 determine how many houses were sold, what profits were
2 made, et cetera, what document would we refer to?

3 A The document that Ginger Griffith accounted
4 for.

5 Q All right. If you'd please turn to Exhibit 2 in
6 the book, Mr. Brady. If you could briefly tell me
7 what that document is.

8 A That's the analysis of accounting of my
9 performance at Allenwood.

10 Q I don't want to crowd the jury. Let's put that
11 over here.

12 Okay. Mr. Brady, after that distraction,
13 again, what is Exhibit 2 in your book?

14 A That's the analysis of my compensation at
15 Allenwood --

16 Q Okay.

17 A -- based on my performance.

18 Q All right. You received that letter?

19 A Yes, September 13th.

20 Q What year?

21 A 2007.

22 Q Okay. Is what's in your binder a truthful and
23 accurate version of the letter that Ms. Griffith sent
24 you?

25 A Yes.

1 MR. THOMSON: Your Honor, I'd move to
2 enter Exhibit 2 into evidence.

3 THE COURT: All right. Any objection?

4 MR. O'KELLEY: No objection.

5 THE COURT: Without objection.

6 (PLF. EXH. 2, Letter from Griffith, was
7 received into evidence.)

8 BY MR. THOMSON:

9 Q Mr. Brady, is this an exact replica of Exhibit 2,
10 Page 1?

11 A Yes.

12 Q Okay. And is this an exact replica of Page 2 of
13 Exhibit 1 [sic]?

14 A Yes.

15 Q Okay. Is this an exact replica of Page 3 of
16 Exhibit 1 [sic]?

17 A Yes.

18 Q Is this an exact replica of Page 4 of Exhibit 2?

19 A Yes.

20 Q And I meant Exhibit 2 through all those questions.

21 MR. THOMSON: Your Honor, I'd move to
22 enter Exhibit 2A into evidence.

23 THE COURT: All right. Any objection?

24 MR. O'KELLEY: Again, Your Honor, I
25 thought it was always Exhibit 2, so no objection.

1 THE COURT: All right.

2 (PLF. EXH. 2A, Letter from Griffith, was
3 received into evidence.)

4 BY MR. THOMSON:

5 Q So, Mr. Brady, what was the purpose of this
6 letter?

7 A This was an analysis of the compensation due
8 me after performing the work that I did at
9 Allenwood on units that were sold and closed.

10 Q Okay. It starts out right off the bat, "Pursuant
11 to your discussion with Mr. Grossman ..."

12 Will you tell me what led up to you receiving
13 this letter from Ms. Griffith?

14 A I kept pushing that homes were being closed,
15 units were being closed, and I wasn't getting
16 paid. And so after many attempts to try to figure
17 this out, what was going on, finally Gary said,
18 "I'll have Ginger look into it."

19 Q Okay. So let me read a brief section of that
20 letter. It says, "I'm transmitting our analysis of
21 the Allenwood compensation to you under our
22 February 2nd, 2004 letter of agreement."

23 I've got two questions about that sentence.
24 The term "our" there, do you know who Ginger is
25 talking about there?

1 A It would be Ginger and Gary.

2 Q So we're -- okay. And the February 2nd, 2004
3 letter of agreement, do you know what letter she's
4 talking about there?

5 A Gary's personal letter to me --

6 Q Okay.

7 A -- establishing the basis for our
8 performance.

9 Q All right. Is it significant to you that she
10 mention the February 2nd, 2004 letter as being "our"
11 letter of agreement?

12 A It was significant only in that was what we
13 based the whole development on and agreed to.

14 Q You can't think of any other agreements that the
15 money owed to you would be owed under; right?

16 A None.

17 Q All right. The basic format of this letter, there
18 is a heading that says "Village Square Development,
19 LLC" on the first page. And then around Page 3, we
20 get to a heading that says, "Asset Hilton Head at
21 Allenwood."

22 Can you please describe to us why there are
23 two separate sections of this letter?

24 A This was a 20-acre site on the north end of
25 Hilton Head. It had a lagoon in the center.

1 Around the lagoon was all townhomes, and around
2 the outside, on the other side of the road that
3 circled around, were all single-family homes.

4 Q Okay.

5 A Village Square was the company that was
6 separated from Hilton Head Homes at Allenwood so
7 that there was separation between single-family
8 homes and the townhomes.

9 Q Okay. Under the "Village Square Development"
10 heading, it mentions that there's income coming in,
11 and then it does so similarly under the "Hilton Head
12 Homes at Allenwood" heading.

13 What generated that income?

14 A Our performance on the job, the sales and
15 marketing success, the construction of the homes,
16 the construction management, the satisfaction of
17 the customers, and the closing of those units.

18 Q Okay. There's a long list of calculations here.
19 Some of them have parentheses around them. If you
20 could please explain to the jury the significance of
21 the parentheses around the numbers in case anyone
22 doesn't have an accounting background.

23 A Those would be deducts. The ones without
24 parentheses would be added up to a total. And
25 then as you came to one -- the number in

1 parentheses, that would be a subtraction.

2 Q Okay. Do you know whether this letter deducts
3 everything that Mr. Grossman and his companies could
4 deduct from the amount that you were owed?

5 A Yes. That's why the analysis was done.

6 Q Right. So you can't think -- are there any
7 reasons why they wouldn't deduct from the amount
8 they're saying you were owed?

9 A No.

10 Q What conclusion did Ms. Griffith draw after
11 running all those numbers?

12 A "Of this writing, the total amount due to you
13 is \$711,027."

14 Q Where do you see that in the letter?

15 A That's on the bottom of Page 3.

16 Q Where was that money supposed to come from?

17 A It would come from Gary. He was the one who
18 was in charge of the accounting and the --

19 Q The LLC's income, who had control over that?

20 A Gary did.

21 Q Okay. Are you aware of any instances where Gary
22 or one of his companies didn't receive the money from
23 one of the houses they sold to an individual owner?

24 A No. They received -- when the closing took
25 place on Hilton Head, the money went up to

1 Pennsylvania.

2 Q Did Gary or his companies ever pay you any of the
3 money they say they owe you in this letter?

4 A No.

5 Q Did they give you any reasons why they did not pay
6 this money that they owed you that was already in
7 their possession?

8 A They came up with some different reasons, but
9 there were no good reasons.

10 Q Okay. Do you see the reasons in that letter
11 anywhere?

12 A Yeah. It says, "Given the carrying costs of
13 the inventory, past due receivables to Forest
14 Homes from Allenwood, the monthly carrying costs
15 at Cypress Harbour, and our massive increase in
16 overhead associated with the new plant, LRC simply
17 cannot fund additional monthly expenses."

18 Q Okay.

19 A None of these companies were associated to my
20 performance or ...

21 Q Let's go through them just to make sure. The
22 first one is carrying costs of inventory.

23 Is there any way that could apply to houses
24 that were already sold?

25 A No. Our deal was, that when you sell a house

1 and you close it, everything that's -- that gets
2 accounted for on that particular unit, and that's
3 why they call it a closing.

4 Q Right. So by stating "cost of inventory," what do
5 they mean by that?

6 A You know, there are homes that there are
7 parts of construction that might have been
8 started. But, you know, there is no inventory of
9 the homes that we were -- that we completed.

10 Q Okay.

11 A When we completed them, they were sold. They
12 were under agreement before we completed them.

13 Q All right. The excuse about Forest Homes from
14 Allenwood, is there any possible way that could apply
15 to houses that you had already built and had sold on
16 their behalf?

17 A Well, that wasn't our agreement. I wasn't in
18 charge of the accounting. I don't know how that
19 could have, you know, been earmarked.

20 Q Okay. What about the monthly carrying costs at
21 Cypress Harbour? Is there any possible way that could
22 have anything to do with the houses that you had
23 already completed and had sold on behalf of these
24 LLCs?

25 A No. That was an unrelated property in a

1 different county.

2 Q Okay. In fact, do you recall what Gary Grossman
3 said about Cypress Harbour in his 2004 letter as to
4 whether he wanted to burden you with those debts?

5 A He did not want that to be a distraction.

6 Q Okay. What do you think he means by
7 "distraction"?

8 A Well, I'm not sure. There's -- Gary Grossman
9 ended up owning Cypress Harbour.

10 Q Okay. Tell me, could you perceive that -- as of
11 the time you entered into the 2004 agreement, would
12 you have any perception that Cypress Harbour's
13 struggles would have an impact on you being paid the
14 money that you already earned?

15 A No. It was unrelated and Gary stressed to
16 keep them separate.

17 Q What other excuses for non-payment did Ms.
18 Griffith or Mr. Grossman give you other than what's
19 listed in the letter there?

20 A Massive increase in overhead associated with
21 the new plant.

22 Q Okay. Would that have had anything to do with
23 your work, your already completed houses?

24 A That was the deals that I did. The plant
25 wasn't even under construction. All our product

1 came from the plant in Pennsylvania.

2 Q Okay.

3 A Not the new plant.

4 Q Okay. Can you think of any moral or ethical
5 reasons as to why Gary and his companies would have
6 taken money that was in their possession that was due
7 to you and used it to pay debts that had nothing to do
8 with this project?

9 A None whatsoever.

10 Q Referring to the middle bottom of Page 2, there is
11 a clause that says, "The guaranteed fee totals." Do
12 you see that?

13 A Yes.

14 Q Can you please tell the jury what that guaranteed
15 fee means, who was getting it?

16 A That guaranteed fee was the one that was
17 going to Gary.

18 Q Does that tell you that Mr. Grossman is being paid
19 his share?

20 A Yes.

21 Q If the defendants raise a defense you're not owed
22 the money because everyone else was supposed to be
23 paid first before you -- and by "everyone," I mean
24 Mr. Grossman and his companies -- what relation does
25 that line have to that defense, in your mind?

1 A None.

2 Q Do you think it establishes that Mr. Grossman was
3 paid first?

4 A Yes.

5 Q Please go to Exhibit 3 in your book.

6 THE COURT: Let's do this before you get
7 on to the next section. I see some jurors raising
8 their hand. I'm just kidding. I've got to use
9 the restroom. So we're going to take a break.
10 About a 10- or 15-minute break and we'll bring you
11 right back in. All right? Stretch your legs.
12 And, again, don't talk about the case. Thank you
13 very much.

14 (A break was taken at 3:13 p.m. to 3:25 p.m.)

15 THE COURT: Bring them out.

16 THE BAILIFF: The jury is entering the
17 courtroom, Your Honor.

18 (The jury enters the courtroom at 3:25 p.m.)

19 THE BAILIFF: The jury is seated, Your
20 Honor.

21 THE COURT: You're still under oath.

22 BY MR. THOMSON:

23 Q Mr. Brady, please turn to Exhibit 3 in your book.

24 As briefly as possible, can you tell me what
25 this document is?

1 A This is an email from Gary to me confirming
2 the analysis that Ginger had previously sent.

3 Q When was it sent?

4 A September 15, 2007.

5 Q Okay. How many days after the Ginger Griffith
6 letter was this email?

7 A Two days.

8 Q Is the paper you're looking at a truthful and
9 accurate version of the email you received?

10 A Yes.

11 MR. THOMSON: I'd move to enter Exhibit 3
12 into evidence.

13 THE COURT: All right. Any objection?

14 MR. O'KELLEY: As long as it's just this
15 one-page email. Exhibit 3 has some stuff behind
16 it. As long as it's just this one page, no
17 objection, Your Honor.

18 THE COURT: For the purposes of this one,
19 it's just this one current page that's Exhibit 3; is
20 that correct?

21 MR. THOMSON: That's correct. It's a
22 one-page exhibit.

23 THE COURT: Without objection.

24 (PLF. EXH. 3, Letter from Griffith;
25 9/15/07, was received into evidence.)

1 BY MR. THOMSON:

2 Q I'm reading the first sentence of this email and
3 it says, "I finally got a chance to look at Ginger's
4 September 13th, 2007 letter and the worksheets."

5 What conclusion do you draw from that
6 sentence?

7 A That Gary personally reviewed them.

8 Q Okay. What do you mean by "them"?

9 A The worksheets, the analysis that Ginger
10 sent.

11 Q Are you talking about the letter we just went over
12 in Exhibit 2?

13 A Yes.

14 Q It then says, "It looks to me like she has
15 accurately accounted for the various forms of
16 compensation."

17 What does that sentence from Gary tell you?

18 A That she -- all the different bullet points
19 in that previous letter that detailed our
20 agreement for my compensation, that she accounted
21 for all of those.

22 Q Are there any qualifications to Mr. Grossman's
23 agreement with Mrs. Griffith's calculations?

24 A No.

25 Q Full agreement. And how much did Ms. Griffith say

1 you were owed?

2 A 711,000.

3 Q All right. The last part of that sentence
4 says -- well, let me read the whole sentence. "It
5 looks to me like she has accurately accounted for the
6 various forms of compensation as laid out in our
7 February 2nd, 2004 letter of agreement."

8 What conclusion do you draw from that last
9 part of that sentence?

10 A That we performed per our deal based on that
11 letter, and this was the compensation that was due
12 me right then.

13 Q So what document is Gary alleging to be your
14 agreement?

15 A The February 2nd, 2004 letter.

16 Q That's the document we went over as Exhibit 1?

17 A Yes.

18 Q Okay. After receiving this email and Ginger's
19 letter, who did you consult with after that?

20 A I spoke back with Gary to find out when I'm
21 getting paid.

22 Q Did you consult with any third parties?

23 A Yes. I had --

24 Q Did you consult with any accountants?

25 A What's that?

1 Q Did you consult with any accountants?

2 A Yes. I wanted to verify and confirm that --
3 have another set of eyes as a professional to look
4 at those calculations to make sure they were
5 correct.

6 Q All right. If you could, please turn to Exhibit 4
7 in your book. As briefly as you can, just for
8 admission, describe what this letter is.

9 A This is the professional accountant that I
10 engaged to review the calculations to verify the
11 information that was sent to me by
12 Ginger Griffith.

13 Q What was the name of the accountant that sent you
14 this letter?

15 A Gardner Brower.

16 Q When did he send it?

17 A December 12, 2007.

18 Q Is that -- is Exhibit 4 that I showed you, is that
19 a truthful and accurate version of the letter you
20 received from the accountant?

21 A Yes.

22 MR. THOMSON: Your Honor, I'd move to
23 enter Exhibit 4 into evidence.

24 MR. O'KELLEY: Your Honor, we object.

25 Under Rule 801, this is classic hearsay. It's an

1 out-of-court statement offered for proof of the
2 matter asserted therein. I don't see any
3 exceptions that would apply under Rule 803.
4 Mr. Gardner Brower was never named as a witness,
5 and this should not come in.

6 THE COURT: All right. Ladies and
7 gentlemen, let me take a look at what he's
8 referring to. So just give me five minutes to go
9 over this and I'll bring you right back in, okay?

10 (Jury exits the courtroom at 3:32 p.m.)

11 MR. THOMSON: Your Honor, I've got a
12 substantive response to the objection whenever
13 you're ready.

14 THE COURT: All right.

15 MR. THOMSON: I have four things here.
16 First, it's not being offered into evidence to prove
17 the truth of the matter asserted, so it's not even
18 hearsay to begin with.

19 THE COURT: What was the last question
20 that you asked?

21 MR. THOMSON: I just moved to put the
22 exhibit into evidence.

23 THE COURT: Is it the same exhibit that
24 he's been going over?

25 MR. THOMSON: Pardon?

1 THE COURT: Is this the same exhibit that
2 he's been going through?

3 MR. THOMSON: Yes.

4 Mr. Brower passed away. He is no longer
5 alive. And it's not being offered to prove the
6 truth of the matter asserted because he calculated
7 that Rod was owed a little more money than what
8 Ginger did, 724,711. We're just agreeing to
9 stipulate that the number is 711,027, and we are
10 not even going to ask the jury to award us the
11 724.

12 But other exceptions are it's a present
13 sense impression. And it's a record from
14 regularly conducted business activities, 803-6.
15 The statements and documents affecting the
16 interest in property, That's Rule 803(15).

17 And to the extent it matters, I'm going
18 to ask Rod on the stand if he agrees to stipulate
19 that the damages are 711,027 instead of the 724.

20 THE COURT: I'll allow you to ask him the
21 question for the time being. Remind me, but I'll
22 take it under advisement at this point in time.

23 MR. THOMSON: Thank you.

24 THE COURT: All right. Bring them out.

25 THE BAILIFF: Jury is entering the

1 courtroom, Your Honor.

2 THE COURT: All right.

3 (Jury enters the courtroom at 3:36 p.m.)

4 MR. O'KELLEY: I would like a running
5 objection under Rule 801 for record preservation
6 purposes.

7 THE COURT: Not a problem.

8 BY MR. THOMSON:

9 Q Mr. Brady, since there was a break, can you please
10 remind us again what document you're looking at?

11 A This is an independent accounting analysis of
12 the calculations that were run by Ginger Griffith.

13 Q Is Mr. Brower still around?

14 A No. Unfortunately, he's passed away.

15 Q What conclusion do you believe that Mr. Brower
16 drew in this letter?

17 MR. O'KELLEY: Your Honor, again, that's
18 hearsay.

19 THE COURT: I'll sustain that
20 objection.

21 BY MR. THOMSON:

22 Q What statement -- if Mr. Brower claimed that you
23 were owed more money than what Ms. Griffith alleges
24 you were owed, are you even claiming that extra amount
25 in this litigation?

1 MR. O'KELLEY: Your Honor, I'm objecting.

2 He is trying to get in the back door what

3 Mr. Brower would have said. Mr. Brower is not

4 here. This is hearsay.

5 THE COURT: Just ask him the question you

6 told me you were going to ask him.

7 BY MR. THOMSON:

8 Q Mr. Brady, are you willing to stipulate that your
9 actual damages in this matter are \$711,027 instead of
10 the higher amount that the accountant said you were
11 owed?

12 A Yes.

13 Q Slightly higher; right?

14 A Yes.

15 Q Who did you forward this letter to after receiving
16 it?

17 A I don't remember. Oh, Gary.

18 Q Okay. How did Gary react to your demands to be
19 paid?

20 A Not very well.

21 Q Can you give us some details on that?

22 A Well, I've been trying to get paid for quite
23 a while. It took quite an effort, uncomfortable
24 conversations to get an analysis done where I
25 actually stood with all the homes that closed.

1 And the conversation, I couldn't understand
2 why it was testy, but it became that way. And I just
3 got consistent promises that I was going to get paid
4 in verbal and in print. It just didn't happen.

5 Q What did he say would happen if you sued him?

6 A Well, that was the determining factor that
7 our friendship had gone south, is one evening at
8 the model home in Allenwood, we were sitting
9 across a desk from each other. And I was now past
10 the point of pleading. I was upset. I didn't
11 feel like I was getting treated with any sort of
12 motivation to solve this problem. This had been
13 going on and for some time.

14 And Gary said, "What are you going to do, sue
15 me?" All of the sudden, he blew up out of the chair.
16 He came halfway over the desk. I had to roll back.
17 So after verbal abuse, avoiding physical abuse, he
18 threatened me, my wife, my son. He told me that I
19 don't know who I'm messing with. And then he threatened
20 verbally -- threatened another business partner.

21 Q What reasons, if any, did Gary tell you for the
22 reasons to not -- that he would not be paying this
23 money?

24 MR. O'KELLEY: Your Honor, I'm going to
25 object to that under Rule 408. It clearly appears

1 they were having some sort of settlement
2 discussion about Mr. Brady's payment at the time.

3 THE COURT: What was the question?

4 MR. THOMSON: I'll rephrase.

5 BY MR. THOMSON:

6 Q Mr. Brady, Mr. Grossman mentioned he was going to
7 send you a payment plan and monthly installments. How
8 many of those did you receive?

9 A None.

10 Q Okay. By the time you filed this lawsuit, had
11 Mr. Grossman given you any other reasons for
12 non-payment that we haven't already discussed here
13 today?

14 A No.

15 Q Can you please tell the jury what a crippling loss
16 this was for you?

17 A Well, this was actually -- all this work had
18 been done previous to the recession, the Great
19 Recession. We were the hottest thing on Hilton
20 Head. Everybody was -- it was a hot real estate
21 market. Everybody was chasing the high-end homes.
22 Nobody was providing anything for the working
23 people. And this community fit that niche. It
24 went much faster. The homes sold for more than
25 the projections were. And there was -- you know,

1 my whole career and focus, for not just the
2 construction time, but leading up to planning and
3 getting it set up, picking out houses and pricing
4 and all the sales and marketing efforts, our
5 offices in the sales and model home. And the
6 first 120 days, I worked out of the back of my
7 vehicle. And we were making sales and getting
8 people signed up. You know, we did everything
9 that we should have done.

10 And when it became apparent to me that I
11 wasn't going to get properly compensated for it, it
12 was a disaster. Because then we stepped into the
13 recession.

14 So now not only do I not have any work
15 looking forward to, I don't have any payment for the
16 work that I just spent the two-plus years of my life
17 killing myself at 90 hours a week accomplishing.

18 And as a result, you know, timing, crazy, my
19 daughter just graduating from high school, going into
20 college, no income, fell behind on my mortgage, got
21 foreclosed upon. Embarrassing. Credit ruined. My
22 wife still gets upset she's not in the house that she
23 raised her children. That was the worst thing that
24 happened.

25 Q Mr. Brady, please answer any question opposing

1 counsel may have.

2 MR. THOMSON: Thank you.

3 CROSS-EXAMINATION

4 BY MR. O'KELLEY:

5 Q Mr. Brady, can you hear me all right? I've been
6 told I'm fairly loud, so I just want to make sure you
7 can hear my questions.

8 A Yes.

9 Q Okay, great. Mr. Brady, you first met
10 Mr. Grossman, you testified, at a National Association
11 of Home Builders conference; correct?

12 A Yes.

13 Q And, Mr. Grossman, do you recall if he was the
14 president at that time?

15 A Was the Grossman the president?

16 Q Of the National Association of Home Builders when
17 you met him?

18 A No.

19 Q Do you know if he has been the president of the
20 National Association of Home Builders?

21 A I don't believe so.

22 Q And you testified you were the president of the
23 Hilton Head Association of Home Builders; is that
24 right?

25 A Yes.

1 Q And how many years did you have that position?

2 A One year.

3 Q And what year was that, sir?

4 A That was 1998.

5 Q So you met Mr. Grossman in 1998; correct?

6 A Yes.

7 Q All right. And do you recall if you-all had any
8 deals prior to February of 2004, any business
9 dealings?

10 A Yes.

11 Q How many, sir?

12 A Well, we had -- I was -- like I said, we had
13 a relationship business-wise, personal. I was
14 initially looking for help when I came across Gary
15 to help with a project called Cypress Harbour.

16 Q Let's get to Cypress Harbour. You've got in front
17 of you, I think, your Exhibit 1, which is the letter
18 from February of 2004. Do you see that, sir? You
19 have it in front of you, Exhibit Number 1?

20 A Yes.

21 Q All right. Go down, if you will, please.

22 And this is a letter from Gary L. Grossman,
23 an unsigned letter, from February of 2004; correct?

24 A Yes.

25 Q All right. Who is Chris Gannon?

1 A Chris Gannon was the property owner and
2 developer -- land developer at Allenwood.

3 Q You didn't own the land at Allenwood; correct?

4 A No.

5 Q And you've never individually ever owned the land
6 at Allenwood; correct?

7 A Correct.

8 Q And Hilton Head Homes, Inc. never owned the land
9 at Allenwood; right?

10 A No.

11 Q And then in this letter -- let's just walk through
12 it. It says, "This past weekend, I convinced Chris to
13 separate these transactions by using Lancaster
14 Redevelopment Corporation as the purchaser of the
15 townhouse lots." Do you see that statement?

16 A Yes.

17 Q And Lancaster Redevelopment Corporation was the
18 entity that wrote you this letter in September of
19 2007; correct?

20 A I'm sorry?

21 Q The letter from 2004 that we were just going over
22 states, "This past weekend" -- and tell me if I read
23 this correctly -- "This past weekend, I convinced
24 Chris to separate these transactions by using
25 Lancaster Redevelopment Corporation as the purchaser

1 of the townhouse lots." I read that correctly?

2 A I'm sorry. You said 2007. This is 2004.

3 Q I said 2004, but what I'm asking about, the 2007
4 letter that's Exhibit 2 is from Lancaster
5 Redevelopment Corporation; correct?

6 A Yes.

7 Q And the letter goes on to state that, "The 64
8 single-family lot agreements has Hilton Head Homes,
9 LLC, not Hilton Head Homes, Inc., as the purchaser."
10 And you just confirmed that; correct? Hilton Head
11 Homes, Inc., your company, never owned the land.

12 A Well, I'm not sure. There were so many
13 companies involved and so many --

14 Q Your testimony a few minutes -- literally two or
15 three minutes ago was that Hilton Head Homes, Inc. and
16 you never owned the dirt; correct?

17 A No. I answered that I didn't own the dirt.

18 Q Did Hilton Head Homes, Incorporated ever own the
19 dirt?

20 A I couldn't keep track of that.

21 Q So you don't know as we sit here?

22 A No. Gary Grossman had more companies going
23 than you could possibly count.

24 Q But Hilton Head Homes, Inc. was your company;
25 correct?

1 A I don't recall.

2 Q You don't recall whether your company was
3 called Hilton Head Homes, Inc. as we sit here today?

4 A No, I don't. It was a number of years ago.

5 Q Let's keep going through the letter, sir. Skip
6 down to the second-to-the-last paragraph. It states
7 that -- let me know if I read this correctly. "I also
8 have some concern about the unresolved problem at
9 Cypress Harbour."

10 What was the unresolved problem at
11 Cypress Harbour?

12 A Well, that -- the reason I went to the
13 homeowner's association and walked into the
14 Building Systems Council booth is because I had
15 gotten interested in doing a development in
16 Jasper County.

17 Q And at some -- I'm going to read from this. "At
18 some point in time, the bank will move through the
19 foreclosure process, seize the assets, sell the asset,
20 and most likely come up with a loss."

21 Was Cypress Harbour in the tank at the time
22 this letter was written in 2004?

23 A I don't recall the timing, but the whole
24 Cypress Harbour plan, financing was orchestrated
25 by Gary Grossman.

1 Q Gary Grossman wasn't involved with
2 Cypress Harbour originally, was he, sir? That was a
3 development that you were working with, correct?

4 A Originally, no.

5 Q All right. And then there's a statement in the
6 next paragraph: "In which case, I believe there is a
7 high probability the bank will pursue a deficiency
8 action against you. Unless and until this threat is
9 resolved, I do not believe it in my best interest to
10 be 'joined at the hip' on a three- to four-year
11 project that involves 3 million plus dollars of debt."

12 Did I read that correctly?

13 A Yes.

14 Q And the next statement says, "Having said all
15 this, I value our friendship highly. I want to work
16 through these difficult issues and move on to better
17 times."

18 You and Mr. Grossman were friends at one
19 point; correct?

20 A Yes.

21 Q And your spouses were friends. You spent the
22 night at each other's houses; right?

23 A Yes.

24 Q At one point, you even were going to have
25 Mr. Grossman be the guardian if something happened to

1 your minor children; correct?

2 A Yes. We were very close.

3 Q Very close.

4 The next paragraph I would like to go over
5 with you states: "I would like to proceed with both
6 transactions in separate limited liability companies
7 wherein Lancaster Redevelopment Corporation owns one
8 hundred percent of the companies but engages you and
9 Joy Walker as independent contractors under the
10 following terms and conditions."

11 Did I read that correctly?

12 A Yes.

13 Q And do you know if there were actually LLCs that
14 were created regarding the townhomes and the
15 single-family homes?

16 A Yes.

17 Q And I want to pass up some documents to you, sir.

18 MR. O'KELLEY: May I say approach, Your
19 Honor?

20 THE COURT: Absolutely.

21 MR. O'KELLEY: Thank you.

22 BY MR. O'KELLEY:

23 Q These are documents that are marked Defendant's 1,
24 2, 3, and 4. I'll hand those to you. I'll represent
25 to you, Mr. Brady, that's the Village Square

1 Development Company operating agreement, along with an
2 assignment of interest and written consent in lieu of
3 a special meeting, as well as the Hilton Head Homes at
4 Allenwood, LLC operating agreement and assignment of
5 interest and written consent as well. Take a moment
6 to look at those, sir.

7 Looking at the back of Defendant's Exhibit 1,
8 go with me to Page 23, please, sir. Who does it say
9 is the member of this LLC? It states Lancaster
10 Redevelopment Corporation, doesn't it?

11 A Gary Grossman is the sole member of
12 Lancaster Redevelopment Corporation.

13 Q That wasn't my question, sir.

14 The question is: The member of the LLC is
15 Lancaster Redevelopment Corporation, correct?

16 A Yes.

17 Q And the manager is Lancaster Redevelopment
18 Corporation, correct?

19 A Yes.

20 Q If you would, sir, the document behind that says
21 "Assignment of interest and written consent in lieu of
22 a special meeting," go to Page Number 5 of that, the
23 second Page 5. The very last page, sir.

24 A Page 5?

25 Q Yes, sir. The very -- there are two Page 5s: One

1 Page 5 with the signature of Lancaster Redevelopment
2 Corporation, and then one with signatures from
3 Arthur F. Long and James R. Brady.

4 A I must be on the wrong document here. I'm
5 sorry. What exhibit?

6 Q Exhibit Defendant's 2. It's the very last page,
7 sir.

8 Is that your signature, Mr. Brady?

9 A Yes.

10 Q And I'll represent to you this is how you became a
11 member of the Village Square Development Company, LLC;
12 isn't that correct?

13 A Yes.

14 Q All right, sir. Turn to Paragraph 9.5, if you
15 would, please, sir. On Page 4. Just let me know when
16 you're there.

17 A Okay.

18 Q I'm going to read this to the jury. Tell me if
19 I'm reading this correctly. 9.5, "Entire agreement.
20 This assignment constitutes the entire treatment
21 between the parties pertaining to its subject matter,
22 and it supersedes all prior and contemporaneous
23 agreements, representations, and understandings of the
24 parties. No supplement, modification, or amendment of
25 this assignment will be binding unless executed in

1 writing by all the parties."

2 Did I read that correctly?

3 A Yes.

4 MR. THOMSON: Objection.

5 Go ahead.

6 THE COURT: What's your objection?

7 MR. THOMSON: I thought he was asking for a
8 legal conclusion, but he ended it with a different
9 question. I'll withdraw the objection.

10 THE COURT: All right.

11 BY MR. O'KELLEY:

12 Q I'll ask it again, Mr. Brady. I read that
13 paragraph 9.5 correctly, did I not?

14 A Yes.

15 Q And further up in the page, you received six
16 percent of this LLC at the time of signing this
17 agreement, did you not?

18 A Yes.

19 Q It's got the percentages broken down. Who were
20 the other members of the LLC at that time?

21 A Lancaster Redevelopment Corporation,
22 Arthur Long.

23 Q Who is Arthur Long?

24 A He was a college friend of mine who became my
25 best man at my wedding.

1 Q And was he an investor in this LLC or what was his
2 function?

3 A Yes, a sole investor just like I was in this
4 agreement.

5 Q How much money did you put into the LLC?

6 A I'm sorry?

7 Q How much money did you put into the LLC at that
8 time?

9 A We put in \$400,000.

10 Q All right. If you'll look at Exhibit 3 and
11 Exhibit 4 that are in front of you, too. I'll
12 represent to you these are the operating agreements
13 for Hilton Head Homes at Allenwood, LLC, and the
14 assignment in which you became a member of Hilton Head
15 Homes at Allenwood, LLC.

16 And again, if you'll look over to the bottom
17 of Page 5, is that your signature?

18 A Yes.

19 Q And a similar question. You got six percent of
20 membership of Hilton Head Homes at Allenwood, LLC;
21 correct?

22 A Yes.

23 Q And the other two members are Lancaster
24 Redevelopment Corporation and Arthur F. Long.

25 A Yes.

1 Q And again, going down to 9.5, tell me if I read
2 this correctly. "Entire agreement. This assignment
3 constitutes the entire agreement between the parties
4 pertaining to its subject matter and it supersedes all
5 prior and contemporaneous agreements, representations,
6 and understandings of the parties. No supplement,
7 modification, or amendment of this assignment will be
8 binding unless executed in writing by all parties."

9 Did I read that correctly?

10 A That's what it says, but that didn't apply to
11 the deal I had with Gary.

12 Q That's what the agreement says, though, the
13 agreement you signed; correct?

14 A You have to understand why this agreement
15 came about.

16 Q Mr. Brady, I'm just asking you, you signed these
17 two assignments. You just testified under oath these
18 are your signatures, correct?

19 A Yes.

20 Q And I just read 9.5 into the record correctly.
21 And your testimony is that I read them correctly,
22 correct?

23 A This agreement was on Mr. Long and my behalf
24 and my interest as owners of the company;
25 shareholders, investors. This had nothing to do

1 with -- anything to do with construction
2 management, sales, marketing, and the compensation
3 due me.

4 This came about solely because, after
5 orchestrating everything we'd been through, we're
6 ready to close the deal with the bank, and
7 Gary Grossman is part of that deal. On that previous
8 letter with me, he was getting a hundred percent.

9 Q A hundred percent of what, sir?

10 A He was a hundred percent owner.

11 Q Well, you became six percent owner, did you not?

12 A Yeah. But you know why?

13 Q You became a six percent owner, is the question.

14 A Because Mr. Grossman called me at the last
15 minute and said the bank wouldn't finance the
16 deal. They needed \$400,000 more, and he couldn't
17 come up with it. That's why this agreement was
18 established. That's why this agreement was
19 executed. It was done for the bank for the
20 loan.

21 Q You built how many homes in your career?

22 A Many.

23 Q And how many have you sold in your career?

24 A Many.

25 Q How many contracts have you signed in your

1 career?

2 A Construction contracts?

3 Q Any contract. How many contracts have you read
4 and signed over time? Thousands?

5 A No.

6 Q Hundreds?

7 A Probably not even a hundred.

8 Q Fifty? Because I see two right here. I know of
9 two that you signed. Signed more than two in your
10 career?

11 A Well, yes, I signed these.

12 Q Any others?

13 A Yes.

14 Q How many?

15 A Throughout my career, but I couldn't fathom
16 how many contracts I signed.

17 Q Go back with me to Exhibit Number 1, please, sir.

18 MR. O'KELLEY: Your Honor, at this time, I've
19 forgotten, I'd move into evidence Defendant's 1,
20 2, 3, and 4.

21 MR. THOMSON: Running objection.

22 THE COURT: Under your previous
23 objection?

24 MR. THOMSON: Correct.

25 THE COURT: At this point in time, I'm going

1 to hold in under abeyance and continue with the case,
2 but I'll make a ruling.

3 MR. O'KELLEY: Thank you, Your Honor.

4 BY MR. O'KELLEY:

5 Q Are you back on Exhibit Number 1, sir?

6 A Yes.

7 Q Go to the bottom of the second page that has all
8 the bullet points.

9 A Which page is that?

10 Q The second page. Are you there?

11 A Yes.

12 Q All right. At the bottom it states, "In addition
13 to the sales and construction management" -- and it
14 says "fess," but I think that should be "fees" -- "as
15 described, I would like to pay you an incentive
16 management fee of 50 percent of pre-tax profits after
17 one percent per month interest on the cash investment
18 to Lancaster Redevelopment Corporation."

19 A I must be on the wrong exhibit.

20 Q I'm sorry.

21 A I'm on the one you gave me.

22 Q It's in your notebook.

23 A Okay.

24 Q Second page, this paragraph at the bottom of the
25 page.

1 Now that you're there, I'm going to read this
2 again. I apologize for repeating myself. "In
3 addition to the sales construction management fess as
4 described, I would like to pay you an incentive
5 management fee of 50 percent of pre-tax profits after
6 one percent per month interest on cash investment to
7 Lancaster Redevelopment Corporation and 500 basis
8 points to me individually for my guaranty."

9 Did I read that correctly?

10 A Yes.

11 Q I'm going to read the rest of that sentence.
12 "However, I am asking that 100 percent of cash
13 invested by Forest Homes, Lancaster Redevelopment
14 Corporation, and/or myself be repaid prior to any
15 profit distribution."

16 So is it your understanding that
17 Forest Homes, Lancaster Redevelopment Corporation,
18 and/or Mr. Grossman had to be repaid prior to any
19 profit distribution?

20 A My dealings, they were all the same. But our
21 deal hinged on not waiting for any other companies
22 unrelated or related, any standing inventory. It
23 was a clear-cut deal that when the houses closed,
24 all accounting would be correctly figured and
25 disbursed like any normal closing.

1 Q Let me read it again. "However, I'm asking that
2 100 percent of cash invested by Forest Homes,
3 Lancaster Redevelopment Corporation, and/or myself be
4 repaid prior to any profit distribution."

