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SC Court of Appeals

STATE OF SOUTH CAROLINA IN
THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS
HON. MARVIN H. DUKES
MASTER IN EQUITY

APPELLATE CASE # 2023-000438

GEORGIA HARRISON, BARBARA HARRISON,
JOYCE ELLEN HARRISON, WILLIAM S. HARRISON, III,
STANLEY ROBERTS AND DIANA MENDHEIM INDIVIDUALLY
AND AS AGENT AND ATTORNEY IN FACT,

RESPONDENTS

vs.

STEPHANIE LORRAINE KIRKLAND, GARY LAMONT KIRKLAND,
KIETA NICOLE WHITE, AND CHERYL KIRKLAND,

APPELLANTS

RECORD ON APPEAL

Charles E. Houston, Jr., Esquire
The Houston Law Firm LLC
1011 Bay Street, Suite 2A
Beaufort, SC 29902
843-684-0211
Attorney for Appellants

Thomas C. Taylor, Esq.
Law Office of Thomas C. Taylor, LLC
10 Pinckney Colony Road, Suite 400
Bluffton, SC 29910
843-785-5050
Attorney for Respondents

Chester C. Williams
17 Executive Park Road, Suite 2
Hilton Head Island, SC 29938
843-842-5411
Attorney for Respondents

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS
HON. MARVIN H. DUKES
MASTER IN EQUITY

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KEITA NICOLE WHITE, AND CHERYL KIRKLAND

APPELLANTS

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CIVIL ACTION NO. 2020-CP-07-02301
	)	
GEORGIA HARRISON, BARBARA	)	
HARRISON, JOYCE ELLEN	)	
HARRISON, WILLIAM S.	)	
HARRISON, III, STANLEY	)	
ROBERTS, and DIANA MENDHEIM,	)	
individually and as agent and attorney	)	
in fact,	)	
	)	
Plaintiffs,	)	ORDER OF REFERENCE
vs.	)	
	)	
STEPHANIE LORRAINE	)	
KIRKLAND, GARY LAMONT	)	
KIRKLAND, KEITA NICOLE	)	
WHITE, and CHERYL KIRKLAND,	)	
	)	
Defendants	)	
_____	)	

Upon motion of the undersigned attorney for the Plaintiffs, and with consent of all other parties to the action; and it further appearing, pursuant to Rule 53(b) of the South Carolina Rules of Civil Procedure, that this is a proper matter to refer to the Honorable Marvin H. Dukes, III, as Master in Equity for Beaufort County;

Now therefore, IT IS ORDERED that the above-entitled cause be, and the same if hereby, referred to the Honorable Marvin H. Dukes, III, as Master in Equity for Beaufort County for the purpose of conducting a bench trial on this matter and entering a final judgment thereon, as well as conducting hearings or entering orders prior to and after the bench trial.

Any appeal from the final judgment in this cause shall be to the South Carolina Court of Appeals.

The Plaintiffs are responsible for paying the Reference Fee set forth in South Carolina Code of Laws Section 14-11-310; however, if the Plaintiffs' case has ended, any remaining party seeking Affirmative Relief shall be responsible for paying the fee. If the case is a Partition Action or Lien

Foreclosure, the fee amount is \$100.00; for all other types of cases the fee is \$50.00. The Reference Fee shall be paid to the Office of the Master in Equity for Beaufort County within 30 days of the date of this Order or the Master will dismiss the case for non-payment of the Reference Fee without further notice.

I Consent:

s/Roberts Vaux
Roberts Vaux, Esq.
P.O. Box 769
Bluffton, South Carolina, 29910
(843) 757-2889
roberts.vaux@vmblawfirm.com
Attorney for the Defendants

I SO MOVE:

s/Thomas C. Taylor
Thomas C. Taylor, Esq.
SC Bar No.: 5499
PO Box 5550
Hilton Head Island, SC 29938
(843) 785-5050
tom@thomastaylorlaw.com
Attorney for the Plaintiffs



Beaufort Common Pleas

Case Caption: Georgia Harrison , plaintiff, et al VS Stephanie Lorraine Kirkland ,
defendant, et al

Case Number: 2020CP0702301

Type: Order/Referred to Master or Special Referee

So Ordered

s/Jerri Ann Roseneau, Beaufort County Clerk of
Court

Electronically signed on 2021-04-21 10:51:25 page 3 of 3

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

GEORGIA HARRISON, BARBARA)
 HARRISON, JOYCE ELLEN)
 HARRISON, WILLIAM S.)
 HARRISON, III, STANLEY)
 ROBERTS, and DIANA MENDHEIM,)
 individually and as agent and attorney)
 in fact,)

Plaintiffs,)

vs.)

STEPHANIE LORRAINE)
 KIRKLAND, GARY LAMONT)
 KIRKLAND, KEITA NICOLE)
 WHITE, and CHERYL KIRKLAND,)

Defendants)

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO. 2020-CP-07-02301

CONSENT ORDER

THIS MATTER COMES BEFORE THE COURT for consideration of the Plaintiffs' Complaint to Quiet Title to certain land located on Hilton Head Island, South Carolina, as is more particularly described in the Complaint filed November 24, 2020. Based upon the consent of the Plaintiffs and the Defendants, as indicated by the signatures of their attorneys below, it is ORDERED:

That the tract of real property described in metes and bounds in paragraph 6 of the original Complaint dated November 24, 2020, is owned in indivision by the Plaintiffs, the represented Co-Owners and the Defendants, and that their respective undivided interests in the real property are as set forth in Exhibit A attached hereto.

AND IT IS SO ORDERED.

s/_____
 Marvin H. Dukes III
 Beaufort County Master in Equity and
 Special Circuit Judge

WE CONSENT:

/s/ Thomas C. Taylor

Thomas C. Taylor (SC Bar No. 5499)
Law Office of Thomas C. Taylor, LLC
22 Bow Circle, Suite A
Hilton Head Island, South Carolina 29928
(843) 785-5050
tom@thomastaylorlaw.com
CO-COUNSEL FOR PLAINTIFFS

May 21, 2021

/s/ Chester C. Williams

Chester C. Williams
Law Office of Chester C. Williams, LLC
17 Executive Park Road, #2
Hilton Head Island, South Carolina 29928
(843) 842-5411
firm@ccwlaw.net
CO-COUNSEL FOR PLAINTIFFS

May 21, 2021

s/Roberts Vaux

Roberts Vaux, Esq. (SC Bar No. 5702)
Vaux Marscher Berglind, PA
P.O. Box 769
Bluffton, South Carolina, 29910
(843) 757-2889
roberts.vaux@vmblawfirm.com
ATTORNEY FOR THE DEFENDANTS

May 21, 2021

**EXHIBIT A
TO
CONSENT ORDER
SETTING FORTH THE
UNDIVIDED INTERESTS IN THE REAL PROPERTY**

Stanley Roberts	25.000000%
Georgia Harrison	20.833333%
Barbara Harrison	20.833333%
Joyce Ellen Harrison	10.416667%
William S. Harrison, III	10.416667%
Carol Bush	1.562500%
Diana Mendheim	1.562500%
Robert Young	1.562500%
Denise Davidson	1.562500%
Rose Hampton	1.562500%
Jason Young	1.562500%
Joanne Elizabeth Carver	0.260417%
William Charles Kirkland	0.260417%
Stephanie Lorraine Kirkland	0.260417%
Gary Lamont Kirkland	0.260417%
Keita Nicole White	0.260417%
Tyrone D. Hodges	0.260417%
Derrick Hodges	0.260417%
Corey Hodges	0.260417%
Vanessa Coleman	0.260417%
Richard Hodges	0.260417%
Diamond Moseley	0.260417%
Donna Mosby	0.130208%
Paulette Kirkland	0.026042%
Paul T. Allbright	0.026042%
Cheryl Kirkland	0.026042%
Christopher Kirkland	0.026042%
Shawn Kirkland	<u>0.026042%</u>
Total	100.000000%



Beaufort Common Pleas

Case Caption: Georgia Harrison , plaintiff, et al VS Stephanie Lorraine Kirkland ,
defendant, et al
Case Number: 2020CP0702301
Type: Order/Consent Order

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2021-05-21 14:28:17 page 4 of 4

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

GEORGIA HARRISON, BARBARA)
 HARRISON, JOYCE ELLEN)
 HARRISON, WILLIAM S.)
 HARRISON, III, STANLEY)
 ROBERTS, and DIANA MENDHEIM,)
 individually and as agent and attorney)
 in fact,)

Plaintiffs,)

vs.)

STEPHANIE LORRAINE)
 KIRKLAND, GARY LAMONT)
 KIRKLAND, KEITA NICOLE)
 WHITE, and CHERYL KIRKLAND,)

Defendants)

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO. 2020-CP-07-02301

ORDER

THIS MATTER CAME BEFORE THE COURT for consideration of the Plaintiffs' Motion to Set Fair Market Value, on September 9, 2021 at 3:00 p.m. via WebEx video hearing. Present at the hearing via video conference were Thomas C. Taylor and Chester C. Williams, counsel for the Plaintiffs, Roberts Vaux, counsel for the Defendants, Plaintiff Georgia Harrison, Plaintiff Diana Mendheim, Plaintiffs' consultant Andre White, and Defendant Keita Nicole White.

This hearing was a continuation of two previous hearings on the same matter, and the Court had previously taken testimony from Andre White and accepted as evidence (without objection), copies of an appraisal of the property dated February 28, 2021 and a copy of a contract for the purchase and sale of the land, dated September 14, 2020. During the September 9, 2021 hearing, counsel for the Plaintiffs and the Defendants, and Defendant Keita Nicole White, advised the Court that they all agreed the current fair market value of the property is Nine Million, One Hundred Thousand (\$9,100,000.00) Dollars.

Having heard the testimony, and considered the exhibits and the arguments of counsel, I make the following findings and conclusions:

FINDINGS OF FACT

1. This is an action initiated by the Plaintiffs on November 24, 2020, to quiet title and partition the land by sale pursuant to the Clementa C. Pinckney Uniform Partition of Heirs' Property Act, codified at S.C. Code Annot. Section 15-61-310 et. seq.
2. All Defendants were properly served or acknowledged service.
3. This case was referred to me as the Master on April 21, 2021.
4. By a Consent Order entered on May 21, 2021, the parties agreed the property is owned in indivision by the Plaintiffs, the represented Co-Owners, and the Defendants, and that their respective undivided interests in the real property are as set forth in Exhibit A to that Consent Order.
5. The parties agree that the current Fair Market Value for the 26.462 acres, more or less, of land described in the Complaint, is \$9,100,000.00.
6. The Defendants wish to retain new counsel in substitution of Mr. Vaux, and neither Mr. Vaux nor the Plaintiffs object. The Defendants advised the Court that they may be contacted directly at 1570 East New York Avenue, Apt. 2A, Brooklyn, New York, 11212 once Mr. Vaux is relieved as counsel of record. Further, the Defendants agreed to retain new counsel and advise the Court of the new counsel, within twenty (20) days of the filing of this Order.

CONCLUSIONS OF LAW

1. Pursuant to S.C. Code Annot. Section 15-61-360(B), the Court adopts the agreed upon Nine Million, One Hundred Thousand (\$9,100,000.00) Dollar valuation as the current Fair Market Value of the 26.462 acres, more or less, of land described in the Complaint.

2. A partition trial of this matter is hereby set for October 6, 2021 at 10 a.m. before the undersigned Master in Equity of Beaufort County, South Carolina, at the Beaufort County Courthouse, 102 Ribaut Road, Room 212, Beaufort, SC.
3. Copies of this filed Order shall be served upon all Defendants by the Plaintiffs' counsel within five (5) days of its filing, and notice therein given to each Defendant that any Defendant may buy all the interests of the Plaintiffs and the represented Co-Owners who have requested partition by sale.
4. Any Defendant who is interested in purchasing the interests of the Plaintiffs and the represented Cotenants that requested partition by sale, shall notify the court of that interest no later than September 26, 2021, which is ten (10) days prior to the scheduled partition trial. Such notice shall be made as follows:

Hon. Marvin H. Dukes III
 Master in Equity
 Post Office Drawer 1228
 Beaufort, SC 29901-1228

With a copy to the Plaintiffs' counsel:

Thomas C. Taylor, Esq.
 Law Office of Thomas C. Taylor
 P.O. Box 5550
 Hilton Head Island, SC, 29938-5550

and,

Chester C. Williams, Esq.
 Law Office of Chester C. Williams. LLC
 P.O. Box 6028
 Hilton Head Island, SC 29938-6028.

The notice to the Court shall reference the caption and case number as set forth above.

5. The purchase price for each of the interests of the cotenants that requested partition by sale is Nine Million, One Hundred Thousand (\$9,100,000.00) multiplied by the cotenant's fractional ownership of the entire parcel.

6. At the Defendants' request, Roberts Vaux, Esq. is hereby relieved as counsel for the Defendants. To ensure that the case moves forward in a timely fashion, the Defendants shall retain new counsel and notify the Court of the name and address of the new counsel, within twenty (20) days of this Order. Further, in the event new counsel is not retained within that time period, the Plaintiffs, the Court, and all interested parties may contact the Defendants directly at 1570 East New York Avenue, Apt. 2A, Brooklyn, New York, 11212. Notice properly mailed via the US Postal Service to such address shall be presumed as service upon the Defendants consistent with the South Carolina Rules of Civil Procedure and the common law.

AND IT IS SO ORDERED.

s/_____
Marvin Dukes, III
Master In Equity and Special Circuit
Court Judge of Beaufort County



Beaufort Common Pleas

Case Caption: Georgia Harrison , plaintiff, et al VS Stephanie Lorraine Kirkland ,
defendant, et al

Case Number: 2020CP0702301

Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2021-09-15 11:16:49 page 5 of 5

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

GEORGIA HARRISON, BARBARA)
 HARRISON, JOYCE ELLEN)
 HARRISON, WILLIAM S.)
 HARRISON, III, STANLEY)
 ROBERTS, and DIANA MENDHEIM,)
 individually and as agent and attorney)
 in fact,)

Plaintiffs,)

vs.)

STEPHANIE LORRAINE)
 KIRKLAND, GARY LAMONT)
 KIRKLAND, KEITA NICOLE)
 WHITE, CHERYL KIRKLAND,)
 WILLIAM CHARLES KIRKLAND,)
 PAULETTE KIRKLAND, PAUL T.)
 ALLBRIGHT, CHRISTOPHER)
 KIRKLAND AND SHAWN)
 KIRKLAND,)

Defendants.

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO. 2020-CP-07-02301

ORDER

On September 27, 2021, Defendants Keita Nicole White, Gary Lamont Kirkland, Stephanie Lorraine Kirkland, and Cheryl Kirkland, by and through their counsel of record, Charles E. Houston, Jr., notified the Court pursuant to S.C. Code Annot. Section 15-61-370 (B), that they are interested in purchasing the ownership interests of the cotenants that requested partition by sale in this case. Said Notice was made via the filing of a “Notice of Exercise of Right of First Refusal” by Attorney Houston with the Clerk of Court on September 27, 2021.

On October 5, 2021, Attorney Houston, current counsel for the original four (4) Defendants, notified counsel for the Plaintiffs that five of the original Represented Co-Owners, namely Christopher Kirkland, Shawn Kirkland, William Charles Kirkland, Paulette Kirkland, and Paul T. Allbright, had revoked their respective Powers of Attorney earlier given to Plaintiff Diana

Mendheim, and that they wish to now be positioned as Defendants in this action and that Mr. Houston now also represents these individuals. Attorney Houston also advised the Plaintiffs that these five individuals also are interested in purchasing the ownership interests of the cotenants that requested partition by sale in this case pursuant to South Carolina Code Annot. Section 15-61-370(B). In response, the Plaintiffs have advised the Court that the Plaintiffs consent to William Charles Kirkland, Paulette Kirkland, Paul T. Allbright, Christopher Kirkland, and Shawn Kirkland being re-aligned as Defendants in this action and further that the Plaintiffs, for purposes of this action, agree that these new Defendants William Charles Kirkland, Paulette Kirkland, Paul T. Allbright, Christopher Kirkland, and Shawn Kirkland have timely notified the Court and the Plaintiffs of their interest in purchasing the ownership interests of the cotenants that requested partition by sale in this case pursuant to South Carolina Code Annot. Section 15-61-370 (B).

The Court held a status conference in this matter via WebEx on October 19, 2021. The Plaintiffs were represented by Thomas C. Taylor and Chester C. Williams. The Defendants (including the five new Defendants above-named) were represented by Attorney Houston. Also present via WebEx were the Plaintiffs' advisor Andre White, and Plaintiffs Georgia Harrison and Diana Mendheim. Also present in the WebEx hearing was Attorney Tom Johnson of Hardeeville, who represents a third party that currently has a contract with the Plaintiffs to purchase the property.

During the status conference, counsel for the Plaintiffs and the Defendants affirmed their consent to the realignment of the parties as above described and confirmed the timeliness of these Defendants' notice to the Court and the Plaintiffs of their intended South Carolina Code Annot. Section 15-61-370 (B) rights of purchase. Further, all counsel agreed that each and every owner of an undivided interest in the land as were identified in this Court's Order of May 21, 2021, have been notified of their South Carolina Code Annot. Section 15-61-370 (B) rights of purchase, and that only the nine Defendants herein have timely notified the Court of their interest in purchasing the ownership interests of the cotenants that requested partition by sale in this case.

The parties have agreed that they will publish a notice of the pendency of this action in a newspaper of general circulation in Beaufort County, once a week for three successive weeks

following the entry of this Order, in order to provide additional notice to the public of the pendency of the action and provide an opportunity for any other person who might claim some interest in the property, to petition the Court for inclusion in the suit if such claim is well founded. However, all parties agree that there are no other known individuals or entities with any interest in the property other than those identified in this Court's May 21, 2021 Order.

Further, although not required under the statutes, at the Defendants' request, this Court and the Plaintiffs and other petitioning co-owners, agree that the appointment of a Guardian ad Litem Nisi would be appropriate to protect the interests of any infants, insane or incompetent persons, persons in the military, and any other persons who may claim a right, title, interest in or lien on the parcel of land identified in the Complaint. Thus, the Court hereby appoints Maria Belbas Parker, Esq., of the Law Office of Maria B. Parker, Post Office Box 7926, Hilton Head Island, SC, 29938, as the Guardian ad Litem Nisi of any infants, insane or incompetent persons, persons in the military, and any other persons who may claim a right, title, interest in or lien on the parcel of land identified in the Complaint, and her appointment and contact information shall be contained in the published Notice of Pendency of Action. If any infants, insane or incompetent persons, persons in the military, and any other persons who may claim a right, title, interest in or lien on the parcel of land identified in the Complaint, contact Ms. Parker, or are brought to her attention, she shall advise this Court in writing by December 1, 2021 of the specifics of the claimant.

The Court having received timely notice of the intention of the nine Defendants to purchase the interests of the cotenants who initiated this action, the Court hereby, pursuant to S.C. Code Annot. Section 15-61-370 (D)(2), allocates the right to buy those interests among the electing Defendant cotenants based upon their respective existing fractional ownership of the entire parcel divided by the total existing fractional ownership of all cotenants electing to buy as follows:

<u>ELECTING COTENTANT</u>	<u>PERCENTAGE OWNERSHIP INTEREST</u>	<u>ALLOCATED RIGHT TO BUY INTEREST</u>
Stephanie Lorraine Kirkland	0.260417%	22.22220%
Gary Lamont Kirkland	0.260417%	22.22220%
Keita Nicole White	0.260417%	22.22220%
William Charles Kirkland	0.260417%	22.22220%

Cheryl Kirkland	0.026042%	2.22224%
Christopher Kirkland	0.026042%	2.22224%
Shawn Kirkland	0.026042%	2.22224%
Paulette Kirkland	0.026042%	2.22224%
Paul T. Allbright	0.026042%	2.22224%
<u>TOTAL</u>	<u>1.171878%</u>	<u>100.00%</u>

<u>ELECTING COTENANT</u>	FAIR MARKET VALUE OF THE PROPERTY	FAIR MARKET VALUE OF THE NON-ELECTING COTENANTS' INTERESTS IN THE PROPERTY (98.82813%)	<u>PRICE TO BE PAID</u>
	\$9,100,000.00	\$8,993,359.10	
Stephanie Lorraine Kirkland			\$1,998,522.25
Gary Lamont Kirkland			\$1,998,522.25
Keita Nicole White			\$1,998,522.25
William Charles Kirkland			\$1,998,522.25
Cheryl Kirkland			\$199,854.02
Christopher Kirkland			\$199,854.02
Shawn Kirkland			\$199,854.02
Paulette Kirkland			\$199,854.02
Paul T. Allbright			\$199,854.02
TOTAL			\$8,993,359.10

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Christopher Kirkland, Shawn Kirkland, William Charles Kirkland, Paulette Kirkland, and Paul T. Allbright, who previously appeared in this action as represented parties (by the Plaintiff Diana Mendheim via Powers of Attorney), are hereby realigned in this case as Defendants, represented by Attorney Houston.

Further, the nine (9) Defendants (specifically Stephanie Lorraine Kirkland, Gary Lamont Kirkland, Keita Nicole White, Cheryl Kirkland, Christopher Kirkland, Shawn Kirkland, William Charles Kirkland, Paulette Kirkland, and Paul T. Allbright) are notified by this Order of their rights

to purchase all of the petitioning cotenants' ownership upon the payments into the Court as set forth above.

Further, because the petitioning Plaintiffs compose or represent all of the cotenants of the property except the nine (9) Defendants set forth above, the filing of this Order satisfies the notice requirement to all other cotenants set forth in S.C. Code Section 15-61-370 (D)(2). No further notice to the cotenants is necessary. Should any other currently unknown individuals claiming some ownership interest in the parcel, petition the Court for recognition in this case, or should Ms. Parker report to the Court that an infant, or insane or incompetent person claiming some ownership interest in the parcel has been identified in her capacity as the Guardian ad Litem Nisi, the Court will consider those claims/notices in a timely fashion.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to S.C. Code Section 15-61-370 (E), the Court hereby sets the date of December 22, 2021 as the date by which the Defendants must pay their apportioned prices into the Court. Payment shall be made by deposit of the appropriate amounts in collected funds with the Beaufort County Clerk of Court on or before 5:00 p.m. EST December 22, 2021.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that if the Defendants fail to timely pay their apportioned prices into the Court, then the property that is the subject of this action shall be partitioned by sale at a purchase price of not less than \$9,100,000.00, and that the Plaintiffs shall be authorized to enter into, or ratify, a contract of sale for not less than such price, and including such other commercially reasonable terms and conditions as are deemed appropriate.

AND IT IS SO ORDERED.

s/_____
Marvin Dukes, III
Master In Equity and Special Circuit
Court Judge of Beaufort County

October____, 2021



Beaufort Common Pleas

Case Caption: Georgia Harrison , plaintiff, et al VS Stephanie Lorraine Kirkland ,
defendant, et al
Case Number: 2020CP0702301
Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2021-10-20 14:23:42 page 6 of 6

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CIVIL ACTION NO. 2020-CP-07-02301
	)	
GEORGIA HARRISON, BARBARA	)	
HARRISON, JOYCE ELLEN	)	
HARRISON, WILLIAM S.	)	
HARRISON, III, STANLEY	)	
ROBERTS, and DIANA MENDHEIM,	)	
individually and as agent and attorney	)	
in fact,	)	
	)	
Plaintiffs,	)	ORDER
vs.	)	
	)	
STEPHANIE LORRAINE	)	
KIRKLAND, GARY LAMONT	)	
KIRKLAND, KEITA NICOLE	)	
WHITE, and CHERYL KIRKLAND,	)	
	)	
Defendants	)	
_____	)	

THIS MATTER CAME BEFORE THE COURT for a status conference and consideration of the Defendants' recently filed three motions, on January 6, 2022 via a WebEx hearing. Present at the hearing via video conference were Thomas C. Taylor and Chester C. Williams, counsel for the Plaintiffs, Charles Houston, counsel for the Defendants, Plaintiff Georgia Harrison, Plaintiff Diana Mendheim, Plaintiffs' consultant Andre White, and Defendant Keita Nicole White. Also on the video hearing were Earsa Jackson, of the Texas Bar, who according to Mr. Houston, is representing the Defendants in negotiations with one or more potential third-party developers, and Robert Brennen, Jr., who represents one or more potential third party developers that the Defendants have contacted. Also present on the video hearing were Luke Lopatka, of Singerman Real Estate and Nick Bergelt of Nassau Investments HHI, LLC, both identified by Mr. Houston as "Financial Partner/Developer" for the Defendants.

Mr. Taylor advised the Court that Beaufort County Clerk of Court Jerri Ann Roseneau had confirmed that no funds were tendered by the Defendants by 5:00 p.m. December 22, 2021, in

payment of the Defendants' apportioned prices pursuant to this Court's Order of October 20, 2021, pursuant to S.C. Code Section 15-61-370 (D)(2). Mr. Houston also confirmed to the Court that none of the Defendants had paid in money to the Court by 5 p.m. December 22, 2021.

Mr. Houston then argued in support of his Motion For Relief of Judgment and For Extension of Time to Tender Purchase Price Under Right of First Refusal and Motion for Realignment of Parties as filed on December 22, 2021 at 7:54 p.m.; the Defendants' Supplemental Motion For Relief Of Judgment and For Extension of Time to Tender Purchase Price Under Right of First Refusal filed January 5, 2022; and the Defendants' Amended Supplemental Motion for Relief Of Judgment And For Extension of Time To Tender Purchase Price Under Right of First Refusal, filed later in the day on January 5, 2022. All counsel were then heard in reply.

Having heard the arguments of counsel and considered the pleadings and Orders of record, I deny the Defendants' pending Motions identified above. The October 20, 2021 Order in this case, which set a date of December 22, 2021 for the Defendants to pay their apportioned prices into the Court, was not appealed nor was a timely Motion to Alter or Amend pursuant to Rule 59 SCRCP filed. Therefore, the October 20, 2021 Order is final and I am without jurisdiction to reconsider or amend that Order, even if I desired to do so. To the extent that any of the three Motions identified above are construed to seek relief or remedy from this Court in addition to reconsideration or amendment to my October 20, 2021 Order, I also respectfully deny those requests.

THEREFORE, IT IS ORDERED AND ADJUDGED that the Defendants' Motions are denied.

AND IT IS SO ORDERED this ____ day of January, 2022.

s/_____
Marvin Dukes, III
Master In Equity and Special Circuit
Court Judge of Beaufort County



Beaufort Common Pleas

Case Caption: Georgia Harrison , plaintiff, et al VS Stephanie Lorraine Kirkland ,
defendant, et al
Case Number: 2020CP0702301
Type: Master/Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2022-01-19 14:55:34 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	
	)	CASE NO: 2020-CP-07-02301
	)	
Georgia Harrison, et al.,	)	
	)	
Plaintiff(s),	)	
	)	ORDER DENYING DEFENDANT'S
vs.	)	MOTION FOR RECONSIDERATION
	)	
	)	
Stephanie Lorraine Kirkland, et al.,	)	
	)	
Defendant(s).	)	
_____	)	

This came before me February 11th, 2022, on Defendants' Motion for Reconsideration, filed January 31st, 2022. After hearing from parties and reviewing the filings, the motion is respectfully denied.

IT IS SO ORDERED:

Honorable Marvin H. Dukes, III
Master in Equity and Special Circuit Court
Judge for Beaufort County

March ____, 2022
Beaufort, South Carolina



Beaufort Common Pleas

Case Caption: Georgia Harrison , plaintiff, et al VS Stephanie Lorraine Kirkland ,
defendant, et al
Case Number: 2020CP0702301
Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2022-03-04 14:25:00 page 2 of 2

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

GEORGIA HARRISON, BARBARA)
 HARRISON, JOYCE ELLEN)
 HARRISON, WILLIAM S.)
 HARRISON, III, STANLEY)
 ROBERTS, and DIANA)
 MENDHEIM, individually and as)
 agent and attorney in fact,)

Plaintiffs,)

vs.)

STEPHANIE LORRAINE)
 KIRKLAND, GARY LAMONT)
 KIRKLAND, KEITA NICOLE)
 WHITE, CHERYL KIRKLAND,)
 WILLIAM CHARLES KIRKLAND,)
 PAULETTE KIRKLAND, PAUL T.)
 ALLBRIGHT, CHRISTOPHER)
 KIRKLAND AND SHAWN)
 KIRKLAND,)

Defendants.)

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO. 2020-CP-07-02301

ORDER

THIS MATTER CAME BEFORE THE COURT for consideration of the Plaintiffs' pending Amended Motion For Master's Deed Conveying Ownership Interests of All Owners of Property to Rotunda Land & Development Group, LLP, and for consideration of the Defendants' pending Motion For Stay and Waiver of Supersedeas Bond or in the Alternative a Nominal Bond Pending Appeal. A hearing on the motions was held via WebEx on Thursday, September 15, 2022. Present at that hearing via video link where Thomas C. Taylor, Esq. and Chester C. Williams, Esq. for the Plaintiffs, and Charles Houston, Esq. for the Defendants. Also present on the video

conference were Terry A. Finger, Esq. for Rotunda Land & Development Group, LLC (“Rotunda”), the entity currently under contract with the Plaintiffs for the sale of the land at issue in this case, Earsa Jackson, Esq. of the Texas Bar, who, according to Mr. Houston, is representing the Defendants in negotiations with one or more potential other third-party developers, and several of the Plaintiffs and the Defendants, along with the Plaintiffs’ advisor, Andre White.

Following arguments of counsel on the pending motions, Mr. Houston requested additional time to prepare and file a supplemental Brief addressing issues discussed during the WebEx hearing, and leave of Court was granted for Mr. Houston to file additional briefing by September 19, 2022. No additional briefing was filed by Mr. Houston with the Court, but an unexecuted draft “Purchase and Sale Agreement” was sent to the Court by email from Mr. Houston on September 20, 2022, and a Certificate of Technical Failure or Technical Difficulties was filed by Mr. Houston on September 20, 2022 and a copy also directed to the Court via email on that date.

On September 22, 2022, another WebEx hearing on the pending motions was held. Present at that hearing via video link were Mr. Taylor, Mr. Williams, Mr. Houston, Mr. Finger, Ms. Jackson, Mr. White, and several of the Plaintiffs and Defendants. Arguments of counsel were presented, and comments were also received from the Plaintiffs and Defendants in attendance who wished to speak by video link. The Court has considered these arguments, reviewed all of the briefs and memoranda filed, and upon due, careful, and just consideration, finds and orders as follows:

This action was initiated by the Plaintiffs on November 24, 2020, to quiet title and partition by sale a 26.462-acre tract of real property located on Hilton Head Island, in Beaufort County, South Carolina (the “Real Property”). (See Paragraph 5 of the Complaint. Admitted in Answer). Title to the Real Property had twice been quieted previously in separate actions. (See Paragraphs 7, 8 and 16 of the Complaint. Admitted in Answer). The Complaint notified the Court and all Defendants that the Plaintiffs had, on September 14, 2020, entered into a contract of purchase and sale of the Real Property to Rotunda for a purchase price of \$9,100,000.00, alleged that the \$9,100,000.00 purchase price was a fair and equitable price for the Real Property, and requested the Court again quiet title and partition the Real Property by sale pursuant to South Carolina law. (See Paragraph 46 of the Complaint. Defendants claimed they lacked sufficient information and demanded strict proof). The Complaint specifically referred to the Defendants’ rights to purchase the interests of the Plaintiffs in the Real Property under the South Carolina law commonly known as the Pinckney Act, and sought an equitable lien on the interests of all owners of the Real Property in proportion to their respective interests for costs and attorney’s fees incurred by the Plaintiffs in the maintenance and prosecution of this action. (See Wherefore clause in Complaint). Answers were timely filed by the then Defendants Stephanie Lorraine Kirkland, Gary Lamont Kirkland, Keita Nicole White, and Cheryl Kirkland, and the case was referred to the Master by consent.

On May 21, 2021, a Consent Order was filed quieting title to the parcel, and further establishing that the Real Property was at that time, owned in indivision by the Plaintiffs, the

represented Co-Owners and the Defendants, and the respective undivided interests in the real property were set forth as is shown on Exhibit A to the May 21, 2021 Consent Order.

On September 15, 2021, this Court entered its Consent Order setting the Fair Market Value of the Real Property at \$9,100,000.00, after all parties agreed to that valuation and the Court was provided with a recent appraisal obtained by the Defendants justifying that valuation. This Consent Order specifically stated the action was pursuant to the Clementa C. Pinckney Uniform Partition of Heirs' Property Act. Shortly thereafter, the Defendants retained Mr. Houston and substituted him as counsel.

On September 27, Keita White, Gary Kirkland, Stephanie Kirkland, and Cheryl Kirkland gave notice that they wanted to exercise the Pinckney Act right of first refusal.

On October 5, 2021, Mr. Houston notified the Plaintiffs and the Court that former Plaintiffs Christopher Kirkland, Shawn Kirkland, William Charles Kirkland, Paulette Kirkland, and Paul T. Allbright, had revoked their Powers of Attorney earlier given Plaintiff Diana Mendheim, and wished to be positioned as Defendants and represented by Mr. Houston. The request was consented to by the Plaintiffs, and they were realigned as Defendants by Order dated October 20, 2021.

At the request of the Defendants, and notwithstanding the fact that all parties to this action, including the Defendants, agreed that there were no other known individuals or entities with any interest in the Real Property other than those identified in this Court's Order of May 21, 2021, the October 20, 2021 Order also noted that the parties had agreed to publish a notice of the pendency

of this action in a newspaper of general circulation in Beaufort County, once a week for three successive weeks following the entry of this Order, in order to provide additional notice to the public of the pendency of this action and provide an opportunity for any other person who might claim some interest in the property, to petition the Court for inclusion in the suit if such claim is well founded. To that end, the Court appointed Maria Belbas Parker, Esq. as the Guardian ad Litem Nisi for any infants, insane or incompetent persons, persons in the military, and any other persons who may claim a right, title, interest in or lien on the Real Property. The notice of pendency was published in *The Island Packet* on October 25, 2021, on November 1, 2021, and on November 8, 2021, as evidenced by the Affidavit of Publication included in the record of this action, and in her Affidavit filed in this action on December 8, 2021, Mrs. Parker confirmed that no person or entity had contacted her and asserted any claim of right, title, interest in, or lien upon the Real Property, nor provided to her any notice of any type of claim in the Real Property.

As of the filing of the October 20, 2021 Order and the realignment of the parties, the Plaintiffs collectively owned a 98.82813 percent undivided interest in the Real Property, and the then nine (9) Defendants collectively owned a 1.171878 percent undivided interest in the Real Property. Using those agreed upon percentage ownerships, this Court's October 20, 2021 Order formally again notified the nine defendants owning the 1.171878 percent interest in the Real Property of their statutory rights under the Pinckney Act, as codified at S.C. Code Section Annot. 15-61-370 (D)(2), to purchase the 98.82813 percent undivided interest of the Plaintiffs in the Real

Property by tendering the purchase prices as allocated therein to each Defendant, to the Clerk of Court by December 22, 2021 at 5:00 p.m. EST. That Order also provided that if the Defendants failed to timely pay their apportioned prices into the Court, “then the property that is the subject of this action shall be partitioned by sale at a purchase price of not less than \$9,100,000.00 and that the Plaintiffs shall be authorized to enter into, or ratify, a contract of sale for not less than such price, and including such other commercially reasonable terms and conditions as are deemed appropriate.” (Order of October 20, 2021, at p. 5).

The Court notes that the October 21, 2021 Order was not appealed nor was a timely Motion to Alter or Amend filed regarding that Order.

None of the nine Defendants tendered or attempted to tender his or her portion of the purchase price to acquire the Plaintiffs’ undivided ownership interests in the Real Property pursuant to the provisions of the Pinckney Act as set forth in S.C. Code Annot. Section 15-61-371 (E), by the December 22, 2021 deadline (see this Court’s Order of January 2022). The portion of this Court’s Order of October 20, 2021 providing that the property shall be partitioned by sale at a purchase price of not less than \$9,100,000.00, thus became automatically effective.

Notwithstanding the Defendants’ collective failure to timely pay their respective portions of the purchase price for the Plaintiffs’ undivided interests in the Real Property, on the evening of December 22, 2021, the deadline for the Defendants’ payment, Mr. Houston, on behalf of the Defendants, filed a Motion for Relief of Judgement and for Extension of Time to Tender Purchase

Price, seeking to obtain additional time for the Defendants to tender their respective portions of the Purchase Price to the Clerk of Court beyond the December 22, 2021 deadline on various grounds. By way of this Court's Order of January 20, 2022, the Defendants' Motion was denied.

On January 31, 2022, the Defendants filed a Motion for Reconsideration of the January 20, 2022 Order, which, after a WebEx hearing held on February 28, 2022, attended by Mr. Taylor, Mr. Williams, Mr. Houston, Ms. Jackson, Mr. White, and various Plaintiffs and Defendants, was denied by this Court's Order entered on March 7, 2022.

On March 9, 2022, the Defendants filed a Notice of Appeal of this Court's March 7, 2022, January 20, 2022, October 20, 2021, and September 15, 2021 Orders with the Clerk of the South Carolina Court of Appeals, which Notice was amended by the Defendants by filings with the Court of Appeals on March 9, 2022 and March 14, 2022. The Court gives no opinion as to whether this March 7, 2022 Notice of Appeal was timely as to any Orders except the March 7 2022 Order.

On March 11, 2022, the Plaintiffs filed a Motion for Master's Deed with this Court, and on March 14, 2022, the Plaintiffs filed the pending Amended Motion for Master's Deed, advising the Court that the proposed purchaser, Rotunda had agreed to pay the Plaintiffs and the Defendants an additional \$650,000.00 for the Real Property, bringing the total purchase price for the Real Property to \$9,750,000.00, and requested this Court's issuance of a Master's Deed to allow the Rotunda closing to move forward immediately.

On March 17, 2022, the Defendants filed a Motion Pursuant to Rule 241(A) with the Court of Appeals, requesting an Order from the Court of Appeals holding that an “automatic stay” was in effect pursuant to SCRAP 241 as to further actions at this trial court. On June 23, 2022, the Court of Appeals denied the Motion for a Stay on the basis that this Court’s Order of October 20, 2021 was a judgment directing the sale or delivery of possession of real property. Thereafter, the Defendants then filed a Motion to Reconsider with the Court of Appeals, which Motion was denied on August 17, 2022.

The Plaintiffs then petitioned this Court for a hearing on their Amended Motion for a Master’s Deed filed March 14, 2022, and the Defendants responded by filing the pending Motion for Stay and Waiver of Supersedeas Bond or In The Alternative a Nominal Bond Pending Appeal.

This Court is charged with the responsibility in this case of protecting the collective interests of all of the property owners within the dictates of South Carolina law, and this Court cannot, and will not, take any action that benefits the interests of the owners of a small percentage interest in the Real Property to the detriment of the owners of the vast lion’s share percentage interest in the Real Property. Given the facts as set forth above, including the earlier agreed upon fair market valuation of the property at \$9,100,000.00 and the current Rotunda contract that is ready for closing at \$9,750,000.00, I believe I must try to protect the best interests of both the Plaintiff and Defendant owners in this volatile financial time, by denying the Defendants’ Motion for Stay and granting the Plaintiffs’ Motion for Issuance of Master’s Deed.

I find that the purpose of the Pinckney Act is to provide a method by which fee simple title to heirs' property can be kept in the family when one or more co-owner heirs want to sell their respective interests in the family property. I further find that the Defendants in this action have been afforded all of the protections of the Pinckney Act, including being offered their right of first refusal to purchase the collective ownership interests in the Real Property, and that the Defendants failed or refused to exercise that right of first refusal on a timely basis, as provided for in this Court's October 20, 2021 Order. Further, the Defendants have offered no evidence to support any assertion that they have a plan to maintain fee simple ownership of the Real Property in their family.

I find that the Defendants' arguments that, notwithstanding the Consent Order of May 21, 2021 in this action, title to the Real Property is unsettled because of several open estates of co-owners of the Real Property who have passed away since the entry of the May 21, 2021 Consent Order, to be without merit, especially considering that the Defendants have taken no action to open the probates of any of those estates, which is well within their power to do.

I reaffirm my October 20, 2021 Order under which I authorized partition of the property by sale. Mr. Finger, on behalf of Rotunda, having advised the Court that Rotunda will accept a deed from the Plaintiffs for their collective undivided interest in the Real Property, this Court will execute and deliver a Master's Deed conveying title, including the Defendants' collective undivided interest in the Real Property, to the Real Property to Rotunda or its assignee, pursuant

to the contract between Rotunda and the Plaintiffs upon presentation of the draft Master's Deed to be prepared by the Plaintiffs' counsel. The Plaintiffs are authorized to move forward with the closing of the sale of the Real Property pursuant to the Rotunda contract, as amended, for \$9,750,000.00 and the Defendants shall each receive their proportionate share of the purchase price of the net Sellers' proceeds as computed by their ownership interests set forth in the Consent Order of May 21, 2021. The closing costs for the sale of the Real Property shall be as provided for in the Rotunda contract, and the Court recognizes the equitable lien on the interests of all owners of the Real Property in proportion to their respective interests for costs and attorney's fees incurred by the Plaintiffs in the maintenance and prosecution of this action and the costs and fees incurred in the Closing. In addition, the net proceeds that are due to any of owners of the Real Property that have died during the pendency of this case shall be deposited with the Clerk of Court at closing, and this case shall remain open for one year from the date of closing to allow the petition by the Personal Representative of any estate of those deceased owners for recovery of their specific proceeds upon presentation of evidence to this Court affirming such ownership right.

AND IT IS SO ORDERED this ____day of October, 2022.

s/_____
Marvin Dukes, III
Master In Equity and Special Circuit
Court Judge of Beaufort County



Beaufort Common Pleas

Case Caption: Georgia Harrison , plaintiff, et al VS Stephanie Lorraine Kirkland ,
defendant, et al
Case Number: 2020CP0702301
Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2022-11-04 15:55:20 page 11 of 11

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

CASE NO: 2020-CP-07-02301

Georgia Harrison, et al.,

Plaintiff(s),

vs.

**ORDER DENYING DEFENDANT'S
MOTION FOR RECONSIDERATION**

Stephanie Lorraine Kirkland, et al.,

Defendant(s).

This came before me February 24th, 2023, on Defendants' Motion for Reconsideration, filed November 17th, 2022. After hearing from parties and reviewing the filings, the motion is respectfully denied.

IT IS SO ORDERED:

**Honorable Marvin H. Dukes, III
Master in Equity and Special Circuit Court
Judge for Beaufort County**

March ____, 2023
Beaufort, South Carolina



Beaufort Common Pleas

Case Caption: Georgia Harrison , plaintiff, et al VS Stephanie Lorraine Kirkland ,
defendant, et al
Case Number: 2020CP0702301
Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2023-03-08 11:23:24 page 2 of 2

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

GEORGIA HARRISON, BARBARA)
 HARRISON, JOYCE ELLEN)
 HARRISON, WILLIAM S.)
 HARRISON, III, STANLEY)
 ROBERTS, and DIANA MENDHEIM,)
 individually and as agent and attorney)
 in fact,)

Plaintiffs,)

vs.)

STEPHANIE LORRAINE)
 KIRKLAND, GARY LAMONT)
 KIRKLAND, KEITA NICOLE)
 WHITE, CHERYL KIRKLAND,)
 WILLIAM CHARLES KIRKLAND,)
 PAULETTE KIRKLAND, PAUL T.)
 ALLBRIGHT, CHRISTOPHER)
 KIRKLAND AND SHAWN)
 KIRKLAND,)

Defendants.)

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO. 2020-CP-07-02301

ORDER

THIS MATTER CAME BEFORE THE COURT on May 15, 2023, in Beaufort, South Carolina, for consideration of the Defendants' Amended Motion To Enforce Right of First Refusal Under The Pinckney Act And Alternative Relief, as was filed on April 24, 2023. Present at the hearing were Thomas C. Taylor and Chester C. Williams, counsel for the Plaintiffs, and Charles Houston, counsel for the Defendants. Terry A. Finger, counsel for Hilton Head Mitchelville Development Partners, LLC, was also present. Plaintiffs Georgia Harrison and Barbara Harrison were also present. In addition, Nick Bergelt, a representative for a development group, was present at Mr. Houston's invitation.

Following arguments of counsel, Mr. Houston requested permission to present testimony from Mr. Bergelt. The Plaintiffs objected, but the Court allowed the testimony, which Mr.

Houston stated would help explain the relief sought by the pending motion. The Court then took the matter under consideration.

Having heard the testimony, and considered the written motion and arguments of counsel, I respectfully deny the Motion because, as Mr. Taylor argued, I believe this Court lacks jurisdiction to consider it. On March 13, 2023, the Defendants filed a Notice of Appeal with the South Carolina Court of Appeals, appealing my Orders in this case dated November 7, 2022 and March 8, 2023. Those Orders, among other things, had denied the Plaintiffs' Motion For Stay and Waiver of Supersedeas Bond or in the Alternative a Nominal Bond Pending Appeal and a Motion for Reconsideration thereof. My Order of November 7, 2022, specifically authorized the Plaintiffs to move forward with the closing of the sale of the real property for the \$9,750,000 contract price.

Under South Carolina Appellate Court Rule 205, "Upon the service of the notice of the appeal, the appellate court shall have exclusive jurisdiction over the appeal; the lower court or administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241." However, nothing in the Rules prohibits a lower court from proceeding with matters of the case not affected by the appeal, including enforcing matters not stayed by the appeal. SCACR 205 and 241. The Plaintiffs having filed their Notice of Appeal of my November 7, 2022 Order authorizing the closing of the sale of the real property, I respectfully find that this Court is without jurisdiction to now consider the Defendants' pending Amended Motion To Enforce Right Of First Refusal Under Pinckney Act And Alternative Relief. However, even if this Court has jurisdiction to grant such a request, I have fully considered same, the arguments of counsel and the testimony of Mr. Bergelt, and find that further delaying the closing of the sale of the real property under the current circumstances could severely prejudice the interests of all the parties, and would therefore deny the motion if I had jurisdiction.

AND IT IS SO ORDERED.

s/_____
Marvin Dukes, III
Master In Equity and Special Circuit
Court Judge of Beaufort County



Beaufort Common Pleas

Case Caption: Georgia Harrison , plaintiff, et al VS Stephanie Lorraine Kirkland ,
defendant, et al
Case Number: 2020CP0702301
Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

Electronically signed on 2023-06-02 16:48:49 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

GEORGIA HARRISON,
BARBARA HARRISON, JOYCE
ELLEN HARRISON, WILLIAM S.
HARRISON, III, STANLEY
ROBERTS, and DIANA
MENDHEIM, individually and
as agent and attorney in fact,

Plaintiffs,

vs.

STEPHANIE LORRAINE
KIRKLAND, GARY LAMONT
KIRKLAND, KEITA NICOLE
WHITE, CHERYL KIRKLAND,
WILLIAM CHARLES
KIRKLAND, PAULETTE
KIRKLAND, PAUL T.
ALLBRIGHT, CHRISTOPHER
KIRKLAND AND SHAWN
KIRKLAND,

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2020-CP-07-02301

MASTER'S DEED

TO ALL WHOM THESE PRESENTS SHALL CONCERN, I, Marvin H. Dukes, III, the Master in Equity for Beaufort County, South Carolina, send Greetings:

WHEREAS, in this certain action in the Court of Common Pleas in Beaufort County, South Carolina, styled *Georgia Harrison, Barbara Harrison,*



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Joyce Ellen Harrison, William S. Harrison, III, Stanley Roberts, and Diana Mendheim, individually and as agent and attorney in fact vs. Stephanie Lorraine Kirkland, Gary Lamont Kirkland, Keita Nicole White, Cheryl Kirkland, William Charles Kirkland, Paulette Kirkland, Paul T. Albright, Christopher Kirkland and Shawn Kirkland, being Case No. 2020-CP-07-02301, on 20 October 2021, I executed an Order directing that the property hereinafter described (the "Property") be partitioned by sale at a purchase price of not less than \$9,100,000.00 if the Defendants did not pay their apportioned prices for the purchase of the Property pursuant to Section 15-61-370(E) of the Code of Laws of South Carolina (1976), as amended by 5:00 PM on 22 December 2021, and that the Plaintiffs in this action shall be authorized to enter into, or ratify, a contract of sale for not less than such price, and including commercially reasonable conditions as are deemed appropriate; and

WHEREAS, several original Plaintiffs were realigned as Defendants by that Order of this Court dated 20 October 2021, such that the original Defendants and the realigned Defendants are those Defendants listed in the caption above; and

WHEREAS, by that Order of this Court dated 20 October 2021, the parties were directed to publish a notice of the pendency of this action in a newspaper of general circulation in Beaufort County, once a week for three successive weeks following the entry of such Order, in order to provide additional notice to the public of the pendency of this action and provide an opportunity for any other person who might claim some interest in the Property, to petition the Court for inclusion in the suit if such claim is well founded; and further, this Court appointed Maria Belbas Parker, Esq. as the *Guardian ad Litem Nisi* for any infants, insane or incompetent persons, persons in the military, and any other persons who may claim a right, title, interest in, or lien on, the Property that is the subject of this action; and

WHEREAS, the notice of pendency of this action was published in *The Island Packet* on 25 October 2021, on 1 November 2021, and on 8 November 2021, as evidenced by the Affidavit of Publication filed on 8 December 2021; and

WHEREAS, in her Affidavits filed in this action on 8 December 2021 and on 15 May 2023, Mrs. Parker confirmed that no person or entity had contacted her and asserted any claim of right, title, or interest in, or lien upon, the



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Property, nor provided to her any notice of any type of claim in the Property;
and

WHEREAS, the 20 October 2021 Order of this Court was not appealed,
nor was a timely Motion to Alter or Amend filed regarding that Order; and

WHEREAS, none of the Defendants paid their apportioned prices for the
purchase of the Property by 5:00 PM on 22 December 2021; and

WHEREAS, as evidenced by this Court's Order of 20 October 2021, the
Defendants collectively own a 1.171878% undivided interest in the Property;
and

WHEREAS, the Defendants have refused to comply with the Orders of
this Court authorizing the sale of the Property by the Plaintiffs; and

WHEREAS, the Plaintiffs previously entered into, and have ratified that
certain Purchase and Sale Agreement with Rotunda Land & Development
Group, LLC of 14 September 2020, as last amended on 15 November 2021,
which provides for a purchase price for the Property of \$9,750,000.00 (the
"Purchase and Sale Agreement"); and

WHEREAS, by Order of this Court dated 20 January 2022, the
Defendants' Motion for Relief of Judgment and for Extension of Time to Tender
Purchase Price Under Right of First Refusal and Motion for Realignment of
Parties, as filed on 22 December 2021, was denied; and

WHEREAS, by Order of this Court dated 7 March 2022, the Defendants'
Motion for Reconsideration of my Order of 20 January 2022 was denied; and

WHEREAS, on 1 March 2022, the Defendants filed an Amended Notice of
Appeal with the South Carolina Court of Appeals regarding this Court's Orders
of 7 March 2022, 20 January 2022, 20 October 2021, and 15 September 2021,
designated as Appellate Case No. 2022-000277; and

WHEREAS, the South Carolina Court of Appeals, by way of its Order of
23 June 2022 in Appellate Case No. 2022-00277, denied the Defendants'
motion seeking an automatic stay intended to block the sale of the Property
pursuant to my Order of 20 October 2021; and



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WHEREAS, the South Carolina Court of Appeals, by way of its Order of 1 November 2022 in Appellate Case No. 2022-00277, denied the Defendants' petition for a supersedeas intended to block the sale of the Property pursuant to my Order of 20 October 2021, and the South Carolina Supreme Court, by its Order of 25 January 2023 in Appellate Case No. 2022-001628, denied Defendants' motion for a writ of mandamus on the same matter; and

WHEREAS, by way of my Order of 7 November 2022 in this action, this Court denied the Defendants' motion for a stay and waiver of supersedeas bond intended to block the sale of the Property pursuant to my Order of 20 October 2021, reaffirmed my Order of 20 October 2021 under which I authorized partition of the Property by sale, and authorized my execution of this Master's Deed conveying title to the Property; and

WHEREAS, by way of this Court's Order of 8 March 2023, the Defendants' Motion for Reconsideration of this Court's Order of 7 November 2022 was denied; and

WHEREAS, on 13 March 2023, the Defendants filed a Notice of Appeal with the South Carolina Court of Appeals regarding this Court's Orders of 7 November 2022 and 8 March 2022, designated as Appellate Case No. 2023-000438, which is now pending, but no supersedeas regarding this Court's 7 November 2022 Order has issued or been sought; and

WHEREAS, by way of its Order of 15 March 2023, the Defendants' Appellate Case No. 2022-000277 was dismissed by the South Carolina Court of Appeals, and that case was remitted to this Court on 5 April 2023; and

WHEREAS, the Defendants have not further appealed the dismissal by the South Carolina Court of Appeals of Appellate Case No. 2022-000277 to the South Carolina Supreme Court; and

WHEREAS, it is in the best interests of all parties to this action that the Property be sold pursuant to the Purchase and Sale Agreement, and this Master's Deed is the most equitable and efficient way to effect such sale; and

WHEREAS, the purchaser under the Purchase and Sale Agreement has directed that title to the Property be vested in Hilton Head Mitchelville Development Partners, LLC, a Georgia limited liability company; and



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WHEREAS, the Plaintiffs in this action will execute and deliver their own warranty deeds to Hilton Head Mitchelville Development Partners, LLC, a Georgia limited liability company; and

WHEREAS, I execute this Master's Deed pursuant to my Order entered in this action on 7 November 2022, and direct that this Master's Deed be delivered to counsel for the Plaintiffs to be held in escrow pending the closing of the sale of the Property pursuant to the Purchase and Sale Agreement;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that I, the undersigned, Marvin H. Dukes, III, as Master in Equity for Beaufort County, South Carolina, pursuant to the foregoing, have, subject to the easements, restrictions, reservations, and conditions of record, granted, bargained, sold, and released, and by these presents do grant, bargain, sell, and release unto Hilton Head Mitchelville Development Partners, LLC, a Georgia limited liability company (the "Grantee"), all of the right, title, and interests of any and all parties, including, without limitation, the Defendants in this action and any person or persons who may be an heir, distribute, legatee, devisee, widow, widower, issue, administrator, executor, personal representative, successor, creditor, or alienee of any deceased Defendants, and any and all other persons or legal entities, known and unknown, having, owning, and claiming any right, title, interest in, or lien upon, the following described property, to wit:

SEE ATTACHED EXHIBIT "A" FOR LEGAL DESCRIPTION

Grantee's Address: One Ravinia Drive, Suite 1400, Atlanta, GA 30346

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

TO HAVE AND TO HOLD, all and singular, the premises before mentioned unto the Grantee, its successors and assigns, forever.

[Signature page follows]



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IN WITNESS WHEREOF, I set my hand and seal on 24th May 2023.

SIGNED, SEALED AND
DELIVERED IN THE PRESENCE
OF:

(witness)

(witness)

(L.S.)

Marvin H. Dukes, III, Master in
Equity for Beaufort County, South
Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

ACKNOWLEDGEMENT

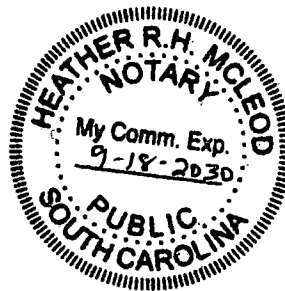
I, the undersigned Notary Public, do hereby certify that Marvin H. Dukes, III, Master in Equity for Beaufort County, South Carolina personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal on 24th May 2023.

(SEAL)

Notary Public for South Carolina

My Commission Expires: 9-18-2030



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EXHIBIT "A" TO MASTER'S DEED

LEGAL DESCRIPTION

ALL that certain piece, parcel, or lot of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing 28.127 acres, more or less, and is specifically shown as Lot B on the unrecorded plat of 165¼ Acres on Hilton Head Island, Formerly Property of March Gardner, prepared by Arthur O. Christianson, RLS, entitled "Plat of Survey Number Two, No Sale", dated April 6-8, 1921, and also on that certain plat of prepared by Millard Dunham, RLS entitled "Plat Prepared for Heirs of Clara Wigfall" dated January 29, 1988, last revised on January 18, 1990, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 38 at Page 29.

BEING the same property shown and designated as "Parcel 7", containing 26.462 acres, more or less, on that certain unrecorded plat of survey entitled "Boundary, Wetland Survey of: Parcel 7, Mitchelville Road" prepared by Sea Island Land Survey, LLC, William E. Mixon, Jr., SCRLS 17573, dated February 7, 2005.

Being TMS R510-005-000-0007-0000



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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CIVIL ACTION NO. 2020-CP-07-_____
	)	
GEORGIA HARRISON, BARBARA	)	
HARRISON, JOYCE ELLEN	)	
HARRISON, WILLIAM S.	)	
HARRISON, III, STANLEY	)	
ROBERTS, and DIANA MENDHEIM,	)	
individually and as agent and attorney	)	
in fact,	)	
	)	
Plaintiffs,	)	SUMMONS
vs.	)	
	)	
STEPHANIE LORRAINE	)	
KIRKLAND, GARY LAMONT	)	
KIRKLAND, KEITA NICOLE	)	
WHITE, and CHERYL KIRKLAND,	)	
	)	
Defendants	)	
_____	)	

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the **Complaint** herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to this Complaint upon Thomas C. Taylor, Esq., at Post Office Box 5550, Hilton Head Island, South Carolina 29938, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default may be rendered against you for the relief demanded in the Complaint.

Law Office of Thomas C. Taylor, LLC
s/ Thomas C. Taylor
 Thomas C. Taylor (S.C. Bar 5499)
 P.O. Box 5550, Hilton Head Isl., SC 29938
 Phone:(843)785-5050-Fax:(843)785-5030
 Email: tom@thomastaylorlaw.com

ATTORNEY FOR PLAINTIFFS

Hilton Head Island, South Carolina
 November 24, 2020

Law Office Of Chester C. Williams, LLC
s/Chester C. Williams
 Chester C. Williams
 P.O. Box 6028, Hilton Head Isl., SC 29938
 Phone:(843)842-5411
 Email: firm@ccwlaw.net

ATTORNEY FOR PLAINTIFFS

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

GEORGIA HARRISON, BARBARA)
 HARRISON, JOYCE ELLEN)
 HARRISON, WILLIAM S.)
 HARRISON, III, STANLEY)
 ROBERTS, and DIANA MENDHEIM,)
 individually and as agent and attorney)
 in fact,)

Plaintiffs,)

vs.)

STEPHANIE LORRAINE)
 KIRKLAND, GARY LAMONT)
 KIRKLAND, KEITA NICOLE)
 WHITE, and CHERYL KIRKLAND,)

Defendants)

IN THE COURT OF COMMON PLEAS)
 FOURTEENTH JUDICIAL CIRCUIT)
 CIVIL ACTION NO. 2020-CP-07-_____)

COMPLAINT

FOR

QUIET TITLE

(SC Code Annot. Sec. 15-67-10, *et seq.*)

AND

PARTITION

(SC Code Annot. Sec. 15-61-10, *et seq.*)

(A NON-JURY MATTER TO BE)
 REFERRED TO THE MASTER IN)
 EQUITY PURSUANT TO SC CODE)
ANNOT. SECTION 15-67-60)

The Plaintiffs, complaining of the Defendants herein, would respectfully show unto this Honorable Court and allege that:

1. Plaintiff Georgia Harrison is a resident of and is domiciled in Cobb County, Georgia; Plaintiff Barbara Harrison is a resident of and is domiciled in Alamance County, North Carolina; Plaintiff Joyce Ellen Harrison is a resident of and is domiciled in Guilford County, North Carolina; Plaintiff William S. Harrison, III is a resident of and is domiciled in Carroll Count, Maryland; Plaintiff Stanley Roberts is a resident of and is domiciled in Kings County, New York; and Plaintiff Diana Mendheim is a resident of and is domiciled in Essex County, New Jersey.
2. Georgia Harrison, Barbara Harrison, Joyce Ellen Harrison, William S. Harrison, III, and Stanley Roberts are Plaintiffs herein in their respective individual capacities.
3. Diana Mendheim is a Plaintiff herein in her individual capacity, and also in her capacity as agent and attorney in fact for eighteen other co-owners of the Real Property (collectively, the "Represented Co-Owners") pursuant to those certain Durable Powers of Attorney recorded in the Office of the Register of Deeds for Beaufort County, as follows:

Co-Owner	Recording Information (Record Book and Page Number)	Date of Recording
Denise Davidson	RB3795p0408	19 September 2019
Robert M. Young	RB3796p2592	25 September 2019
Carol Bush	RB3801p2322	9 October 2019
Rose Hampton	RB3803p2670	17 October 2019
Shawn Kirkland	RB3809p2426	6 November 2019
William Charles Kirkland	RB3811p1583	13 November 2019
Vanessa Coleman	RB3811p1585	13 November 2019
Richard Hodges	RB3816p0271	27 November 2019
Tyrone Hodges	RB3817p3005	6 December 2019
Paulette Kirkland	RB3820p1670	16 December 2019
Jason Young	RB3828p0291	13 January 2020
Corey Hodges	RB3828p0293	13 January 2020
Christopher Kirkland	RB3849p2458	26 March 2020
Joanne Elizabeth Carver	RB3865p1843	20 May 2020
Donna Mosby	RB3870p0381	3 June 2020
Diamond Moseley	RB3898p2726	20 August 2020
Derrick Hodges	RB3917p3140	6 October 2020
Paul T. Allbright	RB3925p2070	23 October 2020

4. Defendant Stephanie Lorraine Kirkland is a resident of and is domiciled in Chatham County, Georgia; Defendant Gary Lamont Kirkland is a resident of and is domiciled in Bronx County, New York; Defendant Keita Nicole White is a resident of and is domiciled in Kings County, New York; and Defendant Cheryl Kirkland is a resident of and is domiciled in Queens County, New York.
5. This is an action to quiet title to, and to partition, a tract of real property located in the Town of Hilton Head Island, Beaufort County, South Carolina, over which this Honorable Court has jurisdiction.
6. The tract of real property that is the subject of this action (the "Real Property") is described as follows:

ALL that certain piece, parcel, or lot of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing 28.127 acres, more or less, and is specifically shown as Lot B on the unrecorded plat of 165¼ Acres on Hilton Head Island, Formerly Property of March Gardner, prepared by Arthur O. Christianson, RLS, entitled "Plat of Survey Number Two, No Sale", dated April 6-8, 1921, and also on that certain plat of prepared by Millard Dunham, RLS entitled "Plat Prepared for Heirs of Clara Wigfall" dated January 29, 1988, last revised on January 18, 1990,

Page 2 of 10

and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 38 at Page 29.

BEING the same property shown and designated as "Parcel 7", containing 26.462 acres, more or less, on that certain unrecorded plat of survey entitled "Boundary, Wetland Survey of: Parcel 7, Mitchelville Road" prepared by Sea Island Land Survey, LLC, William E. Mixon, Jr., SCRLS 17573, dated February 7, 2005.

7. Title to the Real Property has twice been quieted in the past.
8. As evidenced by that certain Amended Order of the Honorable Thomas J. Kemmerlin, Master in Equity for Beaufort County filed on 24 June 1991 as Judgment Roll 79831 in that certain action styled *Fleet Finance, Inc. of Georgia v. Curtis Leander Gillerson, et al.*, Civil Action No. 88-CP-07-0974, title to the Real Property was quieted in Ethel Rivers, owning a 50.00% undivided interest, and Rose Young, Sadie M. Harrison, Stanley Roberts, and Mary Roberts, each owning a 12.50% undivided interest.
9. As evidenced by that certain Deed recorded on 13 May 1992 in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 598 at Page 1461, Ethel Rivers conveyed her interest in the Real Property to Peter Harrison, Ross L. Harrison, and William S. Harrison, as tenants in common.
10. As evidenced by that certain Title to Real Estate recorded on 8 April 2008 in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 2706 at Page 1227, Sadie M. Harrison conveyed her interest in the Real Property to Peter Harrison, Ross L. Harrison, and William S. Harrison, as tenants in common.
11. Rose Young, also known as Rose Elizabeth Young, died intestate on 27 December 1999 in East Orange, New Jersey, leaving as her only heirs at law her spouse, Charles Elmer Young, who disclaimed any interest in the Estate of Rose Elizabeth Young, and her eight children, Charles Edward Young, Carol Bush, Adrienne Kirkland, Diana Mendheim, Robert Young, Denise Davidson, Rose Hampton, and Victoria Young.
12. The Estate of Rose Elizabeth Young was fully probated and administered in the Probate Court for Beaufort County as Case No. 2007ES0700300.
13. As evidenced by that certain Corrective Deed of Distribution in the Estate of Rose Elizabeth Young recorded on 26 November 2008 in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 2786 at Page 2256, Rose Young's interest in the Real Property was conveyed to Charles Edward Young, Carol Bush, Adrienne Kirkland, Diana Mendheim, Robert Young, Denise Davidson, Rose Hampton, and Victoria Young.

14. Ross L. Harrison, also known as Ross Lee Harrison, died testate on 10 June 2008 in Cobb County, Georgia, leaving as his sole devisee his spouse, Georgia Harrison.
15. The Estate of Ross Lee Harrison was probated and administered in the Probate Court of Cobb County, Georgia, and an ancillary probate of the Estate of Ross Lee Harrison was opened in the Probate Court for Beaufort County as Case No. 2009ES0700163.
16. As evidenced by that certain Order of the Honorable Marvin Dukes, III, Master in Equity and Special Circuit Judge for Beaufort County filed on 25 July 2009 in that certain action styled *Peter Harrison v. Rose Young, et al.*, Civil Action No. 2008-CP-07-04542, which Order was further filed with the Probate Court for Beaufort County on 5 August 2009, and recorded on 6 June 2016 in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 3488 at Page 1724 (the "2009 Order"), Mary Roberts died intestate, having been pre-deceased by her spouse, Gerald Roberts, and leaving as her sole heir at law her son, Stanley Roberts.
17. As further evidenced by the 2009 Order, Ross L. Harrison died testate leaving as his only beneficiary his spouse, Georgia Harrison.
18. As further evidenced by the 2009 Order, William S. Harrison died intestate leaving as his only surviving heirs at law his spouse, Joyce Ellen Harrison, and his son, William S. Harrison, III.
19. As further evidenced by the 2009 Order, title to the Real Property was again quieted in the following persons, each having the respective undivided ownership interests:

Peter Harrison	20.833%
Georgia Harrison	20.833%
Joyce Ellen Harrison	10.416%
William S. Harrison, III	10.416%
Stanley Roberts	25.000%
Adrienne Kirkland	1.5625%
Carol Bush	1.5625%
Diane Mendheim	1.5625%
Charles Edward Young	1.5625%
Robert Young	1.5625%
Denise Davidson	1.5625%
Rose Hampton	1.5625%
Victoria Young	1.5625%

20. Victoria Young, also known as Victoria Ruth Young, died intestate on 9 January 2013 in Atlanta, Georgia, leaving as her only heirs at law her six children, Tyrone D. Hodges,

- Derrick D. Hodges, Corey G. Hodges, Vanessa A. Coleman, Richard L. Hodges, and Diamond W. Young-Moseley.
21. The Estate of Victoria Ruth Young is currently being probated and administered in the Probate Court for Beaufort County as Case No. 2020ES0700710, and Tyrone D. Hodges has been appointed as the Personal Representative of the Estate of Victoria Ruth Young.
 22. Peter Harrison, also known as Peter Hamilton Harrison, died on 8 December 2013 leaving as his only heirs his spouse, Barbara Harrison, and his two children, Bruce Harrison, and Kimberly Lakea Harrison.
 23. The Estate of Peter Hamilton Harrison was probated and administered in the Probate Court for Beaufort County as Case No. 2015ES0700274.
 24. As evidenced by that certain Deed of Distribution in the Estate of Peter Hamilton Harrison recorded on 18 December 2015 in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 3450 at Page 380, Peter Harrison's interest in the Real Property was conveyed to Barbara Harrison, Bruce Harrison, and Kimberly Lakea Harrison.
 25. As evidenced by that certain Title to Real Estate recorded on 29 December 2015 in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 3452 at Page 538, Bruce Harrison and Kimberly Lakea Harrison conveyed their interests in the Real Property to Barbara Harrison.
 26. Upon information and belief, Adrienne Kirkland, also known as Adrienne P. Kirkland, died intestate on 27 December 2016 in Atlanta, Georgia, leaving as her only heirs at law her six children, Joanne Elizabeth Carver, William Charles Kirkland, Stephanie Lorraine Kirkland, Gary Lamont Kirkland, Keita Nicole White, and Paul Edward Kirkland.
 27. Joanne Elizabeth Carver has attempted to open an informal appointment for the Estate of Adrienne P. Kirkland in the Probate Court for Beaufort County; however, the Defendants have refused to cooperate with the efforts to open the Estate of Adrienne P. Kirkland for probate and administration.
 28. Upon information and belief, Paul Edward Kirkland died intestate on 8 May 2017 in New York, New York, leaving as his only heirs at law his spouse, Donna Mosby, and his five children, Paulette Kirkland, Paul T. Allbright, Cheryl Kirkland, Christopher Kirkland, and Shawn Kirkland.
 29. The Defendants have refused to cooperate with efforts to open the Estate of Paul Edward Kirkland for probate and administration.

30. Charles Edward Young died intestate on 3 August 2019 in Atlanta, Georgia, leaving as his sole heir at law his son, Jason Young.
31. The Estate of Charles Edward Young is currently being probated and administered in the Probate Court of Gwinnett County, Georgia as Estate No. 20-E-000272, and Jason Young has been appointed as the Administrator of the Estate of Charles Edward Young.
32. An ancillary probate of the Estate of Charles Edward Young has been opened in the Probate Court for Beaufort County as Case No. 2020ES0700991.
33. As evidenced by that certain Deed of Distribution in the Estate of Charles Edward Young recorded on 12 November 2020 in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 3933 at Page 867, Charles Edward Young's interest in the Real Property was conveyed to Jason Young.
34. Pursuant to SCRCP Rule 71(e), because this action includes a partition action, this Honorable Court is empowered to determine the title and interests in the Real Property of the several parties to this action.
35. The Plaintiffs allege that the Real Property is owned in indivision by the Plaintiffs, the Represented Co-Owners, and the Defendants, and that their respective undivided interests in the Real Property are as set forth in Exhibit A attached hereto.

FOR A FIRST CAUSE OF ACTION
QUIET TITLE (RECOVERY OF REAL PROPERTY)
(SC CODE ANNOT. SECTION 15-67-10, et seq.)

36. The allegations of Paragraphs 1 through 35 are incorporated herein as if restated verbatim.
37. The Plaintiffs claim title to their respective undivided interests in the Real Property, and bring this action pursuant to Section 15-67-10, *et seq.* of the Code of Laws of South Carolina (1976), as amended, for the purpose of determining adverse claims and the rights of the Plaintiffs and the Defendants.
38. No Plaintiff has previously brought an action for recovery of the Real Property.
39. The Plaintiffs ask that this action be referred to the Master in Equity for Beaufort County pursuant to Section 15-67-60 of the Code of Laws of South Carolina (1976), as amended.
40. The Plaintiffs know of no other person or persons under disability, persons in the military service, incompetents or minors, or any other individuals who may have or claim any interest in the Real Property, other than the Plaintiffs and the Defendants.
41. The Plaintiffs are informed and believe that they are entitled to an equitable lien on the interests of all owners of the Real Property in proportion to their respective interests for

the costs and attorney's fees incurred in the maintenance and prosecution of this action on the basis this action, by its very nature, provides benefits to all owners in clearing and establishing title to the Real Property.

FOR A SECOND CAUSE OF ACTION
PARTITION
(SC CODE ANNOT. SECTION 15-61-10, et seq.)

42. The allegations of Paragraphs 1 through 41 are incorporated herein as if restated verbatim.
43. On information and belief, there are no encumbrancers of the estates of deceased owners of an interest in the Real Property whose estate has not been administered or is not being administered.
44. The Plaintiffs allege that the issuance of a writ of partition by this Honorable Court would involve unnecessary expense.
45. The Plaintiffs allege that due to the location, size, shape, topography, and condition of the Real Property, and given the wide disparity in the respective undivided interests in the Real Property held by the various Plaintiffs, Represented Co-Owners, and Defendants, and the relatively small undivided interests in the Real Property held by some of the various Plaintiffs, Represented Co-Owners, and Defendants, the Real Property is not susceptible to partition in kind.
46. The Plaintiffs have entered into that certain Purchase and Sale Agreement of 14 September 2020 with Rotunda Land & Development Group, LLC for the sale of the Real Property (the "Rotunda Contract") for a purchase price of \$9,100,000.00, which the Plaintiffs believe is a fair and equitable price for the Real Property.
47. All of the Plaintiffs and the Represented Co-Owners have agreed to the sale of the Real Property pursuant to the Rotunda Contract; however, the Defendants have failed or refused to enter into discussions or negotiations regarding the Rotunda Contract.
48. The Plaintiffs ask that this Honorable Court approve the partition of the Real Property by sale pursuant to the Rotunda Contract.
49. The Plaintiffs are informed and believe that they are entitled to an equitable lien on the interests of all owners of the Real Property in proportion to their respective interests for the costs and attorney's fees incurred in the maintenance and prosecution of this action on the basis this action, by its very nature, provides benefits to all owners by partitioning the Real Property.
50. The Plaintiffs are informed and believe that they are entitled to an award of attorney's fees and costs from any common fund generated by the partition of the Real Property to the

extent the Plaintiffs' attorneys' efforts benefited all parties, pursuant to Section 15-61-110 of the Code of Laws of South Carolina (1976) and SCRCP Rule 71(d)(3).

WHEREFORE, the Plaintiffs pray that this Honorable Court inquire fully into the matters raised by the pleadings and issue an Order:

A. Holding that the owners of the Real Property, and their respective undivided interests therein, are as set forth in Exhibit A attached hereto;

B. Holding that the issuance of a writ of partition in this action would involve unnecessary expense;

C. Holding that, upon the failure or refusal of the Defendants to timely notify this Honorable Court of their interest in purchasing the Plaintiffs' and the Represented Co-Owners' interest in the Real Property at the purchase price established by the Rotunda Contract, and to timely pay into this Honorable Court such purchase price, the Plaintiffs are authorized to close on the Rotunda Contract and sell the Real Property pursuant thereto, including the Defendants' interests therein, in order to effect a partition by sale of the Real Property;

D. Holding that the Plaintiffs have an equitable lien on the interests of all owners of the Real Property in proportion to their respective undivided interests for the costs and attorney's fees incurred in the maintenance and prosecution of this action;

E. Awarding the Plaintiffs' attorney's fees and costs from the common fund generated by the partition by sale of the Real Property;

F. Holding that, subject to the payment of any attorney's fees and costs awarded in this action, the net proceeds of the sale of the Real Property be distributed to the Plaintiffs, the Represented Co-Owners, and the Defendants in accordance with their respective undivided interests in the Real Property; and

G. Providing for such other and further relief as is just and proper.

LAW OFFICE OF THOMAS C. TAYLOR,
LLC

s/Thomas C. Taylor

Thomas C. Taylor
Attorney for Plaintiffs
SC Bar No.: 5499
PO Box 5550
Hilton Head Island, SC 29938
1-843-785-5050
tom@thomastaylorlaw.com

Hilton Head Island, South Carolina
November 24, 2020

LAW OFFICE OF CHESTER C.
WILLIAMS, LLC

s/Chester C. Williams

Chester C. Williams
Attorney for Plaintiffs
17 Executive Park Road, Suite 2
PO Box 6028
Hilton Head Island, SC 29938-6028
1-843-842-5411
firm@ccwlaw.net

**EXHIBIT A
TO
COMPLAINT FOR QUIET TITLE AND PARTITION
UNDIVIDED INTERESTS IN THE REAL PROPERTY**

Stanley Roberts	25.000000%
Georgia Harrison	20.833333%
Barbara Harrison	20.833333%
Joyce Ellen Harrison	10.416667%
William S. Harrison, III	10.416667%
Carol Bush	1.562500%
Diana Mendheim	1.562500%
Robert Young	1.562500%
Denise Davidson	1.562500%
Rose Hampton	1.562500%
Jason Young	1.562500%
Joanne Elizabeth Carver	0.260417%
William Charles Kirkland	0.260417%
Stephanie Lorraine Kirkland	0.260417%
Gary Lamont Kirkland	0.260417%
Keita Nicole White	0.260417%
Tyrone D. Hodges	0.260417%
Derrick Hodges	0.260417%
Corey Hodges	0.260417%
Vanessa Coleman	0.260417%
Richard Hodges	0.260417%
Diamond Moseley	0.260417%
Donna Mosby	0.130208%
Paulette Kirkland	0.026042%
Paul T. Allbright	0.026042%
Cheryl Kirkland	0.026042%
Christopher Kirkland	0.026042%
Shawn Kirkland	<u>0.026042%</u>
Total	100.000000%

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
 COUNTY OF BEAUFORT) CIVIL ACTION NO.: 2020-CP-07-02301

GEORGIA HARRISON, BARBARA)
 HARRISON, JOYCE ELLEN)
 HARRISON, WILLIAM S.)
 HARRISON, III, STANLEY)
 ROBERTS, and DIANA)
 MENDHEIM, individually and as)
 Agent and attorney in fact,)
) ANSWER TO PLAINTIFFS' COMPLAINT
 Plaintiffs,)
)
 vs.)
)
 STEPHANIE LORRAINE)
 KIRKLAND, GARY LAMONT)
 KIRKLAND, KEITA NICOLE)
 WHITE, and CHERYL KIRKLAND,)
)
 Defendants.)

The Defendants, answering the complaint of the Plaintiffs would show unto this Honorable Court:

1. The Defendants deny each and every allegation contained in the complaint unless specifically admitted herein and demands strict proof thereof.
2. The Defendants have insufficient information with which to admit or deny the allegations contained in Paragraphs 1, 2, 3, 11, 14, 15, 20 22, 26, 28, 30, and 31, and therefore deny same.
3. The Defendants admit the allegations contained in Paragraphs 5, 6, 8, 9, 10, .12, 13, 16, 17, 18, 19, 21, 23, 24, 25, 32, and 33.
4. The Defendants deny the allegations contained in Paragraphs 4. 27, and 29,
5. With regard Paragraph 7, the any Orders issued by the Court speak for themselves.
6. With regard to Paragraph 34, SCRCP 71(c) speaks for itself and this Court's jurisdiction is set by statute.

FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION

7. The Defendants incorporate into this Defense the allegations contained elsewhere in this pleading by reference thereto.
8. Paragraph 36 is administrative and does not require a response, but to the extent a response is required it is denied.
9. The allegations contained in Paragraphs 37, 40, and 41 are denied
10. The allegations contained in Paragraph 38 and 39 are admitted.

FOR A FIRST DEFENSE TO THE SECOND CASUE OF ACTION

11. The Defendants incorporate into this Defense the allegations contained elsewhere in this pleading by reference thereto.
12. Paragraph 42 is administrative and does not require a response, but to the extent a response is required it is denied.
13. The allegations contained in Paragraphs 43, 44, 45, 48, 49, and 50.
14. The Defendants have insufficient information or belief with which to admit or deny the allegations contained in Paragraphs 46 and 47 and therefore deny same and demand strict proof thereof.

FOR A SECOND DEFENSE TO ALL CAUSES OF ACTION

15. The Defendants incorporate into this Defense the allegations contained elsewhere in this pleading by reference thereto.
16. The Plaintiffs have failed to join necessary parties and therefore the Complaint is subject to being dismissed pursuant to SCRCP 12(b)(7).

FOR A THIRD DEFENSE TO ALL CAUSES OF ACTION

17. The Defendants incorporate into this Defense the allegations contained elsewhere in this pleading by reference thereto.
18. The Plaintiffs Complaint on its face admits that there are at least two un-probated estates, with unknown heirs, that have not been established to include persons who are or may be under some disability or a minor and thus the Complaint is subject to being dismissed pursuant to SCRCP 12(b)(6).

FOR A FOURTH DEFENSE TO ALL CAUSES OF ACTION

19. The Defendants incorporate into this Defense the allegations contained elsewhere in this pleading by reference thereto.
20. The Plaintiffs Complaint on its face admits that there are at least two un-probated estates, with unknown heirs, and thus the Complaint is subject to being dismissed pursuant to the provisions of SCRCP 12(b)(2).

FOR A FIFTH DEFENSE TO ALL CAUSES OF ACTION

21. The Defendants incorporate into this Defense the allegations contained elsewhere in this pleading by reference thereto.
22. The Plaintiffs Complaint on its face admits that there are at least two un-probated estates, with unknown heirs, that have not been established to include persons who are or may be under some disability or a minor and thus the Complaint is subject to being dismissed pursuant to SCRCP 12(b)(4).

FOR A SIXTH DEFENSE TO ALL SECOND CAUSE OF ACTION

23. The Defendants incorporate into this Defense the allegations contained elsewhere in this pleading by reference thereto.
24. The Plaintiffs allege that they have entered into a contract to sell the real property described in the Complaint, without attaching a copy of the contract, alleging the value of the property, without attaching a copy of any appraisal or even setting forth the terms and conditions of the proposed sale.
25. That as a result of the acts of the Plaintiffs are so extreme, prejudicial and in total disregard of the equities that the Complaint should be dismissed.

FOR A FIFTH DEFENSE TO ALL CAUSES OF ACTION

26. The Defendants incorporate into this Defense the allegations contained elsewhere in this pleading by reference thereto.
27. The real property described in the Complaint contains 28.127 acres.
28. The interests of the Defendants, assuming the facts alleged are true, then the real property is subject to being divided in kind.

WHEREFORE, the Defendants pray that the Complaint be dismissed with costs and assessments, in the alternative that the property be divided in kind, that the heirs of the various deceased persons be established, that the property be appraised and that a Writ of Partition be issued, and for such further and other relief as this Honorable Court deems just and appropriate.

VAUX MARSCHER BERGLIND, P.A.

By: S/ ROBERTS VAUX

Attorneys for Defendants

Roberts Vaux, SC Bar No. 5702 – Fed. No. 4459

Stephen Meyer, SC Bar No. 102322; Fed. No 12237

Post Office Box 769

Bluffton, South Carolina 29910

Telephone 843-757-2888

Facsimile 843-757-2889

January 7, 2021

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

GEORGIA HARRISON, ET AL.,

Plaintiff(s) – Petitioner(s)

VS.

CASE NO.: 2020CP0702301

STEPHANIE LORRAINE, ET AL.,

Defendant(s) – Respondent(s)

STATE OF NEW JERSEY
COUNTY OF ESSEX ss.:

Anabela Pinto, the undersigned, being duly sworn, deposes and says that I was at the time of service over the age of 18 years and not a party to this action.

On 11/25/2020, I received a true copy of a **SUMMONS, COMPLAINT FOR QUIET TITLE AND PARTITION, EXHIBIT A, RULE 4** to serve upon **STEPHANIE KIRKLAND** at 141 ISIAS COURT, PERTH AMBOY, NJ 08861. Service was executed in the manner indicated below:

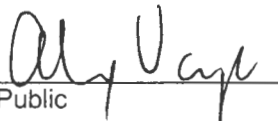
Non-Service
11/28/2020

Deponent attempted to perfect service on the Defendant on the below date and time. Deponent found after diligent search that the Defendant was not present at the address:

11/27/2020 at 2:40 PM – Attempt to serve. No answer, no one home.

11/28/2020 at 3:10 PM – Attempt to serve. Spoke to current resident Maura who states that this person does not live here. She did not provide any further information.

Sworn to before me this
2 day of Dec, 2020


Notary Public


Anabela Pinto
PO Box 25066
Newark, NJ 07102
800-637-1805

Alexander Vays, Esq.
Notary Public
State of New Jersey
New Jersey Attorney ID 008672014

WE SERVE NJ LLC, PO BOX 25066, NEWARK, NJ 07102

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
GEORGIA HARRISON, BARBARA)
HARRISON, JOYCE ELLEN)
HARRISON, WILLIAM S.)
HARRISON, III, STANLEY)
ROBERTS, and DIANA MENDHEIM,)
individually and as agent and attorney)
in fact,)

Plaintiffs,)
vs.)

STEPHANIE LORRAINE)
KIRKLAND, GARY LAMONT)
KIRKLAND, KEITA NICOLE)
WHITE, and CHERYL KIRKLAND,)

Defendants. _)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2020-CP-07-02301

AFFIDAVIT OF
MARIA BELBAS PARKER

BEFORE THE UNDERSIGNED OFFICER duly authorized to take and administer oaths,
came Maria Belbas Parker, who, being duly sworn, deposed and stated as follows:

1. My name is Maria Belbas Parker. I am a practicing lawyer in the State of South Carolina. I am of majority, of sound mind and body, a member of the South Carolina Bar and fully capable to providing this sworn testimony.
2. By Order dated October 20, 2021, the Hon. Marvin H. Dukes III, Master-In-Equity and Special Circuit Judge, appointed me as the Guardian ad Litem Nisi of any infants, insane or incompetent persons, persons in the military, and any other persons who may claim a right, title, interest in or lien on the parcel of land identified in the Complaint herein.



3. Further pursuant to Judge Dukes' October 20, 2021 Order, my name and contact information was published three (3) times in the Island Packet, a newspaper of general circulation in Beaufort County, SC, between October 25, 2021 and November 8, 2021, along with directions that any infant, insane or incompetent persons, persons in the military, and any other persons who may claim a right, title, interest in or lien on the parcel of land identified in the Complaint herein, should contact me in writing by December 1, 2021, with the specifics of the claim.
4. As of 1:00 p.m. on December 8, 2021, no person or entity has contacted me and asserted any claim of right, title, interest in or lien on the parcel of land identified in the Complaint herein, nor provided me notice of any type of claim of interest in the land.