5 Did I read that correctly?

6 A Yes, you did.

7 Q Turn to the next page, sir. Look at the second
8 paragraph. Tell me when you get there.

9 A I'm there.

10 Q It states, "I believe this arrangement fairly
11 balances the scales, makes our initial financing
12 easier, isolates me in the deals from any trouble that
13 may arise from Cypress Harbour, and lowers your
14 personal risk."

15 Did I read that correctly?

16 A Yes.

17 Q All right, sir. How much were you paid in
18 advances against commissions, sir? And if I use that
19 term, do you what it means, an advance against
20 commission?

21 A Yes.

22 Q It's sort of like you're going to bring in X, Y,
23 Z amount on a commission, but you get A, B, C before
24 X, Y, Z comes in; correct?

25 A Yes.

1 Q How much advances on commission did you get at
2 either Allenwood or Village Square?

3 A I'm not sure. Obviously, it takes time when
4 you begin a project before sales are able to be
5 achieved. So, it was part of a business plan to
6 compensate Joy Walker and myself up until that
7 point. And then as soon as we started making
8 sales, that money would be deducted. So it was
9 very short-term.

10 Q Turn to your Exhibit Number 2, please. Your
11 lawyer was asking you about this letter that was
12 written by Ms. Griffith for Lancaster Redevelopment
13 Corporation. You remember that testimony, of course.
14 It was just earlier today. Do you remember that
15 testimony, sir?

16 A I guess we'll find out.

17 Q Well, no. I'm asking your -- you've been in the
18 courtroom today testifying; correct?

19 A Yes.

20 Q Go down to the bottom paragraph of this letter and
21 tell us who Nick Grossman and/or Dan Clore are?

22 A Nick Grossman is Gary's son, and Dan Clore is
23 Nick's friend.

24 Q And were they working at -- in some capacity at
25 Village Square or Hilton Head Homes at Allenwood

1 during this time?

2 A Hard to tell. I could never -- I could never
3 confirm that, but they were there some of the
4 time.

5 Q This letter references Battery Creek.

6 Did you-all have another development that
7 you-all called Battery Creek?

8 A Yes.

9 Q Was that here in Beaufort?

10 A Except when you say "we," you'd have to -- I
11 need to take that -- correct that as Gary Grossman
12 had another development at Battery Creek.

13 Q Were you involved with Battery Creek in any way?

14 A Yes. The lead-up to it, I was there when the
15 property was first introduced. Gary and I met a
16 real estate salesman on that property. Did a lot
17 of up-front work. It was supposed to be my job to
18 manage and supervise it.

19 But by the time that got going, we had
20 already hit our rough patch in discussing my
21 compensation at Allenwood, and so that never became
22 any sort of compensation to me.

23 But Gary started the project and he used my
24 builder license fraudulently to take out building
25 permits. I only found that out because I had some

1 subcontractors ask me, *When did you start the project*
2 *over at Battery Creek?* I said, *That project hasn't*
3 *started.*

4 So I drove over. It was after hours.
5 Permits are posted on the job, and there's my name,
6 James R. Brady, as the building -- on the building
7 permit. It was never authorized.

8 Q Mr. Brady, look -- are you -- turn to Page 2 of
9 this exhibit, please, sir.

10 Remember your lawyer asked you about items in
11 the parentheses, correct, what that means for those of
12 us who are not accountants?

13 A Yes.

14 Q All right. It says in the middle of the page that
15 the net balance is a negative \$25,746. Do you see
16 that?

17 A Yes.

18 Q Do you agree with that statement, sir?

19 A I'm agreeing it for this lawsuit.

20 Q All right. And then in the middle of the page it
21 says -- and tell me if I read this correctly -- "The
22 net income for tax year 2005 was \$708,890 and \$247,495
23 in 2006 for a total taxable income of \$956,385. The
24 LRC allocated income on this is \$956,385 for 88
25 percent or \$841,619."

1 Did I read that correctly?

2 A Yes.

3 Q How about the paragraph below that? "Under the
4 terms of the February 2, 2004 letter agreement,
5 Mr. Grossman was to be paid a priority distribution of
6 500 basis points for his guaranty. The average debt
7 in 2005 was \$2,970,097 from January 1 until
8 December 31, 2005, which calculates to a prorated
9 guaranty fee of \$148,504.85 for 2005."

10 Did I read that correctly?

11 A Yes.

12 Q You never guaranteed any of the debt for
13 Village Square or Hilton Head Homes at Allenwood, did
14 you, sir? You didn't sign any personal guaranties for
15 that.

16 A I didn't sign any personal guaranties, but I
17 put in \$400,000 with a partner and worked there
18 90 hours a week and didn't get compensated.

19 Q Do you have -- did you bring to the court with you
20 time sheets or something to verify this 90 hours a
21 week?

22 A The basis is on the production --

23 Q Sir, I asked if you brought anything to the court
24 verifying your 90 hours a week.

25 A No.

1 Q All right. Because it's true during this time you
2 had a son who was very involved in sailing, did you
3 not?

4 A I have a son.

5 Q And he was a big-time sailor during this time, was
6 he not?

7 A What do you mean by "big-time sailor"?

8 Q He sailed a lot. He was a regular sailor and he
9 competed in races.

10 A Kids do stuff, so he sailed.

11 Q How old was he in 2007?

12 A Well, he was born in '93, so if somebody
13 would like to do the math.

14 Q He was 14, wasn't he?

15 A Okay. I guess he was.

16 Q He couldn't drive -- can't drive in South Carolina
17 when you're 14, can you?

18 A Not legally.

19 Q Were you taking your son to sailing practice, to
20 sailing events during this time?

21 MR. THOMSON: Objection, Your Honor.
22 Relevance.

23 MR. O'KELLEY: It's completely relevant.
24 He says he worked 90 hours a week.

25 THE COURT: What was the question?

1 MR. O'KELLEY: I said, was he taking his
2 son to sailing practice? Was he taking him to
3 tournaments? He says he worked 90 hours a week.
4 He didn't show up with a single thing to verify
5 that.

6 THE COURT: It's cross-examination, so
7 you can say "Yes" or "No," sir, and you can give
8 an explanation if you'd like.

9 THE WITNESS: Okay.

10 BY MR. O'KELLEY:

11 Q So my question was were you involved in driving
12 your 14-year-old son, who didn't have a driver's
13 license, to sailing practice, sailing tournaments,
14 sailing events?

15 A Sometimes.

16 Q How often? Weekly?

17 A No.

18 Q Once a month?

19 A There was not a set schedule.

20 Q Who did he sail for, what yacht club?

21 A Well, he was -- the local yacht club was the
22 South Carolina Yacht Club.

23 Q And do you recall what he sailed for the
24 South Carolina Yacht Club?

25 A A sailboat.

1 Q What type?

2 A Well, at that age, he'd have been sailing an
3 Optimist.

4 Q Did he win any competitions sailing the Optis?

5 A Occasionally.

6 Q How often is occasionally?

7 A Not every day.

8 Q Weekly?

9 A No.

10 Q All summer long?

11 A I don't have a real way to put a finger on
12 it.

13 Q Did he go to regattas up and down the coast, did
14 you-all have to travel for those races, or did he --

15 A Yes, some of the events were out of town.

16 Q Would they be in Charleston or Beaufort or --

17 A Charleston, Savannah.

18 Q Go back to the letter, please, sir, Mr. Brady.

19 I'm on Page 3 of the 2007 letter from
20 Lancaster Redevelopment. Just let me know when you're
21 there.

22 A I'm sorry. Could you ask --

23 Q Yes, sir. Exhibit 2 --

24 A Yep.

25 Q Your Exhibit 2, the third page.

1 A Yes.

2 Q At the top of the page -- and I'm going to read
3 this into the record. Tell me if I read this
4 correctly. "Under the terms of the February 2nd, 2004
5 letter of agreement, 100 percent of LRC loans or
6 accounts receivable are to be paid as a priority
7 distribution."

8 Did I read that correctly?

9 A I'm sorry. I'm on the wrong paragraph
10 here.

11 Q Yes, sir. Take your time.

12 A I'm on Page 2. Which paragraph?

13 Q I'm on Page 3, sir. The very top page, Page 3.

14 A Okay.

15 Q "Under the terms of the February 2nd, 2004 letter
16 of agreement, 100 percent of LRC loans or accounts
17 receivable are to be paid as a priority distribution."

18 Did I read that correctly?

19 A Yes.

20 Q All right. And then the next paragraph states,
21 "Mr. Grossman recently loaned Village Square
22 Development Company, LLC \$124,750, and Forest Homes
23 has past due receivables of \$173,700."

24 Did I read that correctly?

25 A I have to check. I'm sorry. Could I take a

1 minute to clarify?

2 Q Yes, sir.

3 A The February 2nd, 2004 letter?

4 Q All I'm asking first, Mr. Brady, is if I read that
5 correctly into the record.

6 A Yes, but that wasn't in the agreement. That
7 wasn't in our previous letter. There's nothing
8 about account receivables.

9 Q The first exhibit -- I think you just testified a
10 few minutes ago that I read correctly from Exhibit 1,
11 and I'm quoting from Page 2 of your Exhibit 1,
12 "However, I am asking that 100 percent of cash
13 invested by Forest Homes and Lancaster Redevelopment
14 Corporation and/or myself be repaid prior," and then
15 it should say to, but it says prior, "any profit
16 distribution." And you said I read that into the
17 record --

18 A Yeah, I agree with that. But the next one
19 you asked to read said accounts receivable, and
20 that's not in that letter.

21 Q It has past due receivables \$173,700; correct?

22 A No -- yes, yes.

23 Q Under that it says, "We must repay the \$173,700
24 past due receivables as a first priority.

25 Mr. Grossman has indicated his intentions to allow

1 funds to be paid to you ahead of his recent loans."

2 Did I read that correctly?

3 A Yes.

4 Q Turn to the next page, sir. Let me know when
5 you're there.

6 A I'm there.

7 Q Tell me if I read this correctly. "Mr. Grossman
8 directed me to access our ability to fund a
9 \$10,000-a-month draw against these funds. Given the
10 carrying costs of the inventory and past due
11 receivables to Forest Homes from Allenwood, the
12 monthly carrying costs at Cypress Harbour, and our
13 massive increase in overhead associated with the new
14 plant, LRC simply cannot fund any additional monthly
15 expenses."

16 I read that correctly, did I not?

17 A You did, but it had no bearing on the
18 previous letter and deal.

19 Q You're --

20 A There's no explanation.

21 Q Mr. Brady, you introduced this exhibit, and now
22 you're telling the jury it has no bearing?

23 A On the previous letter.

24 Q All right, sir. I just want to make sure we're
25 all on the same page.

1 Turn to your Exhibit 3, please, which is the
2 email.

3 A Never did Gary comment in writing or verbally
4 that the performance of related or unrelated
5 companies would have any impact on my compensation
6 or ability to get paid.

7 Q If you would turn the page to your next Exhibit 3,
8 please, sir. Look at the second paragraph and just
9 read that for a second. Tell me if I read this
10 correctly, sir. "The long and the short of Allenwood
11 project is that all of our cash is tied up in standing
12 inventory and we can no longer make the interest
13 payments. Until we can get this inventory sold, there
14 simply is no cash to fund anything."

15 Did I read that correctly?

16 A I must have turned the wrong way. Which
17 page? Excuse me.

18 Q I'm sorry, sir. It's your Exhibit 3, which is an
19 email.

20 A Oh, Exhibit 3. Oh, I'm sorry. Okay.

21 Q Yes, sir. And it's the second paragraph. I can
22 read it again. What that paragraph states is, "The
23 long and the short of the Allenwood project is that
24 all of our cash is tied up in standing inventory and
25 we can no longer make the interest payments. Until we

1 can get this inventory sold, there is simply no cash
2 to fund anything."

3 Did I read that correctly?

4 A Yes, but that was not my deal with
5 Gary Grossman.

6 Q Your deal with Gary Grossman you're claiming is
7 Exhibit 1, correct?

8 A The deal was that when homes closed, like any
9 normal closing, everything gets accounted for.

10 Q All right. Where is that on Exhibit 1? Show the
11 jury. Point it out for us.

12 A The middle of the page, it references "as and
13 when each home settles."

14 Q Which page are you on, sir?

15 A It's hard to keep track. This would be
16 Page 2, middle of the page.

17 Q And you're relying on this document -- it's
18 unsigned, correct? -- as setting forth your agreement,
19 right?

20 A This is the whole basis of our agreement --

21 Q This unsigned document; correct?

22 A -- for the development.

23 Q And how long --

24 A It came from Gary Grossman personally. I
25 relied on that. It's what we talked about

1 previous, what we agreed to and how we performed
2 on the job and how I was to be compensated and how
3 it was referenced later on by the accountant that
4 Gary employs and confirmed by Gary.

5 Q And you were still operating under the February --
6 your alleged agreement three years later, correct, in
7 2007?

8 A That was our agreement.

9 Q So this agreement from 2004 was in place for well
10 over a year; correct?

11 A This was -- this is what we agreed on to go
12 forward with that development.

13 Q And you were operating for that for more than a
14 year; correct? For three years; correct?

15 A Yeah. I mean, there was lead-up time. It
16 wasn't just time on the job when the houses were
17 under construction. You just don't decide to do a
18 development one day and start it the next.

19 Q It takes a while, does it not?

20 A Yes, it does.

21 Q And, in this case, you testified that things were
22 going south some three years into the development? Is
23 that your testimony, sir?

24 A It went fantastic. We sold almost all the
25 single-family homes immediately. We'd gotten off

1 to a good start on the townhomes. Everything was
2 moving along fine. And then Gary decided to
3 astronomically raise the prices of all the units,
4 which killed all the deals we had in the pipeline
5 and virtually stopped all sales.

6 Q What year was that?

7 A The end of 2007.

8 Q What was going on with the economy at the end of
9 the 2007, if you remember, sir?

10 A Well, if you're talking about Hilton Head's
11 economy --

12 Q I'm talking about the national economy. Do you
13 remember when --

14 A We're on Hilton Head --

15 Q -- when the recession hit?

16 A -- Island. We're on Hilton Head Island in a
17 community called Allenwood. It was not parallel
18 with the national economy.

19 Q So your testimony --

20 A Did that finally come and impact Hilton Head?
21 Yeah, in about three or four months to six months
22 later. But these real estate closings all took
23 place. The work was done. The money got sent up
24 to Pennsylvania.

25 Q Mr. Brady, your testimony a little while ago was

1 this event was crippling to you. Is that still your
2 testimony?

3 A You know, there's financial scars. There's
4 emotional scars. Mr. Long was my best friend. I
5 mentioned he was the best man at my wedding. He
6 is unfortunately no longer alive, and that's how I
7 have to remember Mr. Long.

8 Joy Walker was the best employee I ever had.
9 I lost her because Gary Grossman showed no respect,
10 never listened to any comments that she had on the
11 shock and awe that the clients had of getting their
12 prices raised overnight even though they were
13 represented by Joy as a sales representative for Gary.

14 My marital scenario, if you were to get into
15 a conversation about my wife -- with my wife and ask
16 her about how much pride she took in the house we
17 lost, maybe you would have a better understanding of
18 how it was crippling to me.

19 Q And how many --

20 A It might not have been to a big developer,
21 but it was to me.

22 Q How many foreclosures were you involved in, sir?

23 A The ones that I was associated with Gary?

24 Q How many was that, sir?

25 A More than I can count.

1 Q More than you can count.

2 A Those were the ones that I was associated
3 with Gary. The only foreclosure I had personally
4 was on my house.

5 Q But your testimony is that entities or the
6 development you had with Mr. Grossman or his
7 companies, there were more than you can count.

8 A Right. I'm not even sure which one he's put
9 into foreclosure.

10 Q Are you aware that a bank forecloses on something?
11 An owner does not foreclose, correct? A lender
12 forecloses.

13 A The lender forecloses, but as a result of
14 inaction by the owner.

15 Q Inaction meaning non-payment of the loan usually,
16 correct?

17 A In probably most cases.

18 Q So you still own land in Nova Scotia, sir?

19 A Not personally.

20 Q Do you own it in an LLC or in a trust?

21 A It would be in a family trust, a piece of
22 property that's been in my family for probably
23 six generations.

24 MR. O'KELLEY: Thank you, Mr. Brady.
25 That's all I've got.

1 MR. THOMSON: Should be brief.

2 THE COURT: Not a problem.

3 REDIRECT EXAMINATION

4 BY MR. THOMSON:

5 Q Mr. Brady, Mr. O'Kelley showed you several other
6 LLC agreements. Will you explain to me the subject
7 matter -- how the subject matter of those agreements
8 is different from the subject matter of the agreement
9 we are litigating here today?

10 A Yeah. There was no reference in those
11 secondary agreements about anything to do with
12 construction management, performance, any of the
13 things that Gary and I agreed on.

14 Those other agreements were totally developed
15 because Gary couldn't fund the beginning of the
16 development, and we had to produce these documents for
17 the bank so he could show that he got the cash. And
18 he was showing in these documents how much cash and
19 how much interest -- excuse me -- percentage of the
20 corporation the investors put in. That document was
21 an investment-only document.

22 Q How much money did you lose on these separate
23 deals that you had with Mr. Grossman? And by
24 "separate deals," I mean the documents that Hamlin --
25 that Mr. O'Kelley showed you.

1 A Mr. Long and I split \$400,000.

2 Q How much of that did you lose?

3 A It was around 100,000. 70- to 100,000.

4 Q Are you suing for that money here today?

5 A No.

6 Q Okay. What agreement is applicable to this
7 litigation?

8 A The February 2nd, 2004 document that lays it
9 out. The September 13th, 2007 document that
10 Gary's employee analyzed and shows the amount of
11 money I'm due for performance.

12 Q All right. And switching gears here, Mr. O'Kelley
13 mentioned a term in the 2004 agreement. I'm
14 paraphrasing here, but something about how Grossman
15 and Lancaster Redevelopment Corporation were to be
16 paid first.

17 If you could, refer to -- do you know where
18 to find that?

19 A I do.

20 Q Okay. What deals that had nothing to do with you
21 did you think that term applied to? Did you
22 understand that question?

23 A No.

24 Q Okay. What deals that had nothing to do with you
25 did you think applied to that term?

1 A None.

2 Q It stands to reason if somebody is losing money on
3 other deals, it's not an excuse to fail to pay you for
4 this deal, right?

5 MR. O'KELLEY: Objection; leading, Your
6 Honor.

7 THE COURT: Rephrase.

8 BY MR. THOMSON:

9 Q I think we've already covered it enough.

10 How much money are you asking for in this
11 case as a result of houses other than -- that were
12 already completed and sold?

13 A None.

14 Q Okay. How much money did Ginger Griffith account
15 for in her letter that pertained to houses that were
16 not yet completed and sold?

17 A None.

18 Q And did Ms. Griffith account for payments to
19 Lancaster Redevelopment Corporation and Mr. Grossman
20 in that 2007 letter?

21 A Yes.

22 Q Okay. How does that relate to the term we
23 mentioned where Mr. Grossman alleges he was to be paid
24 first?

25 A We were supposed to get paid at closing.

1 Q All right. And Ms. Griffith accounted for the
2 payments to Grossman and LRC, right?

3 A Yes.

4 Q We've been over this a bunch, but just to be
5 clear: Who did you agree to make the deal with in
6 2004?

7 A Gary Grossman.

8 Q Did you care who paid you for the work you did
9 under Grossman's -- under your deal with Grossman?

10 A No. He's got many, many companies, and it
11 doesn't make a difference to me.

12 Q And you agree to account for the payments those
13 LLCs made you -- gave you. You would agree to deduct
14 that from the amount that you say Grossman owes you.

15 A Absolutely.

16 Q All right. How did the use of
17 Lancaster Redevelopment Corporation letterhead in this
18 letter sent three years after the agreement was sent,
19 how did that impact your impression of who agreed to a
20 deal with you in 2004?

21 A That was -- the deal was -- the agreement was
22 always with Gary. Ginger was an employee of
23 Lancaster Redevelopment Corporation. He asked her
24 to verify the accounting. I don't know in what
25 capacity, but it's all personal.

1 In the deal, Gary was responsible for keeping
2 his finger on all financing and accounting, and
3 everything went through Pennsylvania. Even my
4 independent accountant had said, you know, based on
5 the limited data, everything was done in Pennsylvania.
6 You know, didn't really see any regular financial
7 information. You know, don't always know what's going
8 on in a different location.

9 But I had a deal to -- spelled out to do so
10 many homes, get compensated for it. We produced the
11 homes. We sales and marketed. We construction
12 managed. They closed. Payments were disbursed, and
13 I'm owed \$711,000 per that accounting.

14 Q Okay. Who made you an offer in 2004?

15 A Gary Grossman.

16 MR. THOMSON: Thank you.

17 MR. O'KELLEY: Just very briefly.

18 THE COURT: I was going to say, are you
19 going to able to sleep tonight if I don't let you,
20 at least, ask one or two?

21 MR. O'KELLEY: One or two.

22 THE COURT: All right. Fair enough.

23 MR. O'KELLEY: Thank you, Your Honor.

24 RE CROSS-EXAMINATION

25 BY MR. O'KELLEY:

1 Q Mr. Brady, do you remember me asking you about
2 these operating agreements and your -- assignment of
3 your interest?

4 A Yes.

5 Q Did you read these operating agreements before you
6 became a member?

7 A They looked boilerplate.

8 Q That wasn't my question, sir. Did you read them
9 before you became a member?

10 A Are you talking about a member of that?

11 Q The only two LLCs that we've established you were
12 a member of today are the two, Hilton Head Homes at
13 Allenwood and Village Square Development Company,
14 because you stated you couldn't remember whether you
15 owned another corporation I asked you about. So the
16 only two we've established today are these two LLCs,
17 correct?

18 And my question is: Did you read the
19 operating agreement and your assignment before you
20 agreed to be a six percent member of these two LLCs?

21 A Yes. And I agreed to them because --

22 MR. O'KELLEY: Thank you, sir. That's
23 all I have.

24 THE WITNESS: -- they didn't have anything to
25 do --

1 THE COURT: Hold on. Hold on. For the
2 record, he can give an explanation.

3 THE WITNESS: I agreed to those LLCs
4 because they were specifically to account for the
5 cash that Gary couldn't come up with that the bank
6 requested at the last minute to do the deal.

7 Gary specifically told me that this deal was
8 not going to happen, *unless you're able to find cash*
9 *to get it started.*

10 THE COURT: All right. Is that the final
11 answer to your question, sir?

12 THE WITNESS: That's why those two
13 operating agreements are in place.

14 THE COURT: Fair enough. You may step
15 down.

16 THE WITNESS: Do these stay here?

17 THE COURT: They can stay there. We will
18 deal with it whenever we adjourn.

19 All right. Ladies and gentlemen of the
20 jury, you've, kind of, seen a little bit of how
21 we'll proceed again tomorrow. The witnesses will
22 take a little bit of time. Again, I'm confident
23 that we can get done tomorrow. Maybe we'll go
24 into Wednesday.

25 But with that being said, as I indicated,

1 I'm going to let you out a little early, let you
2 beat the traffic. And so if you'll just be back
3 here tomorrow morning at 9:30, we'll go ahead and
4 resume the trial.

5 But before that, I just want to remind
6 everybody, please don't discuss the case. Go home,
7 don't Google, look up anything. Just -- if anybody
8 asks, just say the mean judge says I wasn't allowed to
9 talk about it, but it's a dispute between two people.
10 Is that fair enough?

11 Lastly, as I indicated at the beginning of
12 the trial, we're a team. All right? I'm the judge of
13 the law. You're the judge of the facts. They're
14 attorneys. But we're still a team. So when I sneeze
15 four times and don't get blessed, one of you-all
16 sneezes and six people bless it, I mean, we've got to
17 be a team on this. Okay? So look out for me, too.
18 Just because I'm the judge doesn't mean I don't like
19 to be blessed as well. Okay?

20 A JUROR: Bless you.

21 THE COURT: Thank you. Have a good
22 night. We'll see you in the morning.

23 (Proceedings were adjourned at 4:39 p.m.)

24

25

CERTIFICATE OF REPORTER

I, SHARON G. HARDOON, Official Circuit Court Reporter for the State of South Carolina at Large, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas, Beaufort, South Carolina.

I do further certify that I am neither kin, counsel, nor interest to any party hereto.

November 7, 2022



Sharon G. Hardoon, CSR
Official Circuit Court Reporter, III

STATE OF SOUTH CAROLINA) COMMON PLEAS COURT OF THE
)
COUNTY OF BEAUFORT) FOURTEENTH JUDICIAL CIRCUIT

JAMES R. BRADY) NO. 2015-CP-07-02047
)
VS.) TRANSCRIPT OF RECORD
HILTON HEAD HOMES AT ALLENWOOD,)
LLC, et al.) Motions

B E F O R E:

The Honorable Bentley Price, Judge
Walterboro, South Carolina

DATE: Wednesday, November 2, 2022

9:43 a.m

A P P E A R A N C E S:

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Reported by: Cathy J. Provost, RMR, Official Court Reporter

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INDEX TO WITNESSES

(No witness called.)

INDEX TO EXHIBITS

(No exhibits marked.)

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COURT REPORTER LEGEND:

dash -- intentional/purposeful interruption; change in thought
 ellipses ... trailing off
 [ph] phonetically written
 [sic] written as said
 [indiscernible] unable to be understood due to low volume or
 quality of audio provided

1 -- P R O C E E D I N G S --

2 THE COURT: Brady versus Grossman. Y'all come on up. All
3 right. Who wants to go first? I think you've got one motion for
4 JOV and one for the --

5 ATTORNEY O'KELLEY: Prejudgment interest.

6 THE COURT: Yeah, prejudgment interest.

7 ATTORNEY O'KELLEY: I'll be happy to go first, Your Honor.
8 Hamlin O'Kelley here for the remaining defendant, Gary Grossman,
9 in this matter. Your Honor will remember we tried this case
10 before you in Beaufort at the end of August, and after a two-day
11 trial and a few hours of jury deliberations, the jury came back a
12 with a verdict finding that my client, Gary Grossman, who is the
13 only remaining defendant in the case -- Your Honor will remember
14 that the plaintiffs dismissed three LLCs at the very beginning of
15 their case. But they found that my client did, indeed, owe money
16 to Mr. Grossman as a result of a contractual agreement.

17 And, Your Honor, our motion is based on the following: The
18 jury relied heavily on an unsigned letter from Mr. Grossman
19 individually and some emails, the letter from February of 2004
20 and some emails, that followed from Mr. Grossman and his
21 assistant claiming that he owed some money.

22 The problem is, Your Honor -- and I've got copies of these
23 documents if Your Honor would like to see them -- the only
24 written contract we have and the only documents signed by the
25 parties who were charged in the matter are the actual operating

1 agreement and the assignment of interest and written consent,
2 which were in July of 2004, some five months after the letter
3 that Mr. Brady says gave rise to his cause of action.

4 At trial, Mr. Grossman admitted that the LLCs did, in fact,
5 owe Mr. Brady money, the LLCs that had been dismissed that day.

6 But I want to point out, Your Honor, Section 9.5 of the
7 assignment, which is a merger clause, an entire agreement clause,
8 which says that the assignment constitutes the entire agreement
9 between the parties pertaining to the subject matter, and it
10 supercedes all prior and contemporaneous agreements,
11 representations, and understandings of the parties. No
12 supplement, modification, or amendment of this assignment will be
13 binding unless executed in writing by all parties. And it's
14 clear that the jury ignored that. And that's our Rosetta Stone;
15 that's our bible. That's it, Your Honor, due to the fact there
16 is a merger case. There was no cause of action for fraud or
17 anything of that nature that should have allowed the jury to go
18 outside of these agreements.

19 And what these agreements say is that Mr. Brady would have
20 been paid by the LLCs. It doesn't say he was going to be paid by
21 Gary Grossman, individually. There was no evidence of an actual
22 contract with Gary Grossman.

23 And for those reasons, we think the jury got it wrong, and
24 we would ask Your Honor to enter -- you know, vacate the jury's
25 verdict for that reason alone, Your Honor, especially because

1 Section 9.5 of these agreements is what controls.

2 It's the same arguments we made for directed verdict, Your
3 Honor. Your Honor found that there was enough evidence to go to
4 the jury. The problem is, we think the jury got it wrong and has
5 committed an error of law at this point, which we would ask Your
6 Honor to correct.

7 If Your Honor corrects that, then we don't get to the next
8 motion because the verdict would go away. In anticipation of
9 Mr. Thomson's argument about the second motion, they did plea for
10 a sum certain and the prejudgment interest, the statute -- I
11 think there's no wiggle room for the Court. I think it applies
12 as written, Your Honor.

13 THE COURT: Fair enough.

14 ATTORNEY THOMSON: I appreciate that, Hamlin. Their
15 argument, basically, that an LLC operating agreement overrides an
16 agreement to build homes, that's clearly the subject matter -- I
17 don't know what else to say about it. I could go on all day,
18 actually. The merger clause says it contains -- it overrides the
19 previous agreements on the same subject matter, the subject
20 matter that the LLC operating agreement was not an agreement to
21 build homes.

22 Also, he would concede that Gary Grossman was not a party to
23 these LLC operating agreements in his individual capacity, so how
24 can the merger clause operate to amend an agreement that
25 Mr. Grossman signed with the parties? None of the terms that are

1 in this matter -- this matter went to trial. It was over
2 construction management fees; it was over incentive management
3 fees, et cetera. None of those terms are anywhere in these
4 operating agreements or assignments.

5 And moreover, they admitted in 2007 that -- so the letter of
6 agreement was February '04. The assignments were entered in July
7 of '04. And then in '07, when they're calculating how much is
8 due under the construction agreement, they referenced the 2/2/04
9 letter of agreement. They could have referenced these
10 assignments, but they didn't, so just ...

11 RULING OF THE COURT

12 THE COURT: I understood Mr. O'Kelley's position and
13 certainly took all that into consideration at the directed
14 verdict phase. It went to the jury, and the jury has spoken.
15 And obviously I'm reluctant to go against anything based on the
16 system we have in place, so I'm going to deny the motion for JOV.

17 And he consented to yours. So what's the number? Are you
18 just going to consent to the order?

19 ATTORNEY THOMSON: I sent an interest calculation. The
20 interest only is -- let me look at this so I'll get it correct.

21 THE COURT: Oh, I got it. All right. Just send it to me.
22 I'm looking at it from your memo.

23 ATTORNEY THOMSON: Okay. I've got two columns. One is
24 interest only, and one is the principal, plus interest, so
25 however you enter the Form 4, if you would it in when you do that

1 order.

2 THE COURT: However the order looks, I'll sign it.

3 ATTORNEY THOMSON: All right.

4 THE COURT: Fair enough.

5 (End of Transcript of Record.)

6
7 CERTIFICATE OF REPORTER

8 I, Cathy J. Provost, Official Court Reporter for the
9 Fourteenth Judicial Circuit of the State of South Carolina, do
10 hereby certify that the foregoing is a true, accurate and
11 complete Transcript of Record of the proceedings had and evidence
12 introduced in the trial/proceedings of the captioned case in the
13 Court of Common Pleas for Beaufort County, South Carolina, on the
14 2nd day of November, 2022.

15 I do further certify that I am neither of kin, counsel, nor
16 interest to any party hereto.

17
18 Date: November 2, 2022

19
20 /s/ Cathy J. Provost
21 Cathy J. Provost, RMR
22 Official Circuit Reporter
23
24
25

1 In the Court of Common Pleas for the
2 State of South Carolina, County of Beaufort

3

4 Case No.: 2015CP0702047

5 James R. Brady,

6 Plaintiff,

7 vs. Transcript of Record

8 Hilton Head Homes At Allenwood, LLC,

9 Defendant(s) .

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15 Februaury 6, 2019

16 Beaufort, South Carolina

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21 BEFORE:

22 The Honorable J. Mark Hayes, II

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APPEARANCES

REPRESENTING PLAINTIFF(S) :

Charles Whaley Thomson, Esquire

843-501-0423

REPRESENTING DEFENDANT(S) :

Hamlin O'Kelley, III, Esquire

843-856-4488

1 PROCEEDINGS

2 THE COURT: All right. I have that this Brady
3 versus Hilton Head Homes.

4 MR. THOMSON: Yes, Your Honor.

5 THE COURT: And I have that this is the
6 plaintiff's Motion for Summary Judgment as to the
7 Defendant's counterclaims?

8 MR. THOMSON: Yes, Your Honor. And your law clerk
9 requested that I bring a hard copy of our brief. We
10 filed it on Monday.

11 MR. O'KELLEY: And, Your Honor, Hamlin O'Kelley
12 for the Defendants. Your law clerk also requested that
13 we bring the hard copy, as we filed ours on Monday as
14 well. So we've got hard copies for Your Honor, as does
15 the Plaintiff.

16 THE COURT: Ready.

17 MR. THOMSON: Your Honor, I'll get the bad part
18 out of the way right off the bat. This case is on the
19 trial roster for Monday, and we are respectfully
20 requesting that you rule on this prior to Monday to
21 prevent prejudice to our client.

22 And I want to briefly touch on the procedural
23 history briefly, so we know why you are -- why we put
24 you in this jam.

25 We first filed this motion more than two years

1 ago.

2 THE COURT: The Motion for Summary Judgment?

3 MR. THOMSON: Yes, Your Honor. And the same exact
4 motion we had to refile it.

5 So we filed this Motion for Summary Judgment.
6 There was a mediation. We provisionally settled the
7 settlement document back and forth, and basically we
8 discovered there was going to be no reasonable
9 iteration of the settlement agreement that the
10 Defendants were going to sign.

11 So we filed a motion to get a Motion for Status
12 Conference, basically asking for three things. We want
13 our Motion for Summary Judgment heard. We have one
14 more depo to take. And we want to be on the trial
15 roster.

16 And basically we all agreed during the hearing
17 with Judge Mullen, Hamlin, and I, let's do the depo
18 first and then refile your Motion for Summary Judgment
19 after that.

20 So I took the depo, immediately filed this motion,
21 and then in the meantime we got placed on the trial
22 roster. So I don't want you to think this is a matter
23 where we got put on the trial roster and I rushed to
24 file some last minute Hail Mary summary judgment
25 motion. This has been in the works for a while, and

1 it's just an unfortunate set of circumstances that
2 leads us to where we need a fast ruling.

3 So with that out of the way, this case involves
4 the development of a neighborhood. Hamlin's client was
5 a developer in the neighborhood, my client was a
6 builder.

7 My client built approximately 130 houses in that
8 neighborhood. All of them were marketed and sold. The
9 developer made a handsome profit off of those houses.
10 A certain amount of money obviously was owed to my
11 client for those services. He was paid some of the
12 money, but not all of it, so he asked for an
13 accounting.

14 This process started in 2004. This was in 2007 by
15 the time he had built 103 houses. He asked for an
16 accounting. The Defendant's employee, their treasurer,
17 wrote him a letter with the accounting.

18 It basically said, the letter said, "So far we
19 have paid you \$500,000, we paid a hundred and some
20 thousand dollars to some other third parties. We are
21 accounting for that. And even after we account for all
22 that, you are owed all this money on the these houses
23 that have already sold, profit is already made, and the
24 balance owed to you is \$711,000."

25 So it's pretty cut and dry. They admitted they

1 owed my client \$711,000.

2 I submitted that letter to you with my memo, also
3 submitted an affidavit for my client that essentially
4 verifies that that letter says exactly what it says.
5 Also submitted some testimony from the lady, Ginger
6 Griffith, the treasurer, who wrote the letter, and the
7 testimony is pretty damning.

8 On their side, they submitted no affidavits, no
9 documents. They sent evidence that, Hey, they paid my
10 client some money, and plenty of third parties, but
11 none of those payments -- they were all included within
12 the letter and accounted for, and then after they got
13 accounted for, they admitted they owed my client
14 \$711,000.

15 So these are not -- those payments are not
16 evidence of anything, as far as he being entitled to
17 any money.

18 Let me back up. They filed counterclaims saying
19 that we owed them in excess of \$600,000. These were
20 just allegations thrown at the wall. They have no
21 basis.

22 Basically, what they're saying is, all the money
23 we did pay you for building those 130 houses, we didn't
24 pay you half of what you earned, and all the money we
25 did pay you, we want that back.

1 So basically he was supposed to have worked for
2 free? A, this is a disgusting counterclaim. I just
3 don't have much respect for it.

4 If they -- I notice he didn't submit an affidavit
5 from Mr. Grossman's client. If they produced any
6 testimony showing that they -- these counterclaims are
7 substantiated, the witness would be impeached because
8 the evidence just doesn't back up the allegations. So
9 they are just mere allegations.

10 Rule 56 is clear that mere allegations are not
11 enough. You need to have some kind of affidavit, or
12 document, or other way to substantiate that. And I'll
13 just -- let me read a clip from Ms. Grossman's
14 testimony. This is who wrote the letter saying he was
15 owed \$711,000.

16 THE COURT: Do I have Ms. Grossman's testimony?

17 MR. O'KELLEY: Ms. Griffith, Your Honor.

18 MR. THOMSON: Yeah. Ms. Griffith. I'm sorry.
19 Not Ms. Grossman.

20 THE COURT: And when you read it, tell me what
21 page and line.

22 MR. THOMSON: It's Page 35 through 36, and is
23 Exhibit B in my memo. So towards the end, the very
24 last part that is highlighted.

25 I asked the question: "Just to drive this point

1 home one last time, you concluded on September 13th,
2 2007, that the contracting parties owed Rod \$711,027.
3 \$711,027, right?"

4 Answer: "Yes."

5 Question: "And you didn't just throw that letter
6 together, right?"

7 Answer: "No."

8 Question: "And you are a professional in the
9 accounting business, right?"

10 Answer: "Right."

11 Question: "And you made a good faith effort to
12 get those numbers right, didn't you?"

13 Answer: "Yes."

14 Question: "And you haven't discovered any errors
15 here now since the time you wrote that letter?"

16 Answer: "No."

17 Question: "Okay. And you don't have any evidence
18 showing that Lancaster Redevelopment Corporation, Gary
19 Grossman, or any other affiliated entity paid any money
20 to Rod subsequent to this September 13th, 2007 letter?"

21 Answer: She said, "I don't know if anything has
22 been paid Rod or not, right."

23 Question: "But the question is, you don't have
24 any evidence showing it, right?"

25 Answer: "Right."

1 Question: "And no other evidence has been
2 produced in this matter showing there are any payments
3 after 2007."

4 So if they can't show that, it's pretty cut and
5 dry summary judgment should be granted. They're
6 basically wanting our client to give back the half
7 money -- the less than half money that he earned, they
8 want that back, and it's just...

9 Out of personal respect for Hamlin, I'm not
10 bringing up a Rule 11 issue, but that's how bad these
11 counterclaims are, Your Honor.

12 MR. O'KELLEY: Thank you, Your Honor. Hamlin
13 O'Kelley for the Defendants.

14 And by way of (inaudible), Your Honor, we have
15 submitted all of Ms. Griffith's deposition to you, not
16 just the portion that was just read, Your Honor.

17 Your Honor, I'm here on behalf of Hilton Head
18 Homes at Allenwood, LLC; Village Square Development
19 Company, LLC; Lancaster Redevelopment Corporation; and
20 a fellow named Gary Grossman individually.

21 Hilton Head Homes at Allenwood and Village Square
22 Development Company were two South Carolina LLCs that
23 were developing neighborhoods on Hilton Head Island
24 back in the early part of the 2000s. They were
25 actually approached by the town of Hilton Head to

1 create what was then euphemistically called Work Force
2 Housing. It was going to be all the rage, and new
3 urbanism. And my clients were gung ho to build.

4 Lancaster Redevelopment Corporation is a
5 Pennsylvania corporation that is owned by my client,
6 Gary Grossman. Gary Grossman was also a member of the
7 two LLCs that were building out on Hilton Head.

8 Ms. Griffith has served as their treasurer for
9 years. That is true. Our counterclaims, Your Honor,
10 and this is the first I've heard that I am somehow
11 disingenuous or that these rise to some Rule 11
12 sanctionable event is today in this courtroom.

13 We filed counterclaims in this matter based on the
14 fact that Mr. Brady, the Plaintiff, was to be paid
15 incentive fees and management fees, but those were to
16 be paid after the debts of the company were paid back.
17 And Ms. Griffith states that clearly in her deposition,
18 on Page 37, Your Honor.

19 You asked what page, and in questioning her, I
20 asked her: "All right. What was the arrangement as to
21 how Mr. Brady was to be paid? Mr. Thompson asked you
22 earlier about that. But it's my understanding that
23 Mr. Brady was to be paid after all the debts of the
24 company were to be paid, correct?"

25 Her answer: "The incentive management fees were

1 to be paid after the initial debts from Lancaster
2 Redevelopment or Mr. Grossman were repaid."

3 My next question to her was this: "And remind the
4 folks who are listening to you what was going on with
5 the greater economy in 2007."

6 Answer: "I believe that's when the housing market
7 started to take a nose-dive, and we'll all remember
8 what was going on with the greater economy during that
9 time."

10 Mr. Thompson just cited a letter from Ms. Griffith
11 where he is trying to make a bunch of hay out of the
12 fact that Mr. Grossman and Village Square and Hilton
13 Head owns now with Lancaster Redevelopment promised to
14 pay Mr. Brady, but I don't think that's what the letter
15 states, Your Honor.

16 If you go to the last page of that letter, which
17 is Exhibit A to Mr. Brady's affidavit, Ms. Griffith
18 specifically states that LRC, which is Lancaster
19 Redevelopment Corporation, "Simply cannot fund any
20 additional monthly expenses," and that was part of the
21 larger economy.

22 Your Honor, they have sought summary judgment in
23 this case. That's correct, it's been a while. No one
24 is citing that Mr. Thompson is doing anything, a gotcha
25 moment or anything like that procedurally. But if this

1 case is scheduled for trial in the not-distant future,
2 and he says, Your Honor, you got to rule quickly
3 because otherwise his client's rights will be
4 prejudiced, the converse is true for my client.

5 Summary judgment is a drastic remedy not to be
6 invoked lightly. If Your Honor grants it, there will
7 be an appeal. There just has to be.

8 So, Your Honor, I would suggest that this motion
9 be denied and the case proceed accordingly. If the
10 motion is denied, there is no appeal from that, and
11 that the ultimate finder of fact can decide whether or
12 not Mr. Brady was given these sums as a loan for future
13 profits against the company, or whether he's actually
14 owed the money. Because that's the ultimate issue in
15 the case, and I think a ten-minute argument here on a
16 Wednesday afternoon in Beaufort short circuits both
17 side's rights to have this matter fully tried and
18 fleshed out at the time the trier of fact hears the
19 case, Your Honor.

20 Thank you.

21 MR. THOMSON: Your Honor, I didn't hear any
22 evidence suggesting that my client owes his client any
23 money. I heard reasons why my client didn't get paid,
24 and that's it. That evidence doesn't exist.

25 The letter is an admission. They were having

1 trouble paying it because they had recession problems
2 with projects other than the ones that Mr. Brady worked
3 on.

4 The money that was earned here, the houses were
5 already sold, profits were already made. You can dive
6 into the accounting of the letter. Each one of these
7 LLCs turned a profit. They took that money and paid
8 off debts on projects that Mr. Brady had nothing to do
9 with, and he is supposed to sit there and solicit for
10 his money.

11 Again, there's no evidence that he would owe them
12 anything. And if there's a document, please show it to
13 us. There is nothing. I do not want the jury to hear
14 those allegations. It's not right.

15 MR. O'KELLEY: Your Honor, whether it's right or
16 not, we are entitled to bring them, and it's my
17 client's, even though Mr. Thompson says it's
18 disrespectful to the Court, it's my client's right to
19 bring those.

20 THE COURT: Not without evidence.

21 MR. O'KELLEY: That's true, Your Honor, but to
22 short circuit by this case, to do it now, Mr. Thompson
23 just injected some facts into the case himself, about
24 other developments, and carrying costs, and whether
25 things -- I'm allowed to finish, Mr. Thomson -- whether

1 things are truly existed or not, Your Honor.

2 So you have heard our argument, Your Honor.

3 THE COURT: The purpose of summary judgment is
4 also to be able to assist the trier of fact. And so
5 summary judgment, the proper purpose of a summary
6 judgment motion is to narrow the issue so that the
7 trier of fact can get to the truth of matters.

8 What I read in those letters, in that letter
9 though, it sounds more like you wanting me to grant
10 summary judgment as to your claim against the Defendant
11 verses the counterclaims.

12 MR. THOMSON: Yes, Your Honor. I ask on the
13 counterclaims. We are owed \$711,000, and we are going
14 to try that issue on whether we are owed that money or
15 not, but there's a separate allegation that, hey, not
16 only are you not entitled to that, you owe us \$600,000.
17 And that's what the counterclaims are.

18 They are basically asking for the money they paid,
19 the partial payments they made, they want those back,
20 and there's no evidence that they are entitled to that
21 whatsoever.

22 THE COURT: You referenced, during your argument,
23 you referenced me to the letter and a paragraph in that
24 letter. I couldn't find that paragraph. Tell me again
25 where that is.

1 MR. O'KELLEY: I'm sorry, Your Honor. I'll pass
2 it up.

3 In the affidavit of Mr. Brady, it is the very last
4 paragraph that states -- and I'll just read it into the
5 record one more time.

6 That states from Ms. Griffith that "LRC, meaning
7 Lancaster Redevelopment, simply cannot fund any
8 additional monthly expenses. I've attached a summary.
9 Kind regards."

10 But it is exhibit -- the last page of Exhibit A to
11 Mr. Brady's affidavit. And here's a copy, Your Honor.

12 THE COURT: Well, that's just part of a sentence.
13 It wasn't even all of it.

14 MR. THOMSON: It is not evidence that my client
15 owes them any money, it's evidence that they are having
16 a hard time paying. And we fleshed that paragraph out
17 with Ms. Griffith, and basically what she was saying is
18 what I said earlier. Yeah, we owe you \$711,000, but
19 the money is not there to pay you. Even though the
20 LLCs you worked on made a profit, and the houses are
21 already sold, profits were gained, but we have these
22 expenses elsewhere that we owe money for on projects
23 that have nothing to do with the project at hand, and
24 that's why we can't pay you.

25 That is what that paragraph says.

1 THE COURT: In your complaint against the
2 Defendants, are you seeking both actual and punitive
3 damages?

4 MR. THOMSON: Yes, Your Honor. We have a Cause of
5 Action Conversion, and punitive can be a part of that.

6 THE COURT: Well, why would you not want the jury
7 to hear -- I mean, if what you say is true, and they
8 have no merit to their claim, why would you not want to
9 make that argument to the jury and have them walk in
10 front of a jury and make defenseless claims against
11 your client and say, "Look what they are doing, they're
12 disparaging my client with absolutely no evidence," and
13 sort of get the jury enraged.

14 Because if, by chance, I grant your Summary
15 Judgment Motion, that would take, I guess, some of the
16 fuel out of your argument?

17 MR. THOMSON: Well, Your Honor, we still -- it is
18 a 12-person jury. Who knows what they might latch
19 onto? We just don't -- there's no facts to support it,
20 and we don't want the allegation smeared, even if -- if
21 that hurts our chances of punitive, so be it.

22 But we want a good, fair result, and we don't want
23 smeared allegations to taint the trial.

24 THE COURT: Best I can do is to tell y'all that I
25 will do my best to take a look at it. But as you sat

1 in the courtroom all afternoon, almost nothing has
2 resolved itself. I have a lot under advisement now, as
3 well as other matters.

4 MR. O'KELLEY: And, Your Honor, just so you know,
5 for housekeeping purposes, we have been in touch with
6 Judge Perry Buckner, who is the administrative judge,
7 and his law clerk was asking what happened here today,
8 and we haven't written him back.

9 So obviously we have actually made a motion, a
10 consent motion for a date certain trial. So if we tell
11 His Honor that it's under advisement, I think there
12 will be some -- I don't know how that will work with
13 the Clerk's office.

14 THE COURT: Well, y'all could tell me, and then I
15 wouldn't have to rush.

16 MR. THOMSON: Well, Your Honor, I don't -- I have
17 a feeling, a strong suspicion, that this trial is going
18 forward.

19 THE COURT: Monday?

20 MR. THOMSON: Well, Mr. O'Kelley doesn't have a
21 conflict. His conflict starts on Wednesday, and this
22 is a two-day trial. I don't think there's any reason
23 why we can't get it done.

24 THE COURT: I'll do my best. I mean, you know,
25 I've got a lot of things under advisement. I will do

1 my best, I will try to move this to the front, but I
2 also have to travel back.

3 Friday I've got -- I am a business court judge,
4 I'm already scheduling things for my business court
5 cases on Friday, so I have other things as well.

6 MR. THOMSON: And, Your Honor, and it's completely
7 out of character for me to put a judge in this
8 position, and I'm sorry I'm doing that, but it's just a
9 critical item for my client.

10 MR. O'KELLEY: Thank you, Your Honor.

11 THE COURT: Okay.

12 (Hearing concluded.)

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CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF BEAUFORT:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 15th day of May, 2019.

Mona L. Manley /s/
MONA L. MANLEY
Official South Carolina Court Reporter
Circuit Reporter for the 14th Circuit
(850) 893-6662
mmanley@sccourts.org

1 STATE OF SOUTH CAROLINA * COURT OF COMMON PLEAS
2 COUNTY OF BEAUFORT * FOURTEENTH CIRCUIT
3 * C.A. No. 2015-CP-07-02047
4 James R. Brady, *
5 Plaintiff, *
6 v. *
7 Hilton Head Homes at *
 Allenwood, LLC; Village
8 Square Development Company, *
 LLC; Lancaster Redevelopment
9 Corp.; and Gary L. *
 Grossman,
10 *
 Defendants.

11 *

12

13 * * * * *

14 December 20, 2018

15 * * * * *

16 Videotaped deposition of GINGER GRIFFITH,
17 held in the offices of Premier Reporting, LLC, 112
18 Market Street, Suite 406, Harrisburg, Pennsylvania
19 17101, commencing at 9:10 a.m., on the above date,
20 before Tracy Dominico, a Professional Court Reporter
21 and Notary Public of the Commonwealth of Pennsylvania.

22

23

24

25

1 APPEARANCES:

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4 (Via videoconference)
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BY: G. HAMLIN O'KELLEY, III, ESQUIRE
8 (Via telephone)
(843) 284-1408
9 Counsel for the Defendants

10

Also Present:

11

Kenneth Haase, Videographer

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NO.	DESCRIPTION	PAGE
(None.)		

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P R O C E E D I N G S

(Proceedings commenced at 9:10 a.m.)

* * * * *

THE VIDEOGRAPHER: Time on the video monitor is 9:10 a.m. My name is Ken Haase for Clark and Associates. This begins the videotaped deposition of Ginger L. Griffith testifying in the matter of James Rod Brady versus Hilton Head Homes at Allenwood, LLC, et al. In the Court of Common Pleas, Fourteenth Circuit, Beaufort County, South Carolina, Case Number 2015-CP-07-02047, taken at Premier Reporting, 8 South Hanover Street, Suite 201, Carlisle, Pennsylvania. Today's date is December 20, 2018.

Will counsel please identify yourselves and state who you represent.

MR. THOMSON: Charles Thomson. I represent the Plaintiff James Rod Brady.

MR. O'KELLEY: And this is Hamlin O'Kelley. I represent the Defendants in this matter.

THE VIDEOGRAPHER: Will the court reporter please identify herself and swear in or affirm the witness.

THE COURT REPORTER: Tracy Dominico. Will you raise your right hand?

* * * * *

1 GINGER GRIFFITH, after having been duly
2 sworn/affirmed to tell the truth, the whole truth and
3 nothing but the truth, testified as follows:

4 THE VIDEOGRAPHER: Please begin.

5 MR. THOMSON: Ready to go?

6 THE VIDEOGRAPHER: Yep.

7 * * * * *

8 EXAMINATION

9 BY MR. THOMSON:

10 Q. Ms. Griffith, as you know, I'm Charles
11 Thomson. I represent James Rod Brady. Mr. Brady has
12 brought suit against Gary Grossman, Lancaster
13 Redevelopment Corporation and two other single-purpose
14 LLCs in South Carolina for failure to pay money owed to
15 him on two development projects down there, two
16 neighborhood development projects.

17 Can you please, to start out, state your
18 full name for the record?

19 A. Ginger L. Griffith.

20 Q. Okay. Ms. Griffith, thank you for coming
21 today. The main purpose is there's a piece of evidence
22 in this matter, a 2007 letter written by you. And I
23 would like for you to authenticate that letter and
24 educate the jury about the contents.

25 But before we get going on that, just a
ROA 515

1 reminder: You're under oath subject to the penalty of
2 perjury. This, again, the purpose is to educate the
3 jury today, so they are our audience here. We are
4 doing this by video because you being in Selinsgrove,
5 Pennsylvania, this seemed to be a better option than
6 forcing you to travel to South Carolina for -- to
7 testify at the trial in this matter.

8 So we'll get started by briefly going
9 through your background. You were born and raised in
10 Selinsgrove, right?

11 A. Correct.

12 Q. And you went to high school there in
13 Pennsylvania?

14 A. Yes.

15 Q. Okay. And then after high school, you went
16 to Williamsport Community College, right?

17 A. That's correct.

18 Q. And you earned an associate degree in
19 accounting there in 1985?

20 A. That is correct.

21 Q. Okay. And from 1985 to 1998, you worked
22 accounting jobs for two separate companies?

23 A. Yes, yes.

24 Q. Then in 1998, you began working for Gary
25 Grossman's company, Lancaster Redevelopment

1 Corporation, right?

2 A. That is correct.

3 Q. And that was 20 years ago obviously. And
4 both Mr. Grossman and Lancaster Redevelopment
5 Corporation are Defendants in this matter, right?

6 A. Yes.

7 Q. And you continued to be -- you were a
8 treasurer for Lancaster Redevelopment Corporation?

9 A. Yes, I held that position.

10 Q. Okay. And you held that position until June
11 of 2010, right?

12 A. Yes.

13 Q. That position expired because Lancaster
14 Redevelopment Corporation just went under?

15 A. Basically, yes.

16 Q. It's not a technical term, but it's probably
17 parlance at least. Okay. And then after June 2010,
18 you continued to be employed by one of Mr. Grossman's
19 companies. But it had a new name of Building Solutions
20 Since 1977, LLC, right?

21 A. That's correct.

22 Q. And that Since 1977 is part of the company
23 name, not a descriptive -- not something I was saying
24 to be descriptive, right?

25 A. Correct, it's part of the company name.

1 Q. Right. Okay. So you're not a CPA?

2 A. No.

3 Q. Right?

4 A. No.

5 Q. But you are a professional in the accounting
6 field?

7 A. Yes.

8 Q. And just to repeat, you've been working
9 under the direction of Mr. Grossman since 1998 for 20
10 years, first under Lancaster Redevelopment Corporation,
11 now under a different company name, right?

12 A. That is correct.

13 Q. Why did Lancaster Redevelopment Corporation
14 go out of business?

15 A. The housing market had gone downhill. And
16 the company just did not have enough income to pay
17 debts. It just -- it was failing. And Gary felt it
18 best to shut down that company. The property was sold
19 by the bank that held the mortgage to another
20 individual.

21 So Gary reorganized as a new company.

22 Q. Okay. So is it a correct summary that
23 pretty much the debts outweighed the assets, right?

24 A. Correct.

25 Q. All right. So you were treasurer for
ROA 518

1 Lancaster Redevelopment Corporation and also for the
2 new company. And you do the accounting for those
3 companies, right?

4 A. Yes.

5 Q. And as part of your job for those companies,
6 you also serve doing the accounting for various
7 single-purpose LLCs owned and directed by either
8 Lancaster Redevelopment Corporation or the Building
9 Solutions company?

10 A. Yes. Most of them are not under the
11 umbrella of Building Solutions. They are Gary
12 Grossman's individual companies that he may have other
13 partners in.

14 Q. Okay. And let's clarify this for the jury:
15 And I'm speaking in generalities here just for
16 background purposes. When a developer develops a
17 specific neighborhood, it might form a single-purpose
18 company for that project. And then when that project
19 is done, that single-purpose company might shut down.

20 But the parent company or other investors
21 might own that single-purpose company. Is that --

22 A. That's correct, yes.

23 Q. -- the general?

24 A. Yes.

25 Q. Yeah. Okay. And that's what we have here
ROA 519

1 on these two Hilton Head projects at issue in this
2 case, right?

3 A. Yes.

4 Q. Okay. And the two LLCs there are Hilton
5 Head Homes at Allenwood, LLC and Village Square
6 Development Company, LLC?

7 A. Yes.

8 Q. And those companies serve no purpose other
9 than the respected neighborhood development that they
10 were designed to serve?

11 A. Correct.

12 Q. When those two companies were active, you
13 did the accounting for them, right?

14 A. Yes, I did.

15 Q. And while those development projects were
16 active, you did the accounting for Lancaster
17 Redevelopment Corporation?

18 A. Yes.

19 Q. Is that correct?

20 A. Yes, that's correct.

21 Q. Okay. And so you specifically did the
22 accounting on these two projects, Allenwood and Village
23 Square?

24 A. Yes.

25 Q. All right. I would like to place two
ROA 520

1 separate letters before you.

2 MR. THOMSON: And, Madam Court Reporter,
3 these were identified as Exhibit 2 and Exhibit 4 at
4 yesterday's deposition.

5 THE COURT REPORTER: Okay. She has them.
6 BY MR. THOMSON:

7 Q. Okay. For the jury, there are two of these
8 letters. One is the September 13, 2007 letter that I
9 will want you to authenticate. And the other letter is
10 dated February 2, 2004. You didn't write the 2004
11 letter, right?

12 A. No, I did not.

13 Q. Okay. But you did reference that letter
14 when writing the September 13, 2007 letter, right?

15 A. Yes.

16 Q. Okay. So, I guess, first, would you please
17 verify that the September 13, 2007 letter in your
18 possession right now, that that is a genuine copy of
19 the letter that you wrote?

20 A. Yes, it is.

21 MR. THOMSON: And at this time I would like
22 to formally enter that as a trial exhibit whenever we
23 do have a judge assigned to this matter. Any
24 objections, Hamlin?

25 MR. O'KELLEY: I'll reserve my objections as
 ROA 521

1 to admissibility with any judge. But she's
2 authenticated it as it's her's. So subject to any
3 later objection to be taken up with the Court, none at
4 this time.

5 MR. THOMSON: Okay.

6 BY MR. THOMSON:

7 Q. All right. And after the 2004 letter, I
8 know you didn't write that, so I'm not asking you to
9 authenticate the authorship, but I do want you to
10 please authenticate that this is indeed a genuine copy
11 of the February 2, 2004 letter that you referenced
12 within your 2007 letter which you just previously
13 authenticated?

14 A. Yes, it is.

15 Q. Okay.

16 MR. THOMSON: And similarly, I would like to
17 formally enter this 2004 letter as a trial exhibit.

18 MR. O'KELLEY: Same response as to the
19 prior.

20 MR. THOMSON: Sure. Okay.

21 BY MR. THOMSON:

22 Q. Let me start with the 2004 letter. As I
23 explained earlier, my purpose here is to get you to
24 explain the 2007 letter. And I know you didn't write
25 this 2004 letter. But I want to go through this

1 briefly because it provides important background that I
2 think would be helpful to the jury in understanding
3 what's before them in the 2007 letter.

4 So, okay, this 2004 letter, generally the
5 subject is about the beginning of two separate
6 developments in the Hilton Head area, Allenwood and
7 Village Square Development, right.

8 A. Yes.

9 Q. And Mr. Brady and Mr. Grossman are teaming
10 up to fund the development of these neighborhoods. And
11 I'm not asking you to verify the contracting parties
12 from this letter. But generally that's what's going on
13 with this letter, right?

14 A. Yes.

15 Q. Okay. And involved with the development of
16 those neighborhoods, there's various services that need
17 to be performed, we have construction services that
18 need to be performed. And marketing services and real
19 estate sales, right?

20 A. That's correct.

21 Q. On page two of the letter, there's a bunch
22 of bullet points full of terms, right?

23 A. Correct.

24 Q. These are the terms you -- this is your
25 reference points for the 2007 letter. You go to this

1 letter to see what the terms are, and then you
2 calculate the numbers based on these terms, right?

3 A. That's correct.

4 Q. Okay. Without getting into the details,
5 some of these terms have to do with Rod Brady being
6 compensated for his fees earned for his construction
7 management work, right?

8 A. Yes.

9 Q. And Rod is to market and sell these houses,
10 right?

11 A. Yes.

12 Q. And in exchange for those services he gets
13 certain fees?

14 A. Yes.

15 Q. And Rod is entitled to hire others to help
16 him with the construction of these projects. But if he
17 does hire the help, that money comes out of his fees
18 that he earns on the project, right?

19 A. Yes, that's correct.

20 Q. Okay. And on top of the construction and
21 marketing and real estate services, there is also
22 what's called an incentive management fee, which is
23 pretty much an overall sharing of profits that these
24 single-purpose LLCs make with Rod, right?

25 A. Yes, that is in here.

1 Q. Okay. And some last terms on this: Before
2 Rod is paid that profit sharing portion, and, again,
3 that's an incentive management fee which is the profit
4 sharing, before Rod gets paid that, Lancaster
5 Redevelopment Corporation gets a cut, a 1 percent
6 return per month on the money it loans to the project,
7 right?

8 A. Yes.

9 Q. And Gary Grossman, personally in his
10 individual capacity, gets 500 points for guaranteeing
11 funds, right?

12 A. Yes.

13 Q. Okay. And that 500 points comes to a 15
14 percent per annum?

15 A. Yes.

16 Q. Okay.

17 A. Okay.

18 Q. At the top of page 3 of the letter, before
19 we move on, it mentions the words of Gary Grossman here
20 that says "I would like all the accounting and debt
21 management to take place from my office so I can stay
22 on top of things."

23 In that sentence when he says he would like
24 his office to take care of accounting, that's talking
25 about a job you would handle, right?

1 A. Yes, it is.

2 Q. Hopefully that provides some background
3 framework of the letter we're about to go into. So,
4 now, looking at trial Exhibit 1, that is the September
5 13, 2007 letter. Please verify that this is a letter
6 to James Rod Brady written from you?

7 A. Yes, that's correct.

8 Q. And then in the first paragraph of that
9 letter it says "Pursuant to your discussion with
10 Mr. Grossman, I'm transmitting our analysis of the
11 Allenwood compensation to you under our February 2,
12 2004 letter of agreement."

13 That February 2 letter is the letter that we
14 just went through in greater detail, right?

15 A. Yes, it is.

16 Q. Okay. And as a reminder, this is for two
17 separate developments, right? We have the Village
18 Square Development neighborhood and we have the
19 Allenwood neighborhood, right?

20 A. Yes.

21 Q. Okay. And so let's just hit the main
22 numbers on this letter real quick. So the first
23 development, Village Square, it looks like the -- you
24 calculated the income of those two -- of that company
25 for the years 2005 and 2006 as 956,385, right?

1 A. Yes.

2 Q. And that's net income?

3 A. Yes, I believe so.

4 Q. Okay. And that income means your income
5 after you take into account money that this LLC owes to
6 other entities, right?

7 A. I believe it's net profit after expenses of
8 building the homes.

9 Q. Right. And the expenses of building homes,
10 that would include money owed to vendors or other
11 companies, right, third parties?

12 A. Yes. You're not including banks or anything
13 like that, correct, in your statement?

14 Q. Right.

15 A. Okay.

16 Q. Correct. And then you note on the letter
17 that Rod was paid a 36,000 distribution out of the 2005
18 and 2006 income, right?

19 A. Correct.

20 Q. Okay. So from looking at the paragraph that
21 starts with "Under the February 2, 2004 letter of
22 agreement you are scheduled to be paid" -- the end of
23 that paragraph says -- "I interpret the February 2,
24 2004 letter of agreement to make the construction fees
25 payable at the time each unit sells."

1 Do you see that?

2 A. Yes.

3 Q. And so what that is telling us here is the
4 fees discussed in this letter, we're talking about
5 houses that the construction is already complete,
6 right?

7 A. Yes.

8 Q. And they've been sold to the owners -- to
9 homeowners, whoever they may be, correct?

10 A. Correct.

11 Q. And the LLC has been paid money for those
12 homes, right?

13 A. Right.

14 Q. Okay. All right. The next paragraph it
15 talks about, you understand that the expenses
16 associated with hiring Nick Grossman and Dan Clore for
17 supervisory work on your behalf are to be deducted.
18 And we went through that on the 2004 letter, right?

19 A. Yes.

20 Q. And, again, we look on the next page, and
21 you were taking into account funds due to Mr. Nick
22 Grossman and Dan Clore as part of this analysis, right?

23 A. That's correct.

24 Q. Okay. And these are for houses that are
25 already completed, right?

1 A. Yes.

2 Q. Okay. So no need for Mr. -- for Nick
3 Grossman or Dan Clore to incur any additional expenses,
4 right?

5 A. That is correct.

6 Q. All right. Let's go to the numbers on -- we
7 have a construction management fee of 32,500 for the
8 Village Square Development. Then there is a \$1,000
9 real estate fee per unit sold, and that comes to
10 26,000, right?

11 A. Yes.

12 Q. All right. It looks like Mr. Brady was paid
13 a portion of those commissions, 9,415, right?

14 A. Yes.

15 Q. And so your -- you got parentheses here.
16 And that means you were deducting that money that's
17 already paid. The money that's already been paid to
18 Rod, you're deducting that from what you are
19 calculating to be owed to him, right?

20 A. Right.

21 Q. And that's fair, right?

22 A. Yes.

23 Q. The fees for Nick Grossman and Dan Clore,
24 we've got four different numbers in there. I've added
25 those numbers up, and it comes to \$111,81. Any reason
ROA 529

1 to believe that's incorrect?

2 A. No.

3 Q. So we are taking into account that Nick
4 Grossman and Dan Clore helped Mr. Brady. Mr. Brady
5 agrees to pay people for their help with the
6 construction of these projects.

7 And so after we go through the numbers of
8 what Mr. Brady earned on his construction management
9 fee and what he had to pay out, and the status as of
10 September 13, 2007, is that Mr. Brady was owing to
11 Lancaster Redevelopment Corporation or whoever those
12 contracting parties may be, Mr. Brady, after taking
13 into account all of those things was owed -- or owed
14 the company \$25,746, right?

15 A. That's right.

16 Q. Okay. All right. So that portion all had
17 to do with construction management and real estate
18 services, right?

19 A. Yes.

20 Q. Okay. And then moving on to the next part
21 of the letter, the next few paragraphs, that has to do
22 with the incentive management fee, basically profit
23 sharing type fees and calculations, right?

24 A. Yes.

25 Q. Okay. And just as a remainder, Rod gets a
ROA 530

1 -- is to receive an incentive management fee profit
2 sharing in the tune of 50 percent of the profits of the
3 LLCs, right?

4 A. Yes.

5 Q. Okay. And but before Rod gets paid,
6 Lancaster Redevelopment Corporation gets a cut, right?

7 A. Yes.

8 Q. And then Gary Grossman individually also
9 gets a cut, right?

10 A. Yes.

11 Q. And so the next three paragraphs, that's
12 what's going on here, right? We're calculating what
13 the profit is. We're seeing what Mr. Grossman's is.
14 We're seeing what Lancaster Redevelopment Corporation's
15 cut is. And then finally from there we're seeing what
16 portion would be due to Mr. Brady, correct?

17 A. Correct.

18 Q. Okay. All right. And it looks like
19 Lancaster Redevelopment Corporation's cut under this
20 section we were just talking about is 841,619. Is that
21 correct? The paragraph starts with the net income.
22 Take the time to read it if you need to.

23 Do you need me to repeat the question?

24 A. I'm just trying to follow our calculations
25 on this letter. It was a long time ago that I wrote

1 it, so I don't remember everything. Okay. So what was
2 your question again now?

3 Q. You know what, can you just strike that
4 question there? I think that's not LRC's cut. That
5 would be the allocated income.

6 A. Okay. Correct.

7 Q. Let's move on to Mr. Grossman's cut of this
8 profit sharing. The next paragraph where it starts
9 "Under the terms of the February 2, 2004 letter" --

10 A. Yes.

11 Q. -- okay, the last portion of the sentence
12 says "which calculates to a prorated guarantee fee of
13 148,504.85 for 2005."

14 A. Yes.

15 Q. That -- that is what is due to Mr. Grossman
16 personally, right?

17 A. Yes.

18 Q. And if we could, please, connect the dots
19 back to the 2004 letter, I just want to connect this
20 calculation and where it pertains to on the 2004
21 letter. So this 148,504.84 due to Gary Grossman, if we
22 want to see how Mr. Grossman is justified to that fee,
23 we go to page 2 at the bottom paragraph, is that
24 right --

25 A. That's correct.

1 Q. -- in the 2004 letter? And this is
2 basically he's earning this fee in exchange for him
3 giving a personal guarantee, right?

4 A. Right.

5 Q. All right. And so that fee, we're still
6 just talking about the Village Square neighborhood,
7 right?

8 A. Yes.

9 Q. Okay. And we're separately going to go
10 through what that fee is for Allenwood, right?

11 A. Correct.

12 Q. Just a remainder: We can get lost in the
13 weeds here. Sometimes we need a reminder of where we
14 are locally. Okay. And then the next few paragraphs,
15 you're starting to calculate what Rod's incentive
16 management fee is. And he's already been paid a
17 certain amount of money on his incentive management
18 fee.

19 But after you take into consideration all
20 that he's earned versus all that he's been paid, the
21 net balance due to Rod for an incentive management fee,
22 which is profit sharing on the Village Square
23 Development project only, is \$83,488. Is that correct?

24 A. That is correct.

25 Q. And -- and -- and that money has already
 ROA 533

1 been earned, right?

2 A. Yes.

3 Q. As of September 13, 2007?

4 A. Yes.

5 Q. And the LLCs have already been paid the
6 money that generated the profits from which this
7 calculation was made, right?

8 A. Yes.

9 Q. Okay. And you've already accounted for
10 Lancaster Redevelopment Corporation's portion of
11 profits out of that, right?

12 A. In the calculation, yes.

13 Q. Yes. And you had already accounted for
14 Mr. Grossman's individual cut of that, right?

15 A. Yes.

16 Q. And so in the end Rod's incentive management
17 fee is exactly what it says; it's money due and owing
18 to him after accounting for everything that needs to be
19 accounted for. And that amount due to him is 83,488,
20 right?

21 A. Yes.

22 Q. Okay. All right. That is -- we've gone
23 through the calculations of the Village Square
24 Development neighborhood. And I would like to move on
25 to the second neighborhood here, the Allenwood

1 neighborhood. So if we go through, it's kind of the
2 same process again, right?

3 A. Yes.

4 Q. Different neighborhood, different numbers to
5 calculate, but the -- and the fees under the agreement
6 might be slightly different, but it's generally the
7 same type of calculations, right?

8 A. That's correct.

9 Q. Okay. All right. So first, looking at the
10 construction management fees for Allenwood, it appears
11 that Mr. Brady has earned about \$240,000 in some fees
12 before taking out other things that you might need to
13 take out, right?

14 A. Yes.

15 Q. Okay. And, again, Mr. Brady was entitled
16 hire help. And it looks like that money just had to
17 come out of his fees, and it looks like he has done
18 that here again with the Allenwood project, right?

19 A. Yes.

20 Q. And he had Rich Raven and RS Davis to help
21 him, right?

22 A. Correct.

23 Q. Okay. And if you add up the two numbers
24 owing to them, and they're both in parentheses there,
25 I'm coming up with \$76,552, correct?

1 A. Correct.

2 Q. And those numbers are in parentheses because
3 we're saying Rod owes money back for that, right?

4 A. Yes.

5 Q. So it's to be subtracted from the end result
6 of whatever money Rod is owed, right?

7 A. Right.

8 Q. Okay. So after we take all of that into
9 account, and we also add in the real estate fees, and
10 we also take into account money that has already been
11 paid to Rod, we are left with a balance of \$19,629,
12 right?

13 A. Yes.

14 Q. And that is money that is owed to Mr. Brady
15 after accounting for all of these other amounts he
16 owes, right?

17 A. Yes.

18 Q. Okay. And this is just for construction
19 management fees and real estate services, right?

20 A. Correct.

21 Q. And it's just for the Allenwood project,
22 right?

23 A. Correct.

24 Q. Okay. All right. Let's move on to the next
25 set of calculations. We're moving on here to the

1 calculations for the incentive management fee and the
2 more profit sharing portion of the fees are, right?

3 A. Yes.

4 Q. Okay. And let's go to the line that says
5 "The 500 basis point guarantee fee calculating to,"
6 and it says 99,693, right?

7 A. Yes.

8 Q. Again, we connected the dots on this 500
9 basis point fee. We previously connected the dots to
10 the last paragraph of page 2 of the 2004 letter, right?

11 A. Yes.

12 Q. And that's the same thing we're doing here,
13 right?

14 A. Yes.

15 Q. Okay. And this is for 2005 only. And it's
16 for the Allenwood project only, right?

17 A. Right.

18 Q. And Mr. Grossman is being paid \$99,693 for
19 that portion, right?

20 A. Yes.

21 Q. In exchange for his personal guarantee,
22 correct?

23 A. Correct.

24 Q. Okay. Let's move on down. The 2006, where
25 it says "The 500 basis point guarantee fee," same set
ROA 537

1 of scenarios, right? We don't need to go back and
2 connect the dots again. But it is the same principle
3 here, right? It's just for 2006 incentive?