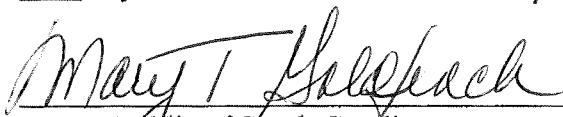
FURTHER AFFIANT SAYETH NOT.



Maria Belbas Parker

Sworn to before me this

8 day of December 2021



Notary Public of South Carolina

My commission expires:




STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL DISTRICT
CIVIL ACTION # 2020-CP-07-02301

GEORGIA HARRISON, BARBARA
HARRISSON, JOYCE ELLEN HARRISON
WILLIAM S. HARRISSON, III, STANLEY
ROBERTS AND DIANA MENDHEIM
INDIVIDUALLY AND AS AGENT AND
ATTORNEY IN FACT

Plaintiffs

Vs.

STEPHANIE LORRAINE
KIRKLAND, GARYY LAMONT
KIRKLAND, KEITA NICOLE
WHITE, AND CHERYL KIRKLAND

Defendants

**DEFENDANT'S
MOTION FOR RELIEF OF JUDGMENT
AND FOR EXTENSION OF TIME TO
TENDER PURCHASE PRICE UNDER
RIGHT OF FIRST REFUSAL AND
MOTION FOR REALIGNMENT OF
PARTIES**

Comes now the Defendants, through their undersigned counsel, who respectfully moves this Honorable Court, for the following relief pursuant to the South Carolina Rules of Civil Procedure, Rule 60(b)(1) and (3). Additionally, the Defendants seek appropriate relief as provided by § 15-1-320 Code of Laws of South Carolina defined as 'Manifest prejudice' or 'Manifest injury' which is defined as a result that is obviously unfair or shocking to the conscience and is direct, obvious, and observable when considering the factors under § 15-61-390(A) of the 'Clement C. Pinckney Uniform Partition of Heirs' Property Act' codified as §15-61-310 et. seq Code of Laws of South Carolina. Further, the Defendants seek the privileges and immunities of citizens of this State as furnished upon them by Article 1 § 3 of the Constitution of the State of South Carolina;

especially the provision, ". . . nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws." (1970 (56) 2684; 1971 (57) 315.)

The Defendants have not received due process and the equal protection of the laws of South Carolina as is hereinafter shown, and the redress sought by this motion is for the Court to issue an order extending the time for a period of Forty-five (45) days from the issuance of its order for the Court to 1) issue its order certifying that parties to this action hold as tenants in common a fee simple absolute marketable title to the property and 2) for the Defendants to tender the purchase price as herein before set by the Court.

The grounds for this motion are as follows:

INADEQUATE NOTICE OF RIGHT OF FIRST REFUSAL

Prior to commencing this action, the plaintiffs had contracted with Rotunda Land and Development Corporation LLC to sell the property which is subject to this action. This contract was entered into on or about September 15, 2020. On November 24, 2020 the plaintiffs instituted this action by the filing of their Summons and Complaint. The plaintiffs filed the action under §15 -67-10 of the Code of Laws of South Carolina rather than under the controlling Clementa C. Pinckney Act.(hereinafter referred to as Pinckney) This, upon information and belief, was deliberately calculated, as §15-67-10 does not provide for the Right of First Refusal as contained in the Pinckney Act. Section 15-61-330 (A) of the Pinckney reads as follows:

(A) For the purposes of this section, joint tenants and tenants in common" include heirs or devisees. Upon the filing of a petition for partition of real property owned by joint tenants or tenants in common, the court shall provide for the non-petitioning joint tenants or tenants in common who are interested in purchasing the property to notify the court of that interest no later than ten days prior to the date set for the trial of the case. The non-petitioning joint tenants or tenants in

common shall be allowed to purchase the interests in the property as provided in this section whether default has been entered against them or not.

Under 15-61-330 (A) of the Pinckney Act, the court upon the filing of the Summons and Complaint is required to give notice of the right of first refusal to all of the parties not desiring to sell the property. It was not until a year later that notice of the right of first refusal was granted to the defendants by order of the court dated October 20, 2021.

The prejudicial effect of this misapplication of the law deprived the plaintiff of a full year to prepare for the purchase of the property and defeats the purposes and goals for which Pinckney Act was enacted to accomplish. Requiring the defendants, as purchasers, to tender the purchase price of \$9.1 Million Dollars within 60 days is a farce, an arbitrary and unconscionable requirement not sanctioned or specifically required under the Pinckney Act and extremely commercially untenable; especially when the property cannot serve as collateral for a loan since the Court has not as yet issued an Order declaring the fee simple absolute title to the property is vested in the parties to this action as Tenants in Common.

CLOUD OF TITLE REMAINS UPON PROPERTY

The property subject to this action has had a voluminous and storied history. As stated by the Plaintiffs in their Complaint, two previous actions to quiet title have been brought before this Court. (Plaintiffs' Original Complaint). In both instances, a new action had to be brought due to either un-probated or opened uncompleted probate estates. Presently, there are four estates that are at various procedural stages with none having been completed.

A marketable land title is one which a reasonably prudent man would be willing to accept. Chicago Title Ins. Co. v. Arkansas Riverview Development, LLC, 573 F Supp. 2d 1152 (ED. Ark. 2008). Sanders v. Coastal Capital Ventures, Inc., 296 S.C. 132, 370 S.E.2d 903 (Ct. App. 1988) (encroachments caused by unauthorized relocation of streets and lots within plat rendered title unmarketable). A purchaser is entitled to demand a title which will give him reasonable security against either loss or annoyance by litigation. Thus, a marketable title enables a purchaser to

hold title in peace during his period of ownership and to have the title accepted from him by a subsequent purchaser who employs the same marketability standards. Bruzzese v. Chesapeake Exploration, LLC, 998 F Supp. 2d 663 (S.D. Ohio 2014).

A "merchantable title" is one that can be readily sold or mortgaged in the ordinary course of business by a reasonable person familiar with the facts and questions involved. The terms "marketable title," "good title" and "merchantable title" are used interchangeably. Stauffer v. Benson, 288 Neb. 683, 850 N.W.2d 759 (2014) ("marketable" and "merchantable" title are practically synonymous, and such title need not be free from every technical defect); Holoubek v. Romshek, 16 Neb. App. 677, 749 N.W.2d 901 (2008) ("clear title" means good title, and "good title" means marketable or merchantable title; terms are practically synonymous, and mean title in which there is no doubt involved, either as to matter of law or fact).

One may not have a marketable title even though the title appears to be good from the records. For example, forged deeds, lack of legal capacity of certain grantors, lack of delivery of deeds and possession of the land by third parties do not appear on the record, but any of these defects would impair marketability. On the other hand, one may have a marketable title, even though ownership does not appear on the records. Thus, a title acquired by adverse possession is treated as marketable, although that fact does not appear on the records.

A marketable title may be dependent upon a question of law; it may involve the construction of a deed, of a will, or even of a statute. Marketability may also be dependent upon a question of fact. Peterson v. McAndrew, 160 Conn. App. 180, 125 A.3d 241 (Conn. App. 2015) (it is possible to have unfettered title without having marketable title). Determining marketable title is a multiple-step-process that demands both investigation of the record at the registry of deeds and analysis of all title-related information relating to the property, with the goal of making sure that the seller or mortgagor actually owns the property to be mortgaged and that there are no other legal claims on the property that might otherwise frustrate or jeopardize the conveyance. "Marketable" means the title to the property is not subject to a claim that could result in the property holder being dispossessed. Carr v. Acacia Country Club Co., 2012-Ohio-1940, 970 N.E.2d 1075 (Ohio Ct. App. 2012).

For purposes of determining whether title to a property is free of encumbrances, there is a difference between economic lack of marketability, which concerns conditions that affect the use of land, and title marketability, which relates to defects affecting legally recognized rights and incidents of ownership; an individual can hold clear title to a parcel of land, although the same parcel is valueless or considered economically unmarketable because of some restriction or regulation on its use. Fidelity National Title Insurance Company v. Woody Creek Ventures, LLC, 830 F.3d 1209 (10th Cir. 2016)

The Defendants have consistently raised their objection to the Court's requirement to tender the purchase price within 60 days while the Plaintiffs who have the primary responsibility of prosecuting this action alone have remained dilatory in addressing and remedying this defect. The Defendants in their proposed order to the Court filed on October 18, 2021 stated, in part, the following:

The Defendants' second objection is to that section or portion of the proposed order that would require the Defendants, who have exercised their Right of First Refusal, to tender the purchase price of the property at 9.1 million Dollars within a 60 day period of time; being by December 1221 2021. This required performance is premature, untenable, unreasonable, inequitable and judicially prejudicial; (an abuse of discretion) especially in an arm's length transaction with a regulated commercial institution where "Heirs' Title and not the Fee Simple Absolute (marketable) title, as collateral for the loan, cannot, as yet, be tendered. Financing cannot be reasonably procured for the purchase of the property pursuant to § 15-61-25 until the Court issues an Order stating that the parties identified in the proposed order, are vested with the fee simple absolute title to the property by adverse possession since title by chain of title does not exist."

The Defendants by only being informed of their right of first refusal a year after the Plaintiffs had already contracted with their buyer to purchase the property and then being further required to secure the purchase price upon property that remains "heirs title" property and useless as commercial collateral nullifies their property right of first refusal which is a taking of a property right prohibited under both the 'Manifest prejudice' or 'Manifest injury' provisions of the Pinckney

Act when considering the factors under § 15-61-390(A) and is a taking of a property right without just compensation as prohibited under Article 1 §3 of the Constitution of South Carolina.

BALANCING OF THE EQUITIES

These are factors proffered for the Court to consider in drafting an equitable Order.

1. The intent of the statute is to allow the heirs to participate in the development of the property in which they hold an interest. The Defendants heirs have come to an agreement with a developer that allows for their participation in a joint venture to develop the property.
2. The Master-in -Equity has expressed concern that he needed verification that the Defendants' financial partner (SRE) was qualified and had the capacity to close. Additionally, he proposed an earnest money deposit with the court of 10% of purchase price and proof of funds required to complete the remaining balance at closing, both which minority heir's developer is willing to do, subject to the contingency that the Master-in Equity allows for an extension to facilitate a 45-day inspection period with similar rights granted to the other party.
 - a. With respect to buyer qualifications, Singerman Real Estate (SRE) fulfills all the Judge's requirements. SRE would be investing in this Property out of a \$850 million, fully discretionary fund. (See Exhibit 1)
 - b. SRE has extensive experiences in the Hilton Head residential market, and currently owns a multifamily project located within one (1) mile of the subject Property.
 - c. Due to SRE's fiduciary responsibilities to its investors, SRE cannot post the proposed earnest money deposit **without** the proposed inspection period, which further reinforces the unreasonableness of the Court's request regarding the 10% deposit.
 - d. Furthermore, while SRE is willing to post this amount to secure the Property, it is far larger than is customary for a transaction of this nature and the Defendants believe is an unfair requirement, given that it is far in excess of the deposit required in the third-party contract.

3. This will also allow the court a suitable amount of time to consummate the probate process or utilize further legal procedures and measures prerequisite to issuing an order certifying fee simple title to the property in an effort for sellers to be able to perform deliverables specified in the existing contract. The customary transactional work has been completed to initiate the formalizing of the joint venture entity formation with the heirs. (See Exhibit 2, REDACTED JV Terms)

4. The Plaintiffs' counsel represented that in the event the judge grants an extension of time to allow the minority heirs to execute their Right of First Refusal, that the other buyer could walk away. It is important to note that Plaintiffs' contract with the other buyer has the option to walk away at any time, and even recoup the entirety of their earnest money (provided the seller is not in a position to perform their obligations). For example, pursuant to Section 7(b) of the third-party contract (Conditions Precedent to Closing), the third-party has the right to terminate the agreement essentially at any time and have its deposit refunded — as long as the contract's closing conditions have not been satisfied due to Seller's inability to deliver clean title. Due to the pending resolution of the probate process, the third-party is still entitled to have its \$50k deposit refunded. Additionally, the existing contract calls for a delivery of a warranty deed and ALTA survey as conditions to closing, so regardless of which buyer consummates the transaction, the probate process must be resolved with finality for the seller to fulfill their obligation to provide those specific deliverables identified in the existing contract to either buyer.

5. Buyer Comparisons (See Exhibit B to JV Terms for complete description)

- a. The Defendants' proposed \$899,335.91 deposit is nearly 20 times larger than the third-party's deposit of Fifty Thousand Dollars.
- b. Defendants' proposed inspection period and closing timeline is one half (1/2%) of the timeline in the third-party contract.

- c. Defendants' financial partners have agreed to pay minority heirs' and Plaintiff's legal expenses up to \$125,000 for each party (\$250,000 total) in exchange for and conditioned on all the parties signing an indemnification and settlement agreement prohibiting any Plaintiffs from appealing the Master -in- Equity's order.
 - d. The Defendants are partnering with their financial partners in accordance with the purposes and goals of statute while the third-party buyer is not.
 - e. Defendants' equity partners have agreed to acknowledge the entire family with a commemorative plaque on location in the new development.
6. Defendants understand that the third-party contract has undergone multiple revisions to which Defendants are not privy to the pertinent terms.
7. The proposed 45-day inspection period requested allows for the other buyer to preserve the existing agreement and still consummate their transaction in the event that Defendants were unable to close for reasons unforeseen as of today, such as an appeal of a court order or for other unforeseen circumstance, as the-party's existing 60-day window would still be in effect, with nothing lost.
8. In the event the Court agrees to issue a consent order allowing for the 45-day inspection period after posting the requested deposit, and the other party decides to appeal that decision, Defendants would ask for the ability to be able to notify the court in writing of its desire to terminate at any time during Inspection Period.

MOTION FOR REALIGNMENT OF PARTIES REQUIRED DUE TO DEATH OF HEIR

On November 27, 2021 and subsequent to the Court's October 20, 2021 Order, Plaintiff Heir Joanne Carver died. Upon information and belief, her sole heirs are Michael Carver and Craig Carver. Upon information and belief, Craig Carver wants to become a member of the Plaintiff Heirs. However, Michael Carver, wants to become a member of the Defendant Heirs and be represented by the undersigned counsel,. The undersigned counsel petitions the Court to approve this realignment of the parties. Thereupon, Michael Carver elects to exercise his right of purchase

under South Carolina Code Annot. Section 15-61-370(B). The Defendants seek an order from this Court to realign the parties, so Michael Carver becomes a member of Defendant heirs.

CONCLUSION

The Plaintiffs were under contract to sell the family property for over a year prior to properly notifying the Defendants of their right of first refusal provided under the Pinckney Act and then entrapped the defendants into a 60-day period of time to secure the 9.1 million Dollars purchase price without the required fee simple title to the property as collateral. This action by Plaintiffs is in derogation of the Pinckney Act and repugnant to the constitutional guarantees of the South Carolina Constitution. Despite this derogation, the Defendants have entered into an Letter of Intent with a financial partner/developer with the funds available to tender with the proviso for a 45 day extension of time that a marketable title can be procured through this current partition action.

Respectfully submitted

The Houston Law Firm, LLC
1000 Main Steet, Suite 200C
Hilton Head Island, SC 29926
843-715-9078
chouston@houstonlwfirmlaw.net

By: S/ Charles E. Houston Jr.
Charles E. Houston Jr.
SC Bar # 2663

December 22, 2021
Hilton Head Island, SC

The Armstrong House
One West Park Avenue
Savannah, GA 31401

Rob Brannen
912.644.5721
rbrannen@bouhan.com

Via e-mail:
chouston@houstonlawfirm.net

December 22, 2021

Charles Houston
The Houston Law Firm, LLC
1000 Main Street, Suite 200C
Hilton Head Island, SC 29926

Re: SRE Acquisitions IV, LLC ("SRE") / Joint venture with Kirkland Heirs

Dear Charles:

As we discussed, I have been asked to represent SRE in the above joint venture for the purpose of purchasing 28.17 acres on Hilton Head Island, Beaufort County, South Carolina (the "Property"). In particular, I have been asked to confirm that the joint venture will be able to receive good and marketable title to the Property.

I understand that you are filing a motion asking for an extension of time that will allow us to properly investigate the title to the Property and the steps that will need to be taken to insure good title. In anticipation of said motion, I have attached a memo outlining the inspection period that we need and the closing terms for incorporation in your motion. Please call me if you have any questions.

I look forward to working with you on this.

Very truly yours,


Robert B. Brannen, Jr., Esq.

Cc: Luke Lopatka

Stephen Duncan

4894-4722-2791, v. 1

The nine Defendants and Michael Carver, the heir of a Plaintiff (“Purchaser Heirs”) in that action filed in the Court of Common Pleas Fourteenth Judicial Circuit, Civil Action No. 2020-CP-07-02301, have located a financial partner, SRE Acquisitions IV, LLC (“SRE”) and a consulting partner, Nassau Investments, LLC (“Nassau”) to assist them in the acquisition from Plaintiffs of the Property described on Exhibit “A” for a purchase price of \$8,993,359.10 (including the Deposit, the “Closing Funds”) and entered into the attached letter of intent outlining the terms of a joint venture with SRE and Nassau (the “Joint Venture”).

SRE has provided the attached financial information confirming their ability to provide the Joint Venture with sufficient funds to purchase the Property, and SRE shall deposit with the Court 10% of the purchase price in the amount of \$899,335.91 (the “Deposit”) no later than two (2) business days after entry of an order by the Court adopting the following conditions (the “Court’s Order”) for the sale of the Property to the Joint Venture, and requiring the Plaintiffs and Purchasers Heirs to enter into a purchase and sales agreement, assignable to the Joint Venture, that contains the following conditions:

1. Inspection:

1.1 SRE shall have until **forty-five (45) days** from the date of the Court’s Order (hereinafter referred to as the “Inspection Period”) to research the title records for the Property, to inspect the Property and to conduct all other due diligence matters. During the Inspection Period, SRE shall identify and provide to Plaintiffs for execution copies of documentation required to convey to the Joint Venture “good and marketable fee simple title”, as defined in Section 2.1 below, to 100% of the Property (together with other documents required to close the transaction, the “Closing Documents”). The Court’s Order shall specifically grant SRE the right to terminate its involvement for any reason by giving written notice to the Court on or before the later to occur of (a) the last day of the Inspection Period, or (b) two (2) business days after the delivery by Plaintiffs of the Closing Documents into escrow with the Court, in which event the Deposit shall be promptly refunded to SRE and SRE shall be relieved of all rights and obligations hereunder.

1.2 SRE shall have the privilege at any time during the term of this Agreement to go upon the Property with SRE’s agents, representatives or designees to inspect, examine and survey the Property. SRE indemnifies and holds Plaintiffs harmless from and against physical loss or damage to the Property Plaintiffs may incur and any and all liens that may arise as a result of SRE’s inspection of the Property, or the activities of SRE’s agents, representatives or designees on the Property and against any and all claims for death or injury to persons or properties arising out of or connected with SRE’s (or its agents, representatives or designees) going upon the Property pursuant to the provisions of this Section, and against all costs, expenses and liabilities occurring in or in connection with any such claim or proceeding directly resulting therefrom, including, without limitation, court costs and reasonable attorney’s fees. This indemnity shall survive the Closing.

1.3 Within five (5) business days after the date of the Court’s Order, Plaintiff’s counsel shall deliver to SRE copies of the most recent surveys, plans, engineering reports, title reports, title insurance policies, environmental assessments and other similar documents concerning the Property which Plaintiffs may possess.

2. Transfer of Title:

2.1 At the Closing, the Plaintiffs and/or the Court (if required) shall convey to the Joint Venture "good and marketable fee simple title" to the entire Property, (except for the portion already owned by Purchaser Heirs, which shall also be conveyed to the Joint Venture), by limited warranty deed. "Good and marketable fee simple title" shall be such title as is acceptable to a reasonable purchaser and is insurable by a national title insurance company (the "Title Company") acceptable to Purchaser at standard rates and without exception other than easements, covenants and restrictions of record that will not adversely affect the Joint Venture's development of the Property, and real property ad valorem taxes for the current year, not yet due and payable. For purposes of clarification, this condition requires that the Joint Venture receive 100% of the fee simple title to the Property.

2.2 Prior to expiration of the Inspection Period, the Plaintiffs shall execute and deliver the Closing Documents into escrow with the Court and such other documents as the Title Company may reasonably request to effect or complete the transaction contemplated by this Agreement and to obtain an owner's policy of title insurance in accordance with the standards set forth above.

2.3 At the Closing, the Plaintiffs shall pay the balance of any liens on the Property, their own attorneys' fees, and any costs of delivering good and marketable fee simple title, except as provided below. Real estate ad valorem taxes and assessments shall be prorated as of the date of Closing. The Joint Venture shall pay all other costs and expenses.

2.4 At the Closing, SRE shall reimburse Plaintiffs for legal fees and expenses actually incurred by Plaintiffs up to the amount of \$125,000.00, provided that the Plaintiffs promptly execute and deliver to the Court all of the required Closing Documents, and provided that the Plaintiffs agree in writing prior to expiration of the Inspection Period not to appeal any order issued by the Court, or challenge the title to the Property granted to the Joint Venture. If either of said conditions is not satisfied in SRE's sole discretion, the Joint Venture may still proceed to Closing, but SRE will not reimburse Plaintiff's legal fees and expenses.

3. Release of Funds:

3.1 Provided that SRE's obligations have not been terminated prior to expiration of the Inspection Period, all other conditions stated above have been satisfied for the Joint Venture to purchase the Property, and the Closing Documents have been placed into escrow with the Court, the Joint Venture shall deposit the balance of the Purchase Price with the Court **within fifteen (15) days after expiration of the Inspection Period.**

3.2 The Court shall hold the Closing Funds and Closing Documents in escrow until all appeal periods related to the issuance of the Court's Order have been waived or expired, and, provided that all conditions for closing are still satisfied, the Court shall then deliver the Closing Documents to the Joint Venture for recording and distribute the Closing Funds per the Court's Order.

3.3 In the event that the Court's Order is appealed, the Court will retain the Closing Funds and Closing Documents in escrow until the first to occur of (i) the appeal is resolved in

favor of the Joint Venture, in which case the Court will proceed with disbursement of the Closing Funds and Closing Documents; (2) the appeal is resolved against the Joint Venture, in which case the Closing Funds (including the Deposit) will be refunded to SRE and the Closing Documents will be returned to Plaintiffs; or (3) the Court receives written notice from SRE at any time prior to resolution of the appeal that it is terminating its involvement in the transaction, in which case the Closing Funds (including the Deposit) will be refunded to SRE and the Closing Documents will be returned to Plaintiffs.

4. Indemnification:

In the event SRE and Nassau have elected not to purchase the Property, or in the event SRE and Nassau have decided to terminate their involvement in the transaction, or in the event of an appeal resolved against the Joint Venture, the Plaintiffs and Purchaser Heirs understand and agree that SRE and Nassau shall have no liability or responsibility whatsoever (other than the obligation set out in Section 1.2 above). Plaintiffs and Purchaser Heirs covenant not to sue SRE and Nassau in the event of any of the foregoing and agree to indemnify, defend and hold harmless SRE and Nassau and their affiliates and related entities, members and managers from and against any and all claims, losses, damages and liabilities arising directly or indirectly therefrom.

EXHIBIT "A"

Property Description

ALL that certain piece, parcel, or lot of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing 28.17 acres, more or less, and is specifically shown as Lot B on the unrecorded plat of 165¼ Acres on Hilton Head Island, Formerly Property of March Gardner, prepared by Arthur O. Christianson, RLS, entitled "Plat of Survey Number Two, No Sale", dated April 6-8, 1921, and also on that certain plat of prepared by Millard Dunham, RLS, entitled "Plat Prepared for Heirs of Clara Wigfall" dated January 29, 1988, last revised on January 18, 1990, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 38 at Page 29.

BEING the same property shown and designated as "Parcel 7", containing 26.462 acres, more or less, on that certain unrecorded plat of survey entitled "Boundary, Wetland Survey of: Parcel 7, Mitchelville Road" prepared by Sea Island Land Survey, LLC, William E. Mixon, Jr., SCRLS 17573, dated February 7, 2005.



SINGERMAN REAL ESTATE, LLC is an opportunistic real estate investment firm that has deep experience executing complex transactions and unlocking embedded value through the ownership of properties, real estate loans and operating companies. SRE focuses on maximizing risk-adjusted returns through investments in both debt and equity across all major asset classes including office, retail, hotel, industrial, and multifamily, in addition to secondary real estate asset classes including student housing and senior housing. Since 2010, SRE sourced and executed, with partners, over \$3.0 billion of investments across the major property types.

Currently, SRE is pursuing investments on behalf of SRE Opportunity Fund IV, L.P. a fully discretionary fund with over \$850 million of commitments and additional co-investment capacity through existing LPs of over \$250 million. To provide the flexibility necessary in order to generate attractive risk-adjusted returns, SRE maintains the following investment strategy:

Capital structure agnostic. Depending on the investment environment, attractive investment opportunities may present themselves as debt or equity investments.

Investment across all major asset classes. SRE believes sector-oriented funds create unnecessary pressure to commit capital to a targeted strategy. Having the depth of experience in all major asset classes, including office, retail, hotel, multi-family, student housing, and senior housing enhances the potential to find optimal risk-adjusted returns.

Flexibility of investment size. SRE has the capacity and relationships to execute deals deemed too small for large real estate private equity funds relative to their fund size, while also capitalizing on the ability to partner with its direct co-investors for larger deals. SRE Principals have experience executing acquisitions ranging in size from \$1 million to over \$600 million.

Broad geographic scope. SRE will focus on the top 30 U.S. Metropolitan Statistical Areas ("MSAs") and has direct investment experience investing in major markets such as San Francisco, Los Angeles, San Diego, Portland, Denver, Dallas, Houston, Chicago, Boston, Washington DC, Raleigh-Durham, Atlanta, and Miami. SRE has a deep breadth of relationships in each of these locations in order to leverage market specific insight.

CONTACTS:

SETH SINGERMAN
Managing Principal

JOSEPH CONCEPCION
*Principal, Head of Asset
Management*

KILEY CARTER
*Principal, Acquisitions/
Business Development*

STEPHEN DUNCAN
*Principal, Acquisitions/
Capital Markets*

CHARLES KELLOGG
*Chief Financial Officer/
Chief Operating Officer*

December 22, 2021

via email

Keita Nicole White, individually and as POWER OF ATTORNEY for STEPHANIE LORRAINE KIRKLAND, GARY LAMONT KIRKLAND, CHERYL KIRKLAND, WILLIAM CHARLES KIRKLAND, CHRISTOPHER KIRKLAND, PAULETTE KIRKLAND, PAUL T. ALLBRIGHT, SHAWN KIRKLAND and MICHAEL CARVER, the heir of a Plaintiff, or a limited liability company formed thereby (collectively, the “Purchaser Heirs”)

Re: Joint Venture – Fish Haul Road Residential Development (the “Project” or the “Property”)

Dear Ms. White:

SRE Acquisitions IV, LLC or its successor funds and affiliates (“SRE”) and Nassau Investments HHI, LLC (“Nassau”) (collectively, the “Sponsor”) are pleased to present the following term sheet to form a joint venture with Purchaser Heirs or its designated affiliate entity to acquire and develop the Project. Except as set forth below, this term sheet is a non-binding expression of the parties’ current intent.

Documentation:	- The parties’ obligations with respect to the transaction will be set forth in definitive documentation (“Definitive Documents”) in a manner mutually satisfactory to SRE, Nassau and Purchaser Heirs. The Definitive Documents include, without limitation, the JV Agreement (as defined below), a development management agreement, and an asset management agreement. - SRE’s counsel will prepare the Definitive Documents. The parties anticipate that the Definitive Documents will be ready for execution forty-five (45) days after the Approval Date (defined below).
Property Acquisition:	- Purchaser Heirs hereby agree to cooperate and assist with the process of obtaining clear title to the Property to consummate the acquisition by the Owner (defined below). - Sponsor will provide 100% of the cash required for closing as shown in Exhibit A. - Purchaser Heirs will convey their interests in the Property to the Owner before the expiration of the Inspection Period.
Owner:	A to-be-formed Delaware LLC, whose members will be Purchaser Heirs and Sponsor (collectively “Members”) to be governed by an operating agreement (the “JV Agreement”). Sponsor will be responsible for entity formation during the Inspection Period.
Estimated Project Capitalization:	See Exhibit A.
Financing Guarantees:	Sponsor shall provide any required guarantees necessary to obtain financing for the Project.
Additional Capital:	Sponsor shall provide all funds necessary for the planning, permitting, development, financing, management and operation of the Project.

Management:	- Sponsor will be the managing member of the Owner (the “Manager”). - Sponsor shall prepare and deliver to Purchaser Heirs quarterly balance sheet and income statement accounts including the supporting documentation. - Sponsor will serve as the tax matters representative.
Right to Cause Sale or Refinance:	[REDACTED]
Development Management:	[REDACTED]
Asset Management:	[REDACTED]
Distributions:	[REDACTED]
Inspection Period:	- See Exhibit B. - Purchaser Heirs shall provide SRE with access to the Project and all available information regarding the Project to the extent in Purchaser Heirs’ control or possession for the purpose of performing its due diligence with respect to the Transaction to SRE’s sole satisfaction. - At any time prior to the date that is forty-five (45) days from the date this LOI is fully executed (the “Approval Date”), SRE may give notice as to whether (i) SRE desires to proceed with the transaction subject to satisfaction of the closing conditions specified in this LOI or the Definitive Documentation or (ii) SRE desires to terminate this letter (which SRE may elect to do in SRE’s sole and absolute discretion). If SRE elects to proceed, SRE shall provide Purchaser Heirs written notice of such election no later than the Approval Date. If SRE does not elect to proceed by the close of business (5:00pm Eastern Time) on the Approval Date, this letter shall automatically terminate. If SRE elects to terminate, Purchaser Heirs will use commercially reasonable efforts to assist SRE in the return of its deposit.
Pursuit & Diligence Costs:	Sponsor will reimburse Purchaser Heirs for \$125,000 of legal and other expenses incurred in connection with the suit involving the Property upon a successful Closing. Sponsor’s reimbursement of Purchaser Heirs legal expenses upon a successful Closing shall be deemed due consideration for Purchaser Heirs’ agreement to sign indemnification agreement to be provided by Sponsor.

	The parties agree to bear their own attorney's fees associated with the negotiation of the JV Agreement until closing, at which time these expenditures will be reimbursed by the Owner.
Exclusivity:	From the date of mutual execution of this letter of intent until the earlier to occur of the signing of the Definitive Documents or the expiration of the Inspection Period (see Exhibit B), neither Purchaser Heirs nor any of its agents or representatives, will, directly or indirectly, enter into any agreement, discussion, or negotiation with, or provide information to, any other person or entity, or solicit, encourage, entertain or consider any inquiries or proposals, with respect to the possible acquisition and the development of the Project and any existing discussions relating to any of the foregoing shall cease immediately. In the event SRE decides not to move forward with the transaction, Purchaser Heirs will be released from this exclusivity clause.
Confidentiality:	Purchaser Heirs, Nassau, and SRE agree to keep all terms and conditions of this letter agreement confidential except that information may be disclosed to those representatives, officers, financing sources, partners, employees and consultants who need to know such information for the purpose of negotiating and closing this transaction.
Non-Binding:	This letter outlines the present intentions of Sponsor and Purchaser Heirs. Other than the sections entitled "Confidentiality", and "Exclusivity", which shall be binding upon the parties, this letter is non-binding.
Acceptance Date	If this offer is acceptable to Purchaser Heirs, Purchaser Heirs must notify Sponsor and sign this letter of intent no later than December 22, 2021 ("Acceptance Date").
Brokerage	Purchaser Heirs and Sponsor represent and warrant that neither Purchaser Heirs nor Sponsor have dealt with any equity placement agent, broker, finder or intermediary, and indemnify one another from any breach of their respective representations and warranties contained within this section.

[THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

Fish Haul Road Multifamily Development
December 2021

Page 4 of 6

If the terms and conditions set forth above are acceptable to you, please indicate your acceptance by signing this letter of intent and returning it to the undersigned. By executing this letter of intent, Purchaser Heirs and Sponsor agree to make good faith efforts to enter into an agreement. Nevertheless, except for the "Exclusivity" and "Confidentiality" provisions above, this letter of intent does not constitute a legally binding agreement and neither party shall be under any binding obligation until such time as a mutually agreeable contract is fully executed by the appropriate officers and or partners in our respective organizations.

We are pleased to make this offer and we look forward to working with you to complete this transaction.

SRE Acquisitions IV, LLC

By: 
Name: Luke Lopatka
Its: Senior Vice President

Nassau Investments HHI, LLC

By: 
Name: Nick Bergelt
Its: President

Accepted and agreed to, as of this ²² day of December 2021:

By: 
00CA476C2AB042B...

Name: **KEITA NICOLE WHITE**, individually and as POWER OF ATTORNEY for
STEPHANIE LORRAINE KIRKLAND, GARY LAMONT KIRKLAND,
CHERYL KIRKLAND, WILLIAM CHARLES KIRKLAND, PAULETTE KIRKLAND,
PAUL T. ALLBRIGHT, CHRISTOHER KIRKLAND, SHAWN KIRKLAND and MICHAEL
CARVER, the heir of a Plaintiff.

ELECTRONICALLY FILED - 2021 Dec 22 7:54 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0702301

Exhibit A
PROJECT CAPITALIZATION

Sources & Uses - Land Acquisition			
Sources		Uses	
Sponsor Cash Contribution	\$9,430,000	Price Paid to Non-Electing Heirs ¹	\$8,993,359
Purchaser Heirs Cash Contribution		- Legal Expenses	\$250,000
		Other DD & Closing Costs	\$186,641
Total Sources	\$9,430,000	Total Uses	\$9,430,000

1) Amount paid to all non-electing heirs upon a successful closing

Initial Equity Capital Account		
	Equity	% Ownership
Sponsor		
Purchaser Heirs		
Total		

Sources & Uses - Total Project			
Sources		Uses	
Advances for Construction Costs		Land Cost	
Capitalized Interest		Hard Costs	
Fully Funded Construction Loan		Soft Costs	
% LTC		Development Mgmt. Fee	
		Financing Costs	
Sponsor Equity			
Purchaser Heirs Equity			
Total Equity			
Total Sources		Total Uses	

Projected Equity Capital Account at Stabilization		
	Equity	% Ownership
Sponsor		
Purchaser Heirs		
Total		

ELECTRONICALLY FILED - 2021 Dec 22 7:54 PM - BEAUFORT - COMMON PLEAS - CASE#2020CP0702301

Exhibit B

MEMO RE CLOSING TERMS

See Attached

**EXHIBIT A
TO
COMPLAINT FOR QUIET TITLE AND PARTITION
UNDIVIDED INTERESTS IN THE REAL PROPERTY**

Stanley Roberts	25.000000%
Georgia Harrison	20.833333%
Barbara Harrison	20.833333%
Joyce Ellen Harrison	10.416667%
William S. Harrison, III	10.416667%
Carol Bush	1.562500%
Diana Mendheim	1.562500%
Robert Young	1.562500%
Denise Davidson	1.562500%
Rose Hampton	1.562500%
Jason Young	1.562500%
Joanne Elizabeth Carver	0.260417%
William Charles Kirkland	0.260417%
Stephanie Lorraine Kirkland	0.260417%
Gary Lamont Kirkland	0.260417%
Keita Nicole White	0.260417%
Tyrone D. Hodges	0.260417%
Derrick Hodges	0.260417%
Corey Hodges	0.260417%
Vanessa Coleman	0.260417%
Richard Hodges	0.260417%
Diamond Moseley	0.260417%
Donna Mosby	0.130208%
Paulette Kirkland	0.026042%
Paul T. Allbright	0.026042%
Cheryl Kirkland	0.026042%
Christopher Kirkland	0.026042%
Shawn Kirkland	<u>0.026042%</u>
Total	100.000000%

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORD

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL DISTRICT
CIVIL ACTION # 2020-CP-07-02301

GEORGIA HARRISON, BARBARA
HARRISON, JOYCE ELLEN HARRISON,
WILLIAM S. HARRISON, III, STANLEY
ROBERTS AND DIANA MENDHEIM
INDIVIDUALLY AND AS AGENT AND
ATTORNEY IN FACT,

Plaintiffs,

vs.

STEPHANIE LORRAINE KIRKLAND, GARY
LAMONT KIRKLAND, KIETA NICOLE
WHITE, AND CHERYL KIRKLAND,

Defendants.

DEFENDANT'S SUPPLEMENTAL
MOTION FOR RELIEF OF
JUDGMENT AND FOR EXTENSION
OF TIME TO TENDER PURCHASE
PRICE UNDER RIGHT OF FIRST
REFUSAL

TO: Thomas Taylor, Esq. and Chester Williams Esq. Attorneys for Plaintiffs

Comes now the Defendants who would further set forth sustaining grounds for the relief requested in its original motion filed on December 22, 2021.

**SIXTY (60) DAY ALLOCATION OF TIME TO TENDER
PURCHASE PRICE IS UNCONSCIONABLE**

According to §15-61-370 (E) of the Code of Laws of South Carolina commonly referred to as the "Right of First Refusal" under the **Clementa C. Pinckney Uniform Partition of Heirs' Property Act**

*(E) If notices are sent to the parties under subsection (D)(1) or (2), the court shall set a date, **not sooner** than sixty days after the date the notice was sent, by which electing cotenants must pay their apportioned price into the court.*

The Plaintiffs are arguing that there is a “statutory 60-day requirement” for the heirs to post the funds upon notice from the Judge; however, this is an unfair mis-representation and inaccurate characterization of the statute. Sixty days is the statutory ***minimum amount of time*** that must be granted to heirs that have exercised their right to purchase a cotenant property. Given the (a) large size of the transaction (nearly \$10 million is likely one of the largest such cases in the history of the state of South Carolina) and (b) the incomplete state of the quiet title action, Defendants should have been granted longer than 60 days to pay their apportioned price into the court’s registry. Requiring the Defendants to raise such a large sum with unmarketable title was near impossible. Yet, Defendants have presented the Court with a funding partner which stands ready to complete this transaction once Defendants are able to provide marketable title.

Additionally, the Defendants (exercisers of the Right of First Refusal) are extremely concerned about the fact that Defendants were not timely made privy to the 6th amendment to the purchase contract that increased the price to \$9.75 million given the heirs were working under the assumption of the purchase price established by this Court in its October 2021 Order. According to said Order, the purchase price is \$9.1 million. Plaintiffs are attempting to force the Court to rush through the option process so that Defendants do not have a chance to buy the property at the \$9.1 million price. Therefore, and alternatively, the 60-day period should re-start at the date the new price is properly before the Court if the Court is inclined to establish a new purchase price.

The nine Defendants and Michael Carver, the heir of a now deceased Plaintiff Joanne Elizabeth Carver (“Purchaser Heirs”) in that action filed in the Court of Common Pleas Fourteenth Judicial Circuit, Civil Action No. 2020-CP-07-02301, have located a financial partner, SRE Acquisitions IV, LLC (“SRE”) and a consulting partner, Nassau Investments, LLC (“Nassau”) to assist them in the acquisition from Plaintiffs of the Property subject to this action for a purchase price **equal to the greater** of \$8,993,359.10, **or Plaintiff’s pro rata share of the purchase price contained in any legally binding contract between Plaintiffs and a third party for the Property, not to exceed \$9,750,000** (including the Deposit, the “Closing Funds”). Further, Purchaser Heirs, SRE

and Nassau have entered into a letter of intent outlining the terms of a joint venture between the parties which was attached to Defendant's December 22, 2021 Motion and incorporated herein by reference (the "Joint Venture").

SRE has provided the attached financial information confirming their ability to provide the Joint Venture with sufficient funds to purchase the Property (See Exhibit B), and SRE shall deposit with the Court 10% of the purchase price in the **estimated** amount of \$899,335.91 (the "Deposit") no later than two (2) business days after entry of an order by the Court adopting the following conditions (the "Court's Order") for the sale of the Property to the Joint Venture, and requiring the Plaintiffs and Purchasers Heirs to enter into a purchase and sales agreement, assignable to the Joint Venture, that contains the following conditions:

1. Inspection:

1.1 SRE shall have until **forty-five (45) days** from the date of the Court's Order (hereinafter referred to as the "Inspection Period") to research the title records for the Property, to inspect the Property and to conduct all other due diligence matters. During the Inspection Period, SRE shall identify and provide to Plaintiffs for execution copies of documentation required to convey to the Joint Venture "good and marketable fee simple title," as defined in Section 2.1 below, to 100% of the Property (together with other documents required to close the transaction (the "Closing Documents"). The Court's Order shall specifically grant SRE the right to terminate its involvement for any reason by giving written notice to the Court on or before the later to occur of (a) the last day of the Inspection Period, or (b) two (2) business days after the delivery by Plaintiffs of the Closing Documents into escrow with the Court, in which event the Deposit shall be promptly refunded to SRE and SRE shall be relieved of all rights and obligations hereunder. 1.2 SRE shall have the privilege at any time during the term of this Agreement to go upon the Property with SRE's agents, representatives or designees to inspect, examine and survey the Property. SRE indemnifies and holds Plaintiffs harmless from and against physical loss or damage to the Property Plaintiffs may incur and any and all liens that may arise as a result of SRE's inspection of the Property, or the activities of SRE's agents, representatives or designees on the Property and against any and all

claims for death or injury to persons or properties arising out of or connected with SRE's (or its agents, representatives or designees) going upon the Property pursuant to the provisions of this Section, and against all costs, expenses and liabilities occurring in or in connection with any such claim or proceeding directly resulting therefrom, including, without limitation, court costs and reasonable attorney's fees. This indemnity shall survive the Closing.

1.3 Within five (5) business days after the date of the Court's Order, Plaintiff's counsel shall deliver to SRE copies of the most recent surveys, plans, engineering reports, title reports, title insurance policies, environmental assessments and other similar documents concerning the Property which Plaintiffs may possess.

2. Transfer of Title:

2.1 At the Closing, the Plaintiffs and/or the Court (if required) shall convey to the Joint Venture "good and marketable fee simple title" to the entire Property, (except for the portion already owned by Purchaser Heirs, which shall also be conveyed to the Joint Venture), by limited warranty deed. "Good and marketable fee simple title" shall be such title as is acceptable to a reasonable purchaser and is insurable by a national title insurance company (the "Title Company") acceptable to Purchaser at standard rates and without exception other than easements, covenants and restrictions of record that will not adversely affect the Joint Venture's development of the Property, and real property ad valorem taxes for the current year, not yet due and payable. For purposes of clarification, this condition requires that the Joint Venture receive 100% of the fee simple title to the Property.

2.2 Prior to expiration of the Inspection Period, the Plaintiffs shall execute and deliver the Closing Documents into escrow with the Court and such other documents as the Title Company may reasonably request to effect or complete the transaction contemplated by this Agreement and to obtain an owner's policy of title insurance in accordance with the standards set forth above.

2.3 At the Closing, the Plaintiffs shall pay the balance of any liens on the Property, their own attorneys' fees, and any costs of delivering good and marketable fee simple title, except as provided below. Real estate ad valorem taxes and assessments shall be prorated as of the date of Closing. The Joint Venture shall pay all other costs and

expenses.

2.4 At the Closing, SRE shall reimburse Plaintiffs for legal fees and expenses actually incurred by Plaintiffs up to the amount of \$125,000.00, provided that the Plaintiffs promptly execute and deliver to the Court all of the required Closing Documents, and provided that the Plaintiffs agree in writing prior to expiration of the Inspection Period not to appeal any order issued by the Court or challenge the title to the Property granted to the Joint Venture. If either of said conditions is not satisfied in SRE's sole discretion, the Joint Venture may still proceed to Closing, but SRE will not reimburse Plaintiff's legal fees and expenses.

3. Release of Funds:

3.1 Provided that SRE's obligations have not been terminated prior to expiration of the Inspection Period, all other conditions stated above have been satisfied for the Joint Venture to purchase the Property, and the Closing Documents have been placed into escrow with the Court, the Joint Venture shall deposit the balance of the Purchase Price with the Court **within ten (10) days after expiration of the Inspection Period.**

3.2 The Court shall hold the Closing Funds and Closing Documents in escrow until all appeal periods related to the issuance of the Court's Order have been waived or expired, and, provided that all conditions for closing are still satisfied, the Court shall then deliver the Closing Documents to the Joint Venture for recording and distribute the Closing Funds per the Court's Order.

3.3 In the event that the Court's Order is appealed, the Court will retain the Closing Funds and Closing Documents in escrow until the first to occur of (i) the appeal is resolved in favor of the Joint Venture, in which case the Court will proceed with disbursement of the Closing Funds and Closing Documents; (2) the appeal is resolved against the Joint Venture, in which case the Closing Funds (including the Deposit) will be refunded to SRE and the Closing Documents will be returned to Plaintiffs; or (3) the Court receives written notice from SRE at any time prior to resolution of the appeal that it is terminating its involvement in the transaction, in which case the Closing Funds (including the Deposit) will be refunded to SRE and the Closing Documents will be returned to Plaintiffs.

4. Indemnification:

In the event SRE and Nassau have elected not to purchase the Property, or in the event SRE and Nassau have decided to terminate their involvement in the transaction, or in the event of an appeal resolved against the Joint Venture, the Plaintiffs and Purchaser Heirs understand and agree that SRE and Nassau shall have no liability or responsibility whatsoever (other than the obligation set out in Section 1.2 above). Plaintiffs and Purchaser Heirs covenant not to sue SRE and Nassau in the event of any of the foregoing and agree to indemnify, defend and hold harmless SRE and Nassau and their affiliates and related entities, members and managers from and against any and all claims, losses, damages and liabilities arising directly or indirectly therefrom. The resolute equity partners additionally have the required finances currently in place not only to complete the purchase of the property but have budgeted over \$73 million for this cultural resort development in historically renown Mitchellville Community of Hilton Head Island.

ABSENCE OF MARKETABLE TITLE AND PROFFERED SOLUTION

The caption of this action commenced by the Plaintiffs is entitled Action to Quiet Title and Partition.

Paragraph 5 of their Complaint reads as follows:

5. *This is an action to quiet title to, and to partition, a tract of real property located in the Town of Hilton Head Island, Beaufort County, South Carolina, over which this Honorable Court has jurisdiction.*

A “marketable title” is one free from encumbrances and any reasonable doubt to its validity; it is a title which a reasonable purchaser, well-informed as to the facts and their legal significance, is ready and willing to accept. Scalise Dev., Inc. v. Tidelands Investments., LLC, 392 S.C. 27, 707 S.E.2d 440 (Ct. App. 2011). In a 199 case arising out of Beaufort County, SC. Though the Master in Equity decision was reversed on appeal the central issue in this case was the principle that to have the cloud on the title removed is to receive fee simple title to property. Clark v. Hargrave, 323 S.C. 84, 87, 473 S.E.2d 474, 476 (Ct. App. 1996). To quiet title to property is to commence an action against all adverse claimants asserting fee simple title to the tract of land and seeking to quiet her title thereto. May v. Jeter, 245 S.C. 529, 534, 141 S.E.2d 655, 658 (1965) In

another quiet title action arising out of Beaufort County Major v. Penn Community Services, Inc., 395 S.C. 175, 717 S.E.2d 70 (Ct. App. 2011) the Court of Appeals held that the evidence was sufficient to support the Master-in-Equity's finding that disputed 6.2-acre lot was conveyed in fee simple to record owner. The gavelman and principal point that these collective cases establish is that in an action to quiet title all impediments that place a cloud upon title to property need to be removed in order for the fee simple title to be invested by a court.

The existence of four deceased persons who appeared within the chain of title to the property whose estates have not been completed is a cloud upon the fee simple title to the property that has not been removed or resolved in this quiet title action presently leaving the court without authority to decree a finding of fee simple title. Without the fee simple title judicial decreed upon the property the Defendants cannot transact any business pertaining to it. The Defendants conjecture that it is highly inequitable to require them to complete their transaction to buy out the Plaintiff Heirs when this action brought by and under the control of the Plaintiffs has failed to remove all of the impediments upon the title to the property that is the subject of this action.

PROFFERED SOUTION

In South Carolina, a ten year period of time must have elapsed since a decedent's death to preclude the commencing of a probate proceeding upon their estate. § 62-3-108 (2009 & Supp. 2015) SC Code Ann. (establishing, subject to certain exceptions, a time limitation of ten years after a decedent's death for commencement of any proceeding to determine whether a decedent died testate or for commencing administration of the decedent's estate. Afterwards, an action to quiet title must be commenced to determine their legal heirs. In an action to quiet title a hearing is held by the Court after publication of the Summons and Complaint where evidentiary testimony is tendered establishing the genealogy of the deceased intestate. From the evidence produced at the hearing the Court makes its findings of fact identifying the heirs of the deceased intestate and the order and extent of each heir's

inheritance according to the Statute or Descent and Distribution. By implementing this same and required procedure in this present action would cure the cloud that remains upon the subject property. A hearing could be scheduled immediately, and the evidence produced at the hearing would provide a sufficient basis for the Court to determine who are the heirs to the four deceased persons whose estate have not been commenced or remain open pending completion are. This would clean up the impediments now clouding the title to the subject property and the Court may then properly issue its declaratory order stating that the persons designated in the order are possessed with the fee simple title to the property as tenants in common with each holding a specific percentage interest as determined by the Statute of Descent and distribution.

The Houston Law Firm LLC
1000 Main Street, Suite 200C
Hilton Head Island, SC 29926
Phone: 843-715-9078
chouston@houstonlawfirm.net

By: Charles E. Houston Jr.
Charles E. Houston Jr.

January 4, 2022
Hilton Head Island, SC



December 1, 2021

Charles Kellogg
Singerman Real Estate, LLC
980 N. Michigan Ave., Suite 1700
Chicago, IL 60611

Dear Charles,

We understand that you require a bank reference for Singerman Real Estate, LLC (the "Company").

The Company has maintained a banking relationship with us since 2015. It is well known to us and has maintained its relationship with us in a satisfactory manner.

In addition, Bank of America, N.A. is the administrative agent for a secured credit facility in the 9 figure range (the "Credit Facility") provided to Singerman Opportunity Fund IV, L.P. (the "Borrower"). The amount outstanding under the Credit Facility is currently in the 8 figure range. The availability of funds under the Credit Facility is subject to the conditions that (a) the Borrower not be in default under the terms of the Credit Facility and (b) the Borrower's representations and warranties contained in the agreement governing the Credit Facility be true and correct in all material respects as of the date of the borrowing.

Please note that the information set forth in this letter is subject to change without notice, and is provided in strict confidence, without any responsibility or liability on the part of Bank of America, N.A., its affiliates or any of its or its affiliates' directors, officers or employees. Bank of America, N.A. undertakes no responsibility to update the information set forth in this letter.

Very truly yours,

BANK OF AMERICA, N.A.

By: 
Name: Brendan Magrady
Title: Vice President

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORD

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL DISTRICT
CIVIL ACTION # 2020-CP-07-02301

GEORGIA HARRISON, BARBARA
HARRISON, JOYCE ELLEN HARRISON,
WILLIAM S. HARRISON, III, STANLEY
ROBERTS AND DIANA MENDHEIM
INDIVIDUALLY AND AS AGENT AND
ATTORNEY IN FACT,

Plaintiffs,

vs.

STEPHANIE LORRAINE KIRKLAND, GARY
LAMONT KIRKLAND, KIETA NICOLE
WHITE, AND CHERYL KIRKLAND,

Defendants.

**DEFENDANT'S AMENDED
SUPPLEMENTAL MOTION FOR
RELIEF OF JUDGMENT AND FOR
EXTENSION OF TIME TO TENDER
PURCHASE PRICE UNDER RIGHT
OF FIRST REFUSAL**

TO: Thomas Taylor, Esq. and Chester Williams Esq. Attorneys for Plaintiffs

Comes now the Defendants who would further set forth sustaining grounds for the relief requested in its original motion filed on December 22, 2021.

**SIXTY (60) DAY ALLOCATION OF TIME TO TENDER
PURCHASE PRICE IS UNCONSCIONABLE**

According to §15-61-370 (E) of the Code of Laws of South Carolina commonly referred to as the "Right of First Refusal" under the Clementa Pinckney Act,

*(E) If notices are sent to the parties under subsection (D)(1) or (2), the court shall set a date, **not sooner** than sixty days after the date the notice was sent, by which electing cotenants must pay their apportioned price into the court.* The Plaintiffs are arguing that there is a "statutory 60-day requirement" for the heirs to post the funds upon notice from the Judge; however, this is an unfair mis-representation and inaccurate characterization of the statute. Sixty days is the statutory **minimum amount of time** that

must be granted to heirs that have exercised their right to purchase a cotenant property. Given the (a) large size of the transaction (nearly \$10 million is likely one of the largest such cases in the history of the state of South Carolina) and (b) the incomplete state of the quiet title action, Defendants should have been granted longer than 60 days to pay their apportioned price into the court's registry. Requiring the Defendants to raise such a large sum with unmarketable title was near impossible. Yet, Defendants have presented the Court with a funding partner which stands ready to complete this transaction once Defendants are able to provide marketable title.

Additionally, the Defendants (exercisers of the Right of First Refusal) are extremely concerned about the fact that Defendants were not timely made privy to the 6th amendment to the purchase contract that increased the price to \$9.75 million given the heirs were working under the assumption of the purchase price established by this Court in its October 2021 Order. According to said Order, the purchase price is \$9.1 million. Plaintiffs are attempting to force the Court to rush through the option process so that Defendants do not have a chance to buy the property at the \$9.1 million price. Therefore, and alternatively, the 60-day period should re-start at the date the new price is properly before the Court if the Court is inclined to establish a new purchase price.

BALANCING THE EQUITIES

The nine Defendants and Michael Carver, the heir of a now deceased Plaintiff Joanne Elizabeth Carver ("Purchaser Heirs") in that action filed in the Court of Common Pleas Fourteenth Judicial Circuit, Civil Action No. 2020-CP-07-02301, have located a financial partner, SRE Acquisitions IV, LLC ("SRE") and a consulting partner, Nassau Investments HHI, LLC ("Nassau") to assist them in the acquisition from Plaintiffs of the Property described on **Exhibit "A"** for a purchase price **equal to the greater of \$8,993,359.10, or Plaintiff's pro rata share of the purchase price contained in any legally binding contract between Plaintiffs and a third party for the Property, not to exceed \$9,750,000** (including the Deposit, the "Closing Funds"). Further, Purchaser Heirs, SRE and Nassau have entered into a letter of intent outlining the terms of a joint venture between the parties which was attached to Defendant's December 22, 2021 Motion and incorporated herein by reference (the "Joint Venture").

SRE has provided the attached financial information confirming their ability to

provide the Joint Venture with sufficient funds to purchase the Property (See Exhibit B), and SRE shall deposit with the Court 10% of the purchase price in the **estimated** amount of \$899,335.91 (the "Deposit") no later than two (2) business days after entry of an order by the Court adopting the following conditions (the "Court's Order") for the sale of the Property to the Joint Venture, and requiring the Plaintiffs and Purchasers Heirs to enter into a purchase and sales agreement, assignable to the Joint Venture, that contains the following conditions:

1. Inspection:

1.1 SRE shall have until **forty-five (45) days** from the date of the Court's Order (hereinafter referred to as the "Inspection Period") to research the title records for the Property, to inspect the Property and to conduct all other due diligence matters. During the Inspection Period, SRE shall identify and provide to Plaintiffs for execution copies of documentation required to convey to the Joint Venture "good and marketable fee simple title," as defined in Section 2.1 below, to 100% of the Property (together with other documents required to close the transaction (the "Closing Documents"). The Court's Order shall specifically grant SRE the right to terminate its involvement for any reason by giving written notice to the Court on or before the later to occur of (a) the last day of the Inspection Period, or (b) two (2) business days after the delivery by Plaintiffs of the Closing Documents into escrow with the Court, in which event the Deposit shall be promptly refunded to SRE and SRE shall be relieved of all rights and obligations hereunder.

1.2 SRE shall have the privilege at any time during the term of this Agreement to go upon the Property with SRE's agents, representatives or designees to inspect, examine and survey the Property. SRE indemnifies and holds Plaintiffs harmless from and against physical loss or damage to the Property Plaintiffs may incur and any and all liens that may arise as a result of SRE's inspection of the Property, or the activities of SRE's agents, representatives or designees on the Property and against any and all claims for death or injury to persons or properties arising out of or connected with SRE's (or its agents, representatives or designees) going upon the Property pursuant to the provisions of this Section, and against all costs, expenses and liabilities occurring in or in connection with any such claim or proceeding directly resulting therefrom, including,

without limitation, court costs and reasonable attorney's fees. This indemnity shall survive the Closing.

1.3 Within five (5) business days after the date of the Court's Order, Plaintiff's counsel shall deliver to SRE copies of the most recent surveys, plans, engineering reports, title reports, title insurance policies, environmental assessments and other similar documents concerning the Property which Plaintiffs may possess.

2. Transfer of Title:

2.1 At the Closing, the Plaintiffs and/or the Court (if required) shall convey to the Joint Venture "good and marketable fee simple title" to the entire Property, (except for the portion already owned by Purchaser Heirs, which shall also be conveyed to the Joint Venture), by limited warranty deed. "Good and marketable fee simple title" shall be such title as is acceptable to a reasonable purchaser and is insurable by a national title insurance company (the "Title Company") acceptable to Purchaser at standard rates and without exception other than easements, covenants and restrictions of record that will not adversely affect the Joint Venture's development of the Property, and real property ad valorem taxes for the current year, not yet due and payable. For purposes of clarification, this condition requires that the Joint Venture receive 100% of the fee simple title to the Property.

2.2 Prior to expiration of the Inspection Period, the Plaintiffs shall execute and deliver the Closing Documents into escrow with the Court and such other documents as the Title Company may reasonably request to effect or complete the transaction contemplated by this Agreement and to obtain an owner's policy of title insurance in accordance with the standards set forth above.

2.3 At the Closing, the Plaintiffs shall pay the balance of any liens on the Property, their own attorneys' fees, and any costs of delivering good and marketable fee simple title, except as provided below. Real estate ad valorem taxes and assessments shall be prorated as of the date of Closing. The Joint Venture shall pay all other costs and expenses.

2.4 At the Closing, SRE shall reimburse Plaintiffs for legal fees and expenses actually incurred by Plaintiffs up to the amount of \$125,000.00, provided that the Plaintiffs promptly execute and deliver to the Court all of the required Closing Documents, and

provided that the Plaintiffs agree in writing prior to expiration of the Inspection Period not to appeal any order issued by the Court or challenge the title to the Property granted to the Joint Venture. If either of said conditions is not satisfied in SRE's sole discretion, the Joint Venture may still proceed to Closing, but SRE will not reimburse Plaintiff's legal fees and expenses.

3. Release of Funds:

3.1 Provided that SRE's obligations have not been terminated prior to expiration of the Inspection Period, all other conditions stated above have been satisfied for the Joint Venture to purchase the Property, and the Closing Documents have been placed into escrow with the Court, the Joint Venture shall deposit the balance of the Purchase Price with the Court **within ten (10) days after expiration of the Inspection Period.**

3.2 The Court shall hold the Closing Funds and Closing Documents in escrow until all appeal periods related to the issuance of the Court's Order have been waived or expired, and, provided that all conditions for closing are still satisfied, the Court shall then deliver the Closing Documents to the Joint Venture for recording and distribute the Closing Funds per the Court's Order.

3.3 In the event that the Court's Order is appealed, the Court will retain the Closing Funds and Closing Documents in escrow until the first to occur of (i) the appeal is resolved in favor of the Joint Venture, in which case the Court will proceed with disbursement of the Closing Funds and Closing Documents; (2) the appeal is resolved against the Joint Venture, in which case the Closing Funds (including the Deposit) will be refunded to SRE and the Closing Documents will be returned to Plaintiffs; or (3) the Court receives written notice from SRE at any time prior to resolution of the appeal that it is terminating its involvement in the transaction, in which case the Closing Funds (including the Deposit) will be refunded to SRE and the Closing Documents will be returned to Plaintiffs.

4. Indemnification:

In the event SRE and Nassau have elected not to purchase the Property, or in the event SRE and Nassau have decided to terminate their involvement in the transaction, or in the event of an appeal resolved against the Joint Venture, the Plaintiffs and Purchaser Heirs understand and agree that SRE and Nassau shall have no liability or responsibility

whatsoever (other than the obligation set out in Section 1.2 above). Plaintiffs and Purchaser Heirs covenant not to sue SRE and Nassau in the event of any of the foregoing and agree to indemnify, defend and hold harmless SRE and Nassau and their affiliates and related entities, members and managers from and against any and all claims, losses, damages and liabilities arising directly or indirectly therefrom. The resolute equity partners additionally have the required finances currently in place not only to complete the purchase of the property but have budgeted over \$73 million for this cultural resort development in historically renown Mitchellville Community of Hilton Head Island.

ABSENCE OF MARKETABLE TITLE

The caption of this action commenced by the Plaintiffs is entitled Action to Quiet Title and Partition.

Paragraph 5 of their Complaint reads as follows:

5. *This is an action to quiet title to, and to partition, a tract of real property located in the Town of Hilton Head Island, Beaufort County, South Carolina, over which this Honorable Court has jurisdiction.*

A “marketable title” is one free from encumbrances and any reasonable doubt to its validity; it is a title which a reasonable purchaser, well-informed as to the facts and their legal significance, is ready and willing to accept. Scalise Dev., Inc. v. Tidelands Invs., LLC, 392 S.C. 27, 707 S.E.2d 440 (Ct. App. 2011). In a 1996 case arising out of Beaufort County, SC., though the Master in Equity decision was reversed on appeal, the central issue in this case was the principle that to have the cloud on the title removed is to receive fee simple title to property. Clark v. Hargrave, 323 S.C. 84, 87, 473 S.E.2d 474, 476 (Ct. App. 1996). To quiet title to property is to commence an action against all adverse claimants asserting fee simple title to the tract of land and seeking to quiet her title thereto. May v. Jeter, 245 S.C. 529, 534, 141 S.E.2d 655, 658 (1965). In another quiet title action arising out of Beaufort County Major v. Penn Community. Services., Inc., 395 S.C. 175, 717 S.E.2d 70 (Ct. App. 2011), the Court of Appeals held that the evidence was sufficient to support the Master-in-Equity's finding that disputed 6.2-acre lot was conveyed in fee simple to record owner. The gavelman and principal point that these collective cases establish is that in an action to quiet title, all impediments that place a cloud upon title to property need to be removed in order for the fee simple title to be vested by a court.

The existence of four deceased persons who appeared within the chain of title to the property whose estates have not been completed is a cloud upon the fee simple title to the property that has not been removed or resolved in this quiet title action presently leaving the court without authority to decree a finding of fee simple title. Without the fee simple title judicially decreed upon the property, the Defendants cannot transact any business pertaining to it. The Defendants' conjecture that it is highly inequitable to require them to complete their transaction to buy out the Plaintiff Heirs when this action brought by and under the control of the Plaintiffs has failed to remove all of the impediments upon the title to the property that is the subject of this action.

PROFFERED SOUTION

In South Carolina, a ten year period of time must have elapsed since a decedent's death to preclude the commencing of a probate proceeding upon their estate. § 62-3—108 (2009 & Supp. 2015) SC Code Ann. (establishing, subject to certain exceptions, a time limitation of ten years after a decedent's death for commencement of any proceeding to determine whether a decedent died testate or for commencing administration of the decedent's estate). Afterwards, an action to quiet title must be commenced to determine their legal heirs. In an action to quiet title a hearing is held by the Court after publication of the Summons and Complaint where evidentiary testimony is tendered establishing the genealogy of the deceased intestate. From the evidence produced at the hearing the Court makes its findings of fact identifying the heirs of the deceased intestate and the order and extent of each heir's inheritance according to the Statute of Descent and Distribution. By implementing this same and required procedure in this present action would cure the cloud that remains upon the subject property. A hearing could be scheduled immediately, and the evidence produced at the hearing would provide a sufficient basis for the Court to determine the heirs to the four deceased persons whose estate have not been commenced or remain open. This would clean up the impediments now clouding the title to the subject property and the Court may then properly issue its declaratory order stating that the persons designated in the order are possessed with the fee simple title to the property as tenants in common with each

holding a specific percentage interest as determined by the Statute of Descent and Distribution.

The Houston Law Firm LLC
1000 Main Street, Suite 200C
Hilton Head Island, SC 29926
Phone: 843-715-9078
chouston@houstonlawfirm.net

By: SI Charles E. Houston, Jr.
Charles E. Houston, Jr.

January 5, 2022
Hilton Head Island, SC



December 1, 2021

Charles Kellogg
Singerman Real Estate, LLC
980 N. Michigan Ave., Suite 1700
Chicago, IL 60611

Dear Charles,

We understand that you require a bank reference for Singerman Real Estate, LLC (the "Company").

The Company has maintained a banking relationship with us since 2015. It is well known to us and has maintained its relationship with us in a satisfactory manner.

In addition, Bank of America, N.A. is the administrative agent for a secured credit facility in the 9 figure range (the "Credit Facility") provided to Singerman Opportunity Fund IV, L.P. (the "Borrower"). The amount outstanding under the Credit Facility is currently in the 8 figure range. The availability of funds under the Credit Facility is subject to the conditions that (a) the Borrower not be in default under the terms of the Credit Facility and (b) the Borrower's representations and warranties contained in the agreement governing the Credit Facility be true and correct in all material respects as of the date of the borrowing.

Please note that the information set forth in this letter is subject to change without notice, and is provided in strict confidence, without any responsibility or liability on the part of Bank of America, N.A., its affiliates or any of its or its affiliates' directors, officers or employees. Bank of America, N.A. undertakes no responsibility to update the information set forth in this letter.

Very truly yours,

BANK OF AMERICA, N.A.

By: 
Name: Brendan Magrady
Title: Vice President

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL DISTRICT
CIVIL ACTION # 2020-CP-07-02301

GEORGIA HARRISON, BARBARA
HARRISSON, JOYCE ELLEN HARRISON
WILLIAM S. HARRISSON, III, STANLEY
ROBERTS AND DIANA MENDHEIM
(Individually and as agent
and attorney in fact

Plaintiffs

vs.

DEFENDANTS' OBJECTIONS
TO PROPOSED ORDER

STEPHANIE LORRAINE
KIRKLAND, GARYY LAMONT
KIRKLAND, KEITA NICOLE
WHITE, AND CHERYL KIRKLAND

Defendants

TO: THOMAS C. TAYLOR, ESQ.; Law offices of Thomas C. Taylor; and CHESTER C. WILLIAMS, Esq.;
Law offices of Chester C. Williams, Attorneys for Plaintiffs.

The Defendants object to Plaintiffs' proposed order pertaining to the rulings of the court taken upon the issues and matters presented at the hearing had in this case via WebEx on January , 2022 upon the following grounds:

- 1) That the proposed order does not set forth all the issues raised in the Defendants Motion for Relief and its Amended Supplemental Motion for Relief:
Including

- A) That the Court has not in this proceeding reached the point that the heirs possess as tenants in common the fee simple title to the property.
- B) To require the Defendants to tender the purchase price of 9.1 million Dollars within 60 days without having fee simple title to the property is inequitable and unconscionable.
- C) That with four intestate estates remaining open and one coming into existence since the October 15, 2021 Order of the Court that a Master's Deed would be insufficient to cure the lack of a fee simple title.
- D) That the Clementa Pinckney Act provides for a minimum of 60 days for heirs exercising their Right of First Refusal to complete the purchase, not 60 days as the 60 day period allotted to the Defendants is commercially impossible to achieve, especially considering the large purchase price.
- E) That the Defendants' request for 45 days to have a hearing to receive testimonial evidence to determine the heirs of the estates of the four deceased heirs and to tender the purchase price, with the Defendants depositing 10%percent down with the court and also paying to the Plaintiffs the amount of 9.7 million in lieu of the appraisal price was rejected.
- F) The counsel for the defendants rejecting this offer prior to presenting it to their clients
- G) The Court ruling that the October 1, 2021 Order was the final order of the court for SCRCF Rule 59(e) purposes therefore not having jurisdiction to entertain Defendants' motions for Relief.
- H) The communications pertaining to this matter is attached as Defendants' Exhibit 1

The Houston Law Firm, LLC
1000 Main Street, Suite 200C
Hilton Head Island, SC 29926
Phone: 843-715-9078
chouston@houstonlawfirm.net

By: S/Charles E. Houston Jr.

Charles E. Houston Jr.
SC Bar # 2663
Attorney for Defendants

January 10, 2022
Hilton Head Island, SC

From: Tom Taylor

Sent: Monday, January 10, 2022 9:56 AM

To: McLeod, Heather; Browne, Jared

Cc: Charles E. Houston; Jackson, Earsa R.; Rob Brannen; Law Office of Chester C. Williams; Andre White

Subject: Proposed Order in Harrison v. Kirkland, 2020-CP-07-2301

Heather and Jared—Good morning. Chet Williams and I represent the Plaintiffs in this matter and Charles Houston, copied on this email, represents the Defendants. We had a WebEx hearing with Judge Dukes last Thursday, January 6, 2022, and the Judge asked me to prepare a proposed Order for his consideration at the end of the hearing.

Would you please let Judge Dukes know that Chet and I have prepared a proposed Order (attached in both word and pdf formats), circulated it, and uploaded it this morning through the e-filing portal for his consideration? Please also advise him that we sent a copy of it to Mr. Houston last Thursday evening, and over the weekend Mr. Houston emailed me and asked me to make certain additions, but I did not feel those proposed additions were keeping within Judge Dukes' verbal rulings of last Thursday on how he wanted the Order prepared. Thus, I did not include them in the attached proposed Order, advised Mr. Houston of that fact, and suggested to him that he could submit something to the Court explaining his position and requesting the wording changes that he sought.

For the Court's information, the email we received from Mr. Houston Saturday (which was also copied directly to Judge Dukes) was a request that the Order include "a complete list of each issue stated in our initial and Amended Supplemental Motion for relief motion" and a request to "include the fact that we offered additional consideration to the Plaintiffs that was not accepted and that judge Dukes ruled that he did not have jurisdiction to entertain our motion under SCRCP 59e because more than 10 days had elapsed since his October Order requiring the Defendants to purchase the property y [sic] December 22, 2021." As I told Charles this morning, my recollection is that Judge Dukes wanted a fairly simple and short Order, similar to a Form 4, and the one I uploaded I think accomplishes that.

Please let me know if either Chet or I can provide the Court with any other assistance in preparing an Order. Thank you.

Again, please let me note that this court communication is being copied to Mr. Houston as counsel for the Defendants.

Thanks all. Have a good week.

Tom

Thomas C. Taylor

Law Office of Thomas C. Taylor, LLC

22 Bow Circle, Suite A

Hilton Head, SC 29928

843-785-5050 (office)

843-785-5030 (fax)

843-301-6900 (cell)

Mailing Address:

P.O. Box 5550

Hilton Head, SC 29938

This law firm is practicing social distancing in accordance with the recommendations of the CDC and SCDHEC. This means we are limiting face-to-face interactions at this time in the following ways:

1. Until at least August 30, 2020, client meetings will take place by telephone.
2. Until at least August 30, 2020, our office will be locked to outside guests.
3. Documents that need to be delivered should be sent electronically or slipped under the office door.
4. If you must come to the office to prepare for a hearing or in an emergency situation), we will make special accommodations in advance.
5. If you need to schedule an appointment, a special accommodation or have questions, please call us at (843)785-5050.

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IRS CIRCULAR 230 NOTICE: Internal Revenue Service regulations generally provide that, for the purpose of avoiding tax penalties, a taxpayer may rely only on formal written advice meeting specific requirements. Any tax advice in this message, or in any attachments to this message, does not meet those requirements. Accordingly, any such tax advice was not intended or written to be used, and it cannot be used, for the purpose of avoiding federal tax penalties that may be imposed on you or for the purpose of promoting, marketing or recommending to another party any tax-related matters.

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STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL DISTRICT
CIVIL ACTION # 2020-CP-07-02301

**GEORGIA HARRISON, BARBARA
HARRISSON, JOYCE ELLEN HARRISON
WILLIAM S. HARRISSON, III, STANLEY
ROBERTS AND DIANA MENDHEIM**

**(Individually and as agent
and attorney in fact**

Plaintiffs,

vs.

**DEFENDANTS' MOTION FOR
RECONSIDERATION**

**STEPHANIE LORRAINE
KIRKLAND, GARYY LAMONT
KIRKLAND, KEITA NICOLE
WHITE, AND CHERYL KIRKLAND**

Defendants.

To: Thomas Taylor, Esq., and Chester –Williams, Esq., Attorneys for the Plaintiffs

YOU WILL PLEASE TAKE NOTICE that the Defendant, pursuant to Rule 52(b), Rule 54(b), Rule 59 (a)2) and (e), Rule 60(b)(2), SCRCPP, move before the Honorable Marvin H. Dukes, Master In Equity, Fourteenth Judicial Circuit, at the Beaufort County Judicial Center, 102 Ribault Road, Beaufort South Carolina upon ten (10) days after service hereof, or at such other time and place as may be convenient to the Court and Counsel to alter or amend the Orders of the Court entered on January 20, 2022, October 20, 2021 and May 21, 2021 the action herein in the following particulars:

1. To amend the findings of fact and conclusions of law or make new findings and conclusions and direct the entry of a new judgment in

the case herein;

2. Request the court to reconsider matters properly encompassed in a decision on the merits;
3. To rule upon motions that have not been addressed upon the merits of the issues raised in this proceeding;
4. To set forth the court's findings, the reasons for those findings and conclusion of law;
5. To open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law;
6. Receive newly discovered evidence; and
7. Make new findings and conclusions and direct the entry of a new judgment.

On January 6, 2022, this court heard Defendants' Motion for Relief & Extension for Relief & Extension of Time & Realignment of Heirs, and Defendants. Defendants reassert and incorporate by reference said motion in its entirety. Attached hereto is the transcript of said hearing in its entirety as **Exhibit A**. The trial court specifically erred in concluding during the January 6, 2022 hearing that the provisions of the October 20, 2021 order were unappealed nor had a motion for reconsideration been filed, such that the order of October 20, 2021 could not be modified. (Tr. p. 15, line 15 – p. 16, line 2). Rule 54(b) specifically provides that “any order. . . however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties . . . is subject to revision at any time before the entry of judgment adjudicating all of the claims and the rights and liabilities of all the parties.”

On January 20, 2022, the Court entered an order generally denying relief without making specific findings, rulings and conclusions of law as required by Rule

52(a), SCRCF, and without sufficiently addressing:

1. Defendants' Motion to modify the terms of the October 20, 2021 order. Additionally, the Court did not rule on Defendants' Motion for Relief of Judgment and for Extension of Time to Tender Purchase Price and Right of First Refusal filed December 22, 2021;

2. Defendants' Amended Supplemental Motion for Relief of Judgment and for extension of time to Tender Purchase Price under Right of First Refusal filed January 5, 2022; and

3. Defendants' Objections to Proposed Order filed January 11, 2022.

To the extent that the January 20, 2022 order addressed its inability to modify the October 20, 2021 order, it was in error. *See* Rule 54(b), *cited above*. Defendants' appeal from the order of January 20, 2022 will also include an appeal of the orders of May 21, 2021 order and the October 22, 2021 orders, neither of which were appealable at the time they were issued but are now subject to appellate review (combined with an appeal from a final order) pursuant to S.C. Code Ann. §14-3-330(1),(2) and (3).

Among the issues to be raised on appeal (and which this Court is asked to consider on rehearing pursuant to this instant motion are:

- A. How can the May 21, 2021 order have been issued without all parties to the action having been served with the pleadings? *See* Clerk's docket, affidavit of non-service on Stephanie Kirkland, and the absence of any proof of service on Garry Lamont Kirkland, Keita Nicole White and Cheryl Kirkland.
- B. How can the May 21, 2021 order have been issued without consent from all defendants?
- C. To the extent that the October 22, 2021 order stated there had been a revocation of a power of attorney, how can the order be valid without the filing of the revocation of power of attorney and a determination of the validity of

the revocation of the power of attorney?

D. To the extent that the October 22, 2021 order constituted a voluntary appearance of certain defendants without proof of service having been filed, what evidence was presented of record that they had authorized counsel to appear?

At the heart of this matter is determining how this court, in equity, may effectuate the purpose and intent of the Pinckney Act. As specifically set forth in Defendants' motion to the court dated December 22, 2022 and the hearing on January 6, 2022, Defendants within a 60-day window identified a partner to purchase the heir property and participate in the development of the property. The proposal put forth put the plaintiffs in a better position than the contract plaintiffs previously brought before the court. Additionally, defendants' developer partner has the financial wherewithal to quickly close on the purchase of the property once technical impediments are removed. Defendants request specific finding of facts, conclusions of law and rulings of the Court set forth below.

1

The Plaintiffs' Complaint on its face admits that there are at least two unprobated estates, with unknown heirs, which have not been established to include persons who are or may be under some disability or a minor and thus the Complaint is subject to being dismissed pursuant to SCRCP 12(b)(4).

2

There are at least four un-probated estates of heirs, two coming into existence since the Publication of the Summons and with unknown heirs, which have not been established to include persons who are or may be under some disability or a minor and thus the Complaint should be dismissed pursuant to SCRCP 12(b)(6). Defendants seek a ruling from the Court upon this issue.

3

Defendants seek a ruling that the Plaintiffs have failed to join necessary parties and, therefore, the Complaint should be dismissed pursuant to SCRCP 12(b)(7).

4

Defendants seek a finding of fact or ruling that an evidentiary hearing has not been provided to the Defendants, though requested and as required by receive evidence pertaining to their factual denials of Paragraphs 1, 2, 3, 4 11, 14, 15, 20 22, 26, 27 28, 29,30, and 31, of the Complaint. In fact, the Pinckney Act contemplates a trial will be set (15-61-370(B) states that cotenant shall have until ten days prior to trial setting to elect option to purchase property). Once valuation of the property is established, Plaintiffs were required to serve all co-tenants, this relates to even cotenants who have not made an appearance in the case. Section 15-61-370(A). The Pinckney Act event contemplates that a cotenant in default still has the ability to purchase the heir property. No service by publication occurred prior to the court's order purporting to quiet title. Months after the purported quieting of title, the court ordered publication. See Affidavit of Maria Belbus Parker, individual designated by the court to procure publication in October 20, 2021 order. Ms. Parker sets forth that publication was made on October 25, 2021 and November 8, 2021. Defendants seek a ruling that the court's May 21, 2021 Order is void, set aside and of no further effect.

5

Defendants seek a finding of fact and ruling by the Court that the Plaintiff's Complaint never requested the court to certify that the co-tenants be bestowed or endowed with the fee simple absolute title to the property subject to this action.

6

Defendants seek a finding of fact and ruling by the Court whether the title to the property subject to this action has been at all times from the commencement of this action been and remains "Heirs Title" property.

7

Defendants seek a finding of fact and ruling by the Court that the present title status of the property does not meet the "marketable title standard as set forth in *Scalise Dev., Inc. v. Tidelands Investments, LLC*, 392 S.C. 27, 707 S.E.2d 440 (Ct. App. 2011). (Principle that to have the cloud on the title removed is to receive fee simple title to property. *Clark v. Hargrave*, 323 S.C. 84, 87, 473 S.E.2d 474, 476 (Ct. App. 1996). *May v. Jeter*, 245 S.C. 529, 534, 141 S.E.2d 655, 658 (1965), *Major v. Penn Community. Services, Inc.*, 395 S.C. 175, 717 S.E.2d 70 (Ct. App. 2011)).

8

Defendants seek a finding of fact and ruling by the Court whether the tendered contract between the Defendants and SRE that, among other things, provides for the Defendants to hold and retain an equity participation in the development of the property is more consistent with the legislative goals and purposes of the Clementa Pinckney Act than the straight contract for purchase proffered by the Plaintiffs under which they would be bought out and then permanently removed from their heritage land.

9

Defendants seek a finding of fact and ruling by the Court whether that SRE has demonstrated a sufficient showing of its capabilities and financial resources to

fulfill the purchase of the property.

10

Defendants seek a finding of fact and ruling by the Court whether a deed of conveyance either with or without marketable title was in preparedness to be delivered to SRE on December 23, 2021.

11

Defendants seek a finding of fact and ruling by the Court whether the property was available to be mortgaged by SRE on December 23, 2021.

12

Defendants seek a finding of fact and ruling by the Court whether a conflict of interest exist with counsel for the Plaintiffs who represents parties both in this action and in one or more of the open estates; (see Affidavit of Keita White) especially where the relief sought by their clients solely seeks to confirm the percentage ownership among the family heirs and not clear the title to the land knowing that without a marketable title and is unjust impediment has been created to prevent SRE from purchasing the property.

13

Did the Court commit an abuse of discretion as a matter of law by not granting the Defendants request for 45 days to have a hearing to receive testimonial evidence to determine the heirs of the estates of the four deceased heirs and to tender the purchase price, with the Defendants depositing 10%percent down with the court and also paying to the Plaintiffs the amount of 9.7 million in lieu of the appraisal price.

14

Did the Court commit an abuse of discretion as a matter of law by not granting the Defendants an extension of time to tender the purchase price in light of the fact that the Clementa C. Pinckney Act provides for a minimum of 60 days for heirs

exercising their Right of First Refusal to complete the purchase especially where the 60 day period allotted to the Defendants is commercially impossible to achieve, especially considering the large purchase price and the cloudy title encumbered upon the property rendering it useless for loan collateral purposes?

15

Have the Defendants property rights under the provisions of Article 1 Section 3 of the SC Constitution and the enumerated Amendments of the U.S. Constitution been infringed upon by having been denied due process of law and the equal protection of the laws in this proceeding.

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully pray that this Motion for Reconsideration be considered and after review that the Court set aside its Orders of May 21, 2021, October 20, 2021 and January 20, 2022 and grant defendants' their requested relief here before requested.

Respectfully submitted,

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By: Charles E. Houston Jr.
Charles E. Houston, Jr.
SC Bar #2663

January 31, 2022
Hilton Head Island, SC

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL DISTRICT
CIVIL ACTION # 2020-CP-07-02301

GEORGIA HARRISON, BARBARA
HARRISSON, JOYCE ELLEN HARRISON
WILLIAM S. HARRISSON, III, STANLEY
ROBERTS AND DIANA MENDHEIM
(Individually and as agent
and attorney in fact

Plaintiffs

vs.

DEFENDANTS' REBUTTAL MEMORANDUM
TO PLAINTIFF'S RESPONSE IN
OPPOSITION TO DEFENDANT'S
MOTION FOR RECONSIDERATION

STEPHANIE LORRAINE
KIRKLAND, GARY LAMONT
KIRKLAND, KEITA NICOLE
WHITE, AND CHERYL KIRKLAND

Defendants

**AGREEMENT TO SELL REAL ESTATE IMPLIES
AGREEMENT TO CONVEY MARKETABLE
TITLE**

In the 1854 case of N.B. Prothro v R.F. Smith, 6 Rich. Eq. 324, rendered by the Court of Appeals of Equity of South Carolina and cited in Ramsay v et.al. v Sims et. al. 12 Rich.Eq.430, 33S.C. Eq. 430; This court of equity ruled and decreed that in contracts for the sale of real estate the agreement to sell implies an agreement to

convey a good and unencumbered title unless the contrary appears by countervailing stipulation or evidence. No subsequent case has overruled this axiom.

UNCONSCIONABILITY

The doctrine of our unconscionability was designed to remedy both abuses in the procedural formation of contracts such as a refusal to bargain over contract terms and abuses in the substance of contracts such as terms which unreasonable favor the contracting party with superior bargaining power. Unconscionability has been defined by our South Carolina courts. See Carolina Care Plan Inc. versus United Health Care Services Inc. 361 S.C. 544, 606 S.E. 2nd 752 as the absence of meaningful choice on the part of one party due to one-sided contract provisions together with terms that are so oppressive that no reasonable person would make them and no for an honest person would accept them the concept of unconscionability has been codified in both the Uniform Commercial Code S.C. Ann. § 36-2-302, 37-5-108 and the South Carolina Consumer Protection Code SC Code Ann. § 3-2-302, 37-5-108 . Further; “equity follows the law!”

To establish that a contract is unconscionable a party must show both

- A) the absence of a meaningful choice due to one-sided contract provisions, and
- B) contract terms that are so oppressive that no reasonable person would make them and no for an honest person would accept them.
- C)

The fact that the Defendants were required in exercising their “Right of First Refusal to purchase the property within sixty (60) days by depositing the sum of 9.1 million dollars with the Clerk of Court to purchase “heirs title” non-marketable title was the equivalent of acquiring a quit-claim deed. The property is heirs title because

among other defects, there remain four (4) non-probated estates among the heirs that opens doors of possibilities that there may be other additional an unknown claimants who may claim a possessory interest in the property also. Additionally, the Order did not state when the purchaser would receive a deed and who would be the proper person(s) to convey the property. Further, there exist no record in this proceeding whether there exist any outstanding liens against any of the parties that would attach to the property. Therefore, the Master in Equity wisely recused himself from the suggestion of a Masters' deed being utilized for the proposed transaction. These facts fit right within the framework and scope and satisfy the elements constituting unconscionability. **“Equity follows the law.”**

The S.C. Supreme Court ruled in the case of *Simpson v. MSA of Myrtle Beach Inc.* 373 S.C. 14, 644 S.E. 2nd 663 that terms which prohibit a party from recovering mandatory state statutory remedies are so oppressive that when coupled with the absence of meaningful choice the terms cannot be enforced such terms violate public policy, citing *Holler v. Holler* 364 S.C. 256, 612 S.E. 2nd 469 (Ct. APP 2005). This reason, among others, standing alone, was sufficiently adequate for the Court to have granted the Defendant's their requested extension of time for 45 days to complete the purchase. The Court, therefore, abused its discretion as a matter of law by refusing to grant the Defendants' requested extension of time and is repugnant to the legislative purposes set forth in the *Clementa C. Pinckney Act* codified as § 15-61-310 et. seq. and comes straight within the purview of § 15-61-390; Determination of manifest prejudice or injury to cotenants as a group. **“Equity regards that as done which ought to be done.”**

The Defendants pointed out to the court that no evidentiary hearing as that is required by §15-61-330 had been held. There is no sworn witness testimony

solicited during the course of the entire proceeding. The court, though requested has not ruled or decided whether the property subject to this action is heirs' property.