4 A. Yes.

5 Q. Okay. And Mr. Grossman's fee in exchange
6 for personally guaranteeing the funds in 2006 for the
7 Allenwood neighborhood is 52,244?

8 A. Yes.

9 Q. Okay. So after taking into account the
10 money owed to Lancaster Redevelopment Corporation, and
11 the money owed to Mr. Grossman individually, we would
12 could then calculate what Mr. Brady's incentive
13 management fee is for the Allenwood project, right?

14 A. Yes.

15 Q. And that number comes to 633,656, right?

16 A. Yes.

17 Q. Owed to Mr. Brady, right?

18 A. Correct.

19 Q. Okay. So now we've -- after we gotten to
20 that point, we made all the preliminary calculations
21 that we need to make to determine the total amount that
22 is owed to Mr. Brady as of September 13, 2007, correct?

23 A. Correct.

24 Q. And that number owed to Mr. Brady as of
25 September 13, 2007 is \$711,027, right?

1 A. Yes.

2 Q. Okay. Let's go back and summarize that more
3 distinctly in a second. But first, look at the next
4 page, top paragraph of, I believe, that's the third
5 page of the letter -- fourth page. I'm sorry. It
6 says, "Mr. Grossman directed me to access our ability,"
7 right?

8 A. Yes.

9 Q. Do you see that paragraph? And what's going
10 on here is that, if I can distinctly paraphrase that,
11 that paragraph is, yes, Mr. Brady, you're owed money,
12 the \$711,000 and change, but Lancaster Redevelopment
13 Corporation is having financial troubles. And we can't
14 -- we don't have the funds to pay it all to you right
15 now. So what we are going to do is pay you \$10,000 a
16 month.

17 Is that essentially what that paragraph is
18 saying?

19 A. Yes.

20 Q. And you don't recall one way or the other
21 whether any of those monthly payments were made to Rod
22 after September of 2007?

23 A. I don't recall, no.

24 Q. Okay. So Rod was already owed the money,
25 right? He'd already earned it, right?

1 A. Yes.

2 Q. And the purpose of getting on this payment
3 plan was because Lancaster Redevelopment Corporation
4 had financial issues, right?

5 A. Yes.

6 Q. And the purpose of those financial -- or the
7 source of those financial issues were projects other
8 than the two at issue here, correct?

9 A. One of the issues was past due receivables
10 from the Allenwood project.

11 Q. Would those past due receivables, would
12 those have been accounted for when you calculated the
13 net income of that LLC?

14 A. Yes.

15 Q. Okay. So we've already accounted for those
16 past due receivables within the number owed to Rod,
17 right?

18 A. Yes.

19 Q. Okay. And then the other reason listed, it
20 says, it seems as if the Lancaster Redevelopment
21 Corporation is having problems with carrying costs of
22 Cypress Harbor. That project had nothing to do with
23 Village Square Development, right?

24 A. No.

25 Q. And it had nothing to do with the Allenwood
ROA 540

1 project, right?

2 A. No.

3 Q. And it had nothing to do with Rod Brady,
4 right?

5 A. I don't believe so. I personally don't
6 remember the Cypress Harbor project.

7 Q. Right. And it doesn't appear to be relevant
8 to this case, I don't think, other than the fact that
9 it seems to be the source of why Lancaster
10 Redevelopment Corporation was having trouble paying Mr.
11 Brady. And this was written in the letter by you,
12 right?

13 A. Yes.

14 Q. And you just don't remember all the complete
15 details of -- behind that -- those problems, right?

16 A. Correct.

17 Q. And it also mentions a "massive increase in
18 overhead associated with the new plant." That didn't
19 have anything to do with Rod Brady, right?

20 A. No.

21 Q. Okay. So to recap, the sales have been
22 final, right, of the properties built on these two
23 neighborhoods, right?

24 A. Yes.

25 Q. And the LLC's, that money from the
ROA 541

1 purchasers of the homes, right?

2 A. Yes.

3 Q. And there was a profit after that, right?

4 A. Yes.

5 Q. Okay. Lancaster Redevelopment's portion of
6 that profit got accounted for, right?

7 A. Right.

8 Q. And Mr. Grossman's individual profits from
9 those transactions got accounted for, right?

10 A. Yes.

11 Q. And after all that, Mr. Brady was still owed
12 a big chunk of money out of those profits, right?

13 A. Right.

14 Q. For work that has already been earned,
15 right?

16 A. Right.

17 Q. We're not projecting future profits here,
18 right?

19 A. Correct.

20 Q. Okay. And Mr. Brady was not paid that money
21 because Lancaster Redevelopment Corporation had
22 problems on other projects that had nothing to do with
23 Rod Brady, right?

24 A. Some of the problems had nothing to do with
25 Allenwood.

1 Q. Okay. Okay. All right. So and let's
2 summarize the specific numbers really quickly. So the
3 total was 711,024 -- or 27 -- I'm sorry. Right?

4 A. Yes.

5 Q. And of that 633,656, that was owed to Rod as
6 an incentive management fee or basically a profit
7 sharing from the Allenwood project, right?

8 A. Right.

9 Q. Already earned, correct?

10 A. Correct.

11 Q. Homes already sold, right?

12 A. Right.

13 Q. LLCs are already paid by the home
14 purchasers, right?

15 A. Yes.

16 Q. And the LLCs made a profit, right?

17 A. Yes.

18 Q. Okay. And then there is an amount 19,629
19 owed to Rod as a construction management fee at
20 Allenwood. And that money was already earned, right?

21 A. Right.

22 Q. And the construction was already completed
23 at those homes, too, correct?

24 A. Correct.

25 Q. All right. And the 83,488 portion was owed
ROA 543

1 to Rod as his incentive management fee for the Village
2 Square Development project, right?

3 A. Yes.

4 Q. And just like in Allenwood, those fees are
5 already earned, right?

6 A. Yes.

7 Q. And the homes are already sold?

8 A. Yes.

9 Q. Okay. And to be fair, Rod owed Lancaster
10 Redevelopment Corporation, or whoever the contracting
11 parties were, \$25,746. And that was for the difference
12 between his construction management fees and the money
13 he owed for the help he retained to assist him with
14 that construction, right, at the Village Square
15 Development project, right?

16 A. Correct.

17 Q. Okay. But the number that he owed to other
18 people was put into the total, right?

19 A. Yes.

20 Q. And that total, again, that was owed to Rod
21 was \$711,027 as of September 13, 2007?

22 A. Right.

23 Q. And the amount accounted for for his help
24 totalled between Nick Grossman, Dan Clore, Rich Raven
25 and RS Davis we've accounted for \$187,633 between the
ROA 544

1 four of them if you add up all the individual numbers.
2 Does that sound about right to you?

3 A. Yes, it does.

4 Q. Yeah. I'm not asking you to do math on the
5 spot. But that's the numbers that I came up with
6 anyhow. That number also took into account that
7 Mr. Grossman was getting consideration in exchange for
8 a personal guarantee. And he had -- we had accounted
9 for \$300,441.85 to be owed to him, right?

10 A. Yes.

11 Q. Already accounted for within the number owed
12 to Rod?

13 A. Yes -- owed to Gary.

14 Q. Okay. Yeah, so, essentially just to drive
15 the point home one last time, you concluded on
16 September 13, 2007 that the contracting parties owed
17 Rod \$711,027, right?

18 A. Yes.

19 Q. And you didn't just throw that letter
20 together, right?

21 A. No.

22 Q. And you're a professional in the accounting
23 business, right?

24 A. Right.

25 Q. And you made a good faith effort to get
ROA 545

1 these numbers right, didn't you?

2 A. Yes.

3 Q. And you haven't discovered any errors in
4 here now since the time you wrote that letter?

5 A. No.

6 Q. Okay. And you do not have any evidence
7 showing that Lancaster Redevelopment Corporation, Gary
8 Grossman or any other affiliated entity paid any money
9 to Rod subsequent to this September 13, 2007?

10 A. I don't know if anything has been paid to
11 Rod or not.

12 Q. Right. But the question is, you don't have
13 any evidence showing it, right?

14 A. Right.

15 MR. THOMSON: Okay. Those are all the
16 questions I have. Mr. O'Kelley, if would like to
17 interview Ms. Griffith, you have may take that
18 opportunity now.

19 MR. O'KELLEY: I thought this is a
20 deposition, not an interview.

21 MR. THOMSON: It's a de bene esse deposition
22 for purpose for use at trial.

23 * * * * *

24 EXAMINATION

25 BY MR. O'KELLEY:

ROA 546

Clark & Associates, Inc.

1 Q. Ms. Griffith, you have the exhibits that Mr.
2 Thomson was asking you about in front of you, correct?

3 A. Yes, I do.

4 Q. All right. What was the arrangement as to
5 how Mr. Brady was to be paid? Mr. Thomson asked you
6 earlier about that, but it's my understanding that Mr.
7 Brady was to be paid after all the debts of the company
8 were to be paid, correct?

9 A. The incentive management fees were to be
10 after the initial debts from Lancaster Redevelopment or
11 Mr. Grossman were repaid.

12 Q. And remind the folks who are listening to
13 you what was going on with the greater economy in 2007?

14 A. I believe that's when the housing market
15 started to take a nose dive.

16 Q. And was Lancaster Redevelopment company in
17 September of the fall of 2007, was it suffering from
18 the falling apart of the housing market?

19 A. Yes. We --

20 Q. And was --

21 A. Go ahead.

22 Q. Go ahead, explain.

23 A. In some of the developments, we had standing
24 inventory that we couldn't sell.

25 Q. And were banks threatening foreclosure

1 against these developments in the fall of 2007 or had
2 foreclosures actually been filed, if you remember?

3 A. I don't remember exactly when. I know that
4 that came shortly into that time period into early
5 2008.

6 Q. And you're aware that there was a
7 foreclosure against Village Square Development Company,
8 correct?

9 A. Correct.

10 Q. And there was a foreclosure against Hilton
11 Head Homes at Allenwood, correct?

12 A. That's correct.

13 Q. And Mr. Rod Brady had nothing to lose in
14 those foreclosures, did he?

15 A. I don't believe he was a guarantee -- or a
16 guarantor on any debt.

17 Q. And was Mr. Grossman a guarantor on debt?

18 A. Yes, he was.

19 Q. And Mr. Brady was advanced sums during his
20 employment by Hilton Head Homes and by Village Square,
21 correct?

22 A. Yes, against his fees earned.

23 Q. That's correct. And then was he ever an
24 employee of Lancaster Redevelopment Corporation to your
25 knowledge?

1 A. I'm trying to remember. I know Gary and Rod
2 talked about it, but I don't recall if he ever became
3 an actual employee.

4 Q. And if I were to represent to you that he
5 was never an employee of Lancaster Redevelopment
6 Corporation, do you have any reason to doubt that?

7 A. No, no.

8 MR. O'KELLEY: Thank you, ma'am. That's all
9 I've got.

10 THE WITNESS: Okay.

11 THE VIDEOGRAPHER: Anything else?

12 MR. THOMSON: Just some quick follow-up.

13 * * * * *

14 EXAMINATION (CONT'D.)

15 BY MR. THOMSON:

16 Q. Ms. Griffith, Mr. O'Kelley was just talking
17 to you about how Mr. Brady was to be paid after
18 everyone else got paid, correct?

19 A. For the incentive management fee, yes.

20 Q. Right. I think I've just got that question
21 backwards. I'll re-ask so it's clear for the record.
22 Hamlin asked you about how Lancaster Redevelopment
23 Corporation and Mr. Grossman were to be paid prior to
24 Mr. Brady being paid for the incentive management fee,
25 right?

1 A. For their initial investment in the
2 development companies.

3 Q. Right. And Mr. O'Kelley asked you a series
4 of questions that basically go into the fact that the
5 company didn't have the funds to pay, right?

6 A. Correct.

7 Q. And we went through this during my direct
8 examination, but the last paragraph -- or on the last
9 page of your 2007 letter on the top paragraph, it talks
10 about some of Lancaster Redevelopment's financial
11 issues, right?

12 A. Yes.

13 Q. And some of those troubles have nothing to
14 do with the two projects at issue here, right?

15 A. That's correct.

16 Q. So even though there might have been an
17 agreement for Mr. Grossman and the Lancaster
18 Redevelopment Corporation to be paid first, that
19 wouldn't necessary excuse some excuse of outside forces
20 taking precedence over payments to Mr. Brady, right?

21 A. Can you repeat that?

22 Q. That wasn't the best-worded question. So
23 even though Lancaster Redevelopment Corporation and
24 Mr. Grossman were to be paid before Rod was to be paid,
25 the confusion of outside economic forces has no bearing

1 on the amount owed to Mr. Brady, right?

2 A. That's correct.

3 MR. THOMSON: Okay. That's the last
4 question I have. Any more Hamlin?

5 MR. O'KELLEY: That's all.

6 THE VIDEOGRAPHER: This concludes today's
7 deposition. The time on the monitor is 10:00 a.m.

8 THE COURT REPORTER: Do you both want PDFs
9 like yesterday?

10 MR. O'KELLEY: Yes.

11 MR. THOMSON: Yes.

12 (Whereas, the deposition concluded at 10:00
13 a.m.)

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1 COMMONWEALTH OF PENNSYLVANIA)
2 COUNTY OF CUMBERLAND) SS.
3)

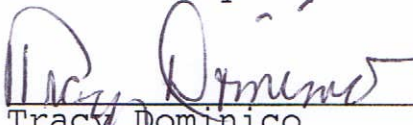
4 I, Tracy Dominico, a Court
5 Reporter-Notary Public authorized to administer
6 oaths and take depositions in the trial of causes
7 and having an office in Mechanicsburg,
8 Pennsylvania, do hereby certify that the
9 foregoing is a true record to the testimony
10 given; that before the taking of said deposition,
11 the witness was duly sworn/affirmed; that the
12 questions and answers were taken down stenotype
13 by said Reporter-Notary and afterwards reduced to
14 computer printout under the direction of said
15 Reporter.

16 I further certify that the proceedings
17 and evidence are contained fully and accurately
18 in the notes taken by me of the within deposition
19 to the best of my ability; and that this copy is
20 a correct transcript of the same.

21 In testimony whereof, I have hereunto
22 inscribed my hand this 20th day of December,

23 2018 COMMONWEALTH OF PENNSYLVANIA

24 NOTARIAL SEAL
TRACY DOMINICO
Notary Public
HAMPDEN TWP, CUMBERLAND COUNTY
25 My Commission Expires Nov 12, 2019


Tracy Dominico
Court Reporter-Notary Public

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< W >

want (6)**way** (1)**weeds** (1)**went** (6)**we're** (12)**we've** (5)**Williamsport** (1)**witness** (2)**words** (1)**work** (3)**worked** (1)**working** (2)**write** (3)**writing** (1)**written** (3)**wrote** (3)

< Y >

Yeah (3)**years** (3)**Yep** (1)**yesterday** (1)**yesterday's** (1)

T. GARDINER BROWER
ACCOUNTANT
33 SAWMILL FOREST DRIVE
BLUFFTON, SC 29910

843-338-1763



December 12, 2007

Rod & Joyce Brady
36 Timber Marsh Lane
Hilton Head Island, SC 29926

Dear Rod & Joyce:

Following is a summary of our review, analysis, and discussion of the information contained the letter dated September 13, 2007 from Lancaster Redevelopment Corporation. This letter is a summary of your compensation under their February 2, 2004 letter of agreement.

1. Based on the limiting factor of not having access to any original documents supporting their analysis on your compensation, it is almost impossible to verify most of the financial information in this letter.
2. They contend that the total monies due you as of the date of this letter are \$711,027.
3. My analysis of the monies due you at 09/13/07, based on the limited amount of data available to us, is \$724,114. See Exhibit 1.
4. This does not take into account any monies due you as partnership distributions.
5. Due to my limited knowledge and experience with partnership tax returns, I have not been able to determine if there are any discrepancies with the returns. Since, a CPA prepares your returns, you may need to ask them for further explanations. See Exhibit 2.

If you have any further questions, please contact me.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "T. Gardiner Brower".

T. Gardiner Brower

JRBRADY: INCOME EARNINGS

	VSD	HHH-A	TOTAL
--	-----	-------	-------

A. MANAGEMENT FEES:

26 Units @ \$750	\$ 19,500		
44 Units @ \$5,000		\$ 220,000	

Less Supervisor Salaries:

Nick G. (10/05-01/07)	(65,930)		
Dan C. (01/07-0907)	(30,756)		
R. Ravens (05/05-08/05)		(1,794)	
RC Davis (08/05-12/05)		(58,611)	

TOTAL MGT. FEES as of 09/13/07	\$ (77,186)	\$ 159,595	\$ 82,409
	=====	=====	=====

B. COMMISSIONS:

26 Units @ \$1,000	\$ 26,000		
44 Units (3%)		\$ 193,532	

TOTAL COMMISSIONS as of 09/13/07	26,000	193,532	\$ 219,532
	=====	=====	=====

C. PROJ. MGT. PROFIT-SHARING:

88 % of Net income

2005	623,823	1,066,728	
2006	217,796	352,521	

TOTAL	841,619	1,419,249	\$ 2,260,868
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Less: Guar. Fee

2005	148,505	99,693	
2006	270,137	63,366	

TOTAL	418,642	163,059	\$ 581,701
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Net Profit

2005	475,318	967,035	
2006	(52,341)	289,155	

TOTAL	422,977	1,256,190	\$ 1,679,167
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Ron's Fees (50%) as of 12/31/06	\$ 211,488	\$ 628,095	\$ 839,584
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GRAND TOTAL DUE ROD (09/13/07)	\$ 160,302	\$ 981,222	\$ 1,141,525
	=====	=====	=====

TOTAL CASH DISBURSED/RECEIVED	-----PER GARY-----		PER ROD
	SUM. LETTER	CK. LIST	

2004	\$ -	\$ 40,000	\$ 10,000
2005	-	150,863	150,734
2006	345,261	136,398	128,677
2007	128,000	128,000	128,000

TOTAL CASH DISBURSED/RECEIVED	\$ 473,261	\$ 455,261	\$ 417,411
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NET CASH DUE ROD	\$ 668,264	\$ 686,264	\$ 724,114
	=====	=====	=====

D. PARTNERSHIP DISTRIBUTIONS

2005	\$ 30,000	\$ 30,000	\$ -
2006	27,937	27,937	-
2007	36,000	36,000	36,000

JRBY: TAX RETURN INFORMATICS
2004 2005 2006 2007

A.

TAX RETURN

VSD

PART. INCOME	\$ -	\$ 57,069	\$ 14,849	\$ -
OTHER INCOME	(1,012)	-	4,394	-
TOTAL	\$ (1,012)	\$ 57,069	\$ 19,243	\$ -

HHH-A

PART. INCOME	\$ 5,365	\$ 72,731	\$ 24,036	\$ -
OTHER INCOME	10,000	189,081	127,803	-
TOTAL	\$ 15,365	\$ 261,812	\$ 151,839	\$ -

TOTAL

PART. INCOME	\$ 5,365	\$ 129,800	\$ 38,885	\$ -
OTHER INCOME	8,988	189,081	132,197	-
TOTAL TAX RETURN	\$ 14,353	\$ 318,881	\$ 171,082	\$ -

B.

K-1 INFORMATION

VILLAGE SQUARE DEVELOPMENT

BEGINNING BALANCE	\$ 100,000	\$ 98,988	\$ 156,067	\$ -
ADD: OTHER INCOME	-	37,205	14,835	-
LESS: DISTRIBUTIONS	(1,012)	-	(1,860)	-
ENDING BALANCE	\$ 98,988	\$ 136,193	\$ 169,042	\$ -

HILTON HEAD HOMES at ALLENWOOD

BEGINNING BALANCE	\$ 100,000	\$ 104,579	\$ 147,392	\$ -
ADD: OTHER INCOME	4,579	42,615	24,030	-
LESS: DISTRIBUTIONS	-	(30,000)	(30,068)	-
ENDING BALANCE	\$ 104,579	\$ 117,194	\$ 141,354	\$ -

OPEN ITEMS FOR K-1

1. Beginning balance does not equal ending balance of previous year.
2. Was the 2005 K-1 revised after 04/07/06 ? There is a difference of approx. \$20K-\$30K, in VSD and HHH at A., in ordinary income reported on the K-1 and amount should on your 2005 tax return (Sch. E, Line 28).
3. Amount paid from V. S. D. account (\$1,860), does not show as paid on their 09/13/07 letter
4. Amount paid from HHH at A. account (\$30,068), does not equal amount (\$27,927) they show on their 09/13/07 letter.

Lancaster Redevelopment Corp.

2138 Route 522

Selinsgrove, PA 17870

570-374-0131 (Fax 570-374-6093)

September 13, 2007

James R. Brady
36 Timber Marsh Lane
Hilton Head, SC 29926-2787

Dear Rod,

Pursuant to your discussion with Mr. Grossman, I am transmitting our analysis of the Allenwood compensation to you under our February 2, 2004 letter of agreement.

As you are aware, there are two separate entities operating at Allenwood. Our analysis isolates compensation by company.

Village Square Development Co. LLC (townhomes)

2005 Income \$708,890

2006 Income \$247,495

Total to date \$956,385

Verly

247,270

x

To date there was one distribution

Paid to you on 4/10/07 \$ 36,000

This distribution was based on cash available at the time of distribution. As you know, our cash is invested in standing inventory.

split \$500 - JV ; 750 - R.B.

Under the February 2, 2004 letter of Agreement you are scheduled to be paid a construction management fee of \$1,250 per townhouse unit. According to our records we have built and delivered 26 townhouses to date. I interpret the February 2, 2004 letter of Agreement to make the construction fees payable at the time each unit settles.

It is my understanding that the expenses associated with hiring Nick Grossman and/or Dan Clore for supervisory work on your behalf are to be deducted. Mr. Grossman did advise me that expenses for Dan Clore would not be counted after a certain date, but I do not know what that date was, so I picked 5/31/07 which is when Nick went to Battery Creek.

The February 2, 2004 letter of Agreement also provides for a \$2,000 per townhouse sales commission to either you or Joy Walker depending on who actually sold the unit. I was subsequently informed that you and Joy agreed to split this commission at \$1,000 each for all sales made by you or her. I made all payments and constructed all commission accounting in accordance with that directive.

The construction management fee on the 26 sold and settled townhomes totals $\times \$1,250-$ \$32,500 ✓

The commissions on the 26 sold and Settled townhomes totals $\times \$1,000-\textcircled{1}$ \$26,000 - $\textcircled{1}$ 1,000 - each to Joy.

} - Less the commission paid to date $\times$ (9,415)
 Less Nick Grossman salary/benefits/expenses 6/6 to 1/7 (29,845)
 Less Dan Clore salary/benefits/expenses 6/6 to 1/7 (30,746)
 Less Nick Grossman salary/benefits/expenses 1/1/07-5/31/07 (24,870)
 Less Dan Clore salary/benefits/expenses 1/1/07-5/31/07 (25,620) } 111,081-
 Current balance as of this date $54,715$ (61,996) ✗

There are construction management fees Due on 29 additional units @\$1,250 \$36,250

(25,746)
 The net balance is a negative (25,746)
 For your sales commissions and construction management ✗
 Fees for Village Square Development Co. LLC

The net income for tax year 2005 was \$708,890 and \$247,495 in 2006 for a total taxable income of \$956,385. The LRC allocated income on this \$956,385 is 88% or \$841,619.

Under the terms of the February 2, 2004 letter of Agreement, Mr. Grossman was to be paid a priority distribution of 500 basis points for his guarantee. The average debt in 2005 was \$2,970,097 from January 1 until December 31, 2005 which calculates to a pro-rated guarantee fee of \$148,504.85 for 2005.

The average VSD to LLC debt balance for 2006 was \$5,402,733, which calculates to a guarantee fee of \$270,137.

The guarantee fee totals \$418,642 which reduces the LRC allocated pretax profits from \$841,619 to \$422,977..

Your allocated share of 50% would be \$211,488..

? - To date I have advanced \$128,000. 4/10/07

The balance of the 2005/2006 "incentive management fee" due to you is \$83,488.

Under the terms of the February 2, 2004 letter of Agreement, 100% of LRC loans or accounts receivables are to be paid as a priority distribution.

Mr. Grossman recently loaned Village Square Development Co. LLC \$124,750 and forest homes has past due receivables of \$173,700.

We must repay the \$173,700 past due receivables as a first priority. Mr. Grossman has indicated his intentions to allow funds to be paid to you ahead of his recent loans.

As to Hilton Head Homes at Allenwood

Your construction management fees on the 44 single family homes sold and settled total $\times \$5,000$ \$220,000

The construction management fees on the 4 remaining single family homes total $\times \$5,000$ \$ 20,000

The expenses associated with Rich Raven \$(17,941)
The expenses associated with RS Davis \$(58,611)

The 10% commission on the 44 single family Homes sold and settled to date total \$192,000

Total earned as of this date \$355,475

Total paid as of this date $\times$ \$335,846

Balance due on contribution fees and commissions \$ 19,629

Mr. Grossman advises that this amount can be paid from the very next S.F. settlement if Art Long will consent.

The 2005 net taxable income was \$1,212,191

The 2006 net taxable income was 400,592

Total taxable income of \$1,612,783

The allocated income on this \$1,612,783 is 88% or \$1,419,249

The average debt balance for 2005 was \$1,993,865

The 500 basis point guarantee fee calculating to \$ 99,693

The average debt balance for 2006 was \$1,267,311

The 500 basis point guarantee fee calculating to \$ 52,244

Therefore, net taxable income after the guarantee Fees for 2005/2006 is \$1,267,312

Your 50% incentive management fee is \$ 633,656

Of this writing, the total amount due to you is \$ 711,027

Mr. Grossman directed me to access our ability to fund a \$10,000 a month draw against these funds. Given the carrying costs of the inventory, and past due receivables to Forest Homes from Allenwood, the monthly carrying costs at Cypress Harbor and our massive increase in overhead associated with the new plant, LRC simply cannot fund any additional monthly expenses.

I have attached a summary of the above information. If you have any questions or need any details, please feel free to call me anytime.

Very truly yours,

Ginger Griffith
Treasurer

Cc: Gary L. Grossman

Project manager profit sharing

	LRC 88% of net	guarantee fee	Rod Brady 50% of net
VSD net income 2005	623,823	148,505	237,659
VSD net income 2006	217,796	270,137	(26,171)
paid April 10, 2007 by LRC			(128,000)
Balance due		<u>83,488</u>	

Partner Distributions

Distribution paid by VSD 4-10-07	<u>36,000</u>
Total partner distributions	<u>36,000</u>

Commissions & Management Fees

management fees on 26 townhomes @ \$750	19,500
less salary for townhome construction supervisor Nick Grossman Oct 05-May 06	(36,085)
commissions on 26 townhomes @ \$1000	<u>26,000</u>
Total comm paid from VSD through Oct 2006	<u>9,415</u>

deduct from future management fees

salary for townhome construction supervisor

Dan Clore	Jan 07 - Sept 07	(30,756)
Nick Grossman	June 06 - Jan 07	(29,845)

Project manager profit sharing

		guarantee fee	Rod Brady 50% of net
HHH net income 2005	1,066,728	99,693	483,518
HHH net income 2006	352,521	52,244	150,138
Balance due		<u>633,656</u>	

Partner Distributions

Distribution paid by HHH 8-17-05	30,000
Distribution paid by HHH 10-23-06	<u>27,937</u>
Total partner distributions	<u>57,937</u>

Commissions & Management Fees

management fees on 44 singles @ \$5000	220,000
less payments to construction supervisor Rich Ravens May-Aug 05	(17,941)
RS Davis Aug-Dec 05	(58,611)
commissions on 44 singles	<u>192,398</u>
Total comm paid from HHH through Oct 2006	<u>335,846</u>

Forest Homes internal use only					Compensation drawn to date:	Fees and Commis	sions earned to date:
Administrativ Cqnstruction					\$39,000.00	\$40,500.00	Joy
Unit/Lot	Assistance Fe	Management	Commissions				
Address	Walker	Brady	Rod	Joy			
65							
66							
67						\$1,500.00	owed to Joy
68							
69							
70							
71							
72							
73							
74							
75							
76							
77							
78							
79							
80							
81							
82							
83							
84	\$500.00	\$750.00	\$1,000.00	\$1,000.00			
85	\$500.00	\$750.00	\$1,000.00	\$1,000.00			
86	\$500.00	\$750.00	\$1,000.00	\$1,000.00			
87	\$500.00	\$750.00	\$1,000.00	\$1,000.00	\$21,893.87	Rod \$47,250.00	total management
88	\$500.00	\$750.00	\$1,000.00	\$1,000.00			
89	\$500.00	\$750.00	\$1,000.00	\$1,000.00		\$3,269.24	Nick-Oct payroll
90	\$500.00	\$750.00	\$1,000.00	\$1,000.00		\$3,269.24	Nick-Nov payroll
91	\$500.00	\$750.00	\$1,000.00	\$1,000.00		\$5,279.01	Nick-Dec payroll
92	\$500.00	\$750.00	\$1,000.00	\$1,000.00		\$3,269.24	Nick - Jan payroll

6750

11,817.19

15,086.73

32,163.27

Totals

7-A

Forest Homes internal use only				
Administrative Construction		Commissions		
Unit/Lot Address	Assistance Walker	Management Brady	Rod	Joy
93	\$500.00	\$750.00	\$1,000.00	\$1,000.00
94	\$500.00	\$750.00	\$1,000.00	\$1,000.00
95	\$500.00	\$750.00	\$1,000.00	\$1,000.00
96	\$500.00	\$750.00	\$1,000.00	\$1,000.00
97				
98				
99	\$500.00	\$750.00	\$1,000.00	\$1,000.00
100	\$500.00	\$750.00	\$1,000.00	\$1,000.00
101	\$500.00	\$750.00	\$1,000.00	\$1,000.00
102	\$500.00	\$750.00	\$1,000.00	\$1,000.00
103	\$500.00	\$750.00	\$1,000.00	\$1,000.00
104				
105	\$500.00	\$750.00	\$1,000.00	\$1,000.00
106				
107				
108				
123				
124				
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128				
129				
130	\$500.00	\$750.00	\$1,000.00	\$1,000.00
131				
138	\$500.00	\$750.00	\$1,000.00	\$1,000.00
151	\$500.00	\$750.00	\$1,000.00	\$1,000.00
152	\$500.00	\$750.00	\$1,000.00	\$1,000.00
153	\$500.00	\$750.00	\$1,000.00	\$1,000.00
154	\$500.00	\$750.00	\$1,000.00	\$1,000.00
155	\$500.00	\$750.00	\$1,000.00	\$1,000.00
156	\$500.00	\$750.00	\$1,000.00	\$1,000.00
	\$13,500.00	\$20,250.00	\$27,000.00	\$27,000.00

Compensation drawn to date: \$39,000.00
Fees and Commis \$40,500.00

sions earned to date: Joy

13,538.92
14,922.88
\$3,269.40
\$3,269.40
\$3,269.40
\$3,730.72
\$3,730.72
\$3,730.72
\$3,730.72
\$3,730.72
\$3,730.72
- \$18,192.40
owed to Rod

Nick
10/05 - 1/06
4x 3264.40
x 13,077.60
2/06 - 5/06
13,538.92
\$26,616.52
6/06 - 9/06
10/06 - 1/07
14,922.88
15,086.73
\$30,009.61

Village Square Development Company
Vendor Ledgers
For the Period From Jan 1, 2006 to Dec 31, 2006

Rod Brady	4/4/06	2005 SC tax		3,641.00	41,250.03
Rod Brady	4/4/06	2607	2,131.00		37,609.03
Rod Brady	4/12/06	2612	39,119.03		-1,510.00
Rod Brady	4/30/06	commissions		9,231.42	7,721.42
Rod Brady	5/25/06	2705	9,231.42		0.00
Rod Brady	6/27/06	AUTO EXP 06		1,608.83	1,608.83
Rod Brady	6/27/06	FOOD RECEIPTS 06		836.33	2,445.16
Rod Brady	6/27/06	OFFICE SUPPLIES 06		161.99	2,607.15
Rod Brady	6/27/06	INTRO SEMINAR 06		84.99	2,692.14
Rod Brady	6/28/06	2752	2,692.14		0.00

	162,073.12	131,035.46	0.00
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total commissions paid 127,802.98 equal to amount on 1099

52
53
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\$2,500.00	\$5,000.00	\$10,532.16	\$5,266.08
\$2,500.00	\$5,000.00	\$10,508.28 ^x	\$5,254.14
\$2,500.00	\$5,000.00	\$10,149.90	\$5,074.95
\$2,500.00	\$5,000.00	\$10,104.84	\$5,052.42
\$110,000.00	\$220,000.00	\$193,565.43	

387,130.80

ms 193,398

x

int. 07A

~~193,565.50~~
193,532.48

6.6

Fees and Commissions earned to date: updated 5/15/06

\$303,565.43 Joy
for 42

\$7,898.50 due to Joy
\$6,731.42
\$1,167.08 owe Joy

17,941.32
58,611.11

\$413,565.43 Rod total fees + commissions
-\$9,502.20
-\$8,439.12
-\$32,862.00
-\$25,749.00
337,013.11

\$10,398.50 due to Rod
lot 42

5498.28
5531.25

Sales Price

<u>Lot</u> <u>Number</u>	<u>Retail</u> <u>Contract Price</u>	<u>Actual</u> <u>Closing Date</u>
1	\$362,000.00	
2	\$271,337	30-Nov-04
3	\$245,750	15-Dec-04
4	\$325,640	19-May-05
5	\$265,490	20-Dec-04
6		
7	\$249,900	14-Apr-05
8	\$231,350	25-May-05
9	\$279,900	
10	\$244,831 ✕	1-Apr-05
11		
12		
13	\$243,145	
14		
15	\$298,723	
16	\$277,017	
17	\$259,089	
18	\$274,419	
19	\$253,630	
20	\$239,811	
21	\$299,722	
22	\$283,498	
23	\$291,043	
24	\$284,498	
25	<u>\$338,090</u>	
26	\$258,169	
27	\$289,802	
28	\$337,898	
29	\$251,900	
30	\$321,750	
31	<u>\$366,552</u>	
32	\$368,753	
33	\$ 279,401	
34	\$ 292,026	
35	\$ 267,625	
36	\$ 354,994	
37	\$ 304,730	
38	\$ 285,676	
39	\$ 283,830	
40	\$ 261,734	
41	\$ 302,647	
42	\$ 359,900	
43	\$ 281,941	
44		
45		
46	\$ 299,722	
47		

Sales Price - 1/5/05

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\$ 299,722

\$ 351,072

\$ 350,276

\$ 338,330

\$ 336,828

\$257,400

\$276,010



\$277,133

\$247,793

\$246,405

\$257,400

\$278,855

\$283,830

Sales Price

98

Sales Price-2

Hilton Head Homes checks

Date	Trans No	
10/7/04	1078	582.39
10/12/04	1020	10,000.00
10/28/04	1114	10,000.00
12/2/04	1148	10,000.00
12/29/04	1208	10,000.00
1/26/05	1274	10,000.00
2/10/05	1287	1,404.20
2/24/05	1328	10,000.00
3/24/05	1427	10,000.00
4/27/05	1488	10,000.00
5/6/05	1517	333.32
5/12/05	1529	690.38
5/26/05	1569	10,000.00
6/29/05	1691	10,000.00
7/28/06	1789	2,545.09
8/4/05	1799	10,000.00
8/17/05	1806	30,000.00
9/1/05	1948	25,243.41
9/29/05	2046	29,199.82
11/10/05	2173	18,736.88
12/7/05	2236	15,895.32
1/26/06	2390	31,037.66
3/15/06	2564	48,414.87
4/1/06	2005 SC tax cr	1,510.00
4/4/06	2607	3,641.00
4/12/06	2612	39,119.03
5/25/06	2705	7,721.42
6/28/06	2752	2,692.14
10/23/06		27,937.00

expense reimbursement
 advance toward commissions
 advance toward commissions
 advance toward commissions
 advance toward commissions
 advance toward commissions
 expense reimbursement
 advance toward commissions
 advance toward commissions
 advance toward commissions
 advance toward commissions
 expense reimbursement
 expense reimbursement
 advance toward commissions
 advance toward commissions
 expense reimbursement
 advance toward commissions
 profit distribution
 comm on lots 21,24,13,15
 commission on lot 20,25,31
 comm on lot 29 & 40 (17,704.51) and expenses (1,032.37)
 Comm on lots 32,35,36,41
 comm on lot 26,28,30,33,37,39
 comm on lot 34,38,43,53,55
 SC Tax due on your personal return - company pays for
 SC Tax corrected amount
 comm on lots 49,46,59
 comm on lot 42 less \$1,510 overpaid for SC tax
 expense reimbursement
 profit distribution

①
 17,704.51 - comm
 1,032.37 - exp
 18,736.88
 + 1158.24
 19,895.12

7721.42
 + 1510
 9,231.42

com - 329,368
 profit - 57,937

Village Square Development Checks

Date	Trans No	Debit Amt
9/29/05	1388	500.00
10/14/05	1053	137.70
11/10/05	1484	1,158.84
11/30/05	NOV 05	1,288.48
1/27/06	1667	4,394.03
4/1/06	2005 SC tax cr	994.00
4/4/06	1871	2,854.00
4/12/06	1874	5,711.36
4/10/07	2333	36,000.00

comm on lot 90
 expense reimbursement
 expense reimbursement
 comm on lots 88,94
 comm on lots 95, 151,153,155
 SC Tax due on your personal return - company pays for
 SC Tax corrected amount
 comm on lots 96,99,100,101,102,103
 profit distribution

4/10/07

128,000 -

net fee

com - 139,843
 profit - 36,000

Village Square Development Company
Vendor Ledgers
For the Period From Jan 1, 2006 to Dec 31, 2006

Village Square Development

Vendor	Date	Trans No	payment amount	invoice amount	Balance
James R Brady	1/1/06	commission		4,394.03	4,394.03
James R Brady	1/27/06	1667	4,394.03		0.00
James R Brady	3/31/06	commission		5,711.36	5,711.36
James R Brady	4/1/06	2005 SC tax cr	994.00		4,717.36
James R Brady	4/4/06	2005 SC tax		2,854.00	7,571.36
James R Brady	4/4/06	1871	2,854.00		4,717.36
James R Brady	4/12/06	1874	5,711.36		-994.00
James R Brady	4/30/06	commission		1,750.00	756.00
James R Brady	4/30/06	Nick's April wages	3,269.40		-2,513.40
James R Brady	5/15/06	commission		1,750.00	-763.40

	17,222.79	16,459.39	-763.40
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total commission paid

10,105.39

4,394.03 amount from 1099
I can file an amended 1099 form

Hilton Head Homes

Vendor	Date	Trans No	payment amount	invoice amount	Balance
Rod Brady	1/1/06	commissions		31,037.66	31,037.66
Rod Brady	1/26/06	2390	31,037.66		0.00
Rod Brady	2/28/06	commissions		48,414.87	48,414.87
Rod Brady	3/15/06	2564	48,414.87		0.00
Rod Brady	3/31/06	commissions		39,119.03	39,119.03
Rod Brady	4/1/06	2005 SC tax cr	1,510.00		37,609.03

Rod Brady

From: Gary Grossman [ggrossman@foresthomes.com]
Sent: Saturday, September 15, 2007 8:01 PM
To: Rod Brady
Cc: Ginger Griffith



Hi Rod,

I finally got a chance to look at Ginger's Sept 13 letter and the worksheets. It looks to me like she has accurately accounted for the various forms of compensation as laid out in our Feb 2, 2004 letter of agreement.