In order to obtain a decree or ruling from the court that the designated family members were the sole heirs with a possessory percentage and undivided interest in the property and are possessed with the fee simple absolute title to the property the defendants had requested the court to hold a hearing pursuant to §15-61-330 as this is a statutory required hearing. At this hearing sworn testimony would be taken pertaining to the genealogy of the family tree; especially of those who have died and left surviving issue. Twice before actions to quiet title to this property have been completed only to revert to heirs' title again. From the evidence compiled at such requested hearing the court would then have a record of evidentiary facts to make its determination that the tenants in common possess the fee simple absolute title to the property. This can be done within the requested 45 day extension. **“Equity will not suffer a wrong without a remedy.”**

BALANCING THE EQUITIES

The defendants' plan to purchase the interest of the family members who desire to sell their interest outright and leave their hereditary land forever. The defendants' have a better approach. They prefer to sell enough interest in the property to pay the selling plaintiffs their interest. The Defendants however will acquire an equity interest with their joint partner who is providing the funds to acquire the selling member's interest. The Defendants interest and cultural influences upon the land will continue indefinitely. This I suggest is the legislative purpose and goals sought to be achieved by the Clementa C. Pinckney Act. The Plaintiff's support gentrification; the Defendants, their heritage and love for the land of their ancestors. **“Where there is equal equity the law shall prevail.”**

Respectfully submitted,

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By: S/ Charles E. Houston, Jr.

Charles E. Houston Jr.
Attorney for the Plaintiff
SC Bar # 2663

Hilton Head Island, SC
February 11, 2022

**GEORGIA HARRISON, BARBARA
HARRISON, JOYCE ELLEN HARRISON,
WILLIAM S. HARRISON, III, STANLEY
ROBERTS AND DIANA MENDHEIM
INDIVIDUALLY AND AS AGENT AND
ATTORNEY IN FACT,**

Plaintiffs,

vs.

**STEPHANIE LORRAINE KIRKLAND, GARY
LAMONT KIRKLAND, KIETA NICOLE
WHITE, AND CHERYL KIRKLAND,
Defendants.**

**DEFENDANT'S REPLY
MEMORANDUM IN SUPPORT OF
DEFENDANT'S AMENDED
SUPPLEMENTAL MOTION FOR
RELIEF OF JUDGMENT AND FOR
EXTENSION OF TIME TO TENDER
PURCHASE PRICE UNDER RIGHT
OF FIRST REFUSAL**

TO: Hon. Marvin H. Dukes, Master -in -Equity for Beaufort Count; Thomas Taylor,
Esq. and Chester Williams Esq. Attorneys for Plaintiffs

This Reply Memorandum is to inform the Court that the Plaintiff's Memorandum in opposition was not responsive to the issue that the Court requested the Parties to address. Contrary to the Court's directives they chose to solely recapitulate their prior arguments presented against the substantive aspects of the motions themselves, rather than to address the court's query, that being; if the court had jurisdiction to address the Plaintiff's Motion for Reconsideration.

The substantive proof of the defendants egregiously acting in derogation of the court's instructions is found in the Transcript of the hearing.

Transcript Page 47

6 THE COURT: But the motion for
7 relief had to do with issues that had
8 been decide months, if not a year ago,
9 in which motions for reconsideration
10 were not filed within the ten days.

11 I guess what I'm trying to do,

Record on Appeal - Page 135

12 since you brought up jurisdiction, is
13 try to figure out -- I've got to piece
14 it all together, I guess, with a
15 calendar, because, as you all very well
16 know, once the ten days has run, then a
17 motion for reconsideration would be
18 improper for me to rule on.

19 MR. HOUSTON: But the question is
20 whether or not that was the final
21 order. That's what we're addressing to
22 the Court. That wasn't the final order
23 ending the case.

Page 48

24 THE COURT: Okay. So let me
25 ponder some of this. I mean, if y'all
26 wanted to send follow-up briefs based
27 on the argument, that's fine. Just
28 make sure the other side gets them.

29 I mean, honestly, part of my
30 concern is whether or not a motion for
31 reconsideration at this stage would be
32 timely, and maybe it is, maybe it
33 isn't, I don't know, I've got to sort
34 of pick through it. But I'd be happy
35 to hear y'all's further thoughts on
36 that.

The Plaintiffs who have a purported buyer before this case was instituted two years ago have requested the Court until sometime in March 2022 to complete their contract and tender the required purchase price. They have not completed this in two years yet are demanding that the court strictly confine the defendants to do the same within 60 days without receiving a warrant deed in exchange for their money Again this is inequitable unconscionable and denies and infringes the defendant's constitutional due process and equal protection guarantees under both the South Carolina and the U.S. constitutions.

Respectfully submitted

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By: *Charles E. Houston Jr.*
Charles E. Houston Jr.

February 28, 2022
Hilton Head Island, SC

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS

HON. MARVIN H. DUKES
MASTER IN EQUITY

Case # 2020-CP-07-0231

GEORGIA HARRISON, BARBARA HARRISON,
JOYCE ELLEN HARRISON, WILLIAM S.
HARRISON, III, STANLEY ROBERTS AND
DIANA MENDHEIM INDIVIDUALLY AND AS
AGENT AND ATTORNEY IN FACT,

Plaintiffs,

RESPONDENTS

vs.

STEPHANIE LORRAINE KIRKLAND, GARY
LAMONT KIRKLAND, KIETA NICOLE WHITE,
AND CHERYL KIRKLAND,

Defendants.

APPELLANTS

NOTICE OF APPEAL

Stephine Lorraine Kirland and the above named Defendants, herein , give notice of their appeal from the Order of the Hon. Marvin H. Dukes, Master in Equity and Special Circuit Court Judge, dated and filled on March 8, 2022 and the prior orders filed in the action herein. Appellant received written notice of entry of this order denying their Motion for Reconsideration on March 8, 2022.

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By: *SI Charles E. Houston, Jr.*
Charles E. Houston, Jr.
SC Bar # 2663

March 9, 2022
Hilton Head Island, SC

Other Counsels of Record:

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Hilton Head, SC 29928

And

Chester C. Williams, Esq.
Law Office of Chester C. Williams, LLC
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PO Box 6028
Hilton Head Island, SC 29938-6028

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

GEORGIA HARRISON, BARBARA)
 HARRISON, JOYCE ELLEN)
 HARRISON, WILLIAM S.)
 HARRISON, III, STANLEY)
 ROBERTS, and DIANA MENDHEIM,)
 individually and as agent and attorney)
 in fact,)

Plaintiffs,)

vs.)

STEPHANIE LORRAINE)
 KIRKLAND, GARY LAMONT)
 KIRKLAND, KEITA NICOLE)
 WHITE, CHERYL KIRKLAND,)
 WILLIAM CHARLES KIRKLAND,)
 PAULETTE KIRKLAND, PAUL T.)
 ALLBRIGHT, CHRISTOPHER)
 KIRKLAND AND SHAWN)
 KIRKLAND,)

Defendants.)

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO. 2020-CP-07-02301

PLAINTIFFS' AMENDED MOTION FOR
 MASTER'S DEED CONVEYING
 OWNERSHIP INTERESTS OF ALL
 OWNERS OF PROPERTY TO ROTUNDA
 LAND & DEVELOPMENT GROUP, LLC,
 AND FOR ORDER DIRECTING CLERK
 OF COURT TO HOLD PROCEEDS OF
 SALE OF DECEASED OWNERS
 PENDING RESOLUTION OF ESTATES

TO: DEFENDANTS STEPHANIE LORRAINE KIRKLAND, GARY LAMONT KIRKLAND, KEITA NICOLE WHITE, CHERYL KIRKLAND, WILLIAM CHARLES KIRKLAND, PAULETTE KIRKLAND, PAUL T. ALLBRIGHT, CHRISTOPHER KIRKLAND AND SHAWN KIRKLAND BY AND THROUGH THEIR COUNSEL OF RECORD, CHARLES E. HOUSTON, ESQ.:

YOU WILL PLEASE TAKE NOTICE that the Plaintiffs, through their undersigned attorneys, will move before the Master in Equity for Beaufort County, South Carolina, in the Beaufort County Courthouse, at 10:00 a.m. on the tenth (10th) day after service of the original Motion, or at such other time and place as is convenient to the Court and counsel, for an Order containing a Master's Deed conveying the ownership interests of all owners in the Property that is

the subject of this action, to Rotunda Land & Development Group, LLC for the contract price of Nine Million, Seven Hundred Fifty Thousand (\$9,750,000) Dollars, with said proceeds to be distributed to all owners on a percentage basis as is set forth in this Court's Order of May 21, 2021, provided that the percentage interests of all those Owners who have died during the pendency of this action or prior, shall be deposited with the Clerk of Court following closing, for safekeeping pending a petition to this Court by a judicially-recognized Estate representative with authority to accept funds on behalf of the Estate.

As the basis for this Motion, the Plaintiffs would show that this Quiet Title and Partition action has been fully litigated and appropriate Orders entered quieting title in specific individuals (see Order of May 21, 2021), and partitioning the land by sale (see Orders of October 20, 2021 and January 20, 2022.) A closing with Rotunda Land & Development Group, LLC is scheduled for March 22, 2022, and counsel for Rotunda has requested issuance of a Master's Deed.

Further, despite the fact that counsel for the Defendants has filed a Notice of Appeal in this matter, pursuant to Rule 241 SCRAP, this Court retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal. Further pursuant to Rule 241, this Court's judgment directing the sale or delivery of possession of real property in not stayed by the Notice of Appeal unless and until the Defendants petition this Court and post an appropriate bond to secure the Plaintiffs interest in the pending sales contract, should the appellate delay result in a loss of the Rotunda contract.

PLEASE BE PRESENT TO OPPOSE SAID MOTION IF SO MINDED.

I SO MOVE.

Law Office of Thomas C. Taylor, LLC

/s/Thomas C. Taylor

Thomas C. Taylor

SC Bar No.: 5499

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LAW OFFICE OF CHESTER C.
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/s/Chester C. Williams

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ATTORNEYS FOR THE PLAINTIFFS

March 14, 2022

Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE # 2020-CP-07--2301

**GEORGIA HARRISON, BARBARA HARRISON,
JOYCE ELLEN HARRISON, WILLIAM S.
HARRISON, III, STANLEY ROBERTS AND
DIANA MENDHEIM INDIVIDUALLY AND AS
AGENT AND ATTORNEY IN FACT,**

Plaintiffs,

vs.

**DEFENDANTS' RESPONSE IN
OPPOSITION TO MOTION FOR
MASTER'S DEED**

**STEPHANIE LORRAINE KIRKLAND, GARY
LAMONT KIRKLAND, KIETA NICOLE WHITE,
AND CHERYL KIRKLAND,**

Defendants.

To: Thomas Heyward, Esq.; and Chester C. Williams , Esq. Attorneys For
Plaintiffs:

The Defendants for the following reasons oppose the Plaintiff's Motion for
the court to convey the property subject to this action by Master's Deed.

FIRST: The Defendants objected to the Master in Equity issuing a
Master's Deed for the proposed sale of the property by the Plaintiffs as the
Plaintiff's objected to this procedure for the conveyance of this property via
Master's Deed when the Defendants were attempting to exercise their
Right of First Refusal. They are now by estoppel precluded from taking an
opposing position; especially where the Court is aware that a Master's
Deed for the property subject to this action cannot convey fee simple

marketable title and for the same reason did not grant the Defendant's request for a Master's deed.

SECOND: It would be a travesty of justice and judicial bias for the Court to grant the issuance of a Master's Deed when the Plaintiff's request it after denying the use of this procedure when the Defendant's had requested that this conveyance mechanism be utilized to convey the property. For the Court to grant this relief to the Plaintiffs while having previously denied it to the Defendants would constitute an inequity and impinge upon the Defendants constitutional right for the equal application and equal protection of the laws administered by the Court.

THIRD: That to issue a Master's Deed would be in violation of Rule 71, SCRCP. This rule states that *"Prior to the filing of the master's report or final order of judgment, the judge or master shall assure that the plaintiff and all other claimants have complied with the statutes pertaining to the filing of notices of Lis pendens."* The Plaintiffs have not filed a Lis Pendens in this action that would constitute both a procedural and jurisdictional defect.

FOURTH: That required and indispensable parties have not been joined in this action that constitutes another jurisdictional defect. There are Four (4) non probated estates of deceased persons possessing an undivided interest in the property subject to this action in violation of Rule 71(d)(1), SCRCP. This rule states the following:

Parties to Partition Actions. *In addition to the requirements of these rules for the joinder in an action of all parties in interest, pursuant to Rule 17(f) no partition of real property of a deceased person shall be had unless the legal representative or representatives of such deceased*

person be made parties to the action and it be made to appear to the court that the debts of such deceased person are fully paid or that the personal estate in the hands of the personal representative or representatives is sufficient for the payment of the debts of such deceased person. If the partition action involves real property of a deceased person whose estate has not been administered or is not being administered at the time of the bringing of the action, then all known encumbrancers of the estate of the deceased person shall be made parties to the action and no decree in partition shall be entered unless due provision is made for the payment of the debts found due such encumbrancers. In all actions for partition, all heirs at law or devisees of the deceased person shall likewise be made parties. The Plaintiffs who commenced and prosecuted this action have failed to do this which constitutes a personal jurisdictional defect in this proceeding.

FIFTH: Another jurisdictional defect falls under Rule 71(e). This Rule states the following:

Actions When Title Is at Issue. *In foreclosure or partition actions when title to real property is at issue the court or master to whom the action is referred shall take testimony and receive evidence as to the title and interest in the premises of the several parties. In all such actions the judge or master shall ascertain the rights and interests of the several parties and set forth in the report or order of judgment the conveyances or probate estates, if any, through which the rights or interests were acquired.* The Plaintiffs have failed to convene and the Court “Sua Sponte” has not held an evidentiary hearing in this proceeding to come into compliance with the provisions of this rule.

SIXTH: and lastly, it would be an injustice perpetrated upon our citizenry for the Court to convey the property by Master’s Deed when it is obvious to the Court that the tenants in common to the property are not seized with

fee simple title to the property and the Master's deed would solely be conveying a limited quit -claim interest. A Master's deed is relied upon as being a warrant deed that conveys marketable title. Additionally, the completion of an action to quiet title, not as it is in the present case, infers that all the clouds, imperfections and impediments upon the title have been removed and what remains is the naked unencumbered fee simple absolute marketable title. A perfect example of this is the prior action to quiet title to this same tract of land. (See Case # 2008-CP-07-0452.) In this case the Hon. Judge Marvin H. Dukes in his Final Order of the case stated the following;

"I now conclude as a matter of law:

- a) The property which is the subject of this action is now owned in **fee simple absolute** by the following persons, having the respective ownership shares as outlined below:" A copy of the complete Order issued by judge Dukes in that action is attached as Exhibit 1.

Respectfully submitted,

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By: S/ Charles E. Houston Jr.

Charles E. Houston Jr.
S.C. Bar No.2663
Attorney for the Defendants

March 16, 2022
Hilton Head Island, SC

5
11
Harrison
3620

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2016 Jun -16 04:23 PM

BEAUFORT COUNTY AUDITOR

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) CASE NO. 2008-CP-07- 04542

PETER HARRISON,

Plaintiff,

-versus-

ORDER

ROSE YOUNG, STANLEY ROBERTS,
MARY ROBERTS, ROSS HARRISON,
WILLIAM HARRISON, JOYCE
HARRISON, WILLIAM HARRISON, JR.,
if living, and if deceased,
their heirs at law, next of kin
and distributes, and all other persons claim-
ing under, by or through them; and, also all
other persons unknown having or claiming
any right, title, estate or interest in, or lien
upon the real property described in the
Complaint herein, being designated
collectively as JOHN DOE and MARY
ROE, including any defendants who may be
deceased, and including all minors, persons
in the Armed Forces, insane persons, all
other persons under any other disability who
might have or claim to have any right, title,
or interest in or lien upon the real estate
described in the Complaint herein,
Defendants.



BEAUFORT COUNTY SC - ROD
BK 3488 Pgs 1724-1728
FILE NUM 2016028726
06/06/2016 01:49:14 PM
REC'D BY rwebb RCPT# 812748
RECORDING FEES \$11.00

ADD DMP Record 6/7/2016 04:06:19 PM
BEAUFORT COUNTY TAX MAP REFERENCE
Dist Map SMap Parcel Block Week
R510 005 000 0007 0000 00

This is an action to quiet and clear title to real estate which is located on Hilton Head Island, Beaufort County, South Carolina. The action was initiated with the filing of a Summons and Complaint, which was filed in the office of the Clerk of Court for Beaufort County on November 20, 2008. All of the allied and ancillary pleadings were also filed in the office of the Clerk of Court for Beaufort County. All of the Defendants in this action were properly served, either personally, by certified mail, return receipt requested, signed by addressee only, or by

Page 1 of 5

Certified - A True Copy

Jerri Ann Roseneau - Clerk of Court
Beaufort County, SC - Melissa Kilby

Record on Appeal - Page 147

acceptance of service by their attorney. An Answer and Counterclaim was filed by Derek Gilbert on behalf of the defendant, Georgia V. Harrison. The counterclaim of the defendant, Georgia V. Harrison basically alleges the undivided fractional interest as set forth in a previous Order quieting the same title to the subject property (Civil Action #88-CP-07-974), to which the Plaintiff filed a Reply. The Estate of Rose Young was represented by Antonia T. Lucia. None of the other Defendants filed any Answers or responsive pleadings in this matter, and they are, therefore, in default. The Plaintiff's attorney has filed an Affidavit of Default. Bernard McIntyre of the Beaufort County Bar was appointed as Guardian ad Litem, and he has appeared and filed his Answer submitting the rights of all unknown persons, and persons suffering from any disabilities to be protected by the Court.

A hearing was held before me on July 1, 2009 at 8:30 a.m. Present at the hearing was Peter Harrison, plaintiff, along with his attorney, Louis O. Dore, Charles Edward Young, along with his attorney, Antonia T. Lucia, and Georgia Harrison, along with her attorney, Derek Gilbert. All of the testimony was received without objection, and all of the exhibits were entered without objection. Now, having heard all of the testimony in this case, and having reviewed all of the exhibits, I now find the following as matters of fact:

1. There was a previous action to quiet said title with respect to the same property which is the subject of this action, and a Final Amended Order filed on January 23, 1991 (Civil Action #88-CP-07-974). Under the terms of that Amended Final Order, it was determined that the various undivided ownership interests in the subject property were as follows (See Paragraph 4, Page 48, Amended Order):

Ethel Rivers	50%
Rose Young	12.5%
Sadie M. Harrison	12.5%

Stanley Roberts	12.5%
Mary Roberts	12.5%
TOTAL:	100%

2. Ethel Rivers transferred and conveyed her 50% ownership interest to Peter Harrison, Ross L. Harrison and William S. Harrison by deed recorded in the office of the RMC for Beaufort County at Deed Book 598, Page 1461.
3. By deed dated May 26, 1998, Sadie M. Harrison transferred and conveyed her 12.5% ownership interest in the subject property to Peter Harrison, Ross L. Harrison and William S. Harrison. This deed is recorded in the office of the RMC for Beaufort County at Deed Book 2706, Page 1227.
4. Mary Roberts died intestate, pre-deceased by her husband, Gerald Roberts, and leaving as her sole surviving heir at law her son, Stanley Roberts.
5. Ross L. Harrison died leaving a valid trust instrument by which his sole beneficiary of his estate was his wife, Georgia Harrison.
6. William S. Harrison died intestate leaving as his sole surviving heirs at law his wife, Joyce Ellen Harrison, and his son William S. Harrison, III.
7. Rose Young died intestate, however, her estate was duly probated and administered in the Probate Court for Beaufort County. Charles Elmer Young, husband of the decedent, Rose Young, disclaimed any ownership interest that he had in the subject property at the time of the administration of the estate of Rose Young. The sole beneficiaries of Rose Young, pursuant to the administration of her estate are as follows, in equal shares:

Adrienne Kirkland, Carol Bush, Diane Mendheim, Charles Edward Young, Robert Young, Denise Davidson, Rose Hampton, and Victoria Young.

I now conclude as a matter of law:

- a) The property which is the subject of this action is now owned in fee simple absolute by the following persons, having the respective ownership shares as outlined below:

Peter Harrison	20.833%
Georgia Harrison	20.833%
Joyce Ellen Harrison	10.416%
William S. Harrison, III	10.416%
Stanley Roberts	25%
Adrienne Kirkland	1.5625%
Carol Bush	1.5625%
Diane Mendheim	1.5625%
Charles Edward Young	1.5625%
Robert Young	1.5625%
Denise Davidson	1.5625%
Rose Hampton	1.5625%
Victoria Young	1.5625%

- b) That this lawsuit to quiet and clear title is regular in all respects, and all of the statutory requirements have been complied with.
- c) That all other persons except those outlined above, including any unknown persons having or claiming to have any right, title, estate, or interest in or lien upon the real estate described in the Complaint are forever barred.

The property which is the subject of this action is described as follows, to-wit:

ALL that certain piece, parcel or lot of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing 28.127 acres, more or less, and is specifically shown as Lot B on said plat which was prepared by Arthur O. Christensen, R.L.S., and designated as "Plat of Survey Number 2, No Sale", dated April 6-8, 1921, and also, on that certain plat of

R510 - 5 - 0007

Millard Dunham, R.L.S entitled "Plat prepared for Heirs of Clara Wigfall", dated January 29, 1988, and revised on January 18, 1990. For a more complete and accurate description as to the metes, bounds, courses and distances, reference may be had to said plats.

AND IT IS SO ORDERED.



MARVIN DUKES, III, MASTER IN EQUITY
AND SPECIAL CIRCUIT COURT JUDGE FOR
BEAUFORT COUNTY

Beaufort, South Carolina

July 17, 2009

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE # 2020-CP-07--2301

**GEORGIA HARRISON, BARBARA HARRISON,
JOYCE ELLEN HARRISON, WILLIAM S.
HARRISON, III, STANLEY ROBERTS AND
DIANA MENDHEIM INDIVIDUALLY AND AS
AGENT AND ATTORNEY IN FACT,
Plaintiffs,**

V

**DEFENDANTS' MOTION
FOR STAY AND WAIVER OF
SUPERSEDES BOND OR IN
THE ALTERNATIVE A
NOMINAL BOND PENDING
APPEAL**

**STEPHANIE LORRAINE KIRKLAND, GARY
LAMONT KIRKLAND, KIETA NICOLE WHITE,
AND CHERYL KIRKLAND,**

Defendants.

**To: Thomas Heyward, Esq.; and Chester C. Williams , Esq. Attorneys for
Plaintiffs:**

The Defendants, through their undersigned counsel, would respectfully move this Court pursuant to S.C. Code Ann. §18-9-170; Rule 241 (a) (b) (4) and (c) (1) (2) (3) (4) SCRAP ; Rule 62 (a) (b) (d)(e)and(f) to enter an Order staying the enforcement and suspending its Order filed on October 20, 2021 and waiving the necessity of the Defendants' posting a supersedeas bond or in the alternative, ordering and setting a nominal bond amount pending Defendants'/ Appellants' appeal taking in this case.

THE RELIEF REQUESTED SHOULD BE GRANTED UPON THE FOLLOWING GROUNDS:

1. Substantial likelihood on the merits
2. Irreparable harm
3. No harm to parties
4. No Public Interest

FACTS

1

The plaintiffs instituting this action seeking the following relief

- A To determine the heirs with interest in the property
- B To determine each heir's proportional interest
- C To quiet title to the property *Paragraph 40 &41* of Complaint
- D For sale *Paragraph 46* of Complaint

2

Unknown minors , persons under disability and those serving in the armed

services were not cited as defendants on the Summons & Complaint. **Record on Appeal - Page 153**

3

Defendants had to at conference hearing insist and argue for an Order to compel the Plaintiffs to issue Publication of Process on unknown heirs persons under disability, minors and those serving in the Armed Services.

4

Nothing in the complaint gave notice to the defendants that they had a right of first refusal to purchase the property from the plaintiff heirs who had contracted with Rotunda to sell the property.

5

Prior to the time counsel appeared in this action as attorney for the defendants the plaintiffs had obtained a Court Order limiting the defendants to sixty days to exercise their “Right of First Refusal.”

6

The defendants filed a *Motion for Instructions*, that among other things requested the Court to hold an evidentiary hearing as required by law to determine the heirs to the property in light of there being four (4) non-probated estates of recently deceased heirs in various states, that was not granted; but denied.

7

The defendants though they produced competent evidence of *financial capacity* see Exhibit # 1 to pay the appraised price of 9.1million they were, nevertheless, required to pay the entire amount of \$ 8.9 million into the Clerk of Court by December 23, 2021 without any provisions in the Order as to

- A) who would convey the property,
- B) When would the property be conveyed
- C) no warrant deed or marketable title would be given.

8

There is no court order specifying a time limit for the sale of the property by Plaintiffs to Rotunda, though Plaintiff's counsels represented to the court at the January 6, 2022 status hearing that they would be ready to close within 90 days or during the month of March 2022.

9

The plaintiff's have not produced any documentation of record that Rotunda still has a valid contract with the Plaintiff heirs to buy the property.

That Defendant's counsel did advise the lower court that prior to filing the lawsuit the defendants had devised a scheme to defraud the defendant heirs out of the benefit of their "Right of First Refusal". The scheme was

- A) not to publish the Summons and Complaint to avoid given notice to any unknown heirs
- B) to circumvent the requirements of conducting an evidentiary hearing as required by § 15-61-330.(A) SC Code but in lieu thereof
- C) Enter a Consent Order stating the heirs and their respective percentage ownership interest.
- D) Set the date and for the minimum amount of time allowable *(60) days) by statute* for the defendants to exercise their Right of First Refusal and before
 - 1) obtaining an Order Quieting Title, knowing that
 - 2) It is commercially infeasible for anyone to procure a loan for six million dollars within less than sixty days on property that cannot be collateralized because it carries Heirs Title and not Marketable Title (i.e. warranty deed) knowing that no title insurance company will insure "heirs title" property.

11

Upon the defendants not being able to exercise their "Right of First Refusal then the plaintiffs would complete their sale to Rotunda with the proviso that the closing would not transpire until the Plaintiffs were vested with Quiet Title.

12

The lower court has ruled that its order of September 21, 2021 is the Final Order. This order does not state that the parties as heirs are vested with the fee simple title to the property. The order solely states who the heirs are and their respective interest percentages of ownership.

13

There are no allegations in the complaint alleging who was the first grantee in the chain of title upon which the family tree or heirships were derived.

14

There are no allegations in the complaint concerning exclusive, open, hostile ownership and possession of the property for the required statutory period of time for either under claim of title or adverse possession.

15

No posters were placed on or about the property as required by the Pinckney Act. This notice requirement in part is to place adjoining landowners that an action to

quiet title has commenced particularly as disagreements as to boundary lines may exist.

ARGUMENT 1

The interest of justice would be better served if this court would retain jurisdiction under Rule 241 (d)(1), SCACR to rule upon the Appellant's motion for supersedes and stay rather than the lower court.

The record of this proceeding contains improper procedural and substantive errors as set forth in the factual narrative above such that it appears that the lower court would have to reverse its understanding an application of the Clemanta C Pinckney Act with its Right of First Refusal provision coupled with the further understanding and that an action to quiet title means a proceeding consisting of an evidentiary hearing with findings of fact and conclusions of law substantiating the issuance of an order removing all clouds and impediments upon the title to real property to then enable the court to issue its order proclaiming the designated owner(s) possess a fee simple absolute (i.e. "marketable title" title to the property.

In the action herein, at best all that has been accomplished is the entry of a consent order alone, without any corroborating testimony or evidence, establishing who are the descendant heirs and their percentage interest in the property, that is

subject to expanding due to the recent deaths among the heirs. There remain four non-probated intestate estates presently to be administered. The complaint states that the action is commenced to quiet title to the property yet it doesn't state whether it is upon claim of title or adverse possession for the appropriate period of time. At the present time the only deed that may be properly issued upon the property is a quit - claim deed. No statutory notice was posted on the property to render notice to the adjoining landowners of the commencement of the action in the event there existed a property bondage dispute. Please direct your attention to the caption of the case. Were any unknown heirs, minors, persons under disability or serving in the armed forces joined as defendants? Yet, under this prevalent condition of the title the defendant non -selling heirs were only afforded the statutory minimum of sixty days to tender with the clerk of court the sum of 6.9 million dollars without benefit of being able to collateralize the property for a loan. (Title insurance companies will not underwrite "heirs title" property only marketable title) Additionally, no provision was made for an authorize person to tender any type deed upon the tender of the money. Further, no time period was

specified as to when the deed conveyance would be made. This is a unconscionable condition without the provisional dictates of the Pinckney Act. According to plaintiff's counsels no deed was required as this was designed for only the

defendants to acquire the plaintiffs' interest in the property. When in the history of our jurisprudence is an interest in real estate transferred by a Bill of Sale?

The gavelmon point is that under the premises considered, it is easier and fairer for another tribunal or full panel to correctly review a proceeding rather than to convince a prior fact finder that their perspective upon the facts may not be properly aligned and that error perinates this proceeding.

ARGUMENT 2

Though **Rule 241 (b)(3) SCRAP** states that “*Judgments directing the execution of conveyances*” is an exception to the general rule stated in **Rule 241 (a) SCACR**; the Appellant will show that specific conditions precedent as set forth in **Rule 241 (b) SCACR** have not been met.

First, the order granting the plaintiffs authority to sell the property to Rotunda cannot be fulfilled or executed giving the status of the property as “heirs title” unless deceit is utilized such as tendering the defendants their share of the appraisal value for a quit-claim deed and then dismissing the action and commence a new action to quiet title. Upon completion of this subsequent action the plaintiff heirs would be paid for their remainder interest.

Second, since the lower court has ruled that its Order of September 21, 2021 is the Final Order of the case no modifications to it may be properly supplemented.

Third, there exist no evidence that Rotunda has a present enforceable contract with the plaintiff heirs to purchase the property.

Fourth, plaintiffs' counsels represented to the court at the January 6, 2022 status hearing that they would be ready to close on the purchase of the property within ninety days which is now over 180 days.

Fifth, the September 21, 2021 Order may be voidable for indefiniteness as it sets no time limits for it to be executed; save in perpetuity.

Sixth, the property is unimproved property not subject to waste and without any maintenance requirements.

Finally, in balancing the equities between the parties the plaintiffs will receive the same consideration for their interest in the property from the defendants without brokerage commissions being deducted. The defendants will receive in addition to their share of the purchase price a perpetual equity interest in the property with their partner purchaser. This was a social goal our legislators desired in enacting the Pinckney Act.

Respectfully submitted,

The Houston Law Firm LLC
1000 Main Street, Suite 200 C
Hilton Head Island, SC 29926
Phone 8 43-715-9078
E-mail: *chouston@houstonlawfirm.net*

By: Charles E. Houston Jr.
Charles E. Houston Jr.
SC Bar# 2663
Attorney for Appellant

September 7, 2021
Hilton Head Island, SC

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL DISTRICT
CIVIL ACTION # 2020-CP-07-02301

**GEORGIA HARRISON, BARBARA
HARRISSON, JOYCE ELLEN HARRISON
WILLIAM S. HARRISSON, III, STANLEY
ROBERTS AND DIANA MENDHEIM
(Individually and as agent
and attorney in fact**

Plaintiffs

vs.

**DEFENDANTS' NOTICE OF
MOTION AND MOTION FOR
RECONSIDERATION**

**STEPHANIE LORRAINE
KIRKLAND, GARY LAMONT
KIRKLAND, KEITA NICOLE
WHITE, AND CHERYL KIRKLAND**

Defendants

To: Thomas Taylor, Esq., and Chester –Williams, Esq., Attorneys for the Plaintiffs.

YOU WILL PLEASE TAKE NOTICE that the Defendant, pursuant to SCRCP Rule 59 (a2)(e), move before the Honorable Marvin H. Dukes, Master In Equity, Fourteenth Judicial Circuit, at the Beaufort County Judicial Center, 102 Ribault Road, Beaufort South Carolina upon ten (10) days after service hereof, or at such other time and place as may be convenient to the Court and Counsel for the following relief pertaining to the Orders of the Court entered on November 7, 2022, in the action herein in the following particulars:

- 1 To amend the findings of fact and conclusions of law or make new findings and conclusions and direct the entry of a new judgment in

- the case herein;
- 2 Request the court to reconsider matters properly encompassed in a decision on the merits;
 - 3 To rule upon motions that have not been addressed upon the merits of the issues raised in this proceeding;
 - 4 To set forth the court's findings, the reasons for those findings and conclusion of law;
 - 5 To open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law;
 - 6 Receive newly discovered evidence; and
 - 7 Make new findings and conclusions and direct the entry of a new judgment.

1

The Plaintiffs' Complaint on its face admits that there are un-probated estates, with unknown heirs, that have not been established to include persons who are or may be under some disability or a minor and thus the Complaint is subject to being dismissed pursuant to SCRCP 12(b)(4) for the non- joinder of the Administrators or Personal Representatives of these open estates as necessary

2

There are at least four un-probated estates of heirs, the order in error attributes those estates to the Defendant non -partitioning heirs where the truth is that only one of the estates can be attributed to them while the other three

are attributed to the Plaintiff

3

Defendants seek a ruling that the Plaintiffs have failed to join necessary parties being the Personal Representatives of the open estates and, therefore, the Complaint should be dismissed pursuant to SCRPC 12(b)(7).

4

Defendants seek a finding of fact or ruling that an evidentiary hearing has not been provided to the Defendants, though requested and as required by SC Code § 15-61-330 (2016) to receive evidence pertaining to their factual denials of Paragraphs 1, 2, 3, 4 11, 14, 15, 20 22, 26, 27 28, 29,30, and 31, of the Complaint. In fact, the Pinckney Act contemplates a trial will be set (15-61-370(B)

5

. Defendants seek a finding of fact and ruling by the Court that the Plaintiff's Complaint never requested the court to certify that the co-tenants be bestowed or endowed with the fee simple absolute title to the property subject to this action.

6

Defendants seek a finding of fact and ruling by the Court whether the title to the property subject to this action has been at all times from the commencement of this action been and remains "Heirs Title" property.

7

Defendants seek a finding of fact and ruling by the Court that the present title status of the property does not meet the "marketable title standard as set forth in Scalise Dev., Inc. v. Tideland Investments., LLC, 392 S.C. 27, 707 S.E.2d

440 (Ct. App. 2011). (Principle that to have the cloud on the title removed is to receive fee simple title to property. Clark v. Hargrave, 323 S.C. 84, 87, 473 S.E.2d 474, 476 (Ct. App. 1996). May v. Jeter, 245 S.C. 529, 534, 141 S.E.2d 655, 658 (1965), Major v. Penn Community. Services., Inc., 395 S.C. 175, 717 S.E.2d 70 (Ct. App. 2011)).

8

Defendants seek a finding of fact and ruling by the Court whether the tendered contract between the Defendants and SRE that, among other things, provides for the Defendants to hold and retain a ten percent equity participation in the development of the property is more consistent with the legislative goals and purposes of the Clementa Pinckney Act than the straight contract for purchase proffered by the Plaintiffs under which they would be bought out and then permanently removed from their heritage land.

9

Defendants seek a finding of fact and ruling by the Court whether that SRE has demonstrated a sufficient showing of its capabilities and financial resources to fulfill the purchase of the property.

10

Defendants seek a finding of fact and ruling by the Court whether a deed of conveyance either with or without marketable title was in preparedness to be delivered to the Defendants on December 23, 2021.

11

Defendants seek a finding of fact and ruling by the Court upon what statutory authority or case law does he rely that grants a Master-in Equity to convey the interest held by them in the property to the non-petitioning heirs

and /or their proposed contractual buyer Rotunda.

12

Defendants seek a finding of fact and ruling by the Court whether a conflict of interest exist with counsel for the Plaintiffs who represents parties both in this action and in one or more of the open estates; especially where the relief sought by their clients solely seeks to confirm the percentage ownership among the family heirs and not clear the title to the land knowing that without a marketable title and is unjust impediment has been created that has prevent the defendants from bringing an independent action to quiet title to the property, '

13

Does the fact that the Consent Order was filed prior to the publication of the summons and complaint cause that order to be voidable for lack of jurisdiction.

14

Did the Court commit an abuse of discretion as a matter of law by not granting the Defendants request for 45 days to have a hearing to receive testimonial evidence to determine the heirs of the estates of the four deceased heirs and to tender the purchase price, with the Defendants depositing 10%percent down with the court and also paying to the Plaintiffs the amount of 9.7 million in lieu of the appraisal price.

15

Did the Court commit an abuse of discretion as a matter of law by not granting the Defendants an extension of time to tender the purchase price in light of the fact that the Clementa C. Pinckney Act provides for a minimum of 60

days for heirs exercising their Right of First Refusal to complete the purchase especially where the 60 day period allotted to the Defendants is commercially impossible to achieve, especially considering the large purchase price and the cloudy title encumbered upon the property rendering it useless for loan collateral purposes?

16

Have the Defendants property rights under the provisions of Article 1 Section 3 of the SC Constitution and the enumerated Amendments of the U.S. Constitution been infringed upon by having been denied due process of law and the equal protection of the laws in this proceeding in the following particulars:

1 A ruling establishing the statutory under which the defendant non-partitioning heirs are compelled to have their proprietary interest in the property conveyed by the court to a third party, (Rotunda) who had contracted with the Plaintiffs partitioning heirs supersede or eradicate the provision of SECTION 15-61-380. Partition in kind or by allotment.

SECTION 15-61-380 read as follows:

(A) If all the interests of the cotenants that requested partition by sale are not purchased by other cotenants pursuant to Section 15-61-370 or if, after conclusion of the buyout pursuant to Section 15-61-370, a cotenant remains that has requested a partition in kind or a partition by allotment, the court shall order a partition in kind or a partition by allotment, unless the court, after consideration of the factors listed in Section 15-61-390, finds that partition in kind or partition by allotment may result in manifest prejudice or manifest injury to the cotenants as a group. In

considering whether to order partition in kind or partition by allotment, the court shall approve a request by two or more parties to have their individual interests aggregated.

(B) If the court does not order partition in kind or partition by allotment under subsection (A), the court shall order partition by sale pursuant to Section 15-61-400 or, if no cotenant requested partition by sale, the court shall dismiss the action.

(C) If the court orders partition in kind or partition by allotment pursuant to subsection (A), the court may require that one or more cotenants pay one or more of the other cotenants amounts so that the payments, taken together with the value of the in-kind distributions to the cotenants, will make the partition in kind or the partition by allotment just and proportionate in value to the fractional interests held.
(3) order that the property be sold by sealed bids or at an auction.

17

WHEREFORE, PREMISES CONSIDERED, Defendants respectfully pray that this Motion for Reconsideration be considered and after review that the Court set aside its Orders of November 17, 2022 and grant defendants' their requested relief here before requested.

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By: S/Charles E. Houston Jr.

Charles E. Houston Jr.
 SC Bar # 2663
 Attorney for Defendants

November 17, 2022
 Hilton Head Island, SC

IN THE STATE OF SOUTH
CAROLINA IN THE COURT
OF APPEALS

The Honorable Marvin H. Dukes, III
Beaufort County
Trial Court Case No. 2020-CP-07-0231

APPELLATE CASE NO.

Georgia Harrison, Barbara Harrison,
Joyce Ellen Harrison, William S.
Harrison III, Stanley Roberts, and
Diana Mendheim, Individually and As Attorney In Fact,

Respondents,

vs.

Stephanie Lorraine Kirkland, Gary Lamont
Kirkland, Kieta Nicole White, and Cheryl
Kirkland,

Appellants.

NOTICE OF APPEAL

NOTICE is hereby given that, the Defendants in the above-captioned case, hereby appeals to the South Carolina Court of Appeals from the Order/Judgment entered in this action on the 7th day of November, 2022 and the Order entered on 8th of March 2023 denying the Defendant's Motion for Reconsideration.

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By: S/ Charles E. Houston Jr.
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Attorney for Plaintiffs

March 13, 2023
Hilton Head Island, SC

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL DISTRICT
CIVIL ACTION # 2020-CP-07-02301

GEORGIA HARRISON, BARBARA
HARRISON, JOYCE ELLEN HARRISON,
WILLIAM S. HARRISON, III, STANLEY
ROBERTS AND DIANA MENDHEIM
INDIVIDUALLY AND AS AGENT AND
ATTORNEY IN FACT,

DEFENDANT'S AMENDED MOTION
TO ENFORCE RIGHT OF FIRST
REFUSAL UNDER PINCKNEY ACT
AND ALTERNATE RELIEF

Plaintiffs,

vs.

STEPHANIE LORRAINE KIRKLAND, GARY
LAMONT KIRKLAND, KIETA NICOLE
WHITE, AND CHERYL KIRKLAND,

Defendants.

TO: THOMAS C TAYLOR, ESQ. AND CHESTER C. WILLIAMS, ESQ, ATTORNEYS FOR
THE PLAINTIFFS.

The Defendants, through their undersigned counsel, would pursuant to Rule 7(b) SCRCF
would move the court to Enforce their Right of First Refusal Under Pinckney Act and other
alternative relief as follows:

BACKGROUND

Plaintiffs commenced this action to clear title on November 24, 2020, attempting to sell
their interests in the approximately 26.462 acres of real property located at the north end of Hilton
Head Island, Beaufort County, South Carolina (the "Property") to a third party – Rotunda Land
and Development Corporation LLC ("Rotunda"); Plaintiffs entered the contract to sell the Property
to Rotunda prior to commencing this lawsuit. It was determined by the Court by order dated
September 15, 2021 that the Property was worth \$9.1 million. Defendants were only notified of
their right of first refusal under South Carolina statute almost a year after the commencement of

this lawsuit on October 20, 2021 (the “Notice”) and after Plaintiffs already entered a contract to sell the property to a third party – Rotunda.

Defendants then properly notified the Court of their interest in purchasing the Property. The Court then ordered that Defendants pay the \$9.1 million in full within sixty days of the Notice (December 22, 2021). Given the considerably large purchase price, given the necessary due diligence required to close on the Property, and given the statutory scheme allowing for a period of longer than sixty days to put forth the purchase price, Defendants requested an extension of the sixty-day timeline in order to secure funding for the purchase of the Property; that request was denied.

Defendants have maintained throughout this litigation that they wish to purchase the Property. Defendants secured funding to purchase the Property before December 22, 2021. However, Defendants must use, as collateral, the clear, fee simple title to the Property. Without having a clear, marketable title to the Property, Defendants have been prohibited from purchasing the Property. In essence, this litigation primarily requests that the Court clear title to the property by issuing a fee simple title to the Property. The Court has refused to issue an Order declaring the fee simple absolute title to the Property is vested in the parties to this action as tenants in common.

On March 9, 2022, Defendants filed an appeal of the Court’s orders dated March 7, 2022, October 20, 2021, and September 25, 2021. On March 13, 2023, Defendants filed an appeal of the Court’s order filed March 8, 2023 denying Defendant’s Motion for Reconsideration. The second appeal is still pending; Plaintiffs attempted to close and sell the Property to Rotunda without first notifying the title company of the pending appeal. The title company will not close on the sale of the Property to Rotunda. Ultimately, Plaintiffs are unable to close on the sale of the Property to Rotunda. At the time Defendants were first given Notice, they did not have sufficient time to

conduct due diligence and secure funding to purchase the Property within sixty days. However, Defendants have been prepared to promptly deposit the full purchase price of the Property into the Court's registry and complete the purchase of the Property since December 22, 2022. Defendants thus respectfully request that the Court enter an order renewing Defendants' right of first refusal to purchase the Property under *S.C. Code Ann. § 15-61-310, et seq.* (the "Pinckney Act").

ARGUMENT

The Court should grant the Motion and award Defendants the right to exercise their right to purchase the Property with a clear, marketable title under the Pinckney Act and under general principles of South Carolina law governing the right of first refusal.

A. The Pinckney Act

The Pinckney Act provides that upon filing a petition for partition of real property owned by joint tenants or tenants in common, the court shall provide for non-petitioning joint tenants or tenants in common¹ who are interested in purchasing the property to notify the court of that interest no later than ten days prior to the date set for the trial of the case; a joint tenant or tenant in common that properly notifies the court prior to the deadline "must be allowed to purchase the interests of any cotenant who requested a partition by sale..." *S.C. Code Ann. §§ 15-61-330(A); 15-61-370(B)*. In other words, non-petitioning joint tenants or tenants in common have a right of first refusal to purchase subject property. The purchase price for the interests of a cotenant that requested a partition by sale is the value of the entire parcel determined by the Court pursuant to § 15-61-360 multiplied by the cotenant's fractional ownership of the entire parcel. *S.C. Code Ann. § 15-61-370(C)*.

¹ For purposes of the Pinckney Act, heirs and devisees are included within the definition of joint tenants and tenants in common. *S.C. Code Ann. § 15-61-25*.

If a joint tenant or tenant in common elects to buy all interests of its cotenants that requested partition by sale, the court shall notify the petitioning party of that fact; the petitioning party then shall notify all other parties of that same fact. *S.C. Code Ann. § 15-61-370(D)*. Once notices are properly sent, the court shall set a date, not sooner than sixty days after the date the notice was sent, by which purchasing joint tenants or tenants in common must pay their apportioned price into the registry of the court. *S.C. Code Ann. § 15-61-370(E)*. If apportioned amounts are properly and timely paid, the court shall issue an order reallocating the interests and disbursing the amounts held by the court to the persons entitled to them. *Id.*

After receiving the Notice, Defendants have worked in good faith to secure the purchase of the Property, despite the fact that Plaintiff disregarded Defendants' right of first refusal and had already entered into an agreement to sell the Property to Rotunda. Because the Pinckney Act expressly allows the Court to grant the Defendants more than sixty days to put forth the funds to purchase the Property, and because of the complexity and value of the Property, Defendants requested a longer time period than sixty days to deposit the funds in accordance with the statute. That request was denied. Defendants were able to secure full funding for the Property's purchase by December 22, 2021, but requested the Court issue a marketable, clear title to the Property in order for Defendants to put forth the Property as collateral. That request was also denied. Defendants have put forth their best efforts in comporting with the Pinckney Act. The Pinckney Act's right of first refusal was promulgated so that properties, such as the Property, could remain in the interest of its cotenants if cotenants so chose. The intent to give cotenants an opportunity to maintain their interests in properties is particularly imperative here with the Property remaining one of the last undeveloped areas of this size and value on Hilton Head Island.

Additionally, Plaintiffs have maintained throughout this litigation that it would be impractical for it to honor Defendants' right of first refusal under the Pinckney Act given the advanced stage of the deal with Rotunda. However, any resulting damage to Plaintiffs or Rotunda in the Court's honoring of Defendants' right of first refusal under the Pinckney Act is directly because of Plaintiffs' own failure to notify Defendants of their intent to sell the Property until almost a year after commencing this suit and because Plaintiffs prematurely entered into the contract with Rotunda before honoring Defendants' right of first refusal under Pinckney Act. Furthermore, Rotunda cannot close on the Property with the appeal pending. Plaintiffs' and Defendants' interests are aligned in completing the sale of the Property; Plaintiffs want to sell and Defendants want to buy at the fair price.

Additionally, the spirit of the Pinckney Act provides that cotenants may have up until ten days prior to the trial setting to elect to purchase the subject property. *S.C. Code Ann. § 15-61-370(B)*. Defendants have expressed their intent to purchase the Property well before trial on this lawsuit. If Defendants had slightly more time, as allowed by statute, to complete the minimal due diligence as a condition to secure funding for the purchase of the Property, and if the Court had issued marketable title to the Property, Plaintiffs would have had no choice but to renege on the deal with Rotunda and sell the Property to Defendants anyway.

Because Defendants complied with all Pinckney Act notice requirements in expressing Defendants' good faith intent to purchase the Property; because the Pinckney Act's purpose is to allow cotenants the right to purchase other cotenants' interests as a right of first refusal; because Plaintiffs are unable to sell the Property to Rotunda; because Defendants are prepared to purchase the Property; and because any harm to Plaintiffs as a result of the Court's honoring of Defendants' right of first refusal results from Plaintiffs' own premature entry of an agreement to sell the

Property to a third party, Defendants respectfully request that the Court grant the Motion and allow Defendants to renew their rights under the Pinckney Act to purchase the Property.

B. Right of First Refusal

While the text and the spirit of the Pinckney Act favors Defendants' renewal of their right of first refusal to purchase the Property, South Carolina case law supports Defendants' position as well. Under well-established South Carolina law, a property owner is generally required, when he or she decides to sell, to first offer the property to the holder of a right of first refusal. *Webb v. Reames*, 485 S.E.2d 384, 385 (S.C. App. 1997). A right of first refusal constrains a real property owner's power of alienation of the property to a certain degree by requiring the owner to offer the property first to the holder of the right. *See Cnty. Of Jackson v. Nichols*, 623 S.E.2d 277, 280 (S.C. App. 2005).

A right of first refusal is only unenforceable if it unreasonably restrains alienation. *Wise v. Poston*, 316 S.E.2d 412, 415 (S.C. App. 1984); *Restatement (Third) of Property: Servitudes* §3.4. South Carolina courts consider the following factors in determining whether rights of first refusal are enforceable: (a) the legitimacy of the purpose of the right of first refusal, (b) the price at which the right of first refusal may be exercised, and (c) the procedures for exercising the right of first refusal. *Clarke v. Fine Housing, Inc.*, 882 S.E.2d 763, 767 (S.C. 2023) (citing *Restatement (Third) of Property: Servitudes* §3.4 cmt. f). "If the right to purchase is on the same terms and conditions as the owner may receive from a third party, if the procedures for exercising the right are clear, and if the period within which it must be exercised is relatively short, the right of first refusal is valid unless the purpose is not legitimate." *Restatement (Third) of Property: Servitudes* § 3.4 cmt. f. Courts typically only deem rights of first refusal to be invalid where the right of first refusal sets

forth no mechanism to determine the price of the property or where the right of first refusal period is unreasonably long. *See Clarke v. Fine Housing*, 882 S.E.2d at 766-767; *see also Mitchell v. Albertelli*, 2023 WL 292918 (S.C. App. 2023). Otherwise, rights of first refusal are honored and taken seriously.

Here, the Defendants' right of first refusal is valid and should be enforced. It is for a legitimate purpose – Defendants wish to retain the Property in which they hold interest as heirs. As stated above, Defendants' purpose in purchasing the Property is even more important because the Property is one of the last remaining undeveloped areas of this size on Hilton Head Island; the nature of the Property's ownership is critical.

Further, Defendants' purchase of the Property is pursuant to the payment terms set by the Court under the Pinckney Act, which is a fair and adequate figure. Defendants have no issues with paying the amounts set by the Court to purchase the Property. Additionally, the Defendants' right of first refusal is not for an unreasonable time period; the South Carolina legislature, per the Pinckney Act, has approved non-petitioning cotenants to elect to invoke their rights of first refusal and purchase respective properties as late as ten days prior to trial on a matter to partition property.

Because South Carolina law favors honoring rights of first refusal and because Defendants' right of first refusal does not unreasonably restrain alienation of the Property and Plaintiffs' Property rights, Defendants respectfully request the Court grant the Motion and enter an order allowing Defendants to invoke their right of first refusal to purchase the Property as they intend.

C. Open-Market Sale or Auction Required if Right of First Refusal Not Reinstated

If the Court does not reinstate Defendants' right of first refusal, the proper protocol is for the court to order an open-market sale or action. According to Pinkney Act (S.C. Code §15-61-

400(A)), “If the court orders a sale of heirs’ property, *the sale must be an open-market sale unless the court finds that a sale by sealed bids or an auction would be more economically advantageous and in the best interest of the cotenants as a group.*” (emphasis added). Rather than an open-market sale, the Plaintiffs brought in a premature contract to sale the Property. Plaintiffs cannot circumvent the Pinckney Act by prematurely entering into a contract with Rotunda prior to filing suit and prior to Defendants being appraised of their right of first refusal. If the court orders an open-market sale, the parties are first tasked with trying to jointly agree upon a broker. S.C. Code §15-61-400(B). If the parties cannot agree on a broker within thirty days after entry of order, “. . .the court shall appoint a disinterested real estate broker licensed in this State to offer the property for sale and shall establish a reasonable commission.” S.C. Code §15-61-400(B).

“If the court orders a sale by sealed bids or an auction, the court shall set terms and conditions of the sale.” S.C. Code §15-61-400(E). The auction must be conducted in accordance with procedures governing judicial sales and auctions. S.C. Code §15-61-400(E).

In the event the court does not reinstate Defendants’ right of first refusal and proceeds with an order to sale the Property, the proper protocol is to order either an open-market sale or auction. Defendants exercised their right of first refusal and should have first opportunity to purchase the Property pursuant to the Pinckney Act and other South Carolina law governing the exercise of rights of first refusal.

CONCLUSION

WHEREFORE, Defendants respectfully request that the Court grant this Motion and enter an order allowing Defendants to invoke their right of first refusal under the Pinckney Act to purchase the Property with a marketable, fee simple title thereto. In

the alternative, Defendants respectfully request that the Court order an open-market sale or auction of the Property and / what further alternate relief that the court may deem equitable and just in the premises.

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Charles E. Houston, Jr.
SC BAR # 2663/ Fed Bar # 1961
Attorney for Defendants

April 22, 2023
Hilton Head Island, SC

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORD

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL DISTRICT
CIVIL ACTION # 2020-CP-07-02301

GEORGIA HARRISON, BARBARA
HARRISON, JOYCE ELLEN HARRISON,
WILLIAM S. HARRISON, III, STANLEY
ROBERTS AND DIANA MENDHEIM
INDIVIDUALLY AND AS AGENT AND
ATTORNEY IN FACT,

**DEFENDANT'S OBJECTION TO
PLAINTIFF'S PROPOSED MASTER'S
DEED**

Plaintiffs,

vs.

STEPHANIE LORRAINE KIRKLAND,
GARY LAMONT KIRKLAND, KIETA
NICOLE WHITE, AND CHERYL
KIRKLAND,

Defendants.

TO: THOMAS C. TAYLOR, ESQ. AND CHESTER C. WILLIAMS, ESQ.; ATTORNEYS
FOR PLAINTIFFS.

COME NOW the Defendants who, for this Objection to Plaintiff's Proposed Master's Deed
(the "Motion"), state as follows:

BACKGROUND

Defendants incorporate by reference the factual recitation in its Motion to Renew Right of
First Refusal. On May 10, 2023, Plaintiffs uploaded its proposed Master's Deed which the Court

instructed Plaintiffs to prepare on April 5, 2023 during status conference held by Court. The Court instructed Plaintiffs to provide a proposed Master's Deed in response to Plaintiffs' representation that sale of approximately 26.462 acres of real property located at the north end of Hilton Head Island, Beaufort County, South Carolina (the "Property") could be accomplished by April 21, 2023 and for sure by May 1, 2023. Having failed to satisfy this timeframe, Defendants filed Motion to Renew Right of First Refusal. Plaintiffs have maintained that Defendants' failure to post full purchase price with the Court without any clarification about how Defendants will get title to Property was fatal to their right of first refusal. Now that Plaintiffs have not performed as represented to the Court, Plaintiffs now, without leave of the Court, presented a proposed Master's Deed to the Court. If Defendants are held to strict deadline despite the Pinckney Act's intent to provide the heirs with purchase rights, Plaintiffs, too, must be judged by the same standard. Additionally, as set forth in Defendants' Motion to Reinstate Right of First Refusal, the pre-packaged contract with a third party – Rotunda Land and Development Corporation LLC ("Rotunda") is counter to the Pinckney Act.

In the event the Court is not inclined to reinstate Defendants' right of first refusal, the Property must be sold on open market or via auction – not a prepackaged contract as Plaintiffs entered with Rotunda.

Defendants, therefore, object to Plaintiffs' proposed Master's Deed.

ARGUMENT

A. Proposed Master's Deed Counter to Pinckney Act.

As more fully set forth in Defendants' Motion to Reinstate Right of First Refusal, the entry of Plaintiff's proposed Master's Deed is not permissible under the Pinckney Act. Proper protocol is to either reinstate right of first refusal or proceed with a sale on open market or via auction.

B. Master's Deed Not in Best Interest of Defendants.

The proposed Master's Deed represents that it is in the best interest of Defendants. Defendants' best interest is to purchase Plaintiffs' interest for fair market value as they have attempted to do since December 2021.

C. Violation of Defendants' Due Process Rights.

Entry of proposed Master's Deed amount to deprivation of Defendants' property, without due process of law.

D. Proposed Master's Deed Does Not Properly Put Public on Notice of Pending Appeal.

Plaintiffs provide only nominal mention of the appeal and neglect to describe that the appeal seeks to invalidate Rotunda contract as it violates the Pinckney Act and neglect to identify that Defendants still maintain they have a right to purchase Plaintiffs' interest, thereby, voiding the Rotunda contract. Further, the proposed Master's Deed should identify the style of the pending appeal: *Harrison v. Kirkland*, Case No. 2023-000438, pending before South Carolina Court of Appeals.

CONCLUSION

WHEREFORE, Defendants respectfully request that the Court refuse to enter Plaintiffs' proposed Master's Deed and grant Defendants' Motion to Reinstate Right of First Refusal and enter an order allowing Defendants to invoke their right of first refusal under the Pinckney Act to purchase the Property with a marketable, fee simple title thereto. In the alternative, Defendants respectfully request that the Court order an open-market sale or auction of the Property.

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By: /S/ Charles E. Houston Jr.
Charles E. Houston, Jr.

May 12, 2023
Hilton Head Island, SC

**STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORD**

**IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL DISTRICT
CIVIL ACTION # 2020-CP-07-02301**

**GEORGIA HARRISON, BARBARA
HARRISON, JOYCE ELLEN HARRISON,
WILLIAM S. HARRISON, III, STANLEY
ROBERTS AND DIANA MENDHEIM
INDIVIDUALLY AND AS AGENT AND
ATTORNEY IN FACT,**

**DEFENDANT'S AMENDED
OBJECTION TO PLAINTIFF'S
PROPOSED MASTER'S DEED**

Plaintiffs,

vs.

**STEPHANIE LORRAINE KIRKLAND,
GARY LAMONT KIRKLAND, KIETA
NICOLE WHITE, AND CHERYL KIRKLAND,**

Defendants.

COME NOW the Defendants who, for this Objection to Plaintiff's Proposed Master's Deed (the "Motion"), state as follows:

BACKGROUND

Defendants incorporate by reference the factual recitation in its Motion to Renew Right of First Refusal. On May 10, 2023, Plaintiffs uploaded its proposed Master's Deed which the Court instructed Plaintiffs to prepare on April 5, 2023 during status conference held by Court. The Court

instructed Plaintiffs to provide a proposed Master's Deed in response to Plaintiffs' representation that sale of approximately 26.462 acres of real property located at the north end of Hilton Head Island, Beaufort County, South Carolina (the "Property") could be accomplished by April 21, 2023 and for sure by May 1, 2023. Having failed to satisfy this timeframe, Defendants filed Motion to Renew Right of First Refusal. Plaintiffs have maintained that Defendants' failure to post full purchase price with the Court without any clarification about how Defendants will get title to Property was fatal to their right of first refusal. Now that Plaintiffs have not performed as represented to the Court, Plaintiffs now, without leave of the Court, presented a proposed Master's Deed to the Court. If Defendants are held to strict deadline despite the Pinckney Act's intent to provide the heirs with purchase rights, Plaintiffs, too, must be judged by the same standard. Additionally, as set forth in Defendants' Motion to Reinstate Right of First Refusal, the pre-packaged contract with a third party – Rotunda Land and Development Corporation LLC ("Rotunda") is counter to the Pinckney Act.

On May 17, 2023, Plaintiffs tendered an amended Master's Deed to the undersigned counsel. Defendant's renew their previous objections and additional objections to Plaintiff's May 17, 2023 amended Master's Deed.

In the event the Court is not inclined to reinstate Defendants' right of first refusal, the Property must be sold on open market or via auction – not a prepackaged contract as Plaintiffs entered with Rotunda.

Defendants, therefore, object to Plaintiffs' proposed Master's Deed, including any amendments thereto.

ARGUMENT

A. Proposed Master's Deed Counter to Pinckney Act.

As more fully set forth in Defendants' Motion to Reinstate Right of First Refusal, the entry of Plaintiff's proposed Master's Deed is not permissible under the Pinckney Act. Proper protocol is to either reinstate right of first refusal or proceed with a sale on open market or via auction.

B. Master's Deed Not in Best Interest of Defendants.

The proposed Master's Deed represents that it is in the best interest of Defendants. Defendants' best interest is to purchase Plaintiffs' interest for fair market value as they have attempted to do since December 2021.

C. Violation of Defendants' Due Process Rights.

Entry of proposed Master's Deed amount to deprivation of Defendants' property, without due process of law.

D. Proposed Master's Deed Does Not Properly Put Public on Notice of Pending Appeal.

Plaintiffs provide only nominal mention of the appeal and neglect to describe that the appeal seeks to invalidate Rotunda contract as it violates the Pinckney Act and neglect to identify that Defendants still maintain they have a right to purchase Plaintiffs' interest, thereby, voiding the Rotunda contract. Further, the proposed Master's Deed should identify the style of the pending appeal: *Harrison v. Kirkland*, Case No. 2023-000438, pending before South Carolina Court of Appeals.

E. Proposed Master's Deed is Misleading. The proposed Master's Deed includes two paragraphs regarding a prior appeal (South Carolina Court of Appeals Case No. 2022-000277) which are irrelevant and may leave the public to conclude that the 2023 appeal is pending. The

two paragraphs regarding the 2022 appeal should be removed. Further, the sole paragraph referring to the 2023 appeal currently pending (South Carolina Court of Appeals Case No. 2023-000438) should be appended to add the following: **“Any conveyance of the Property is subject to the decision of the South Carolina Court of Appeals.”**

CONCLUSION

WHEREFORE, Defendants respectfully request that the Court refuse to enter Plaintiffs’ proposed Master’s Deed and grant Defendants’ Motion to Reinstate Right of First Refusal and enter an order allowing Defendants to invoke their right of first refusal under the Pinckney Act to purchase the Property with a marketable, fee simple title thereto. In the alternative, Defendants respectfully request that the Court order an open-market sale or auction of the Property.

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By: /s/ Charles E. Houston, Jr.
Charles E. Houston, Jr.

May 17, 2023
Hilton Head Island, SC

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORD

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL DISTRICT
CIVIL ACTION # 2020-CP-07-02301

GEORGIA HARRISON, BARBARA
HARRISON, JOYCE ELLEN HARRISON,
WILLIAM S. HARRISON, III, STANLEY
ROBERTS AND DIANA MENDHEIM
INDIVIDUALLY AND AS AGENT AND
ATTORNEY IN FACT,

Plaintiffs,

vs.

STEPHANIE LORRAINE KIRKLAND, GARY
LAMONT KIRKLAND, KIETA NICOLE
WHITE, AND CHERYL KIRKLAND,

Defendants.

DEFENDANTS' MOTION TO VOID
MASTER'S DEED AND MOTION TO
ENFORCE RIGHT OF FIRST REFUSAL
UNDER PINCKNEY ACT

COME NOW the Defendants who, for this Motion to Void Master's Deed and Motion to Enforce Right of First Refusal Under Pinckney Act (the "Motion"), state as follows:

BACKGROUND

A. Commencement of Lawsuit

Plaintiffs commenced this action to clear title on November 24, 2020, attempting to sell their interests in the approximately 26.462 acres of real property located at the north end of Hilton Head Island, Beaufort County, South Carolina (the "Property") to a third party – Rotunda Land and Development Corporation LLC ("Rotunda"); Plaintiffs

entered the contract to sell the Property to Rotunda prior to commencing this lawsuit.¹ It was determined by the Court by order dated September 15, 2021 that the fair market value of the Property was \$9.1 million. Defendants were only notified of their right of first refusal under South Carolina statute almost a year after the commencement of this lawsuit on October 20, 2021 (the “Notice”) and after Plaintiffs already entered a contract to sell the Property to a third party – Rotunda.

B. *Defendants’ Exercise of Right of First Refusal and Request for Extension of Sixty Days*

Defendants then properly notified the Court of their interest in purchasing the Property. The Court then ordered that Defendants pay the \$9.1 million purchase price as determined by the Court in full within sixty days of the Notice (December 22, 2021). Given the considerably large purchase price, given the legal status of the title of the Property as held by “heirs title”, given the necessary due diligence required to close on the Property, and given the statutory scheme under the Pinckney Act allowing for a period of longer than sixty days to tender the purchase price. Defendants requested an extension of the sixty-day timeline in order to secure funding for the purchase of the Property.

C. *Defendants Need Clear Title to Property; Funding Secured to Purchase Property*

Defendants have maintained throughout this litigation that they wish to purchase the Property and stand ready and capable to close immediately. Defendants secured funding to purchase the Property before December 22, 2021. However, Defendants must use, as collateral, the clear, fee simple title to the Property. Without having a clear,

¹ The Rotunda contract was amended numerous times during the pendency of the case before this Court; however, Defendants were not provided copies of the amendments as they were executed and were only provided with the contract and some (but not all) of its amendments in January 2022.

marketable title to the Property, Defendants have been prohibited from purchasing the Property. In essence, this litigation primarily requests that the Court clear title to the Property by issuing a fee simple title to the Property and grant Defendants the right provided to them under the Pinckney Act (as defined below). The Court has refused to issue an Order declaring the fee simple absolute title to the Property is vested in the parties to this action as tenants in common.

D. *Master's Deed Issued Over Defendants' Objection May 24, 2023*

The Court denied the Defendants' requested relief. Thereafter, Plaintiffs petitioned the Court to issue a Master's Deed. The Plaintiffs have claimed numerous times that all they need to close on the sale of the Property to Rotunda is the Court's issuance of a Master's Deed. For example, on February 24, 2023 during the hearing on Defendants' Motion for Reconsideration filed November 17, 2022, Tom Taylor, counsel for Plaintiffs, represented as follows:

And, in any event, Your Honor, we have a binding contract with Rotunda that we need to honor or else we will be sued for breach of contract. The Rotunda people, through Terry [Finger, Esq., counsel for Rotunda], have worked with us. They have, actually, Your Honor, increased the price that they are going to pay by 600 - - excuse me. Yes, \$650,000. ***That money is ready and we are ready to close today.*** Your Honor has already ruled on the issue of the master's deed. (See Transcript, Feb. 24, 2023 at 28:13-24.) (Emphasis added)

Tom Taylor further represented to the Court on May 15, 2023 at hearing on Defendants' Amended Motion to Enforce Right of First Refusal Under Pinckney Act and Alternate Relief as follows:

Any, Your Honor, I think Terry [Finger, Esq., counsel for Rotunda] will probably state in a minute, if given the chance, that ***Rotunda is***

ready to close and is ready to close within the next 15 days once we have the proposed master's deed executed by the Court.” (See Transcript, May 15, 2023 at 12:4-10.) (Emphasis added)

Thereafter, Judge Dukes adopted Tom Taylor’s representation stating, “***Rotunda is ready to close with the current state of the title . . .***” (See Transcript, May 15, 2023 at 50:2-3.) (Emphasis added) On May 24, 2023, over the objection of Defendants, the Court entered an order granting a Master’s Deed purportedly transferring Defendants’ interest in the Property. After more than five months, Plaintiffs still have not closed on the transaction with Rotunda nor have Plaintiffs provided any proof of Rotunda’s financial ability to close on the proposed transaction. Upon information and belief, Plaintiffs have recently refunded to Rotunda the sum of \$50,000.00 initially paid into escrow by Rotunda as a good faith deposit of the purchase price of the property.

E. *Uncertainty as to Rotunda Contract; No Update to Court and No Deadline to Close under Master’s Deed*

The current state of financing and the debt market must be considered. The parties have failed to provide any status update to the court; despite representations by Plaintiffs and counsel for Rotunda to the Court that there would be no impediment to closing once Master’s Deed was issued. The Master’s Deed fails to provide a deadline for Plaintiffs to close the sale of the Property and essentially holds the Property (and Defendants’ interest therein) in abeyance into perpetuity (far longer than Defendants had sought to arrange for a closing on commercially reasonable terms). This violates Defendants’ due process rights and is an unlawful taking as well as acting contradictory

to the rationale for issuing a Master's Deed and provides further support for Defendants' position in this case.

Plaintiffs represented on numerous occasions that they are prepared to close on the Rotunda contract (over Defendants' objection) without the need for further court intervention upon receipt of a Master's Deed. The reality however, is that Plaintiffs are unable to close on the sale of the Property without the Court's assistance to get marketable title. This is the same assurance and direction that the Defendants sought from the Court in December 2021. At that time, Defendants were advised by the Court that the Court was not prepared to take any action at all and that Defendants would receive only what Plaintiffs could transfer to them:

And the opportunity to be in first position was waived by failure to post the appropriate amount of money at the appropriate time. You know, that's the way it is. You know, I'd love to make everybody happy, but I can't do that.

And so what we're going to do is try to protect the rights of all of the heirs, the 98 percent and the 2 percent and get them as much money as possible and as quickly as possible. And it seems like that's the deal that we've already discussed that's been going on for two years. So I don't know what else we need to do. I think that resolves the issue.

To the extent that there are motions to reconsider out there, I'm going to deny them. I think I saw, scrolling through here, there were two of them filed, but – and I'm going to deny those motions. And I assume the buyer – the primary buyer will proceed ahead and y'all let me know what the schedule is. (See Transcript, January 6, 2022 at 37:12 – 38:11).

Now that Plaintiffs and Rotunda are attempting to secure title insurance, they, too, need assistance from the Court. Plaintiffs' counsel represented in status conference held April 5, 2023 that the Rotunda contract required the parties to close on April 21, 2023.

MR. WILLIAMS: Chet Williams.

Right now – I mean, the contract between Rotunda and the sellers, I think, provides for closing, actually, on April 21st. (See Transcript, April 5, 2023 at 10:17-21).

Defendants objected to Plaintiffs' proposed Master's Deed because it failed to acknowledge the pending appeal.² After the objection was raised, counsel for Plaintiffs and Rotunda questioned whether the title company would issue title insurance given the pending appeal. Upon information and belief, Rotunda is not prepared to close without marketable title to the Property. Further, upon information and belief, Rotunda has withdrawn the earnest money it placed on file with the title company; thus, signaling no valid contract to purchase the Property.

Additionally, on September 20, 2023, Rotunda filed a Lis Pendens in Beaufort Court of Common Pleas, Fourteenth Judicial Circuit, Civil Action No. 2023-LP-07-00261 against Plaintiff heirs in the foregoing action before this Court “ . . . seeking [recovery for] breach of contract [for Plaintiff's heirs] failure to provide good marketable title and sell the real estate [Property] to [Rotunda] pursuant to a Purchase and Sale Agreement dated September 14, 2020, as amended.”

On September 21, 2023, Rotunda filed an Amended Lis Pendens adding Defendant heirs as defendants despite the fact that Defendant heirs never entered into a contract with Rotunda. On October 12, 2023, Tom Taylor, Esq. on behalf of Plaintiff heirs, filed a Notice of Motion and Motion to Cancel Lis Pendens on the grounds that, “. . . the original [Lis Pendens] was filed more than twenty (20) days prior to filing of a Complaint. The

² Defendants maintain that the Court's entry of a Master's Deed for the Rotunda contract is improper and inconsistent with the law and spirit of the Pinckney Act.

original Lis Pendens was filed on September 20, 2023 and on information and belief, no Complaint has yet been filed.” If Plaintiff heirs’ motion is granted, the Lis Pendens and the Amended Lis Pendens would be void. At a minimum, Plaintiffs should be required to confirm whether the Rotunda contract has been rescinded, amended or still effective as neither Defendant heirs nor their counsel are privy to any updates on the status of the Rotunda contract.

On March 9, 2022, Defendants filed an appeal of the Court’s orders dated May 21, 2021, October 22, 2021, and January 20, 2022. On March 13, 2023, Defendants filed an appeal of the Court’s order dated March 8, 2023 denying Defendant’s Motion for Reconsideration and the Court’s November 7, 2022 order. The second appeal is still pending; Plaintiffs initially attempted to close and sell the Property to Rotunda without first notifying the title company of the pending appeal. Upon information and belief, the title company will not close on the sale of the Property to Rotunda. Ultimately, Plaintiffs are unable to close on the sale of the Property to Rotunda despite having the Master’s Deed in its possession for almost five months. At the time Defendants were first given Notice of their right of first refusal, they did not have sufficient time to conduct due diligence and secure funding to purchase the Property within sixty days. However, Defendants have been prepared to deposit the full purchase price of the Property into the Court’s registry promptly and complete the purchase of the Property since December 22, 2022.

Defendants thus respectfully request that the Court void the Master’s Deed and enter an order recognizing Defendants’ right of first refusal to purchase the Property

specifically and clearly granted under S.C. Code Ann. § 15-61-310, *et seq.* (the “Pinckney Act”).

ARGUMENT

The Court should grant the Motion and award Defendants the right to exercise the right to purchase the Property with a clear, marketable title under the Pinckney Act and under general principles of South Carolina law governing the right of first refusal.

A. The Pinckney Act

The Pinckney Act provides that upon filing a petition for partition of real property owned by joint tenants or tenants in common, the court shall provide for non-petitioning joint tenants or tenants in common³ who are interested in purchasing the property to notify the court of that interest no later than ten days prior to the date set for the trial of the case; a joint tenant or tenant in common that properly notifies the court prior to the deadline “must be allowed to purchase the interests of any cotenant who requested a partition by sale...” S.C. Code Ann. §§ 15-61-330(A); 15-61-370(B). In other words, non-petitioning joint tenants or tenants in common have a right of first refusal to purchase subject property. The purchase price for the interests of a cotenant that requested a partition by sale is the value of the entire parcel determined by the Court pursuant to § 15-61-360 multiplied by the cotenant’s fractional ownership of the entire parcel. S.C. Code Ann. § 15-61-370(C).

³ For purposes of the Pinckney Act, heirs and devisees are included within the definition of joint tenants and tenants in common. S.C. Code Ann. § 15-61-25.

If a joint tenant or tenant in common elects to buy all interests of its cotenants that requested partition by sale, the court shall notify the petitioning party of that fact; the petitioning party then shall notify all other parties of that same fact. S.C. Code Ann. § 15-61-370(D). Once notices are properly sent, the court shall set a date, not sooner than sixty days after the date the notice was sent, by which purchasing joint tenants or tenants in common must pay their apportioned price into the registry of the court. S.C. Code Ann. § 15-61-370(E). If apportioned amounts are properly and timely paid, the court shall issue an order reallocating the interests and disbursing the amounts held by the court to the persons entitled to them. *Id.*

After receiving the Notice, Defendants have worked promptly and continuously in good faith to secure the purchase of the Property, despite the fact that Plaintiffs disregarded Defendants' right of first refusal and had already entered into an agreement to sell the Property to Rotunda. Because the Pinckney Act expressly allows the Court to grant the Defendants more than sixty days to put forth the funds to purchase the Property, and because of the complexity and value of the Property, Defendants requested a longer time period than sixty days to deposit the funds in accordance with the statute. That request was denied. Defendants were able to secure full funding for the Property's purchase by December 22, 2021, but requested the Court issue a marketable, clear title to the Property in order for Defendants to put forth the Property as collateral. That request was also denied. Defendants have put forth their best efforts in comporting with the Pinckney Act. The Pinckney Act's right of first refusal was promulgated so that properties, such as the Property, could remain in the hands and interest of its electing

cotenants if those cotenants so chose. The intent to give cotenants an opportunity to maintain their interests in properties is particularly imperative here with the Property being one of the last undeveloped areas of this size and value on Hilton Head Island.

Additionally, Plaintiffs have maintained throughout this litigation that it would be impractical for it to honor Defendants' right of first refusal under the Pinckney Act given the advanced stage of the deal with Rotunda. However, any resulting damage to Plaintiffs or Rotunda in the Court's honoring of Defendants' right of first refusal under the Pinckney Act is directly because of Plaintiffs' own failure to notify Defendants of their intent to sell the Property until almost a year after commencing this suit and because Plaintiffs prematurely entered into the contract with Rotunda before honoring Defendants' right of first refusal under Pinckney Act and further because Plaintiffs did not provide Defendants timely copies of the Rotunda contract and its various amendments, keeping Defendants in the dark as to the terms of the proposed sale. Additionally, Plaintiffs concede that the Court's November 7, 2022 Order does not require that the sale be to Rotunda.⁴ Furthermore, Rotunda cannot close on the Property despite numerous times representing that it was prepared to close immediately. Plaintiff has been in possession of a Master's Deed for Defendants' interest in the Property for almost five months – far longer than the approximately sixty (60) days provided to Defendants to purchase the Property subject to applicable law and specifically, the Pinckney Act. Plaintiffs' and Defendants' interests

⁴ See Transcript, April 5, 2023 status conference at 23:9-24 (“Mr. Taylor: Your Honor, your order of November 7th authorizes partition of the property by sale, it does not restrict it to Rotunda. And, in fact, Rotunda is technically not a party to this action. What it authorizes is the prevailing plaintiffs to move forward with the partition by sale. And, quite candidly, *we would not be restricted to Rotunda*, but we certainly in all good faith are representing to the Court that’s exactly who we’re closing it to, it’s simply a new entity that has been created by the assignment, which we’ll be glad to provide. (Emphasis added)

are aligned in completing the sale of the Property; Plaintiffs want to sell and Defendants want to buy at the fair price as set by the Court.

Additionally, the spirit of the Pinckney Act provides that cotenants may have up until ten days prior to the trial setting to elect to purchase the subject property. S.C. Code Ann. § 15-61-370(B). Defendants have expressed their intent to purchase the Property well before trial in this lawsuit. If Defendants had slightly more time, as allowed by statute, to complete the minimal commercial real estate due diligence as a condition to secure funding for the purchase of the Property, and if the Court had issued marketable title to the Property, Plaintiffs would have had no choice but to terminate, pursuant to the Pinckney Act right of first refusal, the deal with Rotunda and sell the Property to Defendants anyway.

Because Defendants complied with all Pinckney Act notice requirements in expressing Defendants' good faith intent to purchase the Property; because the Pinckney Act's purpose is to allow cotenants the right to purchase other cotenants' interests as a right of first refusal; because Plaintiffs are unable to sell the Property to Rotunda despite being issued a Master's Deed; because Defendants are prepared to purchase the Property; and because any harm to Plaintiffs as a result of the Court's honoring of Defendants' right of first refusal results from Plaintiffs' own actions including delay in notifying Defendants and Plaintiffs' premature entry into an agreement to sell the Property to a third party, Defendants respectfully request that the Court grant the Motion and allow Defendants to exercise their statutory rights under the Pinckney Act to purchase the Property.

B. Right of First Refusal

While the text and the spirit of the Pinckney Act favors Defendants' renewal of their right of first refusal to purchase the Property, South Carolina case law supports Defendants' position as well. Under well-established South Carolina law, a property owner is generally required, when he or she decides to sell, to first offer the property to the holder of a right of first refusal. *Webb v. Reames*, 485 S.E.2d 384, 385 (S.C. App. 1997). A right of first refusal constrains a real property owner's power of alienation of the property to a certain degree by requiring the owner to offer the property first to the holder of the right. *See Cnty. Of Jackson v. Nichols*, 623 S.E.2d 277, 280 (S.C. App. 2005).

A right of first refusal is only unenforceable if it unreasonably restrains alienation. *Wise v. Poston*, 316 S.E.2d 412, 415 (S.C. App. 1984); Restatement (Third) of Property: Servitudes §3.4. South Carolina courts consider the following factors in determining whether rights of first refusal are enforceable: (a) the legitimacy of the purpose of the right of first refusal, (b) the price at which the right of first refusal may be exercised, and (c) the procedures for exercising the right of first refusal. *Clarke v. Fine Housing, Inc.*, 882 S.E.2d 763, 767 (S.C. 2023) (citing Restatement (Third) of Property: Servitudes §3.4 cmt. f). "If the right to purchase is on the same terms and conditions as the owner may receive from a third party, if the procedures for exercising the right are clear, and if the period within which it must be exercised is relatively short, the right of first refusal is valid unless the purpose is not legitimate." Restatement (Third) of Property: Servitudes § 3.4 cmt. f. Courts typically only deem rights of first refusal to be invalid where the right of first refusal sets forth no mechanism to determine the price of the property or where the

right of first refusal period is unreasonably long. *See Clarke v. Fine Housing*, 882 S.E.2d at 766-767; *see also Mitchell v. Albertelli*, 2023 WL 292918 (S.C. App. 2023). Otherwise, rights of first refusal are honored and taken seriously.

Here, the Defendants' right of first refusal is valid and should be enforced. It is for a legitimate purpose – Defendants wish to retain the Property in which they hold interest as heirs. As stated above, Defendants' purpose in purchasing the Property is even more important because the Property is one of the last remaining undeveloped areas of this size on Hilton Head Island; the nature of the Property's ownership is critical.

Further, Defendants' purchase of the Property is pursuant to the payment terms set by the Court under the Pinckney Act, which is a fair and adequate figure. Defendants have no issues with paying the amounts set by the Court to purchase the Property. Additionally, the Defendants' right of first refusal is not for an unreasonable time period; the South Carolina legislature, per the Pinckney Act, has approved non-petitioning covenants to elect to invoke their rights of first refusal and purchase respective properties as late as ten days prior to trial on a matter to partition property.

Because South Carolina law favors honoring rights of first refusal and because Defendants' right of first refusal does not unreasonably restrain alienation of the Property and Plaintiffs' Property rights, Defendants respectfully request the Court grant the Motion and enter an order allowing Defendants to invoke their right of first refusal to purchase the Property as they intend.

C. *Open-Market Sale or Auction Required if Right of First Refusal Not Reinstated*

If the Court does not reinstate Defendants' right of first refusal, the proper protocol is for the court to order an open-market sale or action. According to Pinckney Act (S.C. Code §15-61-400(A)), "If the court orders a sale of heirs' property, ***the sale must be an open-market sale unless the court finds that a sale by sealed bids or an auction would be more economically advantageous and in the best interest of the cotenants as a group.***" (*emphasis added*). Rather than an open-market sale, the Plaintiffs brought in a premature contract for the sale the Property and assert it as a reason to bar Defendants' rights under law and equity. Plaintiffs cannot circumvent the Pinckney Act by prematurely entering into a contract with Rotunda prior to filing suit and prior to notifying Defendants of their right of first refusal. If the Court orders an open-market sale, the parties are first tasked with trying to jointly agree upon a broker. S.C. Code §15-61-400(B). If the parties cannot agree on a broker within thirty days after entry of order, ". . .the court shall appoint a disinterested real estate broker licensed in this State to offer the property for sale and shall establish a reasonable commission." S.C. Code §15-61-400(B).

"If the court orders a sale by sealed bids or an auction, the court shall set terms and conditions of the sale." S.C. Code §15-61-400(E). The auction must be conducted in accordance with procedures governing judicial sales and auctions. S.C. Code §15-61-400(E).

In the event the Court does not reinstate Defendants' right of first refusal and proceeds with an order to sale the Property, the proper protocol is to order either an open-market sale or auction. Defendants exercised their right of first refusal and should

have first opportunity to purchase the Property pursuant to the Pinckney Act and other South Carolina law governing the exercise of rights of first refusal.

D. *Economic Uncertainty Weighs in Favor of Relief Sought*

There has existed a climate of economic uncertainty over the past six months. The commercial debt markets have experienced significant upheaval, leading to a cascade of effects on real estate transactions requiring any debt with several key factors having contributed to this disruption. The ongoing economic volatility, including concerns about inflation, bond markets, rising interest rates, geopolitical events and the lingering effects of the COVID-19 pandemic, has created a climate of uncertainty. As a result, commercial lenders are more cautious, making it harder to secure financing to close real estate transactions.

1. Credit Tightening: Lenders have become more stringent in lending practices. They are scrutinizing both borrower creditworthiness and project feasibility, sometimes requiring more equity or collateralization, which can be challenging for closing transactions.

2. Supply Chain Disruptions: Supply chain disruptions have affected construction costs and timelines, potentially increasing project risks and costs for developers and investors.

3. Asset Valuation Challenges: Valuing real estate assets has become more complex, particularly in commercial real estate, affecting appraisals and making it harder to determine the collateral's worth. In circumstances where the collateral securing the loan is the real estate project under development, it can be considered riskier or less valuable than initially assessed, which can be a critical factor and impediment in securing real estate loans.

In combination, these factors have resulted in financing falling through and, in some cases, a freeze on some real estate transactions. Investors and developers in particular, are facing increased challenges in obtaining funding for debt dependent transactions, as lenders proceed with extreme caution. As a result of this consortium of issues, it is a valid question to ask if any financing that may be required to close the transaction by the Plaintiffs even exists; especially where they cannot offer a lender marketable title to the property as collateral. Defendants have financing and stand ready to perform.

CONCLUSION

WHEREFORE, Defendants respectfully request that the Court grant the following relief:

1. Enter an order voiding the Master's Deed;
2. Rescind its prior order authorizing the Plaintiffs to sell the Property to Rotunda, LLC;
3. Enter order allowing Defendants to exercise their right of first refusal under the Pinckney Act;
4. Enter an order for an evidentiary hearing to be held to determine those persons holding a possessory interest in the Property and the correct percentages thereto for the purpose of establishing an evidentiary basis upon which the court may decree fee simple marketable title upon the property; and
5. Enter order requiring that the Personal Representatives of the four open estates of deceased heirs be joined in this action.

WHEREFORE, Defendants pray for such other and further relief to which it is entitled at law and/or equity.

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Attorney for Defendants

October 27, 2023
Hilton Head Island, SC

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

GEORGIA HARRISON, et al,
Plaintiffs,

vs.

CIVIL ACTION NUMBER
2020-CP-07-02301

STEPHANIE LORRAINE KIRKLAND et al,
Defendants.

-----/

The video conference hearing in the
above-entitled cause, taken pursuant to Notice
and agreement, before the Honorable Judge Dukes
and Naomi McCracken, Court Reporter and Notary
Public, on the 6th day of January 2022,
commencing at or about the hour of 3:00 p.m.

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Robert Young

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I N D E X

PAGE

OPENING REMARKS AND STIPULATIONS ----- 5

CERTIFICATE ----- 48
(NO EXHIBITS)

1 THE COURT: Welcome back,
2 everybody, to 2020-CP-07-02301,
3 Harrison, et al. versus Kirkland, et
4 al. I got that caption. This is a
5 series in -- or another -- I don't even
6 know what number -- in an ongoing
7 series of hearings and nonhearing
8 conference calls and Webexes having to
9 do with the sale of this property.

10 And maybe, just before we begin,
11 the plaintiff can just bring me up to
12 speed on kind of where we are and
13 what's happened since the last time we
14 were together. Then I'm happy to hear
15 from anybody who wants to be heard.
16 We've got plenty of time, so...

17 MR. TAYLOR: Judge, thank you so
18 much. This is Tom Taylor on behalf of
19 the petitioning plaintiffs. Chet
20 Williams is also with us and will
21 probably also assist me in
22 presentation.

23 To bring the Court up to speed,
24 Your Honor, by order dated October 20th
25 of 2021, the Court set forth certain

1 procedures for the petitioning
2 defendants to have a time, pursuant to
3 the statute, of not less than 60 days
4 to tender their amounts of money to buy
5 out the plaintiffs.

6 The Court set that date for
7 December 22nd, 2021 at 5:00 p.m. And
8 you may recall, Your Honor, that right
9 before this, there were some
10 discussions in a previous status
11 conference of exactly how the money
12 would be tendered. Mr. Houston, on
13 behalf of his defendants, was concerned
14 about not having a wire transfer
15 portal.

16 So the lawyers all worked together
17 with Clerk Roseneau. We actually
18 established -- the Clerk established a
19 bank account for this particular case,
20 and that information was provided to
21 Mr. Houston well before the December
22 22nd date so that his purchasing
23 defendants could, in fact, tender their
24 money in a timely matter by December
25 22nd at 5:00 p.m.

1 For the Court's information, it
2 has now been confirmed through written
3 communication by the Clerk of Court
4 that no monies were deposited by any of
5 the defendants or anyone else into to
6 the bank account by 5:00 p.m. on
7 December 22nd, 2021, or at any time
8 thereafter until we sit here today.

9 So, Your Honor, pursuant to that
10 order, which is a self-actuating, the
11 Court had ordered, on October 20th,
12 that if no -- if none of the monies
13 were paid in by the defendants, then
14 the -- if the defendants failed to
15 timely pay their apportioned price,
16 then the property that is the subject
17 of this action shall be partitioned by
18 sale at a purchase price of not less
19 than \$9.1 million.

20 And, we, Your Honor, to remind the
21 Court, have an existing contract of
22 sale that is due to close on March the
23 22nd of 2022, and we are proceeding
24 forward towards that closing.

25 Additional deposits have been made to

1 protect all of the petitioners and the
2 defendants.

3 And, Your Honor, we believe very
4 strongly that this deal is going to
5 close on March 22nd, and I'd ask for
6 Chet to perhaps advise the Court a
7 little bit more on any other financial
8 matters that are important.

9 MR. WILLIAMS: Well, not so much
10 the financial matters, but I would
11 point out, Your Honor, that the October
12 20th order also authorized the
13 plaintiffs to either accept or ratify
14 any contract for the sale of the
15 property for not less than \$9.1
16 million. That's what we're proceeding
17 on right now. Like Mr. Taylor said, we
18 have a firm contract with a closing
19 date of March 22nd, and we're working
20 towards that end.

21 MR. TAYLOR: That's where we
22 stand, Judge.

23 THE COURT: Okay. Thank you very
24 much.

25 MR. WHITE: I would add one thing.

1 THE COURT: Yeah.

2 (Cross-talk.)

3 MR. WHITE: You said that the
4 price has increased from that, do you
5 want to mention that, or no?

6 MR. TAYLOR: Chet?

7 MR. WILLIAMS: Yeah. Well, the
8 last contract extension, I think Your
9 Honor's aware, increased the purchase
10 price of the original 9.1 offer to
11 \$9,750,000. And the Sixth Amendment
12 also required that the purchaser
13 deposit an additional \$50,000 as an
14 earnest -- additional earnest money
15 deposit within three days after the
16 time period had run for the defendants
17 to deposit their funds, and that
18 \$50,000 has been posted.

19 THE COURT: Okay. Thank you.

20 MR. TAYLOR: Your Honor, just to
21 remind the Court, I know Mr. Houston is
22 ready to go. But just to remind the
23 Court, Judge, you had heard testimony
24 earlier on two different appraisals,
25 and you have already entered -- and the

1 order does set the fair market value of
2 not less than \$9.1 million.

3 So the fact of the matter is that
4 the petitioning plaintiffs, and Andre
5 White, who is their agent, have been
6 working very hard and we are now at a
7 \$650,000 premium on top of what
8 apparently the fair market value of the
9 property may be, to which will be to
10 the benefit of everyone participating
11 in this as long as we move forward and
12 get it closed before any real estate
13 bubble changes.

14 THE COURT: There's always that
15 risk, isn't there?

16 Okay. Thank you. Thank you very
17 much.

18 Mr. Houston, I'm happy to hear
19 from you, sir.

20 MR. HOUSTON: Okay. I wanted to
21 let the air clear first, and what I'd
22 like to do is state the following for
23 the record, Your Honor.

24 Number 1, this is an action to
25 clear title and the defendant's

1 position is, is that title is only
2 cleared when the court can issue a fee
3 simple title to the property. The
4 defendants -- the plaintiffs, in their
5 complaint, state that there had been
6 two prior court title actions brought
7 on this property. And they've had to
8 start this third action, which is the
9 present one we are involved with,
10 because there have been successive
11 un-probated estates.

12 And, in addition to that, there
13 have -- some estates that have been
14 brought in foreign sister states, but
15 no ancillary administration has been
16 done on those estates in South
17 Carolina, particularly in Beaufort
18 County where the property is, the
19 status of the property.

20 Without having a clear title to
21 the property, the defendants have been
22 prohibited in going through with their
23 sale of the property. They have the
24 money available, but they cannot
25 transact a sale without being able to

1 use, as collateral, the fee simple
2 title to the property.

3 The second thing is that a
4 misrepresentation was made to the Court
5 -- or let me use a little bit more
6 euphemism. An accurate account or
7 report of what the statute requires was
8 not rendered to the Court. It was our
9 understanding that the -- the -- what
10 was reported to the -- what was
11 represented to the Court was that the
12 defendants had to perform in 60 days.
13 The statute does not require that. As
14 a matter of fact, 60 days is only the
15 minimum time set by that statute.

16 So the legislative intent was that
17 the time allotted to complete a sale by
18 the defendant is -- who don't desire to
19 sell -- is a discretionary matter. And
20 60 days is not the statutory
21 requirement, that is only the minimum
22 requirement.

23 So this was not properly brought
24 to the Court's attention at the time
25 the Court issued its order saying that

1 the defendants had to perform within 60
2 days.

3 So predicated on the fact that on
4 the one hand, the plaintiffs have not
5 pursued the case far enough for the
6 Court to decree that they had the fee
7 simple title in conjunction with the
8 fact that the statute allots more than
9 60 days to complete the sale of the
10 property, you cannot complete a sale on
11 a residential property in 60 days, and
12 here we're talking about raw property
13 and we're talking about several million
14 dollars. So to require the defendants
15 to complete this transaction without
16 having a fee simple title to the
17 property to serve as collateral is
18 unconscionable.

19 And so for that reason, we have
20 requested the Court, by motion, to give
21 us an extension of time of 45 days to,
22 one -- to do two things, one, to have a
23 hearing so that we can establish who
24 the exact heirs are and what their
25 percentage interest is. Okay?

1 The chart produced by the
2 plaintiffs when they started this
3 action, though it may have been
4 accurate, it's now not completed
5 because of the change in the deaths of
6 the parties who are members of the
7 various wings of the family.

8 So the plaintiffs have been trying
9 to require the defendants to perform
10 within this time period, and our
11 position of that is that it's
12 unconscionable and it's inequitable.

13 The further thing is, the Court
14 considered the fact, in balancing the
15 equities, that the price offered by the
16 plaintiffs had increased by \$500,000.
17 All right? Now, they haven't produced
18 a copy of these contracts. All they
19 did -- you know, they reported, said
20 that this is in existence, we've done
21 this, we've done this. But they have
22 not produced, for our examination, any
23 copies of these contracts.

24 Nevertheless, the defendants have
25 offered to meet and put an additional

1 amount of money for the plaintiff heirs
2 so that they will not be prejudiced in
3 any manner. So we have met with this
4 balance of the equity proposition that
5 came forth at the last hearing.

6 So, you know, the situation is
7 (indiscernible) right now. We can pay
8 the plaintiffs the larger amount of
9 money and in a shorter period of time.
10 And if counsel is representing the
11 plaintiffs rather than the -- other
12 than (indiscernible), I don't see
13 why -- why they are adverse to that.
14 I yield the floor back to you, Your Honor.

15 THE COURT: Just a quick question,
16 Mr. Houston. I mean, it sounds like
17 what you're asking me to do is
18 reconsider an order from October. I
19 mean, is that sort of the sum and
20 substance of it, right? I mean --

21 MR. HOUSTON: That is correct,
22 Your Honor. Because that order was
23 stepped in during the time that the
24 defendants were transferring
25 representation. And that had been --

1 MR. WILLIAMS: If I may, Your
2 Honor. If I may, Mr. Houston had
3 entered his appearance a month before
4 that order was entered.

5 THE COURT: I remember we went --
6 I think, Mr. Houston, if you look back,
7 you were probably part of it, then.
8 But here's my problem. 59(E) --
9 essentially, I have no jurisdiction to
10 modify that order once ten days has
11 elapsed. I think that's pretty solid
12 law on 59(E). So I don't really have
13 -- even if I thought it was a good
14 idea, I don't have authority to change
15 that order, that's a -- that's an order
16 that's gone beyond the ten days. And
17 there's -- I don't have jurisdiction to
18 modify that order, even if I --

19 MR. HOUSTON: We can include it
20 under 62(B).

21 THE COURT: Well, here's -- we've
22 been talking about these deadlines --

23 MR. HOUSTON: The other thing, you
24 said, this is not a final order.

25 THE COURT: We've been talking

1 about these deadlines forever, and I
2 had suggested, Mr. Houston, I think at
3 one point, come up with a significant
4 nonrefundable deposit. You know, the
5 plaintiff accurately says, "Look, this
6 economy may go on for years or this may
7 be 2009-2010 all over again.

8 You know, we -- this thing may
9 turn around overnight. This buyer may
10 go away and this sale may be a lost to
11 your clients and the plaintiffs. And I
12 can't remember what the percentages
13 are, but I can't be --

14 MR. TAYLOR: Your Honor --

15 THE COURT: -- blind to the
16 percentages --

17 MR. TAYLOR: -- the defendants
18 have 1.17 percent interest in the land.
19 The petitioners have 98.9 percent
20 interest in the land.

21 THE COURT: Yeah, and I've got --
22 that's not the only factor, of course,
23 but I've got to consider that. And so
24 here is what appears to be a solid
25 contract in a, maybe, shaky economy. I

1 don't know. Maybe the economy's rock
2 solid and it's going to go on forever.
3 I have no idea.

4 But I know that I've seen this
5 before. I've seen these property
6 values shoot up before, and overnight,
7 they plummet. And maybe we're there,
8 maybe we're not. You know, maybe we're
9 in 2007, not 2009 again right now. I
10 don't know.

11 But I've got to worry about the
12 98 percent, and that's why a while
13 back, I said, see if your clients want
14 to make a significant, you know,
15 nonrefundable deposit. And if they can
16 close, great. If not, boom, that money
17 gets sent straight to the heirs.
18 98 percent of it, of course, would
19 go -- not to your clients, but --

20 MR. HOUSTON: Your Honor, we're
21 capable of doing that if,
22 simultaneously, we can get an order
23 saying that the title is cleared.
24 We'll provide plaintiffs these funds to
25 put in -- in that deposit. I think it

1 was discussed before, like something
2 like 10 percent.

3 THE COURT: I've never heard that
4 offer. But, again, it may be to far
5 down the road for that. And I think
6 you're -- the buyers might be on the
7 line, and I don't know whether or not
8 they've agreed to put up almost \$2
9 million nonrefundable money.

10 MR. HOUSTON: That's why I have
11 them here today, Your Honor. And, you
12 know, they can speak for themselves,
13 with the Court's permission.

14 But one thing we would --
15 contingent on that proposition, though,
16 is that during the same the time, the
17 title to the property be -- be
18 completely cleared. We haven't had a
19 hearing -- we haven't had a hearing on
20 that issue in this matter.

21 You know, everything has just been
22 by what had been stated in the
23 complaint, but there haven't been any
24 witnesses, there haven't been any
25 cross-examinations --

1 THE COURT: Here's -- here's what
2 I know, Mr. Houston, there's a ready
3 and willing buyer to take the property
4 as it is for significantly above fair
5 market value. I would like --

6 MR. HOUSTON: We don't have the
7 contract, Your Honor.

8 THE COURT: I would like -- well,
9 will you agree to share the contract?

10 MR. WILLIAMS: Oh, absolutely.
11 He's never asked for a copy of it. But
12 absolutely, we're willing to share
13 that.

14 THE COURT: Okay. All right.
15 Well, there you go. I mean, that's --
16 I mean I've heard about it over and
17 over again. I've never heard there was
18 a question about it, so...

19 Otherwise, I would've said,
20 "Please, share it with Mr. Houston."
21 This is the first I've heard that you
22 didn't have it, but it sounds like it
23 would be shared.

24 MR. WILLIAMS: Mr. Houston -- may
25 I take a moment and try and address

1 some of the points Mr. Houston's
2 raised?

3 THE COURT: Go ahead. Please.

4 MR. WILLIAMS: The quiet title
5 issues, Mr. Houston either isn't aware
6 of or wants to ignore the Court's May
7 21, 2021 order that quieted title in
8 all the owners and determined their
9 percentage interests. Now, Your Honor,
10 you yourself, in prior hearings, have
11 pointed out that, well, if you had to
12 stop a partition action or a quiet
13 title action every time there is a
14 death, you'd never get finished with
15 these things.

16 And I think you, Your Honor, have
17 agreed that you have the authority,
18 when push comes to shove, to go ahead
19 and sign the deed to convey title to
20 the property, to who the buyer is, and
21 we can hold any funds that are for the
22 open estates in escrow pending the
23 resolution of those estates. There is
24 no issue with title to the property.

25 And I also would point out that

1 Mr. Houston's aware of these open
2 estates, yet he has done nothing
3 whatsoever to try and open those
4 estates and probate them, he's only
5 used them as a cudgel to try and get
6 more time out of this.

7 With respect to his issue about
8 the 60 days, the October 20th order
9 actually gives the defendants 63 days
10 in order to post their money. So it's
11 not much more, but it is more than 60
12 days.

13 And the new contract that
14 Mr. Houston talked about, it's not a
15 firm contract. There is a due
16 diligence period of 45 days within
17 which the purchaser can walk away and
18 take all their deposit back. So it's
19 not a sure thing. We're ready to move
20 forward with the deal.

21 And, Tom, I'd ask you to add
22 anything else here.

23 MR. TAYLOR: Your Honor, if I may,
24 I want to make sure you understood the
25 last part of what Chet just said,

1 because when he says "The new deal,"
2 he's not talking about the extension,
3 the Sixth Amendment that we just had,
4 he's talking about the proposal that
5 Mr. Houston has made in his paperwork
6 seeking the extension.

7 And it's critically important that
8 the Court understand that while
9 Mr. Houston and the defendants have
10 been repeatedly invited by the Court to
11 make a substantive offer to us,
12 instead, they have chosen to simply put
13 in the paperwork here that we'd like
14 45 days, but we have the right to walk
15 away from it at any time.

16 And if the Court was to grant
17 that, then all you'd be doing, Your
18 Honor, would be adding 45 days on to
19 the 60 that has originally run when
20 there was no effort by any of the
21 defendants to pay into the court, their
22 petitioning money.

23 I remind the Court, Judge, that if
24 even one of them had paid their portion
25 in in a timely manner, that would've

1 automatically given them another 20-day
2 extension in which do this.

3 The real problem here, Your Honor,
4 is that Mr. Sis -- excuse me --
5 Mr. Houston continues to phrase the
6 statutes that are at issue as if this
7 was a -- basically, a competition to
8 find the best developer to pay. That's
9 not what this is, Your Honor. The --
10 the vast majority of the landowners
11 have, in good faith, worked for several
12 years to get this Rotunda contract in
13 effect.

14 We then did exactly what we should
15 have done, we brought the correct suit.
16 The defendants were joined, and
17 everybody understood the ramifications
18 of the Pinckney Act and it gave them
19 the opportunity to buy into it if they
20 wanted to control the property.

21 But, Judge, this is not that a --
22 a statute that is there for the
23 purposes that Mr. Houston is asserting.
24 They don't have the right to stop the
25 people who have worked so hard and who

1 have a good deal in hand simply by
2 repeatedly arguing that they've got to
3 have clear title, because that's not in
4 the books here.

5 This Court has the ability to
6 transfer the deed, as the Court has
7 discussed beforehand. Our purchasers
8 are ready to move forward with the deed
9 quality that the Court normally and
10 routinely issues. And the defendants
11 have had their time. They were well
12 advised of it. There was certainly no
13 orders slipped into the Court, and I
14 take offense at the wording of that
15 earlier.

16 The Court had this and had a long
17 conference before the Court signed the
18 October 20th order, which was reviewed
19 and approved by all counsel of record,
20 including Mr. Houston.

21 MR. HOUSTON: Your Honor, if I may
22 respond to that.

23 Number one, as I said before, we
24 have not been provided with this
25 alleged contract with Rotunda. Now, we

1 don't know if there's any language in
2 that contract that they agreed to buy
3 the property as is, which leaves the
4 door open that they can easily back out
5 on the same basis that we're setting
6 before the Court now as a problem, and
7 that is the horse has been -- the cart
8 has been before the horse.

9 The 60-day period shouldn't have
10 started until Court was able to declare
11 that there is fee simple title. To
12 require the defendants to purchase the
13 property when the proceeding has not
14 reached (indiscernible) yet where the
15 Court can issue an order certifying fee
16 simple title to the property is
17 untenable. And it's commercially
18 unfeasible, which raises to the level,
19 as I said before, of unconscionability.

20 You know, they're making
21 representations, but we haven't seen
22 the Rotunda contract, and I -- I doubt
23 if there is any developer who's going
24 to sign a contract saying we will buy
25 the property as is for several million

1 dollars.

2 THE COURT: Well, my understanding
3 is --

4 MR. HOUSTON: They want you to
5 believe --

6 (Unreportable cross-talk.)

7 MR. HOUSTON: -- have ever
8 produced the contract.

9 THE COURT: Mr. Houston, you
10 haven't asked for the contract. But I
11 understand that you're going to -- you
12 may already have it. Mr. Williams is
13 sending it to you. But the phrasing of
14 that contract has never been an issue
15 before right now.

16 MR. HOUSTON: Well, he's giving me
17 the representation now that they're
18 willing to buy it without fee simple
19 title.

20 THE COURT: Well --

21 MR. HOUSTON: To get it in the
22 record.

23 MR. TAYLOR: Your Honor --

24 MR. WILLIAMS: Look. Hold. Hold.
25 Look. Look.

1 Your Honor, hold on. I never made
2 any sort of representation that Rotunda
3 was willing to buy it without fee
4 simple title. What I said was that you
5 have the authority to execute and
6 deliver a deed which will deliver a fee
7 simple title.

8 THE COURT: And that would be true
9 for any buyer, quite frankly, and
10 always has been. That's not new.
11 We've spoken about that. That would've
12 been any buyer.

13 MR. HOUSTON: All right. And,
14 Your Honor, what we're doing, we're
15 asking the Court to make a ruling that
16 was for open estates, that the parties
17 still have fee simple title to the
18 property vested in the people who the
19 plaintiff have listed in the actions as
20 the heirs.

21 (Unreportable cross-talk.)

22 THE COURT: -- right. I mean, we
23 had a whole -- in fact, I think that's
24 what Mr. Williams and Mr. Taylor were
25 just talking about, is -- and we

1 discussed that back in October. The
2 Court has the authority to issue an
3 order and the money would be escrowed
4 for those people. That's why we
5 discussed, at length, the fact that
6 people die during these actions
7 regularly.

8 And I've got one going on -- I
9 have several that have over 150 people.
10 And, of course, just the law of
11 averages, someone is going to die and
12 you can't stop the whole thing and wait
13 for them to do probate. And so that --

14 MR. HOUSTON: Your Honor, that
15 order didn't -- that order didn't --

16 THE COURT: I --

17 MR. HOUSTON: -- protect the
18 defendants, that the Court would
19 protect them if they tendered the money
20 and that the Court would oversee the
21 distribution to any defendants who --
22 who -- who made a merge out of these
23 probate proceedings. That protection
24 wasn't afforded to my clients.

25 THE COURT: No. But it's the same

1 for everyone.

2 MR. HOUSTON: It wasn't -- it
3 wasn't an order to that effect. The
4 only order to the effect was, you have
5 60 days to pay the money. But there
6 was no reservations or other further
7 protective clauses in the order to
8 protect my clients against unknown
9 claims.

10 MR. TAYLOR: Your Honor,
11 Mr. Houston reviewed and approved that
12 order before it was signed, and if he
13 wanted those sorts of matters in there,
14 then he could've addressed them at that
15 point.

16 THE COURT: Yeah. I mean, we've
17 been around and around about this, and
18 I get it, Mr. Houston, you're --

19 MR. HOUSTON: We did, yes. But
20 we're also very perplexed about the
21 Court issuing a master's deed. And the
22 question was whether either a master's
23 deed would convey fee simple property.
24 So we did have a lengthy discussion,
25 but some of these items were still left

1 up in the air unresolved.

2 MR. WILLIAMS: Your Honor, if I
3 may.

4 Not the last hearing that's --
5 when was at the -- the Savannah hearing
6 board, the hearing before that, I asked
7 Charles, Mr. Houston, if he would like
8 me to contact one of my title insurance
9 carriers to see if they would insure
10 title based on a fee from you, from the
11 Court.

12 I met with Mr. Houston the next
13 day and I made the offer again, and he
14 said, "No. Don't do that right now."
15 So I haven't done that.

16 MR. HOUSTON: I'll say, Your
17 Honor, I don't recall saying, "Don't do
18 that."

19 THE COURT: Months ago, didn't we
20 have Mr. Johnson along who was
21 available to write title insurance
22 under the circumstance for anybody --

23 (Unreportable cross-talk.)

24 MR. HOUSTON: -- Your Honor.

25 THE COURT: We did.

1 MR. HOUSTON: He had -- he asked
2 them to order at that particular time
3 that he appeared, and he --

4 (Unreportable multiple
5 cross-talk.)

6 MR. HOUSTON: He didn't
7 affirmatively -- affirmatively respond
8 to your question on that issue of can
9 title insurance be procured.

10 THE COURT: Actually, I thought
11 the two of you were going to get
12 together and he was -- because my
13 understanding was he wanted to know a
14 little bit more about it, but he
15 thought he'd have no problem writing
16 title insurance under those
17 circumstances. But, I mean, that was
18 six months ago. You know, that was a
19 long time ago. And this thing has just
20 gone on and on and on.

21 No. I mean, I can't put at risk,
22 98 percent of the owners of this
23 property for the 2 percent. And, under
24 these circumstances, under the totality
25 of the circumstances, the 2 percent are

1 going to be compensated quickly, and
2 more. When you're being -- when this
3 much money is out there, having it
4 closed sooner rather than later -- and
5 this one is certainly further along the
6 line than the new one, Mr. Houston,
7 that you're pushing, is worth
8 something. Is it --

9 MR. HOUSTON: Your Honor, I don't
10 know how you can reach that conclusion.
11 I'd say we're further -- we're further
12 around because my clients are ready to
13 put the money in the pot right now --

14 THE COURT: They should've done it
15 before --

16 (Unreportable cross-talk.)

17 THE COURT: They should have done
18 it by the deadline.

19 MR. HOUSTON: Yeah, but by the
20 deadline, who -- who is going to put in
21 \$10 million when they can't get good
22 title to the property and they're
23 not --

24 (Unreportable cross-talk by
25 multiple speakers.)

1 MADAM COURT REPORTER: Hold on.
2 You are all talking over each other and
3 I would respectfully ask you not to do
4 that. This is your record.

5 THE COURT: And I would
6 respectfully ask the same. Thank you,
7 Ms. McCracken, I appreciate that.

8 So we have an October order,
9 nobody's moved to reconsider that.
10 It's an unappealed order and it set
11 forth this timeline, and now I'm being
12 asked to change the timeline on a
13 significant deal that's been worked on
14 for years that is the preference of
15 98 percent of the ownership.

16 I'm just not going to do it. I'm
17 not going to change it. You know,
18 we've been -- there have been ample
19 opportunities, Mr. Houston. And I know
20 you've tried hard. I'll give you
21 points for that. But this -- I'm not
22 going to modify my previous order
23 and --

24 MR. HOUSTON: But, Your Honor, was
25 that -- was that a final order or that

1 was just an interim order? Because a
2 final order hasn't been issued in this
3 case.

4 THE COURT: That was an order on
5 posting the money and proceeding with
6 the sale, with the contract. And
7 that's what is going to happen, you
8 know? And -- and, Mr. Houston, you
9 know what, if that deal falls
10 completely apart, if that never
11 happens, you're still there. And maybe
12 -- maybe it won't happen. I don't
13 know. But nothing's closed until it's
14 closed, anybody that's ever done real
15 estate knows that.

16 But right now, let's follow that
17 path.

18 MR. HOUSTON: But will you
19 consider an interim -- another interim
20 order where my clients would post bond
21 for an extension?

22 THE COURT: I don't -- I'm not
23 going to extend anything. If they want
24 to post bond and be a back-up contract
25 or something, I'm happy to hear

1 whatever proposal you've got.

2 MR. HOUSTON: But, Your Honor, I
3 think, again, for the record, that's
4 inequitable, that we would have to take
5 the back-up position because the
6 plaintiffs had to move this case along
7 far enough where the Court can certify
8 title.

9 THE COURT: Just --

10 (Unreportable cross-talk.)

11 MR. HOUSTON: -- where --

12 THE COURT: Mr. Houston --

13 MR. HOUSTON: -- where the other
14 parties still have protected claims.

15 THE COURT: Mr. Houston, you had
16 the option to be in first position.
17 You waived that option when you missed
18 the deadline. So now you're in second
19 position, if you want to be. But you
20 had the option to be in first position.

21 MR. HOUSTON: Yeah, but that
22 option -- Your Honor, what I'm saying,
23 though, that option was an empty one.
24 I mean, to expect somebody to put in
25 several million dollars and they can't

1 get a fee simple title to the property,
2 that's throwing money to the wind, and
3 that's economically not feasible.

4 THE COURT: Well, sadly, that was
5 -- I don't know if I would characterize
6 it the same way you just did, but the
7 terms and the deadlines and the dates
8 were in the October order, which was
9 unappealed and no one asked to
10 reconsider, and was reviewed by you and
11 your client, so we're stuck with that.

12 And the opportunity to be in first
13 position was waived by failure to post
14 the appropriate amount of money at the
15 appropriate time. You know, that's the
16 way it is. You know, I'd love to make
17 everybody happy, but I can't do that.

18 And so what we're going to do is
19 try to protect the rights of all of the
20 heirs, the 98 percent and the 2 percent
21 and get them as much money as possible
22 and as quickly as possible. And it
23 seems like that's the deal that we've
24 already discussed that's been going on
25 for two years. So I don't know what

1 else we need to do. I think that
2 resolves the issue.

3 To the extent that there are
4 motions to reconsider out there, I'm
5 going to deny them. I think I saw,
6 scrolling through here, there were two
7 of them filed, but -- and I'm going to
8 deny those motions. And I assume the
9 buyer -- the primary buyer will proceed
10 ahead and y'all let me know what the
11 schedule is.

12 MR. TAYLOR: Your Honor, we will.
13 And, of course, we are always open to
14 Mr. Houston if his other people want to
15 come in and talk to the 98 percent
16 petitioning people, we can do that
17 directly. But we would appreciate and
18 do appreciate the Court's assistance
19 today.

20 THE COURT: Yeah. Mr. Houston,
21 that's always a possibility, if y'all
22 want to get together and see if y'all
23 can resolve this in some form or
24 fashion.

25 MR. HOUSTON: Well, Your Honor,

1 like I said at the very beginning, we
2 raised the price so that the -- the --
3 the plaintiffs clients would receive
4 the higher amount. We added \$500,000,
5 from the 9.1 to the 9.75.

6 MR. TAYLOR: Your Honor, if I may?

7 MR. BRANNEN: Your Honor, can I
8 speak, please?

9 THE COURT: Tell me who you are,
10 Mr. Brannen.

11 MR. BRANNEN: Yes, sir. I
12 represent Singerman Real Estate, who is
13 the financial partner that the heirs
14 are bringing in, and my client is the
15 one that's putting up the \$900,000,
16 whatever the purchase price is to
17 purchase the property.

18 We were brought in. I know you
19 guys have been working on this a long
20 time. I'm a real estate guy, I'm not a
21 litigation guy, but I think the intent
22 of the statute is to protect the heirs,
23 and the heirs can buy the property.

24 You know, I think that's a strong
25 argument to counteract the fact that

1 there's a contract to buy that doesn't
2 involve any of the heirs. And that's
3 what we're trying -- we were asked to
4 put up the \$900,000, and in looking at
5 the title, we thought we couldn't do
6 that without being able to confirm that
7 the title is good, because even the
8 Court can't issue a master's deed, the
9 Court has the jurisdiction of the
10 required (undiscernible) core pieces
11 case.

12 The estates that are out there
13 that a master's deed might not -- might
14 not give the title, so we needed time
15 to do that. We offered to do that with
16 45 days, we can put up the 900,000
17 immediately. But the other funding
18 remains to be determined.

19 THE COURT: Okay. Thank you for
20 that. And I had read Mr. Houston's
21 filings, which included what you just
22 said. And, you know, I wish y'all had
23 been around a year ago or a year and a
24 half ago and then perhaps you and Mr.
25 Taylor and Mr. Williams could have sat

1 down and flipped a coin and figured out
2 how to do it.

3 But here we are at the end, and I
4 understand the reasoning behind
5 protecting the heirs. I understand the
6 Pinckney Act. I also understand that
7 I've got 98 percent of the heirs that
8 need protecting as well as the
9 2 percent. And we -- I've done
10 everything I can think of while
11 protecting 98 percent, not blowing
12 their deal, to try to let the 2 percent
13 move ahead. And I can't think of
14 anything else without doing significant
15 risk to the 98 percent at this point in
16 the game.

17 So I appreciate your input, and
18 thank you.

19 MR. WILLIAMS: Your Honor, if I
20 may assist the record, I have e-mailed
21 the contract with -- through the Sixth
22 Amendment to Mr. Houston. If he
23 reviews it, he'll see that Rotunda has
24 wait -- their due diligence period has
25 run, they have acknowledged that, and

1 they have no bounds, that I'm aware of,
2 to be able to cancel that contract.

3 THE COURT: Okay. Well, even more
4 so than -- you know, we probably need
5 to proceed with this and hope it's
6 beneficial for all. I mean, the fact
7 is, we tried. We bring this up and
8 extended it, extended it, extended it.

9 But at this point, I'm very
10 worried about doing harm based on
11 this -- this is a deal that's been out
12 there for while, and who knows what
13 this economy will do.

14 And so to the extent I have
15 motions to reconsider to modify, I'll
16 deny it because I have no jurisdiction
17 in parts of them. Otherwise, I'll deny
18 it because I don't think it's equitable
19 to continue to move this down the road.

20 MR. TAYLOR: Will you do your own
21 form or do you want us to prepare
22 something?

23 THE COURT: If y'all want to
24 prepare something short and not crazy
25 and long and -- not that it would be

1 crazy, but something that's fairly easy
2 to understand, that would be great.
3 Probably better than a form in this
4 situation. So thank you, I'd
5 appreciate that.

6 MR. TAYLOR: Judge, I will do it.
7 I'll circulate it to Mr. Houston and
8 have it to you very shortly.

9 THE COURT: Okay. And,
10 Mr. Houston, I think -- Did Mr. Houston
11 leave? I see a window there. But if
12 he's still there, Mr. Houston, why
13 don't you get together with the
14 plaintiffs and who knows what
15 opportunities are still available to
16 work out. I want everybody to get
17 along.

18 Mr. Houston, are you still there,
19 sir?

20 MR. HOUSTON: Yes, I am.

21 THE COURT: Okay. Good. I was
22 just saying, why don't you, if you get
23 an opportunity, perhaps get with
24 Mr. Williams and Mr. Taylor, see what
25 y'all can sort out. All right?

1 MR. HOUSTON: What I understand,
2 Your Honor, then there'll be no further
3 proceedings in this particular action,
4 there'll be no further testimony, no
5 hearings, nothing to resolve that quiet
6 title issue?

7 THE COURT: We usually have a
8 final order once we have the dollars.
9 The net dollars, of course, will be
10 determined by the HUD statement, to
11 allocate that. And ordinarily, we will
12 have some sort of an opportunity for
13 the signature of deed.

14 So there may very well be some
15 administrative type orders that -- to
16 try to divide the money up according to
17 the percentages and all that. And as
18 you, of course, pointed out, we've got
19 a couple of people who have just
20 recently passed away. That money, of
21 course, will probably need to be paid
22 into the court in their names and
23 that'll have to be sorted out.

24 But I think those might be the
25 only -- I'm happy to hear -- to be

1 corrected if I'm wrong or if anyone can
2 think of anything else that needs to be
3 done.

4 MR. TAYLOR: Judge, there is an
5 order in the file quieting title 100
6 percent already.

7 THE COURT: No, I was talking
8 about further -- Mr. Houston asked
9 about any further orders or hearings.

10 (Unreportable cross-talk by
11 multiple speakers.)

12 MR. TAYLOR: -- reference to
13 quieting title.

14 MR. HOUSTON: Your Honor, that
15 order just set forth the names and
16 identifies of the heirs, it did not
17 quiet the title in them.

18 THE COURT: Okay.

19 MR. HOUSTON: And then -- again,
20 that has reopened since then.

21 THE COURT: Okay. Well --

22 MR. HOUSTON: So we are right back
23 where we were before they started the
24 lawsuit. And I think that that interim
25 order, I don't know if that was an

1 appealable order.

2 THE COURT: I don't know. It's a
3 heck of a file here.

4 MR. HOUSTON: You'd have to find a
5 59(E) after this order.

6 THE COURT: All right. Well,
7 thank y'all very much. And, you know,
8 we will need to have a further order
9 on -- once we know the exact dollars
10 and that sort of thing, I know we'll
11 have to have that sort of an order.

12 As to the balance of it, I've got
13 no answer to your -- to your question
14 at this time, Mr. Houston, but I
15 appreciate it.

16 MR. HOUSTON: Well, will you have
17 an order in response to my motion?

18 THE COURT: It'll be essentially
19 -- I think you had maybe stepped away,
20 but Mr. Taylor volunteered to do a --
21 essentially a Form 4, but not on a Form
22 4 sheet, just a simple order.

23 MR. TAYLOR: And I will circulate
24 it, of course, Mr. Houston, to you.

25 THE COURT: Okay.

1 MR. HOUSTON: Because we're --
2 we're considering a writ of supersedeas
3 so that we can have this reviewed, but
4 not an appeal, which would take much
5 longer.

6 THE COURT: Okay. Well -- all
7 right. Well, thank y'all very much and
8 have a great day and a wonderful
9 weekend. Bye-bye.

10 (Whereupon, the Hearing was
11 concluded at 3:46 p.m.)
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C E R T I F I C A T E

STATE OF SOUTH CAROLINA:

DORCHESTER COUNTY:

I, Naomi McCracken, Court Reporter and Notary Public in and for the above county and state, do hereby certify that the foregoing testimony was taken before me at the time and place herein-before set forth; that the witness was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth, that thereupon the foregoing testimony was later reduced by computer transcription; and I certify that this is a true and correct transcript of my stenographic notes so taken.

I further certify that I am not of counsel to either party, nor interested in the event of this cause.

Naomi McCracken

Court Reporter

Notary Public

Beaufort, South Carolina

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

GEORGIA HARRISON, et al,
Plaintiffs,

vs.

CIVIL ACTION NUMBER
2020-CP-07-02301

STEPHANIE LORRAINE KIRKLAND et al,
Defendants.

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The video conference hearing in the
above-entitled cause, taken pursuant to Notice
and agreement, before the Honorable Judge Dukes
and Naomi McCracken, Court Reporter and Notary
Public, on the 11th day of February 2022,
commencing at or about the hour of 1:35 p.m.

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(NO EXHIBITS

1 THE COURT: Good afternoon. We're
2 here on 2020-CP-07-02301. And we're
3 here today on the 11th of February on a
4 defendant's motion for reconsideration
5 filed January 31st, 2022. And
6 Mr. Houston is here representing those
7 movants.

8 And, Mr. Houston, I am happy to
9 hear from you, sir. Try to speak more
10 towards wherever the microphone is
11 because I don't know about everybody
12 else, but I was having a little bit of
13 difficulty hearing a second ago.

14 I'm happy to hear from you, sir.

15 MR. HOUSTON: Can everyone hear me
16 fine? Very well.

17 THE COURT: Better.

18 MR. HOUSTON: As we begin this
19 hearing, what I want to (indiscernible)
20 on is that we have requested this
21 hearing to obtain in a more --

22 (Disturbance on videoconference)

23 MADAM COURT REPORTER: I'm sorry.
24 I cannot hear.

25 THE COURT: Yeah. Could you hold?

1 Whoever's got that phone, if y'all
2 would -- everybody just take a second,
3 perhaps, to silence the phones.

4 And, also, if you could mute your
5 own microphone. You could always
6 unmute it if you need to be heard or to
7 object or speak or anything like that.
8 But that's the oval button on most
9 people's screens on the bottom on the
10 left. If you hit that, then it doesn't
11 make any noise for us, so...

12 So, anyway, I apologize for the
13 interruption there, Mr. Houston.

14 (Telephone disturbance.)

15 THE COURT: Something's going on.
16 I don't know who that is, but if y'all
17 could mute that, that would be great.

18 Ordinarily, I get a blue box
19 around where the noise is coming from,
20 but for some reason today I'm not
21 getting it so I can't tell where that's
22 coming from.

23 All right. Hopefully we got that
24 resolved.

25 And, Mr. Houston, if you could

1 speak up just a little bit because I
2 think we still have a bunch of people
3 unmuted and it's causing a little bit
4 of a problem.

5 So my apologies for the
6 interruption. Go ahead, please, sir.

7 MR. HOUSTON: What we are
8 requesting, Your Honor, is the Court's
9 response to the issues that have been
10 raised. There have been multiple
11 issues and the last order of the Court
12 seemed like an umbrella denial so that
13 everyone is left, "Well, we know that
14 most of it was denied, but why?" And,
15 you know, was it the judgment on this
16 issue or the judgment on this issue.
17 What was the Judge's big issue on this
18 particular issue? We would like to
19 know.

20 And so, therefore, this is the
21 underlying basis for the motion for
22 reconsideration. It's just to make a
23 ruling on these particular issues
24 rather than just a general denial of
25 the --

1 THE COURT: Uh-oh. We lost
2 Charles.

3 MR. TAYLOR: It looks like it,
4 Your Honor.

5 THE COURT: This is a problem.
6 Okay. We'll give him a minute to come
7 back. Hopefully -- sometimes you lose
8 the whole thing and you don't realize
9 you're gone.

10 So, Charles, if you can hear us,
11 you're gone. You may have to log back
12 in.

13 MS. JACKSON: You may want to stop
14 the video. Okay. I got it.

15 Your Honor, I'll also attempt to
16 send him a text message in case he
17 doesn't know that we lost him.

18 THE COURT: Great. Thank you so
19 much.

20 MR. WILLIAMS: Your Honor, I'll
21 try to give him a call, too.

22 THE COURT: Ms. Jackson, I see
23 you're trying to talk but you're muted.

24 MS. JACKSON: Sorry. Yes. Your
25 Honor, I was just suggesting, from a

1 technical standpoint, once he's back
2 on, perhaps giving him permission to
3 reduce his video to just audio, that
4 will expand his bandwidth if that's the
5 issue.

6 MR. WILLIAMS: Your Honor, I'm on
7 the line with his mobile phone and I
8 can hear him talking as if he's still
9 on, but he can't -- he apparently is
10 not hearing me.

11 THE COURT: Oh. So he thinks he's
12 still on and arguing?

13 MR. WILLIAMS: It sounds that way,
14 yes.

15 THE COURT: Uh-oh. Hopefully
16 he'll figure it out in a second.

17 But wow. I like your thinking,
18 though, on the bandwidth thing. I
19 didn't know that was the case. So,
20 yes, we can, after getting him back,
21 we'll just do audio only and --

22 MS. JACKSON: Right.

23 THE COURT: I didn't realize he
24 was just using his phone. I didn't
25 look at the background of where he was.

1 He in the car or something?

2 MS. JACKSON: So the bandwidth is
3 compromised whether he dials in on his
4 computer or on the cell phone. He
5 still runs the same risk if the
6 connection is already spotty.

7 THE COURT: Okay. Well, I defer
8 to your superior computer knowledge
9 because I know nothing about this
10 except which of these buttons to push.
11 So thank you. And that -- whatever
12 your request is, it's granted, and
13 we'll try that way, if we can get word
14 to him to give it a shot.

15 MS. JACKSON: I'll explain it to
16 him. He just needs to reduce at the
17 bottom to the stop the video piece once
18 he's back on. So I'll try to give him
19 those instructions.

20 THE COURT: All right. Perfect.
21 Thank you. Thank you. Thank you.

22 MADAM COURT REPORTER: If you
23 don't mind, Judge, if we could have him
24 start right at the very beginning
25 again.

1 THE COURT: I think that's wise.

2 Well, if this just falls apart, I
3 mean, I've got some time Monday.

4 MS. JACKSON: He may have to look
5 at Monday. I will certainly let him
6 know. And for anyone else that runs
7 into this technical issue, if you'd
8 just stop the video piece of it, you
9 can usually continue with audio.

10 THE COURT: Okay. That's good to
11 know.

12 Yeah. I'm lucky because the
13 county has, like, hyper-fast whatever
14 and I'm plugged directly into it, so...

15 MR. TAYLOR: It seems like when he
16 stops talking, he'll realize that no
17 one else is engaged.

18 Can you see if still talking?

19 MR. WILLIAMS: I can hear him.
20 He's still talking.

21 THE COURT: All right.

22 MR. TAYLOR: Your Honor, may I ask
23 a quick question of Ms. Jackson?

24 MS. JACKSON: Yes.

25 MR. TAYLOR: You are a lawyer, who

1 do you represent in the matter?

2 MS. JACKSON: Yes. So we
3 represent the defendant group as to the
4 development piece of it. So we're
5 development counsel, that's why we've
6 not entered an appearance, but that's
7 our piece of the puzzle.

8 MR. TAYLOR: When you're talk
9 about the defendant group, you mean the
10 defendants who are represented by
11 Mr. Houston?

12 MS. JACKSON: Exactly, yes. We
13 have common clients.

14 MR. TAYLOR: Thank you, ma'am.

15 MS. JACKSON: Yes.

16 THE COURT: Let's start looking at
17 the calendar here real quick just in
18 case.

19 Actually, Tuesday or Wednesday --
20 Tuesday afternoon or tea time Wednesday
21 looks better for me than Monday.

22 MS. JACKSON: Your Honor, I'm
23 happy to follow up with Charles,
24 continue trying, that way we don't take
25 Court's time to continue trying to

1 reach him, let him know about the
2 technical issues and that we need to
3 get back on the calendar for Tuesday or
4 Wednesday.

5 If that's convenient for the
6 Court, I can continue, that way we
7 don't monopolize the Court's time
8 waiting.

9 THE COURT: Yeah. I just hate --
10 I mean, I'm okay because I had this
11 scheduled. I guess y'all did, too.
12 But I just know that people having to
13 bill their clients by the hour. They'd
14 rather bill one time than one and a
15 half times, so...

16 MS. JACKSON: Right.

17 THE COURT: You know, I mean, it's
18 1:46. Let's give it another four or
19 five minutes and see --

20 MS. JACKSON: Sure.

21 THE COURT: -- if he comes on.
22 And, if not, then -- well, let's start
23 talking times real quick.

24 So Tuesday afternoon, I've got
25 free, 2:00 to 5:00.

1 MS. JACKSON: Okay.

2 THE COURT: How do y'all look if
3 we were to just -- same everything?
4 Obviously, we'd send back out a new
5 invite because WebEx makes us, but 2:00
6 to 5:00 --

7 MR. WILLIAMS: Your Honor, there's
8 a town council meeting that starts at
9 4:00 that I'd like to either watch or
10 attend.

11 MR. TAYLOR: Your Honor? Judge,
12 excuse me. You may remember, you had a
13 case schedule to try that had myself
14 involved and it was going to be a
15 three-day trial with Mr. Lizzi from
16 Charleston which you continued about
17 two weeks ago. And we put in some
18 depositions for those two days and they
19 are going to very long, but they really
20 need to stay on the calendar for those
21 two days, if they can.

22 THE COURT: That's why I have the
23 time. Okay. All right. Well, that
24 makes sense. I've already filled up
25 half of it. Let's see. All right.

1 Well, let me get back on the calendar
2 then.

3 MS. JACKSON: So, then, Mr.
4 Taylor, it sounds like we need look at
5 Thursday; is that right? Tuesday and
6 Wednesday you're in depos?

7 MR. TAYLOR: Those depos are
8 actually Tuesday through Thursday.
9 Monday or Friday, either one of those
10 days would be good, Judge, anytime.

11 THE COURT: I can do -- I've got
12 something that's 1:30 to 5:00 and it
13 going to take every minute of that.
14 I've also got a rule to show cause at
15 10:00 that looks like it's a debtors
16 exam style so it'll probably take an
17 hour, we'll call it. So I've got from
18 11:00 to 1:30 if I bring a candy bar to
19 eat. We can certainly do that. We
20 could do 11:00 to 1:30 on Monday. We
21 know that Tuesday, Wednesday, Thursday
22 are out. Friday -- Friday's not good.

23 And then skipping to the next
24 week, the 21st is a holiday. I have
25 the entire afternoon of the 22nd, which

1 is, of course, a week from this
2 Tuesday.

3 How do y'all look for that.

4 MR. HOUSTON: Hello?

5 (Unreportable simultaneous
6 speakers.)

7 MR. WILLIAMS: Nobody has heard
8 what you had to say, Judge.

9 THE COURT: Oh. You lost me, too?

10 MR. WILLIAMS: You're no longer on
11 the call.

12 THE COURT: I'm no longer on the
13 call?

14 MR. WILLIAMS: I was talking to
15 Charles.

16 THE COURT: My goodness. This
17 whole thing is just falling apart.

18 MR. TAYLOR: Your Honor, I'm good
19 for either of those times that you just
20 said.

21 THE COURT: Well, let's see if we
22 can get Charles back real quick. Maybe
23 we can salvage it.

24 If not, how does everybody look
25 for the afternoon of the 22nd?

1 MS. JACKSON: It's wide open for
2 me.

3 MR. WILLIAMS: Me, too, Judge.
4 Judge, I was just asking about February
5 22nd, what -- I just talked to Charles
6 and I told him what to do. I told him
7 to cut off the call to WebEx and rejoin
8 it.

9 THE COURT: All right. Then we'll
10 then we'll try with the stop video
11 engaged.

12 You know, two years ago when all
13 this started, I kept meaning to get a
14 headset and I've never gotten one.
15 I've got to get one of these days. I
16 heard that helps a lot.

17 MR. WILLIAMS: I use it all the
18 time on the telephone. It really does
19 help. I can go walk outside in the
20 parking lot talking with this one.

21 THE COURT: That's good.

22 MR. WILLIAMS: I can't hear
23 Charles anymore. I think I'm still on
24 with him. My call is still active on
25 his mobile phone, but I can't hear

1 anything.

2 THE COURT: Well, that's bad, if
3 it's still active.

4 MS. JACKSON: Right.

5 MR. WILLIAMS: He was -- we was on
6 the WebEx on his computer so that
7 doesn't -- I did it on the mobile
8 phone. It doesn't do anything there.

9 THE COURT: Oh, okay. Okay.
10 Good. We'll give it another minute or
11 so and then --

12 MR. WILLIAMS: Give me a moment,
13 let me call him back.

14 THE COURT: Okay.
15 Something just happened to the
16 boxes. Oh, wait. Charles is back.

17 MS. JACKSON: Charles, can you
18 hear us?

19 MR. HOUSTON: Yes, I can.

20 MS. JACKSON: You should stop
21 video if you start having problems with
22 capacity.

23 MR. HOUSTON: Say that again?

24 MS. JACKSON: Stop the video.

25 MR. WILLIAMS: Yes, Charles. Our

1 recommendation is that if look down at
2 the bottom -- there you go. You still
3 show up there.

4 THE COURT: All right. Charles --

5 MR. HOUSTON: I don't see myself,
6 but that's doesn't -- that's over here.

7 THE COURT: Right. We think your
8 internet, I guess, is too slow or
9 something, so...

10 All right. Since we can't see
11 your mouth move, it actually makes it,
12 at least for me, a little bit more
13 difficult to hear. So do the best you
14 can as far as getting close to the
15 microphone.

16 Now, we lost you pretty much at
17 the beginning, so why don't we just
18 start over with whatever --

19 MR. HOUSTON: If at any point I'm
20 not heard, would you just do this, Your
21 Honor, and I'll know you are having
22 difficulties?

23 THE COURT: Well, I can't see what
24 you're doing, but you mean something
25 like this, so --

1 MR. HOUSTON: If you'll just hold
2 up your hand, that indicates to me that
3 I'm not being heard.

4 THE COURT: All right. I can
5 certainly do that.

6 MR. HOUSTON: I'll start from the
7 beginning.

8 THE COURT: All right.

9 MR. HOUSTON: What we're saying,
10 Your Honor, is -- what I quickly said
11 was we are requesting the Court to
12 address each issue that we have
13 presented in this proceeding. The only
14 thing that we have received from the
15 Court is a blanket denial of all of the
16 motions and all of the issues within
17 the motions. So, therefore, we are
18 left without knowing why.

19 What is the Court saying what is
20 the reason, et cetera. Did the Court
21 consider this matter at all? So this
22 is the underground -- underrun reason
23 we have requested this motion for
24 reconsideration.

25 There are also other areas of law

1 that we want to bring up in this motion
2 to be addressed by the Court, also.
3 The remaining points pertaining to
4 these issues is one, the procedural
5 issues.

6 One, that there has not been an
7 evidentiary hearing in this matter
8 where sworn testimony has been taken of
9 witnesses. The only thing we've had is
10 just a series of orders, basically
11 consent orders, where the attorneys
12 have stipulated to certain findings.
13 This is not proper because I don't know
14 the genealogy of the family and I
15 cannot either affirm or deny that this
16 is true.

17 What the law requires is to have
18 sworn testimony where members of the
19 family come in and they testify under
20 oath that this is our genealogy.
21 Without that, the Court doesn't have
22 any evidentiary basis upon which to
23 make a ruling as to the chain of title,
24 and also who is within the chain or
25 comes under the umbrella of the chain.

1 The other point we're making is
2 that it was unjust for the defendants
3 to be required to pay several million
4 dollars within 60 days, and is without
5 the benefit of receiving a fee simple
6 title to the property. It's our
7 position that any transaction for the
8 sale of the property implies that the
9 seller will have fee simple title,
10 marketable title to the property. In
11 this instance, they don't have it and
12 they knew they didn't have it.

13 And the other thing was, there was
14 nothing in the prior order stating who
15 would make the conveyance to the
16 defendants. How can you have a
17 contract to sell property if there's no
18 provision as to when you're going to
19 receive the deed or who's going to
20 prepare and sign off on the deed so
21 that you, the buyer, require all of the
22 outstanding interest in the property?
23 You know, at best, the only thing my
24 clients were receiving was a quick
25 claim deed. And that's in evidence.

1 We think that it was justified and
2 fair that we should have received an
3 extension of time of 45 days within
4 which the Court would have an
5 opportunity to cure this defect, i.e.
6 primarily by having an evidentiary
7 hearing where the family members could
8 come in and testify to the genealogy of
9 the family.

10 This would cure the problem of all
11 those four open estates, would be to
12 have the family come in and testify
13 under oath on the record that these are
14 the family members, this person died
15 and these are the people who were their
16 relatives at the time -- or heirs at
17 the time of their death. We don't have
18 that in the record, but we could've
19 gotten that in the record within the 45
20 day period so that we could've closed
21 on the property.

22 The other point we're making is
23 that the plaintiffs knew that the
24 property was heirs titled, even though
25 the Court has not, as yet, made its

1 determination, as required by the
2 Pinckney Act, to find that it is titled
3 property. In their prayer for relief,
4 they don't even ask the Court to
5 declare that that is heirs titled
6 property because they knew that they
7 wanted to complete this sale and that
8 they wanted to do this before all of
9 this could be accomplished. So they've
10 taken the shortest route in trying to
11 obtain their objectives, and this is
12 unfair to the defendants.

13 The other issue is, is that under
14 the balance of the equities, what the
15 defendants want to do with the property
16 is to retain an ownership interest in
17 it, and this is exactly in line with
18 the legislative purpose before the
19 enactment of the -- for the
20 Pinckney Act.

21 So those -- those are the germane
22 issues that we would want the Court to
23 consider and rule upon. There are
24 others, but I think they have been
25 pretty well covered in the respective

1 briefs of both the plaintiffs and the
2 defendants.

3 THE COURT: Thank you so much,
4 sir.

5 Mr. Taylor? We may have just lost
6 Mr. Taylor, or Mr. Williams.

7 MR. WILLIAMS: It looks like
8 Taylor is back there.

9 THE COURT: He's back. Okay.
10 Good.

11 MR. WILLIAMS: Mic's off. You're
12 muted. No, you're frozen.

13 THE COURT: Oh, great. We
14 probably should've grabbed the 22nd and
15 called it a day.

16 Tom, are you --

17 MR. WILLIAMS: Tom, are you with
18 us, there?

19 You're muted. There you go.

20 MR. TAYLOR: Can you y'all hear me
21 okay now, Judge?

22 THE COURT: Yes. You may want to
23 try Ms. Jackson's trick, through. I
24 know you went through all the trouble
25 to put a tie on, but just so we don't

1 lose you again.

2 MR. TAYLOR: Judge, from my end, I
3 was getting some breakup on Charles.
4 But have you call on Chet and I to now
5 to respond, Your Honor?

6 THE COURT: I did, yes.

7 MR. TAYLOR: All right. Judge,
8 I'm stopping my video. I hope that
9 gives me a little more clarity.

10 THE COURT: It has. It has.

11 MR. TAYLOR: All right. Judge,
12 thank you.

13 Your Honor, we filed a memorandum
14 in opposition to set this motion for
15 consideration last night. I hope you
16 have had the opportunity to see it and
17 that you will take a look at it.

18 Within that memo, Your Honor, we
19 respectfully tried to draw the Court's
20 attention to the fact that this is a
21 motion for reconsideration under
22 apparently mostly Rule 60. It is not
23 an opportunity and should not be an
24 opportunity to re-argue all of the
25 background of the case. The Court has

1 ruled.

2 And to address just several of the
3 views that Mr. Houston raised, Your
4 Honor.

5 First of all, I want to make sure
6 I remind the Court that there have been
7 actually -- there's been testimony
8 taken in this matter before Mr. Houston
9 was substituted for Mr. Vaux, but back
10 when we were discussing the valuation
11 of the property, there were appraisals
12 submitted to the Court and there were
13 hearings held concerning that.

14 But, Judge, most importantly, the
15 May 21st order of this Court, which was
16 a consent order -- May 21st, 2021,
17 which was a consent order signed off on
18 by all of the plaintiffs and all of the
19 defendants legally and specifically set
20 forth all of the undivided interest in
21 the real property specifically to each
22 of the parties.

23 There is no question, Judge,
24 whether that has already been resolved
25 by consent, Your Honor, which is even

1 more important. And the issue that
2 continues to be raised by Mr. Houston,
3 which we argue is inappropriate, that
4 there may be some need to hold another
5 hearing for a genealogical series of
6 testimonies and things like that,
7 Judge, quite simply, that was agreed to
8 almost a year ago by all parties.
9 There is no dispute as to the ownership
10 of each of these.

11 Judge, we do -- and we've all
12 talked about it several conferences
13 before -- know that there are going to
14 be deaths in any cases like this where
15 there are a lot of different heirs that
16 have owned the property. That doesn't
17 address the issue of what they owned
18 because that will only be addressed by
19 the probate court and given to those
20 descendants.

21 But, Your Honor, again, all of the
22 ownership issues in this case have been
23 resolved. The quiet title aspect of
24 this case was resolved by consent of
25 all the defendants, a written consent

1 order submitted.

2 Judge, the second part that
3 Mr. Houston continues to talk about a
4 good bit, I understand the equitable
5 argument and the Court has indicated
6 its understanding of the equitable
7 argument, that it is tough to get
8 financing on a project like this from a
9 minority ownership.

10 Judge, I will remind you again
11 that the defendants who are now holding
12 up or attempting to hold up the
13 contract closing that is scheduled to
14 close in March own less than 2 percent
15 of the land. It is the remaining 98
16 percent of the owners who are in the
17 plaintiffs area who are trying to move
18 forward before the Fed kills this real
19 estate market and lets us close on this
20 -- this transaction, which I think
21 everybody agreed two appraisals was a
22 really nice price for the property.

23 But, Judge, to get back to the
24 point I wanted to make, Mr. Houston is
25 simply in error when you argue that it

1 is up to the Court or the plaintiffs to
2 somehow give a -- what would amount to
3 a general warranty deed in South
4 Carolina to the defendants so they can
5 go get their financing. That's simply
6 not the law.

7 The Pinckney Act does not require
8 that, nor does any established case law
9 or statutory law in South Carolina
10 require it. The statute is very clear.
11 An argue, defendants have the
12 opportunity to buy out the ownership
13 interest of the plaintiffs. They're
14 not actually getting a deed, Your
15 Honor, they're simply buying out the
16 ownership interest of the plaintiffs
17 pursuant to the statute.

18 It's not incumbent upon the
19 plaintiff nor the Court to guarantee
20 them any particular type of warranty
21 deed, general, special or otherwise,
22 they are simply buying out the interest
23 of those individuals whose interest has
24 been established by the May 21st, 2021
25 order of this Court.

1 Judge, I would also note for the
2 record that there is an argument within
3 the defendant's memorandum in support
4 of this motion that there was some type
5 of potential issue concerning service
6 of process on Keita White. And, Judge,
7 I pointed out in my memo that that was
8 never raised in the answer, the
9 defendant's answer.

10 There's never been any type of
11 motion before the Court concerning
12 service of process or service. And,
13 that, therefore, has been waived under
14 Rule 12(H). There's also no evidence
15 in the record whatsoever that indicates
16 there was not proper service. But, in
17 any event, it has been laid, the
18 defendant's answer, the general answer,
19 and you moved on.

20 Your Honor, we ask the Court, and
21 I'd like to ask Chet if he had anything
22 further, maybe.

23 But we'd ask the Court to deny the
24 motion for reconsideration. You know,
25 Mr. Houston basically started by

1 saying, we want to know what the judge
2 was thinking. And, you know, Judge, I
3 can appreciate that, but we've all
4 tried more cases to understand that
5 sometimes in an order, you're not
6 necessarily going to get everything and
7 every explanation that you want.

8 The law here has been met. The
9 defendants had 60 days in which to fund
10 -- actually, they had 63 days in which
11 to buy out the plaintiffs' interest.
12 And not during -- at any time of that
13 63 days was there any type of motion
14 made for an extension. It wasn't until
15 after the 5:00 p.m. deadline had fallen
16 on December 22nd that a motion was
17 filed for additional time.

18 But even then, Your Honor, it was
19 not filed with any type of deposit or
20 anything like that that would show the
21 Court that there was actually any
22 reasonable basis for holding up this
23 contract. Which, again, Judge, you've
24 indicated a number of times that you
25 understood our great concern about this

1 real estate market collapsing at some
2 point in time.

3 And given what happened yesterday
4 with interest rates, I think we're all
5 looking again at that. And I ask the
6 Court to deny the motion to reconsider
7 so that we can go on and get this
8 contract closed.

9 And I'd like to ask the Court if
10 Chet has -- my partner has any
11 additional input?

12 MR. WILLIAMS: Yes, I would, if I
13 may, Your Honor.

14 The recent history of this is that
15 the defendants did not timely pay into
16 the registry of court, the amounts that
17 were required to purchase the
18 plaintiff's interest. And on -- I
19 believe it was December 22nd of 2021,
20 Mr. Houston filed three motions, a
21 motion for relief of judgment, which
22 you denied, and several others.

23 And those motions were resolved on
24 June 20, 2021 when you viewed those
25 basically as a motion to reconsider.

1 But they were not timely filed. And,
2 in that case, I don't know that the
3 Court owes the defendants any sort of
4 detailed explanation. If you're moving
5 that the -- that they weren't timely
6 filed if you're told that they weren't
7 timely filed.

8 And with respect some of the title
9 issues, you know, at Mr. Houston's
10 request, we went through a lengthy
11 publication process to see if there
12 were any other folks out there who
13 might claim an interest in the
14 property, Maria Partner was the
15 guardian, no one came forward.

16 Mr. Houston still keeps arguing,
17 well, maybe there's somebody else out
18 there. But if there is, the time for
19 them to enter their claims has long
20 since passed. And defendants' actions
21 now are doing nothing but hindering the
22 possible sale of the property in March,
23 which will be to everybody's detriment.

24 Thank you, Your Honor.

25 MR. HOUSTON: Your Honor, can I be

1 heard?

2 THE COURT: Yes, sir. Please, go
3 ahead.

4 MR. HOUSTON: In response, he said
5 something about capabilities. The
6 defendants are more financially capable
7 of carrying this thing through
8 immediately than the plaintiffs. We
9 have no -- nothing in the record about
10 the plaintiffs' physical -- physical
11 capacity.

12 The defendants have reduced that,
13 so the argument -- our argument would
14 be stronger, that if time is the
15 important factor, we are ready to do it
16 now. The only thing we're requesting
17 is a good deed, and somebody won't give
18 us a deed. I mean, it's ridiculous to
19 have somebody just deposit several
20 million dollars in court and never know
21 when they're going to receive a deed or
22 who's going to make the deed.

23 And where the Act may lack
24 specificity, that's where the court of
25 equity can step in and fill in the

1 blanks. Your Honor, the Pinckney Act
2 may not cover every minute detail, but
3 we're -- as long as the Court does not
4 act contra to the intent and purpose of
5 the Act, the Court itself, as a court
6 of equity, can step in and fill in the
7 dots.

8 And the dots need to be filled in
9 in this particular way when we're
10 talking about an advance of \$7 million
11 for some property. What's more likely
12 to happen is, they're going to try to
13 complete their transaction and then
14 come back later on and say, let's
15 finish the case and now get our client
16 a good title to this property.

17 What they're trying to do now is
18 just defeat our right of first refusal
19 because no one is going to buy this
20 property, even their client, unless
21 they can eventually get a fee simple
22 title to it. How are they going to be
23 able to resell the property or develop
24 the property if they don't have the fee
25 simple title?

1 This is somewhat like a -- like a
2 trick, you know, give it to us now, but
3 we know you're right but then we want
4 to complete our deal and get you out of
5 the picture, then we'll come back to
6 the court and then straighten out the
7 title. That's not equitable.

8 MR. WILLIAMS: Your Honor, may I?

9 THE COURT: Wait for Mr. Houston
10 to finish, then I'm happy to hear from
11 you. Mr. Houston, were you finished
12 with your thoughts?

13 MR. HOUSTON: Yeah.

14 THE COURT: Okay.

15 Go ahead, please, Mr. Williams.

16 MR. WILLIAMS: Thank you, Your
17 Honor.

18 The Pinckney Act -- I would call
19 this use of the Pinckney Act doesn't
20 require any sort of fee through anybody
21 and the end result of whatever happens
22 in the Pinckney Act is accomplished by
23 way of your order. If you enter an
24 order that recognized the many times
25 when Mr. Houston refers to us trying

1 defeat his right -- his client's right
2 of first refusal, they defeated that
3 themselves when they let the time
4 period run without depositing their
5 money.

6 But I would suggest to you that
7 the end result of the Pinckney Act in a
8 case like this is an order from this
9 Court who says who owns the title and
10 what happens. And if it's a sale to
11 our client, then that would be
12 accomplished by an order from you or a
13 deed signed by you.

14 And I think Mr. Houston is just
15 trying to cloud your views in order to
16 continue to try and keep his client's
17 foot in the door, and that's not at all
18 what the Pinckney Act calls for.

19 MR. HOUSTON: The Pinckney Act
20 specifically calls for that, it calls
21 for the family members who want to
22 maintain possession in the interest in
23 the property. This the (indiscernible)
24 of the Pinckney Act. So we're directly
25 on point for what we're trying to do.

1 The second thing is, you know, and
2 I'll give you an analogy. A couple
3 went to inquire to the family court for
4 a divorce, and they say, you know,
5 we've been separated for over a year.
6 But the court's still not going to
7 grant them an order until the court
8 hears some sworn testimony from them.

9 And this is, to use that analogy,
10 the same problem we have here. We
11 don't have any sworn testimony in the
12 record, so that a stranger looking at
13 it, that they can feel comfortable that
14 their client 100 percent interest and
15 there are no other outstanding interest
16 to the property.

17 MR. WILLIAMS: Your Honor, isn't
18 that the purpose of the publication?

19 MR. HOUSTON: Yes, you did -- you
20 did cure that.

21 MR. WILLIAMS: Then it's cured and
22 we're past --

23 MR. HOUSTON: -- after you did the
24 notice, you did cure that. But then --
25 and this goes back to the

1 jurisdictional question that the judge
2 said when he didn't have jurisdiction
3 because he had issued a final order.
4 Well, how could you have a final order
5 when you still have publications going
6 on?

7 MR. WILLIAMS: That was after --
8 that was after the publication was
9 completed, Charles.

10 THE COURT: Let me -- let me do
11 this. Let me let y'all just finish
12 your thoughts rather than go back and
13 forth on this.

14 So, Mr. Houston, did you have any
15 other thoughts on that? I'm happy to
16 hear them and then I'll turn it back
17 over to either Mr. Williams or
18 Mr. Taylor.

19 MR. HOUSTON: What I want to say
20 is that the October order was not the
21 final order in this proceeding.

22 THE COURT: I mean, I'll have to
23 -- this is a heck of a file, but --

24 (Unreportable cross-talk.)

25 THE COURT: -- stop any orders.

1 MR. HOUSTON: -- final order
2 because there has not.

3 THE COURT: Let me -- let me ask a
4 quick question, though, Mr. Houston. I
5 guess what I'm trying to figure out is
6 the lay -- we had so much motions, so
7 many hearings, the order that you have
8 filed this motion on was the result of,
9 in part, a motion for reconsideration
10 because that was the one where there
11 had been the order saying post the
12 money with the clerk, and that order
13 had sat there for however long.

14 And the -- of course, then the
15 time it was not possible for your
16 clients, for whoever reason, they
17 didn't post the money. So then you
18 sought reconsideration of that order
19 and an extension. An order was issued
20 from that motion to reconsider, and
21 now, this, at least at first blush,
22 looks like a motion to reconsider the
23 order from the reconsideration motion
24 that we previously heard.

25 MR. HOUSTON: Your Honor, there

1 were two orders, one -- or two motions,
2 one for relief.

3 THE COURT: Right.

4 MR. HOUSTON: Okay? And the other
5 one was for reconsideration.

6 THE COURT: But the motion for
7 relief had to do with issues that had
8 been decide months, if not a year ago,
9 in which motions for reconsideration
10 were not filed within the ten days.

11 I guess what I'm trying to do,
12 since you brought up jurisdiction, is
13 try to figure out -- I've got to piece
14 it all together, I guess, with a
15 calendar, because, as you all very well
16 know, once the ten days has run, then a
17 motion for reconsideration would be
18 improper for me to rule on.

19 MR. HOUSTON: But the question is
20 whether or not that was the final
21 order. That's what we're addressing to
22 the Court. That wasn't the final order
23 ending the case.

24 THE COURT: Well, on a particular
25 issue, it might be, but -- but I don't

1 know. You know, I'll have to look at
2 it and I'm sure y'all will look at it
3 after this, and try to sit down with a
4 calendar because I don't think anyone
5 can argue with the fact that this has
6 been a fairly complicated situation.

7 Now, I do have to point out,
8 Mr. Houston, that you've continually
9 said that your clients need a fee
10 simple title to move forward, but, I
11 mean, I don't think anyone has ever
12 argued with the proposition that
13 whoever buys this is going to get the
14 same title.

15 If the plaintiffs get it right
16 now, they're getting whatever the title
17 is right now. If they feel like
18 they've got to move forward at some
19 point and further clear the title, so
20 be it. Let them file it.

21 MR. HOUSTON: That's not -- that's
22 not the law, Your Honor. The law is,
23 in South Carolina, that any time you
24 have a sale, it implies the giving of
25 warranty deed.

1 MR. WILLIAMS: But there's no
2 contract. (Indiscernible) contract
3 situation.

4 MR. HOUSTON: I'm putting money --
5 several million dollars in court to
6 purchase a percentage interest is not
7 considered a contract?

8 MR. WILLIAMS: No, sir, it's not.
9 You do it pursuant to the statute.

10 THE COURT: Yeah. I don't
11 disagree with the proposition that one
12 set of heirs is entitled to buy the
13 other set out under certain
14 circumstances. And I don't -- you
15 know, I mean, the fact is, property
16 changes hands with special warranty
17 deeds, quick claim deeds, masters
18 deeds, you know, everyday.

19 You know, every transaction is not
20 going to be a fee simple title, that
21 would shut real estate down, at least
22 in South Carolina. But, yes, if you
23 contract with someone and your
24 obligation is to transfer a fee simple
25 title, then, yes, then you transfer fee

1 simple title. But that's not the
2 situation we're talking about.

3 MR. HOUSTON: Wasn't the Court's
4 order to the effect that upon the
5 production of the money, that there
6 would be a transfer of interest from
7 the plaintiffs' interest in the
8 property to the defendants?

9 THE COURT: Yep. In interest.
10 Yep.

11 MR. HOUSTON: Okay. And in South
12 Carolina, isn't a transfer by interest
13 by deed?

14 THE COURT: Mr. Houston, we can go
15 round and round about this, but I
16 just -- I've got to respectfully
17 disagree with your proposition that
18 there's some requirement of fee simple
19 title in every transaction. That's
20 just --

21 MR. HOUSTON: Well, if it's not,
22 that's because of special arrangements
23 that are agreed between the parties.
24 But we haven't agreed to receive
25 anything. That's for the fee simple

1 title.

2 THE COURT: Who would we give it
3 to?

4 MR. HOUSTON: We said we'd buy the
5 property as is and then clear the title
6 later on, that -- that would be more in
7 line with their particular reason at
8 the moment. But we didn't enter into
9 that agreement that we would take less
10 than the fee simple title to the
11 property. And we suggest it requires
12 that the warranty deed be given.

13 THE COURT: I don't know the
14 agreement you're talking about. What
15 agreement are you talking about?

16 MR. HOUSTON: The right of first
17 refusal. I'm talking about that
18 agreement.

19 MR. WILLIAMS: But there is no
20 agreement. It's all statutory in
21 nature and it's all pursuant to the
22 statute. There's no agreement, and
23 what the Pinckney Act says is that if
24 the defendants buy out the plaintiffs,
25 they get whatever interest the

1 plaintiffs may have.

2 MR. HOUSTON: All right. How do
3 you buy out --

4 MR. WILLIAMS: That's it.

5 MR. HOUSTON: How do you buy out
6 real estate interest in South Carolina?
7 By deed.

8 MR. WILLIAMS: It can be done by
9 way of a court order.

10 THE COURT: Well, let's do this.

11 (Unreportable cross-talk).

12 MR. HOUSTON: -- deed.

13 THE COURT: Let's do this because
14 I think we can probably go round and
15 round about this all day, but -- and I
16 think I understand both of your
17 opinions on it.

18 Was there anything else,
19 Mr. Houston, other than that issue that
20 you wanted to be heard on?

21 MR. HOUSTON: There are some
22 others, but they were all mentioned in
23 our respective briefs, Your Honor.

24 THE COURT: Okay. So let me
25 ponder some of this. I mean, if y'all

1 wanted to send follow-up briefs based
2 on the argument, that's fine. Just
3 make sure the other side gets them.

4 I mean, honestly, part of my
5 concern is whether or not a motion for
6 reconsideration at this stage would be
7 timely, and maybe it is, maybe it
8 isn't, I don't know, I've got to sort
9 of pick through it. But I'd be happy
10 to hear y'all's further thoughts on
11 that.

12 And then certainly, I'll look into
13 Mr. Houston's assertion that the
14 Pinckney Act requires fee simple title
15 transfer. I don't see that in the
16 statute, but I read statutes all the
17 time and see things that I haven't seen
18 before, so who knows. But I'm happy to
19 hear anything else y'all want to let me
20 know in the a brief on that.

21 Anything else from anybody on any
22 part of this?

23 MR. HOUSTON: Your Honor, just one
24 final thought, and that is the final
25 order ends the case, and this case

1 hadn't been ended.

2 THE COURT: Well, of course, as
3 you know, many quiet title and
4 partition actions go on until the
5 administrative portion, which has to do
6 with dispensing of the funds and that
7 sort of thing.

8 The pertinent parts, I think, were
9 ruled on, the quiet title and the
10 partition. But there's still some
11 administrative things that have to be
12 done. I won't disagree with you,
13 there.

14 MR. HOUSTON: No order has been
15 issued from the Court granting the
16 prayer for relief to certify the
17 plaintiffs.

18 MR. TAYLOR: It certainly has --
19 it certainly has been. Excuse me.

20 THE COURT: Yeah, I think y'all
21 are going to have to agree to disagree
22 on that. I think it probably has, but
23 I'll look.

24 MR. WILLIAMS: If I may, if you go
25 back and read the order from October,

1 it says -- that's the order that gives
2 the defendants the time to deposit the
3 money into the court. It also says
4 that if the defendants do not timely
5 make their deposit, then the plaintiffs
6 are authorized to proceed with the sale
7 of the property for the purchase price
8 of not less than \$9.1 million.

9 That has already been ruled on.
10 It's over and done with. It's the law
11 of the case.

12 MR. HOUSTON: Because that
13 would've been considered a final order
14 at that particular time, then we
15 could've taken the appeal --

16 THE COURT: I don't know. Might
17 have to --

18 MR. WILLIAMS: We have a
19 difference of opinion on that. But it
20 is -- it is in the record.

21 MR. HOUSTON: All right. That
22 part is in the record, yes. I -- I --
23 the order is in the record. That's
24 part's in the record.

25 THE COURT: All right.

1 MR. HOUSTON: We agree on that.

2 THE COURT: Always good to get
3 some agreement.

4 MR. TAYLOR: Your Honor?

5 THE COURT: Yes, Mr. Taylor.

6 MR. TAYLOR: Judge, I want to make
7 sure that I understand what the Court
8 is asking for.

9 Are you asking us, sir, to brief
10 further issues or just saying if there
11 are additional things that we want to
12 bring to your attention, we should?
13 And by when should we have that, Judge?
14 Because as we've indicated earlier,
15 we're rapidly coming up to the closing
16 that we anticipate coming to the Court
17 to, I believe, alert them one more time
18 as to that closing date.

19 Correct, Chet?

20 MR. WILLIAMS: Yes.

21 THE COURT: If I said one week,
22 would that give y'all -- and Mr.
23 Taylor, I understand you've got
24 depositions next week. But if I said
25 if you -- optional, of course, but if

1 y'all wanted to be heard further on the
2 issues, specifically that we've
3 discussed today, I'll give you that
4 option to have something in on or
5 before sort of midday next week,
6 Friday.

7 Is that -- is that do-able?

8 MR. TAYLOR: Yes, sir. I mean,
9 we'll get it done, Judge. And Chet and
10 I will discuss, you know, whether we
11 are going to submit further. I think
12 my brief may have covered most of the
13 points. But I just wanted to make sure
14 that you are not, sir, waiting on us on
15 a specific point, and I'm not hearing
16 that.

17 THE COURT: Not -- not really.

18 Mr. Houston, does that work for
19 you, sir?

20 MR. HOUSTON: Yes. I think to
21 brief the Court and each other on our
22 respective positions on the issue, I
23 think what you're asking for right now
24 is the jurisdictional issue, and if
25 that's the one that you would like for

1 us to address.

2 THE COURT: That's definitely part
3 of it, yes, sir.

4 MR. HOUSTON: Then that opens it
5 up again.

6 THE COURT: Well, it's as open as
7 y'all want it to be, but those are the
8 questions, I guess, I've got.

9 You know, I mean, on the motions
10 to reconsider, the filing date, the
11 date, that sort of thing. You know,
12 the last thing I would want to do is
13 issue an order on a motion to
14 reconsider, have y'all spend three
15 years waiting around in Columbia to
16 have the court say, well, wait a
17 minute, now, Dukes didn't have
18 authority to issue any kind of an order
19 because this ten days ran on such and
20 such date.

21 That's sort of a waste of
22 everybody's time, so I want to make
23 sure I get that right. And that
24 appears to be an issue, so I'm happy to
25 hear from y'all.

1 Obviously, please serve the other
2 side with anything that's sent to us.
3 Please don't send it directly to me.
4 Please send it to Heather or Jarred and
5 they'll get it to me. But of course,
6 with copies to the other side.

7 So -- all right. As always, as I
8 say in every case I'm ever involved in,
9 I would urge y'all to sit down and see
10 if there's any resolution in this. I
11 always thought that if anybody can
12 settle even one family court child
13 custody action, then pretty much any
14 real estate action can be settled.

15 So there may be some way to
16 resolve everyone's concerns here and I
17 would urge y'all to at least try to
18 talk between now and the next time we
19 talk and see if there's any way to do
20 anything to bring this to a happy
21 handshake conclusion.

22 So anything else for this record?

23 MR. TAYLOR: Not from the
24 plaintiffs, Judge.

25 MR. WILLIAMS: No, sir.

1 MR. HOUSTON: Thank you, Your
2 Honor.

3 THE COURT: All right. Thank
4 y'all so much.

5 Y'all enjoy the weekend.

6 (Whereupon, the Hearing was
7 concluded at approximately
8 2:29 p.m.)
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C E R T I F I C A T E

STATE OF SOUTH CAROLINA:

DORCHESTER COUNTY:

I, Naomi McCracken, Court Reporter and Notary Public in and for the above county and state, do hereby certify that the foregoing testimony was taken before me at the time and place herein-before set forth; that the witness was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth, that thereupon the foregoing testimony was later reduced by computer transcription; and I certify that this is a true and correct transcript of my stenographic notes so taken.

I further certify that I am not of counsel to either party, nor interested in the event of this cause.

Naomi McCracken

Court Reporter

Notary Public

Beaufort, South Carolina

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

GEORGIA HARRISON, BARBARA
HARRISON, JOYCE ELLEN HARRISON,
WILLIAM S. HARRISON, III,
STANLEY ROBERTS, and DIANA
MENDHEIM, individually and as
agent and attorney in fact,
Plaintiffs,

v.

STEPHANIE LORRAINE KIRKLAND,
GARY LAMONT KIRKLAND, KEITA
NICOLE WHITE, CHERYL KIRKLAND,
WILLIAM CHARLES KIRKLAND,
PAULETTE KIRKLAND, PAUL T.
ALLBRIGHT, CHRISTOPHER KIRKLAND
AND SHAWN KIRKLAND,
Defendants.

Civil Action No.
2020-CP-07-02301

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VIDEOCONFERENCE HEARING

DATE: Thursday, September 15, 2022
TIME: 11:03 a.m. EDT/10:03 a.m. CDT
BEFORE: Honorable Marvin H. Dukes III
LOCATION: Remote Proceeding
Dallas, TX 75201
REPORTED BY: Sophie Caudle, Notary Public
JOB NO.: 5466494

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A P P E A R A N C E S

ON BEHALF OF PLAINTIFFS GEORGIA HARRISON, BARBARA
HARRISON, JOYCE ELLEN HARRISON, WILLIAM S. HARRISON,
III, STANLEY ROBERTS, AND DIANA MENDHEIM:

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1 A P P E A R A N C E S (Cont'd)
2 ON BEHALF OF DEFENDANTS STEPHANIE LORRAINE KIRKLAND,
3 GARY LAMONT KIRKLAND, KEITA NICOLE WHITE, CHERYL
4 KIRKLAND, WILLIAM CHARLES KIRKLAND, PAULETTE KIRKLAND,
5 PAUL T. ALLBRIGHT, CHRISTOPHER KIRKLAND, AND SHAWN
6 KIRKLAND:

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8 The Houston Law Firm, L.L.C.
9 1000 Main Street, Suite 200 C
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12
13 ALSO PRESENT:

14 Andre White
15 Barbara J. Harrison, Plaintiff (by
16 videoconference)
17 Earsa Jackson, Esquire, Clark Hill PLC (by
18 videoconference)
19 Georgia Harrison, Plaintiff (by videoconference)
20 Kay White (by videoconference)
21 Mark Jones (by videoconference)
22 Robert Young (by videoconference)
23 Rose Hampton (by videoconference)
24 Tyrone Hodges (by videoconference)

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E X H I B I T S

NO.	DESCRIPTION	ID/EVD

Plaintiff:

(None marked.)

NO.	DESCRIPTION	ID/EVD

Defendant:

(None marked.)

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P R O C E E D I N G S

THE COURT: Good morning. We're here in 2020-CP-07-02301. This is Harrison et al. vs. Kirkland et al. And this matter was scheduled for 10:30 a.m. today, the 15th of September for all outstanding motions. We're getting a little bit of a late start. It's 11:03 a.m. We had some difficulty trying to get Mr. Houston on. And Mr. Houston has decided to proceed audio only, and we can hear him just fine. And so we'll proceed that way.

Now I've got all outstanding motions. I see one motion. That is Defendants' Motion for Stay and Waiver of Supersedeas Bond or in the Alternative, a Nominal Bond Pending Appeal.

And, Mr. Houston, I'm happy to hear from you, sir.

MR. HOUSTON: Well, there are two motions, I think, Your Honor.

THE COURT: Okay.

MR. HOUSTON: The defendants have a motion, which you just identified. And I think also the plaintiffs had filed a motion for a master's deed, which I think is also on the agenda for today, if I'm correct.

THE COURT: Thank you for that

1 clarification. I should have noted that we're
2 actually having trouble with the CMS system right now,
3 so I have to open each individual document. I can't
4 scroll anymore. So I see that as well.

5 Let me ask, though: I would assume,
6 based on the nature of the motions, it makes some
7 sense to hear the defendants' motion first. Do the
8 parties agree on that? Otherwise, I ordinarily hear
9 motions, as y'all know, in the order in which they
10 were filed. Is there any --

11 MR. TAYLOR: Well, Your Honor, we would
12 agree that Mr. Houston's motion being heard first
13 would be appropriate.

14 THE COURT: Okay. Thank you so much.

15 All right then, Mr. Houston. I am
16 happy to hear from you, sir.

17 MR. HOUSTON: Okay. The first thing I
18 want to point out to the Court, Your Honor, is that we
19 have a duty to be candid and honest with the Court in
20 writing our briefs and in the factual representations
21 we make to the Court. And in that light, I give
22 reference to the brief filed yesterday evening by the
23 defendants citing the controlling statute pertaining
24 to the granting of a stay and supersedeas, which was
25 an error and very misleading. The statute that is

1 controlling is basically 16-6-270. Hold on. I'm
2 going to make sure I'm giving you the right number.
3 This is very small print coming off of
4 the -- otherwise, the ones that the defendants had
5 cited in their brief pertains to money judgments, and
6 that's not the category of our particular case. We're
7 not involved with a money judgment. We're
8 involved -- which I think that the statute they quoted
9 was I think 240. And the controlling one is 270.