The long and the short of the Allenwood project is that all of our cash is tied up in standing inventory and we can no longer make the interest payments. Until we can get this inventory sold there simply is no cash to fund anything.

I have given our two hour discussion of last Saturday a great deal of thought. I think that you have clearly contributed value to the Battery Creek project, the low country line of homes, and deserve compensation for the time you spent in the capacity of the Forest Homes Business Development Officer. The easiest item to account for is the time you spent from the February Convention which started Feb 5 thru May 8th, which is the date that you stated that this was not working. In general I see that as Feb 1 thru May 15. I know you never actually agreed to this but our number for that job was \$80,000 a year which is 6666 a month times 3.5 months is \$23,000 for that period of time.

I have no real way of assigning the value that you contributed to the low country series (which I happen to think is a lot). I have not been able to figure out the Battery Creek issue yet, but that is only a time issue on my part.

On Monday, I will personally lend LRC \$10,000 so LRC can pay you a \$10,000 payment on the Business Development issue. I will also fund a similar amount next month. You can count on these two payments until we can reach an agreement on everything you are owed.

Please know I feel very badly that we have drifted this far apart. I value your friendship, I acknowledge your valuable contribution to my varied business interests thru the low country and clearly want to continue our business relationship on a fair basis going forward.

As to the franchise issue, I really need to get the business Performa's finished to see how juice is in these deals, and figure out how to bring some outside strategic investors to fund the start up. They way I now see the deal, I think it will be very difficult to get the necessary capital in the deal if your end is not a performance based earn in. I got the very real sense that you are unwilling to proceed on an "earn in" basis. I am very reluctant to have you to continue to spend time on the franchise issue until we can reach some kind of agreement. On the other hand I can not reach an agreement absent the Performa's in final form. Furthermore, I think you deserve to know the expectation and you will have to decide how achievable that expectation may be.

You can count on the \$23,000 at the rate of \$10,000 a month for this month and next. I hope to have sales and settlements at Allenwood by that time, and certainly expect to reach an overall accord on all compensation issues to date with in the next 30 days.

I will arrive HHI sometime WEDNESDAY evening. I have meetings all day Thursday and at this time have nothing scheduled for Friday. We are coming back to Pa on Sat or Sunday.

Gary L. Grossman
President/V.C.E.O.
Lancaster Redevelopment Corporation
2138 Route 522
Selinsgrove, Pa 17870
570 374 0131

ROA 583

*Lancaster Redevelopment Corp.**2138 Route 522**Selinsgrove, PA 17870**570-374-0131 (Fax 570-374-6093)*

September 13, 2007

James R. Brady
 36 Timber Marsh Lane
 Hilton Head, SC 29926-2787

Dear Rod,

Pursuant to your discussion with Mr. Grossman, I am transmitting our analysis of the Allenwood compensation to you under our February 2, 2004 letter of agreement.

As you are aware, there are two separate entities operating at Allenwood. Our analysis isolates compensation by company.

Village Square Development Co. LLC (townhomes)

2005 Income	\$708,890
2006 Income	<u>\$247,495</u>
Total to date	\$956.385

To date there was one distribution	
Paid to you on 4/10/07	\$ 36,000

This distribution was based on cash available at the time of distribution. As you know, our cash is invested in standing inventory.

Under the February 2, 2004 letter of Agreement you are scheduled to be paid a construction management fee of \$1,250 per townhouse unit. According to our records we have built and delivered 26 townhouses to date. I interpret the February 2, 2004 letter of Agreement to make the construction fees payable at the time each unit settles.

It is my understanding that the expenses associated with hiring Nick Grossman and/or Dan Clore for supervisory work on your behalf are to be deducted. Mr. Grossman did advise me that expenses for Dan Clore would not be counted after a certain date, but I do not know what that date was, so I picked 5/31/07 which is when Nick went to Battery Creek.

The February 2, 2004 letter of Agreement also provides for a \$2,000 per townhouse sales commission to either you or Joy Walker depending on who actually sold the unit. I was subsequently informed that you and Joy agreed to split this commission at \$1,000 each for all sales made by you or her. I made all payments and constructed all commission accounting in accordance with that directive.

The construction management fee on the 26 sold and settled townhomes totals	\$32,500
--	----------

The commissions on the 26 sold and Settled townhomes totals	\$26,000
--	----------

Less the commission paid to date	(9,415)
Less Nick Grossman salary/benefits/expenses 6/6 to 1/7	(29,845)
Less Dan Clore salary/benefits/expenses 6/6 to 1/7	(30,746)
Less Nick Grossman salary/benefits/expenses 1/1/07-5/31/07	(24,870)
Less Dan Clore salary/benefits/expenses 1/1/07-5/31/07	(25,620)

Current balance as of this date	(61,996)
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There are construction management fees Due on 29 additional units @\$1,250	\$36,250
---	----------

The net balance is a negative For your sales commissions and construction management Fees for Village Square Development Co. LLC	(25,746)
--	----------

The net income for tax year 2005 was \$708,890 and \$247,495 in 2006 for a total taxable income of \$956,385. The LRC allocated income on this \$956,385 is 88% or \$841,619.

Under the terms of the February 2, 2004 letter of Agreement, Mr. Grossman was to be paid a priority distribution of 500 basis points for his guarantee. The average debt in 2005 was \$2,970,097 from January 1 until December 31, 2005 which calculates to a pro-rated guarantee fee of \$148,504.85 for 2005.

The average VSD to LLC debt balance for 2006 was \$5,402,733, which calculates to a guarantee fee of \$270,137.

The guarantee fee totals \$418,642 which reduces the LRC allocated pretax profits from \$841,619 to \$422,977.

Your allocated share of 50% would be \$211,488.

To date I have advanced \$128,000.

The balance of the 2005/2006 "incentive management fee" due to you is \$83,488.

Under the terms of the February 2, 2004 letter of Agreement, 100% of LRC loans or accounts receivables are to be paid as a priority distribution.

Mr. Grossman recently loaned Village Square Development Co. LLC \$124,750 and forest homes has past due receivables of \$173,700.

We must repay the \$173,700 past due receivables as a first priority. Mr. Grossman has indicated his intentions to allow funds to be paid to you ahead of his recent loans.

As to Hilton Head Homes at Allenwood

Your construction management fees on the 44 single family homes sold and settled total	\$220,000
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The construction management fees on the 4 remaining single family homes total	\$ 20,000
--	-----------

The expenses associated with Rich Raven	\$(17,941)
The expenses associated with RS Davis	\$(58,611)

The 10% commission on the 44 single family Homes sold and settled to date total	<u>\$192,000</u>
--	------------------

Total earned as of this date	\$355,475
Total paid as of this date	<u>\$335,846</u>

Balance due on contribution fees and commissions	\$ 19,629
--	-----------

Mr. Grossman advises that this amount can be paid from the very next S.F. settlement if Art Long will consent.

The 2005 net taxable income was	\$1,212,191
The 2006 net taxable income was	<u>400,592</u>
Total taxable income of	\$1,612,783
The allocated income on this \$1,612,783 is 88% or	\$1,419,249

The average debt balance for 2005 was	\$1,993,865
The 500 basis point guarantee fee calculating to	\$ 99,693

The average debt balance for 2006 was	\$1,267,311
The 500 basis point guarantee fee calculating to	\$ 52,244
Therefore, net taxable income after the guarantee Fees for 2005/2006 is	\$1,267,312

Your 50% incentive management fee is	\$ 633,656
Of this writing, the total amount due to you is	\$ 711,027

Mr. Grossman directed me to access our ability to fund a \$10,000 a month draw against these funds. Given the carrying costs of the inventory, and past due receivables to Forest Homes from Allenwood, the monthly carrying costs at Cypress Harbor and our massive increase in overhead associated with the new plant, LRC simply cannot fund any additional monthly expenses.

I have attached a summary of the above information. If you have any questions or need any details, please feel free to call me anytime.

Very truly yours,

Ginger Griffith
Treasurer

Cc: Gary L. Grossman

Payments to Rod Brady

Inv date	Inv #	Amt	date paid	ck #
1/31/2007	13107	\$ 1,105.46	6/13/2007	25323
2/25/2007	22507	\$ 2,702.08	6/13/2007	25323
3/31/2007	331007	\$ 2,405.05	6/13/2007	25323
4/24/2007	42407	\$ 249.45	6/13/2007	25323
4/28/2007	42807	\$ 1,059.10	6/13/2007	25323
4/26/2007	06 exp	\$ 2,743.37	4/27/2007	25077
7/24/2007	72407	\$ 282.93	12/3/2007	26254
8/28/2007	0828comput	\$ 1,220.29	8/28/2007	1358
8/28/2007	0828travel	\$ 1,132.74	8/28/2007	1358
10/18/2006	101806	\$ 386.06	6/13/2007	25323
12/15/2006	121506	\$ 481.54	6/13/2007	25323
9/18/2007	mgmt fee	\$ 10,000.00	9/18/2007	25864
12/17/2007	Nov	\$ 3,000.00	12/17/2007	26326
10/26/2007	Oct mgmt	\$ 10,000.00	10/26/2007	26139
4/10/2007	VSD	\$ 128,000.00	4/10/2007	24842
8/28/2007	VSD fee	\$ 15,000.00	8/28/2007	1358

Hilton Head Homes at Allenwood LLC

Vendor Ledgers

For the Period From Jan 1, 2001 to May 31, 2009

Filter Criteria includes: 1) Names from Rod Brady to Rod Brady. Report order is by ID.

Vendor	Date	Trans No	Amt	check #	check date
Rod Brady	10/12/04	Oct draw	10,000.00	1020	10/1/2004
Rod Brady	9/24/04	0924-exp	582.39	1078	10/7/2004
Rod Brady	10/28/04	Nov draw	10,000.00	1114	10/28/2004
Rod Brady	12/2/04	Dec 04	10,000.00	1148	12/2/2004
Rod Brady	12/29/04	Jan 2005	10,000.00	1208	12/29/2004
Rod Brady	1/26/05	Feb 05 draw	10,000.00	1274	1/26/2005
Rod Brady	1/28/05	0105 exp	1,404.20	1287	2/10/2005
Rod Brady	2/24/05	Mar-Rod	10,000.00	1328	2/24/2005
Rod Brady	3/24/05	April 05	10,000.00	1427	3/24/2005
Rod Brady	4/27/05	May 05	10,000.00	1488	4/27/2005
Rod Brady	4/13/05	0405 exp	333.32	1517	5/6/2005
Rod Brady	4/29/05	0405-1	690.38	1529	5/12/2005
Rod Brady	5/26/05	June 05	10,000.00	1569	5/26/2005
Rod Brady	6/29/05	July 05	10,000.00	1691	6/29/2005
Rod Brady	7/18/05	0705 exp	526.56	1789	7/28/2005
Rod Brady	7/18/05	0705 exp	2,018.53	1789	7/28/2005
Rod Brady	7/31/05	August 05	10,000.00	1799	8/4/2005
Rod Brady	8/17/05	equity distribution	30,000.00	1806	8/17/2005
Rod Brady	9/1/05	lots 13, 15, 21, 24	25,243.41	1948	9/1/2005
Rod Brady	9/29/05	lot 20	8,597.17	2046	9/29/2005
Rod Brady	9/29/05	lot 25	10,071.35	2046	9/29/2005
Rod Brady	9/29/05	lot 31	10,531.30	2046	9/29/2005
Rod Brady	10/31/05	lots 29 & 40	17,704.51	2173	11/1/2005
Rod Brady	11/8/05	OCT EXP	1,032.37	2173	11/1/2005
Rod Brady	11/30/05	Nov 05	15,895.32	2236	12/7/2005
Rod Brady	12/31/05	26,28,30,33,37,39	31,037.66	2390	1/26/2006
Rod Brady	2/28/06	34,38,43,53,55	48,414.87	2564	3/15/2006
Rod Brady	4/4/06	2005 SC tax	3,641.00	2607	4/4/2006
Rod Brady	3/31/06	lots 49, 46, 59	39,119.03	2612	4/12/2006
Rod Brady	4/30/06	lot 42	9,231.42	2705	5/25/2006
Rod Brady	6/27/06	AUTO EXP 06	1,608.83	2752	6/28/2006
Rod Brady	6/27/06	FOOD RECEIPTS 06	836.33	2752	6/28/2006
Rod Brady	6/27/06	OFFICE SUPPLIES 06	161.99	2752	6/28/2006
Rod Brady	6/27/06	INTRO SEMINAR 06	84.99	2752	6/28/2006
Rod Brady	10/23/06	equity distribution	27,937.00		

<date> at <time>

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**Hilton Head Homes at Allenwood LLC
Vendor Ledgers****For the Period From Jan 1, 2001 to May 31, 2009**

Filter Criteria includes: 1) Names from Rod Brady to Rod Brady. Report order is by ID.

Vendor	Date	Trans No	Amt	check #	check date
			396,703.93		

<date> at <time>

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Village Square Development Company
Vendor Ledgers

For the Period From Jan 1, 2001 to Jun 30, 2009

Filter Criteria includes: 1) Names from Rod Brady to Rod Brady. Report order is by ID.

Vendor	Date	Trans No	Debit Amt	Credit Amt	check #	date
Rod Brady	9/29/05	lot 90		500.00	1388	9/29/2005
Rod Brady	10/14/05	1053		137.70	1053	10/14/2005
Rod Brady	11/2/05	10-05 EXP		530.06	1484	11/10/2005
Rod Brady	11/8/05	OCT EXP		628.78	1484	11/10/2005
Rod Brady	11/30/05	NOV 05		-1,288.48	1667	1/27/2006
Rod Brady	12/31/05	88,94,95,151-153-155		5,682.51	1667	1/27/2006
Rod Brady	4/4/06	2005 SC tax		2,854.00	1871	4/4/2006
Rod Brady	3/31/06	96,99,100-103		5,711.36	1874	4/12/2006
Rod Brady	4/10/07	distribution		36,000.00	2333	4/10/2007
Rod Brady	4/1/06	2005 SC tax cr		-994.00	net	4/26/2007
Rod Brady	4/30/06	lot 93		1,750.00	net	4/26/2007
Rod Brady	4/30/06	Nick's April wages		-3,269.40	net	4/26/2007
Rod Brady	5/15/06	lot 130		1,750.00	net	4/26/2007
Rod Brady	4/26/07	expenses		583.84	net	4/26/2007
				50,576.37		

<date> at <time>

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Village Square Development

loan from LRC	\$ 271,442.13
AP to LRC	\$ 88,217.17
AP to LRC Ridgeland	\$ 16,339.42
loan from GLG	\$ 149,750.00
Equity - LRC	\$ 412,006.45
Equity - Brady	\$ 75,494.00
Equity- Long	\$ 77,230.00

Hilton Head Homes

Loan from LRC	\$ 40,400.00
AP from LRC	\$ 10,229.21
Equity - LRC	\$ 902,864.15
Equity - Brady	\$ 161,559.20
Equity- Long	\$ 138,634.19

**NOTICE: THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO THE
SOUTH CAROLINA UNIFORM ARBITRATION ACT, SECTION 15-48-10 ET SEQ. OF
THE CODE OF LAWS OF SOUTH CAROLINA.**

HILTON HEAD HOMES AT ALLENWOOD, LLC

OPERATING AGREEMENT

MEMBERSHIP SHARES IN HILTON HEAD HOMES AT ALLENWOOD, LLC, HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE. MEMBERSHIP SHARES ACQUIRED BY MEMBERS MAY NOT BE SOLD OR OFFERED FOR SALE IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT OF THE MEMBERSHIP SHARES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND SUCH STATE LAWS AS MAY BE APPLICABLE, OR DELIVERY TO THE COMPANY OF AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED. ADDITIONAL RESTRICTIONS ON TRANSFER OF THE MEMBERSHIP SHARES ARE SET FORTH IN THIS AGREEMENT.



THIS OPERATING AGREEMENT ("Agreement") is made and entered into as of the 8th day of July, 2004, by its Manager and Member, Lancaster Redevelopment Corporation, a Pennsylvania corporation (collectively referred to as the "Members" and individually as a "member").

WHEREAS, the Company has been formed as a limited liability company under South Carolina law for the limited purposes hereinafter set forth; and

WHEREAS, the Members wish to adopt this Agreement as the operating agreement of the Company.

NOW, THEREFORE, in consideration of the sum of Ten (\$10.00) Dollars, to each paid in hand, the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Members and the Company covenant and agree as follows:

ARTICLE I. Definitions

Definitions. Whenever used in this Agreement, or any amendment hereof, the following terms shall have the meanings set forth below:

- (a) "Act" shall mean the South Carolina Uniform Limited Liability Company Act of 1996, Sections 33-44-101 et seq. of the Code of Laws of South Carolina (1976), as amended, and any corresponding provisions of future laws.
- (b) "Agreement" shall mean this Operating Agreement, together with any amendments hereto.
- (c) "Articles of Organization" shall mean the Articles of Organization filed with the South Carolina Secretary of State by which the Company was organized as a South Carolina limited liability company pursuant to the Act, together with any amendments thereto.
- (d) "Capital Account" shall mean the account established and maintained for each Member on the books of the Company pursuant to this Agreement.
- (e) "Capital Contribution" or "Contribution to Capital" shall mean the amount of cash and net fair market value (at the time of the contribution) of any property contributed to the Company by or on behalf of a Member.
- (f) "Code" shall mean the Internal Revenue Code of 1986, as amended, and any corresponding provisions of future laws.
- (g) "Company" shall mean Hilton Head Homes at Allenwood, LLC.
- (h) "Company Liability" shall mean any enforceable debt or obligation for which the Company is liable or which is secured by any Company Property.
- (i) "Company Property" shall mean any and all property, real, personal, tangible and intangible, either contributed by a Member as capital, transferred to, or otherwise acquired by the Company.
- (j) "Control" or "Controlled" shall mean with respect to any legal entity, the actual or constructive ownership of more than fifty (50%) percent of all the voting rights in the entity, determined using the constructive ownership rules under Section 318 of the Code, regardless of whether the legal entity in question is a corporation or other legal entity.

(k) **“Disinterested”** shall mean with respect to any Member, a Member who (1) is not a party to a particular transaction or other undertaking, (2) has no material financial interest in any organization that is a party to that undertaking, and (3) is not a Family member of any Person who is either a party to that undertaking or has a material financial interest in any organization that is a party to that undertaking.

(l) **“Dissociation”** shall mean only the action of a Member deemed to be a Dissociation by the Member pursuant to ARTICLE XIV, and shall not have the meaning given it in the Act.

(m) **“Family”** shall mean (1) the spouse, lineal descendants and ancestors of an individual; (2) any estate, trust, guardianship, conservatorship, custodianship or other fiduciary arrangement for the benefit of any one or more of the individuals described in (1) above; and (3) any corporation, partnership, limited liability company or other business organization Controlled by any one or more individuals or entities described in (1) or (2) above.

(n) **“Financial Rights”** shall mean the right to share in the Profits and Losses of the Company and the right to share in distributions.

(o) **“Losses”** shall mean the losses of the Company as determined under ARTICLE XII hereof.

(p) **“Management Committee”** shall mean Lancaster Redevelopment Corporation, or any subsequent Managers, collectively, who are elected from time to time pursuant to ARTICLE VIII.

(q) **“Manager”** shall mean Lancaster Redevelopment Corporation, or any subsequent individual elected to the Management Committee from time to time pursuant to ARTICLE VIII.

(r) **“Member”** shall mean the parties to this Agreement from time to time.

(s) **“Membership Share”** shall mean all of the rights of a Member under this Agreement and under the Act, including, but not limited to, a Member's Financial Rights and Voting Rights.

(t) **“Person”** shall mean an individual, general partnership, limited liability company, limited liability partnership, limited partnership, trust, estate, corporation, custodian, trustee, executor, personal representative, legal representative, administrator, nominee or any other entity or person, and any individual or entity acting in a representative capacity.

(u) **“Profits”** shall mean the profits of the Company as determined under ARTICLE XII hereof.

(v) **“Voting Rights”** shall mean the right of a Member to vote on any matter as provided in this Agreement or under the Act. Any reference to a Member's Voting Rights shall mean the percentage of Voting Rights in the Company held by the Member.

(w) **“Voting Rights in the Company”** shall mean the Voting Rights held by the Members, collectively. Unless otherwise specifically provided herein, reference to a percentage of Voting Rights in the Company shall mean a percentage of the total Voting Rights held by all the Members.

ARTICLE II. Formation, Purposes and Powers

- 2.01 Formation.** The parties to this Agreement hereby agree to and adopt the terms and conditions set forth in this Agreement as the operating agreement of the Company. The Company shall exist under and be governed by the provisions of the Act, except as otherwise provided or modified by the Articles of Organization or this Agreement. The Company shall exist only for the purposes specified in this Agreement and shall not be deemed to create a partnership, joint venture, or any other relationship between the Members.
- 2.02 Name.** The name of the Company shall be Hilton Head Homes at Allenwood, LLC. The Company's name may only be changed by an amendment to the Articles of Organization.
- 2.03 Articles of Organization.** The Articles of Organization have been filed with the South Carolina Secretary of State, and the Company shall remain in compliance with all applicable provisions of the Act necessary to maintain its existence as a South Carolina limited liability company.
- 2.04 Designated Office.** The Company shall maintain a designated office in South Carolina in accordance with the Act. The designated office shall be at the address set forth in the Articles of Organization.
- 2.05 Registered Agent and Address.** The registered agent for service of process on the Company and the street address of the registered agent for service of process on the Company shall be the Person and address set forth in the Articles of Organization.
- 2.06 At-Will Company.** The Company shall be an at-will Company, as that term is defined in the Act. The Company's existence shall commence on the date the Articles of Organization were filed with the South Carolina Secretary of State, unless a later effective date is specified in said Articles of Organization.
- 2.07 Purposes.** The purposes of the Company shall be the acquisition and development of real property, and any such other activities as the Members deem necessary or appropriate.
- 2.08 Construction.** Unless otherwise required by law, if and to the extent the provisions of this Agreement conflict with the Act, this Agreement shall control. If and to the extent the provisions of this Agreement do not conflict with the Act, the Act shall control.

ARTICLE III. Membership and Capitalization

- 3.01 Members.** Each Member's Capital Contribution to the Company, Financial Rights and Voting Rights are shown on EXHIBIT A attached hereto.
- 3.02 Admission of New Members.** Additional Members (including transferees) may be admitted to the Company only with the consent of the Management Committee. The Management Committee shall indicate its consent to the admission of a new Member by executing with the new Member and the Company an amendment to EXHIBIT A of this Agreement setting

forth the names, addresses, and percentage ownership of Financial Rights and Voting Rights of all the Members as a result of the new Member's admission.

(a) Except as otherwise provided in the next paragraph, no creditor of a Member who obtains any portion of a Membership Share by charging order pursuant to the Act, or otherwise, or any Person, including any creditor, receiver, or bankruptcy estate that obtains any rights in the Company by reason of a security interest, pledge or the filing of an action for foreclosure, bankruptcy, receivership, divorce, or any similar proceeding may become a Member in the Company without the unanimous written consent of the Members, obtained after the transfer.

(b) Notwithstanding anything herein to the contrary, if at any time the Company has only one Member, and if that Member's entire Membership Share, or all of that Member's Financial Rights, are transferred voluntarily by the Member by sale, exchange or gift, or involuntarily by reason of the Member's death, incompetence, insolvency, bankruptcy, or dissolution, then the transferee(s) of such Membership Share or Financial Rights shall automatically become full Member(s) of the Company.

3.03 Transferee of Membership Share Admitted as a Member. Upon the transferee(s) of a transferor Member's entire Membership Share or all of the transferor Member's Financial Rights in the Company becoming Member(s), the transferor ceases to be a Member.

3.04 Transferee of Membership Share not Admitted as a Member. If the transferee of all or any part of a Membership Share is not admitted as a Member, he shall be entitled to retain the Financial Rights transferred to him, but he shall not have any Voting Rights and shall not be entitled to participate in the management of the Company or to exercise any other rights of a Member. The transferee is subject to any claims or offsets the Company has against the transferor, regardless of whether those claims or offsets exist at the time of the transfer or arise afterwards. An amendment to this Agreement may change the rights of a transferee, even if the amendment is made after the transfer. A transferee who is not admitted as a Member shall not have the right to seek a judicial determination that it is equitable to dissolve and wind up the Company's business under the Act. The transferor continues to be a Member, entitled to all rights of a Member, other than the rights transferred. Notwithstanding anything herein to the contrary, a transferee who is not admitted as a Member shall not be entitled to receive any distributions from the Company until such transferee delivers to the Management Committee written notice of the transfer, proof of the transfer deemed sufficient by the Management Committee, the transferee's federal and state tax identification numbers, and/or social security number, current legal address and telephone number, and such other information as the Management Committee may reasonably require.

3.05 Redemption of Member's Financial Rights Subjected to Charging Order. In the event a Member's Financial Rights are subjected to a charging order under the Act, the Company may redeem the Member's Financial Rights so charged, with Company Property, at any time prior to foreclosure of said Financial Rights in accordance with the Act. Nothing in this Section shall be construed as affecting or limiting the rights of the judgment debtor and the other Members to redeem any Financial Rights subjected to a charging order with their own property in accordance with the Act.

ARTICLE IV. Mandatory Capital Calls

- 4.01 Mandatory Capital Calls.** The Management Committee may make a mandatory capital call, in whatever amount it deems appropriate, by giving notice to all the Members of the amount each is required to contribute to the Company's capital. Any additional capital shall be contributed by the Members in the same ratio as each Member's Financial Rights bears to the total of all the Financial Rights in the Company. Solely for purposes of this Section, a Member who has transferred his Financial Rights, but whose transferee has not become a Member, shall be deemed to hold the Financial Rights so transferred.

ARTICLE V. Deficit Loan

- 5.01** If any Member fails to make his required Capital Contribution within 30 days after notice of a mandatory capital call ("Defaulting Member"), the amount which the Defaulting Member fails to contribute shall be considered a loan made by the Company to the Defaulting Member ("Deficit Loan"). A Defaulting Member's Deficit Loan shall be payable on demand of the Company as well as out of any distributions from the Company otherwise payable to the Defaulting Member. Said loan shall bear interest, per annum, at the rate of two (2%) percent above the prime rate as published in the *Wall Street Journal* at the date of the loan or, if greater, the rate of interest applicable under Section 1274 of the Code, adjusted each January 1 the Deficit Loan is outstanding. The Defaulting Member shall not be entitled to receive any distributions from the Company until the Deficit Loan of the Defaulting Member has been paid in full.
- 5.02** The Defaulting Member hereby grants to the Company a security interest in his Membership Share to the extent of the Defaulting Member's Deficit Loan. If the Defaulting Member fails to satisfy his Deficit Loan within ten (10) days after the Company's demand for payment, the Defaulting Member shall forfeit his Membership Share, to the extent of any unpaid obligations. The other Members shall not be required to make any additional Capital Contributions by reason of the Defaulting Member's forfeiture. To the extent a Defaulting Member's Deficit Loan remains unsatisfied, the Deficit Loan of the Defaulting Member shall be a personal debt obligation of the Defaulting Member, and the Company may resort to any available legal or equitable remedy to enforce said obligation.

ARTICLE VI. Representations and Warranties

- 6.01 Representations and Warranties of Members.** Each Member hereby represents and warrants to the Company and each other Member, and covenants with the Company and each other Member that:
- (a) the Member is acquiring such Member's Membership Share in the Company for the Member's own account as an investment and without an intent to distribute the Membership Share;

- (b) the Member acknowledges that such Member's Membership Share has not been registered under the Securities Act of 1933 or any state securities laws;
- (c) the Member acknowledges that such Member's Membership Share is subject also to the restrictions on transfer contained in this Agreement and the Act, and may not be resold or transferred by the Member without appropriate registration under applicable securities laws or the availability of an exemption from such requirements and compliance with the restrictions herein;
- (d) the financial capacity of the Member is such that the investment in the Company is not material to the Member's total financial capacity, and the Member has the financial ability to bear the economic risk of the investment and has means for providing for the Member's current needs and personal contingencies and has no need for liquidity with respect to the Member's investment in the Company;
- (e) the Member has such knowledge and experience in financial and business matters that the Member is capable of evaluating the merits and risks of investment in the Company, understands that investment in the Company constitutes a speculative investment with substantial market, operational, competitive, management, economic, tax, interest rate, and other risks, has evaluated the risks associated with investment in the Company AND HAS HAD OPPORTUNITY TO SEEK THE ADVICE OF THE MEMBER'S OWN INDEPENDENT LEGAL COUNSEL AND OTHER INDEPENDENT EXPERTS REGARDING THE TRANSACTION;
- (f) the Member acknowledges that, to the best of the Member's knowledge, the purchase of the Member's Membership Share in the Company was not solicited by the use of general advertising or solicitation, and that no brokerage or similar commission was paid to anyone relating to the Member's acquisition of an interest in the Company;
- (g) the Member has been given sufficient opportunity to ask questions, and receive answers with respect to the Company concerning the terms and conditions of the Member's investment and has been given the opportunity to obtain such additional information necessary to verify the accuracy of the information provided to such Member in order for the Member to evaluate the merits and risks of investment in the Company;
- (h) in the event such Member is not a natural person, the Member is duly organized, validly existing and in good standing under the laws of the state of its formation and has full power to carry on its business and to own and operate its properties and assets as presently owned and operated;
- (i) such Member has taken all action necessary to approve and authorize the execution of this Agreement and to consummate the transaction contemplated hereby; and
- (j) when executed and delivered, this Agreement shall constitute the valid and binding obligations of the Member, enforceable in accordance with its terms and conditions.

The inclusion of the foregoing does not constitute an acknowledgment that an interest in the Company is a security under applicable law, and the Company reserves the right to contest whether an interest in the Company constitutes a security.

6.02 Indemnification. Each Member shall and does hereby agree to indemnify and hold harmless the Company and the other Members from any and all liabilities, losses, costs, damages or expenses (including, without limitation, the costs of litigation and reasonable

attorneys' fees) arising out of, resulting from, or in any way related to the misrepresentation or breach of any representation or warranty of such Member set forth in this Agreement.

ARTICLE VII. Member Meetings

- 7.01 Place of Meetings.** All meetings of the Members shall be held at the Company's principal place of business, or at such other place as shall be decided by the Management Committee.
- 7.02 Time of Meeting.** Meetings of the Members may be called at any time by the Management Committee or any Member by delivery to all Members of written notice at least seven (7) days in advance of the proposed meeting date. The notice shall contain the time, date and place of the meeting.
- 7.03 Member Voting and Quorum.** Each Member shall be entitled to vote in proportion to his Voting Rights in the Company. In order for any vote of the Members to be valid, a quorum must be represented at the meeting either in person or by proxy. 66% percent of the Voting Rights in the Company constitutes a quorum. Unless otherwise provided in this Agreement or the Articles of Organization, once a quorum is established, the affirmative vote of those Members who own 66% percent of the Voting Rights in the Company shall constitute a valid decision of the Members.
- 7.04 Voting by Certain Members.** Voting Rights owned by a corporation or other business entity may be voted by the officer, agent or proxy as the by-laws of that corporation or other governing instruments of the business entity prescribe, or, in the absence of such provision, as the board of directors or other governing body of the corporation or entity may determine.
- (a) Voting Rights owned by an administrator, executor, personal representative, guardian, or conservator may be voted by him, either in person or by proxy, without a transfer of such Voting Rights into his name. Voting Rights owned by a trustee may be voted by him, either in person or by proxy, but no trustee shall be entitled to exercise any Voting Rights held by him without a transfer of the Voting Rights into his name.
- (b) Voting Rights owned by a receiver may be voted by the receiver, and Voting Rights owned by or under the control of a receiver may be voted by the receiver without the transfer thereof into his name if authority so to do is contained in an appropriate order of the court by which such receiver was appointed.
- (c) A Member whose Membership Shares or Voting Rights are pledged (if otherwise permitted hereunder) shall be entitled to vote such Voting Rights until the Voting Rights have been transferred into the name of the pledgee and thereafter the pledgee shall be entitled to vote the Voting Rights so transferred.
- 7.05 Proxies.** Members may vote by proxy appointed by an instrument in writing. A proxy shall be delivered to the other Members before the meeting at which it is to be voted and shall not be valid after the final adjournment of the meeting.

- 7.06 Waiver of Notice.** A Member may waive notice of any meeting by a signed writing. In addition, a Member who attends a meeting waives his right to assert any lack of notice, or defect in notice, of the meeting unless he states such objection at the outset of the meeting.
- 7.07 Manner of Meetings.** Members may participate in meetings by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting as provided herein shall constitute presence in person at such meeting.
- 7.08 Action without Meeting.** The Members may take action without notice and a meeting if all the Members consent to such action and sign a Consent of the Members which sets forth the action to be taken.
- 7.09 Personal Services.** No Member shall be required to perform any services for the Company by virtue of being a Member or Manager of the Company.