10 And that is an order, you know, for the
11 sale of property in which the standards apply
12 different and the supersedeas bonds are much lower.
13 Under 270, basically the only bond that is required is
14 a bond to cover any waste to the land. And since this
15 is undeveloped property, you know, there can be no
16 damage done to it. No one is using it or occupying it
17 or having any activity upon the property. So the
18 property would be preserved in its natural state
19 during the pendency of the appeal.

20 And the formula that the statute sets
21 forth is the difference between the present value or
22 use of the property at this time compared with what it
23 would be at the time the appeal process would have
24 been resolved and completed. So here, we're dealing
25 with raw land, so we're only dealing with a nominal or

1 really no supersedeas bond at all. The --

2 THE COURT: I'm listening, sir. Keep
3 going.

4 MR. HOUSTON: Okay. The second point I
5 want to bring to the Court's attention is that the
6 order itself is vague, and the plaintiffs have not
7 conformed to it. This order was issued back in
8 October. And in January, I believe, the defendants
9 requested an additional amount of time to complete the
10 contract. This is September 2022. And as yet, there
11 has been no announcement that a valid contract exists.
12 And your order speaks to a valid contract. And since
13 there is no valid contract, that makes the order
14 voidable.

15 Additionally, the order didn't put any
16 definitive time frame in it, which it should have.
17 But in any event, back in January, they asked for
18 additional 60 or 90 days, and they weren't able to
19 produce. So we're being asked to post a bond on an
20 order, and the order itself is not concrete as to its
21 terms.

22 MR. FINGER: This is Terry Finger. At
23 the risk of interrupting, there is a valid contract
24 between my client, Rotunda Land Company, and the
25 plaintiffs. It is still in existence. We have been

1 waiting, ready, willing, and able to close. We just
2 keep -- every time we get close, there's another
3 appeal or another motion or something like that. But
4 there is a contract in place between the parties that
5 are referenced earlier in these transactions.

6 MR. TAYLOR: And copies had been
7 delivered to Mr. Houston prior.

8 THE COURT: Okay. All right. Thank
9 you.

10 Mr. Houston, go ahead and finish if you
11 would, please.

12 MR. HOUSTON: What is the date of the
13 contract? We've never been provided a complete
14 contract. The only thing we've heard of is that
15 requested another extension.

16 THE COURT: Do y'all have the date of
17 the contract?

18 MR. TAYLOR: Chet, can you help me with
19 that?

20 THE COURT: -- muted.

21 MR. TAYLOR: Turn your volume on,
22 Chester.

23 MR. WILLIAMS: Yeah. Your Honor, I'm
24 looking at a copy of an e-mail that I sent to
25 Mr. Houston on January 6 of this year that had a copy

1 of the fully executed contract attached to it.

2 THE COURT: Okay. Thank you.

3 MR. WILLIAMS: And --

4 MS. JACKSON: And, Your Honor, if I may
5 add, I think that what was provided had an expiration
6 date or a deadline by which to close. And I believe
7 that he's referring to documentation of an extension
8 of that deadline.

9 MR. WILLIAMS: Correct. And there have
10 been several extensions. And at this point, though,
11 there is a valid contract out there. Neither the
12 buyer nor the seller have taken any action to put the
13 other in default. And both the buyer and the seller
14 agree that there's a valid contract.

15 THE COURT: Okay. Thank you.

16 Mr. Houston, go ahead and --

17 MR. HOUSTON: Okay.

18 THE COURT: Yes, sir.

19 MR. HOUSTON: I'm raising the question
20 of the validity of a contract that they have come to
21 court and say, "This is the contract that's signed."
22 You know, for all we know, at some time, they may have
23 had a tentative contract that's now void.

24 THE COURT: Well, they have both sides
25 to the contract on this call, and they claim the

1 contract still exists. But -- go ahead.

2 MR. HOUSTON: That's lawyer's talk.
3 That's not producing the document.

4 MR. FINGER: Am I being accused of
5 misrepresenting my client?

6 MR. HOUSTON: You know, all we
7 concerned, they could say they have a verbal contract.

8 THE COURT: Okay. Well -- everybody
9 hold up a second. So I assume there's no objection to
10 sending Mr. Houston the latest contract extension if
11 he doesn't already have it. But that might resolve
12 that issue if it is an issue.

13 But so, Mr. Houston, go on with your
14 motion if you would, please, sir.

15 MR. HOUSTON: All right. But that's
16 the other point. The third point, Your Honor -- the
17 other matter. But those are the two salient points.
18 Plus the other points I've outlined in our brief. But
19 those are the two salient points that I want to bring
20 to the Court's attention now. One, we received it
21 under the incorrect statute, and that 270 controls as
22 the standard there. And the other one is that the
23 question about whether or not there is a valid
24 contract to substantiate the Court's order.

25 THE COURT: Okay. All right. Thank

1 you so much, sir.

2 MR. HOUSTON: -- says that they compel
3 it. They can enter the contract if they have it. If
4 they have it, come forth with the contract.

5 THE COURT: Okay.

6 MR. WILLIAMS: Well, that's simply not
7 true, Charles -- in March. It's the same contract.

8 THE COURT: Y'all hold on one second.
9 Let me make sure Mr. Houston is finished, and then
10 I'll be happy to hear the opposition to his motion.

11 So, Mr. Houston, anything else, sir?

12 MR. HOUSTON: Well, Your Honor, yes.
13 What I would say is that if they don't want to show
14 the contract to us -- which they should -- but that
15 they at least show it to you that they have a valid
16 contract and not a contract -- and not a contract
17 dependent upon the logic contingencies.

18 MR. WILLIAMS: If I may, Your Honor.

19 Charles, did you not get that e-mail
20 that I sent you in January with the copy of the
21 contract attached to it?

22 MR. HOUSTON: I may have, but I don't
23 have it in front of me. It's not been filed of
24 record.

25 MR. WILLIAMS: Well, it didn't bounce

1 back to me, so I have to assume that you got it. So
2 you do have the contract. So --

3 MR. HOUSTON: I'm not denying that you
4 sent me something. Right. But what I'm saying is --

5 MR. WILLIAMS: -- that we hadn't
6 provided it to you.

7 THE COURT: Yeah. We're making it
8 really difficult for our court reporter who's trying
9 to --

10 MR. WILLIAMS: I apologize.

11 THE COURT: -- take down everyone's
12 voices at once.

13 But let me do this: Mr. Houston, I
14 want to make sure you've told me everything you want
15 to tell me. Is there anything else, sir?

16 MR. HOUSTON: Well, we're talking,
17 basically, about a reasonable supersedeas bond. And
18 what we request is that the requirement of supersedeas
19 be waived or, if it can't be waived, let just some
20 nominal amount be established under the provisions of
21 the section 70 of that. I think it's 16-12-70 statute
22 dealing with appeals.

23 THE COURT: All right. Thank you.

24 MR. HOUSTON: If it's not granted, the
25 defendants will suffer irreparable harm and with the

1 potential, you know, that the appeal could be
2 dismissed as moot.

3 THE COURT: All right.

4 MR. HOUSTON: Yeah. The plaintiffs
5 have shown no prejudice. They have made the argument
6 about the economic factor, but that's frivolous.
7 You're talking about a development that's probably ten
8 years to twelve years into development. And basically
9 whatever the economic environment may be at the
10 moment, that's subject to change. And we're looking
11 at an extended period of time. I know my clients have
12 budgeted at least 75 million for the development of
13 this property. So where the stock market is today or
14 might be within the next few days, that is irrelevant
15 and not even taken into consideration for someone
16 who's going to make a major development. I mean,
17 everything on Hilton Head that's been built was
18 usually planned during bad times, so by the time they
19 built it, the good times are there. So I think that
20 their argument is misplaced and frivolous and carries
21 no substantial weight for consideration.

22 THE COURT: All right. Thank you so
23 much, sir. I appreciate it.

24 MR. HOUSTON: I also give reference
25 to --

1 THE COURT: Oh, go ahead.

2 MR. HOUSTON: -- all the other points I
3 made in my brief. But for the brevity of time, I
4 don't want to dwell on each one at that particular
5 moment, Your Honor. But I'll ask you to read the
6 brief and take those other factors in consideration.

7 THE COURT: Thank you so much, sir.

8 All right. I'm happy to hear anything
9 in opposition.

10 MR. TAYLOR: Your Honor, good morning.
11 Tom Taylor on behalf of the petitioning plaintiffs.
12 Judge, first, to deal with the issue of the contract,
13 let me be as clear as possible: I, with 38 years of
14 experience in front of -- Chet Williams, who is also
15 here on behalf of the plaintiffs, and Terry Finger
16 have affirmatively represented to the Court this
17 morning that there is a valid and existing contract
18 between Rotunda and the plaintiffs for the sale of
19 this property at \$9,750,000. That contract has been
20 previously provided to Mr. Houston. Copy of it will
21 be provided to Mr. Houston within an hour of this.

22 And, Your Honor, I draw the Court's
23 attention to the fact that in his motion, there is not
24 a word contending that there is not a valid contract
25 in existence. I have no idea where this issue came

1 from this morning. And certainly we could have
2 provided it prior to this had there been an issue
3 raised about it. But it is in existence, and it is
4 valid from both perspectives.

5 And, Mr. Finger, I'd ask you to confirm
6 that.

7 MR. FINGER: That's correct,
8 Your Honor.

9 MR. TAYLOR: All right. Judge --

10 MR. HOUSTON: My point is that they
11 have a contract, but it may not be a contract for a
12 complete sale. When is the closing date? Does the
13 contract specify a closing date?

14 THE COURT: Why don't we do this? I
15 understand that the contract is to be e-mailed to you,
16 Mr. Houston. And I'll let you tell me whatever else
17 you want to tell me once Mr. Taylor finishes. Why
18 don't we just try to keep it back and forth rather
19 than all at once? It makes it --

20 MR. HOUSTON: Well, Your Honor, I'm not
21 the person who's going to be the finder of fact.
22 E-mailing it to me doesn't accomplish anything. I
23 think that basically it should be submitted for your
24 review to see if it's a current and exercisable
25 present contract or if it's just a contract with the

1 intent to purchase with a lot of contingencies
2 contained in the contract.

3 THE COURT: Would y'all copy me with
4 the contract when you copy Mr. Houston again with it,
5 please? So --

6 MR. WILLIAMS: Your Honor, I've just
7 sent it to Mr. Houston. I've copied you. I've copied
8 Heather. I've copied Ms. Jackson. I've copied
9 Mr. Taylor. I've copied Mr. Finger. And --

10 MR. HOUSTON: Thank you for that.

11 MR. WILLIAMS: -- it does provide for a
12 closing date, I think, on March 22nd. However,
13 because of the defendants' actions in this
14 matter -- the dilatory actions of the
15 defendant -- we're not in a position to close yet.
16 We're waiting -- well, we are as long as Judge Dukes
17 grants our motion to sign a master's deed. Then we'll
18 be able to close. And neither party has taken any
19 action steps to put the other party into default.

20 THE COURT: Okay. Thank you so much.

21 All right. Mr. Taylor, go on, please.

22 MR. TAYLOR: Your Honor, thank you.

23 Your Honor, focusing on the motion at
24 hand -- Mr. Houston's motion which is entitled Motion
25 for Stay and Waiver of Supersedeas Bond -- we filed a

1 memorandum yesterday afternoon. Mr. Houston has
2 discussed it. Your Honor, this entire issue has
3 already been decided. As the Court is aware,
4 Mr. Houston has filed the notice of appeal with the
5 Court of Appeals, and that was filed on March the 9th
6 of 2022. On March the 17th of 2022, Mr. Houston filed
7 a motion pursuant to Rule 241(a), asking the Court of
8 Appeals to declare an automatic stay. And by order of
9 June 23, 2022, the Court of Appeals denied that motion
10 and stated specifically that the relief sought
11 required the posting in writing with two sureties
12 guaranteeing the property will not be wasted while the
13 appeal is pending. The Court of Appeals has
14 already -- and then -- asked for a reconsideration of
15 that. And after another two months, the Court of
16 Appeals denies the motion for reconsideration. The
17 Court of Appeals judge has already ruled that pursuant
18 to Rule 241, there is no automatic stay in this
19 matter, and that if there is going to be one,
20 Mr. Houston has to apply on behalf of his clients for
21 a supersedeas, and then this Court will decide what
22 that supersedeas, if it should be granted, should also
23 be bonded off with.

24 And, Your Honor, we would maintain very
25 strongly, as we have in every hearing that has been

1 held of this matter, that the continuing delays on the
2 sale of this land put at risk very much the \$9,750,000
3 price, which, Your Honor, I would remind the Court, is
4 a benefit to not only the plaintiffs, but to the
5 defendants because everyone is going to share in this
6 sale price pursuant to the previously agreed-upon and
7 court-ordered ownership percentages. There's nothing
8 about that that is in question anymore. The only
9 question is, how long are we going to delay until we
10 sell this land?

11 Your Honor, the motion is controlled by
12 Rule 241. Mr. Houston has talked a little bit about
13 the code. Because he raised that in his motion, I
14 attempted to address it for the Court's benefit.
15 Judge, what he is talking about is Section 18-9-130,
16 which I quote in my brief. And Mr. Houston talked
17 about 18-9-17, which may arguably be the more
18 appropriate code section to look at. But provides in
19 the same light, Judge, that a surety has to be taken
20 out to affirm that there is no waste committed on the
21 land. And, Judge, we don't know of anything that
22 could be more wasteful to all the people involved in
23 this process than to have a \$9,750,000 contract, which
24 was executed at the time when land sales were probably
25 40 to 50 percent higher than they are right now, given

1 what has occurred with the real estate and stock
2 market. And we urge the Court to deny the motion for
3 any type of nominal bond and to grant the motion only
4 upon a ordering and a rendering of a bond of
5 \$9.75 million in order to secure this property and to
6 secure the contract until the Court of Appeals can
7 rule upon the matter.

8 THE COURT: Now I've got --

9 MR. HOUSTON: -- interrupt --

10 THE COURT: All right, Mr. Houston.

11 MR. HOUSTON: In response -- again,
12 Counsel is citing the wrong statute. It's this 170
13 that controls the situation. This is not a judgment
14 for the payment of money. If this were a judgment for
15 the payment of money, what Counsel is proffering to
16 the Court would be correct. But Counsel knows, being
17 a learned lawyer, that this is not the nature of what
18 we are involved with -- order to sell property. Okay?

19 The second thing is, we have not
20 engaged in any dilatory practice. We have exercised
21 every right we have under the law because of the
22 deceitful manner in which the plaintiffs' counsel have
23 proceeded with this case. Not only with the due
24 process violation, but also with not proceeding to
25 permit the granting of a deed to the defendants when

1 they were requested to exercise their right of first
2 refusal.

3 The second thing is, they had no
4 intentions of going through with this action. They
5 said that this was an action to quiet title. But they
6 had no intent to take it that far. And they knew at
7 the inception of the action that there were four
8 outstanding estates. And so what their game plan was,
9 was to just take it as far as getting a order to sell,
10 and I don't know how they're going to close on any
11 quitclaim deed. But even if they do close on a
12 quitclaim deed, then what they're going to do is going
13 to bring another quiet title action, and then that
14 quiet title action alleged that my defendants have
15 already conveyed their interest in the property. And
16 that's deceitful. You know, when they said that
17 they're bringing an action to quiet title, that
18 actually stops my defendants from doing that. If we
19 have wanted to create a title, we wouldn't have been
20 able to do so because there was an action pending.

21 So the counsel for the plaintiffs have
22 not pursued this matter in good faith by not
23 proceeding to complete the cause of action that they
24 instituted. You know, that they stopped at the
25 halfway mark. So you know, to accuse of us any

1 dilatory practice is misplaced.

2 MR. WILLIAMS: If I may, Your Honor.

3 THE COURT: Go ahead, please, sir.

4 MR. WILLIAMS: Mr. Houston simply is
5 absolutely wrong in his assertion that there were four
6 open estates at the time of the consent order that
7 quieted title. At that point, all of the co-owners of
8 the property were living and alive. It's only because
9 of the defendants' dilatory actions through this that
10 four open estates are now out there. But, Your Honor,
11 you've addressed that before, and the way you handled
12 that is the property is sold; any amounts that are due
13 to those estates go into the registry of the court
14 until the estates are probated; they can then be
15 distributed from there.

16 THE COURT: Thank you.

17 MR. TAYLOR: Your Honor --

18 MR. HOUSTON: Your Honor, that consent
19 order is a subterfuge. Even in a criminal case, you
20 can't convict the defendant on just a confession; you
21 have to have some other collateral evidence. And in
22 this situation, they tried to substitute a consent
23 order in lieu of having an evidentiary hearing. And
24 because even the consent order, everybody couldn't
25 consent to it because some people had died.

1 MR. TAYLOR: Your Honor. Tom Taylor.

2 MR. HOUSTON: So that was another
3 subterfuge and misrepresentation of a nature.

4 MR. WILLIAMS: And I take offense at
5 being inferred -- not inferred -- absolutely stated
6 that we are doing anything underhand.

7 THE COURT: Thank you.

8 Mr. Taylor, you had something you
9 wanted to add.

10 MR. TAYLOR: Yes, sir, Your Honor.
11 Your Honor, for the record, all of this discussion
12 about the topics that Mr. Houston is now throwing out
13 there is inappropriate in this motion. Mr. Houston
14 can make those arguments if he likes to the Court of
15 Appeals via his appeal, but they are inappropriate at
16 this point.

17 And biting my tongue as hard I can,
18 Judge, I want to again say I take great offense at
19 this. And I know, Judge, you don't want to hear this,
20 but, Your Honor, Mr. Vaux representing the defendants
21 a year and a half ago consented to the ownership
22 because everyone knew that it was the right thing to
23 do. And there is a court order as to that in the
24 file. And to just be marching the law and throwing
25 out these allegations of deceit on behalf of me and

1 Chet and our plaintiffs is just factually wrong, and
2 it's just morally wrong --

3 MR. HOUSTON: You know -- in any case
4 in the history of South Carolina jurisprudence where a
5 consent order is accepted in lieu of a
6 statutory-required evidentiary hearing.

7 MR. TAYLOR: That's just bizarre to
8 even say.

9 MR. WILLIAMS: Yeah. I suggest that
10 there's been jurisprudence that says you can't do it.

11 THE COURT: Well, let's do this: I'm
12 going to try to read the statutes y'all have given me,
13 try to figure out what "waste" means, look at all of
14 this, and try to let y'all know something. I know
15 it's gone on forever. I see something popped up. I
16 guess somebody sent me the contract a minute ago. I
17 hadn't looked at it yet, of course.

18 MR. WILLIAMS: I did, Your Honor.

19 THE COURT: But I'll take a look at all
20 of it. This is the case -- and I got several of these
21 cases, of course, that sometimes run into one another
22 in my mind. But, Mr. Houston, your clients represent
23 what percentage ownership of the whole?

24 MR. TAYLOR: One point one percent.

25 MR. HOUSTON: Your Honor, the

1 percentage doesn't have anything to do with equitable
2 rights.

3 THE COURT: I'm sorry. I didn't hear
4 that, sir.

5 MR. HOUSTON: I said percentages has
6 nothing to do with equitable rights. And so far, if
7 we want to make comparisons, we've offered more money
8 than their alleged contract calls to pay --

9 THE COURT: My question didn't have
10 to --

11 MR. HOUSTON: -- communicated -- let me
12 finish, please.

13 THE COURT: Go ahead, please, sir.

14 MR. HOUSTON: This wasn't communicated
15 to their clients. Their clients don't know that we
16 took more -- that they would see more money under our
17 offer than they would under this present contract.

18 MR. WILLIAMS: Your Honor, the
19 contract --

20 MR. HOUSTON: -- the essence of what
21 I'm saying is percentages doesn't mean anything. The
22 thing that should be considered is, what is the
23 maximum benefit to the greatest number of people? And
24 the contract that the money amount offer we offered
25 would be, whether or not we're just a small minority

1 or not.

2 MR. WILLIAMS: Your Honor, please.

3 Your Honor --

4 MR. HOUSTON: -- well, minority doesn't
5 come into the equation.

6 MR. WILLIAMS: Yeah --

7 THE COURT: Charles, you tell us when
8 you're finished because it sounds like you're
9 finished, and then you'll start again. So tell me --

10 MR. HOUSTON: I'm finished on that
11 point.

12 THE COURT: Okay. Thank you so much.

13 MR. HOUSTON: You were raising the
14 thing about the percentage.

15 MR. WILLIAMS: If I may, Your Honor.
16 This contract that Mr. Houston keeps talking about
17 isn't signed. It never has been signed. And it
18 provides for, as I recall, a new 180-day due diligence
19 period within which the prospective buyer can cancel
20 the contract.

21 The Rotunda contract that's in place
22 right now, the addenda to the contract state that the
23 due diligence periods have already run, they can't
24 cancel the contract anymore under it, and the title
25 examination periods have run. Mr. Finger, of course,

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1 will want to update title from the last -- but there
2 are no more contingencies left in the Rotunda
3 contract.

4 The contract that Mr. Houston keeps
5 talking about that doesn't actually exist because it's
6 never been signed has all sorts of contingencies in it
7 during which period of time the buyer can just walk
8 away and leave all of the owners of the property
9 holding a bag full of nothing. Thank you.

10 MR. TAYLOR: Your Honor --

11 MR. HOUSTON: Counsel, it wasn't --

12 MR. TAYLOR: Your Honor --

13 MR. HOUSTON: It wasn't offered as a
14 contract. It was an offer.

15 MR. WILLIAMS: But you keep saying
16 "contract," Charles.

17 MR. HOUSTON: No. I said we made an
18 offer.

19 MR. WILLIAMS: No. You said
20 "contract."

21 MR. HOUSTON: -- that exceeds
22 what -- let me clarify that: I said that the
23 defendants made an offer that, if it were accepted,
24 would be a greater benefit to the heirs than what they
25 would receive on the proposed contract with Rotunda.

1 MR. WILLIAMS: If it in fact ever
2 closed, which it very well might not do.

3 MR. HOUSTON: Well, you know, that
4 could be applicable on both sides.

5 MR. WILLIAMS: No. Because on the
6 Rotunda side, all the due diligence periods have run.

7 THE COURT: All right. Let's do this
8 rather than y'all arguing back and forth. I
9 appreciate the spirited banter. But let me ask y'all
10 a practical question here with regard to Mr. Houston's
11 motion: If in fact I were to set a bond, and if in
12 fact we had a downturn in the economy, which is -- the
13 economy goes up; it goes down. It's been up; I mean,
14 common sense dictates, it will be down at some point.
15 When? How much? Who knows? Wish I knew. But nobody
16 really knows that. But it would be inconceivable that
17 this property would drop to zero. It certainly is
18 conceivable -- I think we all probably remember
19 2008/2009 when things fell to 50 percent of their
20 previous value in Beaufort County. I'm sure it was
21 worse in other places. I guess if I were to
22 say -- because I don't think a nominal bond protects
23 against waste. And "waste" is, I believe, the
24 applicable word if I use 170, as Mr. Houston wants me
25 to do, which may very well be exactly right. But that

1 doesn't mean that number is zero. And it doesn't mean
2 the number is the entire value of the property.

3 MR. HOUSTON: Your Honor, if I may
4 interrupt. I think the --

5 THE COURT: Sure.

6 MR. HOUSTON: -- statute does say that
7 the bond would cover any, I think, diminution in
8 value.

9 THE COURT: Right. And so we've got a
10 value right now of the contract price of nine million
11 whatever. If the value is diminished by operation of
12 the economy, by comet hitting Hilton Head, by, you
13 know, anything, then there's a diminution of value.
14 The question is, what is that diminution of value?
15 Nobody really knows that. Again, it's not going to
16 zero. I mean, unless somebody discovers that the
17 place is a toxic waste dump or something, and I'm sure
18 that's already been explored. So is it going to
19 50 percent? Is that a safe bet? I don't know. I
20 don't know the answer to that. I don't know if y'all
21 have any thoughts. Again, I don't think it goes to
22 zero. But if the economy drops, it certainly goes
23 below nine. Any thoughts on that?

24 MR. HOUSTON: Well --

25 MR. TAYLOR: Your Honor --

1 MR. HOUSTON: -- Your Honor, they've
2 already assumed that risk in a sense that they said
3 that they're ready to go to contract now. So if the
4 economy drops, they're buying property that the value
5 could go down three months from now.

6 THE COURT: Property buying's a risky
7 undertaking. I'll grant you that.

8 MR. WILLIAMS: Yeah. Your Honor, I
9 think one of the real risks here is that if you do
10 grant the supersedeas and the bond is posted, then
11 there's a chance that Rotunda walks away. And then
12 the bottom drops out, and next time we go to sell the
13 property, instead of nine million seven fifty,
14 someone's only willing to offer four million --

15 THE COURT: Exactly. That's --

16 MR. WILLIAMS: -- the risk. Yes.

17 THE COURT: That's the risk. And I
18 think that's one of the things "waste" means:
19 Diminution of value. I just don't know what that
20 number is. I mean, again, historically, I think most
21 of us on the thing here remember the last recession
22 and the amount things dropped, which was a lot. But I
23 don't --

24 MR. HOUSTON: But, Your Honor --

25 THE COURT: Go ahead, sir.

1 MR. HOUSTON: Your Honor, during this
2 recession, the price of property on Hilton Head has
3 gone up 35 percent.

4 THE COURT: -- well, we're not in a
5 recession yet. But you know, and so I don't know. If
6 I knew --

7 MR. WHITE: Judge Dukes --

8 THE COURT: -- I'd be living on a yacht
9 in the Med, you know, calling into my broker. But
10 it's --

11 MR. WHITE: Well, Judge Dukes, that's
12 why it goes to the point that you should assume that
13 it's zero; right? Because there could be no potential
14 market at all. Like, we shouldn't say that
15 it's -- you can't determine --

16 THE COURT: I appreciate your input,
17 Mr. White, and I appreciate your expertise. But I
18 think there's always a market, again, unless there's
19 something like an oil spill or --

20 MR. WHITE: Well, no. I was just
21 saying, it's not a market that you can predict; right?
22 So, therefore --

23 THE COURT: Oh, absolutely. Yeah --

24 MR. WHITE: Therefore, we have a market
25 that has been set. So you assume that we would lose

1 the entire market. Right? You don't assume 50, 30.
2 You assume that it's either you have the market now,
3 or you have no market. So the value is 9.75, and
4 that's where we're at today. So we're at risk of
5 losing all of it.

6 MR. TAYLOR: Your --

7 MR. WHITE: We can --

8 MR. TAYLOR: Your Honor --

9 MR. WHITE: We can transact on that.
10 We can't transact on a future value that no one knows.

11 THE COURT: You and I may have to agree
12 to disagree on --

13 MR. WHITE: Okay.

14 THE COURT: -- this property would go
15 to zero. You know, there'd be some takers at a
16 dollar, I can tell you.

17 MR. TAYLOR: Your Honor.

18 THE COURT: Yes.

19 MR. TAYLOR: Your Honor, if I may just
20 one second. Judge, I think that it would be
21 appropriate to take a step and to talk for a second
22 about the overall historic aspect of why this
23 supersedeas bond statute rule is in place. And what
24 it is in place for, Judge -- I know I don't need to
25 remind the Court, but I like to remind everybody -- is

1 that the legislature and the court system came
2 together and said, once a full Circuit Court trial has
3 been set and once it has gone through and once a order
4 has been entered, then it is presumed, until
5 overturned, that that order is correct. And in order
6 to secure that, we're going to post a high bond
7 requirement because if someone who loses in Circuit
8 Court wants to continue on and delay things by two
9 more years, then they must go and bear the burden of
10 the responsibility of insuring that.

11 And such I assume -- and speaking on
12 behalf of the plaintiffs, I agree that there's very
13 little chance that property would go to zero. But it
14 is within this Court's discretion -- and I would urge
15 the Court to err on the side of protecting all of the
16 property owners, including Mr. Houston's people, and
17 require at least a 50 percent amount, Judge, which
18 would be \$4,850,000. Because to do anything less than
19 that and require them to not put anything substantial
20 will only continue to encourage the behavior of
21 stopping everything they can by filing every single
22 motion they can. With the respect that I have for
23 Mr. Houston after many years of knowing him, there's
24 no other way to put it but that that is the strategy
25 in this case. And clearly, that is exactly what they

1 intend to do is try to wait this out until such time
2 as somebody offers to make a deal with them. And it's
3 not right.

4 Judge, you've heard the evidence.
5 You've entered your order. And if they want to put a
6 stay on this case and stop us from completing the
7 sale, they need to put up a serious bond.

8 THE COURT: Okay. All right. I think
9 I got the big picture.

10 MR. HOUSTON: Your Honor.

11 THE COURT: Yes, sir. I'll give you
12 one quick, final word, Mr. Houston. Mr. Houston?

13 MR. HOUSTON: Okay. Another factor
14 that, in this statutory scheme that the legislature
15 has provided for has been also the financial posture
16 of the party seeking the supersedeas bond. You know,
17 if a defendant is well-heeled, in the statute which
18 Counsel had cited before, they're required to pay more
19 than the maximum. But if they don't fall in that
20 category, the statutory scheme is that they would pay
21 a lower amount because the Court looks at the welfare
22 of the person who is required to put up the
23 supersedeas bond.

24 MR. TAYLOR: Judge, you can't tell me
25 that I'm absolutely wrong on the statute --

1 MR. HOUSTON: So --

2 MR. TAYLOR: -- rely on.

3 MR. HOUSTON: -- just taking an
4 arbitrary calculation between full and zero and set it
5 at 50 is basically not appropriate. There's no sound
6 basis that the property would, within the course of a
7 year and a half, diminish from the present appraised
8 value down to zero --

9 THE COURT: I don't think it's going to
10 zero. I don't disagree with you there.

11 MR. HOUSTON: And I don't think it's
12 going to go to half. There's no --

13 THE COURT: I would've said that --

14 MR. HOUSTON: -- drop 50 percent in
15 value. If anything, it's going to go up.

16 THE COURT: You know, historically,
17 there are plenty of drops. But --

18 MR. HOUSTON: -- you know, because of
19 its uniqueness, the value is going to go up. There is
20 no more waterfront property on Hilton Head.

21 THE COURT: All right. Well, let me do
22 this. Y'all have given me stuff to consider, and I've
23 got something after this. And I've got to deal with
24 that and some other things. But I will try to get
25 back with y'all by the end of the day Monday with

1 something on this. I know that time is of the essence
2 for all parties. And --

3 MR. WILLIAMS: And there's still one
4 other outstanding motion there, Your Honor.

5 MR. TAYLOR: Your Honor, I realize,
6 Your Honor, that you need to move forward. Judge, can
7 we just --

8 THE COURT: It was the flip side of the
9 other motion; right? It's either grant a supersedeas,
10 set a bond, or issue the master's deed; right? I
11 mean, I'm happy to hear it. But I mean, it's --

12 MR. WILLIAMS: That's a fair way
13 to -- yes.

14 MR. TAYLOR: Judge, I don't mean
15 to -- I don't mean to take up your time. If you will
16 just review the motion filed on March the 14th of 2020
17 requesting it. You're exactly right, Your Honor.
18 That is the position.

19 THE COURT: Okay. I mean, I don't mean
20 to shortchange --

21 MR. HOUSTON: Your Honor --

22 THE COURT: It's a coin flip; right? I
23 mean, it's one or the other.

24 MR. TAYLOR: Yes, Your Honor.

25 THE COURT: All right. Any --

1 MR. HOUSTON: Your Honor, before you
2 rule on that other motion in reference to the master's
3 deed --

4 THE COURT: Yes, sir.

5 MR. HOUSTON: -- I will have a
6 memorandum in to you probably by tomorrow or next day.
7 But the salient point I want to make in reference to
8 that is that there's no statutory provision granting a
9 Master in Equity authority to grant a master's deed in
10 an action to quiet title, which this one is. Now
11 there is one code section --

12 MR. WILLIAMS: No.

13 MR. HOUSTON: -- under the section of
14 partitioning that does permit that. But that's only
15 when the action is just for partition. So here, where
16 the action is to quiet title, there are other
17 procedural requirements that have to be met. And
18 there's nothing under this section that gives any
19 authority to a Master in Equity to issue a master's
20 deed. You know, most of the times in partition
21 action, the parties may have a fee simple title
22 already. Or it's just a matter dividing -- making a
23 physical division of the land. But this is an action
24 to quiet title in which a further finding has to be
25 made --

1 THE COURT: Okay.

2 MR. HOUSTON: -- on the action to quiet
3 title, there's no statutory authority for the Master
4 in Equity to grant a master's deed.

5 MR. TAYLOR: And, Your Honor --

6 THE COURT: Go ahead.

7 MR. TAYLOR: -- our position is, that's
8 just wrong, that the Pinckney Act clearly provides
9 that, once the statutory scheme has gone through, once
10 the minority owners have been given the opportunity to
11 purchase the majority owners' interest out and that
12 time has past, which it undoubtedly has here, that the
13 only way to then implement the Pinckney Act scheme is
14 for the judge to enter and be willing to sign the deed
15 as we have asked. And we would, once again,
16 Your Honor, ask the Court to do that.

17 MR. WILLIAMS: Yeah. And if I may,
18 Your Honor --

19 MR. HOUSTON: No, you're not going
20 to --

21 MR. WILLIAMS: Mr. Houston --

22 MR. HOUSTON: No, you're not going to
23 find any language to that --

24 MR. WILLIAMS: If I may --

25 MR. HOUSTON: -- Act.

1 THE COURT: Okay. Hold on one
2 second -- Mr. Williams is talking. Then I'm happy to
3 hear from you, Mr. Houston.

4 MR. HOUSTON: Go ahead and proceed,
5 Chet. Go ahead and proceed.

6 MR. WILLIAMS: Your Honor, Mr. Houston
7 simply is wrong. This is an action to do two things:
8 It was initially filed to quiet title and to partition
9 the property. The quiet title was solved back in May
10 of last year. That issue was resolved, and all we're
11 dealing with now is the partition. And clearly in the
12 context of partition, you have the ability to issue a
13 master's deed to resolve that partition. Thanks.

14 THE COURT: All right. Well, let's do
15 this: Charles, you said --

16 MR. HOUSTON: Your Honor. Your Honor,
17 there is -- title property was not resolved. It still
18 is title property.

19 THE COURT: Okay. Well, let's do this.
20 Charles, I understand -- you wanted to draft something
21 and said you'd get it in today or tomorrow. Is that
22 right?

23 MR. HOUSTON: Yes. Right.

24 THE COURT: Okay. And then I'm sure
25 the other side would like a quick response to that,

1 which I assume I'd get before --

2 MR. HOUSTON: But this is a
3 rebuttal -- this is a rebuttal to their brief. That's
4 what it is.

5 THE COURT: Oh, okay. Well, let's do
6 this.

7 MR. HOUSTON: While you may not have
8 seen it yet, but yesterday evening, they submitted a
9 memorandum in support of their motion. And I was
10 going to --

11 MR. TAYLOR: That's not right, Judge.
12 The memorandum was only an opposition to Mr. Houston's
13 motion. It did not address the master's deed because
14 he has not objected to that before right now.

15 THE COURT: Why don't we do this,
16 Mr. Houston? You're going to send me something on the
17 master's deed authority, and I understand that --

18 MR. HOUSTON: Correct.

19 THE COURT: -- the other side will
20 submit something solely on that particular topic --

21 MR. TAYLOR: Yes, sir.

22 THE COURT: -- in response. I had said
23 I'd try to get something done by Monday afternoon.
24 Why don't we see if y'all can get me whatever you're
25 going to get in response to whatever Mr. Houston's got

1 Monday if you can. And then I'll try to deal with
2 this Tuesday or Wednesday or so. But as soon as
3 possible. All right. Anything else we can do for
4 this record then?

5 MR. TAYLOR: Not on behalf of the
6 petitioners, Judge.

7 MR. WILLIAMS: Thank you, Your Honor.

8 THE COURT: Thank you.

9 All right. Mr. Houston, anything else,
10 sir?

11 MR. HOUSTON: I think that much more
12 could be said, but I think enough has been said with
13 the time we have allotted, Your Honor. And I think
14 that both sides have been able to convey to you their
15 salient arguments.

16 THE COURT: All right. I appreciate
17 it. As usual, in any case that's contested, I always
18 encourage the parties to see if there's some way to
19 get together and resolve the whole thing. If not, I
20 understand completely. And I will await Mr. Houston's
21 memo and then the response to that and try to get on
22 it as quickly as possible. Y'all have a --

23 MR. HOUSTON: And also --

24 THE COURT: Yes, sir.

25 MR. HOUSTON: Your Honor, you also said

1 you would review the sufficiency of this alleged
2 contract.

3 THE COURT: That was sent to me, and I
4 will take a look at it. So thank you so much.

5 All right. Y'all have a good day.
6 Thank you so much.

7 (Whereupon, at 11:50 a.m. EDT/
8 10:50 a.m. CDT, the proceeding was
9 concluded.)
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CERTIFICATE OF DEPOSITION OFFICER

I, SOPHIE CAUDLE, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

September 27, 2022



SOPHIE CAUDLE
Notary Public in and for the
State of Texas

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CERTIFICATE OF TRANSCRIBER

I, EMILY LOFING, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

September 27, 2022



EMILY LOFING

[& - amounts]

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11:50 43:7	38 16:13	accurate 44:9 45:5	agree 7:8,12 11:14 33:11 34:12
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South Carolina Rules of Civil Procedure

Part V. Depositions and Discovery

Court Rule 30

(e) Submission to Witness; Changes; Signing.

When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the court holds

that the reasons given for the refusal to sign
require rejection of the deposition in whole or in
part.

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OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

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GEORGIA HARRISON vs STEPHANIE LORRAINE KIRKLAND et al
2020-CP-07-02301 - HEARING

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

4 GEORGIA HARRISON, et al.
5 Plaintiff,
6
7
8

9 vs. CIVIL ACTION NUMBER
10 2020-CP-07-02301
11
12

13 STEPHANIE LORRAINE KIRKLAND, et al.
14
15 Defendant.

16 -----/

17 The Motion Hearing, in the
18 above-entitled cause, taken pursuant to Notice
19 and agreement, before Honorable Judge Marvin H.
20 Dukes, and Naomi McCracken, Stenographic Court
21 Reporter and Notary Public, at the Beaufort
22 County Magistrate's Courthouse, 102 Ribaut Road,
23 2nd Floor, Beaufort, South Carolina, on the 24th
24 day of February 2023, commencing at or about the
25 hour of 10:32 a.m.



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5 **REPORTER'S NOTE: ALL EXHIBITS**
6 ARE RETAINED BY THE COURT.

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1 THE COURT: Good morning, then.
2 We're here in 2020-CP-07-02301. This
3 is Harrison, et al. versus Kirkland, et
4 al. This matter that we have scheduled
5 for today is a motion for
6 reconsideration filed November 17th,
7 2022.

8 And, Mr. Houston, I am happy to
9 hear from you, sir.

10 MR. HOUSTON: Yes, Your Honor.
11 Good morning to you, again.

12 Your Honor, this is some
13 manifesting justice going on here with
14 this case. And -- but first I'd like
15 to take -- address a matter not
16 contained within our motion. It has to
17 do with ongoing efforts pursuant to
18 your request that we try to settle this
19 cases, if possible.

20 THE COURT: I always say that. I
21 always hope it happens. Yes, sir.

22 MR. HOUSTON: Here's the problem
23 I'm having, I'll be forthright with it.
24 And that is that one counsel is wearing
25 two hats. He's representing the



1 interest of the developer and of the
2 heirs.

3 Before this case was instituted,
4 all of the communications were between
5 plaintiffs and Attorney Chet Williams.
6 It was only after the contract with
7 Rotunda was first executed that then
8 Attorney Taylor was brought in to
9 institute this lawsuit. All right?
10 Every -- and you always say follow the
11 money.

12 THE COURT: I don't know if I say
13 that. But it's frequently said, yeah.

14 MR. HOUSTON: Every motion,
15 memorandum that has been filed has been
16 filed by Attorney Taylor. Attorney
17 Williams hasn't filed a motion other
18 than just putting his name on whatever
19 Tom filed.

20 MR. TAYLOR: Pardon me. I object
21 to this because I don't know what we're
22 doing. This apparently is not a part
23 of the motion for reconsideration. We
24 were given no notice of this. I don't
25 know if it's an actual claim of some



1 type. But it sounds to me like, Your
2 Honor, that it's just a generalized
3 recitation of events. And, certainly,
4 if he's going to get into settlement
5 discussions, that's not appropriate for
6 this Court or the record.

7 THE COURT: Mr. Houston, there's
8 some merit, certainly, with what
9 Mr. Taylor just said. We're not really
10 supposed to -- I'm supposed to
11 encourage them, and as you've
12 suggested, I have.

13 MR. HOUSTON: Right. Right.
14 And --

15 THE COURT: I hope it happens.

16 MR. HOUSTON: But we have been
17 trying to follow it. But this is a
18 fiasco. And I want -- because -- there
19 was a motion filed before the Supreme
20 Court trying to get sanctions for me
21 saying that I was litigious. But only
22 pursuing my client's interest because
23 of all of these obstacles, artificial
24 and real, that we've had to confront.

25 And one is, I think I'm -- made an



1 offer that goes directly to the heirs,
2 but it has to be filtered through
3 Rotunda before it gets to the heirs.

4 (Crosstalk.)

5 THE COURT: Hold on a second,
6 Mr. Houston. Let's do this, we've got
7 a motion scheduled that we probably
8 ought to hear and get that on the
9 record. If there are issues that need
10 to be taken up other than that motion,
11 we can either see if by consent we can
12 deal with them today or we can schedule
13 a time to deal with them.

14 And I'm happy to hear from you,
15 I'm not cutting you off, I'm just -- my
16 understanding is this is something new.

17 MR. HOUSTON: I prefaced my remark
18 saying this didn't pertain to the
19 motion directly. All right?

20 THE COURT: You did, that's true.
21 I wasn't sure if you were going to talk
22 about something filed in the wrong
23 place.

24 MR. HOUSTON: No, no. I just want
25 to ask Attorney Taylor if he'd state



1 for the record that he hasn't received
2 any compensation from the developer who
3 he represents some cases in this case.

4 THE COURT: Well, why don't we do
5 this, rather than getting into issues
6 that weren't noticed or scheduled or
7 anything like that, y'all might just
8 want to have a conversation after this
9 since you're all in the same building.
10 But that's not -- none of that is
11 before me today.

12 I share in your desire to settle
13 the case. But why don't we do this, I
14 think it's a little unfair to make
15 statements like that without sort of an
16 opportunity to respond. But I'm not --

17 MR. HOUSTON: I thought we'd keep
18 it informal, Your Honor, I didn't want
19 like -- that he could just --

20 THE COURT: Sure. Why don't y'all
21 talk after this. If y'all can agree
22 that whatever you can agree to, that
23 would suit me just fine. If you feel
24 something needs to be filed and heard,
25 you know, we'll deal with that also.



1 But why don't we do this, let's
2 try to deal with -- I don't know if you
3 feel like you need to address this now
4 or we can just deal with it later.

5 MR. WILLIAMS: Your Honor. Who
6 was your question addressed to,
7 Mr. Houston? Who was your question
8 about getting paid by Rotunda addressed
9 to, me?

10 MR. HOUSTON: No.

11 MR. WILLIAMS: Okay. To Tom?

12 MR. HOUSTON: Correct.

13 MR. TAYLOR: Your Honor, only for
14 the record because of what Mr. Houston
15 just said, I want to make it clear and
16 the record will so indicate, there has
17 never been a motion filed on behalf of
18 the plaintiffs and respondents in the
19 Supreme Court concerning sanctions.

20 We did, in fact, ask Mr. Houston
21 and his clients to be sanctioned in
22 response to their filing a petition for
23 a writ of mandamus. But we did not
24 file any separate motion.

25 THE COURT: All right. Well, and,



1 again, that's --

2 MR. TAYLOR: Yes, sir.

3 THE COURT: -- Columbia and not
4 me.

5 MR. FINGER: On behalf of Rotunda,
6 Terry Finger.

7 I called Mr. Houston about two
8 weeks ago and asked him if his clients
9 had any interest in Rotunda try to
10 sweeten the pot a little bit and he
11 indicated they had no interest. So
12 discussions were had as recently as two
13 weeks ago.

14 THE COURT: Okay. And I don't
15 know what sort of authority you have
16 today, y'all have, if y'all want to
17 talk after this, stranger things have
18 happened. You know, cases that look
19 like they can't be settled get settled
20 all the time.

21 MR. WILLIAMS: Just to make it
22 clear, the reason why Mr. Taylor is
23 involved in this litigation is because
24 I'm not Rule 5(B) qualified.

25 THE COURT: Okay.



1 MR. WILLIAMS: So I can't appear
2 as sole lead counsel. It used to be
3 Rule 5(B), I don't know what it is now.

4 THE COURT: 400 or something.

5 MR. WILLIAMS: But I can't appear
6 as lead or sole counsel at a hearing or
7 a trial on merits, which is why I
8 always have to have someone like
9 Mr. Taylor here to hold my hand.
10 That's his role in this.

11 THE COURT: All right. Well,
12 maybe that will settle the issue. If
13 not, I would suggest y'all talk after
14 the fact. And, again, it sounds like
15 the communication lines, perhaps, are
16 open with regard to settlement. The
17 numbers or something, y'all would have
18 to discuss and see what you can do.

19 But I appreciate it. So why don't
20 we move on.

21 MR. HOUSTON: Your Honor, let me
22 ask you this.

23 THE COURT: Sure.

24 MR. HOUSTON: What's the format
25 that you would like for me to follow



1 with the presentation of our motion?
2 There are about 15 different issues
3 I've raised in the motion. Some of
4 them can be combined because they
5 basically touch upon the same issue,
6 just you know, shades of differences?

7 THE COURT: Are you talking in the
8 way of response, whether or not I would
9 like to hear number one and then hear
10 the response and then back to you for
11 number two?

12 MR. HOUSTON: Right.

13 THE COURT: I'll let you structure
14 it in any order you want, in any
15 grouping you want. And then I'll leave
16 it to -- Mr. Taylor, would you be --
17 want to wait until the end and respond
18 to the whole thing or respond point by
19 point?

20 MR. TAYLOR: Your Honor, I think
21 it would be best to respond at the end,
22 if that would be okay with you.

23 THE COURT: Okay. So just take
24 your time, go through the whole thing.
25 And then we'll do it that way.



1 MR. HOUSTON: Okay. Very well,
2 Your Honor.

3 Your Honor, the first things that
4 we would like for the Court to give us
5 a ruling upon is the first, second,
6 third, which is tied into the 13th
7 paragraph of the motion.

8 THE COURT: Okay. Hold on one
9 second.

10 Quick question: Does the blue
11 notebook contain the motion or not?

12 MR. TAYLOR: Yes, sir. It does,
13 your Honor.

14 THE COURT: Okay.

15 MR. TAYLOR: We'll find it, Judge.

16 MR. FINGER: 68, I believe, Your
17 Honor.

18 THE COURT: 58?

19 MR. FINGER: 68.

20 MR. TAYLOR: 68, Your Honor.

21 THE COURT: 68. Okay.

22 That will be a little easier for
23 me than scrolling, so I'm just going to
24 put this aside.

25 Please repeat that page and



1 paragraph for me again, Mr. Houston.

2 MR. HOUSTON: Paragraphs 1, 2, 3,
3 and 13. They are all tied in together.

4 THE COURT: Okay. Got it.

5 MR. HOUSTON: All right. What we
6 would ask the Court to rule upon is the
7 fact that, one, which the statute
8 requires, is that the administrators or
9 the personal representatives of those
10 four -- or three or four estates were
11 not joined as parties through this
12 action and that they are necessary
13 parties.

14 And, basically, the failure to do
15 so would be subject to a 12(B)7 motion
16 to dismissal and, therefore, the Court
17 doesn't have jurisdiction of the matter
18 or the absence of the necessary
19 parties.

20 The next one is Number 6 and 7.
21 The statute requires the Court or the
22 master to make a determination whether
23 it is titled property. And that is
24 necessary because there are other
25 sections which are predicated upon that



1 particular finding. And in this
2 particular action, a finding of fact as
3 to the status of the title has not been
4 made by the Court.

5 And in connection with that Number
6 7, we're asking if the present status
7 of the title to the property would be
8 considered marketable title.

9 Number 8 is the situation where
10 the defendants were allowed only 60
11 days in which to tender the purchase
12 price of the property, that it was
13 nonrefundable and they were to deposit
14 the money into Court, nonrefundable,
15 and without any provision made of them
16 receiving the deed to the property. No
17 further warranty deed would be provided
18 to them.

19 And the fact that they weren't
20 goes to the issue of unconscionability
21 and also whether or not they should
22 have been granted an extension of time
23 that was requested for 45 days in which
24 to tender the money under some other
25 circumstances pertaining to the title.



1 The other one is -- pertains to
2 the fact that they were only given 60
3 days under those conditions to tender
4 the money in the Court.

5 THE COURT: Are we still on Number
6 8? I'm sorry. Are we still on Number
7 8?

8 MR. HOUSTON: Yes.

9 THE COURT: Okay. I'm sorry. Go
10 ahead, please.

11 MR. HOUSTON: We'll be moving on
12 to the -- to Number 10, which is
13 already -- I mentioned in eight, and
14 that was there was no deed in
15 preparedness for them to receive when
16 they deposited the money into the Clerk
17 of Court.

18 In conjunction also with the
19 request for the 45-day extension, we
20 raised the equal protection clause
21 because we were only allowed 60 days
22 whereas the other party provided 91
23 days for the plaintiffs to get their
24 contract together. Okay.

25 Number 11 is the one we really



1 want to dwell on.

2 In Number 11, Your Honor -- I'll
3 wait for you.

4 THE COURT: I've got it. Go
5 ahead.

6 MR. HOUSTON: In Number 11, we ask
7 this question, Your Honor: By what
8 authority -- and this is what we
9 actually want the Court to state for
10 us -- by what authority does the Court
11 have to compel an heir to sell their
12 interest in property to the other heirs
13 and where the other heirs have already
14 contracted to sell their interest to a
15 third party?

16 Our position is that this is
17 unconstitutional and there's no
18 authority for it and that it
19 defranchises the heir's property rights
20 as to the price and the disposition
21 they want to make of their interest.
22 And without the Court having any
23 authority to convey their interest,
24 there is a statute, Statute 15.61.400,
25 that says it is mandatory, when there's



1 a factual situation of this nature,
2 that the remedy is and the course the
3 Court is supposed to follow is to sell
4 the property at public auction.

5 And this is what the plaintiffs --
6 the defendants desire to do. We do not
7 believe that we have to be bound by the
8 purchase price that the other
9 plaintiffs contracted to sell their
10 interest to. If they want to go ahead
11 and buy the other plaintiffs' interest
12 out, we have no objections to that. It
13 will just be Rotunda standing in their
14 place.

15 But we have the statutory right to
16 not have to convey our interest to
17 Rotunda or the other heirs. But the
18 statute gives us the constitutional
19 right to dispose of our interest
20 because it is an action, you know, to
21 partition interest at public auction.

22 And whoever the highest bidder is,
23 let's say subject to -- as long as the
24 bid is above the -- what has been
25 determined by the clerk to be the fair



1 market value, that's the procedure the
2 Court should follow.

3 So basically, our position is,
4 Your Honor, you know, a lot of these
5 matters have been discussed
6 previously. But we've never had a
7 definitive answer from the Court. So
8 by this motion, without taking away the
9 Court's authority to amend its motion,
10 which it can do, we're asking just for
11 a ruling on these particular issues.

12 So when we -- if we necessarily go
13 to an appeal, the appellate court will
14 clearly understand what the position of
15 this Court was on those particular
16 issues rather than just a statement
17 saying the Court just denied it.

18 But we particularly call to the
19 Court's attention that Statute
20 15.61.400 which we rely upon.

21 Thank you, Your Honor.

22 THE COURT: Thank you so much,
23 sir.

24 I'm happy to hear from you.

25 MR. TAYLOR: Your Honor, good



1 morning. Tom Taylor and Chet Williams
2 on behalf of the plaintiffs.

3 Your Honor, with all respect to
4 Mr. Houston, the plaintiffs suggest
5 strongly that each and every one of the
6 arguments that was just articulated by
7 Mr. Houston have been made repeatedly
8 in this case prior. Specifically, Your
9 Honor, these arguments -- these exact
10 arguments were made on our hearing
11 dates of September 15th, 2022 and
12 September the 22nd, 2022 when I will
13 remind the Court that Mr. Houston's
14 original motion for stay and for
15 supersedeas, as was filed on September
16 7th, 2022, was heard.

17 And the Court will recall, during
18 the course of that extended first video
19 conference on September 15th,
20 Mr. Houston articulated each and every
21 one of the exact same points, and you
22 can simply compare the motion from
23 September 7th to the motion for
24 reconsideration currently pending
25 before the Court and you will see they



1 are almost identical in nature.

2 Mr. Houston then asked for an
3 extension of time to further brief
4 certain issues that arose during the
5 September 15th video conference and the
6 Court gave him an additional week to.
7 On September 22nd, 2022, we reconvened,
8 Your Honor, and you heard further
9 arguments from Mr. Houston concerning
10 these exact same issues.

11 The Court then issued its order of
12 November the 7th, 2022 which Your Honor
13 does, in fact, address each and every
14 one of these points in the Court's
15 preferred method of doing so.

16 Mr. Houston then filed, on
17 November the 17th, a pending motion for
18 reconsideration.

19 Your Honor, on behalf of the
20 petitioners, we ask that the Court deny
21 the motion for reconsideration.

22 And, very briefly, Your Honor, I
23 would point out that the motion for
24 reconsideration as it is styled is, of
25 course, a motion to alter or amend



1 judgment under Rule 59(E). I have
2 provided the Court with a brief that
3 sets forth the applicable legal
4 standard for consideration.

5 I think the Court probably agrees
6 that there are only three circumstances
7 in South Carolina where such a motion
8 is appropriate to be acted upon. And
9 the first is to accommodate an
10 intervening change and controlling law,
11 which Mr. Houston does not assert
12 occurred.

13 The second is to account for new
14 evidence unavailable at trial. And
15 even though, Your Honor, the motion
16 states that there is new evidence to be
17 considered, there was no affidavit,
18 there was no transcript, there was
19 nothing even argued this morning about
20 any new evidence that is risen since
21 then. So certainly, the second
22 provision where new evidence had been
23 discovered that was unavailable at
24 trial occurs.

25 And then thirdly, to correct a



1 clear error of law or prevent
2 manifested justice. Mr. Houston's
3 argument this morning is premised upon
4 the wording that there is a manifest
5 injustice about to occur. And I would
6 ask the Court to please remember, Your
7 Honor, that we have also addressed this
8 very issue several hearings before.

9 Mr. Houston has made other
10 accusations against the lawyers for the
11 plaintiffs in the case about conflicts
12 of interest and things such as that.
13 And, Your Honor, the Court has
14 consistently ruled, after hearing the
15 evidence that was presented, that there
16 has been none.

17 The only thing that has occurred
18 in this case, which is now over two and
19 a half years old, is that the owners of
20 less than 1.2 percent of this property
21 has successfully delayed the conclusion
22 of this case by two years in order to
23 try extract a higher percentage than
24 they are due under the terms of the
25 Pinckney Act.



1 Mr. Houston, today, argues that
2 there are other statutes that are
3 applicable and that somehow their due
4 process rights have been denied. Your
5 Honor, we remind the Court that this
6 Pinckney Act was specifically put in
7 place just for this type of situation
8 where there are basically minority
9 owners of a property who contend that
10 they are not getting a sufficient
11 amount of money. And it gives them the
12 opportunity to come in and buy out the
13 interest of the majority owners.

14 Your Honor, there's never been a
15 factual assertion made in this case
16 that every issue of the case has been
17 handled above board and properly from
18 the appraisals that were initially
19 brought forth to the 65-day window that
20 the minority owners were given in order
21 to tender money.

22 I remind the Court, without going
23 through the substance of it, Judge,
24 that there was not a penny brought
25 forward by any of the minority owners



1 towards this, no money ever made, took
2 any action in order to try to bring
3 forth and buy out the interest of the
4 majority owners, even though their
5 rights to do so were certainly
6 protected.

7 Your Honor, this case, which was
8 appealed in March of last year, 11
9 months ago to the Court of Appeals and
10 from which the Court of Appeals' denial
11 of Mr. Houston's motion for supersedeas
12 was appealed to the Supreme Court,
13 which turned that down and sent it back
14 down with knowledge, Your Honor, and I
15 believe you probably read the order
16 from the Supreme Court, that it was
17 certainly the Supreme Court's
18 indication that this should be
19 continued to conclusion as soon as
20 possible.

21 Your Honor, we are here today, and
22 I listened carefully to what
23 Mr. Houston argued, there are no new
24 issues that have been brought forth.
25 The only thing, Your Honor, that I feel



1 is probably necessary to respond to was
2 the allegation that I understood that
3 somehow we were given 90 days to get a
4 contract in order.

5 Judge, I don't have any idea what
6 that is supposedly about. Nothing like
7 that has occurred within this case.
8 The petitioners were given -- the
9 defendants were given their Pinckney
10 Act time to come forward. They
11 declined to do so. They have never, to
12 this day, Your Honor, via any motion to
13 reopen or otherwise, come forward to
14 this Court with anything that lacks --
15 that has any semblance of being an
16 actual good faith effort to buy out the
17 majority owners' interest.

18 I will, in anticipation of what
19 Mr. Houston may say, remind the Court
20 that although there have been
21 assertions made in hearings, Judge,
22 that there was some contract in effect
23 between these 1.1 percent owners and a
24 certain third party that would
25 potentially pay more money, the Court



1 has never been provided with such.

2 The only thing we got and that the
3 Court has seen, is a one-page piece of
4 paper that purportedly says, from this
5 third party, they've got some financial
6 integrity. There has never been a
7 contract brought forward. There's
8 never been anything shown to this Court
9 that would in any way, shape, or form
10 lead anybody to believe that there
11 actually is this opportunity to get a
12 better price for it.

13 And, in any event, Your Honor, we
14 have a binding contract with Rotunda
15 that we need to honor or else we will
16 be sued for breach of contract. The
17 Rotunda people, through Terry, have
18 worked with us. They have, actually,
19 Your Honor, increased the price that
20 they are going to pay by 600 -- excuse
21 me. Yes, \$650,000. That money is
22 ready and we are ready to close today.

23 Your Honor has already ruled on
24 the issue of the master's deed. And in
25 response to Mr. Houston's argument, I



1 would certainly remind the Court that
2 there are preliminary instances where
3 this Court has, because of someone's
4 refusal to execute a deed, either
5 assigned to the Court Clerk, the right
6 to sign the deed, or this Court has, in
7 fact, signed master's deeds prior.

8 Your Honor, this entire case
9 really comes down to the effectuation
10 of Pinckney Acts intent. And, Your
11 Honor, these petitioners have followed
12 it scrupulously. We have come before
13 this Court on motion after motion after
14 motion that has delayed the closing for
15 more than two years. And we are
16 prepared, Your Honor, to move forward
17 and some as far as -- Chet may have one
18 other thing to add, Your Honor.

19 But, in sum, we basically feel
20 that the motion to alter or amend
21 currently pending before the Court does
22 not in any way show any of the three
23 standards. These arguments have been
24 made before. And we ask the Court to
25 deny the motion to reconsider and move



1 forward with the closing, which we are
2 prepared to do fairly soon.

3 Chet, anything else?

4 Your Honor, I'd be glad to answer
5 any questions you have.

6 THE COURT: I'll give you the last
7 word.

8 MR. HOUSTON: I want to put a
9 witness on the stand.

10 THE COURT: I'm sorry?

11 MR. HOUSTON: I want to put a
12 witness on the stand.

13 THE COURT: Well, this is a motion
14 to reconsider. We don't --

15 MR. HOUSTON: Well, it was
16 (indiscernible) before if there was any
17 testimony.

18 THE COURT: Let me hear from them
19 real quick.

20 MR. FINGER: Your Honor, if I
21 could I draw your attention to page 54
22 of the documents that Tom Taylor has
23 given you in the notebook. And that is
24 the order that's seeking
25 reconsideration. I think there's some



1 pretty key indications in that order
2 that should short circuit this entire
3 argument.

4 In the middle of page 54, it says,
5 the Court notes that the October 21st,
6 2021 order was not appealed nor was a
7 timely motion to alter or amend the
8 final regarding that order. That order
9 is the law of the case now, period.
10 This is where we are. He's trying to
11 undo something.

12 The next paragraph, again, is
13 key. None of the nine defendants
14 tendered or even attempted to tender a
15 portion of the purchase price.

16 Your Honor, my client has been
17 sitting, waiting to move forward on
18 this matter. It should have closed
19 about two years before I was even
20 involved. Actually, I was involved in
21 with Kent -- the Court. But they
22 didn't appeal. And before that order,
23 there were two or three consent orders
24 that everybody agreed to, and there was
25 no appeals from any of them.



1 So we've been to the Court of
2 Appeals twice. I've been sitting on
3 the sidelines watching. I think twice,
4 maybe three times. And then the
5 Supreme Court. Each time they said no,
6 there's no stay. You don't have any
7 standing. You don't have any grounds.
8 Move forward.

9 And that's what I'm asking the
10 Court to issue an order on today.

11 THE COURT: Thank you so much.

12 MR. FINGER: Thank you.

13 THE COURT: Mr. Houston, I'll give
14 you the last word.

15 MR. HOUSTON: All right. Your
16 Honor, the question about the
17 financials and our ability to follow
18 through, this is what I have a witness
19 to testify to. He's with the
20 development company.

21 THE COURT: We don't have -- I'll
22 tell you what, I'm happy to hear from
23 counsel as to --

24 MR. TAYLOR: Your Honor, we object
25 to that. The September 15th hearing



1 which the Court was accepting evidence
2 upon was the appropriate place for
3 this. If there was going to be any
4 evidence tendered as such and we would
5 object to any evidence being tendered
6 via a witness at a motion to
7 reconsider. It would be grossly
8 inappropriate.

9 THE COURT: That would be very
10 unusual. I mean, the fact is, the
11 Court now gives judges the right to
12 have reconsideration motions held
13 without a hearing at all, just on the
14 documents.

15 MR. HOUSTON: He mentioned the
16 issue about presenting new evidence in
17 his remarks.

18 THE COURT: What is the new
19 evidence?

20 MR. HOUSTON: The new evidence is
21 evidence about the financial integrity
22 of SRE, which he said isn't in the
23 record.

24 THE COURT: Well, I think what he
25 said was nobody, in a timely manner,



1 ever presented anything. You want to
2 now present it today.

3 MR. HOUSTON: No, there is
4 financial statements in the record
5 already concerning SRE. I have the
6 developer that wants -- wants to hear
7 from them on their financial integrity
8 and their ability to follow through,
9 which counsel has said they doubt they
10 have the ability.

11 And this developer has multiple
12 more money than Rotunda. So he's --
13 he's put in accusations that -- and
14 inferences to the Court that our
15 clients don't have a developer with
16 financial integrity. He made that
17 argument before the Court.

18 THE COURT: I didn't think --
19 (Crosstalk.)

20 THE COURT: I'll allow him to tell
21 me exactly what he said if he wants to
22 make that and --

23 MR. HOUSTON: Ask the court
24 reporter, she can read it back to you,
25 Your Honor.



1 THE COURT: Mr. Taylor.

2 Hold on a second, Mr. Houston.

3 Do you have thoughts on this or?

4 MR. TAYLOR: Yes, sir. Your
5 Honor, all I did was mention that in
6 Mr. Houston's motion, he made certain
7 accusations, the one that we're here
8 about today. He requested that
9 there -- he said there was new evidence
10 and I simply tried to address that and
11 point out, Your Honor, there is no new
12 evidence.

13 As Mr. Houston just said, he has
14 already placed into evidence what he
15 contends is some proof of this back in
16 the September 15th hearing date, a one
17 sheet piece of paper which the Court
18 reviewed and said that's not really any
19 type of agreement. That's really
20 nothing that matters here.

21 Judge, we again would strenuously
22 object to any new evidence coming in.
23 This is a motion to reconsider the
24 Court's November 7th, 2022 order, and
25 it would be, again, very inappropriate



1 to begin to even entertain this. It's
2 not new evidence.

3 Mr. Houston is seeking to buttress
4 the record by putting something in or
5 assumedly another motion that we will
6 then be fighting in the Court of
7 Appeals. But we believe, Your Honor,
8 that the Circuit Court is ready,
9 hopefully, to wrap this up and to
10 finish this case so that hopefully the
11 deal can still be salvaged and closed.

12 THE COURT: Thank you so much.

13 So, Mr. Houston, this would be a
14 supplement to whatever was put in
15 before because there's already a
16 document. But, I mean, supplementing
17 the record at a 59(E) or 60 motion is
18 not the way we usually do these things.

19 MR. HOUSTON: He opened the door.
20 He mentioned something about producing
21 new evidence.

22 THE COURT: Well, I mean, he was
23 reading, I think, from your motion.

24 But let's do this. I think it
25 would be inappropriate for me to accept



1 such testimony. The record is
2 preserved that you have offered this
3 testimony. And --

4 MR. HOUSTON: May we proffer it
5 outside?

6 THE COURT: I don't know if that's
7 appropriate. If the Court of Appeals,
8 at some point, or the Supreme Court
9 feels I should have listened to this
10 evidence, they'll let us know. But I
11 don't know if that alone, proffered
12 evidence, would change the course of
13 this case.

14 So they're not going to decide in
15 Columbia, well, he's worth 10 million
16 or 100 million or whatever, therefore
17 we're going to reverse or remand or
18 something like that. I don't see that
19 happening. I don't really think a
20 profer is the right way to do it.

21 Again, you're well preserved on
22 the record that you wanted to
23 supplement the record, the previous
24 record, and give more details about
25 this particular developer's financial



1 wellbeing.

2 MR. HOUSTON: Okay.

3 THE COURT: I mean, that's --
4 that's what you're offering.

5 MR. HOUSTON: Here's the rest of
6 our position, Your Honor. The Court
7 may very rarely not, in some instances
8 it should, but this is the Court's
9 responsibility. It may amend this
10 order. It may leave this order
11 intact. The only thing that we're
12 really pushing the Court for is just a
13 ruling on why the Court ruled the
14 manner in which they did.

15 You know, why the Court decides
16 that it was not necessary to join the
17 personal representatives of the as the
18 four different estates. Why the Court
19 had all the parties before it when the
20 publication of process wasn't made
21 until after consent order had been
22 entered in.

23 You know, they're anxious to move
24 ahead but they're anxious to move ahead
25 in the wrong way. They don't want to



1 comply by the statutory requirements
2 but they want the Court to give them
3 their relief. And they used the
4 incorrect statutory procedures to the
5 detriment of my clients.

6 You know, we're not proceeding, as
7 you said. I wish we were proceeding
8 strictly under the Pinckney Act rather
9 than the contract with Rotunda as
10 counsel inadvertently said. You know,
11 we're proceeding under the Pinckney
12 Act. We're not proceeding under their
13 contract. And we're relying upon the
14 Pinckney Act and its statutes and the
15 manner in which it says that this
16 procedure is suppose to proceed.

17 And there's so many -- it's
18 riddled with irregularities, and what
19 we're asking the Court to do right now
20 is just because, you know, when you're
21 taking an appeal, the thing that the
22 Court of Appeals wants is, was the
23 question presented to the Court. If
24 the question wasn't presented to the
25 Court, they can't consider it.



1 So this is why we presented the
2 question to the Court, so that the
3 Court could consider it and make a rule
4 upon it, you know. The Court can say,
5 well, we're waiving the jurisdictional
6 requirements because we just feel like
7 it or whatever reason the Court may
8 consider.

9 But we just put it on the record
10 so when we go up for an appeal, the
11 Court of Appeals has a proper record
12 before them, Judge.

13 THE COURT: Thank you so much,
14 sir. I appreciate it.

15 All right. Y'all gave me a whole
16 notebook of some stuff to read and some
17 argument. And so I will take a look at
18 it.

19 I understand for all parties, time
20 is of the essence. I'll try to get to
21 it as soon as I can. If you haven't
22 heard from me in about ten days, I
23 wouldn't be offended if you'd call
24 Heather and say, why has he not gotten
25 to this yet? And I'll let y'all know



1 something.

2 And anything else for this record?

3 MR. TAYLOR: Yes, Your Honor.

4 Your Honor, on behalf of the
5 plaintiff petitioners, we are handing
6 up and ask the Court to consider the
7 master -- a proposed master's deed.
8 The Court has seen a version of this
9 before. We have now worked with
10 Rotunda's counsel and we have a final
11 version of it.

12 (Whereupon, Plaintiff's Exhibit
13 Number 1 was marked for
14 identification.)

15 MR. TAYLOR: I'm handing one to
16 the court reporter for the record, Your
17 Honor. And if you don't mind, sir,
18 I'll hand one up around here for the
19 Court's consideration.

20 The petitioners ask that the
21 Court, in conjunction with considering
22 the pending motion before it, also
23 consider, as you had said, Your Honor,
24 in the November 7th order, that you
25 would be prepared to move forward with



1 the signing of a master's deed upon
2 presentation, and we have presented
3 same now.

4 THE COURT: All right. I'll tuck
5 it into the notebook here.

6 And I would presume that, without
7 even looking at it, that Mr. Houston
8 would object to me reviewing the same,
9 perhaps not reviewing the same, but
10 executing the same without notice.

11 All right. Anything else for this
12 record?

13 That will conclude today's -- oh,
14 I'm sorry.

15 MR. TAYLOR: Your Honor.

16 THE COURT: You got up so slowly,
17 I didn't catch it.

18 MR. TAYLOR: I'm sorry, Your
19 Honor. Because of what you just said,
20 we do not consider that this would be
21 without notice, Your Honor.

22 The November 7th order was an
23 order from two motions. One was
24 Mr. Houston's motion for stay in
25 supersedeas. The other was a competing



1 motion for the master to sign the
2 master's deed. So if you'll review the
3 November 7th order, Your Honor, you
4 will see that that motion has already
5 been brought before the Court and
6 tendered earlier.

7 And we are just simply trying to
8 comply with the court's November 7th
9 order by tendering the master's deed.
10 It's not without notice, Your Honor.

11 THE COURT: I understand. What I
12 meant was Mr. Houston will not simply
13 get a denial, if there is a denial, of
14 the 59(E) motion and a copy of the deed
15 in the mail. That would seem to be
16 unfair.

17 So I will let the parties know on
18 how I rule on his motion and let the
19 parties know if this happens again,
20 this is subject to me ruling one way or
21 the other.

22 MR. TAYLOR: Yes.

23 THE COURT: But let the parties
24 know that it would be my intent to sign
25 the deed, if it happens.



1 MR. TAYLOR: Thank you. Judge, we
2 understand.

3 MR. HOUSTON: Your Honor, may we
4 respond to this deed?

5 THE COURT: You may. Keep in
6 mind, I'm not even looking at it. So
7 if you wanted to respond in writing --

8 MR. HOUSTON: Yeah. Because here
9 I'm concerned that if the Court --
10 first, whether or not the Court can
11 issue a warranty deed. And then if the
12 Court doesn't issue a warranty deed, if
13 it may expose my clients to some future
14 action by somebody --

15 THE COURT: This one says master's
16 deed so -- but -- so take a look at it
17 and if you've got some issues on it --
18 look, again, I -- other than just
19 looking at the front, when you said
20 warranty deed, I was like, I think he's
21 right, I'm not going to sign a deed
22 that says warranty deed. I'm going to
23 sign a deed that says master's deed.
24 So -- but you're correct, I'm not going
25 to sign a warranty deed. But take a



1 look at it.

2 MR. HOUSTON: Because -- and it
3 also has some recitals in here that are
4 still in litigation.

5 THE COURT: Okay. Well, take a
6 look. Give me your comments. I'll be
7 happy to at it.

8 Anything else, then? Third try in
9 the record, here.

10 Anything else for the record?

11 MR. TAYLOR: Not from the
12 plaintiffs, Your Honor.

13 THE COURT: That will conclude the
14 record for today.

15 (Hearing concluded at 11:13 a.m.)

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA:

BEAUFORT COUNTY:

I, Naomi McCracken, Court Reporter and Notary Public in and for the above county and state, do hereby certify that the foregoing testimony was taken before me at the time and place herein-before set forth; that the foregoing testimony was later reduced by computer transcription; and I certify that this is a true and correct transcript of my stenographic notes so taken.

I further certify that I am not of counsel to either party, nor interested in the event of this cause.

Naomi McCracken

Naomi McCracken

Court Reporter

Notary Public

Beaufort, South Carolina



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GEORGIA HARRISON vs STEPHANIE LORRAINE KIRKLAND et al
2020-CP-07-02301 - CONFERENCE CALL

1 IN THE COURT OF COMMON PLEAS
2 FOURTEENTH JUDICIAL CIRCUIT
3 STATE OF SOUTH CAROLINA
4 COUNTY OF BEAUFORT

5 GEORGIA HARRISON, et al.
6 Plaintiffs,

7
8 vs.

CIVIL ACTION NUMBER
2020-CP-07-02301

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14 STEPHANIE LORRAINE KIRKLAND, et al.
15 Defendants.

16
17 -----/

18 The telephonic conference-call, in the
19 above-entitled cause, taken pursuant to Notice
20 and agreement, before Honorable Marvin H. Dukes,
21 Beaufort County Master In Equity, and Naomi
22 McCracken, Stenographic Court Reporter and
23 Notary Public, via telephone, on the 5th day of
24 April 2023, commencing at or about the hour of
25 2:29 p.m.



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2223

25 (NO EXHIBITS MARKED.)



1 THE COURT: Marvin Dukes.

2 MR. TAYLOR: Good afternoon, Your
3 Honor. Tom Taylor and a number of
4 others here.

5 How are you.

6 THE COURT: Seven others, as I
7 understand it from the computer. And
8 Mr. Houston had a probate matter
9 downstairs and so he's just come up
10 from that. He's sitting here across
11 the desk from me. And -- let's see, so
12 I've got Charles here in the office.
13 Got Tom.

14 Who else is with us?

15 MS. JACKSON: Earsa Jackson.

16 THE COURT: Welcome.

17 MS. JACKSON: Thank you.

18 MR. FINGER: Terry Finger.

19 THE COURT: And Terry. Shouldn't
20 you be on the golf course or getting
21 ready for the -- that's next week, I
22 guess.

23 MR. FINGER: That's next week,
24 Judge. Yeah, you're right. We're
25 getting close. We're getting close.



1 THE COURT: All right. Terry, and
2 who else? I'm sorry.

3 MS. HAMPTON: Rose Hampton.

4 MR. JONES: Mark Jones.

5 MS. HARRISON: Georgia Harrison.

6 MS. MENDHEIM: Diana Mendheim.

7 MR. HODGES: Tyrone Hodges.

8 MADAM COURT REPORTER: Naomi
9 McCracken, court reporter.

10 THE COURT: Hey, Naomi McCracken,
11 court reporter.

12 Okay. This is, of course, not a
13 hearing, this is a conference call.
14 But all are welcome.

15 Somebody else just joined us, I
16 think.

17 MS. HARRISON: Barbara Harrison.

18 MR. WILLIAMS: Chet Williams.

19 THE COURT: Okay.

20 MR. WILLIAMS: Good afternoon.

21 THE COURT: Good afternoon.

22 MR. WILLIAMS: How are you today,
23 Judge?

24 THE COURT: Just great. Thanks.

25 (Off the record discussion.)



1 THE COURT: All right. I've got
2 2:31.

3 So this, again, is not a hearing,
4 it's a conference call. I have got all
5 of y'all on the phone, of course, and
6 the rest of you just joining us,
7 Charles Houston had a probate matter
8 downstairs that just ended so he's just
9 come up. So he's sitting across the
10 table from me here.

11 MR. WILLIAMS: Okay.

12 THE COURT: The purpose of the
13 conference call is this, I -- in the
14 going back and forth, my understanding
15 of this situation is as follows:
16 Originally, an appeal of a prior order
17 in this case, that appeal was
18 dismissed. Then another order was
19 issued, the final order -- well, won't
20 be final because there has got to be
21 disbursement and that sort of thing,
22 but they're close to final order, and
23 that will -- then a new appeal was
24 filed under a new case number.

25 Now, since then, I don't think



1 anything has been filed either to allow
2 relief from the automatic stay or to
3 stay because, of course, under the
4 rules, this, what is -- what is left to
5 do under this order before disbursement
6 of funds or anything is to transfer
7 property. Of course, we all know the
8 rule on transfer of property, but it's
9 ordinarily not stayed.

10 In fact, the appeals court, I
11 guess, made that clear in the order
12 from the last appeal. But we've still
13 got an appeal, but I don't know if it's
14 stayed. And I'm happy to hear from
15 counsel on what -- the different idea,
16 but it seemed pretty clear from the
17 order that the court issued last time
18 that it's not stayed. Because, again,
19 it was the same case, that kind of
20 thing, even though it's a different
21 appeal.

22 So anyway, with that as a -- and
23 then my understanding -- my
24 understanding watching the e-mails back
25 and forth between, I think, Charles and



1 Tom and maybe Terry and Chet, I can't
2 remember who all was on them, I was
3 sort of peripherally copied on a couple
4 of them. It's almost looked like y'all
5 had reached some sort of an agreement
6 to throw some language in the deed
7 and -- but then I never really -- and,
8 Charles, I understand you wanted all
9 kind of language and contingencies on
10 the closing, that kind of thing, and I
11 think that was rejected.

12 But then it seems like y'all were
13 back to just throwing a sentence or two
14 (indiscernible) subject to common
15 case -- and Charles is nodding.

16 So is that all -- is that where
17 y'all are, because I can throw a
18 sentence in there and sign the deed and
19 done.

20 MR. HOUSTON: There are three
21 things, Your Honor --

22 THE COURT: Can y'all year
23 Charles?

24 MR. HOUSTON: Yes.

25 MADAM COURT REPORTER: No, I can't



1 hear.

2 THE COURT: Okay. You come in
3 closer, don't worry.

4 MR. HOUSTON: There are three
5 facts we wanted the Court to consider,
6 Your Honor. One is that the deed be
7 placed in escrow -- or not the deed be
8 placed in escrow, but the funds be
9 placed in escrow, the funds being
10 placed in escrow if you grant -- issued
11 the deed.

12 Second is that a time constraint
13 before the --

14 MR. WILLIAMS: Charles, May 1st or
15 May 31st?

16 MR. TAYLOR: May 1st.

17 MR. WILLIAMS: May 1st.

18 (Indiscernible.)

19 THE COURT: I don't even know what
20 you mean by time constraint, but
21 whatever y'all are talking about, y'all
22 agree on that; is that correct?

23 (Audio interruption.)

24 MADAM COURT REPORTER: This is
25 unreportable.



1 THE COURT: Yeah, this is a
2 conference call, so I get it.

3 Let me make sure I understand.
4 Item 2 on Charles's list is no longer
5 an item because y'all agree to it's
6 funding by May 1st; is that accurate?

7 MR. TAYLOR: Judge, it's Tom
8 Taylor. It is appropriate from our
9 perspective. We welcome a court order,
10 if you would like, that with all -- all
11 possible haste, we move forward to
12 close by May 1st, and I believe Terry
13 Finger's client is in agreement.

14 Terry?

15 MR. FINGER: That is correct, Your
16 Honor.

17 MR. WILLIAMS: Chet Williams.
18 Right now -- I mean, the contract
19 between Rotunda and the sellers, I
20 think, provides for closing, actually,
21 on April 21st.

22 THE COURT: That's before
23 May 1st. Okay.

24 All right. So that not an issue
25 then, right?



1 MR. HOUSTON: Yeah, but we allow
2 time because you can always have
3 something go wrong.

4 THE COURT: Sure.

5 MR. HOUSTON: So you have a
6 week --

7 (Indiscernible.)

8 MADAM COURT REPORTER: I can't
9 hear him.

10 THE COURT: Come right around this
11 way.

12 MR. HOUSTON: The point is that if
13 it doesn't close by the 1st, then the
14 order for the deed would become null
15 and void.

16 THE COURT: Well, I'm not going to
17 issue an order because that -- but
18 you're welcome to petition, of course,
19 if it doesn't close, you know, to
20 whatever you want on the petition.
21 But, you know, it may agree to that, I
22 don't know. It maybe -- maybe the
23 buyer walks away at that point. It may
24 be self executing.

25 But I wasn't going to issue,



1 necessarily, any orders that weren't by
2 consent. What I was trying to do is
3 come up with a plan that resolved as
4 many of the problems that y'all had.

5 MR. HOUSTON: Well, that would
6 resolve it, but with the time
7 constraint on it.

8 THE COURT: Well, it's got a time
9 constraint, May 1st, but you want it to
10 be null and avoid, the order to be
11 vacated is basically what you just
12 said.

13 Well, let me do this, I'm happy to
14 hear, Tom, from you.

15 MR. TAYLOR: Your Honor, the
16 plaintiffs do certainly not agree with
17 that. Your Honor, it would be
18 appropriate in the normal course of
19 this, the way we do litigation and
20 matters such as this, to have an order
21 requiring that the closing be first,
22 deadlined, and then certainly if
23 something reasonable comes up at the
24 last minute, I (indiscernible) the
25 Court, but in no way would we agree to



1 an order that says everything is void

2 May 1st --

3 MR. HOUSTON: Your Honor, that's
4 the same position we had, you know, of
5 December 23rd. If we didn't get --

6 (Crosstalk.)

7 MR. WILLIAMS: I'm sorry.

8 MR. HOUSTON: The right to
9 purchase.

10 THE COURT: Well, let me do this,
11 I don't -- I don't want to relitigate
12 all that stuff, I'm just trying to --

13 MR. HOUSTON: We just want the
14 same provision.

15 THE COURT: I'm not going to issue
16 an order that vacates a prior order if
17 it doesn't occur by that date.

18 However, if it doesn't, file a motion.

19 You know, who knows what I might
20 order. Okay? But to go ahead and do
21 that -- well, they're not going to
22 consent.

23 Let me ask you this, so the
24 closing date is not an issue, it will
25 be on or before May 1st. Now, you



1 escrow the money and then do the deed,
2 that's not a standard closing issue. I
3 know what you're going to say, well,
4 that's not the way we were treated in
5 December two years ago or whatever it
6 was, but --

7 MR. HOUSTON: I glad you
8 acknowledge that, Your Honor.

9 THE COURT: But that was a
10 different matter. That was a -- we had
11 already had a contract. You wanted to
12 put in a backup, essentially.

13 MR. HOUSTON: You know --

14 MR. WILLIAMS: Your Honor, if I
15 may. Chet Williams here.

16 Charles and his clients were
17 operating pursuant to a specific
18 statute that required those things.
19 We're not operating pursuant to
20 agreement, we're operating pursuant to
21 the contract and the contract doesn't
22 require an escrow of the funds prior to
23 closing. And so, I mean, I don't speak
24 for Terry, but I doubt his client would
25 agree to that.



1 MR. HOUSTON: Your Honor, the
2 other thing is --

3 MR. FINGER: This is Terry. This
4 will be a normal Beaufort County
5 closing. We would ask that the
6 master's deed be issued prior to May
7 1st. We would ask that there be no
8 further modifications that Mr. Houston
9 has asked to be put in that master's
10 deed, and upon our client wiring the
11 money, Chet Williams's office -- Chet,
12 I assume you're going to handle the
13 closing for the sellers?

14 MR. WILLIAMS: Yes.

15 MR. FINGER: Upon -- typical when
16 good funds are received by
17 Mr. Williams, he'll deliver the deed
18 and other seller documents to me. I
19 assume that the escrow that Mr. Houston
20 may be referring to is his 1.2 percent,
21 and that will be escrowed or paid out.

22 It doesn't matter to me. We just
23 want to have a general warranty deed
24 from the 98 plus percent that Tom and
25 Chet represent. They tell me that's



1 what we'll get. We'll get a master's
2 deed -- or Charles's people will not
3 sign deeds apparently and then they
4 can -- whatever happens to that 1.2
5 percent doesn't really matter to my
6 client, to be honest.

7 MR. HOUSTON: Another point, it's
8 not supposed to be a general warranty
9 deed. Just supposed to be a --

10 THE COURT: Charles, I'll --

11 MR. WILLIAMS: Excuse me, Your
12 Honor.

13 THE COURT: Yeah.

14 MR. WILLIAMS: Chet Williams.

15 THE COURT: Yeah.

16 MR. WILLIAMS: Charles, the
17 contract requires -- calls for a
18 warranty deed. And with respect to the
19 master's deed, Your Honor, I direct you
20 to the third whereas paragraph page 3
21 that says that you're executing it
22 pursuant to your order of November 7th
23 and that -- deliver it to counsel for
24 plaintiffs to be held in escrow pending
25 the closing of the sale of the property



1 pursuant to the (indiscernible) --

2 (Crosstalk.)

3 THE COURT: I'm not -- their
4 individual people are going to sign the
5 deed, but the master's deed is what
6 I've got.

7 MR. WILLIAMS: And, again, and
8 that's not --

9 THE COURT: It's not a warranty
10 deed.

11 MR. WILLIAMS: No, it's not.

12 THE COURT: Yeah. That's -- so, I
13 mean, that's -- so that's not really an
14 issue.

15 So we're sort of down to --

16 MR. HOUSTON: Now, is this
17 warranty deed, does it propose -- it's
18 not going to be incumbent upon my
19 client because I don't want my clients
20 to be (indiscernible) to a third party
21 coming back and suing them saying you
22 didn't give us a warranty deed.