ARTICLE VIII. Management and Control

- 8.01 General Authority.** The Company shall be manager managed, as defined in the Act. Except as otherwise expressly provided by this Agreement, any matter relating to the business and affairs of the Company shall be decided by the Management Committee. The Management Committee, or their authorized delegates, shall have full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business. Without limiting the generality of the foregoing, they shall have the power and authority on behalf of the Company to:
- (a) Acquire property, real, personal, tangible and intangible;
 - (b) Borrow money for the Company from banks, other lending institutions, and other Persons and to hypothecate, encumber and grant security interests in the assets of the Company to secure payment of the borrowed sums;
 - (c) Purchase liability and other insurance to protect the Company and the Members;
 - (d) Hold, own, invest and reinvest, purchase and sell, any property, real, personal, tangible and intangible, in the name of the Company, including, but not limited to, deeds, mortgages, leasehold interests, general partnerships, limited partnerships, limited liability companies, common trust funds, mutual funds, stocks, Options, warrants, rights, puts, calls, contracts, futures, bonds, debentures, securities (public and private), and other debt and equity interests of any kind or nature, and to actively trade, speculate on, maintain and manage the same;
 - (e) Enter into, make, and perform contracts, agreements, and other undertakings binding on the Company that may be necessary, appropriate, or advisable in furtherance of the purposes of the Company and make all decisions and waivers thereunder;
 - (f) Employ accountants, legal counsel, managing agents, money managers, property managers, investment advisors and other advisors to perform services for the Company and to compensate them out of Company Property;

- (g) Screen, interview, and examine staff and personnel to be employed by the Company;
- (h) Open and maintain bank and investment accounts and arrangements, draw checks, letters of credit, and other orders for payment of money and designate individuals with authority to sign or give instructions with respect to those accounts and arrangements;
- (i) Pay debts and obligations of the Company to the extent that Company Property is available;
- (j) Sell, purchase, lease, loan, borrow, rent, repair, partition, mortgage, pledge, encumber develop, improve, subdivide or otherwise deal with any property, including Company Property;
- (k) Collect sums due the Company and bring suit on the Company's behalf or defend the Company in any action, and compromise, settle, collect, and otherwise represent, prosecute and defend the legal rights and interests of the Company;
- (l) File on behalf of the Company a voluntary petition for bankruptcy, or bring an action on behalf of the Company for receivership, insolvency or other similar relief in any court of competent jurisdiction, and to defend, answer, respond and otherwise represent the Company in any such action or proceeding; and
- (m) Perform all other acts as may be necessary or appropriate to the conduct of the Company's business, and to execute, acknowledge, verify and deliver any or all instruments desirable to effectuate any of the foregoing.

8.02 Members Approval Required for Certain Major Decisions. Notwithstanding anything herein to the contrary, the following major decisions shall require approval of the Members in the percentages designated:

- (a) Any amendment to this Agreement or the Articles of Organization shall require the approval of those Members who own 66% percent of the Voting Rights in the Company.
- (b) The Company shall not compromise, settle, waive or limit the obligation of any Member to make a Capital Contribution to the Company without the consent of those Disinterested Members who own 66% percent of the Voting Rights owned by all Disinterested Members.
- (c) The Company shall not sell, or contract to sell, or otherwise dispose of all or substantially all of the Company Property without the approval of those Members who own 66% percent of the Voting Rights in the Company. For purposes of this subsection, all or substantially all of the Company Property means 75% percent of such property by value.
- (d) The Company shall not enter into any merger, or any profit sharing, joint venture, or other such arrangement without the approval of those Members who own 66% percent of the Voting Rights in the Company.
- (e) The Company shall not hire anyone who is a member of a Member's Family without the approval of those Members who own 100% percent of the Voting Rights in the Company.

8.03 No Authority of Members. Except as otherwise provided in this Agreement, or as authorized by the Management Committee, no Member is an agent of the Company or has the authority to make any contracts, enter into any transactions, or make any commitments on behalf of the Company.

ARTICLE IX. Managers.

9.01 Number and Qualifications. The number of Managers on the Management Committee shall be at least 1, but not more than 3. As of the date of this Agreement, the number of Managers on the Management Committee shall be 1, and the following are hereby elected to the Management Committee:

(a) Lancaster Redevelopment Corporation

The number of Managers on the Management Committee may be changed by those Members who own 100% percent of the Voting Rights in the Company. Each Manager shall hold office until his successor shall have been elected and qualified, or until his earlier death, resignation or removal from office. Managers need not be residents of the State of South Carolina or Members in the Company or natural persons.

9.02 Election of Managers. The Managers shall be elected by the affirmative vote of those Members who own 66% percent of the Voting Rights in the Company.

9.03 Removal. Managers may be removed from office with or without cause by a vote of those Members who own 66% percent of the Voting Rights in the Company.

9.04 Vacancies. A vacancy occurring in the Management Committee may be filled by a vote of 66% percent of the remaining Managers, or by the sole remaining Manager. Notwithstanding the foregoing, a vacancy created by an increase in the authorized number of Managers shall be filled only by the Members. The Members may elect a Manager at any time to fill any vacancy not filled by the Management Committee.

9.05 Management Committee Meetings.

(a) Quorum. 66% percent of the Managers constitute a quorum. Except as otherwise provided in this Agreement, in order for any vote of the Managers to be valid and constitute an action of the Management Committee, a quorum must be represented at the meeting either in person or by proxy.

(b) Voting. Each Manager shall be entitled to one (1) vote. Once a quorum is established, the affirmative vote of 66% percent of the Managers represented at the meeting shall constitute a valid decision of the Management Committee.

(c) Place. All meetings of the Management Committee shall be held at the Company's principal place of business, or at such other place as shall be agreed upon by 66% percent of the Managers.

(d) Notice. Meetings of the Management Committee may be called at any time by any Manager of the Company, by delivery to all Managers of written notice at least two (2) business days in advance of the proposed meeting date. The notice shall contain the time, date and place of the meeting.

(e) Waiver of Notice. A Manager may waive notice of any meeting by a signed writing. In addition, a Manager who attends a meeting waives his right to assert any lack of notice, or defect in notice, of the meeting unless he states such objection at the outset of the meeting.

- 9.06 Proxy.** Managers may vote by proxy appointed by an instrument in writing. A proxy shall be delivered to the other Managers before the meeting at which it is to be voted and shall not be valid after the final adjournment of the meeting.
- 9.07 Manner of Meetings.** Managers may participate in meetings by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting as provided herein shall constitute presence in person at such meeting.
- 9.08 Action without Meeting.** The Management Committee may take action without notice and a meeting if all of the Managers consent to such action by signing a Consent of the Managers which sets forth the action to be taken and contains the signature of each Manager.
- 9.09 Delegation of Powers.** From time to time, the Management Committee may authorize, or delegate any of its authority to a subcommittee of Persons, or a single Person, whom it shall name, to act on its behalf regarding any matter over which the Management Committee has authority.
- 9.10 Ratification.** The Management Committee may ratify and adopt any and all acts of any Person done on behalf of the Company.
- 9.11 Compensation for Services.** Those Managers who provide services to the Company shall be entitled to reasonable compensation from the Company in an amount to be determined by the Management Committee. Also, the Managers shall be entitled to reimbursement for all expenses reasonably incurred by them on behalf of the Company.

ARTICLE X. Fiduciary Duties; Right to Rely; Indemnification

- 10.01 Duties of Members.** A Member who is not also a Manager owes no duties to the Company or to the Members solely by reason of being a Member; provided, however, that a Member who, pursuant to this Agreement, exercises some or all of the rights of a Manager in the management and conduct of the Company's business is held to the standards of conduct applicable to Managers under this Agreement and the Act to the extent that the Member exercises the managerial authority vested in a Manager by this Agreement or the Act.
- 10.02 Duty of Loyalty.** A Manager's duty of loyalty to the Company and the Members is limited to the following:
- (a) To account to the Company and to hold as trustee for the Company any property, profit or benefit derived by the Manager in the conduct or winding up of the Company's business or derived from a use by the Manager of the Company's property, including the appropriation of a Company opportunity;
 - (b) To refrain from dealing with the Company in the conduct or winding up of the Company's business as or on behalf of a party having an interest adverse to the Company; and

(c) Notwithstanding anything herein to the contrary, the Members and the Company acknowledge and agree that some or all of the Managers, and/or their Family members, either directly or indirectly through other Persons, are engaged in other business and investment activities which may be considered to compete with or be adversarial to the business conducted by the Company; however, the Members and the Company intend and agree that they shall have no interest or rights with respect to any business, investment or other activities of the Managers or their Family members carried on outside the Company. The Members are sophisticated investors and are aware of the extent of the Managers' business and investment activities. No Manager shall be under any obligation to disclose any business opportunity to the Company or the Members. The fiduciary duties of the Managers shall be limited to their dealings with the Company Property.

(i) The Members and the Company further acknowledge that Gary L. Grossman, in his capacity as President and sole shareholder of Lancaster Redevelopment Corporation, has historically and will continue to routinely engage in the development and construction of residential homes and residential development projects, which may compete with activities of the Company.

(ii) The Members and the Company further acknowledge that Lancaster Redevelopment Corporation owns and operates "Forest Homes", located at Rt. 522, RD#1, Box 131K, Selinsgrove, PA 17870, and that Forest Homes manufactures the Engineering Building Systems product that will be purchased by the Company for the Allenwood project.

(iii) Certain Forest Homes Authorized Builders hold protected territory agreements. Forest Homes by Hilton Head Homes, Inc. co-owned by Gary L. Grossman and James R. Brady holds one such protected territory, which includes Beaufort County, South Carolina. On behalf of Hilton Homes, Inc., Gary L. Grossman hereby consents to the sale of Forest Home Engineered Building Systems directly to the Company at the then current wholesale cost. Any volume discounts and/or order incentives accruing under the terms of the Forest Homes Authorized Builder Agreement by and between Forest Homes by Hilton Head Homes, Inc. and Forest Homes a Division of Lancaster Redevelopment Corporation shall remain the property of Forest Homes by Hilton Head Homes, Inc. and not inure to the benefit of the Company.

(iv) James R. Brady of Hilton Head Homes, Inc. holds a South Carolina Contractor's license and may act as the building permit holder for and on behalf of the Company.

(v) In the event James R. Brady and/or Hilton Head Homes, Inc. acts as a building permit holder, it shall be reimbursed for all costs related to this function, including but not limited to insurance costs attributable to the project.

(vi) In order to effectively market the project and control the cost of construction, it is the intention of the Manager to enroll the company in the Forest Homes Business Management System, which will require an initial set-up fee of \$500 and an access fee of \$200 per calendar quarter, these fees will be paid by the Company.

10.03 Fiduciary Duties. Each Manager shall discharge his duties and exercise any of his rights consistently with the obligation of good faith and fair dealing which he owes to the Company and the Members. A Manager does not violate a duty or obligation to the Company merely because the Manager's conduct furthers the Manager's own interest. A Manager may lend money to and transact other business with the Company. As to each loan or transaction, the

rights and obligations of the Manager are the same as those of a Person who is not a Manager, subject to other applicable law.

- 10.04 Right to Rely.** The Managers shall not be held liable to the Company, or to the Members, for relying in good faith upon the records required to be maintained by this Agreement and upon such information, opinions, reports or statements by any of the other Managers, Members, attorneys, accountants, agents, advisors or any other Person who has been selected with reasonable care by or on behalf of the Company, as to matters the Manager reasonably believes are within such other Person's professional or expert competence.
- 10.05 Indemnification of Managers.** To the fullest extent allowed by law, the Managers shall be indemnified and held harmless by the Company for any liability resulting from any act performed or omission made by them in good faith on behalf of the Company, except for acts or omissions of gross negligence, reckless conduct, intentional misconduct, or knowing violation of the law.
- 10.06 Duty of Confidentiality.** Each Manager hereby warrants, covenants and agrees that he will not furnish, divulge, communicate, use to the detriment of the Company or use for the business of any other Person, any of the Company's confidential information, including but not limited to pricing information, data, sales methods, know how, processes, licenses, trade secrets, names of customers, customer lists, names of Members, or the partners, shareholders, members or other principals of any Member, future plans, accounting, marketing, financial data, or contract information.

ARTICLE XI. Capital Accounts and Accounting

- 11.01 Capital Accounts.** The Company shall establish for each Member a Capital Account, which shall be maintained in accordance with Section 704 of the Code and the capital account rules set forth in Treasury Regulations Section 1.704-1(b).
- 11.02 Compliance with Section 704(b) of the Code.** The provisions of this Agreement as they relate to the maintenance of Capital Accounts and allocations of Profits and Losses are intended, and shall be construed, and, if necessary, modified to cause the allocations of Profits, Losses, income, gain, deductions, credit and other items pursuant to this Agreement to have substantial economic effect within the meaning of the Treasury Regulations promulgated under Section 704(b) of the Code. Notwithstanding anything herein to the contrary, this Agreement shall not be construed as creating a deficit restoration obligation.
- 11.03 Tax Matters Partner.** Lancaster Redevelopment Corporation is designated the initial tax matters partner of the Company, as defined in Section 6231(a)(7) of the Code. The Management Committee may designate a new tax matters partner from time to time without amending this Agreement.

ARTICLE XII. Interim Distributions and Allocations

- 12.01 Interim Distributions.** Interim distributions to the Members shall be made in accordance with the following:
- (a) From time to time the Management Committee shall determine to what extent, if any, the Company's cash on hand ("Company Cash") exceeds the current and anticipated needs of the Company's business, including, but not limited to, operating expenses, debt service, acquisitions, payments under Section 707(c) of the Code, all amounts necessary to preserve, maintain and repair any Company Property, reserves against future contingent liabilities, and the retention of funds for future investments and activities. Any Company Cash in excess of such amounts shall be distributed to the Members.
- 12.02** (a) Except as otherwise provided in this Agreement, all distributions to the Members must be made simultaneously to each of the Members and must be made in proportion to the Members' Financial Rights. Such distributions may be in cash or Company Property or partly in both. Items of Company Property need not be distributed proportionately, provided the Members agree upon the value of the property being distributed and the value of the property and the cash received by each Member is proportionate to his Financial Rights.
- (b) Subject to the Act, at the time that a Member becomes entitled to receive a distribution, the Member has the status of and is entitled to all remedies available to a creditor of the Company with respect to the distribution.
- 12.03 Restrictions on Distributions.** Notwithstanding anything herein to the contrary, no distribution to any Member may be made if after giving effect to the distribution either (a) the Company would not be able to pay its debts as they become due in the ordinary course of business, or (b) the Company's total assets would be less than the sum of its total liabilities plus the amount that would be needed if the Company were to be dissolved, wound up and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up and termination of Members whose preferential rights are superior to those receiving the distribution. The provisions of Section 33-44-406 of the Act shall apply in construing this Section.
- 12.04 Calculation of Profits and Losses.** The Profits and Losses of the Company for each fiscal year or other period shall be the taxable income or loss of the Company for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be separately stated pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:
- (a) Any Company income which is exempt from federal income tax and not otherwise taken into account in computing Profits and Losses pursuant to this subsection shall be added to such taxable income or loss.
- (b) Any expenditures of the Company described in Code Section 705(a)(2)(B) (expenditures of the Company not deductible in computing its taxable income and not properly chargeable to a capital account) or treated as such expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i)(2) and (3) (organizational expenditures which the Company elects not to amortize under Code Section 709(b) and certain disallowed losses)

and not otherwise taken into account in computing Profits and Losses pursuant to this subsection shall be subtracted from such taxable income or loss.

(c) Gain or loss with respect to the disposition of Company Property with respect to which gain or loss is recognized for federal income tax purposes shall be computed based upon the "adjusted book value" (as determined in the Treasury Regulations promulgated under Code Section 704) of such property without regard to the adjusted basis.

(d) Depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss shall, for purposes of this subsection, be based upon the "adjusted book value" (as determined in the Treasury Regulations promulgated under Section 704) of Company Property.

12.05 Allocation of Profits and Losses. The Profits and Losses of the Company for any fiscal year of the Company shall be allocated among the Members in accordance with their Financial Rights. The proceeds of any life insurance policy insuring the life of a Member which are received by the Company shall be allocated to the surviving Member(s), and the deceased Member, his estate, successors, or legal representatives shall have no interest in or distributive share of such proceeds.

12.06 Code Section 704(c). In accordance with the provisions of Code Section 704(c), income, gain, loss and deductions with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated to the Members so as to take account of any variation between the adjusted basis of such property and the fair market value at the time of contribution.

12.07 Distributions Subject to Set-Off. Except as otherwise provided in this Agreement, all distributions are subject to set-off by the Company for any past-due obligation of a Member to the Company.

ARTICLE XIII. Dissolution, Winding Up, and Termination

13.01 Dissolution. Except as otherwise provided herein, the Company shall dissolve, its affairs shall be wound up, and the Company shall terminate only upon the happening of one or more of the following events:

(a) The written consent of those Members who own 66% percent of the Voting Rights in the Company;

(b) Any event occurs that makes it unlawful for all or substantially all of the business of the Company to be continued, but any cure of illegality within ninety (90) days after notice to the Company of the event is effective retroactively to the date of the event for purposes of this subsection;

(c) The filing by the Secretary of State of a certificate administratively dissolving the Company pursuant to the Act, unless the Company is reinstated in accordance with the Act.

ARTICLE XIV. Dissociation

14.01 Events of Dissociation. The provisions of the Act relating to dissociation shall not apply to the Company. No Member shall have the power to withdraw from the Company except as provided herein. Only the occurrence of one or more of the following events with respect to a Member shall constitute the Dissociation of such Member:

- (a) Withdrawing, retiring or resigning from the Company by giving written notice to the Company; or
- (b) Withdrawing, retiring or resigning from the Company with the consent of those Members who own 50% percent of the Voting Rights in the Company; or
- (c) If the Member files a voluntary petition for bankruptcy, is adjudicated a bankrupt or has a bankruptcy petition filed against him which is not dismissed within ninety (90) days; or
- (d) On application by the Company or another Member, the Member's expulsion by judicial determination under Section 33-44-601(6) of the Act because the Member:
- (e) Engaged in wrongful conduct that adversely and materially affected the Company's business; or
- (f) Willfully or persistently committed a material breach of this Agreement or of a duty owed to the Company or the other Members under Section 33-44-409 of the Act; or
- (g) Engaged in conduct relating to the Company's business which makes it not reasonably practicable to carry on the business with the Member; or
- (h) Entry of an order by a court of competent jurisdiction adjudicating the Member to be insane, the appointment of a guardian or general conservator for the Member, or a judicial determination that the Member has otherwise become incapable of performing his duties under this Agreement; or
- (i) The giving by a Member of notice to the Company that the Member desires to transfer all or any portion of his Membership Share; or
- (j) The death of the Member; or
- (k) The Disability of the Member (Disability shall mean totally and permanently disabled for a period of twelve (12) months during a fifteen (15) consecutive month period so that a Member is unable to engage in his usual Company duties as determined by a doctor selected and paid by the Company).

ARTICLE XV. Restrictions on Transfer and Buy-Sell Provisions

15.01 Restrictions on Transfer.

- (a) Except for Permitted Transfers as set forth in this Agreement, no Member may voluntarily or involuntarily sell, transfer, gift, assign, pledge, mortgage, hypothecate, or otherwise convey or encumber any portion or all of his Membership Share to any Person without the prior written consent of the Management Committee. If such consent is obtained, the provisions of ARTICLE III shall govern the rights of the transferor and transferee. Any attempted conveyance or encumbrance of all or a portion of a Membership Share not expressly permitted herein shall be null, void and without effect.

15.02 Right to Buy.

(a) **Dissociation.** If a Member Dissociates within the meaning of ARTICLE XIV (a "Triggering Event"), then such Member ("Dissociating Member") is deemed to have offered to the Company all of his Membership Share at the price determined in accordance with this Section.

(b) If the Company does not accept said offer within ten (10) days after receiving written notice of the Triggering Event from the Dissociating Member (or his estate or other legal representative, as the case may be) and the determination of the purchase price, then such Member's Membership Share shall be offered in writing, at the same price and upon the same terms, to the other Members (the "Remaining Members") by delivery of written notice to them. The Company and/or the Remaining Members may accept the offer by delivering written notice to the Dissociating Member. If the Company and/or the Remaining Members accept the offer, then all of the Membership Share offered for sale must be purchased by the Company and/or the Remaining Members. In the event more than one offeree accepts the offer, those accepting shall purchase in proportion to their Membership Shares, unless they agree otherwise.

(c) If none of the Remaining Members accept the offer to purchase the Dissociating Member's Membership Share within ten (10) days after receipt of written notice by them, then the Membership Share may be offered for sale to any Person, provided that such Membership Share shall be sold for at least the same price and upon the same terms at which it was offered to the Company and the Remaining Members. The rights of the transferee of such Membership Share shall be determined in accordance with ARTICLE III.

15.03 Purchase Price. Unless the Member offering or selling his Membership Share hereunder and the Management Committee on behalf of the Company agree otherwise, the purchase price shall be determined in accordance with the following:

(a) The purchase price of the Membership Share shall be the Appraised Value of the Company (as defined herein) multiplied by the Financial Rights associated with the Membership Share being offered hereunder. The Appraised Value of the Company shall be the Fair Market Value (as defined below) of all Company Property less the Fair Market Value of all Company Liabilities obtained by agreement of two (2) appraisers, one appointed by the seller and one appointed by the Management Committee on behalf of the Company. The seller and Company must appoint their respective appraisers by delivering notice of the identity of their respective appraisers to each other within thirty (30) days after Company receives written notice of the Triggering Event from the Dissociating Member (or his estate or other legal representative, as the case may be). If the two (2) appraisers cannot agree on an Appraised Value of the Company within thirty (30) days after the last of them is appointed, then within five (5) days, they shall appoint a third appraiser. The third appraiser shall determine the Appraised Value of the Company within thirty (30) days after his appointment. The Appraised Value shall be the average of the two (2) appraisals which are closest to each other. Fair Market Value is defined as the cash equivalent price at which property would change hands between a hypothetical willing buyer and a hypothetical willing seller, neither being under a compulsion to buy or sell and both having reasonable knowledge of relevant facts. The hypothetical buyer and seller are assumed to be able, as well as willing, to trade and are assumed to be well-informed about the property and concerning the market for such property. The seller and the Company shall each pay the

costs of the appraiser appointed by them, and one-half (1/2) of the cost of the third appraiser.

The purchase price as determined herein shall be conclusive and binding on the parties, their personal representatives, legal representatives, heirs, successors and assigns. If any party fails to appoint an appraiser within the time required herein, the purchase price determined by the appraiser appointed by the other party shall be conclusive and binding upon the seller and purchaser(s), their personal representatives, legal representatives, heirs, successors, and assigns.

15.04 Payment of Purchase Price. The closing of the purchase shall take place at the principal place of business of the Company within sixty (60) days after the purchase price has been determined and an offer accepted, or at such other date and place as the parties may agree.

15.05 Installments. Unless the parties mutually agree otherwise, the purchase price shall be paid in 12 equal and consecutive monthly installments of principal and interest beginning 30 days after the date of the closing. The purchaser(s) shall execute and deliver to the seller a promissory note made payable to the order of the seller which shall bear interest, per annum, at the prime rate as published in the Wall Street Journal at the date of the sale or, if greater, the rate of interest applicable under Section 1274 of the Code. Payments may be anticipated, in whole or in part, at any time and from time to time, without penalty. The note shall provide that upon ten (10) days default of any payment of interest or principal, the note shall become due and payable immediately, at the Option of the holder of the note.

15.06 Upon execution and delivery of the note, the Membership Share (or any portion thereof) shall be conveyed to the purchaser(s). Until the note is paid in full, the Membership Share shall be held by the purchaser(s), but shall be pledged to the seller as collateral security for payment of the note. The seller shall have no right to exercise any Financial Rights or Voting Rights associated with the Membership Share unless and until there is a default on the note.

ARTICLE XVI. Miscellaneous Provisions

16.01 Members' Rights To Receive Information.

(a) The Company shall provide Members and their agents and attorneys access to its records, if any, at the Company's principal office. The Company shall provide former Members and their agents and attorneys access for proper purposes to records pertaining to the period during which they were Members. The right of access provides the opportunity to inspect and copy records during ordinary business hours. The Company may impose a reasonable charge, limited to the costs of labor and material, for copies of records furnished.

(b) The Company shall furnish to a Member, and to the legal representative of a deceased Member or Member under legal disability:

(c) Without demand, information concerning the Company's business or affairs reasonably required for the proper exercise of the Member's rights and performance of the Member's duties under this Agreement and the Act; and

(d) On demand, other information concerning the Company's business or affairs, except to the extent the demand or the information is unreasonable or otherwise improper under the circumstances.

(e) A Member has the right upon written demand given to the Company to obtain at the Company's expense a copy of this Agreement.

16.02 Notices. All notices, consents, requests, demands, offers, reports or other communications required or permitted hereunder shall be in writing and hand delivered or sent by certified or registered mail, postage prepaid, and return receipt requested, to the Management Committee and the Company at the Company's principal place of business and to a Member at the address on EXHIBIT A attached hereto, or to such other address as may hereafter be designated by the giving of notice in accordance with this Section. All notices, consents or other communications shall be deemed given when actually hand delivered, or upon the date of mailing in accordance with this Section.

16.03 Time of Essence. Time is of the essence of this Agreement.

16.04 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina regardless of the residence or domicile, now or in the future, of any party hereto and notwithstanding any conflicts of laws.

16.05 Consent to Jurisdiction. Except as otherwise required by law, the parties to this Agreement hereby agree that the courts of the State of South Carolina shall have sole and exclusive jurisdiction over any matter arising from the interpretation, purpose, effect, or operation of this Agreement, and with regard to all matters associated with operation of the Company's business. Except as otherwise required by law, the parties consent to venue in Charleston County, South Carolina, and waive any rights they may have to assert jurisdiction or venue in any other court, administrative forum, or other adjudicative body.

16.06 Waiver. No waiver of any breach of any covenant, agreement or undertaking contained herein shall operate as a waiver of any subsequent breach of the same covenant, agreement or undertaking or as a waiver of any breach of any other covenant, agreement or undertaking. In the case of a breach by any party of any covenant, agreement or undertaking, the nonbreaching party may nevertheless accept from the other, any payment or performance without waiving its right to exercise any right or remedy provided herein or otherwise, with respect to any such breach which was in existence at the time such payment or performance was accepted by it. No failure of any party to exercise any power given herein or to insist upon strict compliance with any covenant, agreement or undertaking contained herein, or to object to any custom or practice which varies from the terms hereof, shall constitute a waiver of such party's right to demand exact compliance with the terms of this Agreement. The waiver by any party of a breach of any covenant, agreement or undertaking contained herein shall be made only by a written waiver in each case, and no such waiver shall operate or be construed as a waiver of any prior or subsequent breach.

16.07 Severability. If any provision of this Agreement shall, to any extent, be held invalid, illegal or unenforceable, in whole or in part, the validity, legality, and enforceability of the remaining part of such provision, and the validity, legality and enforceability of the other provisions hereof, shall not be affected thereby and each term, covenant or condition shall be valid and enforceable to the fullest extent permitted by law. If any such invalidity shall be

caused by the length of any period of time, the size of any area or the scope of activities set forth in any provision hereof, such period of time, such area or scope or all, shall be considered to be reduced to a period, area, or scope which would cure such invalidity. Any provision of this Agreement which is held invalid, illegal or unenforceable in any jurisdiction shall not be deemed invalid, illegal or unenforceable in any other jurisdiction.

- 16.08 Counterparts.** This Agreement may be executed in more than one counterpart, each such counterpart shall be deemed an original, and all such counterparts shall constitute one and the same agreement. This Agreement shall be effective when executed by all parties, but all parties need not execute the original or the same counterpart.
- 16.09 Captions.** The headings, titles and captions of the Articles and Sections of this Agreement are inserted only to facilitate reference. They shall not define, limit, extend or describe the scope or intent of this Agreement or any provision hereof, and they shall not constitute a part hereof or affect the meaning or interpretation of this Agreement or any part hereof.
- 16.10 Entire Agreement.** This Agreement embodies the entire understanding and agreement among the parties pertaining to the subject matter hereof, and all prior agreements and understandings of the parties, whether written or oral, are terminated and superseded by this Agreement and shall be deemed merged herein.
- 16.11 Remedies Cumulative.** Except as otherwise expressly provided herein, all rights, powers and privileges conferred hereunder upon any party shall be cumulative and not restrictive of those given by law. No remedy herein conferred is exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given by agreement or now or hereafter existing at law or in equity or by statute.
- 16.12 Binding Effect.** This Agreement shall be binding upon, shall inure to the benefit of, and shall be enforceable by and against all the parties and their respective heirs, legal representatives, personal representatives, successors and permitted assigns. Nothing in this Agreement, expressed or implied, is intended to or shall confer upon any Person other than the parties, and their respective heirs, legal representatives, personal representatives, successors and permitted assigns, any rights, remedies, obligations or liabilities.
- 16.13 Use of Terms.** Use of the terms "herein", "hereby", "hereunder", "hereof", "hereinbefore", "hereinafter", and other equivalent words refer to this Agreement in its entirety and not solely to the particular portion of the Agreement in which such word is used. Reference to "this Article", "this Section", or a similar reference to a specific part of this Agreement shall refer to the particular Article, Section or specific part in which such reference appears. Whenever used herein, any pronoun shall be deemed to include both the singular and plural and all genders.
- 16.14 Further Assurances.** Each of the parties will execute, deliver, acknowledge or supply such further documents, instruments and assurances as shall be reasonably necessary or appropriate to carry out the full intent and purposes of this Agreement, including but not limited to

the filing of either a copy of this Agreement or a Memorandum of this Agreement with the applicable government authorities.

- 16.15 Equitable Remedies.** The rights and remedies of the Members, Managers and the Company hereunder shall not be mutually exclusive, and the exercise of one or more of the provisions hereof shall not preclude the exercise of any other provisions hereof. The parties confirm that damages at law may be an inadequate remedy for a breach or threatened breach of this Agreement and agree that in the event of a breach or threatened breach of any provision hereof, the respective rights and obligations hereunder shall be enforceable by specific performance, injunction (temporary and/or permanent), without posting bond, or other equitable remedy, but nothing herein contained is limited to, nor shall it limit or affect any right or rights at law or by statute or otherwise of any aggrieved party against any other party for a breach or threatened breach of any provision hereof, it being the intention of this Section to make clear the agreement of the parties that the respective rights and obligations of the parties hereunder shall be enforceable in equity as well as at law or otherwise.
- 16.16 Exhibits.** The exhibits attached to this Agreement are hereby made a part hereof and incorporated herein by reference. All such exhibits shall read as of the date of this Agreement or, as to any of the exhibits bearing a particular date, as of any other date specified therein.
- 16.17 Effective Date.** This Agreement shall become effective upon the later of the execution of this Agreement by all the Members or the filing of Articles of Organization with the South Carolina Secretary of State.
- 16.18 Arbitration.** Any dispute or controversy arising under or in connection with this Agreement shall be submitted to binding arbitration in accordance with the requirements of the South Carolina Uniform Arbitration Act as then in effect ("SCUAA"). All arbitration proceedings shall be conducted in Charleston, South Carolina. The arbitrators shall be selected as provided in the SCUAA, and the arbitrators shall render a decision on any dispute within one hundred twenty (120) days after the last of the arbitrators has been selected. If any party to this Agreement fails to select an arbitrator with regard to any dispute submitted to arbitration under this Section, within thirty (30) days after receiving notice of the submission to arbitration of such dispute, then the other party shall select an arbitrator for such non-selecting party, and the decision of the arbitrators shall be binding upon all the parties to the dispute, their personal representatives, legal representatives, heirs, successors and assigns. Each party to an arbitration proceeding under this Section shall pay an equal portion of all arbitrators' expenses and fees, together with other expenses of arbitration, except that the parties shall bear their own respective expert witness, professional and attorneys' fees.
- 16.19 Conflict of Interest.** The parties all acknowledge that the law firm of Buist, Byars, Pearce & Taylor, LLC prepared this Agreement on behalf of and in the course of its representation of the Company and that:
- 

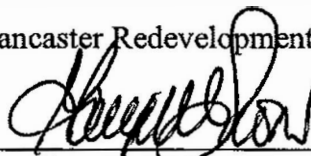
- (a) The parties have been advised by Gray B. Taylor that a conflict exists among their individual interests;
- (b) The parties have been advised by Gray B. Taylor to seek the advice of independent counsel; and
- (c) The parties have had the opportunity to seek the advice of independent counsel.

IN WITNESS WHEREOF, the undersigned have executed and sealed this Operating Agreement as of the day and year first above written.

WITNESSES:

MEMBER

Lancaster Redevelopment Corporation



(SEAL)

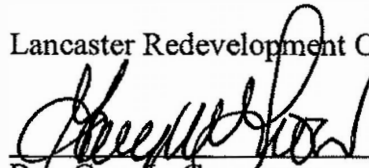
By: Gary L. Grossman

Its: President

WITNESSES:

MANAGER

Lancaster Redevelopment Corporation



(SEAL)

By: Gary L. Grossman

Its: President

EXHIBIT A**Initial Capital Contributions and Voting Rights**

Member	Capital Contribution	Voting Rights
Lancaster Redevelopment Corporation	\$1,000	100%
Total	\$1,000	100%

NOTICE: THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT, SECTION 15-48-10 ET SEQ. OF THE CODE OF LAWS OF SOUTH CAROLINA.

VILLAGE SQUARE DEVELOPMENT COMPANY, LLC

OPERATING AGREEMENT

MEMBERSHIP SHARES IN VILLAGE SQUARE DEVELOPMENT COMPANY, LLC, HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATE. MEMBERSHIP SHARES ACQUIRED BY MEMBERS MAY NOT BE SOLD OR OFFERED FOR SALE IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT OF THE MEMBERSHIP SHARES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND SUCH STATE LAWS AS MAY BE APPLICABLE, OR DELIVERY TO THE COMPANY OF AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED. ADDITIONAL RESTRICTIONS ON TRANSFER OF THE MEMBERSHIP SHARES ARE SET FORTH IN THIS AGREEMENT.

THIS OPERATING AGREEMENT ("Agreement") is made and entered into as of the 8th day of July, 2004, by its Manager and Member, Lancaster Redevelopment Corporation, a Pennsylvania corporation (collectively referred to as the "Members" and individually as a "member").

WHEREAS, the Company has been formed as a limited liability company under South Carolina law for the limited purposes hereinafter set forth; and

WHEREAS, the Members wish to adopt this Agreement as the operating agreement of the Company.

NOW, THEREFORE, in consideration of the sum of Ten (\$10.00) Dollars, to each paid in hand, the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Members and the Company covenant and agree as follows:

ARTICLE I. Definitions

Definitions. Whenever used in this Agreement, or any amendment hereof, the following terms shall have the meanings set forth below:

- (a) **"Act"** shall mean the South Carolina Uniform Limited Liability Company Act of 1996, Sections 33-44-101 et seq. of the Code of Laws of South Carolina (1976), as amended, and any corresponding provisions of future laws.
- (b) **"Agreement"** shall mean this Operating Agreement, together with any amendments hereto.
- (c) **"Articles of Organization"** shall mean the Articles of Organization filed with the South Carolina Secretary of State by which the Company was organized as a South Carolina limited liability company pursuant to the Act, together with any amendments thereto.
- (d) **"Capital Account"** shall mean the account established and maintained for each Member on the books of the Company pursuant to this Agreement.
- (e) **"Capital Contribution" or "Contribution to Capital"** shall mean the amount of cash and net fair market value (at the time of the contribution) of any property contributed to the Company by or on behalf of a Member.
- (f) **"Code"** shall mean the Internal Revenue Code of 1986, as amended, and any corresponding provisions of future laws.
- (g) **"Company"** shall mean Village Square Development Company, LLC.
- (h) **"Company Liability"** shall mean any enforceable debt or obligation for which the Company is liable or which is secured by any Company Property.
- (i) **"Company Property"** shall mean any and all property, real, personal, tangible and intangible, either contributed by a Member as capital, transferred to, or otherwise acquired by the Company.
- (j) **"Control" or "Controlled"** shall mean with respect to any legal entity, the actual or constructive ownership of more than fifty (50%) percent of all the voting rights in the entity, determined using the constructive ownership rules under Section 318 of the Code, regardless of whether the legal entity in question is a corporation or other legal entity.

(k) **“Disinterested”** shall mean with respect to any Member, a Member who (1) is not a party to a particular transaction or other undertaking, (2) has no material financial interest in any organization that is a party to that undertaking, and (3) is not a Family member of any Person who is either a party to that undertaking or has a material financial interest in any organization that is a party to that undertaking.

(l) **“Dissociation”** shall mean only the action of a Member deemed to be a Dissociation by the Member pursuant to ARTICLE XIV, and shall not have the meaning given it in the Act.

(m) **“Family”** shall mean (1) the spouse, lineal descendants and ancestors of an individual; (2) any estate, trust, guardianship, conservatorship, custodianship or other fiduciary arrangement for the benefit of any one or more of the individuals described in (1) above; and (3) any corporation, partnership, limited liability company or other business organization Controlled by any one or more individuals or entities described in (1) or (2) above.

(n) **“Financial Rights”** shall mean the right to share in the Profits and Losses of the Company and the right to share in distributions.

(o) **“Losses”** shall mean the losses of the Company as determined under ARTICLE XII hereof.

(p) **“Management Committee”** shall mean Lancaster Redevelopment Corporation, or any subsequent Managers, collectively, who are elected from time to time pursuant to ARTICLE VIII.