23 THE COURT: They're not giving a
24 warranty deed, they're -- I'm signing a
25 master's deed on their behalf, okay, is



1 what's going on. The warranty deed, if
2 anybody sues on the warranty, I can't
3 imagine the -- your clients would be
4 defendants because they wouldn't have
5 signed the warranty, right?

6 MR. HOUSTON: You're signing on
7 behalf of my client.

8 THE COURT: No warranties.

9 MR. FINGER: Charles, we will be
10 happy to take quit claim deed from your
11 clients.

12 MR. HOUSTON: No, I'm talking
13 about what the master is conveying, not
14 a warranty.

15 MR. WILLIAMS: Of course, the
16 master's deed contains no warranty of
17 title whatsoever in it.

18 THE COURT: And even if it did, it
19 would be warranty by -- you know, not
20 me, the office, but --

21 (Audio interruption.)

22 MR. FINGER: Charles, this is
23 Terry.

24 Are your clients willing to give a
25 quit claim deed to my clients?



1 MR. HOUSTON: No.

2 MR. FINGER: Okay.

3 MS. JACKSON: Your Honor, this is
4 Earsa Jackson. I would like to at
5 least make one comment to the proposed
6 master's deed, even if we're talking
7 about the limited interest of the
8 defendant heirs.

9 I do think that referencing the
10 court of appeals matter as if it's
11 closed is not accurate. That -- at a
12 minimum, that needs to be modified.
13 That is not accurate as it sits because
14 the appeal is still pending.

15 THE COURT: Which paragraph is
16 that in?

17 MS. JACKSON: This is on page 2,
18 second to the last paragraph that
19 references that the court of appeals
20 denied the motions for supersedeas.

21 THE COURT: Yeah.

22 MS. JACKSON: All of that is
23 factual, but it's not -- it's not
24 accurate or it's not complete as
25 written.



1 THE COURT: Got you. So if a
2 phrase were added that says,
3 thereafter, an appeal was filed in
4 case -- or thereafter, another appeal
5 was filed in this same case which
6 remains pending as appeals court number
7 whatever it is.

8 MS. JACKSON: I think for
9 completeness, that at minimum, that
10 needs to be included.

11 THE COURT: Yeah. I mean, I don't
12 know what else you would put other than
13 that.

14 MS. JACKSON: Right.

15 THE COURT: But that would -- that
16 would tell the whole -- what you want
17 to tell is the whole story and --

18 MS. JACKSON: Exactly.

19 MR. WILLIAMS: If I may, Your
20 Honor.

21 THE COURT: Yes.

22 MR. WILLIAMS: In all fairness, at
23 the time this master deed was draft,
24 that second appeal wasn't
25 (indiscernible) --



1 THE COURT: Oh, no, I know, I --
2 but I can't see a problem with adding
3 what's requested there, though. Just a
4 phrase that says, you know -- I don't
5 know if anybody wrote it down, but
6 roughly what I just said, which was
7 probably wrong. But, you know,
8 thereafter, another appeal was filed in
9 this case which remains pending as of
10 the date of this order as case number
11 whatever.

12 MR. HOUSTON: Technically, there
13 are two appeals still pending.

14 MR. WILLIAMS: Terry, are you okay
15 with that?

16 MR. HOUSTON: What was dismissed
17 was the amended appeal.

18 THE COURT: Okay. Well, I mean,
19 this would direct them -- the concern
20 is if someone looked at the deed and
21 said -- (indiscernible) -- this
22 paragraph -- the fact is.

23 (Audio interruption.)

24 MR. HOUSTON: I have --

25 MADAM COURT REPORTER: I can't



1 hear anything.

2 MR. WILLIAMS: Somebody somewhere
3 doesn't have their phone on mute when
4 they're not talking.

5 MR. HOUSTON: The concern is this,
6 the order that you signed empowered
7 them to sell the property to Rotunda.
8 All right? Now they're not going to
9 sell the property to Rotunda, they're
10 selling it to some new party, which
11 infers two things.

12 Number one, that the
13 misrepresentation was made to the Court
14 that Rotunda was -- has all this time
15 to prepare to buy the property. And
16 now there's no order authorizing them
17 to sell the property to this other
18 third LLC.

19 THE COURT: All right. Anybody
20 shed light on --

21 MR. WILLIAMS: With an assignment
22 of Rotunda's rights, that issue is
23 resolved.

24 THE COURT: Okay.

25 MR. HOUSTON: Your Honor, no



1 assignment has been filed. We have
2 haven't been served with any
3 assignment.

4 THE COURT: All right. Is the
5 assignment something --

6 MR. WILLIAMS: I'll get -- those
7 assignments are executed at closing.

8 THE COURT: Okay. I mean -

9 MR. TAYLOR: Your Honor, your
10 order of November 7th authorizes
11 partition of the property by sale, it
12 does not restrict it to Rotunda. And,
13 in fact, Rotunda is technically not a
14 party to this action.

15 What it authorizes is the
16 prevailing plaintiffs to move forward
17 with the partition by sale. And, quite
18 candidly, we would not be restricted to
19 Rotunda, but we certainly in all good
20 faith are representing to the Court
21 that's exactly who we're closing it to,
22 it's simply a new entity that has been
23 created by the assignment, which we'll
24 be glad to provide.

25 THE COURT: Company owned by



1 Rotunda or something; is that correct?

2 MR. WILLIAMS: That is correct,
3 Your Honor.

4 THE COURT: Got you. All right.
5 Let's do this, then -- I can't remember
6 who drafted the deed.

7 MR. WILLIAMS: I did, Your Honor.
8 Chet Williams. I did.

9 THE COURT: Chet, do you think you
10 could put that language in there
11 bringing the current status of the
12 appeals up to date?

13 MR. HOUSTON: I think the example
14 you gave was adequate, Your Honor.

15 THE COURT: Okay.

16 MR. HOUSTON: Incorporate that.

17 THE COURT: Yeah. Just put that
18 in there. I think that was
19 Ms. Jackson's suggestion. And that --
20 and if y'all could do that and --

21 MR. HOUSTON: I'm talking about
22 your language here, part of the appeal
23 and --

24 THE COURT: Right. Yeah, that's
25 what I'm talking about.



1 MR. FINGER: This is Terry Finger.
2 I'd just like to register my objection
3 to any changes in this proposed
4 master's deed. We have shared this
5 master's deed with the entity that's
6 going to be handling the title
7 insurance, issuing the title insurance.
8 Any further changes are going to just
9 create more problems.

10 This is not stating anything that
11 isn't already of public record. I
12 don't know whether Mr. Houston's
13 clients are going to perfect this
14 appeal. Their prior appeal has been
15 dismissed.

16 MR. HOUSTON: No, it hasn't been
17 dismissed, Terry.

18 MR. FINGER: Oh, yes it has.

19 MR. HOUSTON: The amended appeal
20 was dismissed. The first one still
21 stands.

22 THE COURT: Well, y'all --
23 (indiscernible) -- just keep going.
24 What else?

25 MR. FINGER: It's going cause



1 Rotunda some issues with their title
2 insurance entity that had pretty much
3 passed grace over the prior draft and
4 now you're introducing something that
5 I'll have to go back and see if I can
6 got approval on. I don't know if I'll
7 be able to or not, to be perfectly
8 blunt with it, and it's just -- it's
9 unnecessary in my opinion. It doesn't
10 state anything that's not of public
11 record anyway. Were we aware of it --

12 THE COURT: Go ahead. I'm sorry.

13 MR. FINGER: We're aware of the
14 new appeal. Chet Williams and Tom
15 Taylor have made me aware of the new
16 appeal. I don't know when their
17 designation of matter is due or when
18 their brief is due. I suspect it's
19 fairly soon, but my understanding is
20 that the prior appeals have all been
21 dismissed.

22 MR. HOUSTON: No, it hasn't,
23 Terry, just the amended one. So the
24 first initial appeal is still standing.
25 They dismissed the amended one.



1 MR. WILLIAMS: I don't think
2 you're right, Charles.

3 THE COURT: Let's do this, you
4 know, somebody can figure that out
5 later.

6 So, Terry, I understand what
7 you're saying. I can't image, though,
8 simply bringing this up to date is
9 going to cause them too much heartburn
10 because as you've pointed out, it's all
11 public record anyway and this is simply
12 amending the public record portion of
13 this -- of this deed.

14 So hopefully it won't be a
15 problem. If they say forget it, this
16 language ruins everything, we'll have
17 another conference call and we'll talk,
18 but at this point, if -- Chet, if you
19 can add that language in there and get
20 it to me, I'll go ahead and execute it
21 and return it in a timely fashion to be
22 held in escrow pending the usual
23 closing.

24 MR. WILLIAMS: Okay.

25 MR. FINGER: Okay. Thank you,



1 Judge.

2 THE COURT: Terry, if that's a
3 disaster, ask somebody for a conference
4 call and we'll talk and we'll see what
5 we can do.

6 MR. FINGER: I will do everything
7 in my power to not make it a disaster.

8 THE COURT: Okay.

9 MR. WILLIAMS: Thank you, Terry.

10 THE COURT: As always, if y'all
11 can figure out a way to resolve this,
12 let me know. That would be great.

13 All right. This, again, was not a
14 hearing, but anything for our
15 conference call?

16 MR. TAYLOR: Not on behalf of the
17 plaintiffs, Judge.

18 THE COURT: Okay.

19 All right. Naomi, good luck
20 trying to turn this into something on
21 paper.

22 MR. HOUSTON: Your Honor, the
23 other thing we want to do, if they do
24 close is to hold the funds for the
25 defendants in escrow.



1 THE COURT: Well, we always do
2 that for some period of time.

3 MR. WILLIAMS: Charles, I'll be
4 glad to give you the funds for the
5 defendants.

6 MR. HOUSTON: You give us
7 (indiscernible) --

8 THE COURT: Let's do this. Let's
9 see if it closes.

10 MR. HOUSTON: Yeah.

11 THE COURT: And if it does, then
12 there will be some net funds, and I'm
13 sure we will all get together and there
14 will be some claims for fees and costs
15 and that kind of thing that we'll all
16 need hash out. We do in all these
17 cases. But yeah, the money, you know,
18 we -- it can be paid into the clerk.
19 Most attorneys don't
20 want (indiscernible) --

21 MR. WILLIAMS: Oh, yeah. The
22 plaintiffs are going to want their
23 funds held.

24 MR. HOUSTON: Well, we don't
25 have -- they can do whatever they want



1 to do with the plaintiff's money,

2 but --

3 THE COURT: Well, let's do this,
4 what -- right now, the order calls for
5 doing what with the net proceeds?

6 MR. TAYLOR: Your Honor, it's
7 first -- normal course, I have it in
8 front of me, plaintiff's are authorized
9 to move forward with the closing of the
10 sale for 9,750,000 and the defendants
11 shall each receive their proportionate
12 share of the purchase price of net the
13 sellers proceeds as computed by their
14 ownership interest in the consent
15 order.

16 The closing costs for the sale
17 shall be provided for in the Rotunda
18 contract, and the Court recognizes the
19 equitable lien of the interest of all
20 owners of the real property in
21 proportion to their respective interest
22 or cost and attorney's fees incurred by
23 the plaintiff and the maintenance and
24 prosecution of this action.

25 MR. HOUSTON: (Indiscernible) --



1 fees.

2 THE COURT: Hold on a second.

3 Keep going. I'm sorry.

4 MR. TAYLOR: In addition, Your
5 Honor, it's at page 36 of what I --
6 excuse me, 26 of what I sent you
7 earlier. If you have it and want to
8 refer to it. And it, basically, Judge,
9 provides for the distribution of all
10 costs and proceeds on a pro-rata basis
11 with the defendant's portion being
12 delivered, we assume to them.

13 And then to the deceased
14 defendants, Your Honor, we had already
15 arranged and you had put in the order
16 that those proceeds would be given to
17 the clerk of court and held for one
18 year pending someone comes forward in
19 those.

20 But Mr. Houston's alive defendants
21 will receive a check and we're prepared
22 to cut the check for them at closing.

23 THE COURT: What -- don't we still
24 need to have a hearing to approve
25 attorneys fees?



1 MS. JACKSON: Yes. Your Honor,
2 this is Earsa Jackson. I agree with
3 that. We also need to see that closing
4 statement. I'm sure there's a
5 tentative one floating around as well.
6 That could be taken care of at the same
7 time.

8 MR. TAYLOR: There's no
9 provisions -- (indiscernible) --
10 allowed anybody.

11 THE COURT: I'm sorry, I couldn't
12 hear you.

13 MR. TAYLOR: I said, Your Honor,
14 there's no provision about the
15 defendants having any type of say in
16 the disbursement of the monies or other
17 costs. It is -- again, Your Honor, I
18 draw your attention to the order of
19 November the 7th that provides that
20 closing costs will be as per normal in
21 Beaufort County.

22 And we're certainly at the Court's
23 pleasure, but we did not anticipate,
24 Judge, that the Court was going to be
25 holding funds and then having any other



1 type of hearing on disbursement of
2 those funds.

3 THE COURT: No, no, no. I'm
4 talking regular closing costs, of
5 course.

6 What I was talking about is it
7 sounded like there was going to be a
8 reduction for --

9 MR. HOUSTON: Attorney fees.

10 THE COURT: -- from the gross for
11 plaintiff's attorneys fees, which, you
12 know, again, wouldn't be unusual, but
13 ordinarily, we would have at least some
14 brief hearing to determine the amount
15 of that number.

16 MR. HOUSTON: Well, we don't have
17 any objection so long as it's not --
18 affects against the defendants. They
19 can charge the plaintiffs for all they
20 want.

21 THE COURT: Well, there's an
22 option.

23 MR. WILLIAMS: That's what I had
24 anticipated that we would do.

25 THE COURT: All right. Well, if



1 you want to memorialize that with an
2 order, then Charles, you've no problem
3 with it; is that correct?

4 MR. HOUSTON: Yeah.

5 THE COURT: I think I still
6 probably need to approve it because we
7 do have unknowns and deceased persons.
8 So as I understand it, Charles, on
9 behalf of his client, waives that, but
10 I think I probably still need to take a
11 look at that.

12 So when will that be prepared or
13 when -- I mean, y'all aren't finished
14 yet, you don't know what it's going to
15 be.

16 MR. TAYLOR: Chet, what do you
17 think about when we'll have a closing
18 statement that would have that for the
19 Court's review?

20 MR. WILLIAMS: Typically it's the
21 purchaser's attorney that prepares the
22 closing statement, so that would come
23 from Terry.

24 THE COURT: But the number is what
25 I'm worried about.



1 MR. WILLIAMS: I'm sorry, say
2 again, Your Honor.

3 THE COURT: I mean, it will be in
4 the closing statement, but it's in
5 number that will actually come from the
6 plaintiffs that -- the usual closing
7 stuff, you know, the proration of taxes
8 and all that, it just is what it is.
9 But I'm just talking about the
10 deduction from the gross except for
11 Charles's clients of the attorney's
12 fees.

13 MR. WILLIAMS: That -- I can have
14 that. It may take me two weeks to put
15 that together.

16 THE COURT: Okay. That's fine.

17 MR. WILLIAMS: I, in all honestly,
18 am substantially behind on my billing.

19 THE COURT: Okay. All right.
20 But, again, I think that probably ought
21 to be approved by the Court even if
22 Charles -- y'all aren't going to assess
23 it against Charles's client, but still,
24 with regard to -- and of course your
25 clients agree, but the -- there are



1 some unknowns and deceased people that
2 I think should be looked at.

3 MR. WILLIAMS: Okay.

4 THE COURT: Whose the guardian? I
5 can't remember.

6 MR. WILLIAMS: Maria Parker.

7 THE COURT: Okay. I would like
8 for her to take a look at them as
9 well.

10 All right. So let's see, Chet,
11 you're going to throw in the sentence
12 suggested by Ms. Jackson and then --

13 MR. WILLIAMS: As long as you're
14 doing that, you know, this doesn't
15 include any reference to the -- I'm
16 sorry, it does say -- it does refer to
17 the supreme court denial. Okay. Never
18 mind.

19 Yep, we'll add in the fact that
20 there is another appeal had -- has been
21 filed but not yet perfected with
22 respect to the order that you signed
23 recently.

24 MR. HOUSTON: What do you mean by
25 not perfected?



1 MR. WILLIAMS: Say again.

2 MR. HOUSTON: What do you mean by
3 not perfected?

4 MR. WILLIAMS: If you don't file
5 your brief --

6 THE COURT: Why don't you just say
7 filed and leave out the not perfected
8 and -- anyway, anybody (indiscernible)
9 is going to look and see that.

10 MR. TAYLOR: It has been assigned,
11 Your Honor.

12 THE COURT: Okay. All right. All
13 right. I think that will do it then.

14 So, again, I'll keep an eye out.
15 Y'all get that order to either Heather
16 or Jared, that would be great, and just
17 let me know.

18 All right, then, y'all have a
19 great afternoon and a happy and
20 wonderful Easter. And thank y'all so
21 much for accommodating me with the
22 conference call.

23 (Whereupon, the conference-call was
24 concluded at approximately 2:59 p.m.)

25



C E R T I F I C A T E

STATE OF SOUTH CAROLINA:

BEAUFORT COUNTY:

I, Naomi McCracken, Court Reporter and Notary Public in and for the above county and state, do hereby certify that the foregoing conference-call was taken before me via telephone at the time and herein-before set forth; that thereupon the foregoing testimony was later reduced by computer transcription; and I certify that this is a true and correct transcript of my stenographic notes so taken.

I further certify that I am not of counsel to either party, nor interested in the event of this cause.

Naomi McCracken

Naomi McCracken

Court Reporter

Notary Public

Beaufort, South Carolina



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VS .

STEPHANIE LORRAINE KIRKLAND, et al.
Defendant.

-----/

The Motion Hearing, in the
above-entitled cause, taken pursuant to Notice
and agreement, before Honorable Judge Marvin H.
Dukes, and Naomi McCracken, Stenographic Court
Reporter and Notary Public, at the Beaufort
County Magistrate's Courthouse, 102 Ribaut Road,
2nd Floor, Beaufort, South Carolina, on the 15th
day of May 2023, commencing at or about the hour
of 3:02 p.m.



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1 THE COURT: Good afternoon. We're
2 here in 2020-CP-07-02301. This is
3 Harrison, et al. versus Kirkland, et
4 al. We are here on defendant's amended
5 motion to enforce right of first
6 refusal under Pinckney Act and
7 alternate relief.

8 And, Mr. Houston, I'm happy to
9 hear from you, sir.

10 MR. HOUSTON: Thank you very much,
11 Your Honor. Your Honor, in the
12 interest of brevity of time, but also
13 to set apart our pertinent points, I
14 will make it somewhat brief because our
15 entire position has been set out in our
16 motion, which everyone has had the
17 chance to review and conjugate over.

18 Actually, what -- the situation as
19 we have presented in the motion is
20 this, Your Honor, the defendants were
21 on very limited and stringent
22 circumstances.

23 In fact, there's granted a right
24 of first refusal without -- and the
25 order did not even provide for the



1 granting of the deed, just for the
2 plaintiffs -- the defendants to deposit
3 the money in with the clerk of court.
4 And they were only given 60-day period
5 in which to do that. All right.

6 Upon that not being performed
7 under those circumstances, we asked for
8 an extension, which was not granted.
9 The Court then proceeded, over an
10 extensive period of time, to eventually
11 grant an order preventing the
12 plaintiffs to sell to property to
13 Rotunda. And they were given the May
14 15, 2023 deadline in which to complete
15 closing. This did not occur.

16 Therefore, our position today is
17 basically threefold. Number 1, a
18 declaration that this order granting
19 them the privilege to sell the property
20 has run its course, rescinded, and no
21 longer in effect. Two, that the
22 defendants be able to go ahead and
23 purchase the property from the
24 plaintiffs.

25 And in that light, we have renewed



1 our -- excuse me for a second.

2 THE COURT: Hard to move around in
3 this packed little courtroom, isn't it?

4 I've been handed a purchase and
5 sale agreement.

6 You've seen this?

7 MR. TAYLOR: No, sir.

8 THE COURT: Have you got an extra
9 copy for counsel?

10 MR. HOUSTON: Um-hmm. They've
11 seen this before, but it's been
12 updated.

13 It's basically the same purchase
14 agreement that we had tendered and
15 offered before, Your Honor, just
16 renewing it now on the record in which
17 we basically agree to pay the
18 plaintiffs the appraisal value of the
19 property which was determined by the
20 Court, I think, to be \$9.1 million.

21 THE COURT: Okay. I'm listening.
22 Go ahead, please.

23 MR. HOUSTON: So that is the prime
24 order we would like to receive from the
25 Court, is just go ahead and purchase



1 the property from the plaintiffs.

2 The other alternative motion in
3 the event there's some problem the
4 Court may find, which I don't know of
5 any problem, would be to sell the
6 property at public auction and let it
7 go to the highest bidder.

8 THE COURT: Okay.

9 MR. HOUSTON: Those are our
10 salient positions, Your Honor.

11 THE COURT: All right. Thank you.
12 Happy to hear from whoever would
13 like to be heard.

14 MR. WILLIAMS: If I may, Your
15 Honor. I think Mr. Houston said this
16 is a purchase agreement with the
17 defendants, but the defendants aren't a
18 party to this purchase agreement, it's
19 somebody called SRE Acquisitions 4,
20 LLC, is named as the purchaser. So
21 that's not the defendants.

22 MR. TAYLOR: Your Honor, Tom
23 Taylor of behalf of the plaintiff,
24 whenever you are ready, Judge.

25 THE COURT: Yeah. Go ahead.



1 MR. TAYLOR: All right. Your
2 Honor, first and overall, Your Honor,
3 we believe this Court is without
4 jurisdiction in this moment to
5 entertain this motion whatsoever. As
6 the Court is aware, under Appellate
7 Court Rule 205, upon the service of
8 notice of an appeal, the appellate
9 court shall have exclusive jurisdiction
10 over the appeal except for those very
11 limited issues, Your Honor, pertaining
12 to a motion for writ of supersedeas or
13 other issues that may be involved
14 within implementing an unappealed issue
15 in the case, such as a master's deed in
16 this particular one.

17 Your Honor, as the Court is aware,
18 the defendants originally filed an
19 appeal on all of the substantive issues
20 in this matter in March of 2022. That
21 included the original order of this
22 Court authorizing the defendants to
23 purchase the plaintiff's rights. That
24 order issued in October of 2021.

25 And as the Court is aware, Your



1 Honor, we've heard this repeatedly.
2 But it is wrong, as it was the first
3 time we heard it. The Court granted
4 the defendants a 65-day right to
5 purchase the interest of the moving
6 plaintiffs.

7 The Pinckney Act does not
8 established, as the Court well knows, a
9 situation where either the Court or the
10 plaintiffs are required to tender any
11 type of deeds whatsoever. The Pinckney
12 Act allowed the defendants, who were on
13 notice from the time of the filing of
14 the summons and compliant that this was
15 a Pinckney Act case, to purchase out
16 the plaintiffs' rights.

17 And the Court set that
18 specifically for those moneys being due
19 in the clerk of court's office by
20 December 22nd, 2021 at 5:00 p.m. The
21 Court will remember that there was
22 absolutely not a penny tendered and it
23 was not until after the 5:00 p.m.
24 deadline had, passed several hours
25 later that Mr. Houston filed a motion



1 requesting an extension.

2 In any event, Judge, all of that
3 has been ruled on previously. All of
4 it was appealed and that appeal has
5 been dismissed and a remittitur
6 returned to the clerk of court. All of
7 those issues have been resolved and
8 they are now the law of the case.

9 Mr. Houston has filed on behalf of
10 the defendants, a new appeal in March
11 of 2023, which appeals only this
12 Court's declining to reconsider it's
13 November of 2022 order, which was a
14 denial of another motion to basically
15 be reconsidered.

16 As the Court is well aware, Judge,
17 we have been to the Court of Appeals.
18 We have been to the Supreme Court and
19 the Supreme Court declined a petition
20 for cert and issued an order that
21 advised that sanctions would be
22 considered if the defendants continue
23 to delay the process unnecessarily.

24 Judge, as rude as it sounds and I
25 hate to say it, we are now at that



1 point. We have now been delayed more
2 than two and a half years from the
3 filing of this action. There is not a
4 shred of truth as to the assertion that
5 there was any deadline set for the
6 closing of this.

7 In fact, when this was discussed,
8 the Court will probably remember that
9 there was a lengthy discussion about
10 how the May 1st hoped for deadline, if
11 it did not get hit, would be still
12 absolutely enforced and we would
13 continue to do everything we could in
14 order to get the transaction closed.

15 The truth of the matter is that
16 because of the prior motions, the title
17 insurance company for Rotunda had to
18 look at it a good bit harder and we
19 have been working with Terry Finger,
20 who represents Rotunda and who is here
21 today, to finally get to the point
22 where the proposed master's deed has
23 incorporated all of the language which
24 Mr. Houston asked for as far as notice
25 to any purchaser that there is



1 currently pending, one appeal. That
2 master's deed is currently before the
3 Court.

4 And, Your Honor, I think Terry
5 will probably state in a minute, if
6 given the chance, that Rotunda is ready
7 to close and is ready to close within
8 the next 15 days once we have the
9 proposed master's deed executed by the
10 Court.

11 Your Honor, to move past the issue
12 of jurisdiction, which, again, I don't
13 thinking the Court has jurisdiction to
14 even hear this motion at this point, it
15 lies within the Court of appeals.
16 Substantively, the motion is simply as
17 wrong as it can be.

18 Your Honor, this is not a do over
19 type situation. This has been
20 appealed. It went to the Court of
21 Appeals on the substantive issue of
22 whether or not the defendants received
23 their right to purchase the plaintiff's
24 rights out in timely manner. They did
25 not execute on that and the Court of



1 Appeals had it front of them and that
2 appeal has been dismissed.

3 This Court would be very wrong in
4 starting to reconsider, again, the
5 issue of whether or not the plaintiff
6 -- the defendants had sufficient time
7 or did, in fact, execute. But, Your
8 Honor, as we all know, there's never
9 been the first assertion that they did
10 execute.

11 There just seems to be a
12 continuing misunderstanding from our
13 perspective, Your Honor, of how the
14 Pinckney Act works. This is not an Act
15 by the legislation that requires the
16 court to issue a warranty deed or
17 anything such as that. This is an Act
18 that allowed to defendants the
19 opportunity to buy out the plaintiff's
20 rights.

21 The plaintiffs, quite candidly, 18
22 months ago, would have welcomed that.
23 They would have been glad to have taken
24 that money at \$9.1 million. But
25 instead, these delays, these incessant



1 motions, the appeals have now delayed
2 us through this point in time, with the
3 only good news being, Your Honor, that
4 Rotunda is still not only interested in
5 closing the contract, but has increased
6 their offer by \$650,000.

7 We are now prepared to move
8 forward, not at the consent agreed fair
9 market value of 9.1, but at the price
10 of \$9.75 million, and we're prepared to
11 do that within the next 15 days. I
12 believe Terry will confirm.

13 Your Honor, we believe that there
14 is absolutely nothing that can even be
15 read into the Pinckney Act concerning
16 some inherent right of first refusal.
17 This is not -- it may feel like that
18 and it may be kind of a good wording
19 for what the Pinckney Act set up, but
20 it didn't set up a right of first
21 refusal. Again, Judge, it set up an
22 opportunity for the defendants to come
23 forward and buy out the interest of the
24 plaintiffs.

25 And then to hit the last point,



1 Judge, substantively, the allegation
2 that this now must go to some type of a
3 public bid, the Pinckney Act
4 specifically provides that if there is
5 an agreed upon price, which the Court
6 will remember, there was a consent
7 order entered and signed off on by all
8 the defendants that established the
9 price at 9.1 million. Then the Court
10 may go ahead and order what basically
11 is a sale, and that is what we have
12 done. We are prepared, Your Honor, to
13 move forward.

14 As I indicated to the Court
15 earlier today when I handed up an
16 affidavit, we have also checked with
17 Maria Belbas Parker who was appointed
18 by the Court as the Guardian ad Litem
19 of any incompetent individuals who may
20 have an interest in the property.

21 Ms. Parker has tendered an affidavit
22 that as of 11:00 this morning, she has
23 not heard from anyone.

24 Your Honor, your orders earlier
25 have set forth that the plaintiff



1 should move forward with the sale.

2 Those orders are the law of the case,
3 we believe. And we are prepared, Your
4 Honor, to move forward.

5 And to lastly address this
6 proposal of some type of agreement that
7 is not signed, which is the only thing
8 I've seen that was handed by up by
9 Mr. Houston, we really can't address it
10 other than to say, as Chet pointed out
11 a minute ago, it does not involve the
12 defendants. It apparently involves two
13 other entities. It is unsigned.

14 And I would remind the Court,
15 again, Judge, that notwithstanding
16 anything in the brief or in the motion
17 that was filed, there has never been an
18 agreement put forth in front of this
19 Court that said that anyone was
20 prepared to offer actual money.

21 There's never been a deposit made with
22 the clerk of court nor any offer of a
23 deposit made in front of Your Honor.
24 And this is simply, Your Honor, from
25 our perspective, hopefully the last



1 delaying tactic that should be thought
2 of.

3 And, Your Honor, on behalf of the
4 petitioners, we ask the Court deny the
5 motion as amended and we ask the Court
6 further to go ahead and execute the
7 master's deed that has been
8 appropriately tendered and Mr. Houston
9 has had a copy of it for more than five
10 days.

11 Chet, do you have anything to add?

12 MR. WILLIAMS: Just, Your Honor,
13 if I may, this so-called offer that
14 Mr. Houston has put forth -- and I've
15 tried pointing this out to him on
16 several occasions -- it contains a
17 45-day inspection period during which
18 the purchaser, in its sole and absolute
19 discretion, can cancel the deal and
20 walk away from it.

21 So even if we did go down this
22 route, we wouldn't know for a full 45
23 days whether or not, in fact, there was
24 a contract. Rotunda's due diligence
25 period ran a long time ago. We are



1 past that point. Theirs is an absolute
2 contract. This, it's a contingent
3 offer. Again, like Tom said, it's not
4 signed and there ain't no money.

5 THE COURT: Thank you.

6 Mr. Houston?

7 MR. HOUSTON: Your Honor, in
8 rebuttal, let me just state this.
9 Number 1, since December of 2021 when
10 we didn't exercise the right of first
11 refusal, the plaintiffs have had the
12 ball on this. You know, we've been
13 here over a year and they haven't been
14 able to close.

15 We're not being the dila -- the
16 dilatory party. We've not been holding
17 this up. If they could have come up
18 with the money, the property would have
19 been sold under your order.

20 And getting to the jurisdictional
21 question, if -- the plaintiff's point
22 of view is that the Court doesn't have
23 jurisdiction, then we cannot go any
24 further because in order to go any
25 further, the Court would have to issue



1 another order. So that works both
2 ways.

3 And the defendants have not done
4 anything to delay this proceeding.
5 We've waited and waited and waited and
6 waited. And, you know, the plaintiffs
7 have come up and said, well, we are
8 going to do this, we're going to do
9 this, we can do this in 60 days, we can
10 do this in 90 days. And each time, the
11 Court has been liberal in extending
12 them -- go ahead, we'll give you
13 another chance, give you another
14 chance, give you another chance.

15 You know, you read last conference
16 hearing we had, they gave the Court all
17 types of affirmative assurances that
18 we're going to close this thing by
19 May 15th, and they never tendered the
20 copy of the deed that they proposed to
21 use and it didn't close.

22 And the statute very readily sets
23 forth the provisions for having a
24 public sale. That's always been an
25 equitable remedy. You know, if the



1 parties can't agree, have a public
2 sale, let it go to the highest bidder,
3 that way everybody is protected.

4 You know, the main thing is, these
5 people want their money. I hear more
6 about Rotunda than I hear about these
7 people getting their money. You know,
8 I believe we're here -- almost --
9 Rotunda should be a party to this suit
10 because I hear more things about the
11 interest of Rotunda than I do the
12 plaintiffs themselves.

13 You know, they've instituted this
14 suit back in 2020. No telling when
15 they planned to start it before then.
16 And right now, they're still sitting
17 here at the table happy to be paid.
18 And we're prepared to paid them. So
19 far as that contract, that was model
20 and no one's going to sign it until at
21 least we get some affirmation that the
22 terms within it are acceptable. You
23 know, that provision by the inspection,
24 we can waive. That's waived. We don't
25 need that.



1 THE COURT: What about the 45
2 days?

3 MR. HOUSTON: We can -- let me
4 confer with my client to see how much
5 quicker we can put money on the table.
6

7 (Discussion off the record.)

8 THE COURT: Well, I was really
9 thinking about the closing.

10 But my understanding is Rotunda is
11 prepared to close when?

12 MR. FINGER: Your Honor, we were
13 prepared to close, as we said in our
14 last conference, until Mr. Houston, on
15 behalf of his clients, some of which
16 were original plaintiffs. Five of them
17 were original plaintiffs that consented
18 to your initial order that said the
19 100 percent ownership. They've
20 switched sides now and they apparently
21 claim that that order doesn't mean
22 anything.

23 Your order of November 7th of '22
24 gives a wonderful recitation of how we
25 got to where we are now, including the



1 fact that no appeal was ever filed to
2 the Pinckney Act order that gave them
3 65 days to close. They never appealed
4 that. They appealed it subsequently
5 and their first appeal was sent down.
6 It was dismissed by the Court of
7 Appeals on March 15th and the
8 remittitur was sent to the court --

9 MR. HOUSTON: (Inaudible.)

10 MR. FINGER: I didn't interrupt
11 you at all, Charles.

12 MR. HOUSTON: (Inaudible) It was
13 April 20th.

14 MR. FINGER: The Court of Appeals
15 order, I believe, is dated -- March
16 15th is when it's filed. The
17 remittitur to the lower court here is
18 April 5th of this year.

19 So his appeal on the merits on his
20 claims have been dismissed by the Court
21 of Appeals. He has no standing in the
22 Court of Appeals to raise any issues
23 about the Pinckney Act at this point in
24 time.

25 Every time my client, Rotunda,



1 gets to the finish line and is ready to
2 close, we get some other filing at this
3 point in time, including this filing
4 that we're here about today, which, if
5 the Court looks at it closely, there
6 are a number of things that are not
7 supported by one shred of evidence in
8 this file, including the fact that he
9 doesn't mention that five of his
10 clients were initially plaintiffs.

11 MR. HOUSTON: That's not --

12 MR. FINGER: I didn't interrupt
13 you at all.

14 MR. HOUSTON: Excuse me.

15 MR. FINGER: It says, defendants
16 were only notified of their right of
17 first refusal under the South Carolina
18 statute almost a year after
19 commencement. All those people were
20 represented by counsel. And this --
21 the original complaint, if I recall of
22 the top of my head, mentioned the
23 Pinckney Act in it.

24 So when they first got served and
25 they were represented by Roberts Vaux



1 and they entered the consent order,
2 they were well aware of their Pinckney
3 Act rights that far back.

4 Plaintiffs attempted to close and
5 sell the property to Rotunda without
6 first notifying the title company of
7 the pending appeal. The title company
8 will not close on the sale of the
9 property to Rotunda. There's no proof
10 in the record of that assertion by
11 Mr. Houston in this motion that we're
12 here about today.

13 Every time we get to the finish
14 line, there's some other filing that
15 has no legal or factual support to it.
16 My client is ready, willing, and able
17 to close. I was very concerned about
18 this motion in the circuit court. I
19 think Mr. Taylor summed it up perfectly
20 by saying they have no jurisdiction to
21 file this.

22 You remember, Judge, we went down
23 the supersedeas trail and the bond
24 trail a dozen times, including all the
25 way to the South Carolina Supreme Court



1 that indicated if you keep doing this,
2 defendants, you might be sanctioned.

3 We need to get this over. My
4 client wants to buy the property. We
5 could have had it half developed by
6 now. These folks could have all had
7 their money.

8 THE COURT: When is the closing
9 anticipated?

10 MR. FINGER: Closing is
11 anticipated -- right now, the title
12 company is most concerned about this
13 motion. And I believe that once this
14 motion is dealt with, the title company
15 will be in a position to issue their
16 title policy.

17 I think that between work that
18 Chet Williams did about a year and a
19 half ago, which I relayed to the title
20 company this past week, there were
21 probably 18 or 20 different tax liens
22 that registered that were not heirs.
23 And Chet, probably 18 months ago,
24 provided affidavits of all of the heirs
25 saying, you know, that person is not



1 me. That tax lien is not me. And I've
2 given all that documentation to the
3 title company.

4 The only problem we currently
5 have, Judge, is that I'm going on
6 vacation on Thursday and I'm out until
7 the 31st so we can't close during that
8 period of time. We can close as soon
9 thereafter as I get back.

10 THE COURT: So it will be a couple
11 of weeks?

12 MR. FINGER: Yes. But I don't
13 know what Mr. Houston and his people
14 will try to pull next, to be perfectly
15 blunt with you, Judge, and that's what
16 concerns me. I'm not issuing a title
17 policy, it's a national title company
18 that's doing it. It's First American,
19 it will be written out of South
20 Carolina, but it's being handled by the
21 people who are with Rotunda on putting
22 up the equity to fund it.

23 I'm dealing with a lawyer in
24 Greenville, South Carolina by the name
25 of Scott Lawrence who has his own firm



1 and he is the one who is underwriting,
2 or doing all the underwriting for the
3 title policy. And I have given that
4 gentleman everything he's asked for
5 within the last two weeks.

6 THE COURT: Okay. Thanks.
7 Mr. Houston?

8 MR. HOUSTON: Yes. Your Honor, we
9 didn't file this motion until after
10 they didn't close. So this motion had
11 no bearing on the decision that the
12 title company made. So my colleague's
13 assertion that we are stopping the sale
14 is misplaced because this motion wasn't
15 filed until after the 15th. We only
16 filed this motion when they didn't meet
17 that closing date. So --

18 MR. FINGER: Your Honor, this
19 motion was filed on April 24th so he is
20 incorrect.

21 MR. HOUSTON: The closing date was
22 supposed to have been May 15th -- April
23 15th.

24 (Simultaneous speakers.)

25 MR. HOUSTON: The closing date was



1 April 15th, this was filed after April
2 15th. So our motion had nothing to do
3 with it, so it's a misrepresentation to
4 kind of color us as being the
5 obstructionist in here. We're not
6 being obstructionists, we're
7 basically -- our client want to
8 purchase the property.

9 THE COURT: But they don't.
10 That's not what this says. You handed
11 me something that says SRE Acquisitions
12 Number 4, LLC, a Delaware Limited
13 Liability Company is buying it and --

14 MR. HOUSTON: Well, they are the
15 ones putting up the money, Your Honor.

16 THE COURT: Well, also, your
17 clients will be transferring
18 100 percent of their interest to this
19 corporation. They won't own any of it.

20 MR. BERGELT: That's not true.

21 MR. HOUSTON: No, that's not true.

22 THE COURT: Well, that's what this
23 says. The related contract --

24 (Crosstalk.)

25 MR. HOUSTON: No, because there's



1 another agreement where they have
2 equity participation in the project.

3 THE COURT: Where's -- that's not
4 in here.

5 MR. HOUSTON: No, it's not in
6 there.

7 (Crosstalk.)

8 MR. HOUSTON: Let me have the
9 representative explain it.

10 MR. TAYLOR: Objection, Judge.

11 THE COURT: Hold on one second.
12 Hold on one second.

13 I mean, you've all been around and
14 remember when Senator Pinckney created
15 the Pinckney Act. He was working on it
16 during his lifetime, and the idea was
17 to try, if possible, to keep lands in
18 people's names to stop people from
19 selling to developers. And it looks
20 like it would be a developer either way
21 here.

22 To try to keep, you know, great
23 grandfather's house in the family
24 forever and ever. This purchase and
25 sale agreement doesn't do that, and



1 neither does Rotunda, you know, neither
2 of them do. But it doesn't really
3 follow the spirit of the Pinckney Act
4 to have 1.3802125 percent interest,
5 which is what is asserted, I guess,
6 Mr. Houston, your clients own, transfer
7 to a development corporation, and then
8 they own some shares, I guess, of the
9 LLC.

10 That, I don't think, is what
11 Senator Pinckney had in mind or the
12 legislature which they passed the
13 Pinckney Act.

14 MR. HOUSTON: Well, as we've said
15 ever since we started this proceeding,
16 Your Honor, our position is more in
17 tune and compatible with the Pinckney
18 Act because my clients will have a
19 perpetual equity interest in the
20 project. That's what makes our sale
21 different from that of the plaintiffs.

22 (Crosstalk.)

23 MR. HOUSTON: With the plaintiff's
24 position, they are giving them the
25 money and then run them off the land.



1 In our situation, we are going to have
2 equity participation in the project for
3 a lifetime, very distinguishable
4 difference.

5 THE COURT: Thank you, sir.

6 MR. WILLIAMS: There's nothing at
7 all in the record about defendant's
8 having any sort of equity interest in
9 anything. And if you'll look at
10 paragraph 5(C) of this agreement, it
11 says that the defendants are going to
12 convey their interest in the property
13 to SRE so that SRE owns 100 percent of
14 the interest of this property.

15 So, Your Honor, it's simply wrong
16 to say the defendants are buying the
17 property because they are clearly not.
18 They are selling their interest under
19 this contract.

20 MR. HOUSTON: Your Honor, in
21 rebuttal, my colleague is more of a
22 corporate lawyer than I am. But there
23 is an agreement for equity
24 participation.

25 MR. WILLIAMS: Which is not in the



1 record.

2 MR. HOUSTON: Which would be
3 impossible, but it's just not mentioned
4 in that particular document. And the
5 reason -- one reason why, we didn't
6 want to make public disclosure of
7 exactly what it is.

8 THE COURT: Well, it's important,
9 though, isn't it?

10 Let's go ahead -- we've been
11 talking about this, let's make it
12 Defendant's 1, I guess.

13 (Whereupon, Defendant's Exhibit 1
14 was marked for identification
15 purposes.)

16 MR. TAYLOR: Thank you, Judge.

17 MR. HOUSTON: If it becomes that
18 pertinent, we can provide with you copy
19 of it, Your Honor.

20 MR. TAYLOR: Your Honor --

21 MR. HOUSTON: But this is an
22 agreement between the developer and the
23 defendants and has nothing directly to
24 do with the other parties other than
25 the fact that they will have an equity



1 position in the development of the
2 project -- not in the development, but
3 in the project itself.

4 MR. TAYLOR: Your Honor.

5 THE COURT: Yes.

6 MR. TAYLOR: I'm sorry. I'll keep
7 it very brief.

8 Just so that it does not appear
9 that we have revision as history here,
10 I want remind the Court, the reason we
11 were unable to close with Rotunda at
12 the anticipated May 1st date that we
13 had shot for is because Mr. Houston's
14 clients, in the motion before, insisted
15 upon new wording within that master's
16 deed. That's what held that up.

17 To come in here and take the
18 position that they have not been
19 holding this up is literally against
20 everything that we've been doing the
21 past two years. This is has been one
22 effort after another to slow down. As
23 you can look at today's motion, to
24 totally reopen something that was 18
25 months ago -- actually, 22 months ago



1 and is now the law of the case.

2 Judge, we need to get this -- we
3 need to get this closed, as the Court
4 has always talked about. Who knows
5 about what we -- what will happen in
6 the real estate market, too, and now
7 we're staring down the federal debt
8 ceiling.

9 And, Your Honor, lastly, I just
10 want to remind the Court that the
11 Rule 241 on supersedeas does
12 specifically vest the Court with
13 authority to continue to have
14 jurisdiction over matters not affected
15 by the appeal, including the authority
16 to enforce any matters not stayed by
17 the appeal.

18 They have sought and been denied a
19 supersedeas. The Court of Appeals and
20 the Supreme Court both are anticipating
21 this is going to be closed. And, Your
22 Honor, we are prepared under the rules
23 to move forward with that, we just need
24 the master's deed.

25 THE COURT: All right.



1 MR. HOUSTON: Your Honor, here
2 again, they're pulling the wool over
3 the Court's eyes. They are attempting
4 to. We changed that because it was
5 agreed at the conference hearing that
6 they would put a provision in that deed
7 mentioning the fact that there was a
8 pending appeal.

9 THE COURT: Did not make it in
10 here?

11 MR. WILLIAMS: Yes, sir.

12 MR. HOUSTON: That was in the
13 record. And knowing that, they still
14 represented to the Court that they
15 would close by April 15th. And that
16 also, that they would provide a copy of
17 the revised deed for the Court to sign.
18 And they never did either. They never
19 presented a revised deed and they never
20 closed. So --

21 MR. TAYLOR: Your Honor --

22 MR. HOUSTON: -- I just wanted to
23 make the factual record straight.

24 MR. TAYLOR: We send the Court and
25 Mr. Houston the proposed Volume IX of



1 the master's deed last week. He has
2 had it. It contains a provision that
3 says, whereas, on 13, March 2023, the
4 defendants filed a notice of appeal
5 with the South Carolina Court of
6 Appeals regarding this Court's order of
7 November 7th and March 8th designated
8 as appeal case 202200348, which is now
9 pending, but no supersedeas regarding
10 the Court's November 7th order was
11 issued.

12 Judge, everything that this Court
13 asked us to do had been done.

14 THE COURT: It looks like it's in
15 there.

16 MR. TAYLOR: Yes, sir.

17 THE COURT: Charles, maybe you
18 hadn't seen the latest one.

19 MR. WILLIAMS: He has.

20 MR. HOUSTON: What is that?

21 THE COURT: The language you
22 requested is in this proposed order.

23 MR. HOUSTON: Okay. But what I'm
24 saying is they never submitted it to
25 the Court. I mean, now they are trying



1 to get the Court to give them another
2 order to try again.

3 THE COURT: Well, no. Nobody's
4 requesting another order, is my
5 understanding.

6 MR. HOUSTON: Well, the other
7 order is -- should be presented.

8 THE COURT: Well, you've requested
9 one.

10 MR. HOUSTON: Yes, because they
11 didn't comply with it. The order
12 specifically says that they would close
13 by April the 20th.

14 MR. TAYLOR: No, it did not.

15 THE COURT: Do you have a copy of
16 the order that says that? There seems
17 to be a dispute on that, Charles.

18 MR. TAYLOR: Absolutely not.

19 MR. HOUSTON: Well, you had the
20 order, Your Honor, you signed it.

21 THE COURT: I got lots of orders.
22 Do you know which one we're talking
23 about that says that?

24 MR. HOUSTON: That was the order
25 for sale because they filed a motion --



1 amended motion to -- in order to sell.

2 MR. FINGER: There's no such
3 order, Your Honor.

4 MR. TAYLOR: That's correct.
5 There is no such order.

6 THE COURT: I mean, Charles,
7 there's so many orders in here, you
8 have to give me a date to look at that.

9 MR. HOUSTON: There was --

10 MR. WILLIAMS: After April 5th.

11 MR. HOUSTON: They filed an
12 amended motion to sell the property,
13 and this was almost like a year after
14 the first motion and the Court had to
15 issue an order in response to that
16 motion.

17 MR. WILLIAMS: I mean, I think
18 what Charles is talking about is he
19 filed the motion to authorize the
20 master's deed.

21 MR. FINGER: Your Honor --

22 THE COURT: Anybody got that
23 handy?

24 MR. FINGER: On behalf of Rotunda,
25 the only reason why it has not closed



1 is because Mr. Houston and his clients,
2 every time we get to the closing table,
3 throw some other motion like this one
4 up that takes the title company back,
5 they have to analyze it, and then we
6 have to get it front of you in order to
7 get it heard.

8 MR. HOUSTON: Well, we're always
9 (indiscernible) the law, Your Honor.
10 We're not -- we haven't suggested
11 anything illegal. I'm just advocating
12 my client's rights that they wanted to
13 pursue. So for him to mischaracterize
14 that as being an obstacle is misplaced.

15 MR. TAYLOR: You're Honor, I'm
16 handing the Court up a November 7th
17 order of this Court, page 9 of 10. The
18 Court talks about having reaffirmed --
19 you'll see it's highlighted, sir --
20 reaffirmed your order. That is last
21 substantive order that this Court has
22 issued regarding this. And there is no
23 deadline, no drop-dead date or anything
24 like that in it whatsoever.

25 THE COURT: Yeah. Charles, have



1 you got that one handy?

2 MR. HOUSTON: I had the transcript
3 of the last conference hearing we had
4 where you said that they had until
5 April 20th to close.

6 MR. TAYLOR: Judge, I have that
7 right here and I would challenge him to
8 show us where that is. It simply is
9 not in there.

10 MR. HOUSTON: This was your
11 ruling. They didn't prepare an order,
12 I don't think.

13 THE COURT: What I remember him
14 saying was -- or saying was to go ahead
15 and put in the language you had
16 requested and y'all get together on
17 that. I believe I had an issue on the
18 final resolution of the attorneys'
19 fees. But I don't remember ordering
20 them to close by a certain date. I
21 probably would have gotten some
22 pushback there. They may have said we
23 anticipate closing on a certain date.
24 But I'm looking. It was a long
25 transcript here. But it didn't make it



1 an order, in any event.

2 Charles, help me out with the
3 jurisdiction issue. How do I have
4 jurisdiction to hear this? I've got
5 jurisdiction to issue a deed, I think
6 that's pretty solid law, but how would
7 I have jurisdiction to essentially
8 modify a prior order during this
9 appeal?

10 MR. HOUSTON: Right. Well, what's
11 under appeal is your order granting
12 them the right to buy the property in
13 lieu of defendants -- denial of the
14 defendants asserting their right of
15 first refusal. All right? But that
16 has been adjudicated by the lower court
17 and that issue is on appeal. But the
18 Court has gone forward with
19 entertaining the plaintiffs' motion for
20 the Court to tender a deed.

21 THE COURT: Well, isn't that a
22 specific transfer of properties,
23 though, or outside the --

24 MR. HOUSTON: All right. So
25 that's the only thing that we're



1 asking. We're saying that they
2 defaulted on their opportunity for the
3 Court to grant them a deed and now
4 we're under the same basis asking the
5 Court grant us a deed upon our
6 performing by purchasing the property.

7

8 THE COURT: Okay. I've having
9 hard time with what they defaulted on.
10 I'm looking through here.

11 MR. HOUSTON: Well, if you get the
12 transcript from the last conference
13 hearing we had, it said that they would
14 close by the --

15 MR. TAYLOR: I have it.

16 THE COURT: I think it's on file.
17 It's filed April 22nd.

18 MR. TAYLOR: Yes, sir.

19 Charles, what page are you on?

20 MR. BERGELT: The proposed date
21 was the 20th and there's ten days given
22 just in case there is some kind of
23 complication to perform.

24 MR. FINGER: The only discussion
25 in that April 5th conference call is



1 about May 1st. We talked about May
2 31st and May 1st. There's nothing in
3 there about April 15th.

4 MR. HOUSTON: April 20th.

5 MR. FINGER: Or April 20th. And
6 after that conference call on the 5th
7 of April is when he filed this most
8 recent motion that we're here about
9 today, which was filed on April -- the
10 amended motion is April 24th.

11 MR. HOUSTON: After the closing
12 date that had -- that had been set.

13 THE COURT: I just -- I don't see
14 it. There's a whole lot here. But I
15 didn't see it in the order.

16 But back to the jurisdictional
17 issue, if I rule the way you want me
18 to, I'd be deciding the appeal in
19 essence, wouldn't I? And I'm certainly
20 not going to do that.

21 MR. HOUSTON: Well, if we're given
22 the opportunity to purchase the
23 property, which we think we're well
24 deserving of, then there wouldn't be a
25 necessity for an appeal because that



1 was our objective all along, was to be
2 able to pay the plaintiffs their money
3 that they've been waiting on. So
4 that's the sale we appoint that you
5 ask.

6 THE COURT: Here it is. Y'all
7 were shooting for a May 1st closing.
8 It's on line -- roughly line 12 of
9 page 10, maybe, of the transcript. All
10 right.

11 MR. HOUSTON: And this is the
12 bench from which we said that they've
13 defaulted.

14 THE COURT: Of course, you filed
15 it before May 1st.

16 MR. HOUSTON: We waited until
17 after that date before we filed
18 anything.

19 THE COURT: Well, let's do this.
20 Anything else for this record?
21 Anything else for this record?

22 MR. TAYLOR: Not from the
23 plaintiffs, Your Honor.

24 THE COURT: All right.

25 MR. BERGELT: So, Judge, just so I



1 can speak and again tell me if I'm out
2 of line in this forum in any way, shape
3 or form. He's just asking me to kind
4 of speak on our behalf.

5 So, again, there's been a lot of
6 back and forth. We, as of kind of a
7 third-party to all of this, have --
8 this would have been closed five times
9 over with respect to, you know, a
10 45-day contingency period. That's
11 simply what we were looking for, is a
12 remedy from the Court, was the same
13 thing that ultimately was declined to
14 us that I think back in '21, the Court
15 didn't have any capacity or -- but
16 there was jurisdiction at that point to
17 handle the deed and title issue.

18 Had that been done -- you know,
19 they keeping bringing up this 45-day
20 issue, they keep bringing up the fact
21 trying to discredit that contract,
22 these guys would have been paid three
23 times over. And again, I'm not here to
24 interject or put myself in the middle
25 of the actual legal scenario with



1 respect to the moves and countermoves
2 here, but the reality is these guys
3 need to get paid, could have been paid.
4 We've put forth offers in front of them
5 on multiple occasions. It seems it
6 stops dead over there.

7 So, again, in the event that they
8 are within their capacity, I believe
9 what we were just kind of going back
10 and forth on was an anticipated close
11 date of the 20th. Charles had just
12 offered up an additional ten days to
13 cover anything that would be prohibited
14 in that process, which is where we
15 landed on that May 1st date.

16 And once we had eclipsed that, to
17 the same degree that our hand was held
18 to the fire on those dates, it seemed,
19 even through we had gotten
20 representations that Rotunda was
21 prepared to close agnostic of whether,
22 you know, the specific wording of that
23 appeal or if that appeal was ever
24 dropped, and so we -- we've approached
25 them in good faith on multiple



1 occasions to do something with them to
2 just get this done.

3 So the one thing I will say is
4 those heirs are a part of this long
5 term. There's no disputing that. That
6 contract is real and as long as they
7 have the means to sign it, we're
8 prepared to sign it immediately. And
9 so there's a lot juxtaposition here
10 on -- which is ultimately leading to
11 just incessant delays, but this whole
12 notion that our 45-day contingency
13 period keeps trying to discredit a very
14 real offer that honors the intent of
15 the Pinckney Act. And that's why we've
16 been here as a party to all of this.
17 We've shown up in each case. I just
18 don't want that to get lost on anybody.

19 So, again, whether this is the
20 proper forum for that or not, there's a
21 very real offer, a very real means to
22 move forward immediately in the event
23 that the respective title and deed
24 issues are handled appropriately. And
25 that's what the -- for us, that's the



1 45-day period, is giving the benefit,
2 the same degree that Charles was trying
3 to provide in that incremental ten
4 days.

5 And so I just needed that to be
6 said because it's being misconstrued a
7 bit and I just wanted to set the record
8 straight on that.

9 MR. TAYLOR: Your Honor, on behalf
10 of the petitioners, I want to object to
11 that unsworn colloquy by Mr. Bergelt
12 here. This Court has rules that we all
13 follow. Those rules apply to evidence.
14 The evidentiary rules are just
15 screaming to be heard at this moment.

16 There is not the first contract
17 signed by anyone that has ever been
18 given to these plaintiffs whatsoever.
19 It would have been sticking out of my
20 ear if that was the case. What we have
21 just heard is a five-minute
22 dissertation about how we are prepared
23 to do this, we're prepared to do that
24 in an unsworn basis.

25 Judge, there's simply nothing in



1 front of this Court today that can
2 actually be relied upon in any way,
3 shape, or form about that. It's simply
4 not there. They haven't offered money,
5 they haven't put up a signed contract.
6 They easily could have signed a
7 contract with the defendants with a
8 contingency here or there. But nothing
9 like has been put in front of this
10 Court.

11 MR. HOUSTON: Your Honor, it's not
12 normal business protocol to sign a
13 contract when it's tendered as an
14 offer.

15 MR. WILLIAMS: Sure, it is.

16 MR. HOUSTON: Until the party
17 indicates that the terms are
18 acceptable, then they will sign it.
19 Now, if they want to challenge us on
20 that, we'll produce a signed contract.

21

22 THE COURT: Well, I mean, the fact
23 is, Charles, you've said all along,
24 when we were talking about this last
25 year or two years ago, your client



1 couldn't close because of the state of
2 the title. Rotunda is ready to close
3 with the current state of the title and
4 is -- I'm sorry, I didn't catch your
5 last name, sir?

6 MR. BERGELT: Bergelt.

7 THE COURT: Mr. Bergelt even
8 mentioned a minute ago, I think you
9 said something about we're ready to do
10 whatever we need to do based on the
11 state of the deed and the title and
12 that sort of thing. So I guess that
13 still might even be an issue. I don't
14 know.

15 Mr. Taylor's correct, I can't take
16 anything Mr. Bergelt just told me as
17 evidence, just sort of information
18 because it wasn't sworn testimony or an
19 affidavit.

20 MR. HOUSTON: Let's swear him in,
21 Your Honor.

22 MR. FINGER: No.

23 MR. HOUSTON: What's the
24 objection? Let's swear him.

25 Mr. Finger's here, he's not a party to



1 the suit. He's been advocating here at
2 the table. So if we're going to be
3 consistent, let's swear him nunc pro
4 tunc and we'll have it on the record.
5 Swear him.

6 THE COURT: Sure. Why not? It's
7 3:49, I don't think I have anything
8 else today.

9 (Court swears Mr. Bergelt.)

10 THE COURT: State your full name
11 for the record, please.

12 THE WITNESS: Nick Bergelt.

13 THE COURT: Where do you live.

14 THE WITNESS: Bluffton.

15 THE COURT: Okay. What is the
16 name of your company.

17 THE WITNESS: Nassau Investments.

18

19 THE COURT: Please answer any
20 questions Mr. Houston would have.

21 MR. WILLIAMS: Your Honor, I'd
22 enter an objection here because Nassau
23 Investments doesn't show up anywhere on
24 this contract. This is SRE
25 Acquisitions 4, LLC.



1 THE COURT: I assume maybe he'll
2 get to that. But thank you.

3 Go ahead, please, Mr. Houston.
4 (Off the record discussion.)

5 DIRECT EXAMINATION

6 BY MR. HOUSTON

7 Q Mr. Bergelt, would you kindly, for the
8 Court, explain the function that your company
9 plays in this particular corporate setup?

10 A Sure. We are a member of that joint
11 venture LLC that the defendants were also the
12 members of and granted equitable interest in
13 that entity, that would be the acquisition
14 vehicle for this.

15 THE COURT: Just so we're here,
16 that is Defendant's 1, the document
17 you're talking about, the purchase and
18 sale agreement?

19 THE WITNESS: Yes.

20 THE COURT: Okay.

21 Go ahead, Mr. Houston.

22 BY MR. HOUSTON:

23 Q Okay. Would you just explain in
24 detail, the relationship and how the whole deal
25 is structured, including the equity



1 participation provision?

2 A What specifically (indiscernible), it
3 depends what we want here.

4 Q The relationship between your company
5 and all of the other principals involved in the
6 transaction on the part of the defendants.

7 A Sure. Just you want the general
8 overarching structure?

9 Q Right. Just for the record.

10 A Okay. That's essentially what I just
11 did. So you have three material parties in
12 there, two co-developers that have member
13 interests in that legal vehicle as well as the
14 defendants who also have membership interest in
15 that legal vehicle. And the intent there is for
16 them to participate as owners longstanding
17 forever in that vehicle, a direct equity in that
18 vehicle.

19 Q Would you state for record what the
20 financial posture of these companies are?

21 A We are operating out of a billion
22 dollar-plus fund with all the requisite
23 resources not only to acquire the vehicle but to
24 see through the entire scope of this project
25 development, which, frankly, there's been



1 considerable input from the heirs as to what
2 that looks like and as a means to kind of honor
3 what they would hope to see for this development
4 long term with respect to honoring the family
5 interest. It's not like there's some silent
6 party sitting here.

7 Q Under this arrangement, do the
8 defendants have a contract with you to have an
9 equity participation in this project?

10 A Yes.

11 Q And is that by a separate agreement
12 between the -- your company --

13 A Yes.

14 Q -- and the defendants?

15 A Yes.

16 Q Okay. And have y'all participated in
17 any other development on Hilton Head Island?

18 A Yes.

19 Q Which one?

20 A Again, we would have a laundry list of
21 developments, but I am happy to provide that if
22 we need to.

23 Q Okay.

24 MR. WILLIAMS: (Inaudible.)

25 THE COURT: Well, he'll have an



1 opportunity to cross-examine him.

2 Go ahead, Mr. Houston.

3 MR. HOUSTON: I think that is
4 adequate, Your Honor, thank you.

5 THE COURT: Thank you so much.

6 Questions of the witness?

7 MR. TAYLOR: Yes, sir.

8 CROSS-EXAMINATION

9 BY MR. TAYLOR:

10 Q Mr. Bergelt, I'm Tom Taylor. The Court
11 earlier marked --

12 THE COURT: Actually, we never got
13 a mark on it, but it will be.

14 MR. TAYLOR: May we refer to it as
15 Defendant's 1.

16 THE COURT: Please.

17 MR. TAYLOR: Okay.

18 BY MR. TAYLOR:

19 Q Mr. Bergelt, that appears to be an
20 unsigned contract; would you agree?

21 A Yes.

22 Q Carries therefore absolutely no weight
23 whatsoever on either party, right?

24 A At this moment, yes.

25 Q Right. Have you ever, as you sit here



1 today, tendered a signed one of those agreements
2 to the defendants for purposes of -- well,
3 they're not -- first, the defendants are not
4 even listed in Defendant's 1, are they?

5 A Say that again.

6 Q The defendants, the individual heirs
7 who own 1 percent of this project's ground are
8 not listed in that, are they?

9 A Not on this page.

10 Q All right. Are they listed anywhere in
11 it?

12 A I'd have to go back and make sure.

13 Q Okay. Did you draft that document?

14 A Attorneys did.

15 Q Okay. And, again, has it ever been
16 signed and tendered?

17 A We have attempted to do that. So it is
18 not, though, because then I guess -- again, stop
19 me if I'm in the wrong forum here, but obviously
20 we are honoring the existing confines and
21 existing contracts. And so, as I mentioned
22 earlier, in the event someone had the capacity
23 to sign this, we would be prepared to sign it
24 immediately.

25 Q But -- so the record is clear,



1 Mr. Bergelt, your group, Nassau Investments, has
2 never tendered an actual signed contract to --

3 A Not yet.

4 Q Not yet? Okay.

5 As far as this other agreement that you
6 talked about that exists between y'all and the
7 defendants making them equity partners, that's
8 not here, is it?

9 A I do not know if that's not here. But
10 I --

11 Q Well, it's not here now.

12 Do you have it with you?

13 A I do not.

14 Q Is it signed?

15 A Yes.

16 Q All right. By all parties?

17 A Yes.

18 Q Why would it not have been brought with
19 y'all today, do you know?

20 A Why would it not be brought here today?

21 Q Yes, sir.

22 A Because it's not material to the actual
23 purchase and sale agreement.

24 Q How can that possibly be when one of
25 the biggest arguments that y'all have been



1 making is that them being long-term participants
2 is integral part of this?

3 A Sure. So they're a part of this
4 vehicle.

5 Q Yes, sir.

6 A And that is a separate agreement which
7 was kept private. Again, if it is material to
8 produce that, I guess we can have a separate
9 conversation about that.

10 But that is -- again, we've been
11 prepared to move forward on this and would have
12 had this signed months ago and we would have
13 eclipsed any due diligence contingency period
14 five times over at this point with the fact that
15 we're going on 18 months.

16 Q Well, during all of this time when it
17 would have been easier, did you ever put up
18 money for the defendants or for the court?

19 A Not yet.

20 Q Okay.

21 A In the event that the outstanding
22 issues are remedied, we would be prepared to do
23 that immediately.

24 Q What are those outstanding issues that
25 you see that need to be remedied?



1 A Clear title. And so we had attempted
2 to do this --

3 THE WITNESS: Charles, do you have
4 the dates when --

5 BY MR. TAYLOR:

6 Q He can't help you, sir.

7 A Oh. Got you.

8 Q Tell me what you mean by clear title.

9 A Addressing the issues with the title
10 and the deed that we've been discussing here all
11 day long.

12 Q So your offer to purchase this would be
13 contingent upon achieving what you believe to be
14 clear title?

15 A Correct.

16 Q Okay. Oh, Mr. Bergelt, give us a
17 couple of examples of the numerous developments
18 y'all have done on Hilton Head involving large
19 housing developments.

20 A One comparable would be Title Bluff.

21 Q Title Bluff?

22 A Yeah.

23 Q How many homes are there?

24 A It's a mixed-use development.

25 Q Okay. Where it is and how much? Tell



1 me what's involved there.

2 A On the north end of the island, and
3 it's a workforce housing oriented development.

4 Q Okay. How many homes are in it?

5 A I'll have to get you all those exact
6 details if we needed to.

7 Q Were you involved with the development
8 of it?

9 A Our partner was, yes.

10 Q Were you involved with the development
11 of it?

12 A Me personally, no.

13 Q Yes.

14 So you don't really know anything about
15 that one?

16 A I do know plenty, I can furnish that
17 information for you.

18 Q Well, we're here now. I'd like to you
19 furnish it on the record because we're trying to
20 establish, from our perspective, whether you do
21 actually have background for a similar-type
22 project.

23 A Okay. So our partner in this deal does
24 this across the United States, has done multiple
25 developments here on Hilton Head, and in the



1 same scope and scale. It's got continuity with
2 all of the other projects that we've done.

3 Q Okay. So how many houses and
4 residences are in Title Bluff?

5 A I'll have to get you that information
6 from them specifically.

7 Q Okay. Do you have any personal
8 knowledge of any other development on Hilton
9 Head which you believe would be comparable to
10 the size of the development that would be put up
11 here?

12 A Do I have any personal knowledge?

13 Q Yes, sir.

14 A Existing right now of other --

15 Q Yes, sir.

16 A -- opportunities that would be --

17 Q No, not opportunities. Of projects
18 that you have been involved with that have
19 achieved this.

20 A Not on the island.

21 Q Okay. Where else in the Lowcountry?

22 A What do you mean?

23 Q Where else in the Lowcountry?

24 A Nowhere in the Lowcountry.

25 Q Where else in the world?



1 A In the United States, we've -- Nassau
2 by extension operates a broad (phonetic)
3 majority in Ohio.

4 Q Okay. I don't understand what by
5 extension operates a broad majority means.

6 Did you personally have anything to do
7 with the construction -- development and
8 construction of a residential developments that
9 you believe are comparable to what we're talking
10 about here on this property?

11 A We're not talking about a residential
12 development so that wouldn't be appropriate
13 context.

14 Q Tell us what the context, then, is that
15 you foresee here.

16 A The scope and scale of the project?

17 Q Yes, sir.

18 A Okay. It's a mixed-use project with a
19 workforce housing component. A -- I don't know
20 what to call this. But a commercial component
21 on the front half of this property, and a -- for
22 the lack of a better term, an RV destination.

23 Q Okay. So tell us which of those three
24 do you believe in y'all's development mind has
25 the most to do with preserving the traditional



1 type input that this family would want to see
2 established that you talked about when you were
3 giving your colloquy earlier.

4 A Sure. So the biggest thing that has
5 been reflected to us is preserving the integrity
6 of the nature and the surroundings of that area.
7 And so we have worked hand in hand with them
8 throughout this scope of this entire process to
9 honor their specific concerns about trying to
10 develop this in the context of, you know, not
11 only what is representative of Hilton Head
12 Island, but what's representative of maintaining
13 the most of that land that we can without it
14 just turning into, you know, another
15 cookie-cutter residential neighborhood.

16 Q Are there preliminary drawings or plats
17 that show us what you've come up with?

18 A Those plans have ebbed and flowed a
19 little bit based on their feedback, but we could
20 provide that too.

21 Q Okay. And how -- who would provide
22 that?

23 A We would directly.

24 Q Nassau?

25 A Yes.



1 Q Okay. And how many workforce housing
2 units are anticipated to be in these preliminary
3 ones?

4 A Up to 230.

5 Q Okay. And how many square footage of
6 commercial component?

7 A Still a moving target based on the
8 front two pieces of those. But we would seek to
9 maximize that piece of it on the beach front
10 facing parcel.

11 Q And what's the range of square footage
12 of commercial?

13 A 5- to 10,000.

14 Q Okay. And how big an RV park?

15 A Again, still subject to where
16 everything lands.

17 Q So no range on that at all?

18 A What's that?

19 Q No range on that at all?

20 A It's kind of predicated on the other
21 two pieces.

22 Q And I think to wrap up here, although
23 Chet may whisper something, hopefully, in my
24 ear.

25 Mr. Bergelt, to sum up, there is no



1 existing signed document between the defendants
2 and Nassau Investments or -- or wait, let me
3 just get my -- or SRE Acquisitions as we sit
4 here today; correct?

5 A Not presently in the courtroom.

6 Q But there is one somewhere else?

7 A Correct.

8 Q Okay. And that one somewhere else is
9 in -- is there a copy in Mr. Houston's
10 possession?

11 A I --

12 THE WITNESS: Charles, you don't
13 have that with you today, do you.

14 MR. HOUSTON: Sir, no.

15 BY MR. TAYLOR:

16 Q Does he have one, to your knowledge?

17 A He has a copy of anything that's been
18 executed attached as the exhibit.

19 MR. TAYLOR: Your Honor, may Chet
20 ask a couple just so it will speed
21 things along?

22 CROSS-EXAMINATION

23 BY MR. WILLIAMS:

24 Q Mr. Bergelt, I believe your testimony
25 was that you were involved in the development of



1 Title Bluff?

2 A What's that? Our partner was involved
3 in the full development of Title Bluff.

4 Q Well, that's interesting because Title
5 Bluff was developed probably about 20 years or
6 so ago, maybe 25, by someone other than SRE.
7 And as part of the development, I handled
8 getting a variance for them. So I know it
9 wasn't SRE who was involved in it and --

10 A That is their most recent development.

11

12 Q Well, they acquired it.

13 A Correct.

14 Q But when you say developed, I think
15 most people think --

16 A My apologies.

17 Q -- -- bare dirt. I build something on
18 it.

19 A My apologies. And I think you do have
20 plenty of context with that, sir, and you seem
21 fully aware of their capabilities and who they
22 are --

23 Q Oh.

24 A -- as an organization. And in a
25 development context, you know they are highly



1 qualified.

2 Q No. I don't know that I could say
3 that. But that --

4 A Don't they --

5 Q But just to be clear, they weren't
6 involved in the development of Title Bluff?

7 A Wrong verbiage. Wrong verbiage. I
8 apologize.

9 Q Earlier during your colloquy, you said,
10 well, the inspection period, that's just for
11 title. And what else was it? The deed?

12 A Addressing the outstanding issues that
13 the Court said they didn't have the capacity to
14 address back in December. Had they addressed
15 those issues, those monies would have been
16 furnished to the Court, and that was the only
17 thing that kept us from doing that.

18 Q I'm going to hand you pages --
19 (Crosstalk.)

20 BY MR. WILLIAMS:

21 Q This is pages 2 and 3 out of the
22 contract that's Defendant's 1. Down at the
23 bottom, it starts with inspection period. On
24 the second page of that, on page 3, is a
25 Subsection C there, the last section on 5.



1 A 5? I'm under 3C.

2 Q 3 --

3 A Because I don't have a Section 5. If
4 you want me to view a Section 5...

5 Q I'm sorry. Inspection is Section 3, so
6 C.

7 Can you read that for us, please?

8 A Sure. The permitted exemptions are --
9

10 Q No. Section --this is Section 3C on
11 page 3.

12 A Oh. Sorry. Sorry.

13 C, in the event that the purchaser
14 determines, in its sole and absolute discretion
15 for any and no reason, that the property is not
16 suitable for the purchased intended use thereof,
17 then the purchasers have the right to terminate
18 this agreement by delivering written notice
19 thereof to seller on or before the expiration of
20 the inspection period in which this agreement
21 shall terminate.

22 The earnest money shall be refunded to
23 purchaser and purchaser and the seller shall
24 have no further rights, obligations, or
25 liabilities hereunder except for those expressly



1 to survive termination of this agreement. If
2 purchaser terminates this agreement prior to
3 closing, any title, survey, and phase 1 reports,
4 if any, generated by purchaser for property
5 shall be given to seller for no additional
6 consideration.

7 Q Now, are you generally familiar with
8 commercial contracts like this?

9 A Yes.

10 Q And these sorts of inspection periods?

11 A Yes.

12 Q Is it fair to say that that inspection
13 period creates a loophole that's big enough to
14 drive a truck through?

15 A I wouldn't say big enough to drive a
16 truck through, but I think it provides an
17 adequate period of time in the 45 days to
18 address the issues. But I think it's also
19 important for the Court to understand that we
20 are simultaneously advocating for an auction
21 that would waive that period to us and to your
22 client that we would be happy to consummate,
23 which would eliminate that whole thing in the
24 event the Judge granted an auction.

25 Q An auction? Okay.



1 A Yeah. Under the Pinckney Act.

2 Q But just to be clear, if this contract
3 was signed, then SRE would have the right, for
4 45 days, for any reason or for no reason to just
5 cancel it and walk away?

6 A Sure. I think we might even --

7 MR. WILLIAMS: That's all. That's
8 all I need. Thank you.

9 MR. TAYLOR: Judge, I've got just
10 a couple more follow-ups.

11 RECROSS EXAMINATION

12 BY MR. TAYLOR:

13 Q Mr. Bergelt, in your background and
14 experience, you understand the concept of law
15 that is entitled tortuous interference with a
16 contract?

17 A Sure.

18 Q And you have abided by that concern
19 during all of your activities in this matter?

20 A Yes.

21 Q All right. Which defendants live on
22 Hilton Head Island?

23 A Which defendants live on Hilton Head
24 Island?

25 Q Yes, sir. Which of the people, the



1 minority shareholders that you're working

2 with --

3 A I can't speak to that.

4 Q You don't know that?

5 A Correct.

6 Q Okay. Have you talked to any of the
7 actual plaintiffs, either the people who are
8 sitting here today or others that we represent
9 about the development of the property?

10 A No.

11 Q Well, since your people only represent
12 1.2 percent, have you attempted to do that as
13 far as your goal of trying to keep the property
14 in the position that you testified to earlier?

15 A No one has spoke -- not with any of the
16 folks at this table, no.

17 Q And, Mr. Bergelt, it would be accurate
18 to say that the title concerns that your group
19 has mainly are based on the activities and
20 filings of Mr. Houston's clients, the
21 defendants, aren't they?

22 A Will you repeat that one more time?

23 Q Yes, sir. The concerns that your
24 client -- that your development corporation has
25 are based mainly upon the activities and the



1 filings by Mr. Houston on behalf of the
2 defendants that have attempted to show all of
3 these other issues with the title, aren't they?

4

5 A Let's go one more time there.

6 Q I'm still a little too wordy for you?

7 A Yes. Laymen's --

8 Q All right. You testified that Nassau
9 and you have some concerns about the quality of
10 title?

11 A Yes.

12 Q All right.

13 A In it's existing form.

14 Q In it's existing form.

15 A Correct. Yeah.

16 Q And those existing forms are
17 highlighted by all the filings and motions that
18 Mr. Houston has made in this court attacking the
19 title, such as supposed people who have not been
20 brought in with estates and things such as that,
21 right?

22 A I would say that's accurately reflected
23 in the record.

24 Q Okay.

25 MR. TAYLOR: Judge, that's all we



1 have. Thank you very much.

2 THE COURT: Mr. Houston, any other
3 questions?

4 MR. HOUSTON: No. Just the
5 statement in reference to the title,
6 two thoughts, Your Honor. Number 1,
7 as --

8 THE COURT: If you're done with
9 the questions, I'll let him sit back
10 down.

11 MR. HOUSTON: As closing counsel
12 has --

13 THE COURT: Do you have any more
14 questions.

15 MR. HOUSTON: No, I haven't.

16 THE COURT: Okay. You can go back
17 if you'd like. I'm going grab this
18 exhibit back.

19 MR. TAYLOR: Thank you, Your
20 Honor.

21 THE COURT: All right. Go ahead,
22 Mr. Houston. I'm sorry.

23 MR. HOUSTON: Regain my thoughts.

24

25 Basically two things, Number 1, we



1 are concerned with the title, but we
2 are ready to put money on the table
3 under whatever terms the Court would
4 consider fair, nonrefundable, and if
5 that -- we don't come up with the full
6 purchase price.

7 What we would aspire to do between
8 the time we get a firm agreement is to
9 continue this present action, have an
10 evidentiary hearing, then the Court
11 would have a basis for issuing an order
12 saying that the parties are vested with
13 a fee simple title.

14 So we want to perfect both
15 problems. We want to put money on
16 table, good faith, and between the time
17 we put the money on the table and we
18 have the closing, we'd like to have an
19 evidentiary hearing so the Court could
20 have a basis for issuing a fee simple
21 title. Simple, straightforward,
22 honest, no dilly dallying.

23 THE COURT: Okay. I'm still not I
24 have --

25 MR. HOUSTON: (Cross-talk.)



1 THE COURT: -- jurisdiction to even
2 hear this motion. But, anyway --

3 Anything else for the record?

4 MR. HOUSTON: On that money, it
5 has to go either way. If you don't
6 have jurisdiction to hear our matter,
7 you don't have jurisdiction to hear
8 their matter.

9 THE COURT: I don't need to hear
10 their matter. I would have
11 jurisdiction under the rules to issue a
12 deed. I think that's pretty clear.

13 I'm not sure what the other matter
14 might be.

15 MR. HOUSTON: Well, I mean, the
16 only thing that would support that,
17 Your Honor, is if you could say, well,
18 I'm going to have a continuing
19 resolution or a continuing order just
20 permitting them in indefinitely to get
21 their act together. You know, we could
22 be here another five years under this
23 present order waiting for them to
24 close.

25 THE COURT: Well, and your



1 statement, I think, is based on what
2 you believe to be a drop-dead date that
3 you thought was in a previous order
4 that it turns out when he looked, was
5 not.

6 MR. HOUSTON: Well, it wasn't a --
7 it wasn't an order, it was what we had
8 -- you had stated that you wanted. You
9 wanted them, one, to present to you, a
10 revised deed that they wanted you to
11 sign.

12 THE COURT: Right. To satisfy
13 your concern.

14 MR. HOUSTON: And that wasn't
15 done.

16 The second thing was they were
17 supposed close by a certain date. They
18 didn't do that.

19 THE COURT: I'm not sure about
20 that part in an order. But okay.

21 All right. Well, let's do this.
22 Anything else from anyone?

23 Mr. Houston, any --

24 MR. HOUSTON: Well, because if
25 that wasn't an order, there is no



1 order. But I thought that that was the
2 order from the bench at the time we had
3 that conference hearing, was that this
4 is what would be done.

5 THE COURT: I don't think there
6 was a you better close by this date or
7 game over. It was never that.

8 MR. HOUSTON: Yes. Because I had
9 even offered to extend an additional
10 ten days and they said we don't need
11 it.

12 MR. WILLIAMS: The transcript will
13 say you said the exact opposite, Your
14 Honor.

15 THE COURT: Yeah. I don't -- I
16 didn't see it looking at it. But -- -

17 MR. HOUSTON: I had said, we would
18 even extend it ten days because I know
19 sometimes somebody can drop dead, they
20 don't get the report from the title
21 company in time. You know, there
22 are -- miscellaneous things can go
23 wrong with a title closing. So I even
24 suggested, I said we'll give them ten
25 days more. They said we don't need



1 it --

2 THE COURT: Okay.

3 MR. HOUSTON: -- we got this
4 wrapped up.

5 THE COURT: But that doesn't
6 convert into a do it or die situation.

7 That's different than a court order
8 requiring something to happen, time is
9 of the essence, shall, all that good
10 stuff. I mean, we think we can do it
11 by this day is great, but it was no
12 order, unless you're going to show me
13 an order I haven't seen, and I've
14 looked --

15 MR. HOUSTON: If it wasn't an
16 order, it was your words, and that's
17 what everybody walked away with.

18 THE COURT: We have a transcript.

19

20 MR. HOUSTON: They went to try to
21 close and we waited.

22 THE COURT: Right. Well let's do
23 this. Y'all have --

24 MR. FINGER: Your Honor. Can I
25 have one last comment, Your Honor?



1 THE COURT: Sure. Sure. Go
2 ahead.

3 MR. FINGER: In the master's deed
4 that's been presented to you, the fifth
5 whereas clause on the third page, I
6 think may have a wrong case number in
7 the appellate court. So if you would
8 just let us -- let the lawyers work
9 that out. It talks about an appeal in
10 March of 2023 that's got a 2022 case
11 number.

12 THE COURT: You're talking about
13 the deed, a clerical error in the
14 proposed deed.

15 MR. FINGER: Yeah, in the master's
16 deed, that's correct. So if you'll let
17 us --

18 THE COURT: Sure.

19 MR. FINGER: -- deal with that.
20 And if there is any changes, I'm
21 certain they will send it to
22 Mr. Houston. I think there might be a
23 docket number wrong in the fifth
24 whereas in page 3.

25 THE COURT: All right. Thank you.



1

2 All right. Anyone else?

3 MR. HOUSTON: The other thing is,
4 you know, the other point I want to
5 make is that we would like to go ahead,
6 put the money on the table to buy the
7 property so we don't have to go forward
8 with this appeal.

9 THE COURT: Okay. All right.
10 Anything else, then?

11 MS. HARRISON: Your Honor, am I
12 out of order?

13 THE COURT: Can I get your full
14 name for me, please, ma'am.

15 MS. HARRISON: Georgia Harrison.

16 THE COURT: All right.
17 Ms. Harrison, be kind of brief, but
18 tell me what you want to tell me.

19 MS. HARRISON: Explain the
20 Pinckney Act to me, please.

21 THE COURT: The Pinckney Act was
22 an effort by Senator Pinckney and
23 others to preserve native land because
24 what was happening was developers were
25 coming in and they would get a quit



1 claim deed from one or two people who
2 might own a small percentage of the
3 land and then they would force a
4 partition and sale and drive everybody
5 off the property.

6 MS. HARRISON: Okay.

7 THE COURT: The idea was native
8 land is disappearing at a ridiculously
9 rapid rate, with it some of the, you
10 know, the historic structures, you
11 know, that sort of thing, it was all
12 just going away way too fast and we
13 need to at least try to put the brakes
14 on that and set up a system to try to
15 preserve native land within families.

16 Sometimes it's difficult because
17 you get, you know, 400 heirs and you've
18 got 10 acres and sometimes it just
19 can't be done. But to the extent that
20 it can be done, it was a methodology to
21 try to do that.

22 That's my understanding of the
23 Pinckney Act.

24 MS. HARRISON: Okay. From my
25 understanding, also, it was saying that



1 if someone was living on that property,
2 because the property was being sold
3 from people that were actually living
4 on the land.

5 THE COURT: That's certainly a
6 factor.

7 MS. HARRISON: Okay. Nobody is
8 living on that land. Nobody has lived
9 on that land since 1920 something.

10 THE COURT: All right. Okay. I
11 believe you. I don't think that's an
12 issue, so...

13 MS. HARRISON: No. But I keep
14 hearing, you know, I want to save the
15 integrity of the land. If you had no
16 part of that land, you don't know about
17 the integrity of that land.

18 Now, she and I are the matriarchs
19 of the family. We are oldest ones
20 living now that have something to do
21 with that land. Pay taxes, come down
22 here three or four times a year to make
23 sure that nothing is happening on that
24 land.

25 THE COURT: Where do you live?



1 MS. HARRISON: At one point in New
2 York.

3 THE COURT: That's a long way.

4 MS. HARRISON: Yeah. Now Atlanta
5 and North Carolina. Still a long way.

6 THE COURT: Still a long way.

7 MS. HARRISON: Right. Drove here
8 this morning to come to this hearing.
9 Was here at the last hearing.

10 I have not seen anything from you.

11

12 THE COURT: Well, just address me
13 if you would.

14 MS. HARRISON: Okay. Well, I have
15 not seen any purchase sale agreement or
16 anything.

17 THE COURT: Okay. I take it
18 you're asking me to move ahead with the
19 Rotunda agreement?

20 MS. HARRISON: Yes.

21 THE COURT: Okay. All right.
22 Anything else?

23 MS. HARRISON: No.

24 THE COURT: Okay. Thank you so
25 much.



1 MR. HOUSTON: Your Honor, this is
2 part of the problem that I mentioned
3 when I first directed my remarks to the
4 Court, is that this is not the first
5 time we have tendered an unsigned offer
6 to the counsels for the plaintiffs and
7 there's never been communicated to
8 their clients.

9 The interest of Rotunda has cut it
10 off right at their desks. So that's
11 what she said, she never heard anything
12 about any offer to this property.

13 THE COURT: I'm not sure that's
14 what she said.

15 MS. HARRISON: That's not what I
16 said.

17 MR. HOUSTON: Isn't that what you
18 said?

19 MS. HARRISON: No.

20 MR. HOUSTON: What did she say.

21 THE COURT: I think she said she's
22 been at every hearing and --

23 MR. HOUSTON: She never heard
24 anything about this offer before; isn't
25 that correct?



1 THE COURT: I'll let you answer
2 for yourself, ma'am.

3 Are you familiar with what's going
4 on with regard to offers and whatnot?

5 MS. HARRISON: Yes, I am familiar
6 with it.

7 THE COURT: Okay.

8 MR. HOUSTON: Have you seen this
9 offer before?

10 THE COURT: All right. Let's do
11 this. Let's not -- we've gone a little
12 far afield of the way we usually do
13 things.

14 I'll take it under advisement. I
15 have grave concerns about my
16 jurisdiction to do anything in this
17 matter because, again, I think the
18 automatic stay allows me to do
19 basically about one thing in this case,
20 and that's issue a deed. I'm not sure
21 if it allows me to do anything that
22 would modify the order under appeal.

23 But that's not a ruling. That's
24 just my thoughts.

25 So I think that will conclude. So



1 we've got -- you got exhibit sticker?
2 We have got one exhibit, as I
3 understand it. And I'll try to let you
4 know something fairly soon.

5 (Whereupon, the Hearing
6 was concluded at
7 approximately 4:22 p.m.)
8
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1 C E R T I F I C A T E O F H E A R I N G

2

3

4 STATE OF SOUTH CAROLINA:

5 BEAUFORT COUNTY:

6

7

8 I, Naomi McCracken, Court Reporter and Notary
9 Public in and for the above county and state, do
10 hereby certify that the foregoing testimony was
11 taken before me at the time and place
12 herein-before set forth; that thereupon the
13 foregoing testimony was later reduced by
14 computer transcription; and I certify that this
15 is a true and correct transcript of my
16 stenographic notes so taken.

17 I further certify that I am not of counsel to
18 either party, nor interested in the event of
19 this cause.

20

21

Naomi McCracken

22

Naomi McCracken

23

Court Reporter

24

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APPRAISAL OF
30.08 ACRES OF VACANT LAND
CONTAINING 29.852 ACRES HIGHLAND
LOCATED ON MITCHELVILLE ROAD
HILTON HEAD ISLAND, SOUTH CAROLINA

FOR
MS. KEITA WHITE

DATED
FEBRUARY 28, 2021

BY
LISA D. NIMMICH, MAI
AND
FRANKLIN B. SEWELL

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NIMMICH & ASSOCIATES, LLC
REAL ESTATE APPRAISALS

March 10, 2021

Ms. Keita White
1570 East New York Avenue, #2A
Brooklyn, NY 11212

RE: Appraisal of:
30.08 Acres of Vacant Land
Containing 29.852 Acres of Highland
Located on Mitchelville Road
Hilton Head Island, South Carolina

Dear Ms. White:

In accordance with your request, we have visited the above referenced property located on Mitchelville Road, Town of Hilton Head Island, Beaufort County, South Carolina, and have made the requisite investigation to estimate the Market Value “As Is” of the fee simple estate of the subject property as of the date of our last visit to the property, February 28, 2021. Market Value and Market Value “As Is” are defined in the attached report. This appraisal is in a narrative report format. The engagement letter for this appraisal can be found in the Addenda as Addendum A. **It should be noted that the current COVID-19 pandemic has created material valuation uncertainty in the market.**

Based on our investigation, analysis, and conclusions, an opinion has been formed that the Market Value “As Is” of the fee simple estate of subject property, as of the last visit to the property, February 28, 2021, subject to the Extraordinary and General and Underlying Assumptions and General Limiting Conditions (which are incorporated into this letter by reference and which are fully set forth in the attached report), was:

ELEVEN MILLION NINETY THOUSAND DOLLARS
\$11,090,000

The final estimate of value does not contain the value of any personal property or intangible items.

Ms. Keita White
March 10, 2021
Page Two

We have attempted to prepare this appraisal report in conformity with the Uniform Standards of Professional Appraisal Practice and Code of Professional Ethics of the Appraisal Institute. The appraisal report also meets the Uniform Standards of Professional Practice (USPAP) developed by The Appraisal Standards Board of The Appraisal Foundation. The appraisal report has been prepared in compliance with FIRREA Title XI, 12 CFR Part 34 (RTC).

The compensation for this report is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result or the occurrence of a subsequent event. The appraisal assignment is not based on a requested minimum valuation, a specific valuation, or the approval of a loan. We hereby certify that we have no interest in the subject property.

Respectfully submitted,

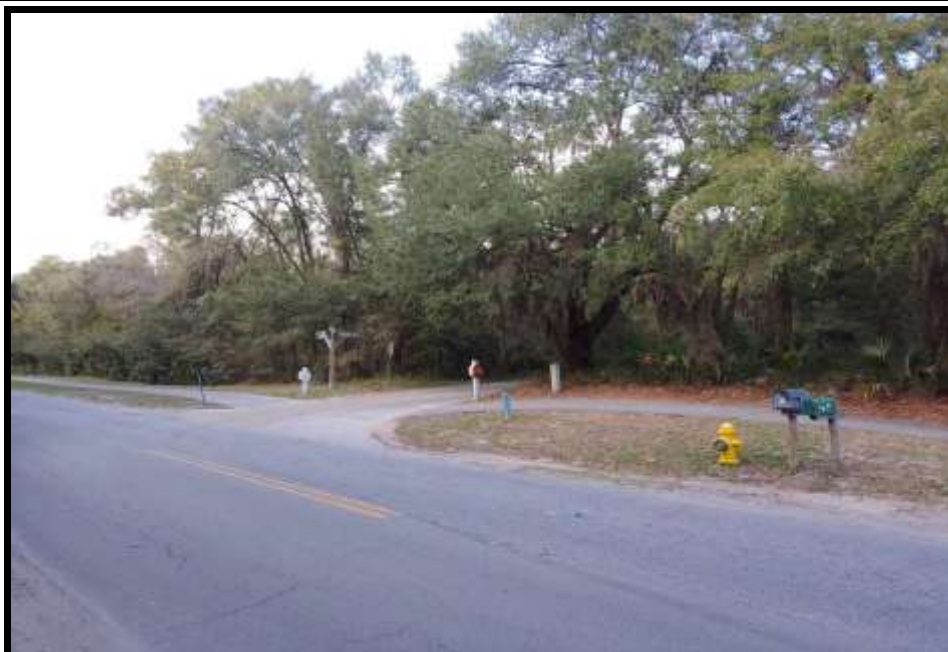
Lisa D. Nimmich, MAI
SC State Certified General
Real Estate Appraiser CG-162
NC State Certified General
Real Estate Appraiser A1777
Georgia State Certified General
Real Estate Appraiser 259066

Franklin B. Sewell, MAI
SC State Certified General
Real Estate Appraiser CG-2877
NC State Certified General
Real Estate Appraiser A8089

Enc.
21-011



SUBJECT PROPERTY FROM MITCHELVILLE ROAD



SUBJECT PROPERTY FROM FISH HAUL ROAD



SUBJECT PROPERTY INTERIOR



PORT ROYAL SOUND VIEW FROM SUBJECT PROPERTY



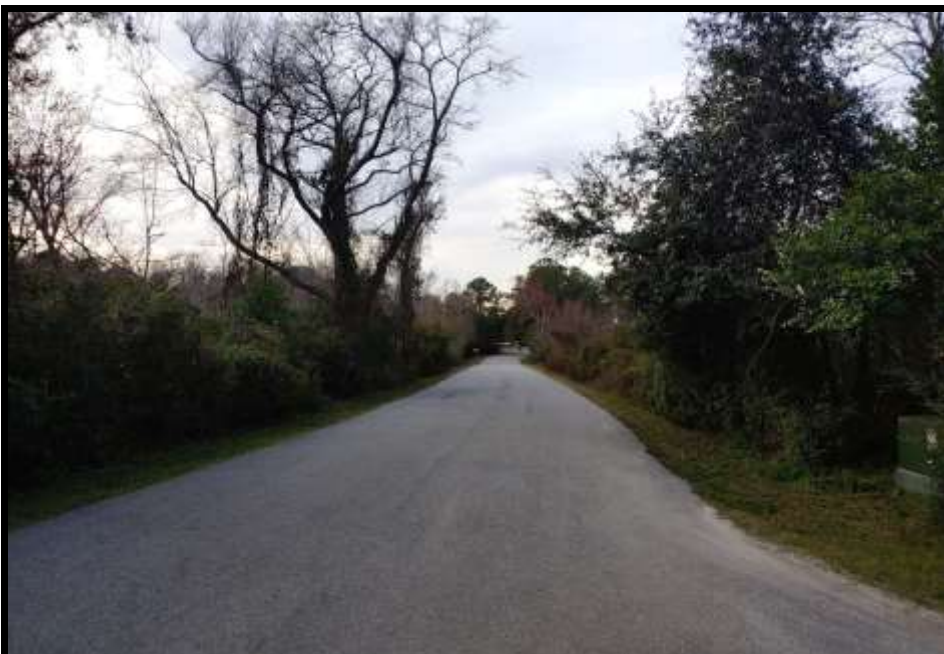
MITCHELVILLE BEACH FACING SOUTHEAST



MITCHELVILLE BEACH FACING NORTHWEST



SUBJECT PROPERTY INTERIOR (MITCHELVILLE) ROAD



MITCHELVILLE ROAD FACING NORTHWEST



FISH HAUL ROAD FACING SOUTHEAST



FISH HAUL ROAD FACING NORTHWEST

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CERTIFICATION

We hereby certify that, to the best of our knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are our personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- We have no present or prospective interest in the property that is the subject of this report, and no personal interest with respect to the properties involved.
- We have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- The engagement in this assignment was not contingent upon developing or reporting predetermined results.
- The compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result or the occurrence of a subsequent event directly related to the intended use of this report.
- The analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.
- Lisa D. Nimmich, MAI and Franklin B. Sewell, MAI made a personal visit to the property that is the subject of this report.
- No one provided significant real property appraisal assistance to the person signing this report.
- The report analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute.
- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- As of the date of this report, Lisa D. Nimmich, MAI and Franklin B. Sewell, MAI have completed the continuing education program for Designated Members of the Appraisal Institute.
- We have performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this appraisal assignment.

Nimmich & Associates, LLC was engaged to appraise the Market Value “As Is” of the fee simple estate of the following real property, as of the date of the last visit to the property, February 28, 2021:

30.08 Acres of Vacant Land
Containing 29.852 Acres Highland
Located on Mitchelville Road
Hilton Head Island, South Carolina

Based on the appraisers’ investigation, analyses, and conclusions, an opinion has been formed that the Market Value “As Is” of the fee simple estate of the subject property, as of February 28, 2021, subject to the Extraordinary and General and Underlying Assumptions and General Limiting Conditions, was:

ELEVEN MILLION NINETY THOUSAND DOLLARS
\$11,090,000

Lisa D. Nimmich, MAI
SC State Certified General
Real Estate Appraiser CG-162
NC State Certified General
Real Estate Appraiser A1777
GA State Certified General
Real Estate Appraiser 259066

Franklin B. Sewell, MAI
SC State Certified General
Real Estate Appraiser CG-2877
NC State Certified General
Real Estate Appraiser A8089

EXTRAORDINARY AND GENERAL AND UNDERLYING ASSUMPTIONS

This appraisal has been made with, and is subject to, the following General Assumptions:

That title to the property is assumed to be good and marketable unless otherwise stated. No responsibility is assumed for the legal descriptions or for any legal matter.

That the definition of value together with other definitions and assumptions on which the analyses of the appraiser is based are set forth in appropriate sections of this 60report and are a part of these General Assumptions as if included here in their entirety.

That the property is considered to be under responsible ownership and management and free of all liens and encumbrances except as specifically discussed herein.

That the facts, estimates, and opinions furnished the appraiser by others and contained in this report are considered to be from reliable sources and where feasible have been verified. However, no responsibility is assumed for the accuracy of the information. The appraiser reserves the right to modify the value estimates should more reliable or accurate information become available subsequent to delivery of this report.

All engineering and/or surveys are assumed to be correct. The sketches, plot plans, and drawings included in the report are included only to assist the reader in visualizing the property.

It is assumed that there are no hidden or other unapparent conditions in the soil, subsoil, structures, or property which would render them more or less valuable. The appraiser specifically accepts no responsibility for damage by termites, wood borers, or any other wood infesting insects. No responsibility is assumed for such conditions or for engineering or inspection which would be required to discover them.

Unless otherwise stated in this report, the existence of hazardous material, which may or may not be present on or in the property, was not observed by the appraiser. The appraiser has no knowledge of the existence of such materials on, in, or near the property. The appraiser, however, is not qualified to detect such substances.

The presence of potentially dangerous or hazardous materials, gasses, or toxic substances may affect the value of the property and in this appraisal the value estimate is predicated on the assumption that there is no such element on, in, or near the property that would cause a loss in value.

No responsibility is assumed for any such conditions or for any expertise or engineering knowledge required to discover them.

Good structural and mechanical conditions are assumed to exist and no opinion as to these matters is to be inferred or constructed from the attached report.

It is assumed that there is full compliance with all applicable federal, state, and local environmental regulations and laws unless non-compliance is stated, defined, and considered in the appraisal report.

It is assumed that all required licenses, certificates of occupancy, legislated or administrative consents from any local, state, or national governmental or private entity or organization have been or can be obtained or renewed for any use on which the value estimated contained in this report is based.

It is assumed that the utilization of the land and/or improvements is within the boundaries or property lines of the property described herein and that there is no encroachment or trespass unless noted within the report.

The Americans with Disabilities Act of 1990 ("ADA") became effective January 26, 1992. The appraiser has not made a specific compliance survey and analysis of this property to determine whether or not it is in conformity with the various detailed requirements of the ADA. It is possible that a compliance survey of the property, together with a detailed analysis of the requirements of the ADA, could reveal that the property is not in compliance with one or more of the requirements of the Act. If so, this fact could have a negative effect upon the value of the property. Since the appraiser has no direct evidence relating to this issue, possible non-compliance with the requirements of the ADA was not considered in estimating the value of the property.

Unless otherwise noted in the appraisal report, the estimated Market Value does not include any personal property, fixtures or other non-real estate items.

This appraisal is made subject to the following **extraordinary assumptions**: First, the Mitchelville Road right-of-way runs from Fish Haul Plantation and ends at the subject property. The road continues through the subject property as an unpaved road, joining Fish Haul Road (S-334) at the subject property's southwestern boundary. The road appears to be used by local motorists, although traffic flow appears to be minimal. According to Patricia Wilson, Beaufort County Right-of-Way manager, the road through the subject property is county maintained. We were unable to locate any documentation of a recorded easement for the road and Ms. Wilson indicated that she did not have any record of a formal instrument being obtained granting right-of-way for this portion of Mitchelville Road.

However, she stated that since the road has been maintained by the county for many years, it is considered a legacy road and there may be prescriptive rights involved. She indicated that if access through the subject property were closed, the potential exists that residents could lobby for condemnation. Under this scenario, it is assumed that the subject property could be developed under an agreement to provide continued access through the property, with the road being relocated, if necessary, to accommodate a specific development plan. We recommend that the property owner consult a condemnation attorney for additional guidance.

Second, the subject property appears to be partially located in flood hazard zones. Please be aware that a Federal regulation known as Biggert-Waters Flood Insurance Act of 2012 may cause flood insurance premiums to increase. This potential increase could negatively impact the value of the subject property. We do not have the expertise to determine building elevations. We do not have the expertise to determine future flood insurance rates, subject to this legislation. We recommend a qualified surveyor and/or insurance broker be consulted if additional information is required. The prospective value reported in this appraisal may change if flood insurance premiums increase.

GENERAL LIMITING CONDITIONS

This appraisal has been made with, and is subject to, the following General Limiting Conditions:

The appraiser, by reason of this appraisal report, is not required to give further consultation, testimony, or to be in attendance in court or at any governmental or other hearing with reference to the property without prior arrangements.

The distribution, if any, of the total valuation in this report between land and improvements, if any, applies only under the stated program of utilization. The separated allocations for land and buildings, if any, must not be used in conjunction with any other appraisal and are invalid if so used.

Use and disclosure of the content of this report are governed by the bylaws and regulations of the Appraisal Institute. Neither all nor any part of the contents of this report (especially any conclusions as to the value, the identity of the appraisers or the firm with which they are connected, or any reference to the Appraisal Institute to the MAI or SRA designations) shall be disseminated to the general public through advertising or sales media, public relations media, news media, or other public means of communication without the prior written consent of the appraiser.

Possession of this report or a copy thereof, does not carry with it the right of publication. It may not be used for any purpose by any other person other than the party to whom it is addressed without consent of the appraiser, and in any event, only with properly written qualifications and only in its entirety.

The party for whom this appraisal report was prepared may distribute copies of this appraisal report in its entirety to such third parties as may be selected by the party for whom this appraisal report was prepared. However, portions of this appraisal report shall not be given to third parties without the prior consent of the signatories of this appraisal report.

Additional copies of this appraisal may be obtained for an appropriate fee only with the knowledge and consent of the client.

SUMMARY OF SALIENT FACTS AND CONCLUSIONS

Property Type:	Vacant Land
Property Location:	Mitchelville Road, Town of Hilton Head Island, SC
Tax Map Numbers:	R510-005-000-0007-0000, R510-005-000-007A-0000, & R510-005-000-0192-0000
County:	Beaufort
Census Tract:	108.00
Date of Appraisal:	February 28, 2021
Date of Report:	March 10, 2021
Property Rights Appraised:	Fee Simple Estate
Owner of Record:	Stanley Roberts, et al.
Site Data:	30.08 Acres; 29.852 Acres Highland
Flood Zones:	C, A7, A9, V9; 4502500009D (September 29, 1986)
Zoning:	RM-4, Low-to-Moderate Density Residential District; MV, Mitchelville District
Highest and Best Use:	Residential Development
Market Value "As Is" Estimate:	\$11,090,000

IDENTIFICATION AND HISTORY

The subject property is in the Town of Hilton Head Island, Beaufort County, South Carolina. The subject property can be identified on the Beaufort County Assessor's map as tax map numbers R510-005-000-0007-0000, R510-005-000-007A-0000, and R510-005-000-0192-0000. Each of these tax map numbers is currently under separate ownership. TMS No. R510-005-000-0007-0000 is currently owned by Peter Harrison, Georgia Harrison, Joyce Ellen Harrison, William S. Harrison, III, Stanley Roberts, Adrienne Kirkland, Carol Bush, Diane Mendheim, Jason Young, Robert Young, Denise Davidson, Rose Hampton, and Victoria Young. The ownership interests in this parcel, as summarized in the table below, were concluded upon by action to clear and quiet title in the Beaufort County Court of Common Pleas, as recorded on June 6, 2016 in the Beaufort County ROD Office in book 3488, at page 1724. Charles Edward Young's interest in the parcel was subsequently transferred to Jason Young by deed of distribution, as recorded on February 3, 2021, in the Beaufort County ROD Office in book 3933, at page 867.

Parcel R510-005-000-0007-0000	
Owner	Interest
Peter Harrison	20.833%
Georgia Harrison	20.833%
Joyce Ellen Harrison	10.416%
William S. Harrison, III	10.416%
Stanley Roberts	25.000%
Adrienne Kirkland	1.5625%
Carol Bush	1.5625%
Diane Mendheim	1.5625%
Charles Edward Young*	1.5625%
Robert Young	1.5625%
Denise Davidson	1.5625%
Rose Hampton	1.5625%
Victoria Young	1.5625%

*to Jason Young via probate

TMS No. R510-005-000-007A-0000 is currently owned by Anthony J. Iannazzo and Elizabeth F. Iannazzo. The owners each received a 25% interest in the property from Gene A. Iannazzo, by deed recorded on January 12, 1994 in the Beaufort County ROD Office in book 678, at page 293. Anthony J. Iannazzo acquired the remaining 50% interest in the property from Gennaro Iannazzo by deed of distribution, as recorded on August 11, 2003 in the Beaufort County ROD office in book 1809, at page 2318. This parcel contains a single-family residence that is not considered to add value to the subject tract valued as a whole.

TMS No. R510-005-000-0192-0000 is currently owned by Curtis Blair Hennessey and Lynette M. Hennessey, having been acquired on January 2, 2008, from Furman Ezekiel Jordan, Jr., Trustee of the Revocable Trust of Furman Ezekiel Jordan, Jr. and Terry Wingo Jordan, Trustee of the Revocable Trust of Terry Wingo Jordan, by deed recorded in the Beaufort County ROD office in deed book 2667, at page 2399. This parcel contains an office/garage building that is used as a contractor's office. This building is not considered to add value to the subject tract valued as a whole.

The subject parcels are not currently under contract or listed for sale and have not been listed for sale during the three-year period preceding the effective date of this appraisal. Copies of portions of the most recent deeds, including legal descriptions, for the subject property can be found in the Addenda as Addendum B.

TAX MAP



AERIAL



OWNER OF RECORD

The subject property is currently owned by Stanley Roberts, et al (see Identification and History section for detail).

PURPOSE OF THE APPRAISAL

The purpose of the appraisal is to estimate the Market Value “As Is” of the fee simple estate of the subject property.

INTENDED USE OF THE APPRAISAL

The intended use of the appraisal report is to aid in evaluation and internal decision making involving the subject property.

INTENDED USER OF THE APPRAISAL

The client and intended user of this appraisal is Ms. Keita White, for the stated intended use.

PROPERTY RIGHTS APPRAISED

The subject property is appraised in the fee simple estate which is “Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.”¹

DATE OF THE MARKET VALUE “AS IS”

February 28, 2021

DATE OF THE REPORT

March 10, 2021

¹ Appraisal Institute, *The Appraisal of Real Estate*, 13th ed., p. 114.

DEFINITIONS

Market Value: as defined by The Office of the Comptroller of the Currency, FDIC Rules and Regulations 12 C.F.R. Part 323.2 Definitions (g), is:

The most probable price which a property would bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specific date and the passing of title from seller to buyer under conditions whereby:

1. *Buyer and seller are typically motivated;*
2. *Both parties are well informed or well advised, and acting in what they consider their own best interests;*
3. *A reasonable time is allowed for exposure in the open market;*
4. *Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and*
5. *The price represents the normal consideration for the property sold unaffected by special or creative financing or sale concessions granted by anyone associated with the sale.*

Market Value “As Is” on Appraisal Date: The estimate of the market value of property in its current physical condition, use, and zoning as of the appraisal date. (Proposed Interagency and Evaluation Guidelines, OCC-4810-33-P)”²

² Appraisal Institute, *Dictionary of Real Estate Appraisal*, 5th edition.

SCOPE OF THE APPRAISAL

The appraisal problem is to estimate the Market Value “As Is” of the fee simple estate of the subject property located on Mitchelville Road, Hilton Head Island, Beaufort County, South Carolina, as of the date of the last visit to the property, February 28, 2021. This appraisal is in a narrative report format. Franklin B. Sewell, MAI made a personal visit to the subject property.

To estimate the Market Value “As Is,” we have completed the appraisal process which includes the collection, confirmation, analysis, and reporting of market data. The geographical area studied was defined in the Region Analysis section of this report. The data was collected from various sources as follows:

- A physical visit to the subject property
- Recorded plats and deeds found in various county RMC and ROD offices.
- Local professionals involved in the sale of properties similar to the subject property
- Employees and publications of state and local government agencies (tax assessors, zoning officials, Chamber of Commerce, and so on)
- Data services such as MLS and CoStar

This information has been confirmed when possible and analyzed to derive area and neighborhood trends in land values, absorption rates, growth rates, and so on. A value indication for the subject property was reached using this data in a direct sales comparison approach to value in this report. The highest and best use of the subject property was determined to be future residential development, following demolition and removal of the existing improvements. We have not deducted the demolition/removal costs as the interim use and salvage value is assumed to offset these costs.

REGION ANALYSIS

Location

The subject property is in the Town of Hilton Head Island, Beaufort County, South Carolina. Beaufort County is located on the coastline of South Carolina and was established in 1769. It has about 30 miles of coastline, a land area of 578 square miles, and 113 square miles of water and marsh. Beaufort County includes 64 major islands. Beaufort County is bounded on the north by Colleton County, on the west by Hampton and Jasper Counties, and on the south by Jasper County.

The two major urban areas in Beaufort County are the Greater Beaufort Area, which contains the City of Beaufort, and Hilton Head Island. The only other incorporated areas in Beaufort County are Bluffton, Port Royal, and Yemassee. The City of Beaufort is the County seat for Beaufort County. It is named for Henry, Duke of Beaufort, one of the Lord Proprietors of South Carolina. The historic City of Beaufort is located on the Beaufort River, which is also the Intracoastal Waterway. The Beaufort River flows into the Port Royal Sound.

Hilton Head Island is located just south of the City of Beaufort on Port Royal Sound and the Atlantic Ocean. Hilton Head is an internationally known resort and convention center. The island has ten championship golf courses and is the home of the Heritage Golf Classic every spring.

Climate

The State of South Carolina is in what is known as the “sunbelt” region of the country due to its moderate climate. The average daily temperature in January, the coldest month, is 47.2 degrees Fahrenheit. The average temperature in August, the hottest month, is 83.5 degrees Fahrenheit. The average monthly precipitation is 4.73 inches. In Beaufort County, the average temperature in January is 49 degrees Fahrenheit, the average temperature in August is 80 degrees, and the average monthly precipitation is 4.12 inches.

Population

According to the 2010 Census, the population of Beaufort County was 162,233, indicating a 34.2% increase in population since 2000. The 2020 population was estimated to be 195,368, an increase of 20.4% over 2010. The population of the City of Beaufort was 12,950 in 2000 and was reportedly 12,361 for 2010, a 4.6% decrease, but rose to 13,492 in 2020, an increase of 9.1% over 2010. The 2010 population of Port Royal was 10,678, up from 3,950 in 2000. The 2020 Port Royal population was estimated at 13,428, an increase of 25.8%. Hilton Head Island had a 2000 population of 34,407 and accounted for 28.0% of all residents in the county. The population in 2010 was 37,099, 22.9% of the county’s residents. The 2020 population was estimated at 39,907, an increase of 7.1% over 2010. The population for the Town of Bluffton was 1,275 in 2000 and was 12,530 in 2010, an increase of 882.8%. The 2020 population was estimated at 28,247, a 125.4% increase over 2010.

BEAUFORT COUNTY POPULATION

1980	1990	2000	2010	2020
65,364	86,425	120,937	162,233	195,368

GROWTH

1980 - 1990	1990 – 2000	2000 – 2010	2010-2020
32.2%	40.0%	34.2%	20.4%

Government

Beaufort County is governed by a nine-member County Council and a County Administrator. The City of Beaufort, the Town of Bluffton, the Town of Hilton Head Island, and the Town of Port Royal have mayor-council-manager forms of government.

Public services and utilities are available and adequate in the incorporated areas. The taxes in Beaufort County and in the incorporated areas are reasonable in comparison with similar areas offering the same services.

Education

Beaufort County contains sixteen elementary schools, six middle schools, five high schools, a K-8 charter school, four early childhood centers, and one school for exceptional children. There are also numerous private/religious schools, including Beaufort Academy and Hilton Head Preparatory School. The Beaufort Area has four higher educational facilities: University of South Carolina (Beaufort Regional Campus), Park College, Webster University (two-year MA and MBA programs), and the Technical College of the Lowcountry (a two-year college).

A satellite campus for the University of South Carolina is now located on US Highway 278, near the Sun City development in Bluffton. A satellite campus for the Technical College of the Lowcountry was constructed near the new USC campus on US Highway 278.

Medical Facilities

The two hospitals in Beaufort are the Beaufort Memorial Hospital (170 beds) and the Beaufort Naval Hospital (250 beds). There is one hospital on Hilton Head Island, which is Hilton Head Regional Health Care (93 beds). A new medical center has also recently been built near Bluffton, the SunGate Medical Center.

Culture & Recreation

Tourists are primarily drawn to the Beaufort Area by the beaches on the barrier islands, the historic district of Beaufort, and many public and private golf courses. Hunting Island contains a national park and campground, which is the most visited national park in South Carolina.

Historic Beaufort attractions include the Beaufort Arsenal Museum, the North Street Aquarium, and the many historic homes. The Lewis Reeve Sams House and the Edward Fripp House are popular attractions that have been utilized for several motion pictures.

Economic Profile

Beaufort County's economy is based heavily on the military and tourism. The impact of these two factors and others are discussed below:

The military is the leading economic contributor to the local economy. The bases include the Marine Corps Recruit Depot on Parris Island, which was originally established as a naval base in 1884, and the Marine Corps Air Station in Beaufort, which began as a Naval Air Station in 1943. There is also the Naval Hospital. Most of the Naval facilities in the Charleston area closed in October of 1995. The Beaufort military facilities were spared in the last round of base closures, and Beaufort gained military personnel.

Tourism plays a large role in Beaufort County's economy, second only to the military as a contributor to the economy. The greater Beaufort area draws some tourists to the historic homes, beaches, and annual Water Festival. Most tourists are bound for the resort island of Hilton Head.

The total civilian labor force in Beaufort County was 75,427 in 2018, up from 74,104 in 2017. The unemployment in Beaufort County was 3.3% in November of 2020, compared to 4.4% in South Carolina, and compared to 6.7% for the US in December of 2020. Following is a breakdown of labor force and employment for the years 2010 to 2018.

LABOR FORCE ESTIMATES

	2012	2013	2014	2015	2016	2017	2018
LABOR FORCE	65,919	67,339	69,490	71,691	72,683	74,104	75,427
EMPLOYMENT	60,939	63,040	65,555	67,760	69,348	71,113	73,082
UNEMPLOYMENT	4,980	4,299	3,935	3,931	3,335	2,991	2,435
% OF LABOR FORCE	7.6%	6.4%	5.7%	5.5%	4.6%	4.4%	3.9%

Source: SC Dept. of Employment & Workforce

The 2019 per capita income for Beaufort County is \$38,946. The 2019 median family income is estimated to be \$68,377.

The rapid development of Hilton Head Island spearheaded new residential development on the mainland, as available vacant land on the Island has become scarce. This led to the boom in the Bluffton area. Sun City Hilton Head, located 13 miles west of Hilton Head Island, is Phoenix-based, Del Webb Corporation's first east coast community. Del Webb Corporation has developed other retirement properties in Tuscon, Las Vegas, and Palm Springs, California. About two-thirds of the development, the first phases are in Beaufort County. In January 1994, the Del Webb Corporate Board of Directors gave its final go-ahead to bring the company's unique adult community concept to the Lowcountry.

Upon completion, the community will be home to more than 16,000 seniors and retirees. A total of 8,500 homes are planned for the \$1.4 billion development. Development was rapid, spurring other residential and commercial growth in the area.

Transportation

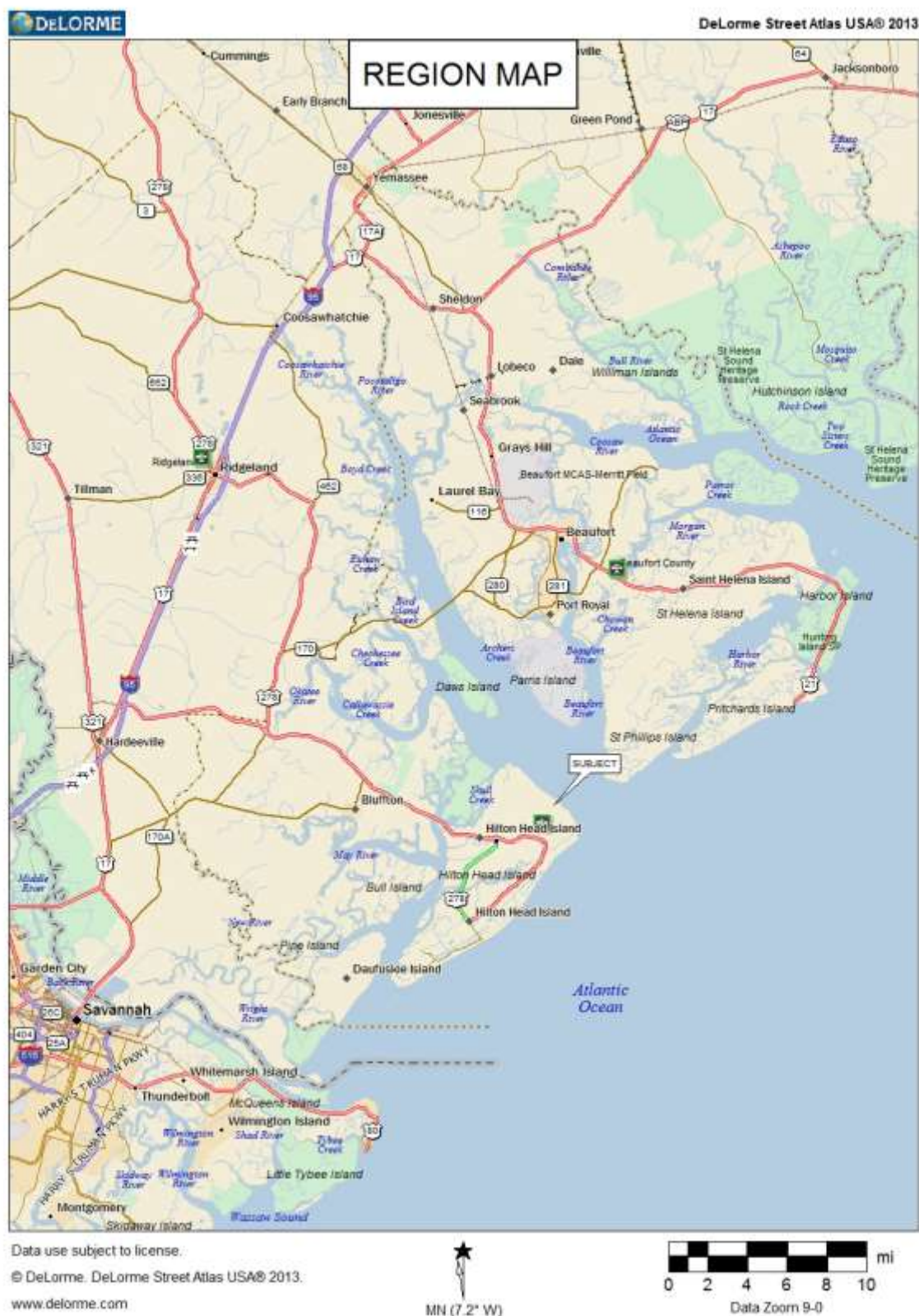
There are varied transportation systems in the greater Beaufort area. Barge traffic plies the Intracoastal Waterway. The City of Savannah is located about an hour south of the area and is one of the largest container ports in the eastern half of the country. The City of Charleston is located about 65 miles to the north and is the third largest container port in the eastern half of the country and seventh largest in the continental United States.

There are two small airports in Beaufort County. One of the airports is located three miles from the City of Beaufort on Lady's Island. The other small airport is located on Hilton Head Island. Airline and airfreight services are available at the Savannah Municipal Airport 55 miles south of the City of Beaufort and at the Charleston International Airport about 75 miles north of the City. Rail service is provided by CSX Railroad and AMTRAK. The Port Royal Railroad connects Beaufort with the Town of Yemassee. In Yemassee, this line connects with rail service to Savannah and Charleston. Interstate 95 runs along the eastern seaboard and is the major conduit of traffic from the northeast to Florida. Access to I-95 is about 20 miles west of the City of Beaufort. US Highway 278 connects Hilton Head Island to I-95. The county is also served by US Highway 21 and SC Highways 116, 170, 281, and 802.

Summary

The subject property is in the City of Beaufort in Beaufort County. Beaufort County is in the southeastern part of the state bordering on the Atlantic Ocean. The economic outlook for this area is good. Growth in this area has been strong over the last twenty years, and this trend is expected to continue. Beaufort County has the benefit of a diverse economy including a fast-growing tourism industry and a strong military presence. The educational and medical facilities in the area are adequate. The four basic factors that influence value: social, economic, government, and environmental considerations, are well balanced in Beaufort County. Property values are stable or appreciating, overall. The economic outlook for this area is good in the long run.

COVID-19 was declared a pandemic on March 11, 2020 by the World Health Organization. Moreover, the National Bureau of Economic Research announced June 8, 2020 that the longest economic expansion in the nation's history has come to an end and that a recession began in February. Depending upon the length of time that the pandemic and the current economic issues continue, property values could be adversely affected in the future. CoStar has also projected that marketing times could be extended. The financial markets have sustained substantial turmoil, and due to the developing situation, it is not possible at this time to quantify its long-term or short-term effects on the marketplace overall.



NEIGHBORHOOD ANALYSIS

The subject property is in the Town of Hilton Head Island, Beaufort County, South Carolina. The subject property is located at the northeastern portion of Hilton Head Island on Mitchelville Road, in the Mitchelville community. Mitchelville Road runs from Fish Haul Plantation and ends at the subject property. The road continues through the subject property as a private, unpaved road. The road through the subject property is reportedly county maintained and is regularly utilized by local motorists. We were unable to locate any documentation of a recorded easement for the road. The subject property can also be accessed from Fish Haul Road. Mitchelville Road and Fish Haul Road are two-lane, asphalt paved, 66' rights-of-way with no streetlights, or curb and gutter. Fish Haul Road has a sidewalk, while Mitchelville Road does not.

The subject neighborhood is accessed by Beach City Road, which runs from US Highway 278 (William Hilton Parkway) and ends at the Port Royal Sound. US Highway 278 is the main artery for Hilton Head Island and is also the access route from Bluffton and Interstate 95.

The general subject neighborhood is Hilton Head Island. Hilton Head Island is located about 30 miles north of the City of Savannah, GA, and about 30 miles southwest of the City of Beaufort. According to the 2010 census data, the 2010 population of Hilton Head Island was 37,266, an 8.3% increase from 2000. The estimated population in 2020 was 39,907, indicating a 7.1% increase since 2010. Head Island is 54.0 square miles and is separated into two portions, northern and southern, by the Broad Creek.

The major arteries on the island are the William Hilton Parkway (US Highway 278), Pope Avenue, and the Cross-Island Parkway (Palmetto Bay Road). Palmetto Bay Road is a five-lane route that connects to the Cross-Island Parkway at Broad Creek and intersects with William Hilton Parkway and Pope Avenue at Sea Pines Circle. William Hilton Parkway is the primary artery on Hilton Head Island. Commercial development along the US Highway 278 corridor includes independent retail, shopping centers, restaurants, and offices. Development away from the Highway 278 frontage is more diverse with a combination of retail, warehouse, and service/commercial establishments. Residential development is located primarily in plantation developments which are accessed from Highway 278. The Cross Island Expressway is the other main thoroughfare on the island crossing broad creek and eventually joining William Hilton Parkway at Sea Pines Circle.

The immediate subject neighborhood is the northwestern portion of Hilton Head Island, or the Mitchelville community and Fish Haul Plantation. In 1862, Gen. Ormsby Mitchel set up the town of Mitchelville to house the islands first freedman's village. Mitchelville residents elected their own officials, passed their own laws, and established the first compulsory education law in the state. The Mitchelville community was built along modern-day Beach City Road. In February 2018, what is now formerly Fish Haul Creek Park was officially renamed The Mitchelville Freedom Park. The rebranding, which included the unveiling of a sign off the Beach City Road location, was carried out by the Mitchelville Preservation Project board. The nonprofit group aims at preserving the story of historic Mitchelville. The next phase is recreating a section of what the town would have looked like 156 years ago.

According to project director Ahmad Ward, “The whole thing won’t be as it was in 1862 but we will be trying to recreate the historic street grid, the historic homes and the praise house which is where all the life happened in the area.” Ward’s next step is rendering a master plan for the park which he said will consist of 16 acres initially. The settlement itself was 32 acres in 1862.

In the early 2000s, the Town announced and began a series of public works improvement projects in Mitchelville. The projects included: Fish Haul Creek Park (now Mitchelville Freedom park); new soccer, lacrosse, rugby, and multipurpose fields (Barker Field Expansion improvements) and a beach renourishment project that restored a half-mile stretch of the beach to its original condition along with the creation of a seven-acre beach park (Fish Haul Beach Park). The Town has recently collaborated with Hilton Head Public Service District on the Baygall Sewer Project. The project involves the installation of a sewer pump station and main sewer lines throughout Mitchelville’s Baygall neighborhood along Mitchelville and Fish Haul Roads.

The Mitchelville community and Fish Haul Plantation are bounded by Beach City Road, Palmetto Hall and Hilton Head Plantation with many properties having frontage on the Port Royal Sound. This area is one of the least developed areas on the island. There are still several unpaved roads throughout the immediate subject neighborhood. The neighborhood includes many older residential structures, with some recreational properties, such as Fish Haul Creek Park, Mitchelville Beach Park, and Barker Field. There are a few light industrial properties located at the intersection of Beach City Road, Fish Haul Road, and Dillon Road.

The Hilton Head Airport is in the southwestern quadrant of the subject neighborhood. The airport is owned by Beaufort County. Mostly used for general aviation, it is also served by a commercial airline and one public charter airline operating limited service. It is the only airport on Hilton Head Island.

There is a condominium development adjacent to the subject property, accessed at the end of Beach City Road and known as The Spa on Port Royal. This sound front development was constructed in the early 1980’s and features gated access, three tennis courts, gym, and indoor and outdoor swimming pools.

Also adjacent to the subject property and accessed from Beach City Road is a 32-lot single-family subdivision. Beach City Place at Mitchelville was completed in 2009; however, only one lot was sold and developed. In 2013, the developer requested that property be rezoned from RM-4 (Low Density Residential) zoning district to RM-12 (Moderate to High Density Residential) zoning district. He indicated that an order of foreclosure had been issued and that the rezoning was necessary to avoid foreclosure by redeveloping the property into a high-density multifamily development. However, the zoning request was denied, and the property was purchased out of foreclosure later that year. The new ownership group sought to have the property rezoned to RM-8 (Moderate Density Residential) zoning district in order to allow duplex development; however, this request was also denied. The property has seen a good deal of recent development, with most of the lots now having been improved with single-family homes. Adjacent to this subdivision is the recently developed Mitchelville Golf Cottages. This development, which is utilized as housing for the Junior Players Golf Academy, consists of six, 4-bedroom, 4 ½ bath cottages located in its own gated community.

A new hotel was recently constructed on Hilton Head and some new residential development is occurring. A 115-room Courtyard Marriott hotel opened in May 2020. The six-story hotel is the tallest building in Hilton Head Island's Coligny area, and it features the island's only rooftop pool and bar. One of the oldest fine dining restaurants on Hilton Head Island is set to be replaced by a six-floor luxury condo building next year. Although the restaurant is still open, Old Fort Pub will be demolished to make way for The Charles, a 22-unit luxury complex developed by Charleston-based Hancock Development Corp. Eight of the 22 units were already pre-sold as of the latest update in December 2020. The top floor units are selling for over \$1.2 million and the least expensive units are listed at \$999,900. The units boast sunset views over Skull Creek, large balconies, nine-foot ceilings, and gas fireplaces. The building will include a saltwater pool, one story of parking and five stories of condos on the waterfront.

A new timeshare resort, Hilton Head Port Royal Resort, has received initial approval from the Design Review Board. The development will be located along Folly Field Road, close to Islanders Beach Park, on an 8.4-acre piece of property that is currently the site of the Port Royal Racquet Club. According to the project plans, there will be three four-story and four three-story residential buildings with a mix of one, two, and three-bedroom units. The total number of planned units is 132. Remnants of the Port Royal Racquet Club will remain on the site, including existing parking spaces, and a club building and some tennis courts.

Developers are moving ahead with plans to turn the land where Hilton Head Christian Academy now sits into 260 apartments after the school moves across the bridge to Bluffton. In July 2020, the Hilton Head Island Town Council approved the plan for three 55-foot-tall apartment buildings and one 45-foot-tall building on the 13.8-acre site. Part of the agreement between the town and developer is a minimum rental period of six months and that 5% of the development, or 13 units, be priced below market rate for the island's workforce for a minimum of 20 years.

The buildings will be reevaluated each year to confirm it still has workforce-oriented units and the property is not being used as a short-term rental community. Spandrel developer Emanuel Neuman said in July that a below-market unit may be priced around \$850 per month for a studio, and \$1,100 for a two-bedroom apartment. The rest of the units, he said, will rent at the original rates of \$1,200 to \$2,800 per month. The density of the property will be 19 units per acre, according to the plans, which is relatively high in relation to the four surrounding communities, where the average density is 10 to 11 units per acre.

Hammock Breeze is a new 37-lot subdivision developed on Mitchelville Road, which fronts on Port Royal Sound. Homes range from 1,821 to 2,694 S.F., with initial pricing ranging from \$358,990 to \$409,990. Only two lots in the subdivision have direct sound views and due to an expanse of marsh, there is no direct access to the beachfront. Construction began in 2020 and the development is reportedly sold out.

A new 34-home gated subdivision, called The Estuary, is located off Fish Haul Road next to the Arthur Hills Golf Course at Palmetto Hall Plantation. Construction began in 2019 and the development has completely sold out. Initial home prices ranged from \$337,900 to \$390,000, with 32 of the 34 new homes having golf course or lagoon views. Twenty-three new homes are being built in a new subdivision off Marshland Road, called The Marshes at Broad Creek. Home

prices will range from \$491,900 to \$551,900. A Bluffton developer has also applied to the Town of Hilton Head Island to construct a 29-home subdivision off Jonesville Road near Old House Creek and the Cross Island Parkway.

Hilton Grand Vacations and Strand Capital Group recently completed development of a new timeshare resort on Hilton Head Island. The resort was constructed on a seven-acre beachfront parcel located on South Forest Beach, which was the site of the former Adventure Inn. The Adventure Inn, which was built in 1963 and demolished in 2008, was an island landmark and one of Hilton Head's three original hotels. Regarded as one of Hilton Head Island's most sought-after locations, South Forest Beach occupies a one-mile beachfront stretch between the Coligny District and Sea Pines Plantation. The new resort is comprised of four distinct buildings with a total of 125 two-bedroom units.

Developers envisioned the complex including three four-story buildings with parking on the ground level. The largest building would have the main amenities, and the small buildings would each hold four units facing the beach. Anchoring the complex from the center would be a pool. Whether the units would be apartments or condominiums had not been determined yet, Stowers said. The Design Review Board provided Stowers with feedback on the design, expressing concern with the large scale of the project, the tree removal plans and the height of the buildings. Chair Michael Gentemann recommended Architecture 101 withdraw its proposal and create a new one responsive to the board's suggestions before coming back for approval.

A 45-unit, oceanfront development has been proposed for Mitchelville Road, promising luxury amenities and 270-degree views of the water. Beaufort firm Architecture 101 is leading the effort to bring multifamily housing to the previously undeveloped tract. The property was sold by Charles Bertrand to Hilton Head Island Beachfront, LLC for \$1.36 million in 2019. Architect Steve Stowers said he intends for the complex to be "a very high-end establishment that should really upscale the housing offerings on Hilton Head." The initial design was submitted to the Town's Design Review Board in September 2020 for conceptual approval.

There are preliminary plans for a 9-lot gated subdivision to be located on a waterfront tract at 272 Mitchellville Road. Mitchelville Heights would add nine homes to a 1.5-acre site, according to town application documents. According to application documents, there would be five houses on the marsh side and four along Mitchelville Road. A 6.22-acre tract located at 280 Mitchelville Road was rezoned in late 2019 from RM-4/RM-8 to RM-12 in order to allow the property owner to develop the site with multifamily units. A development plan has not yet been announced for this property. The subject neighborhood has all necessary utilities available.

The subject neighborhood appears to be in the growth stage of its lifecycle. The residential market is stable, and we believe that the long-term outlook for the island is very good. Growth is expected to continue, and property values are expected to increase, in the long-term.



SITE ANALYSIS

The subject property is in the Town of Hilton Head Island, Beaufort County, South Carolina. The subject property is located at the northeastern portion of Hilton Head Island on Mitchelville Road, in the Mitchelville community. The subject property can also be accessed from Fish Haul Road. Mitchelville Road and Fish Haul Road are two-lane, asphalt paved, 66' rights-of-way with no streetlights, or curb and gutter. Fish Haul Road has a sidewalk, while Mitchelville Road does not. The subject neighborhood is accessed by Beach City Road, which runs from US Highway 278 (William Hilton Parkway) and ends at the Port Royal Sound. US Highway 278 is the main artery for Hilton Head Island and is also the access route from Bluffton and Interstate 95.

The Mitchelville Road right-of-way runs from Fish Haul Plantation and ends at the subject property. The road continues through the subject property as an unpaved road, joining Fish Haul Road (S-334) at the subject property's southwestern boundary. The road appears to be used by local motorists, although traffic flow appears to be minimal. According to Patricia Wilson, Beaufort County Right-of-Way manager, the road through the subject property is county maintained. We were unable to locate any documentation of a recorded easement for the road and Ms. Wilson indicated that she did not have any record of a formal instrument being obtained granting right-of-way for this portion of Mitchelville Road. However, she stated that since the road has been maintained by the county for many years, it is considered a legacy road and there may be prescriptive rights involved. She indicated that if access through the subject property were closed, the potential exists that residents could lobby for condemnation. Under this scenario, it is assumed that the subject property could be developed under an agreement to provide continued access through the property, with the road being relocated, if necessary, to accommodate a specific development plan. We recommend that the property owner consult a condemnation attorney for additional guidance.

We have been provided with three surveys that indicate the subject property as totaling 30.08 acres. The larger parcel is shown as having 0.169 acre of tidal wetland lying below the OCRM critical line and 0.059 acre of freshwater wetland; therefore, the total indicated highland is 29.852 acres. A 25' wide ingress/egress easement is shown along a portion of the property's northern boundary. No other easements are shown; however, an overhead power line and water line are shown as running through the property along the access road, and utility easements for these are assumed. We have also analyzed a USGS topographical map. Copies of the plat, topographic, and flood plain map follow in this section.

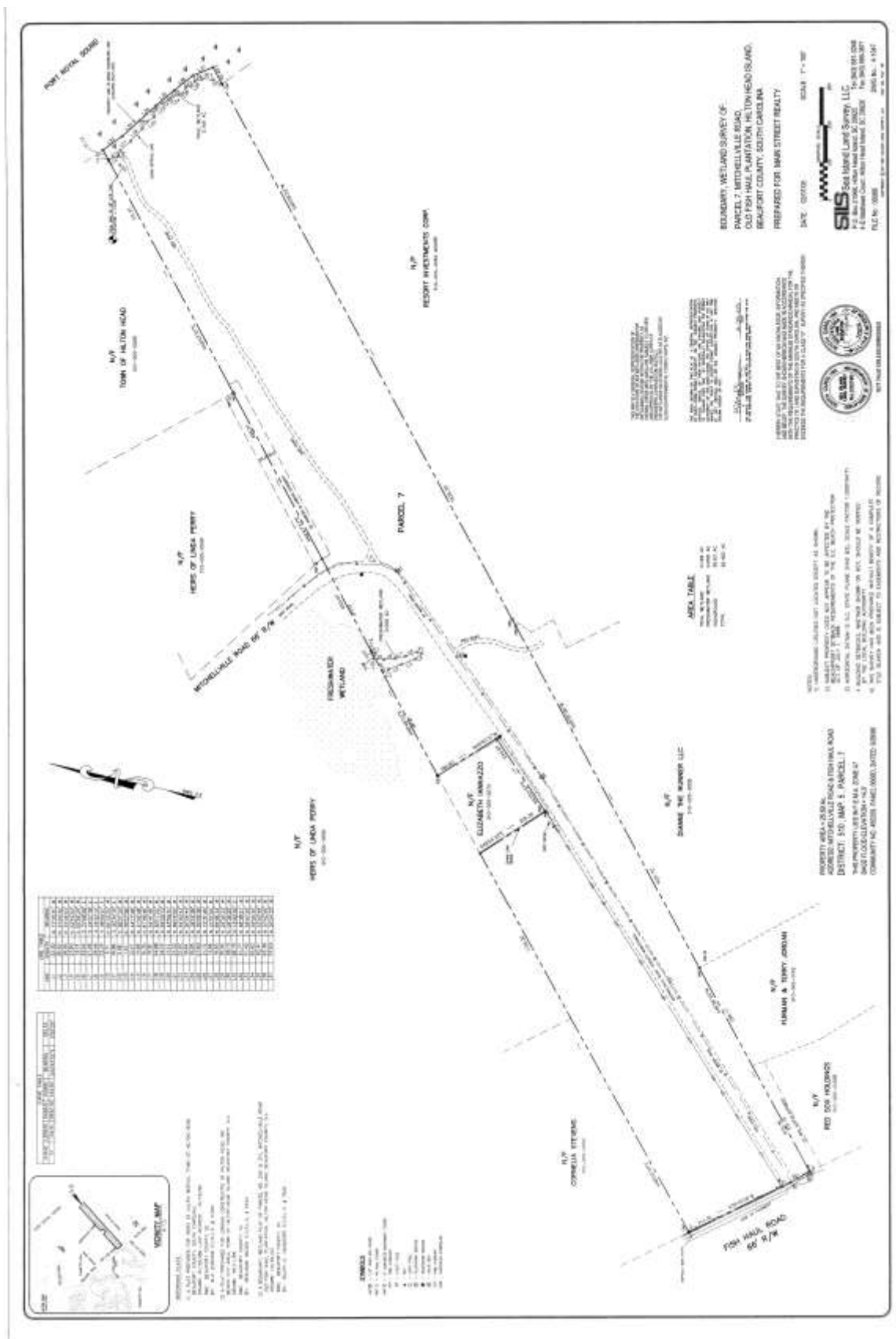
The subject property is shown as having 358.56' of frontage on Fish Haul Road and as previously stated, the Mitchelville Road right-of-way ends at the subject property. The size of the subject tract is larger than is typical for residential tracts in the subject neighborhood. The shape of this tract is irregular, but the site is functional for development. Most of the tract appears to be located in either a C flood zone or an A7 (14) flood zone. The C flood zone is a non-hazard area, while the A7 (14) flood zone is a coast flood hazard area, requiring a base elevation of 14' MSL. The area immediately fronting on the sound appears to be in several A9 and V9 flood zones.

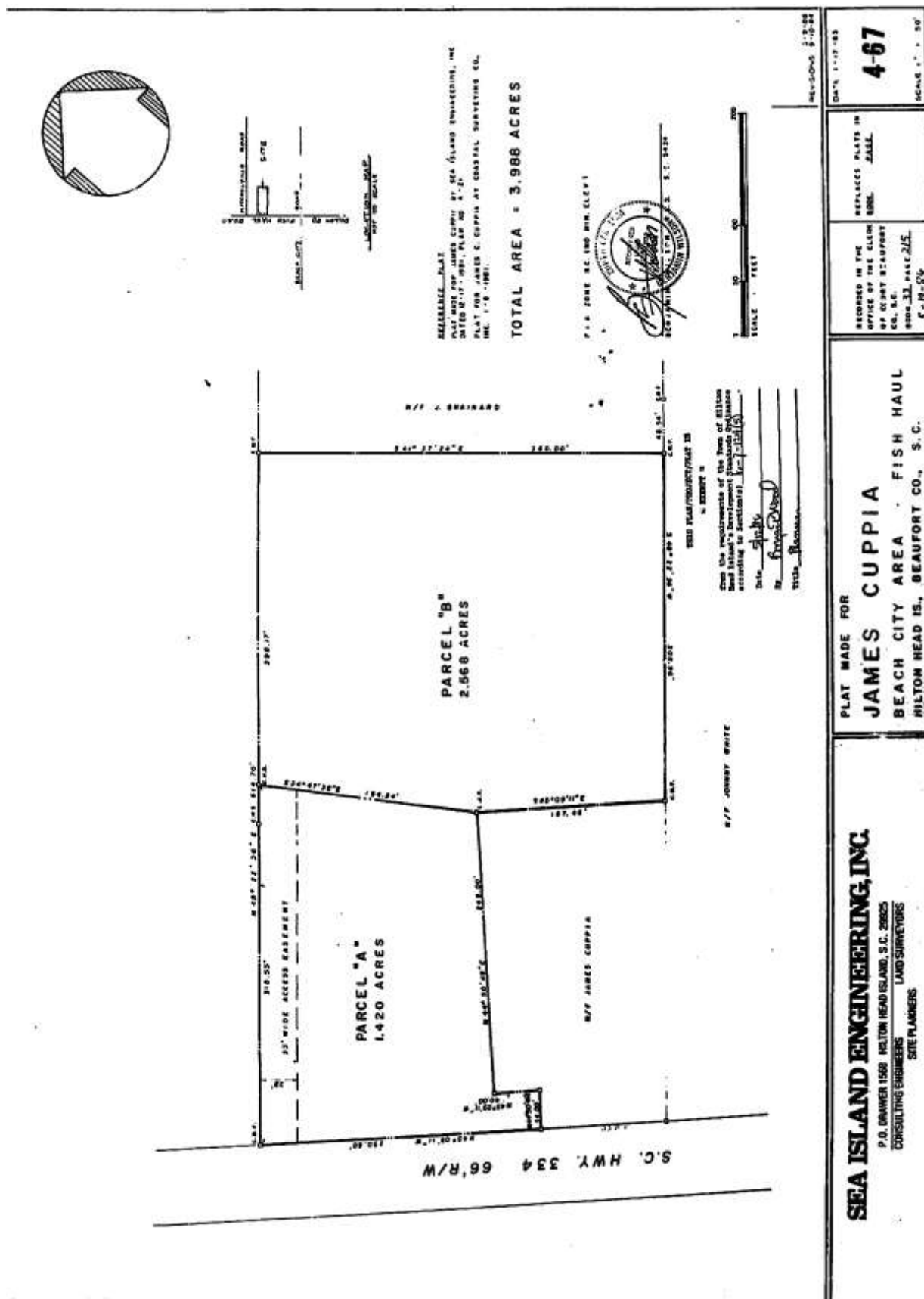
These are coastal flood hazard areas, with the V9 zone being a velocity hazard area (wave action). The base flood elevations for this area appear to range from 14' to 22' above MSL. It should be noted that flood maps by FEMA are not precise. For a precise determination of the subject's flood hazard classification, a professional engineer, licensed surveyor, or a local governmental authority should make an exact determination.

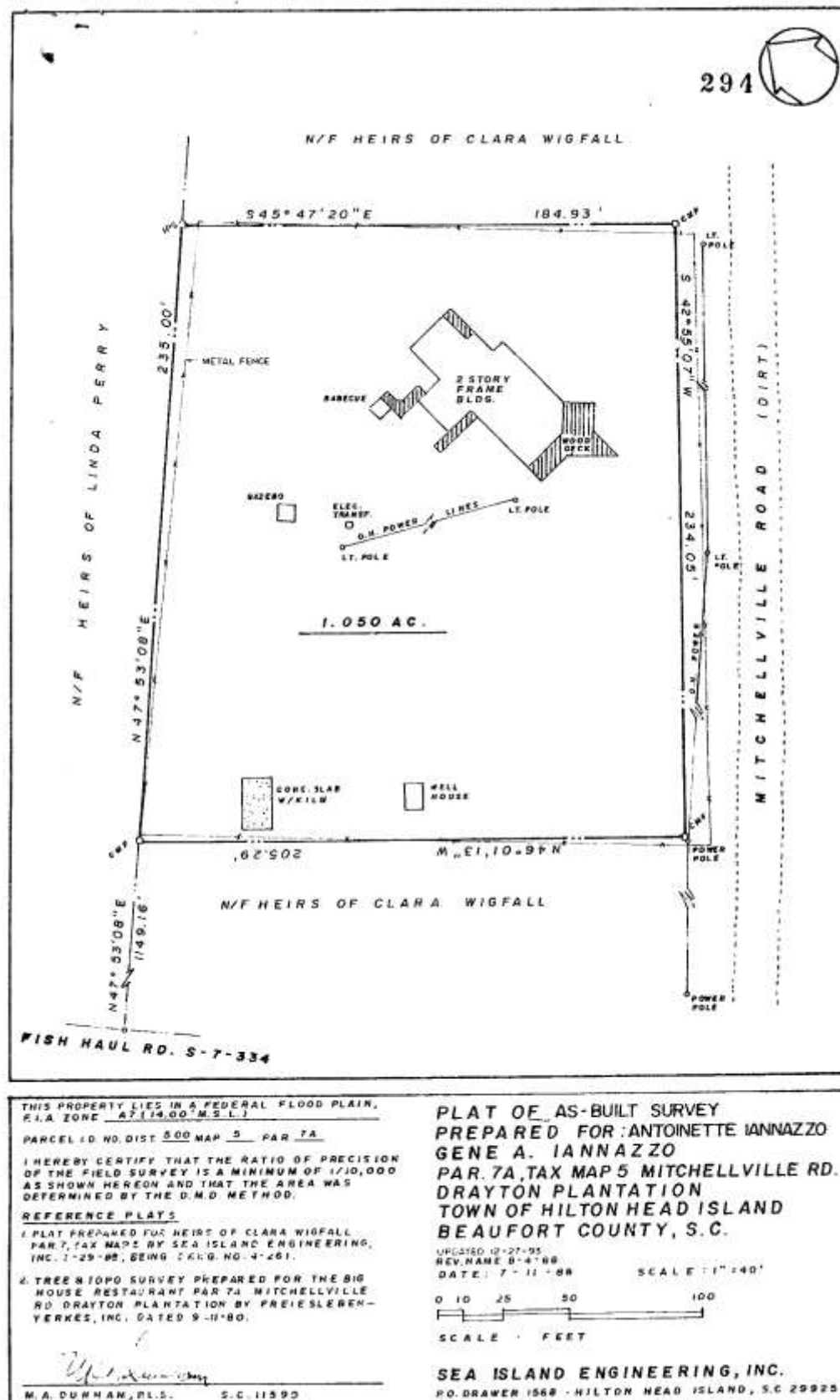
Most of the tract appears to be basically level. An inspection of a USGS topographic map showed most of the subject tract as being slightly above 10' MSL, with the area closest to the sound being below 10' MSL. The subject property contains approximately 367' of frontage on the banks of Port Royal Sound and affords expansive water views. Port Royal Sound is a coastal sound, or inlet of the Atlantic Ocean. It is the estuary of several rivers, the largest of which is the Broad River. The sound is located between Hilton Head Island to the south and, to the north, Port Royal Island, Saint Helena Island, Parris Island, and other smaller islands.

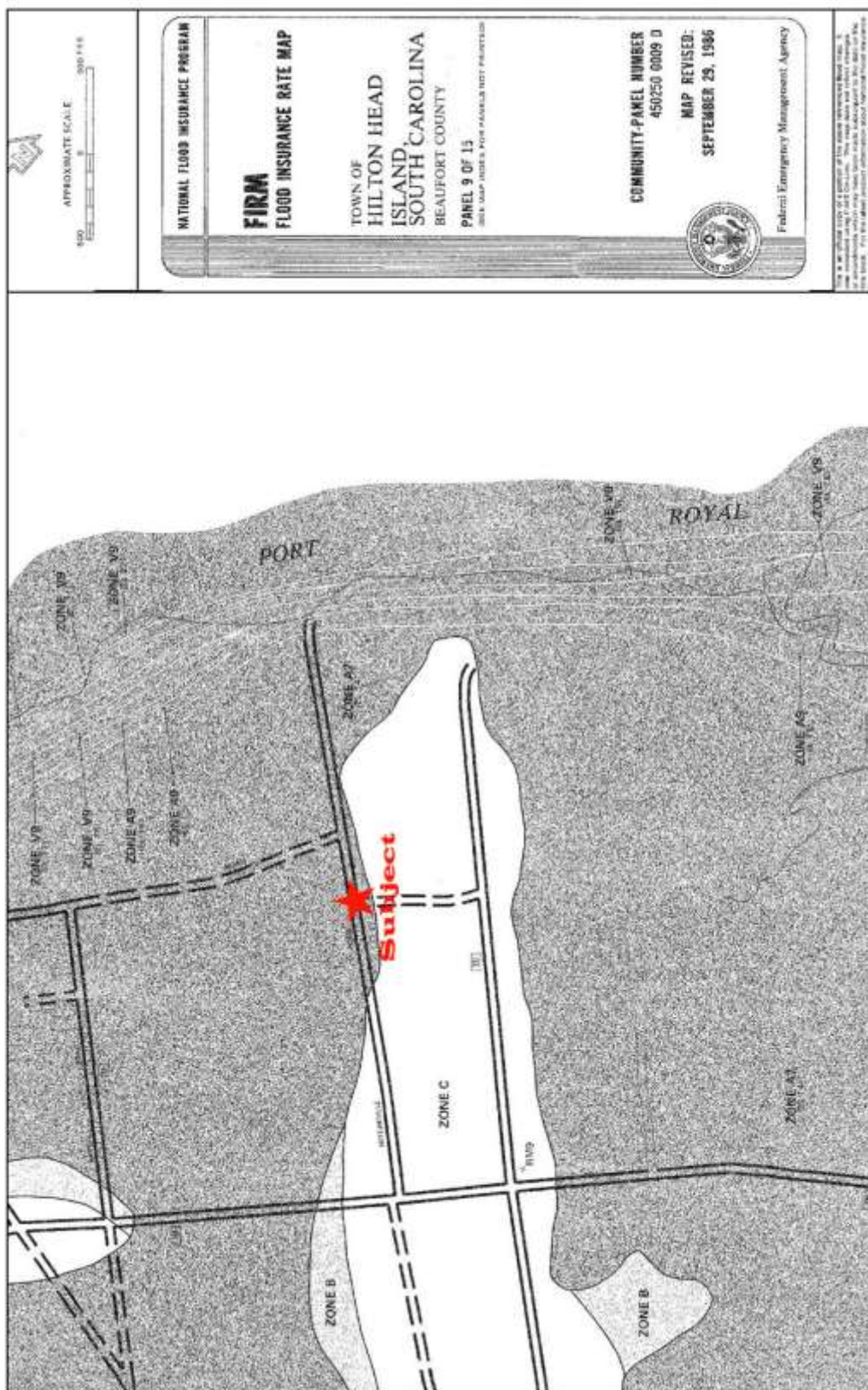
There is a beach front on the sound, known as Mitchelville Beach. The beach does not have the wave action of an oceanfront beach, but the beach is popular for nature walks and fishing. The beach can be rather narrow at high tide. No information has been provided as to the soils on the subject tracts. An on-site visit did not reveal any adverse soil conditions; however, no responsibility is assumed for any soil or sub-soil conditions. The visit to the property revealed most of the site to be wooded. The subject property has all necessary utilities available. The subject site is in Census Tract 108.00.

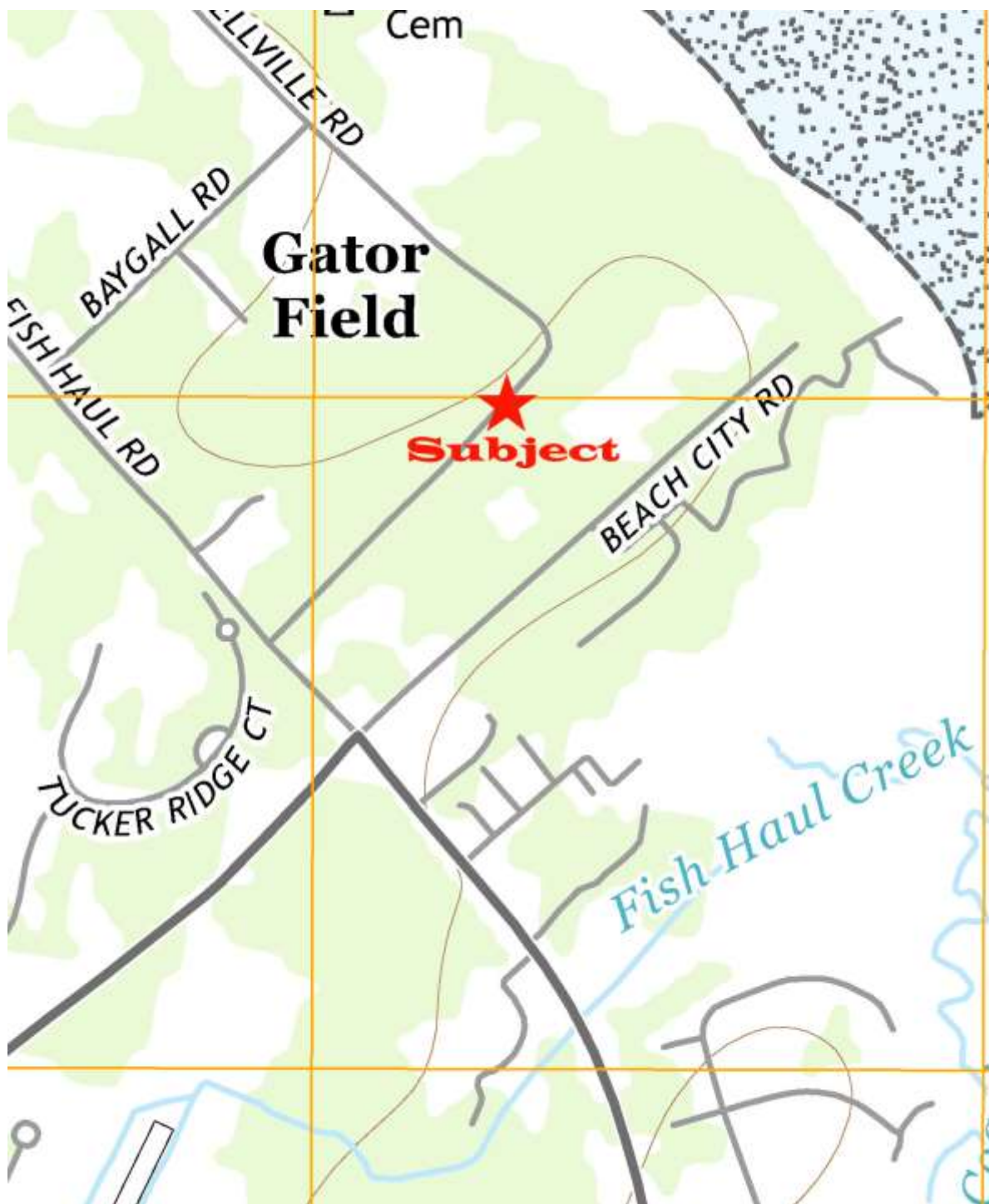
In summary, the subject property consists of a 30.08-acre tract with 29.852 acres of highland. The tract has frontage on Port Royal Sound. The shape of this tract is irregular, but functional and suitable for residential development. A portion of the tract appears to be in A7, A9, and V9 flood hazard areas, with the V9 flood zone representing a coastal velocity hazard area (wave action). Access to the property is adequate. The physical and functional characteristics of the subject tract appear to meet the desires and standards of typical purchasers in the market.











ZONING

The subject property is zoned RM-4, Low-to-Moderate Density Residential District and MV, Mitchelville District, by the Town of Hilton Head. The MV zoned area consists of 12.0 acres that is in proximity to Port Royal Sound, while the remaining 18.08 acres is zoned RM-4. A portion of the official Hilton Head Island zoning map follows in this section.

According to the Hilton Head Island Land Management Ordinance, it is the purpose of the RM-4 District to protect and preserve the character of these areas and neighborhoods at densities up to four dwelling units per net acre. The maximum allowed density is four units per acre, or six units per acre if the lot area is at least three acres and eight units per acre if the lot area is at least five acres. On February 16, 2021, the Hilton Head Town Council voted to amend the town's code in order to offer bonus densities for developments that include workforce housing on specific parcels that are zoned RM-4. According to an amendment exhibit, a portion of the subject property that fronts on Fish Haul Road is eligible. This area is estimated at about six acres.

According to the amendment:

- a. A density bonus up to 100% above the base residential density standards is permitted if 50% of all units within the development are workforce housing units.
- b. A density bonus up to 50% above the base residential density standards is permitted if 25% of all units within the development are workforce housing units.
- c. The maximum density permitted in any workforce housing development is 12 units per acre.

The RM-4 district is used to encourage a variety of residential opportunities, including multifamily residential units, single-family residences, and group living. The regulations of the district are intended to discourage development that would substantially interfere with, or be detrimental to, residential character. Single-family, multifamily, and group home uses are allowed in this district, as well as agricultural and some public, civic, and institutional uses. Several other uses are permitted conditionally.

The maximum structure height is 35' and the maximum impervious coverage area is 35%. The minimum open space for major residential subdivisions is 16%. For residential uses, the minimum adjacent street setback ranges from 10' to 50', dependent upon the size of the street and height of the building. There are adjacent use setbacks which vary by the use of the subject property in relation to the uses on adjacent properties. For residential uses, these setbacks range from 20' to 40.' The multifamily parking requirement is 1.4 spaces per one-bedroom dwelling unit, 1.7 spaces per 2-bedroom unit, and two spaces per 3-bedroom unit. The parking requirement for single-family use is two spaces per dwelling unit, plus one per 1,250 S.F. of GFA over 4,000 S.F. of GFA.

The purpose of the Mitchelville (MV) District is to recognize the historical and cultural significance of this area of the Island. A variety of uses are permitted in an effort to facilitate development in this area. These sites have a unique ability to provide an environment conducive to water-oriented commercial and residential development. Single-family and multifamily uses are allowed in this district, as well as agricultural, public, civic, institutional, commercial recreation, and resort accommodation uses, including hotel use. Several other uses are permitted conditionally.

The maximum structure height is 75' and the maximum impervious coverage area is 35%. The minimum open space for major residential subdivisions is 16%. For residential uses, the minimum adjacent street setback ranges from 10' to 50', dependent upon the size of the street and height of the building. The minimum setback from tidal wetlands is 20' for single-family uses and 15' for non-residential uses and must be a minimum average of 35' for multifamily uses. There are adjacent use setbacks which vary based on the use of the subject property in relation to the uses on adjacent properties.

For residential uses, these setbacks range from 20' to 40.' The multifamily parking requirement is 1.4 spaces per one-bedroom dwelling unit, 1.7 spaces per 2-bedroom unit, and two spaces per 3-bedroom unit. The parking requirement for single-family use is two spaces per dwelling unit, plus one per 1,250 S.F. of GFA over 4,000 S.F. of GFA. The parking requirement for hotel use is one space per guestroom. The maximum allowed density is 12 units per acre. The maximum hotel density is 35 rooms per acre.

The subject property is also located in the A-O, Airport Overlay District, and COR, Corridor Overlay District. The Airport Overlay (A-O) District is established to ensure against safety hazards, noise, and obstruction problems associated with aircraft utilizing the Hilton Head Island Airport. All development proposed within the A-O District shall be subject to the standards specified in the overlay district in addition to the standards and regulations contained in the particular base district in which the development occurs. Development in the A-O District is subject to regulation primarily to mitigate safety and noise problems. However, uses within the district also shall be regulated to ensure they are compatible with airport operations. The regulations governing use and height within the A-O District shall conform to the standards recommended by the Federal Aviation Administration's (FAA) Advisory Circular, 150/5190-4A, "Model Zoning Ordinance to Limit Height of Objects Around Airports" (12-14-87).

The subject property falls within the following A-O subdistricts:

Discretionary Noise Level District - Ldn 60

Notwithstanding any other provisions of this Ordinance, no use may be made of land or water within the Ldn 60 noise level district in such a manner as to create electrical interference with navigational signals or radio communication between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and other lights (i.e., colors and patterns), result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, create bird strike hazards or otherwise in any way endanger or interfere with the landing, takeoff, or maneuvering of aircraft intending to use the airport. Noise mitigation measures are encouraged for all proposed residential development.

Approach Path District

Within the Approach Path subdistrict, no building, structure, utility pole or protrusion of any kind shall be permitted to extend to a height measured from the mean elevation of the airport runway that exceeds the limits established by the methodology described in this section.

- i. The maximum height limits permitted under this Ordinance of 75 feet shall be lowered as necessary to correspond with the limits established as follows:

Along both sides and ends of the airport primary surface area, at the extremity of the primary surface, the height restriction shall be zero feet. Moving outward from both sides of the runway, 250 feet from the runway center line, the height limit shall increase at the rate of 1 foot upward per 7 linear feet, or a ratio of 1:7.

Moving outward from both ends of the runway primary surface area, the height limit shall increase at the rate of one foot upward per 34 linear feet, or a ratio of 1:34. From both ends of the primary surface area, the area subject to these special height limitations shall fan outward beyond the area that would be covered if the height limitation from the sides of the primary surface area extended beyond the ends of the runway.

According to measurements taken from the Beaufort County GIS system, the subject property is located approximately 2,300 L.F. from the end of the airport runway's paved surface area. Based upon a height limit of one foot upward per 34 linear feet, the indicated minimum height is approximately 67.' This exceeds the height requirement of the RM-4 District (35'), but is below that of the MV District (75'). However, the portion of the subject site that is zoned MV is estimated to be approximately 3,700' from the runway, indicating an approximate 108' maximum height, which is greater than the MV maximum.

A detailed process is established and detailed in the ordinance for tree pruning, topping, and removal on and off airport property to address the height limits in provision i above.

Outer Hazard Zone

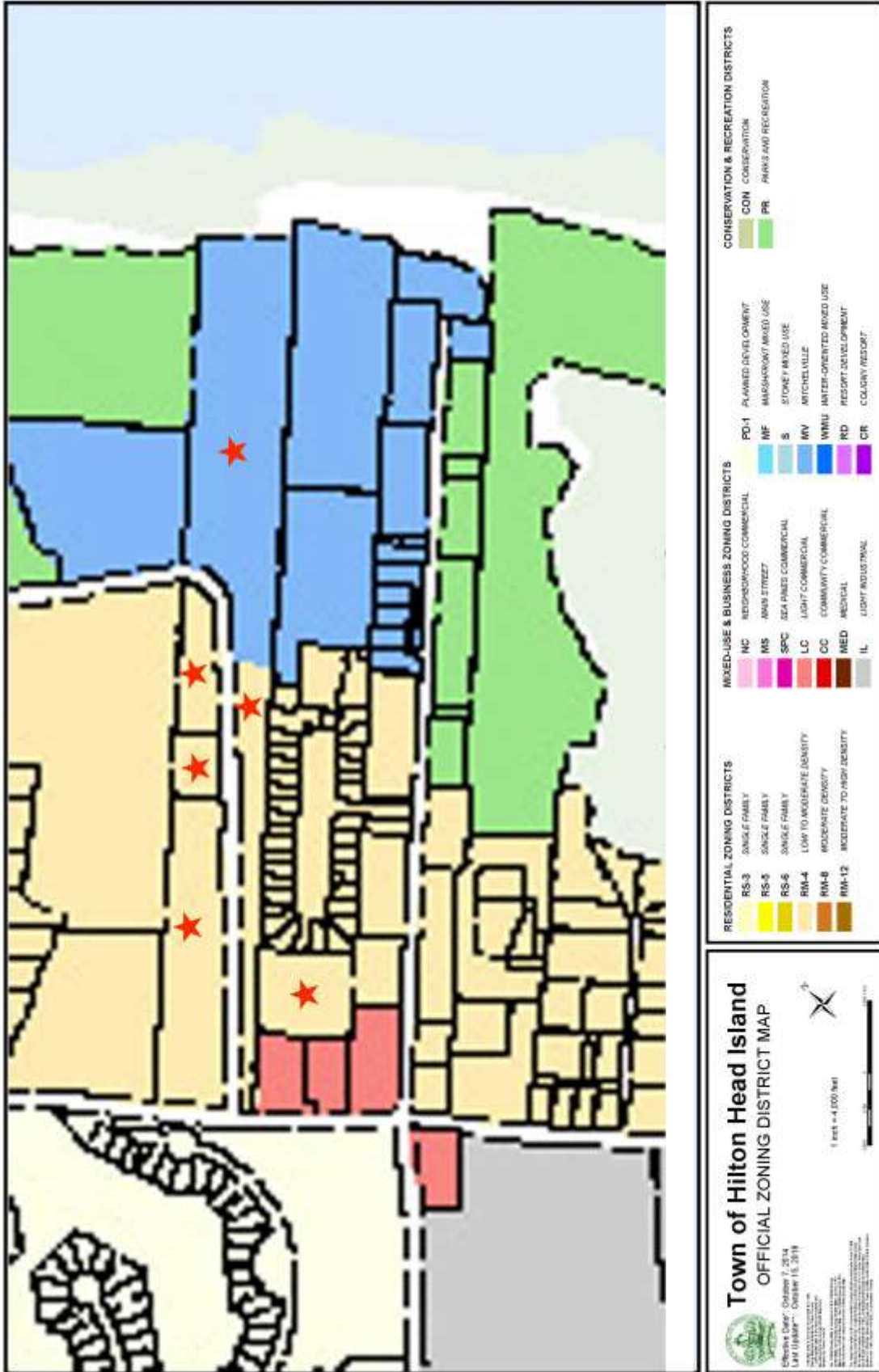
i. Special Construction Standards

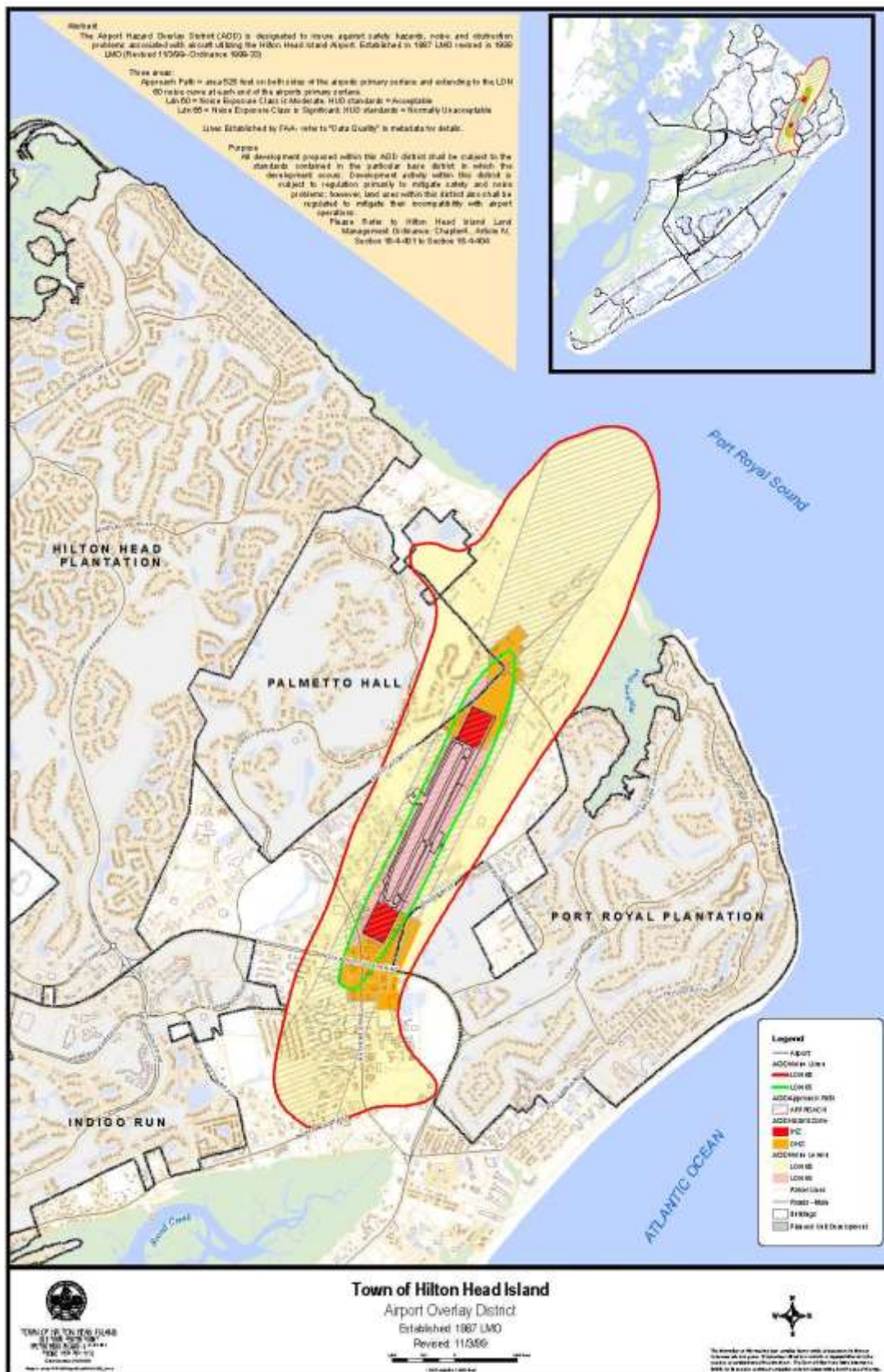
For uses with minimum occupant loads of 100 square feet or more per occupant or structures designated as historical by the Town Council, no special construction standards shall apply.