(q) **“Manager”** shall mean Lancaster Redevelopment Corporation, or any subsequent individual elected to the Management Committee from time to time pursuant to ARTICLE VIII.

(r) **“Member”** shall mean the parties to this Agreement from time to time.

(s) **“Membership Share”** shall mean all of the rights of a Member under this Agreement and under the Act, including, but not limited to, a Member’s Financial Rights and Voting Rights.

(t) **“Person”** shall mean an individual, general partnership, limited liability company, limited liability partnership, limited partnership, trust, estate, corporation, custodian, trustee, executor, personal representative, legal representative, administrator, nominee or any other entity or person, and any individual or entity acting in a representative capacity.

(u) **“Profits”** shall mean the profits of the Company as determined under ARTICLE XII hereof.

(v) **“Voting Rights”** shall mean the right of a Member to vote on any matter as provided in this Agreement or under the Act. Any reference to a Member’s Voting Rights shall mean the percentage of Voting Rights in the Company held by the Member.

(w) **“Voting Rights in the Company”** shall mean the Voting Rights held by the Members, collectively. Unless otherwise specifically provided herein, reference to a percentage of Voting Rights in the Company shall mean a percentage of the total Voting Rights held by all the Members.

ARTICLE II. Formation, Purposes and Powers

- 2.01 Formation.** The parties to this Agreement hereby agree to and adopt the terms and conditions set forth in this Agreement as the operating agreement of the Company. The Company shall exist under and be governed by the provisions of the Act, except as otherwise provided or modified by the Articles of Organization or this Agreement. The Company shall exist only for the purposes specified in this Agreement and shall not be deemed to create a partnership, joint venture, or any other relationship between the Members.
- 2.02 Name.** The name of the Company shall be Village Square Development Company, LLC. The Company's name may only be changed by an amendment to the Articles of Organization.
- 2.03 Articles of Organization.** The Articles of Organization have been filed with the South Carolina Secretary of State, and the Company shall remain in compliance with all applicable provisions of the Act necessary to maintain its existence as a South Carolina limited liability company.
- 2.04 Designated Office.** The Company shall maintain a designated office in South Carolina in accordance with the Act. The designated office shall be at the address set forth in the Articles of Organization.
- 2.05 Registered Agent and Address.** The registered agent for service of process on the Company and the street address of the registered agent for service of process on the Company shall be the Person and address set forth in the Articles of Organization.
- 2.06 At-Will Company.** The Company shall be an at-will Company, as that term is defined in the Act. The Company's existence shall commence on the date the Articles of Organization were filed with the South Carolina Secretary of State, unless a later effective date is specified in said Articles of Organization.
- 2.07 Purposes.** The purposes of the Company shall be the acquisition and development of real property, and any such other activities as the Members deem necessary or appropriate.
- 2.08 Construction.** Unless otherwise required by law, if and to the extent the provisions of this Agreement conflict with the Act, this Agreement shall control. If and to the extent the provisions of this Agreement do not conflict with the Act, the Act shall control.

ARTICLE III. Membership and Capitalization

- 3.01 Members.** Each Member's Capital Contribution to the Company, Financial Rights and Voting Rights are shown on EXHIBIT A attached hereto.
- 3.02 Admission of New Members.** Additional Members (including transferees) may be admitted to the Company only with the consent of the Management Committee. The Management Committee shall indicate its consent to the admission of a new Member by executing with

the new Member and the Company an amendment to EXHIBIT A of this Agreement setting forth the names, addresses, and percentage ownership of Financial Rights and Voting Rights of all the Members as a result of the new Member's admission.

(a) Except as otherwise provided in the next paragraph, no creditor of a Member who obtains any portion of a Membership Share by charging order pursuant to the Act, or otherwise, or any Person, including any creditor, receiver, or bankruptcy estate that obtains any rights in the Company by reason of a security interest, pledge or the filing of an action for foreclosure, bankruptcy, receivership, divorce, or any similar proceeding may become a Member in the Company without the unanimous written consent of the Members, obtained after the transfer.

(b) Notwithstanding anything herein to the contrary, if at any time the Company has only one Member, and if that Member's entire Membership Share, or all of that Member's Financial Rights, are transferred voluntarily by the Member by sale, exchange or gift, or involuntarily by reason of the Member's death, incompetence, insolvency, bankruptcy, or dissolution, then the transferee(s) of such Membership Share or Financial Rights shall automatically become full Member(s) of the Company.

3.03 Transferee of Membership Share Admitted as a Member. Upon the transferee(s) of a transferor Member's entire Membership Share or all of the transferor Member's Financial Rights in the Company becoming Member(s), the transferor ceases to be a Member.

3.04 Transferee of Membership Share not Admitted as a Member. If the transferee of all or any part of a Membership Share is not admitted as a Member, he shall be entitled to retain the Financial Rights transferred to him, but he shall not have any Voting Rights and shall not be entitled to participate in the management of the Company or to exercise any other rights of a Member. The transferee is subject to any claims or offsets the Company has against the transferor, regardless of whether those claims or offsets exist at the time of the transfer or arise afterwards. An amendment to this Agreement may change the rights of a transferee, even if the amendment is made after the transfer. A transferee who is not admitted as a Member shall not have the right to seek a judicial determination that it is equitable to dissolve and wind up the Company's business under the Act. The transferor continues to be a Member, entitled to all rights of a Member, other than the rights transferred. Notwithstanding anything herein to the contrary, a transferee who is not admitted as a Member shall not be entitled to receive any distributions from the Company until such transferee delivers to the Management Committee written notice of the transfer, proof of the transfer deemed sufficient by the Management Committee, the transferee's federal and state tax identification numbers, and/or social security number, current legal address and telephone number, and such other information as the Management Committee may reasonably require.

3.05 Redemption of Member's Financial Rights Subjected to Charging Order. In the event a Member's Financial Rights are subjected to a charging order under the Act, the Company may redeem the Member's Financial Rights so charged, with Company Property, at any time prior to foreclosure of said Financial Rights in accordance with the Act. Nothing in this Section shall be construed as affecting or limiting the rights of the judgment debtor and the

other Members to redeem any Financial Rights subjected to a charging order with their own property in accordance with the Act.

ARTICLE IV. Mandatory Capital Calls

- 4.01 Mandatory Capital Calls.** The Management Committee may make a mandatory capital call, in whatever amount it deems appropriate, by giving notice to all the Members of the amount each is required to contribute to the Company's capital. Any additional capital shall be contributed by the Members in the same ratio as each Member's Financial Rights bears to the total of all the Financial Rights in the Company. Solely for purposes of this Section, a Member who has transferred his Financial Rights, but whose transferee has not become a Member, shall be deemed to hold the Financial Rights so transferred.

ARTICLE V. Deficit Loan

- 5.01** If any Member fails to make his required Capital Contribution within 30 days after notice of a mandatory capital call ("Defaulting Member"), the amount which the Defaulting Member fails to contribute shall be considered a loan made by the Company to the Defaulting Member ("Deficit Loan"). A Defaulting Member's Deficit Loan shall be payable on demand of the Company as well as out of any distributions from the Company otherwise payable to the Defaulting Member. Said loan shall bear interest, per annum, at the rate of two (2%) percent above the prime rate as published in the *Wall Street Journal* at the date of the loan or, if greater, the rate of interest applicable under Section 1274 of the Code, adjusted each January 1 the Deficit Loan is outstanding. The Defaulting Member shall not be entitled to receive any distributions from the Company until the Deficit Loan of the Defaulting Member has been paid in full.
- 5.02** The Defaulting Member hereby grants to the Company a security interest in his Membership Share to the extent of the Defaulting Member's Deficit Loan. If the Defaulting Member fails to satisfy his Deficit Loan within ten (10) days after the Company's demand for payment, the Defaulting Member shall forfeit his Membership Share, to the extent of any unpaid obligations. The other Members shall not be required to make any additional Capital Contributions by reason of the Defaulting Member's forfeiture. To the extent a Defaulting Member's Deficit Loan remains unsatisfied, the Deficit Loan of the Defaulting Member shall be a personal debt obligation of the Defaulting Member, and the Company may resort to any available legal or equitable remedy to enforce said obligation.

ARTICLE VI. Representations and Warranties

- 6.01 Representations and Warranties of Members.** Each Member hereby represents and warrants to the Company and each other Member, and covenants with the Company and each other Member that:

- (a) the Member is acquiring such Member's Membership Share in the Company for the Member's own account as an investment and without an intent to distribute the Membership Share;
- (b) the Member acknowledges that such Member's Membership Share has not been registered under the Securities Act of 1933 or any state securities laws;
- (c) the Member acknowledges that such Member's Membership Share is subject also to the restrictions on transfer contained in this Agreement and the Act, and may not be resold or transferred by the Member without appropriate registration under applicable securities laws or the availability of an exemption from such requirements and compliance with the restrictions herein;
- (d) the financial capacity of the Member is such that the investment in the Company is not material to the Member's total financial capacity, and the Member has the financial ability to bear the economic risk of the investment and has means for providing for the Member's current needs and personal contingencies and has no need for liquidity with respect to the Member's investment in the Company;
- (e) the Member has such knowledge and experience in financial and business matters that the Member is capable of evaluating the merits and risks of investment in the Company, understands that investment in the Company constitutes a speculative investment with substantial market, operational, competitive, management, economic, tax, interest rate, and other risks, has evaluated the risks associated with investment in the Company AND HAS HAD OPPORTUNITY TO SEEK THE ADVICE OF THE MEMBER'S OWN INDEPENDENT LEGAL COUNSEL AND OTHER INDEPENDENT EXPERTS REGARDING THE TRANSACTION;
- (f) the Member acknowledges that, to the best of the Member's knowledge, the purchase of the Member's Membership Share in the Company was not solicited by the use of general advertising or solicitation, and that no brokerage or similar commission was paid to anyone relating to the Member's acquisition of an interest in the Company;
- (g) the Member has been given sufficient opportunity to ask questions, and receive answers with respect to the Company concerning the terms and conditions of the Member's investment and has been given the opportunity to obtain such additional information necessary to verify the accuracy of the information provided to such Member in order for the Member to evaluate the merits and risks of investment in the Company;
- (h) in the event such Member is not a natural person, the Member is duly organized, validly existing and in good standing under the laws of the state of its formation and has full power to carry on its business and to own and operate its properties and assets as presently owned and operated;
- (i) such Member has taken all action necessary to approve and authorize the execution of this Agreement and to consummate the transaction contemplated hereby; and
- (j) when executed and delivered, this Agreement shall constitute the valid and binding obligations of the Member, enforceable in accordance with its terms and conditions.

The inclusion of the foregoing does not constitute an acknowledgment that an interest in the Company is a security under applicable law, and the Company reserves the right to contest whether an interest in the Company constitutes a security.

- 6.02 Indemnification.** Each Member shall and does hereby agree to indemnify and hold harmless the Company and the other Members from any and all liabilities, losses, costs, damages or expenses (including, without limitation, the costs of litigation and reasonable attorneys' fees) arising out of, resulting from, or in any way related to the misrepresentation or breach of any representation or warranty of such Member set forth in this Agreement.

ARTICLE VII. Member Meetings

- 7.01 Place of Meetings.** All meetings of the Members shall be held at the Company's principal place of business, or at such other place as shall be decided by the Management Committee.
- 7.02 Time of Meeting.** Meetings of the Members may be called at any time by the Management Committee or any Member by delivery to all Members of written notice at least seven (7) days in advance of the proposed meeting date. The notice shall contain the time, date and place of the meeting.
- 7.03 Member Voting and Quorum.** Each Member shall be entitled to vote in proportion to his Voting Rights in the Company. In order for any vote of the Members to be valid, a quorum must be represented at the meeting either in person or by proxy. 66% percent of the Voting Rights in the Company constitutes a quorum. Unless otherwise provided in this Agreement or the Articles of Organization, once a quorum is established, the affirmative vote of those Members who own 66% percent of the Voting Rights in the Company shall constitute a valid decision of the Members.
- 7.04 Voting by Certain Members.** Voting Rights owned by a corporation or other business entity may be voted by the officer, agent or proxy as the by-laws of that corporation or other governing instruments of the business entity prescribe, or, in the absence of such provision, as the board of directors or other governing body of the corporation or entity may determine.
- (a) Voting Rights owned by an administrator, executor, personal representative, guardian, or conservator may be voted by him, either in person or by proxy, without a transfer of such Voting Rights into his name. Voting Rights owned by a trustee may be voted by him, either in person or by proxy, but no trustee shall be entitled to exercise any Voting Rights held by him without a transfer of the Voting Rights into his name.
- (b) Voting Rights owned by a receiver may be voted by the receiver, and Voting Rights owned by or under the control of a receiver may be voted by the receiver without the transfer thereof into his name if authority so to do is contained in an appropriate order of the court by which such receiver was appointed.
- (c) A Member whose Membership Shares or Voting Rights are pledged (if otherwise permitted hereunder) shall be entitled to vote such Voting Rights until the Voting Rights have been transferred into the name of the pledgee and thereafter the pledgee shall be entitled to vote the Voting Rights so transferred.
- 7.05 Proxies.** Members may vote by proxy appointed by an instrument in writing. A proxy shall be delivered to the other Members before the meeting at which it is to be voted and shall not be valid after the final adjournment of the meeting.

- 7.06 Waiver of Notice.** A Member may waive notice of any meeting by a signed writing. In addition, a Member who attends a meeting waives his right to assert any lack of notice, or defect in notice, of the meeting unless he states such objection at the outset of the meeting.
- 7.07 Manner of Meetings.** Members may participate in meetings by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting as provided herein shall constitute presence in person at such meeting.
- 7.08 Action without Meeting.** The Members may take action without notice and a meeting if all the Members consent to such action and sign a Consent of the Members which sets forth the action to be taken.
- 7.09 Personal Services.** No Member shall be required to perform any services for the Company by virtue of being a Member or Manager of the Company.

ARTICLE VIII. Management and Control

- 8.01 General Authority.** The Company shall be manager managed, as defined in the Act. Except as otherwise expressly provided by this Agreement, any matter relating to the business and affairs of the Company shall be decided by the Management Committee. The Management Committee, or their authorized delegates, shall have full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business. Without limiting the generality of the foregoing, they shall have the power and authority on behalf of the Company to:
- (a) Acquire property, real, personal, tangible and intangible;
 - (b) Borrow money for the Company from banks, other lending institutions, and other Persons and to hypothecate, encumber and grant security interests in the assets of the Company to secure payment of the borrowed sums;
 - (c) Purchase liability and other insurance to protect the Company and the Members;
 - (d) Hold, own, invest and reinvest, purchase and sell, any property, real, personal, tangible and intangible, in the name of the Company, including, but not limited to, deeds, mortgages, leasehold interests, general partnerships, limited partnerships, limited liability companies, common trust funds, mutual funds, stocks, Options, warrants, rights, puts, calls, contracts, futures, bonds, debentures, securities (public and private), and other debt and equity interests of any kind or nature, and to actively trade, speculate on, maintain and manage the same;
 - (e) Enter into, make, and perform contracts, agreements, and other undertakings binding on the Company that may be necessary, appropriate, or advisable in furtherance of the purposes of the Company and make all decisions and waivers thereunder;

- (f) Employ accountants, legal counsel, managing agents, money managers, property managers, investment advisors and other advisors to perform services for the Company and to compensate them out of Company Property;
- (g) Screen, interview, and examine staff and personnel to be employed by the Company;
- (h) Open and maintain bank and investment accounts and arrangements, draw checks, letters of credit, and other orders for payment of money and designate individuals with authority to sign or give instructions with respect to those accounts and arrangements;
- (i) Pay debts and obligations of the Company to the extent that Company Property is available;
- (j) Sell, purchase, lease, loan, borrow, rent, repair, partition, mortgage, pledge, encumber develop, improve, subdivide or otherwise deal with any property, including Company Property;
- (k) Collect sums due the Company and bring suit on the Company's behalf or defend the Company in any action, and compromise, settle, collect, and otherwise represent, prosecute and defend the legal rights and interests of the Company;
- (l) File on behalf of the Company a voluntary petition for bankruptcy, or bring an action on behalf of the Company for receivership, insolvency or other similar relief in any court of competent jurisdiction, and to defend, answer, respond and otherwise represent the Company in any such action or proceeding; and
- (m) Perform all other acts as may be necessary or appropriate to the conduct of the Company's business, and to execute, acknowledge, verify and deliver any or all instruments desirable to effectuate any of the foregoing.

8.02 Members Approval Required for Certain Major Decisions. Notwithstanding anything herein to the contrary, the following major decisions shall require approval of the Members in the percentages designated:

- (a) Any amendment to this Agreement or the Articles of Organization shall require the approval of those Members who own 66% percent of the Voting Rights in the Company.
- (b) The Company shall not compromise, settle, waive or limit the obligation of any Member to make a Capital Contribution to the Company without the consent of those Disinterested Members who own 66% percent of the Voting Rights owned by all Disinterested Members.
- (c) The Company shall not sell, or contract to sell, or otherwise dispose of all or substantially all of the Company Property without the approval of those Members who own 66% percent of the Voting Rights in the Company. For purposes of this subsection, all or substantially all of the Company Property means 75% percent of such property by value.
- (d) The Company shall not enter into any merger, or any profit sharing, joint venture, or other such arrangement without the approval of those Members who own 66% percent of the Voting Rights in the Company.
- (e) The Company shall not hire anyone who is a member of a Member's Family without the approval of those Members who own 100% percent of the Voting Rights in the Company.

8.03 No Authority of Members. Except as otherwise provided in this Agreement, or as authorized by the Management Committee, no Member is an agent of the Company or has

the authority to make any contracts, enter into any transactions, or make any commitments on behalf of the Company.

ARTICLE IX. Managers.

- 9.01 Number and Qualifications.** The number of Managers on the Management Committee shall be at least 1, but not more than 3. As of the date of this Agreement, the number of Managers on the Management Committee shall be 1, and the following are hereby elected to the Management Committee:

(a) Lancaster Redevelopment Corporation

The number of Managers on the Management Committee may be changed by those Members who own 100% percent of the Voting Rights in the Company. Each Manager shall hold office until his successor shall have been elected and qualified, or until his earlier death, resignation or removal from office. Managers need not be residents of the State of South Carolina or Members in the Company or natural persons.

- 9.02 Election of Managers.** The Managers shall be elected by the affirmative vote of those Members who own 66% percent of the Voting Rights in the Company.
- 9.03 Removal.** Managers may be removed from office with or without cause by a vote of those Members who own 66% percent of the Voting Rights in the Company.
- 9.04 Vacancies.** A vacancy occurring in the Management Committee may be filled by a vote of 66% percent of the remaining Managers, or by the sole remaining Manager. Notwithstanding the foregoing, a vacancy created by an increase in the authorized number of Managers shall be filled only by the Members. The Members may elect a Manager at any time to fill any vacancy not filled by the Management Committee.
- 9.05 Management Committee Meetings.**
- (a) Quorum.** 66% percent of the Managers constitute a quorum. Except as otherwise provided in this Agreement, in order for any vote of the Managers to be valid and constitute an action of the Management Committee, a quorum must be represented at the meeting either in person or by proxy.
 - (b) Voting.** Each Manager shall be entitled to one (1) vote. Once a quorum is established, the affirmative vote of 66% percent of the Managers represented at the meeting shall constitute a valid decision of the Management Committee.
 - (c) Place.** All meetings of the Management Committee shall be held at the Company's principal place of business, or at such other place as shall be agreed upon by 66% percent of the Managers.
 - (d) Notice.** Meetings of the Management Committee may be called at any time by any Manager of the Company, by delivery to all Managers of written notice at least two (2) business days in advance of the proposed meeting date. The notice shall contain the time, date and place of the meeting.

- (e) **Waiver of Notice.** A Manager may waive notice of any meeting by a signed writing. In addition, a Manager who attends a meeting waives his right to assert any lack of notice, or defect in notice, of the meeting unless he states such objection at the outset of the meeting.
- 9.06 **Proxy.** Managers may vote by proxy appointed by an instrument in writing. A proxy shall be delivered to the other Managers before the meeting at which it is to be voted and shall not be valid after the final adjournment of the meeting.
- 9.07 **Manner of Meetings.** Managers may participate in meetings by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting as provided herein shall constitute presence in person at such meeting.
- 9.08 **Action without Meeting.** The Management Committee may take action without notice and a meeting if all of the Managers consent to such action by signing a Consent of the Managers which sets forth the action to be taken and contains the signature of each Manager.
- 9.09 **Delegation of Powers.** From time to time, the Management Committee may authorize, or delegate any of its authority to a subcommittee of Persons, or a single Person, whom it shall name, to act on its behalf regarding any matter over which the Management Committee has authority.
- 9.10 **Ratification.** The Management Committee may ratify and adopt any and all acts of any Person done on behalf of the Company.
- 9.11 **Compensation for Services.** Those Managers who provide services to the Company shall be entitled to reasonable compensation from the Company in an amount to be determined by the Management Committee. Also, the Managers shall be entitled to reimbursement for all expenses reasonably incurred by them on behalf of the Company.

ARTICLE X. Fiduciary Duties; Right to Rely; Indemnification

- 10.01 **Duties of Members.** A Member who is not also a Manager owes no duties to the Company or to the Members solely by reason of being a Member; provided, however, that a Member who, pursuant to this Agreement, exercises some or all of the rights of a Manager in the management and conduct of the Company's business is held to the standards of conduct applicable to Managers under this Agreement and the Act to the extent that the Member exercises the managerial authority vested in a Manager by this Agreement or the Act.
- 10.02 **Duty of Loyalty.** A Manager's duty of loyalty to the Company and the Members is limited to the following:
- (a) To account to the Company and to hold as trustee for the Company any property, profit or benefit derived by the Manager in the conduct or winding up of the Company's business or derived from a use by the Manager of the Company's property, including the appropriation of a Company opportunity;

(b) To refrain from dealing with the Company in the conduct or winding up of the Company's business as or on behalf of a party having an interest adverse to the Company; and

(c) Notwithstanding anything herein to the contrary, the Members and the Company acknowledge and agree that some or all of the Managers, and/or their Family members, either directly or indirectly through other Persons, are engaged in other business and investment activities which may be considered to compete with or be adversarial to the business conducted by the Company; however, the Members and the Company intend and agree that they shall have no interest or rights with respect to any business, investment or other activities of the Managers or their Family members carried on outside the Company. The Members are sophisticated investors and are aware of the extent of the Managers' business and investment activities. No Manager shall be under any obligation to disclose any business opportunity to the Company or the Members. The fiduciary duties of the Managers shall be limited to their dealings with the Company Property.

(i) The Members and the Company further acknowledge that Gary L. Grossman, in his capacity as President and sole shareholder of Lancaster Redevelopment Corporation, has historically and will continue to routinely engage in the development and construction of residential homes and residential development projects, which may compete with activities of the Company.

(ii) The Members and the Company further acknowledge that Lancaster Redevelopment Corporation owns and operates "Forest Homes", located at Rt. 522, RD#1, Box 131K, Selinsgrove, PA 17870, and that Forest Homes manufactures the Engineering Building Systems product that will be purchased by the Company for the Allenwood project.

(iii) Certain Forest Homes Authorized Builders hold protected territory agreements. Forest Homes by Hilton Head Homes, Inc. co-owned by Gary L. Grossman and James R. Brady holds one such protected territory, which includes Beaufort County, South Carolina. On behalf of Hilton Homes, Inc., Gary L. Grossman hereby consents to the sale of Forest Home Engineered Building Systems directly to the Company at the then current wholesale cost. Any volume discounts and/or order incentives accruing under the terms of the Forest Homes Authorized Builder Agreement by and between Forest Homes by Hilton Head Homes, Inc. and Forest Homes a Division of Lancaster Redevelopment Corporation shall remain the property of Forest Homes by Hilton Head Homes, Inc. and not inure to the benefit of the Company.

(iv) James R. Brady of Hilton Head Homes, Inc. holds a South Carolina Contractor's license and may act as the building permit holder for and on behalf of the Company.

(v) In the event James R. Brady and/or Hilton Head Homes, Inc. acts as a building permit holder, it shall be reimbursed for all costs related to this function, including but not limited to insurance costs attributable to the project.

(vi) In order to effectively market the project and control the cost of construction, it is the intention of the Manager to enroll the company in the Forest Homes Business Management System, which will require an initial set-up fee of \$500 and an access fee of \$200 per calendar quarter, these fees will be paid by the Company.

10.03 Fiduciary Duties. Each Manager shall discharge his duties and exercise any of his rights consistently with the obligation of good faith and fair dealing which he owes to the Company and the Members. A Manager does not violate a duty or obligation to the Company merely

because the Manager's conduct furthers the Manager's own interest. A Manager may lend money to and transact other business with the Company. As to each loan or transaction, the rights and obligations of the Manager are the same as those of a Person who is not a Manager, subject to other applicable law.

- 10.04 Right to Rely.** The Managers shall not be held liable to the Company, or to the Members, for relying in good faith upon the records required to be maintained by this Agreement and upon such information, opinions, reports or statements by any of the other Managers, Members, attorneys, accountants, agents, advisors or any other Person who has been selected with reasonable care by or on behalf of the Company, as to matters the Manager reasonably believes are within such other Person's professional or expert competence.
- 10.05 Indemnification of Managers.** To the fullest extent allowed by law, the Managers shall be indemnified and held harmless by the Company for any liability resulting from any act performed or omission made by them in good faith on behalf of the Company, except for acts or omissions of gross negligence, reckless conduct, intentional misconduct, or knowing violation of the law.
- 10.06 Duty of Confidentiality.** Each Manager hereby warrants, covenants and agrees that he will not furnish, divulge, communicate, use to the detriment of the Company or use for the business of any other Person, any of the Company's confidential information, including but not limited to pricing information, data, sales methods, know how, processes, licenses, trade secrets, names of customers, customer lists, names of Members, or the partners, shareholders, members or other principals of any Member, future plans, accounting, marketing, financial data, or contract information.

ARTICLE XI. Capital Accounts and Accounting

- 11.01 Capital Accounts.** The Company shall establish for each Member a Capital Account, which shall be maintained in accordance with Section 704 of the Code and the capital account rules set forth in Treasury Regulations Section 1.704-1(b).
- 11.02 Compliance with Section 704(b) of the Code.** The provisions of this Agreement as they relate to the maintenance of Capital Accounts and allocations of Profits and Losses are intended, and shall be construed, and, if necessary, modified to cause the allocations of Profits, Losses, income, gain, deductions, credit and other items pursuant to this Agreement to have substantial economic effect within the meaning of the Treasury Regulations promulgated under Section 704(b) of the Code. Notwithstanding anything herein to the contrary, this Agreement shall not be construed as creating a deficit restoration obligation.
- 11.03 Tax Matters Partner.** Lancaster Redevelopment Corporation is designated the initial tax matters partner of the Company, as defined in Section 6231(a)(7) of the Code. The Management Committee may designate a new tax matters partner from time to time without amending this Agreement.

ARTICLE XII. Interim Distributions and Allocations

- 12.01 Interim Distributions.** Interim distributions to the Members shall be made in accordance with the following:
- (a) From time to time the Management Committee shall determine to what extent, if any, the Company's cash on hand ("Company Cash") exceeds the current and anticipated needs of the Company's business, including, but not limited to, operating expenses, debt service, acquisitions, payments under Section 707(c) of the Code, all amounts necessary to preserve, maintain and repair any Company Property, reserves against future contingent liabilities, and the retention of funds for future investments and activities. Any Company Cash in excess of such amounts shall be distributed to the Members.
- 12.02 (a)** Except as otherwise provided in this Agreement, all distributions to the Members must be made simultaneously to each of the Members and must be made in proportion to the Members' Financial Rights. Such distributions may be in cash or Company Property or partly in both. Items of Company Property need not be distributed proportionately, provided the Members agree upon the value of the property being distributed and the value of the property and the cash received by each Member is proportionate to his Financial Rights.
- (b) Subject to the Act, at the time that a Member becomes entitled to receive a distribution, the Member has the status of and is entitled to all remedies available to a creditor of the Company with respect to the distribution.
- 12.03 Restrictions on Distributions.** Notwithstanding anything herein to the contrary, no distribution to any Member may be made if after giving effect to the distribution either (a) the Company would not be able to pay its debts as they become due in the ordinary course of business, or (b) the Company's total assets would be less than the sum of its total liabilities plus the amount that would be needed if the Company were to be dissolved, wound up and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up and termination of Members whose preferential rights are superior to those receiving the distribution. The provisions of Section 33-44-406 of the Act shall apply in construing this Section.
- 12.04 Calculation of Profits and Losses.** The Profits and Losses of the Company for each fiscal year or other period shall be the taxable income or loss of the Company for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be separately stated pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:
- (a) Any Company income which is exempt from federal income tax and not otherwise taken into account in computing Profits and Losses pursuant to this subsection shall be added to such taxable income or loss.
- (b) Any expenditures of the Company described in Code Section 705(a)(2)(B) (expenditures of the Company not deductible in computing its taxable income and not properly chargeable to a capital account) or treated as such expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i)(2) and (3) (organizational expenditures which the Company elects not to amortize under Code Section 709(b) and certain disallowed losses)

and not otherwise taken into account in computing Profits and Losses pursuant to this subsection shall be subtracted from such taxable income or loss.

(c) Gain or loss with respect to the disposition of Company Property with respect to which gain or loss is recognized for federal income tax purposes shall be computed based upon the "adjusted book value" (as determined in the Treasury Regulations promulgated under Code Section 704) of such property without regard to the adjusted basis.

(d) Depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss shall, for purposes of this subsection, be based upon the "adjusted book value" (as determined in the Treasury Regulations promulgated under Section 704) of Company Property.

12.05 Allocation of Profits and Losses. The Profits and Losses of the Company for any fiscal year of the Company shall be allocated among the Members in accordance with their Financial Rights. The proceeds of any life insurance policy insuring the life of a Member which are received by the Company shall be allocated to the surviving Member(s), and the deceased Member, his estate, successors, or legal representatives shall have no interest in or distributive share of such proceeds.

12.06 Code Section 704(c). In accordance with the provisions of Code Section 704(c), income, gain, loss and deductions with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated to the Members so as to take account of any variation between the adjusted basis of such property and the fair market value at the time of contribution.

12.07 Distributions Subject to Set-Off. Except as otherwise provided in this Agreement, all distributions are subject to set-off by the Company for any past-due obligation of a Member to the Company.

ARTICLE XIII. Dissolution, Winding Up, and Termination

13.01 Dissolution. Except as otherwise provided herein, the Company shall dissolve, its affairs shall be wound up, and the Company shall terminate only upon the happening of one or more of the following events:

(a) The written consent of those Members who own 66% percent of the Voting Rights in the Company;

(b) Any event occurs that makes it unlawful for all or substantially all of the business of the Company to be continued, but any cure of illegality within ninety (90) days after notice to the Company of the event is effective retroactively to the date of the event for purposes of this subsection;

(c) The filing by the Secretary of State of a certificate administratively dissolving the Company pursuant to the Act, unless the Company is reinstated in accordance with the Act.

ARTICLE XIV. Dissociation

- 14.01 Events of Dissociation.** The provisions of the Act relating to dissociation shall not apply to the Company. No Member shall have the power to withdraw from the Company except as provided herein. Only the occurrence of one or more of the following events with respect to a Member shall constitute the Dissociation of such Member:
- (a) Withdrawing, retiring or resigning from the Company by giving written notice to the Company; or
 - (b) Withdrawing, retiring or resigning from the Company with the consent of those Members who own 50% percent of the Voting Rights in the Company; or
 - (c) If the Member files a voluntary petition for bankruptcy, is adjudicated a bankrupt or has a bankruptcy petition filed against him which is not dismissed within ninety (90) days; or
 - (d) On application by the Company or another Member, the Member's expulsion by judicial determination under Section 33-44-601(6) of the Act because the Member:
 - (e) Engaged in wrongful conduct that adversely and materially affected the Company's business; or
 - (f) Willfully or persistently committed a material breach of this Agreement or of a duty owed to the Company or the other Members under Section 33-44-409 of the Act; or
 - (g) Engaged in conduct relating to the Company's business which makes it not reasonably practicable to carry on the business with the Member; or
 - (h) Entry of an order by a court of competent jurisdiction adjudicating the Member to be insane, the appointment of a guardian or general conservator for the Member, or a judicial determination that the Member has otherwise become incapable of performing his duties under this Agreement; or
 - (i) The giving by a Member of notice to the Company that the Member desires to transfer all or any portion of his Membership Share; or
 - (j) The death of the Member; or
 - (k) The Disability of the Member (Disability shall mean totally and permanently disabled for a period of twelve (12) months during a fifteen (15) consecutive month period so that a Member is unable to engage in his usual Company duties as determined by a doctor selected and paid by the Company).

ARTICLE XV. Restrictions on Transfer and Buy-Sell Provisions

15.01 Restrictions on Transfer.

- (a) Except for Permitted Transfers as set forth in this Agreement, no Member may voluntarily or involuntarily sell, transfer, gift, assign, pledge, mortgage, hypothecate, or otherwise convey or encumber any portion or all of his Membership Share to any Person without the prior written consent of the Management Committee. If such consent is obtained, the provisions of ARTICLE III shall govern the rights of the transferor and transferee. Any attempted conveyance or encumbrance of all or a portion of a Membership Share not expressly permitted herein shall be null, void and without effect.

15.02 Right to Buy.

(a) **Dissociation.** If a Member Dissociates within the meaning of ARTICLE XIV (a "Triggering Event"), then such Member ("Dissociating Member") is deemed to have offered to the Company all of his Membership Share at the price determined in accordance with this Section.

(b) If the Company does not accept said offer within ten (10) days after receiving written notice of the Triggering Event from the Dissociating Member (or his estate or other legal representative, as the case may be) and the determination of the purchase price, then such Member's Membership Share shall be offered in writing, at the same price and upon the same terms, to the other Members (the "Remaining Members") by delivery of written notice to them. The Company and/or the Remaining Members may accept the offer by delivering written notice to the Dissociating Member. If the Company and/or the Remaining Members accept the offer, then all of the Membership Share offered for sale must be purchased by the Company and/or the Remaining Members. In the event more than one offeree accepts the offer, those accepting shall purchase in proportion to their Membership Shares, unless they agree otherwise.

(c) If none of the Remaining Members accept the offer to purchase the Dissociating Member's Membership Share within ten (10) days after receipt of written notice by them, then the Membership Share may be offered for sale to any Person, provided that such Membership Share shall be sold for at least the same price and upon the same terms at which it was offered to the Company and the Remaining Members. The rights of the transferee of such Membership Share shall be determined in accordance with ARTICLE III.

15.03 Purchase Price. Unless the Member offering or selling his Membership Share hereunder and the Management Committee on behalf of the Company agree otherwise, the purchase price shall be determined in accordance with the following:

(a) The purchase price of the Membership Share shall be the Appraised Value of the Company (as defined herein) multiplied by the Financial Rights associated with the Membership Share being offered hereunder. The Appraised Value of the Company shall be the Fair Market Value (as defined below) of all Company Property less the Fair Market Value of all Company Liabilities obtained by agreement of two (2) appraisers, one appointed by the seller and one appointed by the Management Committee on behalf of the Company. The seller and Company must appoint their respective appraisers by delivering notice of the identity of their respective appraisers to each other within thirty (30) days after Company receives written notice of the Triggering Event from the Dissociating Member (or his estate or other legal representative, as the case may be). If the two (2) appraisers cannot agree on an Appraised Value of the Company within thirty (30) days after the last of them is appointed, then within five (5) days, they shall appoint a third appraiser. The third appraiser shall determine the Appraised Value of the Company within thirty (30) days after his appointment. The Appraised Value shall be the average of the two (2) appraisals which are closest to each other. Fair Market Value is defined as the cash equivalent price at which property would change hands between a hypothetical willing buyer and a hypothetical willing seller, neither being under a compulsion to buy or sell and both having reasonable knowledge of relevant facts. The hypothetical buyer and seller are assumed to be able, as well as willing, to trade and are assumed to be well-informed about the property and concerning the market for such property. The seller and the Company shall each pay the

costs of the appraiser appointed by them, and one-half (1/2) of the cost of the third appraiser. The purchase price as determined herein shall be conclusive and binding on the parties, their personal representatives, legal representatives, heirs, successors and assigns. If any party fails to appoint an appraiser within the time required herein, the purchase price determined by the appraiser appointed by the other party shall be conclusive and binding upon the seller and purchaser(s), their personal representatives, legal representatives, heirs, successors, and assigns.

- 15.04 Payment of Purchase Price.** The closing of the purchase shall take place at the principal place of business of the Company within sixty (60) days after the purchase price has been determined and an offer accepted, or at such other date and place as the parties may agree.
- 15.05 Installments.** Unless the parties mutually agree otherwise, the purchase price shall be paid in 12 equal and consecutive monthly installments of principal and interest beginning 30 days after the date of the closing. The purchaser(s) shall execute and deliver to the seller a promissory note made payable to the order of the seller which shall bear interest, per annum, at the prime rate as published in the Wall Street Journal at the date of the sale or, if greater, the rate of interest applicable under Section 1274 of the Code. Payments may be anticipated, in whole or in part, at any time and from time to time, without penalty. The note shall provide that upon ten (10) days default of any payment of interest or principal, the note shall become due and payable immediately, at the Option of the holder of the note.
- 15.06** Upon execution and delivery of the note, the Membership Share (or any portion thereof) shall be conveyed to the purchaser(s). Until the note is paid in full, the Membership Share shall be held by the purchaser(s), but shall be pledged to the seller as collateral security for payment of the note. The seller shall have no right to exercise any Financial Rights or Voting Rights associated with the Membership Share unless and until there is a default on the note.

ARTICLE XVI. Miscellaneous Provisions

16.01 Members' Rights To Receive Information.

- (a) The Company shall provide Members and their agents and attorneys access to its records, if any, at the Company's principal office. The Company shall provide former Members and their agents and attorneys access for proper purposes to records pertaining to the period during which they were Members. The right of access provides the opportunity to inspect and copy records during ordinary business hours. The Company may impose a reasonable charge, limited to the costs of labor and material, for copies of records furnished.
- (b) The Company shall furnish to a Member, and to the legal representative of a deceased Member or Member under legal disability:
- (c) Without demand, information concerning the Company's business or affairs reasonably required for the proper exercise of the Member's rights and performance of the Member's duties under this Agreement and the Act; and
- (d) On demand, other information concerning the Company's business or affairs, except to the extent the demand or the information is unreasonable or otherwise improper under the circumstances.

(e) A Member has the right upon written demand given to the Company to obtain at the Company's expense a copy of this Agreement.

16.02 Notices. All notices, consents, requests, demands, offers, reports or other communications required or permitted hereunder shall be in writing and hand delivered or sent by certified or registered mail, postage prepaid, and return receipt requested, to the Management Committee and the Company at the Company's principal place of business and to a Member at the address on EXHIBIT A attached hereto, or to such other address as may hereafter be designated by the giving of notice in accordance with this Section. All notices, consents or other communications shall be deemed given when actually hand delivered, or upon the date of mailing in accordance with this Section.

16.03 Time of Essence. Time is of the essence of this Agreement.

16.04 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina regardless of the residence or domicile, now or in the future, of any party hereto and notwithstanding any conflicts of laws.

16.05 Consent to Jurisdiction. Except as otherwise required by law, the parties to this Agreement hereby agree that the courts of the State of South Carolina shall have sole and exclusive jurisdiction over any matter arising from the interpretation, purpose, effect, or operation of this Agreement, and with regard to all matters associated with operation of the Company's business. Except as otherwise required by law, the parties consent to venue in Charleston County, South Carolina, and waive any rights they may have to assert jurisdiction or venue in any other court, administrative forum, or other adjudicative body.

16.06 Waiver. No waiver of any breach of any covenant, agreement or undertaking contained herein shall operate as a waiver of any subsequent breach of the same covenant, agreement or undertaking or as a waiver of any breach of any other covenant, agreement or undertaking. In the case of a breach by any party of any covenant, agreement or undertaking, the nonbreaching party may nevertheless accept from the other, any payment or performance without waiving its right to exercise any right or remedy provided herein or otherwise, with respect to any such breach which was in existence at the time such payment or performance was accepted by it. No failure of any party to exercise any power given herein or to insist upon strict compliance with any covenant, agreement or undertaking contained herein, or to object to any custom or practice which varies from the terms hereof, shall constitute a waiver of such party's right to demand exact compliance with the terms of this Agreement. The waiver by any party of a breach of any covenant, agreement or undertaking contained herein shall be made only by a written waiver in each case, and no such waiver shall operate or be construed as a waiver of any prior or subsequent breach.

16.07 Severability. If any provision of this Agreement shall, to any extent, be held invalid, illegal or unenforceable, in whole or in part, the validity, legality, and enforceability of the remaining part of such provision, and the validity, legality and enforceability of the other provisions hereof, shall not be affected thereby and each term, covenant or condition shall be valid and enforceable to the fullest extent permitted by law. If any such invalidity shall be

caused by the length of any period of time, the size of any area or the scope of activities set forth in any provision hereof, such period of time, such area or scope or all, shall be considered to be reduced to a period, area, or scope which would cure such invalidity. Any provision of this Agreement which is held invalid, illegal or unenforceable in any jurisdiction shall not be deemed invalid, illegal or unenforceable in any other jurisdiction.

- 16.08 Counterparts.** This Agreement may be executed in more than one counterpart, each such counterpart shall be deemed an original, and all such counterparts shall constitute one and the same agreement. This Agreement shall be effective when executed by all parties, but all parties need not execute the original or the same counterpart.
- 16.09 Captions.** The headings, titles and captions of the Articles and Sections of this Agreement are inserted only to facilitate reference. They shall not define, limit, extend or describe the scope or intent of this Agreement or any provision hereof, and they shall not constitute a part hereof or affect the meaning or interpretation of this Agreement or any part hereof.
- 16.10 Entire Agreement.** This Agreement embodies the entire understanding and agreement among the parties pertaining to the subject matter hereof, and all prior agreements and understandings of the parties, whether written or oral, are terminated and superseded by this Agreement and shall be deemed merged herein.
- 16.11 Remedies Cumulative.** Except as otherwise expressly provided herein, all rights, powers and privileges conferred hereunder upon any party shall be cumulative and not restrictive of those given by law. No remedy herein conferred is exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given by agreement or now or hereafter existing at law or in equity or by statute.
- 16.12 Binding Effect.** This Agreement shall be binding upon, shall inure to the benefit of, and shall be enforceable by and against all the parties and their respective heirs, legal representatives, personal representatives, successors and permitted assigns. Nothing in this Agreement, expressed or implied, is intended to or shall confer upon any Person other than the parties, and their respective heirs, legal representatives, personal representatives, successors and permitted assigns, any rights, remedies, obligations or liabilities.
- 16.13 Use of Terms.** Use of the terms "herein", "hereby", "hereunder", "hereof", "hereinbefore", "hereinafter", and other equivalent words refer to this Agreement in its entirety and not solely to the particular portion of the Agreement in which such word is used. Reference to "this Article", "this Section", or a similar reference to a specific part of this Agreement shall refer to the particular Article, Section or specific part in which such reference appears. Whenever used herein, any pronoun shall be deemed to include both the singular and plural and all genders.
- 16.14 Further Assurances.** Each of the parties will execute, deliver, acknowledge or supply such further documents, instruments and assurances as shall be reasonably necessary or appropriate to carry out the full intent and purposes of this Agreement, including but not limited to

the filing of either a copy of this Agreement or a Memorandum of this Agreement with the applicable government authorities.

- 16.15 Equitable Remedies.** The rights and remedies of the Members, Managers and the Company hereunder shall not be mutually exclusive, and the exercise of one or more of the provisions hereof shall not preclude the exercise of any other provisions hereof. The parties confirm that damages at law may be an inadequate remedy for a breach or threatened breach of this Agreement and agree that in the event of a breach or threatened breach of any provision hereof, the respective rights and obligations hereunder shall be enforceable by specific performance, injunction (temporary and/or permanent), without posting bond, or other equitable remedy, but nothing herein contained is limited to, nor shall it limit or affect any right or rights at law or by statute or otherwise of any aggrieved party against any other party for a breach or threatened breach of any provision hereof, it being the intention of this Section to make clear the agreement of the parties that the respective rights and obligations of the parties hereunder shall be enforceable in equity as well as at law or otherwise.
- 16.16 Exhibits.** The exhibits attached to this Agreement are hereby made a part hereof and incorporated herein by reference. All such exhibits shall read as of the date of this Agreement or, as to any of the exhibits bearing a particular date, as of any other date specified therein.
- 16.17 Effective Date.** This Agreement shall become effective upon the later of the execution of this Agreement by all the Members or the filing of Articles of Organization with the South Carolina Secretary of State.
- 16.18 Arbitration.** Any dispute or controversy arising under or in connection with this Agreement shall be submitted to binding arbitration in accordance with the requirements of the South Carolina Uniform Arbitration Act as then in effect ("SCUAA"). All arbitration proceedings shall be conducted in Charleston, South Carolina. The arbitrators shall be selected as provided in the SCUAA, and the arbitrators shall render a decision on any dispute within one hundred twenty (120) days after the last of the arbitrators has been selected. If any party to this Agreement fails to select an arbitrator with regard to any dispute submitted to arbitration under this Section, within thirty (30) days after receiving notice of the submission to arbitration of such dispute, then the other party shall select an arbitrator for such non-selecting party, and the decision of the arbitrators shall be binding upon all the parties to the dispute, their personal representatives, legal representatives, heirs, successors and assigns. Each party to an arbitration proceeding under this Section shall pay an equal portion of all arbitrators' expenses and fees, together with other expenses of arbitration, except that the parties shall bear their own respective expert witness, professional and attorneys' fees.
- 16.19 Conflict of Interest.** The parties all acknowledge that the law firm of Buist, Byars, Pearce & Taylor, LLC prepared this Agreement on behalf of and in the course of its representation of the Company and that:

- (a) The parties have been advised by Gray B. Taylor that a conflict exists among their individual interests;
- (b) The parties have been advised by Gray B. Taylor to seek the advice of independent counsel; and
- (c) The parties have had the opportunity to seek the advice of independent counsel.

IN WITNESS WHEREOF, the undersigned have executed and sealed this Operating Agreement as of the day and year first above written.

WITNESSES:

MEMBER

Lancaster Redevelopment Corporation



(SEAL)

By: Gary L. Grossman
Its: President

WITNESSES:

MANAGER

Lancaster Redevelopment Corporation



(SEAL)

By: Gary L. Grossman
Its: President



EXHIBIT A**Initial Capital Contributions and Voting Rights**

Member	Capital Contribution	Voting Rights
Lancaster Redevelopment Corporation	\$1,000	100%
Total	\$1,000	100%

**ASSIGNMENT OF INTEREST AND
WRITTEN CONSENT IN LIEU OF A SPECIAL MEETING
OF THE MEMBERS OF HILTON HEAD HOMES AT ALLENWOOD, LLC**

DATE: July __, 2004

PARTIES: Hilton Head Homes at Allenwood, LLC (the "Company"), Lancaster Redevelopment Corporation (the "Manager" and "Initial Member"), and Arthur F. Long, Jr. and James R. Brady (the "New Members").

Whereas, Hilton Head Homes at Allenwood, LLC is a limited liability company organized under the laws of the State of South Carolina, is Manager-managed, and governed by an Operating Agreement dated May 13, 2004 (the "Operating Agreement"); and,

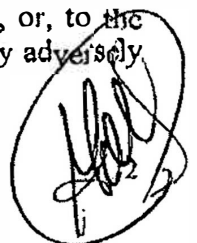
Whereas, the Manager and Initial Member has an ownership interest in the Company of One hundred (100%) percent under the terms of the Operating Agreement, and is entitled to that percentage of the profits and interim distributions of the Company, and must bear that percentage of the Company's losses; and,

Whereas, the New Members desire to make an investment in the Company, and the Initial Member, Manager and Company have agreed to the proposed investment, and further agreed that upon payment of the Purchase Price to the Company by the New Members, they may be admitted as Members of the Company; and,

Now, therefore, the Parties to this Agreement agree as follows:

1. **ASSIGNMENT.** In exchange for the consideration set forth herein, paid to the Company at the execution of this Agreement, the Company hereby assigns and transfers to each New Member a six (6%) percent membership interest in the Company. This assignment and transfer includes a proportionate right of the profits, losses, and interim distribution of the Company.
2. **ACCEPTANCE.** By signing this assignment and making the investment in the Company set forth herein, each New Member accepts the assignment and transfer of interest from the Company, and agrees to be bound by the terms and provisions of the Operating Agreement.
3. **PURCHASE PRICE AND PAYMENT.** The purchase price for the interest in the Company being transferred under this assignment is One Hundred Thousand and 00/100 (\$100,000.00) Dollars per New Member, to be paid in full to the Company by the New Members upon the execution of this Assignment.
4. **INITIAL MEMBER'S REPRESENTATIONS AND WARRANTIES.** The Initial Member represents and warrants to each New Member that:
 - 4.1. **Ownership of Interest and Right to Transfer.** The Initial Member is currently the sole owner of the Company, and has authorized this assignment of interest in the Company to each New Member.
 - 4.2. **Status of Company.** The Company is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of South Carolina and has all

- powers required to own its assets and property and to carry on its business as now owned and conducted. The Company is not licensed or qualified as a foreign limited liability company in any other state, and the nature of its business does not make such license or qualification necessary. The Operating Agreement is in full force and effect in accordance with its terms and has not been amended or modified in any manner.
- 4.3. Financial Statements. The financial records of the Company, to the extent available, have been furnished to each New Member (collectively the "Financial Statements") and are in accordance with the books and records of the Company, are based upon regularly accepted accounting principles that have been consistently applied, are complete and correct, and fairly present the financial position and results of operation of the Company as of the dates and for the periods indicated.
- 4.4. Adverse Changes. There has been no material adverse change in the financial condition of the Company or in the condition of its assets from that reflected in the Financial Statements.
- 4.5. Liabilities. Except as reflected or reserved against in the Financial Statements, the Company does not have any material liabilities or obligations of any kind whether accrued, absolute, contingent, or otherwise, and whether or not such liabilities or obligations would have been required to be disclosed on a balance sheet prepared in accordance with generally accepted accounting principles.
- 4.6. Tax Returns. The Company has filed all tax returns and reports that it is required to file with the appropriate federal, state, and local government agencies. Such returns and reports are accurate and complete, and the Company has paid in full or has made adequate provision for payment of all taxes, interest, penalties, assessments, or deficiencies shown to be due on such returns or reports, claimed to be due by any taxing authority, or otherwise due and owing. The Company has made all withholdings of tax required to be made under all applicable federal, state, and local tax regulations. To the best of the knowledge of the Initial Member, the provisions for property taxes and payroll taxes payable reflected in the Financial Statements are adequate.
- 4.7. Assets. The Company has good and marketable title to all of its assets, including all property listed in the Financial Statements, free and clear of all claims and encumbrances, except any liens for taxes not yet due and payable or as disclosed in the financial statements.
- 4.8. Compliance with Law. To the best of the knowledge and belief of the Initial Member, the Company is not in violation of any applicable law, ordinance, regulation, order, or requirement relating to its operations.
- 4.9. Actions and Suits. There are no actions, suits, or proceedings pending or threatened against or affecting the Company at law or in equity or before or by any federal, state, municipal, or other governmental or nongovernmental department, commission, board, bureau, agency, or instrumentality that can reasonably be expected to result in any adverse change in the business, properties, operations, prospects, or assets of the Company or in its condition, financial or otherwise.
- 4.10. Obligations and Contracts. The Company is not in default in the payment of any of its obligations and is not in breach of the performance of any contract to which it is a party.
- 4.11. Complete Disclosures. To the best of the knowledge and belief of the Initial Member, neither this assignment nor any document that has been furnished by the Initial Member to each New Member in connection with this assignment contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements in this assignment or in such documents not misleading. There is no fact that materially adversely affects, or, to the best of the knowledge and belief of the Initial Member, in the future may materially adversely



affect, the business, operations, or condition (financial or otherwise) of the Company that has not been set forth in this assignment or in the Financial Statements.

5. **NEW MEMBER'S REPRESENTATIONS AND WARRANTIES.** Each New Member represents and warrants to the Initial Member, and to the Company, that:
- 5.1. **Investment Intent.** The New Member is acquiring the interest as a member of the Company being transferred under this assignment for investment and not with a view to distribution.
 - 5.2. **Securities Law Registration.** The New Member understands that the membership interest in the Company being transferred under this assignment has not been registered under the Securities Act of 1933 or under applicable state securities statutes in reliance upon exemptions from registration. The New Member also understands that the interest must be held indefinitely, unless it is later registered under the Securities Act of 1933 and applicable state securities statutes unless exemptions from registration are otherwise available, and that the Company has no obligation to register the interest. The New Member agrees that the interest will not be offered, sold, transferred, pledged, or otherwise disposed of without registration under the Securities Act of 1933 and applicable state securities laws or an opinion of counsel acceptable to the Company that such registration is not required.
 - 5.3. **Agreement to be Bound.** The New Member covenants and warrants that he has been provided with a copy of the Company's Operating Agreement, that this assignment is in compliance with the provisions of the Operating Agreement, and represents and warrants to the Company that all of the requirements of the Operating Agreement for assignment are satisfied, and that he does hereby adopt and agree to be bound by the provisions of the Operating Agreement, as amended herein.
6. **SURVIVAL OF REPRESENTATIONS AND WARRANTIES.** All warranties and representations made in this assignment will survive the closing of the transfer of the interest as a member of the Company being transferred under this assignment.
7. **CONSENT.** By signing this assignment, the Initial Member and Manager consents to the assignment and transfer to each New Member of the interest as a member of the Company being transferred under this assignment and agree to accept each New Member as a substituted member of the Company, with full rights and obligations of a member as if each New Member were named as a member in the Operating Agreement, and by signing this written Consent, waives notice of the time, place and purpose of a joint meeting of the Members, and agree to the transaction of the business of this joint meeting by unanimous consent of the Members.
8. **OWNERSHIP INTEREST.** The Operating Agreement of the Company is hereby amended and modified as follows: The Members of the Company, and their ownership and voting percentage within the Company (as originally set forth in Exhibit A to the Operating Agreement of the Company) shall be as follows:



MEMBERS

OWNERSHIP AND
VOTING
PERCENTAGE

Lancaster Redevelopment
Corporation
Route 522
RD #1, Box 131K
Selinsgrove PA 17870
Attn: Gary L. Grossman, President

88 %

Arthur F. Long, Jr.
184 Whitehall Blvd.
Garden City, NY 11530

6 %

James R. Brady
P.O. Box 22737
Hilton Head Island SC 29925

6 %

TOTAL 100 %

9. MISCELLANEOUS PROVISIONS.

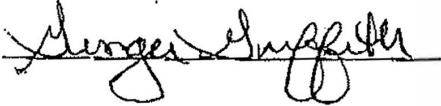
- 9.1. Binding Effect. The provisions of this assignment are binding upon and will inure to the benefit of the heirs, personal representatives, successors, and assigns of the parties.
- 9.2. Notice. Any notice or other communication required or permitted to be given under this assignment must be in writing and must be mailed by certified mail, return receipt requested, postage prepaid, addressed to the parties at the addresses set forth herein. All notices and other communications will be deemed to be given at the expiration of three days after the date of mailing. The address of a party to which notices or other communications must be mailed may be changed from time to time by giving notice to the other parties.
- 9.3. Litigation Expense. If any legal proceeding is commenced for the purpose of interpreting or enforcing any provision of this assignment, including any proceeding in the United States Bankruptcy Court, the prevailing party in such proceeding will be entitled to recover reasonable attorney's fees in such proceeding, or any appeal thereof, to be set by the court without the necessity of hearing testimony or receiving evidence, in addition to the costs and disbursements allowed by law.
- 9.4. Governing Law. This assignment will be governed by the law of the State of South Carolina.
- 9.5. Entire Agreement. This assignment constitutes the entire agreement between the parties pertaining to its subject matter, and it supersedes all prior and contemporaneous agreements, representations, and understandings of the parties. No supplement, modification, or amendment of this assignment will be binding unless executed in writing by all parties.
- 9.6. Authority. Each individual executing this assignment on behalf of a corporation or other entity warrants that he or she is authorized to do so and that this assignment constitutes the legally binding obligation of the corporation or other entity that the individual represents.



- 9.7. Attorney Representation. The parties all acknowledge that the law firm of Buist, Byars, Pearce & Taylor, LLC prepared this Agreement on behalf of and in the course of its representation of the Initial Member and that the parties have been advised by Gray B. Taylor that a conflict exists among their individual interests and to seek the advice of independent counsel; and that the parties have had the opportunity to seek the advice of independent counsel.

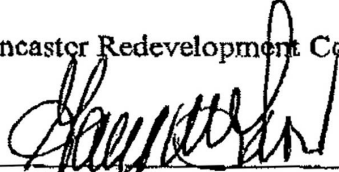
AND IT IS SO RESOLVED AND APPROVED THIS ____ DAY OF JULY 2004.

WITNESS:



INITIAL MEMBER AND MANAGER:

Lancaster Redevelopment Corporation


By: Gary L. Grossman
Its: President

NEW MEMBERS:

Arthur F. Long, Jr.

James R. Brady

9.7. Attorney Representation. The parties all acknowledge that the law firm of Buist, Byars, Pearce & Taylor, LLC prepared this Agreement on behalf of and in the course of its representation of the Initial Member and that the parties have been advised by Gray B. Taylor that a conflict exists among their individual interests and to seek the advice of independent counsel; and that the parties have had the opportunity to seek the advice of independent counsel.

AND IT IS SO RESOLVED AND APPROVED THIS ____ DAY OF JULY 2004.

WITNESS:

FRANK IANNUCCI
Notary Public, State of New York
No. 011A6088399
Qualified in Nassau County
Commission Expires March 03, 2007

[Signature]

INITIAL MEMBER AND MANAGER:

Lancaster Redevelopment Corporation

By: Gary L. Grossman
Its: President

NEW MEMBERS:

[Signature]
Arthur F. Long, Jr.

[Signature]

[Signature]
James R. Brady

**ASSIGNMENT OF INTEREST AND
WRITTEN CONSENT IN LIEU OF A SPECIAL MEETING
OF THE MEMBERS OF VILLAGE SQUARE DEVELOPMENT COMPANY, LLC**

DATE: July ____, 2004
PARTIES: Village Square Development Company, LLC (the "Company"), Lancaster Redevelopment Corporation (the "Manager" and "Initial Member"), and Arthur F. Long, Jr. and James R. Brady (the "New Members").

Whereas, Village Square Development Company, LLC is a limited liability company organized under the laws of the State of South Carolina, is Manager-managed, and governed by an Operating Agreement dated July 8, 2004 (the "Operating Agreement"); and,

Whereas, the Manager and Initial Member has an ownership interest in the Company of One hundred (100%) percent under the terms of the Operating Agreement, and is entitled to that percentage of the profits and interim distributions of the Company, and must bear that percentage of the Company's losses; and,

Whereas, the New Members desire to make an investment in the Company, and the Initial Member, Manager and Company have agreed to the proposed investment, and further agreed that upon payment of the Purchase Price to the Company by the New Members, they may be admitted as Members of the Company; and,

Now, therefore, the Parties to this Agreement agree as follows:

1. **ASSIGNMENT.** In exchange for the consideration set forth herein, paid to the Company at the execution of this Agreement, the Company hereby assigns and transfers to each New Member a six (6%) percent membership interest in the Company. This assignment and transfer includes a proportionate right of the profits, losses, and interim distribution of the Company.
2. **ACCEPTANCE.** By signing this assignment and making the investment in the Company set forth herein, each New Member accepts the assignment and transfer of interest from the Company, and agrees to be bound by the terms and provisions of the Operating Agreement.
3. **PURCHASE PRICE AND PAYMENT.** The purchase price for the interest in the Company being transferred under this assignment is One Hundred Thousand and 00/100 (\$100,000.00) Dollars per New Member, to be paid in full to the Company by the New Members upon the execution of this Assignment.
4. **INITIAL MEMBER'S REPRESENTATIONS AND WARRANTIES.** The Initial Member represents and warrants to each New Member that:
 - 4.1. **Ownership of Interest and Right to Transfer.** The Initial Member is currently the sole owner of the Company, and has authorized this assignment of interest in the Company to each New Member.
 - 4.2. **Status of Company.** The Company is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of South Carolina and has all



powers required to own its assets and property and to carry on its business as now owned and conducted. The Company is not licensed or qualified as a foreign limited liability company in any other state, and the nature of its business does not make such license or qualification necessary. The Operating Agreement is in full force and effect in accordance with its terms and has not been amended or modified in any manner.

- 4.3. Financial Statements. The financial records of the Company, to the extent available, have been furnished to each New Member (collectively the "Financial Statements") and are in accordance with the books and records of the Company, are based upon regularly accepted accounting principles that have been consistently applied, are complete and correct, and fairly present the financial position and results of operation of the Company as of the dates and for the periods indicated.
- 4.4. Adverse Changes. There has been no material adverse change in the financial condition of the Company or in the condition of its assets from that reflected in the Financial Statements.
- 4.5. Liabilities. Except as reflected or reserved against in the Financial Statements, the Company does not have any material liabilities or obligations of any kind whether accrued, absolute, contingent, or otherwise, and whether or not such liabilities or obligations would have been required to be disclosed on a balance sheet prepared in accordance with generally accepted accounting principles.
- 4.6. Tax Returns. The Company has filed all tax returns and reports that it is required to file with the appropriate federal, state, and local government agencies. Such returns and reports are accurate and complete, and the Company has paid in full or has made adequate provision for payment of all taxes, interest, penalties, assessments, or deficiencies shown to be due on such returns or reports, claimed to be due by any taxing authority, or otherwise due and owing. The Company has made all withholdings of tax required to be made under all applicable federal, state, and local tax regulations. To the best of the knowledge of the Initial Member, the provisions for property taxes and payroll taxes payable reflected in the Financial Statements are adequate.
- 4.7. Assets. The Company has good and marketable title to all of its assets, including all property listed in the Financial Statements, free and clear of all claims and encumbrances, except any liens for taxes not yet due and payable or as disclosed in the financial statements.
- 4.8. Compliance with Law. To the best of the knowledge and belief of the Initial Member, the Company is not in violation of any applicable law, ordinance, regulation, order, or requirement relating to its operations.
- 4.9. Actions and Suits. There are no actions, suits, or proceedings pending or threatened against or affecting the Company at law or in equity or before or by any federal, state, municipal, or other governmental or nongovernmental department, commission, board, bureau, agency, or instrumentality that can reasonably be expected to result in any adverse change in the business, properties, operations, prospects, or assets of the Company or in its condition, financial or otherwise.
- 4.10. Obligations and Contracts. The Company is not in default in the payment of any of its obligations and is not in breach of the performance of any contract to which it is a party.
- 4.11. Complete Disclosures. To the best of the knowledge and belief of the Initial Member, neither this assignment nor any document that has been furnished by the Initial Member to each New Member in connection with this assignment contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements in this assignment or in such documents not misleading. There is no fact that materially adversely affects, or, to the best of the knowledge and belief of the Initial Member, in the future may materially adversely

affect, the business, operations, or condition (financial or otherwise) of the Company that has not been set forth in this assignment or in the Financial Statements.

5. **NEW MEMBER'S REPRESENTATIONS AND WARRANTIES.** Each New Member represents and warrants to the Initial Member, and to the Company, that:

- 5.1. **Investment Intent.** The New Member is acquiring the interest as a member of the Company being transferred under this assignment for investment and not with a view to distribution.
- 5.2. **Securities Law Registration.** The New Member understands that the membership interest in the Company being transferred under this assignment has not been registered under the Securities Act of 1933 or under applicable state securities statutes in reliance upon exemptions from registration. The New Member also understands that the interest must be held indefinitely, unless it is later registered under the Securities Act of 1933 and applicable state securities statutes unless exemptions from registration are otherwise available, and that the Company has no obligation to register the interest. The New Member agrees that the interest will not be offered, sold, transferred, pledged, or otherwise disposed of without registration under the Securities Act of 1933 and applicable state securities laws or an opinion of counsel acceptable to the Company that such registration is not required.
- 5.3. **Agreement to be Bound.** The New Member covenants and warrants that he has been provided with a copy of the Company's Operating Agreement, that this assignment is in compliance with the provisions of the Operating Agreement, and represents and warrants to the Company that all of the requirements of the Operating Agreement for assignment are satisfied, and that he does hereby adopt and agree to be bound by the provisions of the Operating Agreement, as amended herein.

6. **SURVIVAL OF REPRESENTATIONS AND WARRANTIES.** All warranties and representations made in this assignment will survive the closing of the transfer of the interest as a member of the Company being transferred under this assignment.

7. **CONSENT.** By signing this assignment, the Initial Member and Manager consents to the assignment and transfer to each New Member of the interest as a member of the Company being transferred under this assignment and agree to accept each New Member as a substituted member of the Company, with full rights and obligations of a member as if each New Member were named as a member in the Operating Agreement, and by signing this written Consent, waives notice of the time, place and purpose of a joint meeting of the Members, and agree to the transaction of the business of this joint meeting by unanimous consent of the Members.

8. **OWNERSHIP INTEREST.** The Operating Agreement of the Company is hereby amended and modified as follows: The Members of the Company, and their ownership and voting percentage within the Company (as originally set forth in Exhibit A to the Operating Agreement of the Company) shall be as follows:



MEMBERS

OWNERSHIP AND
VOTING
PERCENTAGE

Lancaster Redevelopment
Corporation
Route 522
RD #1, Box 131K
Selinsgrove PA 17870
Attn: Gary L. Grossman, President

88 %

Arthur F. Long, Jr.
184 Whitehall Blvd.
Garden City, NY 11530

6 %

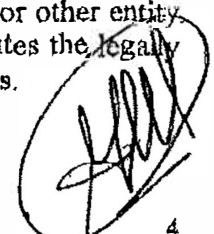
James R. Brady
P.O. Box 22737
Hilton Head Island SC 29925

6 %

TOTAL 100 %

9. MISCELLANEOUS PROVISIONS.

- 9.1. Binding Effect. The provisions of this assignment are binding upon and will inure to the benefit of the heirs, personal representatives, successors, and assigns of the parties.
- 9.2. Notice. Any notice or other communication required or permitted to be given under this assignment must be in writing and must be mailed by certified mail, return receipt requested, postage prepaid, addressed to the parties at the addresses set forth herein. All notices and other communications will be deemed to be given at the expiration of three days after the date of mailing. The address of a party to which notices or other communications must be mailed may be changed from time to time by giving notice to the other parties.
- 9.3. Litigation Expense. If any legal proceeding is commenced for the purpose of interpreting or enforcing any provision of this assignment, including any proceeding in the United States Bankruptcy Court, the prevailing party in such proceeding will be entitled to recover reasonable attorney's fees in such proceeding, or any appeal thereof, to be set by the court without the necessity of hearing testimony or receiving evidence, in addition to the costs and disbursements allowed by law.
- 9.4. Governing Law. This assignment will be governed by the law of the State of South Carolina.
- 9.5. Entire Agreement. This assignment constitutes the entire agreement between the parties pertaining to its subject matter, and it supersedes all prior and contemporaneous agreements, representations, and understandings of the parties. No supplement, modification, or amendment of this assignment will be binding unless executed in writing by all parties.
- 9.6. Authority. Each individual executing this assignment on behalf of a corporation or other entity warrants that he or she is authorized to do so and that this assignment constitutes the legally binding obligation of the corporation or other entity that the individual represents.

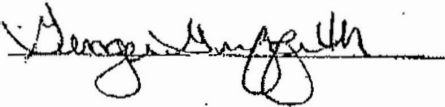


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- 9.7. Attorney Representation. The parties all acknowledge that the law firm of Buist, Byars, Pearce & Taylor, LLC prepared this Agreement on behalf of and in the course of its representation of the Initial Member and that the parties have been advised by Gray B. Taylor that a conflict exists among their individual interests and to seek the advice of independent counsel; and that the parties have had the opportunity to seek the advice of independent counsel.

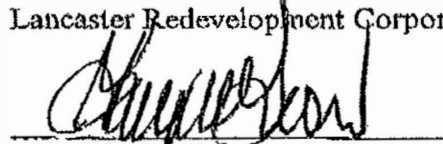
AND IT IS SO RESOLVED AND APPROVED THIS ____ DAY OF JULY 2004.

WITNESS:



INITIAL MEMBER AND MANAGER:

Lancaster Redevelopment Corporation



By: Gary L. Grossman
Its: President

NEW MEMBERS:

Arthur F. Long, Jr.

James R. Brady

- 9.7. Attorney Representation. The parties all acknowledge that the law firm of Buist, Byars, Pearce & Taylor, LLC prepared this Agreement on behalf of and in the course of its representation of the Initial Member and that the parties have been advised by Gray B. Taylor that a conflict exists among their individual interests and to seek the advice of independent counsel; and that the parties have had the opportunity to seek the advice of independent counsel.

AND IT IS SO RESOLVED AND APPROVED THIS ____ DAY OF JULY 2004.

WITNESS:

FRANK IANNUCCI
Notary Public, State of New York
No. 011A6066399
Qualified in Nassau County
Commission Expires March 03, 2007

[Signature]

INITIAL MEMBER AND MANAGER:

Lancaster Redevelopment Corporation

By: Gary L. Grossman
Its: President

NEW MEMBERS:

[Signature]
Arthur F. Long, Jr.

[Signature]

[Signature]
James R. Brady

GARY L. GROSSMAN
419 COFFEE GOSS ROAD
MARIETTA, PA 17547

February 2, 2004

James R. Brady
29 Otter Hole Road
Bld. #1, Unit #11
Hilton Head Island, SC 29926

Dear Rod,

As you know, I have been in direct negotiations with Chris Gannon to keep us in the single-family lot takedown transaction by agreeing to purchase the 92 townhouse lots in a 3 phase bulk buy.

This past weekend, I convinced Chris to separate these transactions by using Lancaster Redevelopment Corporation as the purchaser of the townhouse lots.

Chris Gannon and I went back and forth all weekend by e-mail, which resulted in the enclosed contracts.

Please make note that the 64 single family lot agreement has Hilton Head Homes LLC not Hilton Head Homes, Inc. as the purchaser.

I do not want any creditor of Hilton Head Homes, Inc. to be able to take hostile action against the Allenwood project (i.e.: subcontractor vendors).

At this point in our business relationship, I am somewhat torn between trying to help you as a friend, and making prudent business decisions on my own behalf.

The two Allenwood transactions require an absolute minimum of \$110,000 in cash equity (probably more) and recourse positions on a minimum of \$3,000,000 in debt.

From a business only standpoint of view, I have a problem putting up all the cash, funding the interest expense by myself and taking all the real risk of recourse on a 50/50 basis.

I also have some concern about the unresolved problem at Cypress Harbour. At some point in time the bank will move through the foreclosure process, seize the assets, sell the asset and most likely come up with a loss.

In which case, I believe there is a high probability the bank will pursue a deficiency action against you. Unless and until this threat is resolved, I do not believe it in my best

interest to be "joined at the hip" on a 3 or 4 year project that involves 3,000,000 plus dollars of debt.

Having said all of this, I value our friendship highly. I want to work through these difficult issues and move on to better times.

I would like to proceed with both transactions in separate limited liability companies wherein, Lancaster Redevelopment Corporation owns 100% of the companies, but engages you and Joy Walker as independent contractors under the following terms and conditions:

- We move the entire Hilton Head Homes operation into the Allenwood model home. This will keep someone on site at all times.
- We do our own sales and marketing through you and Joy Walker and offer a 3% co-broker commission on all products.
- We pay Joy Walker a flat rate of \$2500 per single family home and \$500 per townhouse for her administrative assistance/sales work as and when homes are settled as her sales compensation.
- We pay you a flat fee construction management fee of \$5000 for each single family home and \$1250 per unit for each townhouse, as and when homes are settled as her sales compensation.
- The 3% sales fee should be paid to you or Joy Walker for any sale of single family homes and a flat \$2000 fee for townhouses, either of you write and close, as and when each home settles.
- If we build 24 single family homes and 36 townhouses a year (which is what our contract takedown schedule is) this arrangement provides you with \$174,000 in construction management fees per year.
- If you can sell 50% of this without paying a broker you can earn an additional \$108,000 per year in commission.
- If you elect to hire people to fulfill these roles I want you to pay them out of the fees set forth above!

In addition to the sales and construction management fees as described, I would like to pay you an "incentive management fee" of 50% of pre-tax profits after a 1% per month interest on cash investment to Lancaster Redevelopment Corporation and 500 basis points to me individually for my guarantee. However, I am asking that 100% of cash invested by Forest Homes, Lancaster Redevelopment Corporation and/or myself be repaid prior any profit distribution.

I would like all accounting and debt management to take place from my office so I can stay on top of things.

I believe this arrangement fairly balances the scales, makes our initial financing easier, isolates me, and the deals from any trouble that may arise from Cypress Harbour and lowers your personal risk!

I am hopeful you are not in anyway insulted or upset. I simply need to feel totally comfortable because of the level of debt exposure involved with this undertaking.

Please give my concerns and my proposed solution your immediate attention and advise your thoughts. I want to make immediate application to Jeff Heidt at National Bank of Commerce in Savannah.

Very truly yours,

Gary L. Grossman

GLG/sa
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