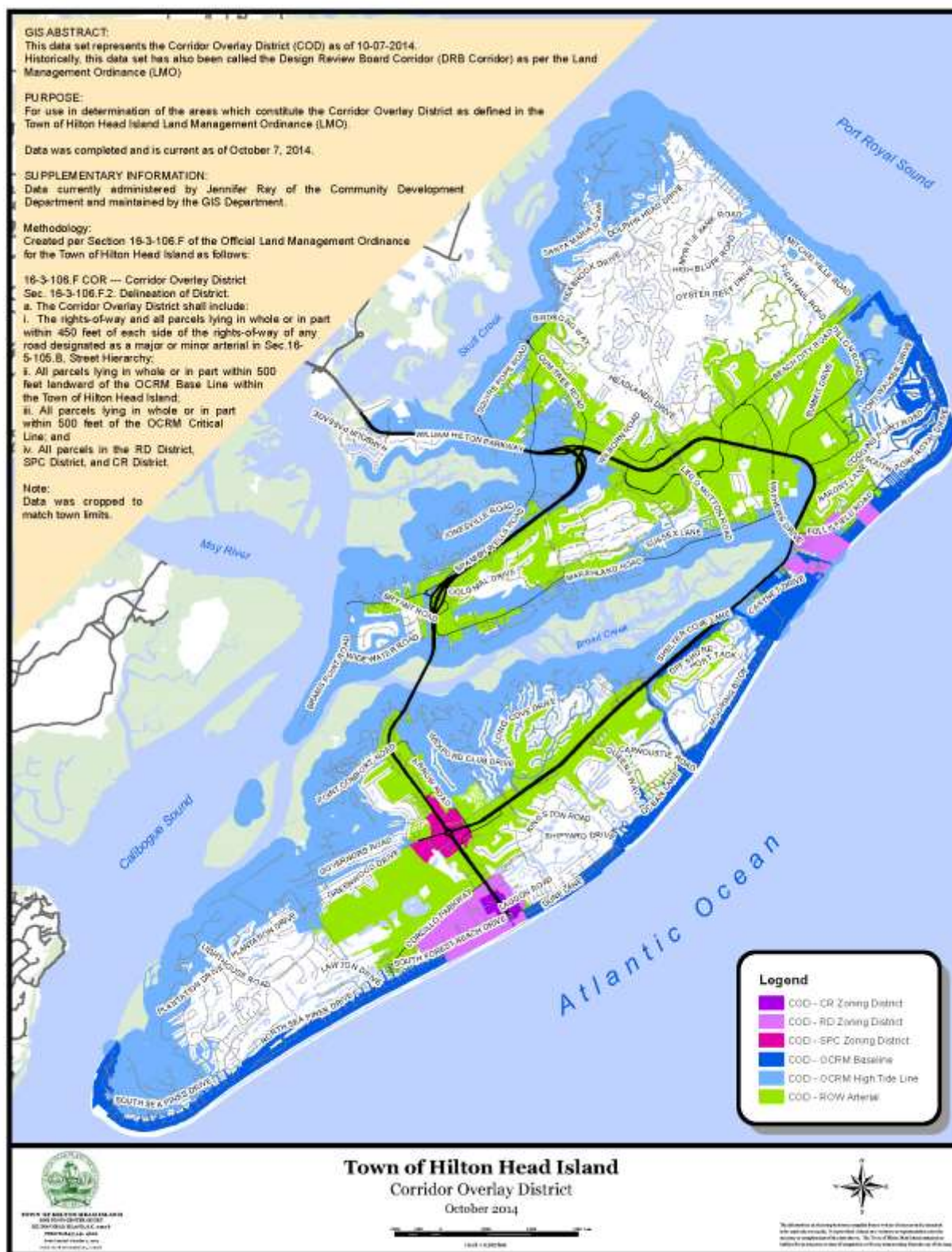
A portion of the subject property lies within the Corridor Overlay District (COR). The purpose of this district is to establish the procedures and standards for the review and decision on an application for Corridor Review approval. Applications must be submitted for all development in the COR District and will be subject to staff and/or Design Review Board approval.

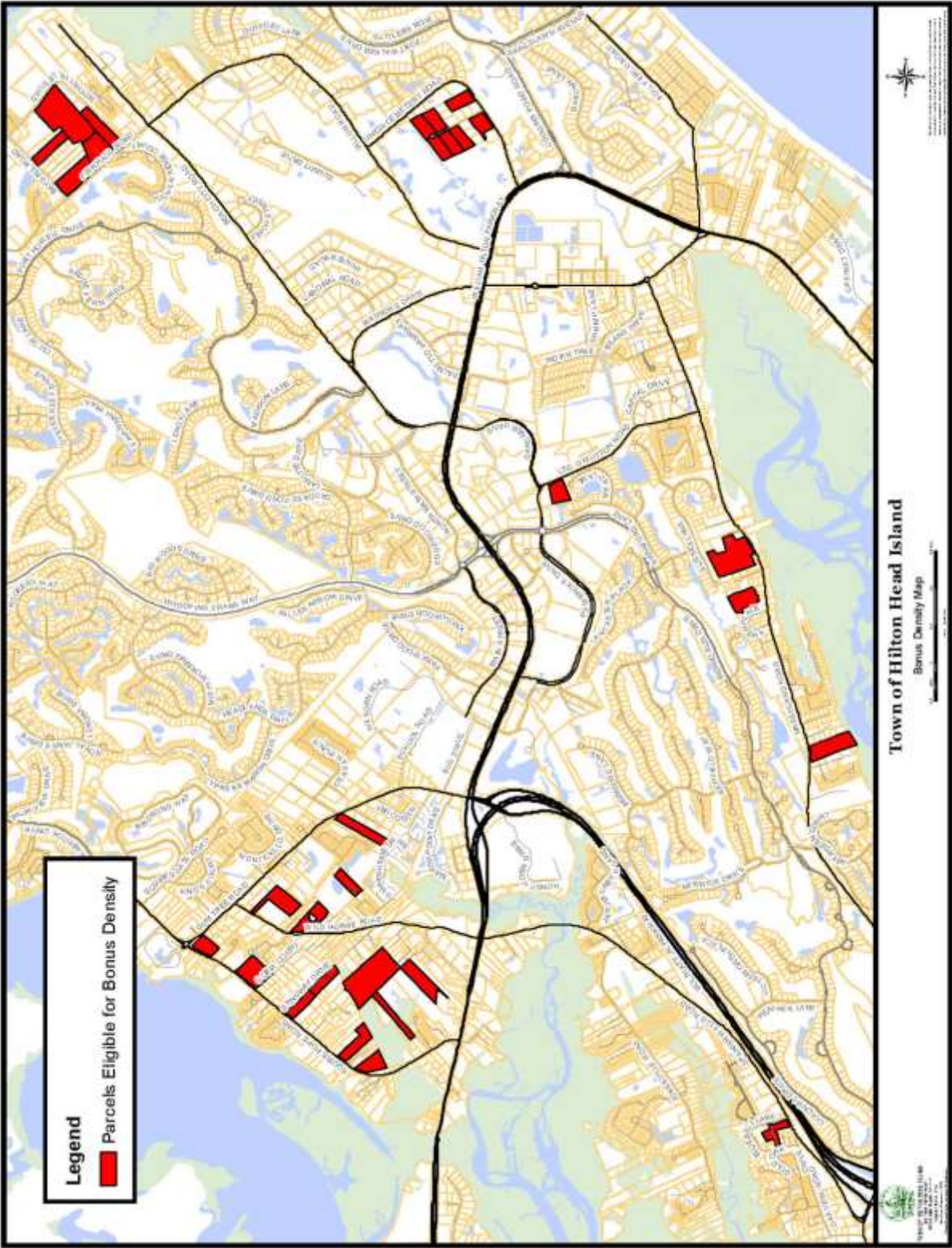
Based upon the current zoning, the subject property would be allowed up to eight units per acre on the 18.08 acres zoned RM-4, or 144 units, and 12 units per acre on the 12.0 acres zoned MV, or 144 units, indicating a total of 288 allowed units. The 12 acres with MV zoning would allow up to 35 hotel rooms per acre, or 420 total rooms. If a residential development on the subject property were to include 50% workforce housing, a six-acre portion of the property would be eligible for bonus density of an additional four units per acre, or 24 additional units. If 25% of a new development were workforce housing, an additional 12 units would be allowed.

The subject property contains a single-family residence and an office/garage building that is used as a contractor's office. The residence appears to meet all zoning requirements; however, according to an employee with the Hilton Head Island planning department, the contractor's office represents a legal, non-conforming use.









ASSESSMENT AND TAXES

The subject property is in Beaufort County. Property valuation and assessment are the responsibility of the Beaufort County Assessor. Under South Carolina Statutes and Constitution, all the property in the State of South Carolina is appraised by the Assessor at Market Value and assessed based on a system of classification. Industrial properties falling under certain classifications are appraised by the South Carolina Tax Commission. This system provides that these industrial properties carry a 10.5% ratio of assessment to Market Value.

Commercial properties are appraised at Market Value and assessed at 6% of that value. All other properties, except qualifying primary owner-occupied residences and properties which qualify for agricultural use valuation, are assessed at 6% of Market Value. Owner-occupied residences may be assessed at 4% upon application. Agricultural properties which qualify for agricultural use valuation are assessed at 4% or 6% of Use Value, depending on the type of ownership.

The subject property is currently appraised at a combined market value of \$2,788,600. The property was taxed in 2020 based upon market value on two parcels (totaling \$614,700) and an agricultural use value on one parcel (\$4,000), for a total taxable value of \$618,700. The parcel with taxes based upon agricultural use was assessed at 4% and the remaining two parcels were assessed at 6%, with the combined assessment for the three parcels totaling \$37,040. The combined 2020 taxes for the subject parcels, including police and stormwater utility fees, totaled \$10,077.07. The 2020 millage rate was 249.8. The 2021 millage rate has not yet been set.

A partial payment for TMS No. R510-005-000-0007-0000 of \$5,878.45 has been paid. The remaining taxes due for this parcel total \$1,441.93. The two other subject parcels currently have a combined tax due of \$2,756.69. Property taxes are normally due by January 15 each year; however, the Beaufort County Treasurer has received approval from SCDOR to extend the first and second penalty dates for 2020 tax bills. For 2021, property taxes must be paid by March 31, 2021 to avoid penalty.

Based on the recently passed change in the new South Carolina tax law, properties are appraised at up to 75% of market value upon sale. The new taxable value is based on a 25 percent exemption off the assessor's fair market value at the point of sale, but this new taxable value may not be less than the fair market value determined by the most recent assessment prior to the sale.

Due to the agricultural use classification of TMS No. R510-005-000-007-0000, a portion of the taxes are deferred, but not eliminated. If the property ceases to be used for agricultural purposes, the owner as of December 31 in the year the use changes is liable for the difference between the amount of tax paid under agricultural use classification and the amount that would have been paid at full market value classification. These rollback taxes are recovered for the five years prior to the change in use of the property.

HIGHEST AND BEST USE ANALYSIS

Highest and Best Use may be defined as “the reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value.”³

Therefore, any use of a property must meet the four tests of being legally permissible, physically possible, financially feasible, and maximally productive.

Legally Permissible: The subject property is zoned RM-4, Low-to-Moderate Density Residential District and MV, Mitchelville District, by the Town of Hilton Head. The MV zoned area consists of 12.0 acres that is in proximity to Port Royal Sound, while the remaining 18.08 acres is zoned RM-4. A portion of the official Hilton Head Island zoning map follows in this section.

According to the Hilton Head Island Land Management Ordinance, it is the purpose of the RM-4 District to protect and preserve the character of these areas and neighborhoods at densities up to four dwelling units per net acre. The maximum allowed density is four units per acre, or six units per acre if the lot area is at least three acres and eight units per acre if the lot area is at least five acres. On February 16, 2021, the Hilton Head Town Council voted to amend the town’s code in order to offer bonus densities for developments that include workforce housing on specific parcels that are zoned RM-4. According to the amendment, a portion of the subject property that fronts on Fish Haul Road is eligible. This area is estimated at about six acres.

According to the amendment:

- a. A density bonus up to 100% above the base residential density standards is permitted if 50% of all units within the development are workforce housing units.
- b. A density bonus up to 50% above the base residential density standards is permitted if 25% of all units within the development are workforce housing units.
- c. The maximum density permitted in any workforce housing development is 12 units per acre.

The RM-4 district is used to encourage a variety of residential opportunities, including multifamily residential units, single-family residences, and group living. The regulations of the district are intended to discourage development that would substantially interfere with, or be detrimental to, residential character. Single-family, multifamily, and group home uses are allowed in this district, as well as agricultural and some public, civic, and institutional uses. Several other uses are permitted conditionally.

3. Appraisal Institute, *The Appraisal of Real Estate*, 13th ed., p. 278.

The maximum structure height is 35' and the maximum impervious coverage area is 35%. The minimum open space for major residential subdivisions is 16%. For residential uses, the minimum adjacent street setback ranges from 10' to 50', dependent upon the size of the street and height of the building. There are adjacent use setbacks which vary by the use of the subject property in relation to the uses on adjacent properties. For residential uses, these setbacks range from 20' to 40.' The multifamily parking requirement is 1.4 spaces per one-bedroom dwelling unit, 1.7 spaces per 2-bedroom unit, and two spaces per 3-bedroom unit. The parking requirement for single-family use is two spaces per dwelling unit, plus one per 1,250 S.F. of GFA over 4,000 S.F. of GFA.

The purpose of the Mitchelville (MV) District is to recognize the historical and cultural significance of this area of the Island. A variety of uses are permitted in an effort to facilitate development in this area. These sites have a unique ability to provide an environment conducive to water-oriented commercial and residential development. Single-family and multifamily uses are allowed in this district, as well as agricultural, public, civic, institutional, commercial recreation, and resort accommodation uses, including hotel use. Several other uses are permitted conditionally.

The maximum structure height is 75' and the maximum impervious coverage area is 35%. The minimum open space for major residential subdivisions is 16%. For residential uses, the minimum adjacent street setback ranges from 10' to 50', dependent upon the size of the street and height of the building. The minimum setback from tidal wetlands is 20' for single-family uses and 15' for non-residential uses and must be a minimum average of 35' for multifamily uses. There are adjacent use setbacks which vary by the use of the subject property in relation to the uses on adjacent properties.

For residential uses, these setbacks range from 20' to 40.' The multifamily parking requirement is 1.4 spaces per one-bedroom dwelling unit, 1.7 spaces per 2-bedroom unit, and two spaces per 3-bedroom unit. The parking requirement for single-family use is two spaces per dwelling unit, plus one per 1,250 S.F. of GFA over 4,000 S.F. of GFA. The parking requirement for hotel use is one space per guestroom. The maximum allowed density is 12 units per acre. The maximum hotel density is 35 rooms per acre.

The subject property is also located in the A-O, Airport Overlay District, and COR, Corridor Overlay District. The Airport Overlay (A-O) District is established to ensure against safety hazards, noise, and obstruction problems associated with aircraft utilizing the Hilton Head Island Airport. All development proposed within the A-O District shall be subject to the standards specified in the overlay district in addition to the standards and regulations contained in the particular base district in which the development occurs. Development in the A-O District is subject to regulation primarily to mitigate safety and noise problems. However, uses within the district also shall be regulated to ensure they are compatible with airport operations. The regulations governing use and height within the A-O District shall conform to the standards recommended by the Federal Aviation Administration's (FAA) Advisory Circular, 150/5190-4A, "Model Zoning Ordinance to Limit Height of Objects Around Airports" (12-14-87).

The subject property falls within the following A-O subdistricts:

Discretionary Noise Level District - Ldn 60

Notwithstanding any other provisions of this Ordinance, no use may be made of land or water within the Ldn 60 noise level district in such a manner as to create electrical interference with navigational signals or radio communication between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and other lights (i.e., colors and patterns), result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, create bird strike hazards or otherwise in any way endanger or interfere with the landing, takeoff, or maneuvering of aircraft intending to use the airport. Noise mitigation measures are encouraged for all proposed residential development.

Approach Path District

Within the Approach Path subdistrict, no building, structure, utility pole or protrusion of any kind shall be permitted to extend to a height measured from the mean elevation of the airport runway that exceeds the limits established by the methodology described in this section.

- i. The maximum height limits permitted under this Ordinance of 75 feet shall be lowered as necessary to correspond with the limits established as follows:

Along both sides and ends of the airport primary surface area, at the extremity of the primary surface, the height restriction shall be zero feet. Moving outward from both sides of the runway, 250 feet from the runway center line, the height limit shall increase at the rate of 1 foot upward per 7 linear feet, or a ratio of 1:7.

Moving outward from both ends of the runway primary surface area, the height limit shall increase at the rate of one foot upward per 34 linear feet, or a ratio of 1:34. From both ends of the primary surface area, the area subject to these special height limitations shall fan outward beyond the area that would be covered if the height limitation from the sides of the primary surface area extended beyond the ends of the runway.

According to measurements taken from the Beaufort County GIS system, the subject property is located approximately 2,300 L.F. from the end of the airport runway's paved surface area. Based upon a height limit of one foot upward per 34 linear feet, the indicated minimum height is approximately 67.' This exceeds the height requirement of the RM-4 District (35'), but is below that of the MV District (75'). However, the portion of the subject site that is zoned MV is estimated to be approximately 3,700' from the runway, indicating an approximate 108' maximum height, which is greater than the MV maximum.

A detailed process is established and detailed in the ordinance for tree pruning, topping, and removal on and off airport property to address the height limits in provision i above.

Outer Hazard Zone

i. Special Construction Standards

For uses with minimum occupant loads of 100 square feet or more per occupant or structures designated as historical by the Town Council, no special construction standards shall apply.

A portion of the subject property lies within the Corridor Overlay District (COR). The purpose of this district is to establish the procedures and standards for the review and decision on an application for Corridor Review approval. Applications must be submitted for all development in the COR District and will be subject to staff and/or Design Review Board approval.

Based upon the current zoning, the subject property would be allowed up to eight units per acre on the 18.08 acres zoned RM-4, or 144 units, and 12 units per acre on the 12.0 acres zoned MV, or 144 units, indicating a total of 288 allowed units. The 12 acres with MV zoning would allow up to 35 hotel rooms per acre, or 420 total rooms. If a residential development on the subject property were to include 50% workforce housing, a six-acre portion of the property would be eligible for bonus density of an additional four units per acre, or 24 additional units. If 25% of a new development were workforce housing, an additional 12 units would be allowed.

The subject property contains a single-family residence and an office/garage building that is used as a contractor's office. The residence appears to meet all zoning requirements; however, according to an employee with the Hilton Head Island planning department, the contractor's office represents a legal, non-conforming use.

Physically Possible: The subject property is in the Town of Hilton Head Island, Beaufort County, South Carolina. The subject property is located at the northeastern portion of Hilton Head Island on Mitchelville Road, in the Mitchelville community. The subject property can also be accessed from Fish Haul Road. Mitchelville Road and Fish Haul Road are two-lane, asphalt paved, 66' right-of-ways with no streetlights, or curb and gutter. Fish Haul Road has a sidewalk, while Mitchelville Road does not. The subject neighborhood is accessed by Beach City Road, which runs from US Highway 278 (William Hilton Parkway) and ends at the Port Royal Sound. US Highway 278 is the main artery for Hilton Head Island and is also the access route from Bluffton and Interstate 95.

The Mitchelville Road right-of-way runs from Fish Haul Plantation and ends at the subject property. The road continues through the subject property as an unpaved road, joining Fish Haul Road (S-334) at the subject property's southwestern boundary. The road appears to be used by local motorists, although traffic flow appears to be minimal. According to Patricia Wilson, Beaufort County Right-of-Way manager, the road through the subject property is county maintained. We were unable to locate any documentation of a recorded easement for the road and Ms. Wilson indicated that she did not have any record of a formal instrument being obtained granting right-of-way for this portion of Mitchelville Road. However, she stated that since the road has been maintained by the county for many years, it is considered a legacy road and there may be prescriptive rights involved.

She indicated that if access through the subject property were closed, the potential exists that residents could lobby for condemnation. Under this scenario, it is assumed that the subject property could be developed under an agreement to provide continued access through the property, with the road being relocated, if necessary, to accommodate a specific development plan. We recommend that the property owner consult a condemnation attorney for additional guidance.

We have been provided with three surveys that indicate the subject property as totaling 30.08 acres. The larger parcel is shown as having 0.169 acre of tidal wetland lying below the OCRM critical line and 0.059 acre of freshwater wetland; therefore, the total indicated highland is 29.852 acres. A 25' wide ingress/egress easement is shown along a portion of the property's northern boundary. No other easements are shown; however, an overhead power line and water line are shown as running through the property along the access road, and utility easements for these are assumed. We have also analyzed a USGS topographical map. Copies of the plat, topographic, and flood plain map follow in this section.

The subject property is shown as having 358.56' of frontage on Fish Haul Road and as previously stated, the Mitchelville Road right-of-way ends at the subject property. The size of the subject tract is larger than is typical for residential tracts in the subject neighborhood. The shape of this tract is irregular, but the site is functional for development. Most of the tract appears to be in either a C flood zone or an A7 (14) flood zone. The C flood zone is a non-hazard area, while the A7 (14) flood zone is a coast flood hazard area, requiring a base elevation of 14' MSL. The area immediately fronting on the sound appears to be in several A9 and V9 flood zones. These are coastal flood hazard areas, with the V9 zone being a velocity hazard area (wave action). The base flood elevations for this area appear to range from 14' to 22' above MSL. It should be noted that flood maps by FEMA are not precise. For a precise determination of the subject's flood hazard classification, a professional engineer, licensed surveyor, or a local governmental authority should make an exact determination.

Most of the tract appears to be basically level. An inspection of a USGS topographic map showed most of the subject tract as being slightly above 10' MSL, with the area closest to the sound being below 10' MSL. The subject property contains approximately 367' of frontage on the banks of Port Royal Sound and affords expansive water views. Port Royal Sound is a coastal sound, or inlet of the Atlantic Ocean. It is the estuary of several rivers, the largest of which is the Broad River. The sound is located between Hilton Head Island to the south and, to the north, Port Royal Island, Saint Helena Island, Parris Island, and other smaller islands.

There is a beach front on the sound, known as Mitchelville Beach. The beach does not have the wave action of an oceanfront beach, but the beach is popular for nature walks and fishing. The beach can be rather narrow at high tide. No information has been provided as to the soils on the subject tracts. An on-site visit did not reveal any adverse soil conditions; however, no responsibility is assumed for any soil or sub-soil conditions. The visit to the property revealed the majority of the site to be wooded.

In summary, the subject property consists of a 30.08 acre tract with 29.852 acres of highland. The tract has frontage on Port Royal Sound. The shape of this tract is irregular, but functional and suitable for residential development. A portion of the tract appears to be located in A7, A9, and V9 flood hazard areas, with the V9 flood zone representing a coastal velocity hazard area (wave action). Access to the property is adequate. The physical and functional characteristics of the subject tract appear to meet the desires and standards of typical purchasers in the market.

Financially Feasible: Next we will consider financially feasible uses for the subject property. The immediate subject neighborhood is considered to be the northwestern portion of Hilton Head Island, or the Mitchelville community and Fish Haul Plantation. In 1862, Gen. Ormsby Mitchel set up the town of Mitchelville to house the islands first freedmans village. Mitchelville residents elected their own officials, passed their own laws, and established the first compulsory education law in the state. The Mitchelville community was built along modern-day Beach City Road. In February 2018, what is now formerly Fish Haul Creek Park was officially renamed The Mitchelville Freedom Park. The rebranding, which included the unveiling of a sign off of its Beach City Road location, was carried out by the Mitchelville Preservation Project board. The nonprofit group aims at preserving the story of historic Mitchelville. The next phase is recreating a section of what the town would have looked like 156 years ago.

According to project director Ahmad Ward, “The whole thing won’t be as it was in 1862 but we will be trying to recreate the historic street grid, the historic homes and the praise house which is where all the life happened in the area.” Ward’s next step is rendering a master plan for the park which he said will consist of 16 acres initially. The settlement itself was 32 acres in 1862.

In the early 2000s, the Town announced and began a series of public works improvement projects in Mitchelville. The projects included: Fish Haul Creek Park (now Mitchelville Freedom park); new soccer, lacrosse, rugby, and multipurpose fields (Barker Field Expansion improvements) and a beach renourishment project that restored a half-mile stretch of the beach to its original condition along with the creation of a seven-acre beach park (Fish Haul Beach Park). The Town has recently collaborated with Hilton Head Public Service District on the Baygall Sewer Project. The project involves the installation of a sewer pump station and main sewer lines throughout Mitchelville’s Baygall neighborhood along Mitchelville and Fish Haul Roads.

The Mitchelville community and Fish Haul Plantation are bounded by Beach City Road, Palmetto Hall and Hilton Head Plantation with many properties having frontage on the Port Royal Sound. This area is one of the least developed areas on the island. There are still several unpaved roads throughout the immediate subject neighborhood. The neighborhood includes many older residential structures, with some recreational properties, such as Fish Haul Creek Park, Mitchelville Beach Park, and Barker Field. There are a few light industrial properties located at the intersection of Beach City Road, Fish Haul Road, and Dillon Road. The Hilton Head Airport is in the southwestern quadrant of the subject neighborhood. The airport is owned by Beaufort County. Mostly used for general aviation, it is also served by a commercial airline and one public charter airline operating limited service. It is the only airport on Hilton Head Island.

There is a condominium development adjacent to the subject property, accessed at the end of Beach City Road and known as The Spa on Port Royal. This sound front development was constructed in the early 1980's and features gated access, three tennis courts, gym, and indoor and outdoor swimming pools.

Also adjacent to the subject property and accessed from Beach City Road is a 32-lot single-family subdivision. Beach City Place at Mitchelville was completed in 2009; however, only one lot was sold and developed. In 2013, the developer requested that property be rezoned from RM-4 (Low Density Residential) zoning district to RM-12 (Moderate to High Density Residential) zoning district. He indicated that an order of foreclosure had been issued and that the rezoning was necessary to avoid foreclosure by redeveloping the property into a high-density multifamily development. However, the zoning request was denied, and the property was purchased out of foreclosure later that year. The new ownership group sought to have the property rezoned to RM-8 (Moderate Density Residential) zoning district in order to allow duplex development; however, this request was also denied. The property has seen a good deal of recent development, with most of the lots now having been improved with single-family homes. Adjacent to this subdivision is the recently developed Mitchelville Golf Cottages. This development, which is utilized as housing for the Junior Players Golf Academy, consists of six, 4-bedroom, 4 ½ bath cottages located in its own gated community.

A new hotel was recently constructed on Hilton Head and some new residential development is occurring. A 115-room Courtyard Marriott hotel opened in May 2020. The six-story hotel is the tallest building in Hilton Head Island's Coligny area, and it features the island's only rooftop pool and bar. One of the oldest fine dining restaurants on Hilton Head Island is set to be replaced by a six-floor luxury condo building next year. Although the restaurant is still open, Old Fort Pub will be demolished to make way for The Charles, a 22-unit luxury complex developed by Charleston-based Hancock Development Corp. Eight of the 22 units were already pre-sold as of the latest update in December 2020. The top floor units are selling for over \$1.2 million and the least expensive units are listed at \$999,900. The units boast sunset views over Skull Creek, large balconies, nine-foot ceilings, and gas fireplaces. The building will include a saltwater pool, one story of parking and five stories of condos on the waterfront.

A new timeshare resort, Hilton Head Port Royal Resort, has received initial approval from the Design Review Board. The development will be located along Folly Field Road, close to Islanders Beach Park, on an 8.4-acre piece of property that is currently the site of the Port Royal Racquet Club. According to the project plans, there will be three four-story and four three-story residential buildings with a mix of one, two, and three-bedroom units. The total number of planned units is 132. Remnants of the Port Royal Racquet Club will remain on the site, including existing parking spaces, and a club building and some tennis courts.

Developers are moving ahead with plans to turn the land where Hilton Head Christian Academy now sits into 260 apartments after the school moves across the bridge to Bluffton. In July 2020, the Hilton Head Island Town Council approved the plan for three 55-foot-tall apartment buildings and one 45-foot-tall building on the 13.8-acre site. Part of the agreement between the town and developer is a minimum rental period of six months and that 5% of the development, or 13 units, be priced below market rate for the island's workforce for a minimum of 20 years.

The buildings will be reevaluated each year to confirm it still has workforce-oriented units and is not being used as a short-term rental community. Spandrel developer Emanuel Neuman said in July that a below-market unit may be priced around \$850 per month for a studio, and \$1,100 for a two-bedroom apartment. The rest of the units, he said, will rent at the original rates of \$1,200 to \$2,800 per month. The density of the property will be 19 units per acre, according to the plans. That is relatively high in relation to the four surrounding communities, where the average density is 10 to 11 units per acre.

Hammock Breeze is a new 37-lot subdivision developed on Mitchelville Road, which fronts on Port Royal Sound. Homes range from 1,821 to 2,694 S.F., with initial pricing ranging from \$358,990 to \$409,990. Only two lots in the subdivision have direct sound views and due to an expanse of marsh, there is no direct access to the beachfront. Construction began in 2020 and the entire development is reportedly sold out. A new 34-home gated subdivision, called The Estuary, is located off Fish Haul Road next to the Arthur Hills Golf Course at Palmetto Hall Plantation. Construction began in 2019 and the development has completely sold out. Initial home prices ranged from \$337,900 to \$390,000, with 32 of the 34 new homes having golf course or lagoon views. Twenty-three new homes are being built in a new subdivision off Marshland Road, called The Marshes at Broad Creek. Home prices will range from \$491,900 to \$551,900. A Bluffton developer has also applied to the Town of Hilton Head Island to construct a 29-home subdivision off Jonesville Road near Old House Creek and the Cross Island Parkway.

Hilton Grand Vacations and Strand Capital Group recently completed development of a new timeshare resort on Hilton Head Island. The resort was constructed on a seven-acre beachfront parcel located on South Forest Beach, which was the site of the former Adventure Inn. The Adventure Inn, which was built in 1963 and demolished in 2008, was an island landmark and one of Hilton Head's three original hotels. Regarded as one of Hilton Head Island's most sought-after locations, South Forest Beach occupies a one-mile beachfront stretch between the Coligny District and Sea Pines Plantation. The new resort is comprised of four distinct buildings with a total of 125 two-bedroom units.

Developers envisioned the complex including three four-story buildings with parking on the ground level. The largest building would have the main amenities, and the small buildings would each hold four units facing the beach. Anchoring the complex from the center would be a pool. Whether the units would be apartments or condominiums had not been determined yet, Stowers said. The Design Review Board provided Stowers with feedback on the design, expressing concern with the large scale of the project, the tree removal plans and the height of the buildings. Chair Michael Gentemann recommended Architecture 101 withdraw its proposal and create a new one responsive to the board's suggestions before coming back for approval.

A 45-unit, oceanfront development has been proposed for Mitchelville Road, promising luxury amenities and 270-degree views of the water. Beaufort firm Architecture 101 is leading the effort to bring multifamily housing to the previously undeveloped tract. The property was sold by Charles Bertrand to Hilton Head Island Beachfront, LLC for \$1.36 million in 2019. Architect Steve Stowers said he intends for the complex to be "a very high-end establishment that should really upscale the housing offerings on Hilton Head." The initial design was submitted to the Town's Design Review Board in September 2020 for conceptual approval.

There are preliminary plans for a 9-lot gated subdivision to be located on a waterfront tract at 272 Mitchellville Road. Mitchellville Heights would add nine homes to a 1.5-acre site, according to town application documents. According to application documents, there would be five houses on the marsh side and four along Mitchellville Road. A 6.22-acre tract located at 280 Mitchellville Road was rezoned in late 2019 from RM-4/RM-8 to RM-12 in order to allow the property owner to develop the site with multifamily units. A development plan has not yet been announced for this property.

According to the Hilton Head Area Association of Realtors' 2020 Annual Report, buyer activity was the leader again in 2020. With mortgage interest rates setting record lows multiple times throughout the year and a strong drive by many buyers to secure a better housing situation, in part due to the new realities brought on by COVID-19, many segments of the market experienced a multiple-offer frenzy not seen in the last 15 years or more. While markedly improved from their COVID-19 spring lows, seller activity continued to lag buyer demand, which had strengthened the ongoing seller's market for most housing segments as inventories remain at record lows.

The median sale price of condos/villas on Hilton Head Island was \$302,500 in 2020, a significant 21.0% increase from a median sale price of \$250,038 in 2019. The market saw more moderate annual increases of 3.1% and 6.7% the preceding two years. Overall, the median condo/villa sale price has increased by 33.1% over the past three years, with 2020 accounting for the bulk of the increase.

There were 1,396 condo/villa sales on the island in 2020, a 7.0% increase from 1,194 sales in 2019. Sales volume increased moderately over the previous two years, with annual increases of 3.1% and 6.7%. The number of sales has increased cumulatively by 26.6% over the past three years, due primarily to the large increase in sales volume in 2020. There are currently 162 condominium/villa listings on Hilton Head Island, indicating roughly a one to two-month supply. The marketing time for condos and villas saw a decline of 7.5% over the past year. The marketing time for condo/villas has decreased cumulatively by 21.5% over the past three years.

The median sale price of detached single-family homes on Hilton Head Island was \$625,000 in 2020, an 11.8% increase from a median sale price of \$559,000 in 2019. The median sale price increased by 4.7% in 2019 over 2018, while the 2018 median sale price saw a slight 0.2% decline from 2017. The median single-family home sale price has increased cumulatively by 16.8% over the past three years.

There were 1,569 single-family home sales on the island in 2020, a significant 46.8% increase from 1,069 sales in 2019. Sales volume decreased by 6.2% in 2019 over 2018; however, 2018 sales volume was 16.8% higher than 2017. The annual number of sales has increased cumulatively by 60.8% over the past three years, buoyed by 2020 sales. There are currently 608 single-family home listings on Hilton Head Island, indicating roughly a two to three-month supply. The marketing time for single-family homes saw an increase of 3.4% over 2019, after seeing substantial decreases the previous two years. The marketing time for single-family homes decreased cumulatively by 12.1% over the past three years.

Following is a chart summarizing condo/villa and detached single-family home sales on Hilton Head Island between 2017 and 2020:

HILTON HEAD ISLAND SALES (2017 – 2020)

Detached Single-Family						
Year	Median Sale Price*	Change	# of Sales*	Change	Avg. DOM*	Change
2017	\$535,000	N/A	976	N/A	174	N/A
2018	\$533,750	-0.2%	1,140	16.8%	153	-12.40%
2019	\$559,000	4.7%	1,069	-6.2%	164	7.19%
2020	\$625,000	11.8%	1,569	46.8%	153	-6.71%
Condos/Villas						
Year	Median Sale Price*	Change	# of Sales*	Change	Avg. DOM*	Change
2017	\$227,250	N/A	1,103	N/A	158	N/A
2018	\$242,500	6.7%	1,116	1.2%	124	-21.52%
2019	\$250,038	3.1%	1,194	7.0%	134	8.06%
2020	\$302,500	21.0%	1,396	16.9%	124	-7.46%

In conclusion, all indicators for both condo/villas and single-family homes show improvement in the market over the past three years, with all 2020 figures being very positive. Sales volume has increased substantially for both single-family homes and condo/villas, while the median sale price for all property types also saw substantial increases. Marketing time has decreased in the past year and inventory is currently very low for all property types. New residential development is occurring, and several new projects are planned as the market has become favorable for new construction. We believe that the long-term outlook for the island is very good. Growth is expected to continue, and property values are expected to increase, in the long-term.

Commercial uses of the subject property are severely limited by zoning and would not be likely due to the surrounding uses and character of the immediate neighborhood. Hotel use is an allowed use for the 12 acres of the subject property that is zoned MV; however, the hotel industry has been one of the hardest hit sectors by the pandemic. Smith Travel Research (STR) reported in June 2020 that even with improving performance already underway, U.S. hotel demand will not return completely to pre-pandemic levels until 2024. “Compared with our last forecast, we actually improved our demand projection for 2020 from -45.0% to -36.2%, but we expect it to take 11 quarters for the number of room nights sold to rise to the corresponding levels of 2019,” said Jan Freitag, STR’s senior VP of lodging insights. “Similarly, it will take until 2023 for occupancy to reach the 20-year historical average.

With lower occupancy levels, and the influence of discounting as hoteliers compete for market share, ADR could show a slower recovery timeline even with more normalization each quarter—we improved our 2021 ADR projection from +1.7% to +5.2%. Despite this better growth rate next year, we do not see ADR recovering to pre-2020 levels in the next five years.

In November 2020, the final 2020 U.S. hotel forecast was released by STR, indicating that leisure demand was slightly stronger than anticipated in the fall. Regardless of the short-term upgrade, the forecast for 2021 remained functionally unchanged and stated that full recovery in revenue per available room (RevPAR) is unlikely until 2024. Hilton Head hotels have fared better than the national averages, with 2020 occupancy down 23.5%, as compared to 36.1% nationally and ADR down 6.6%, as compared to 21.0% nationally; however, most properties are operating substantially below normal income levels. How the pandemic affects the hotel industry in 2021 is unknown. Due to the projected slow recovery in the hotel industry and the uncertainty surrounding forecasting occupancy and ADR over the next few years, hotel development on the subject site would be unlikely in the future. Despite its waterfront location, the subject tract is also not ideally suited for hotel use, due to the lack of supporting business surrounding the site. The residential market is currently strong and based upon the foregoing information, it is our opinion that the most financially feasible use of the subject property would be residential development of the entire tract.

Due to the physical characteristics of the subject property and its location, the financially feasible use is believed to be residential use, likely condominium\villa or a mixture of condominium, villa, and high density single-family detached units. The current inventory for condominium/villas is one to two months, and the inventory for single-family homes is two to three months, which is less than the typical six-month inventory characteristic of a balanced market, indicating strong demand. Based upon the foregoing information, we believe that the most financially feasible use of the subject property is residential development.

Maximally Productive: The financially feasible use is residential development. The current zoning allows up to 288 units, or up to 312 units under bonus density if a significant portion of the property consists of workforce housing. Therefore, the maximally productive use is residential development, of up to 288 units, or up to 312 units with workforce housing. The most likely development would be condominium\villa or a mixture of condominium, villa, and high density single-family detached units.

Conclusion

Based on the foregoing information, it is our opinion that the highest and best use for the subject property “as though vacant” is residential development, of up to 288 units, or up to 312 units with workforce housing. The most likely development would be condominium\villa or a mixture of condominium, villa, and high density single-family detached units. The highest and best use of the subject site “As Improved” is also residential development, of up to 288 units, following demolition and removal of the existing improvements. The most likely purchaser of the subject property would be a regional developer.

VALUATION METHODOLOGY

The valuation process begins when an appraiser identifies the appraisal problem and ends when he or she reports a conclusion to the client. Each real property is unique and many different types of value can be estimated for a single property. The most common appraisal assignment is performed to estimate market value; the valuation process contains all the steps appropriate to the type of assignment. The model also provides the framework for estimating any other defined value. Furthermore, evaluation assignments often call for value estimates which are derived through application of the valuation process.

The valuation process is accomplished through specific steps; the number of steps followed depends on the nature of the appraisal assignment and the data available. The model indicates a pattern that can be used in any appraisal assignment to perform market research and data analysis, to apply appraisal techniques, and to integrate the results of these activities into an estimate of defined value.

Research begins after the appraisal problem has been defined. The analysis of data relevant to the problem starts with an investigation of trends observed at all market levels - international, national, regional, community, and neighborhood. This examination will help the appraiser understand the interrelationships among the principles, forces, and factors that affect real property value in the specific area. It also provides raw data from which to extract quantitative information and property value over a number of years, the population movement into and area, and the number of employment opportunities available the effect on the purchasing power of potential property users. These data can be analyzed and employed to estimate a defined value.

Traditionally, appraisal techniques are the specific procedures within the three approaches that are applied to derive indications of real property value. Other procedures such as the use of inferential statistics and economic models also contribute to appraisals. One or more approaches to value may be used depending on their applicability to the particular appraisal assignment.

In assignments to estimate market value, the ultimate goal of the valuation process is a well-supported value conclusion that reflects all the factors that influence the market value of the property being appraised. To achieve this goal, an appraiser studies a property from three different viewpoints, which correspond to the three traditional approaches to value.

1. The current cost of reproducing or replacing the improvements, minus the loss in value from depreciation, plus site value - the cost approach.
2. The value indicated by recent sales of comparable properties in the market - the sales comparison approach.
3. The value of a property's earning power based on the capitalization of its income - the income capitalization approach.

The three approaches are interrelated; each requires the gathering and analysis of cost, sales, and income data that pertain to the property being appraised.

From the approaches applied, the appraiser derives separate indications of value for the property being appraised. One of more of the approaches may not be applicable to a specific assignment or may be less reliable due to the nature of the property, the needs of the client, or the data available.

To complete the valuation process, the appraiser integrates the information drawn from market research and data analysis and from the application of approaches to form a value conclusion. This conclusion may be present as a single point estimate of value or as a range within which the value may fall. An effective integration of all the elements in the process depends on the appraiser's skill, experience, and judgement.⁴

4. Appraisal Institute, *The Appraisal of Real Estate*, 11th ed.

SALES COMPARISON APPROACH TO VALUE

The major premise of the Sales Comparison Approach to Value is that no prudent purchaser would pay more for a property than the cost to acquire a property of similar utility in the competing market. The principles that apply are those of substitution, supply and demand, and externalities.

There are many different units of comparison used to develop a pattern of indicated value for properties. The following units of comparison are the most commonly used in valuing properties such as the subject.

Dollars Per Unit: Dollars per Unit (\$/Unit) is the direct ratio of sale price to total number of units.

Dollars per Acre: Dollars per Acre (\$/Acre) is the direct ratio of the sale price of a property and the site area in acres.

We have researched the market and have located the following sales of residential tracts used in estimating a value for the subject property. All sales involved a coastal tract with a water view. They are shown on a chart at the end of this section entitled "Land Sales Chart."

Land Sale No. 1: This is the sale of a 28.33-acre tract of land, with 19.13 highland acres, located off Barefoot Bridge Road, with frontage on the Intracoastal Waterway, in the City of North Myrtle Beach, Horry County, SC. The property sold on June 13, 2019. The sale price was \$3,826,000, or \$200,000/highland acre. The property is zoned PDD, Planned Development District, by the City of North Myrtle Beach and is being developed with 253 detached cottages, indicating a density of 13.2 units per acre. The sale price equates to \$15,123/unit. The tract has approximately 690' of frontage on the Intracoastal Waterway, which equates to 35.2' of frontage per usable acre. The site is situated across the waterway from the Barefoot Landing shopping complex and bounds the Barefoot Resort golf course to the southwest and the Barefoot Marina to the northeast. The site is in X and AE flood zones. The site is very irregular in respect to shape and the developable acreage is particularly irregular, due to the wetland areas and buffers being dispersed though the interior of the site. This property has a large amount of water frontage; however, the views are inferior to the subject property's sound view. The property is also inferior to the subject property in respect to topography. The value per unit for this sale is low due to the relatively high development density. The indicated value of the subject property is greater than \$210,000/acre and \$15,879/unit, after a time adjustment.

TMS No. 156-00-01-047 (Horry County, SC)

Land Sale No. 2: This is the sale of a 16.03-acre tract, located on Marina Cove Drive, in the City of St. Augustine, FL. This property has approximately 10.91 highland acres and contains approximately 925' of frontage on the Intracoastal Waterway, or about 85' per highland acre. The property sold on October 12, 2017 for \$4,350,000, or \$398,717/highland acre. This property is zoned RGO, Residential and General Office District, by the City of St. Augustine. This is a mixed-use oriented district that allows for a variety of commercial and multifamily residential uses. Single-family development is a conditional use. There is no stated maximum multifamily density. The site has been developed with Isla Antigua, a 249-unit luxury apartment community. The developed density is 22.8 units per acre and the sale price equates to \$17,470/unit. The site is in an AE flood zone. There is a city owned buffer area that separates the site from the waterfront and a bulkhead has been constructed along the entire site's waterway frontage.

This property is considerably smaller than the subject site and was developed at a much higher density than the subject property's allowed density. The indicated value for the subject property is less than \$438,539/acre, but is greater than \$19,217/unit, after a time adjustment, due to the high development density.

TMS Nos. 162208-0000 and 162208-0010 (St. Johns County, FL)

Land Sale No. 3: This is the sale of an 8.738-acre tract located on Mitchelville Road, on Hilton Head Island, SC. The property is fronts on Port Royal Sound and is located about 0.20 miles northwest of the subject property. This tract has approximately 288' of frontage on Port Royal Sound, or 42.5' per highland acre. The tract sold on June 17, 2019 for \$1,900,000. The property contains 6.775 acres of highland and 1.963 acres of marsh. The sale price equates to \$280,443/acre of highland. The property is zoned MV, Mitchelville District, which allows up to 12 units per acre. The site has been improved with a 37-lot subdivision known as Hammock Breeze. The developed density equates to 5.5 units per highland acre. Only two lots in the subdivision have direct sound views. The highland portion of the site is separated from the beachfront by an expanse of marsh that spans several hundred feet, therefore, there is not direct access to the beach from this property. The nearest beach access is through the Fish Haul Beach Park, whose entrance is about 1,000' northeast of the subdivision.

This property is considerably smaller than the subject property, but the property is inferior in respect to proximity to the water and beach access. The indicated value of the subject property is greater than \$294,465/acre. The property was developed at a lower density than is allowed on the subject site, therefore, the indicated value for the subject site is less than \$53,919/unit, after a time adjustment.

TMS No. R510-005-000-431-0000 & 432-0000 (Beaufort County, SC)

Land Sale No. 4: This is the sale of a 68.36-acre tract of land, with 66.13 acres of highland, located on Factory Road, with frontage on the Intracoastal Waterway, in the unincorporated community of Hampstead, Pender County, NC. The property, which is located about 10 miles north of Wilmington, sold on May 8, 2019 for \$10,500,000, or \$158,788/acre of highland. The property is being developed with a 120-lot subdivision called Salters Haven. The sale price equates to \$87,500/unit.

The tract has over 823' of frontage on the Intracoastal Waterway, or 12.4' per highland acre. The property is zoned RP, Residential Performance District, by Pender County. This is a residential oriented zoning district that allows a maximum development density of 3.6 units per acre. The development will include a 75' slip marina that is being built along a deep-water creek that enters the site. Ten of the planned lots will front on the Intracoastal Waterway and 20 lots will have creek or marina frontage. According to the subdivision plat, the site is located entirely in a X flood zone.

The zoning for this property is less flexible than the subject zoning and allows a much lower development density. This property is in a more rural area than the subject property and is inferior in respect to location and is considerably larger than the subject property. The indicated value of the subject property is greater than \$166,717/acre; however, due to the low development density of this site, the indicated value for the subject property is less than \$91,875/unit, after a time adjustment.

TMS Nos.: 3292-44-0015-0000, 3292-44-8068-0000, 3292-44-7189-0000, 3292-44-7313-0000, 3292-44-5684-0000, 3292-44-5688-0000, and 3292-45-5001-0000 (Pender County, NC)

Land Sale No. 5: This is the sale of a 20.48-acre tract located at 1810 Salter Path Road, in the Town of Indian Beach, NC. The site has extensive frontage on Bogue Sound and is located across Salter Path Road from the Atlantic Ocean beachfront. The property contains 17.05 acres of highland. The site sold on September 16, 2019 for \$2,155,000, or \$126,393/acre. The seller was a YMCA association that had received the property as a donation. The site is zoned PDD, Planned Development District, by the Town of Indian Beach. The site had been developed with a 23-lot single-family cluster subdivision. The developed density is 1.3 units per acre. Initial development plans had called for 30 lots. The sale price equates to \$93,696/ unit.

This property is superior to the subject property in respect to water frontage; however, the location is inferior to that of the subject property and the developed density is far lower than is allowed on the subject site. The indicated value of the subject property is greater than \$131,449/acre; however, due to the low development density of this site, the indicated value for the subject property is less than \$97,444/unit, after a time adjustment.

TMS Nos. 04-05788 and 04-05821 (Carteret County, NC)

Additional Sales: In addition to the sales discussed, a 20.311-acre waterfront tract, with 19.90 acres of highland located on Daniel Island, SC, sold on October 17, 2018 for \$13,250,000, or \$655,829/acre. A 17-acre portion of this site is being developed with 90 single-family and townhome lots, indicating a density of 5.29 units per acre. No plans have been released for the remaining parcel which contains the property's water frontage, about 188' on the Cooper River. Assuming the same density for the entire tract, the sale price equates to \$126,190/planned unit. We did not include this sale in our analysis due to its far superior location to the subject site.

A 19.69-acre site, containing approximately 19.55 highland acres and roughly 1,400' of frontage on the marshes of the Beaufort River sold on September 12, 2018 for \$5,550,000, or \$283,887/highland acre. The site is located just across Woods Memorial Bridge from downtown Beaufort, SC. The buyer subsequently sold a 9.72-acre portion of the site to Beaufort County for use as a public park. This parcel sold for \$5,450,000.

The remaining 9.97 acres has been approved for a mixed-use development with eight townhomes, 16 single-family homes, three larger river homes, four garden cottages, and three mixed-use office/retail buildings. We did not include this sale in our analysis due to the very low development density and the considerable commercial component, as well as the sale of half of the tract to the county for a sale price that nearly equaled the original purchase price.

We are also aware of four small sites that have recently sold on Hilton Head Island for residential development, three of which are located on Mitchelville Road and front on Port Royal Sound. These sites were too small to be used as comparable sales, but the sales have been analyzed and are discussed below for informational purposes.

A 6.34-acre site located on Marshland Road on Hilton Head Island sold on May 31, 2018 for \$1,242,000. The site fronts on the marshes of Broad Creek and has distant water views. The site contains extensive saltwater marsh, estimated at approximately 30% of the total site area, or about 1.9 acres. The indicated highland area is then 4.44 acres. The site contains a small non-jurisdictional wetland area that is to be filled, at an estimated cost of \$20,000, indicating an effective sale price of \$1,262,000, or \$284,234/acre. The property is zoned MF, Marshfront Mixed-Use District, by the Town of Hilton Head Island and has a maximum allowed residential density of 6.0 units per acre. The buyer has developed the property with a 23-lot subdivision, The Marshes at Broad Creek. The indicated density is 5.18 units per usable acre. The effective sale price equates to \$54,870/unit.

A 2.1-acre site that is located about 0.30 miles northwest of the subject site sold on February 11, 2020 for \$965,000 or \$459,524/acre. The site has about 140' of sound frontage. The property is zoned MV, Mitchelville District, by the Town of Hilton Head. The property is separated from the beach by an expanse of marsh; however, the property does have an existing boardwalk that provides beach access over the marsh. No plans have been announced for this site.

A 3.9-acre site that is located about 0.35 miles northwest of the subject site sold on November 20, 2019 for \$965,000 or \$459,524/acre. The site has about 325' of sound frontage, but the site is separated from the beach by an expanse of marsh. The property is zoned MV, Mitchelville District, by the Town of Hilton Head. The property is being improved with a 45-unit apartment development. The indicated density is 11.5 units per acre and the sale price equates to \$30,222/unit.

A 3.18-acre site that is located about 0.50 miles northwest of the subject site sold on February 19, 2021 for \$945,000 or \$297,170/acre. The site has about 390' of sound frontage, but the site is also separated from the beach by an expanse of marsh. The property is zoned MV, Mitchelville District, by the Town of Hilton Head. The site is located on an unpaved portion of Mitchelville Road, which appears to be county maintained. No plans have been announced for this site.

Before adjustments, the comparable sales indicate a range of \$15,123 to \$93,696/unit and \$126,393 to \$398,717/acre.

Description of Adjustments:

Time/Market Conditions: The sales occurred between October 2017 and September 2019. We were unable to extract a time adjustment from the sales. COVID-19 was declared a pandemic on March 11, 2020 by the World Health Organization. Moreover, the National Bureau of Economic Research announced June 8, 2020 that the longest economic expansion in the nation's history has come to an end and that the recession began in February. Depending upon the length of time that the pandemic continues, property values could be adversely affected in the future. However, supported by low-interest rates, the residential real estate sector has been very resilient. According to NAR data, 2020 was a record-breaking year for the US housing market. The typical U.S. home was worth \$266,104 in December, up 8.4% (or \$20,587) from a year ago. A total of 5.64 million homes were sold in 2020, up 5.6% from 2019 and the most since before the Great Recession, according to Lawrence Yun, NAR's chief economist. Sales also rose 0.7% from November and 22.2% year over year. Existing home sales reached the highest level in 13 years.

There is a limited supply of waterfront development sites and the residential market has been strong for the past few years. We have made moderate 3.0% annual time adjustments to the sales, which is believed to be reasonable.

Conclusion

Due to differences to size, location, and so on, we have placed the sales on a continuum. After time adjustments, the sales indicate a range of \$15,879 to \$97,444/unit and \$131,449 to \$438,589/acre. The mean sale price is \$55,667/unit and \$248,244/acre.

Higher density residential tracts are typically sold on a per unit basis; therefore, we have placed most emphasis on the per unit value indication. However, due to the wide variation in sizes, densities, and locations, we have also considered the dollars per acre value indication as a test of reasonableness.

Based upon the preceding discussion of each sale, the relevant range is \$19,217 to \$53,919/unit and \$294,465 to \$438,589/acre. Sale No. 2, at \$19,217/unit is considerably smaller than the subject site and was developed at a much higher density than the subject property's allowed density. The indicated value for the subject property is greater than \$19,217/unit, due to the high development density. Sale No. 3, at \$53,919 unit is located just north of the subject property and has frontage on Port Royal Sound. The property is zoned MV, Mitchelville District, which allows up to 12 units per acre. The site has been improved with a 37-lot subdivision known as Hammock Breeze. The developed density equates to 5.5 units per highland acre. Only two lots in the subdivision have direct sound views. The highland portion of the site is separated from the beachfront by an expanse of marsh that spans several hundred feet, therefore, there is not direct access to the beach from this property. The nearest beach access is through the Fish Haul Beach Park, whose entrance is about 1,000' northeast of the subdivision.

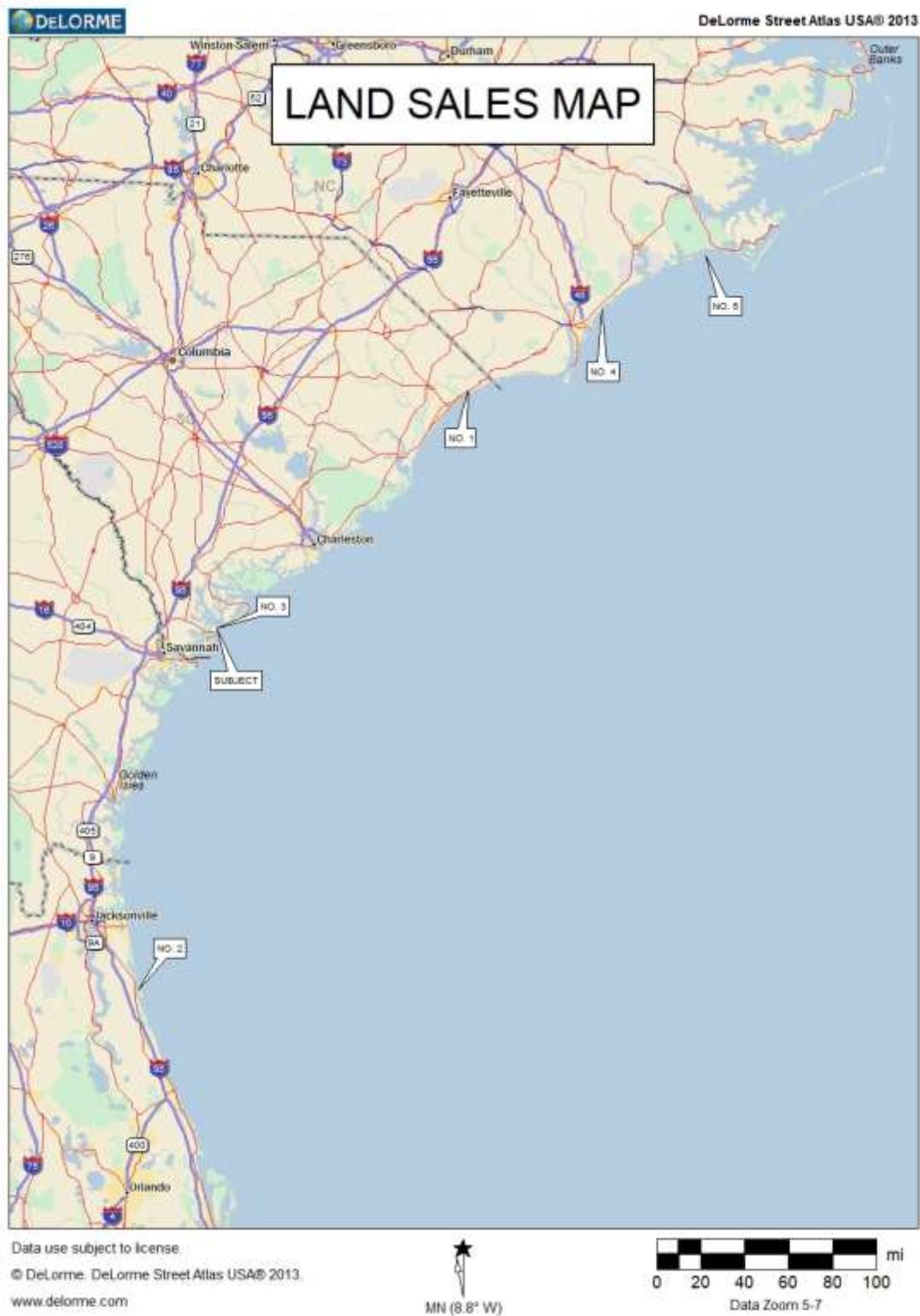
This property is considerably smaller than the subject property, but the site is inferior in respect to proximity to the water and beach access. The indicated value of the subject property is greater than \$294,465/acre. However, the property was developed at a much lower density than is allowed on the subject site, therefore, the indicated value for the subject site is less than \$53,919/unit.

Considering the subject property's beach frontage and size, as well as the allowed development density, we believe that it would sell at a price that is slightly above the middle of the relevant range. A value of \$38,500/unit falls approximately 5% above the middle of the relevant range and appears reasonable.

Based upon the allowed 288 units and a value of \$38,500/unit, the value indication is \$11,088,000, rounded to \$11,090,000. The relevant range in value per acre is \$294,465 to \$438,589/acre. A value of \$11,090,000 equates to \$371,499/highland acre, which falls slightly above the middle of the relevant range and further supports the per unit value indication. Based upon the foregoing information, the indicated Market Value "As Is" of the subject property is **\$11,090,000.**

LAND SALES CHART

SALE NUMBER	SALE NO. 1	SALE NO. 2	SALE NO. 3	SALE NO. 4	SALE NO. 5
TMS NUMBER	156-00-01-047	162208-0000 162208-0010	R510-005-000-431- 0000/432-0000	5292-44-0015-0000, etc.	04-05788 04-05821
LOCATION	Barefoot Bridge Rd. N. Myrtle Beach, SC	Marina Cove Dr. St. Augustine, FL	Mitchelville Rd. Hilton Head, SC	Factory Road Hampstead, NC	1810 Salter Path Rd. Indian Beach, NC
SALE DATE	06-13-19	10-12-17	06-17-19	05-08-19	09-16-19
EFF. SALE PRICE	\$3,826,000	\$4,350,000	\$1,900,000	\$10,500,000	\$2,155,000
SIZE, ACRES	28.33	16.03	8.738	68.36	20.48
EFF. SIZE, ACRES	19.13	10.91	6.775	66.13	17.05
# UNITS	253	249	37	120	23
DENSITY (UNITS/ACRE)	13.2	22.8	5.5	3.6	1.3
SALE PRICE/ACRE	\$200,000	\$398,717	\$280,443	\$158,778	\$126,393
SALE PRICE/UNIT	\$15,123	\$17,470	\$51,351	\$87,500	\$93,696
TIME ADJUSTMENT	+5%	+10%	+5%	+5%	+4%
ADJ. SP/ACRE	\$210,000	\$438,589	\$294,465	\$166,717	\$131,449
ADJ. SP/S.F.	\$15,879	\$19,217	\$53,919	\$91,875	\$97,444



Land Sale No. 1**Property Identification**

Record ID	744
Property Type	Vacant Land, Residential Land
Property Name	Barefoot Cottages
Address	Barefoot Bridge Road, North Myrtle Beach, Horry County, South Carolina 29582
Location	Intracoastal Waterway
Tax ID	156-00-01-047

Sale Data

Grantor	Barefoot Village Investments, LLC
Grantee	Marina Cottages at Barefoot Landing, LP
Sale Date	June 13, 2019
Deed Book/Page	4216/137
Recorded Plat	286/149
Property Rights	Fee Simple
Financing	Cash-to-Seller
Verification	Knowledgeable Third Party; CoStar, Other sources: Public Records

Sale Price	\$3,826,000
Adjusted Price	\$3,826,000

Land Data

Zoning	PDD, Planned Development District
Topography	Intracoastal Waterway Frontage
Utilities	All Available
Shape	Irregular

Land Size Information

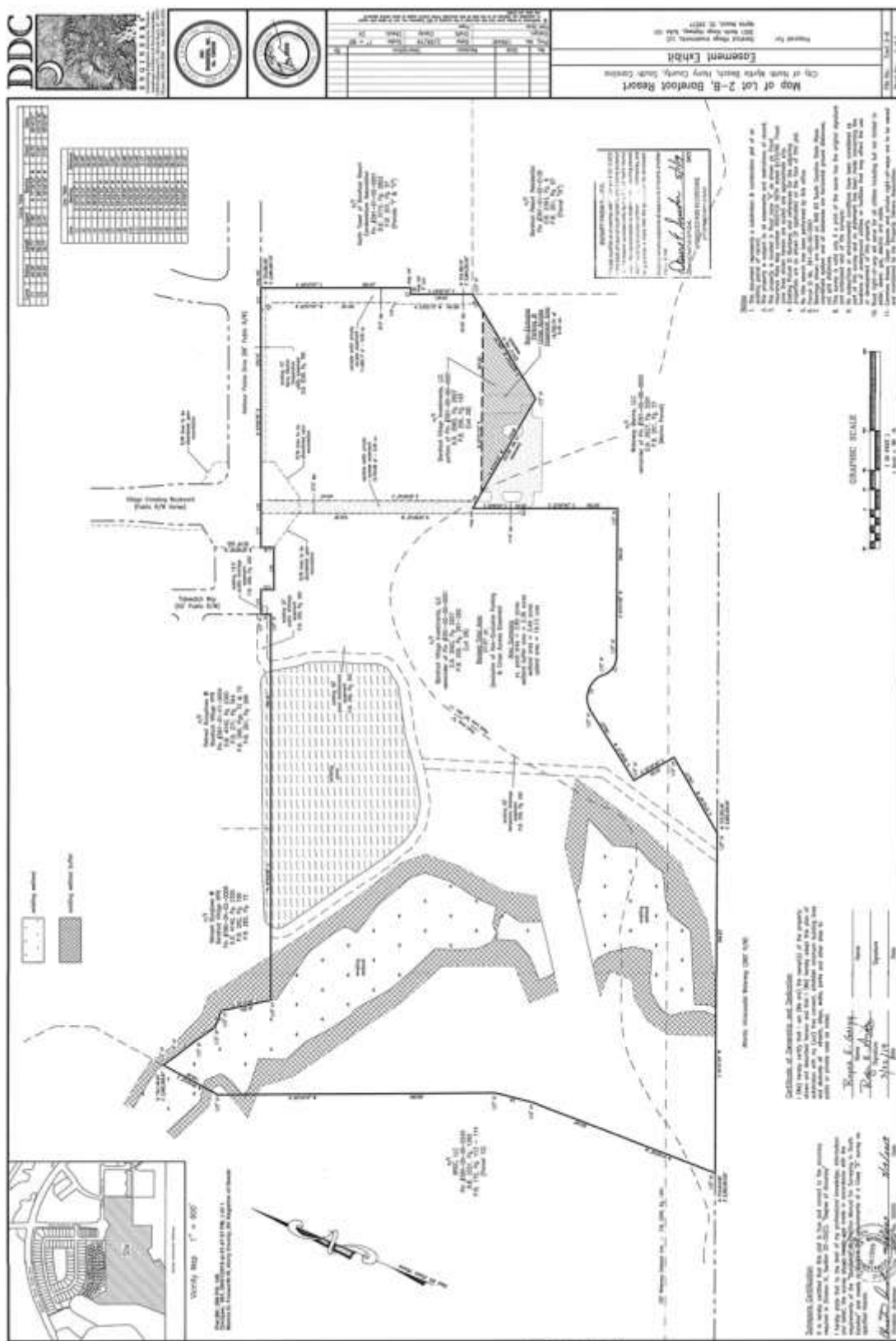
Gross Land Size	28.330 Acres or 1,234,055 SF
Uplands Land Size	19.130 Acres or 833,303 SF, 67.53%
Planned Units	253

Indicators

Sale Price/Gross Acre	\$135,051
Sale Price/Gross SF	\$3.10
Sale Price/Uplands Acre	\$200,000
Sale Price/Uplands SF	\$4.59
Sale Price/Planned Unit	\$15,123

Remarks

This site is being developed with 253 detached cottages, indicating a density of 13.2 units per acre. The tract has approximately 690' of frontage on the Intracoastal Waterway. The site is situated across the waterway from the Barefoot Landing shopping complex and bounds the Barefoot Resort golf course to the southwest and the Barefoot Marina to the northeast. The site is very irregular in respect to shape and the developable acreage is particularly irregular, due to the wetland areas and buffers being dispersed though the interior of the site.



Land Sale No. 2**Property Identification**

Record ID	745
Property Type	Vacant Land, Residential Land
Property Name	Isla Antigua
Address	Marina Cove Drive, St. Augustine, St. Johns County, Florida 32080
Location	Intracoastal Waterway
Tax ID	162208-0000 & 162208-0010

Sale Data

Grantor	PCA Antigua, LLC
Grantee	CRP/CDP St. Augustine Owner, LLC
Sale Date	October 12, 2017
Deed Book/Page	4447/1616
Property Rights	Fee Simple
Financing	Cash-to-Seller
Verification	Knowledgeable Third Party; CoStar, Other sources: Public Records

Sale Price	\$4,350,000
Cash Equivalent	\$4,350,000
Adjusted Price	\$4,350,000

Land Data

Zoning	RGO, Residential General Office District
Topography	Some Westland
Utilities	All Available
Shape	Irregular

Land Size Information

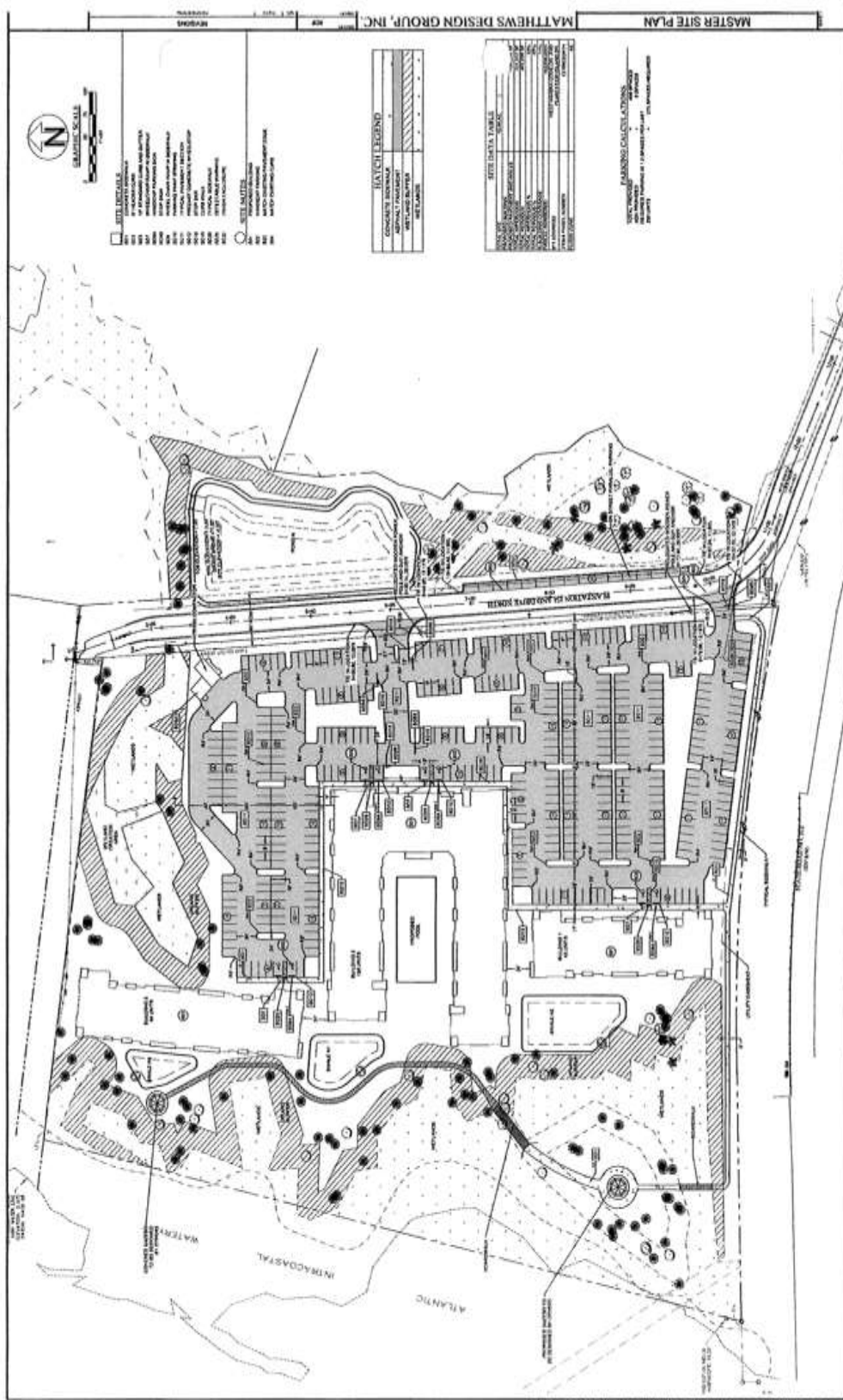
Gross Land Size	16.030 Acres or 698,267 SF
Uplands Land Size	10.910 Acres or 475,240 SF, 68.06%
Planned Units	249

Indicators

Sale Price/Gross Acre	\$271,366
Sale Price/Gross SF	\$6.23
Sale Price/Uplands Acre	\$398,717
Sale Price/Uplands SF	\$9.15
Sale Price/Planned Unit	\$17,470

Remarks

This tract has approximately 925' of frontage on the Intracoastal Waterway. The site has been developed with Isla Antigua, a 249-unit luxury apartment community. The developed density is 22.8 units per highland acre. The site is located in an AE flood zone. There is a city owned buffer area that separates the site from the waterfront and a bulkhead has been constructed along the entire site's waterway frontage.



Land Sale No. 3**Property Identification**

Record ID	746
Property Type	Vacant Land, Mixed-Use Land
Property Name	Hammock Breeze
Address	Mitchelville Road, Hilton Head, Beaufort County, South Carolina
Location	Port Royal Sound
Tax ID	R510-005-000-0431-0000 & 0432-0000

Sale Data

Grantor	Daniel Driessen
Grantee	K. Hovnanian Homes of South Carolina, LLC
Sale Date	June 17, 2019
Deed Book/Page	3769/34
Recorded Plat	150/165
Property Rights	Fee Simple
Verification	Representative of Grantee; CoStar, Other sources: Public Records

Sale Price	\$1,900,000
Adjusted Price	\$1,900,000

Land Data

Zoning	MV, Mitchelville District
Topography	Marsh/Sound Frontage
Utilities	All Available
Shape	Irregular, Functional

Land Size Information

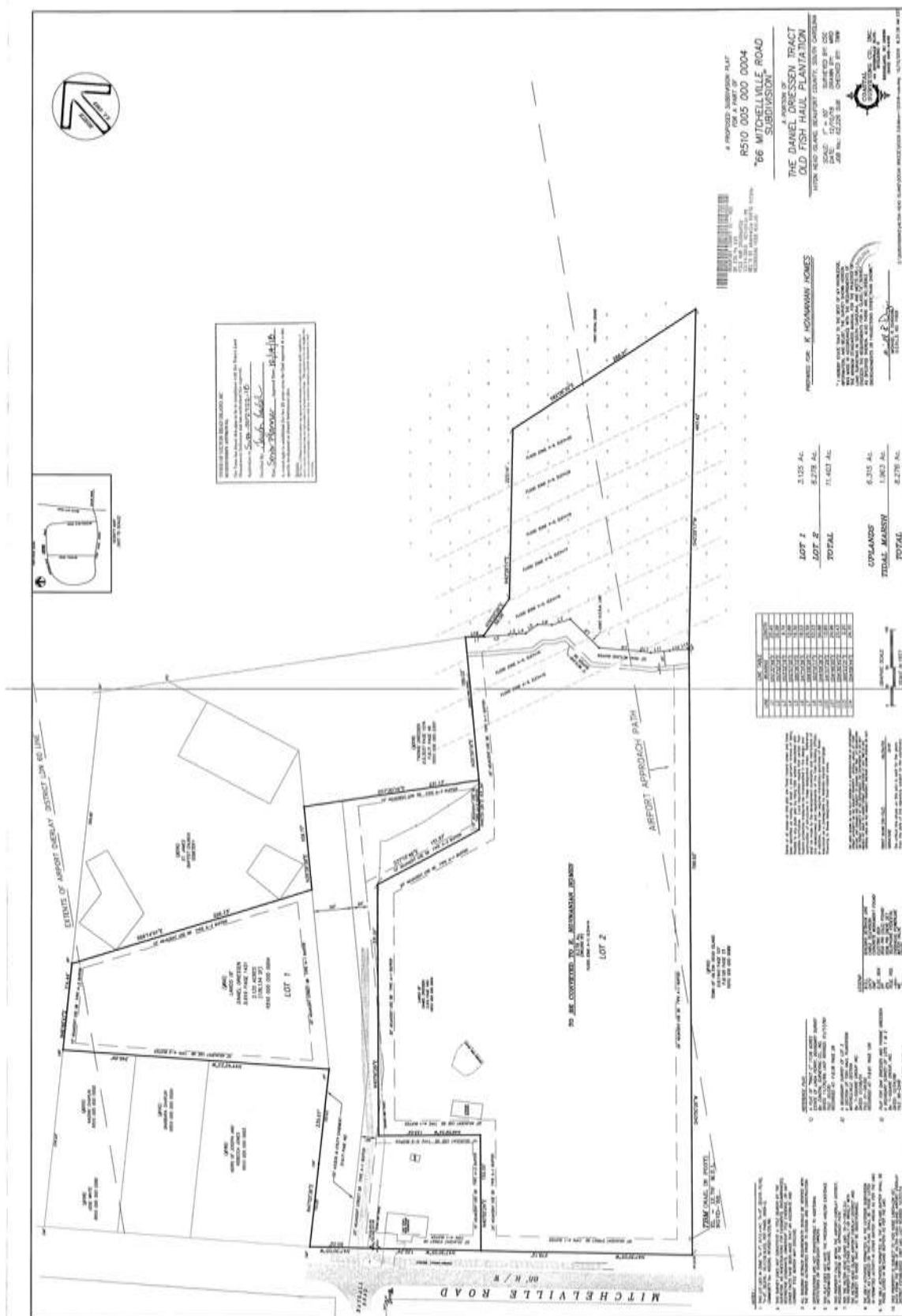
Gross Land Size	8.738 Acres or 380,627 SF
Uplands Land Size	6.775 Acres or 295,119 SF, 77.53% 37

Indicators

Sale Price/Gross Acre	\$217,441
Sale Price/Gross SF	\$4.99
Sale Price/Uplands Acre	\$280,443
Sale Price/Uplands SF	\$6.44
Sale Price/ Unit	\$51,351

Remarks

This tract has approximately 288' of frontage on Port Royal Sound. The site has been improved with a 37-lot subdivision known as Hammock Breeze. The developed density equates to 5.5 units per highland acre. Only two lots in the subdivision have direct sound views. The highland portion of the site is separated from the beachfront by an expanse of marsh that spans several hundred feet, therefore, there is not direct access to the beach from this property. The nearest beach access is through the Fish Haul Beach Park, whose entrance is about 1,000' northeast of the subdivision.





Land Sale No. 4**Property Identification**

Record ID 747
Property Type Vacant Land, SF Residential Lots
Property Name Salters Haven
Address Factory Road, Hampstead, Pender County, North Carolina
Location Intracoastal Waterway
Tax ID 3292-44-0015-0000, 3292-44-5684-0000, 3292-44-5688-0000,
 3292-44-7189-0000, 3292-44-7313-0000, 3292-44-8068-0000,
 and 3292-45-5001-0000
MSA Wilmington

Sale Data

Grantor Bert L. Lea, Jr., Barbara Parker Lea, Dorothy Lea Medlin, Judy
 Lea Lane, &
Grantee WLI Investments, LLC
Closing Date May 08, 2019
Deed Book/Page 4684/1175
Recorded Plat 63/139
Property Rights Fee Simple
Financing Cash-to-Seller
Verification Representative of Grantee; CoStar, Other sources: Public
 Records

Contract Price \$10,500,000
Adjusted Price \$10,500,000

Land Data

Zoning RP, Residential Performance District
Topography Intracoastal Waterway Frontage
Utilities All Available
Shape Irregular

Land Size Information

Gross Land Size 68.360 Acres or 2,977,762 SF
Uplands Land Size 66.130 Acres or 2,880,623 SF, 96.74%
Actual Units 120

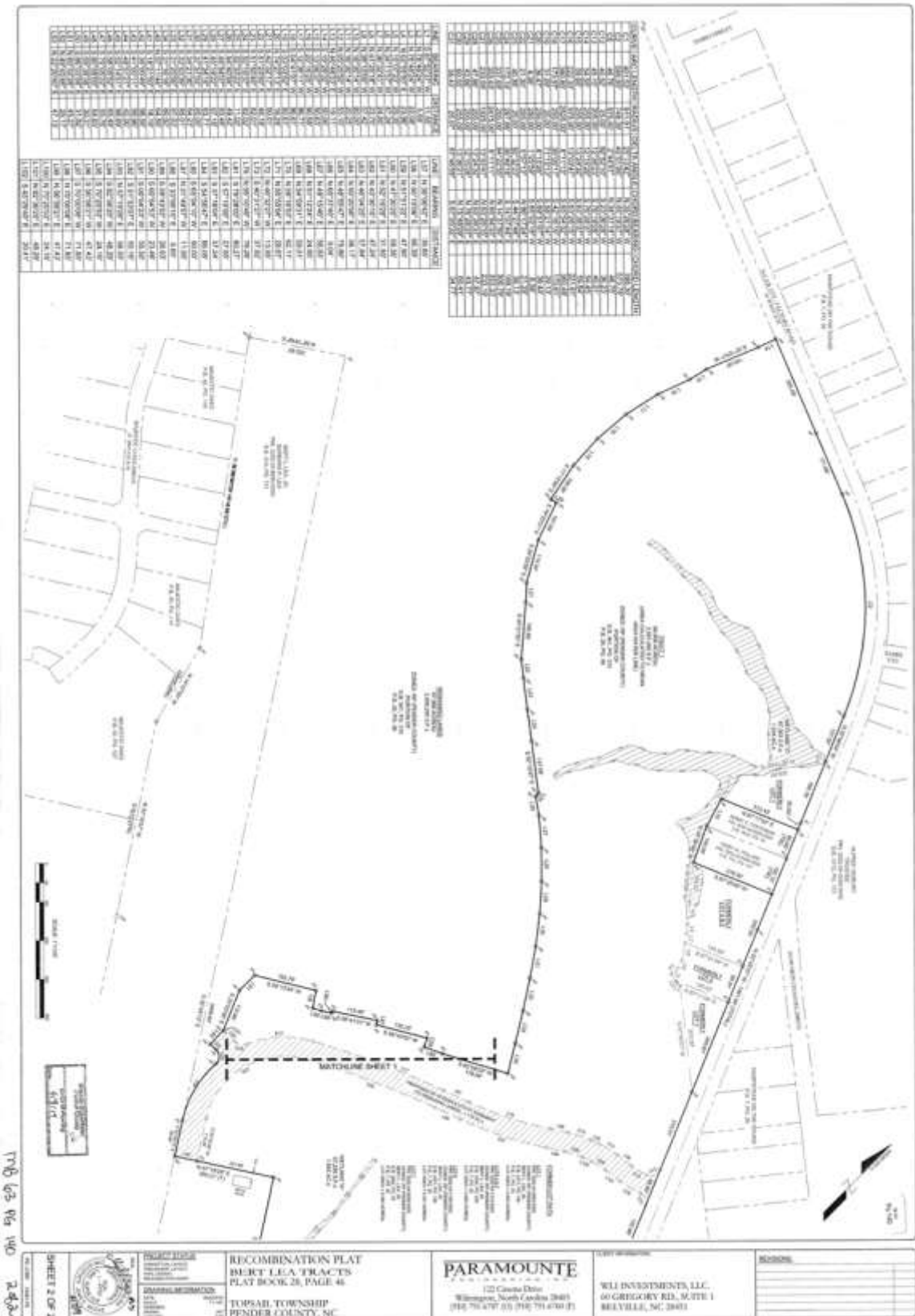
Indicators

Sale Price/Gross Acre \$153,599
Sale Price/Gross SF \$3.53
Sale Price/Uplands Acre \$158,778
Sale Price/Uplands SF \$3.65
Sale Price/Actual Unit \$87,500

Remarks

The property is being developed with a 120-lot subdivision called Salters Haven. The tract has over 823' of frontage on the Intracoastal Waterway. The development will include a 75' slip marina that is being built along a deep-water creek that enters the site. Ten of the planned lots will front on the Intracoastal Waterway and 20 lots will have creek or marina frontage.





Land Sale No. 5**Property Identification**

Record ID	748
Property Type	Vacant Land, Residential Land
Property Name	Roosevelt Cove
Address	1810 Salter Path Road, Indian Beach, Carteret County, North Carolina
Location	Bogue Sound
Tax ID	04-05788 & 04-05821

Sale Data

Grantor	The Young Men's Christian Association of the Triangle Area, Inc.
Grantee	J & B East Properties, LLC
Sale Date	September 16, 2019
Deed Book/Page	1649/155
Recorded Plat	31/350
Property Rights	Fee Simple
Verification	Broker; CoStar, Other sources: Public Records
Sale Price	\$2,155,000
Adjusted Price	\$2,155,000

Land Data

Zoning	PDD, Planned Development District
Topography	Sound Frontage
Utilities	All Available
Shape	Irregular, Functional

Land Size Information

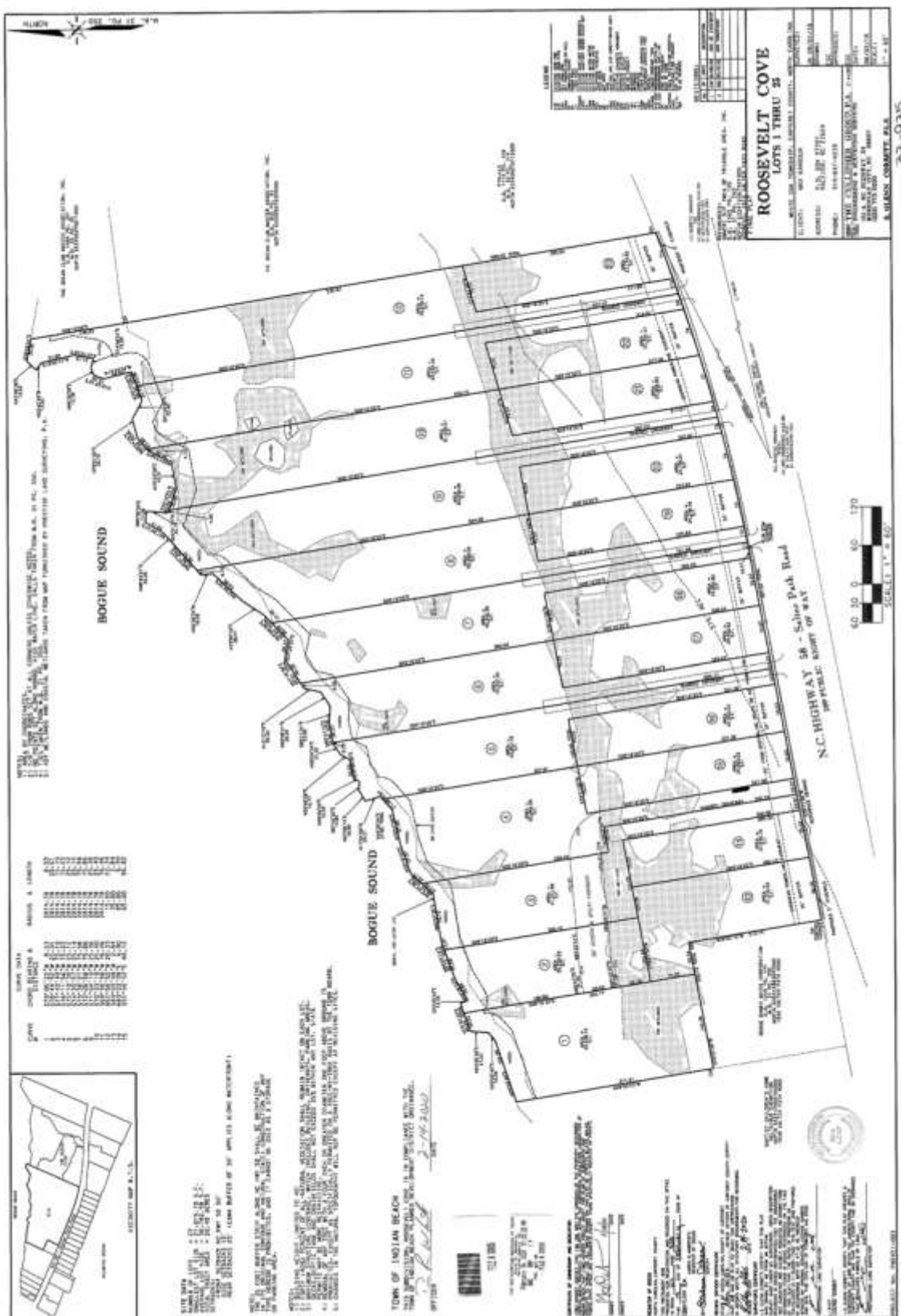
Gross Land Size	20.480 Acres or 892,109 SF
Uplands Land Size	17.050 Acres or 742,698 SF, 83.25% 23

Indicators

Sale Price/Gross Acre	\$105,225
Sale Price/Gross SF	\$2.42
Sale Price/Uplands Acre	\$126,393
Sale Price/Uplands SF	\$2.90
Sale Price/ Unit	\$93,696

Remarks

The site has extensive frontage on Bogue Sound and is located across Salter Path Road from the Atlantic Ocean beachfront. The site had been developed with a 23-lot single-family cluster subdivision. The developed density is 1.3 units per acre.



FINAL CONCLUSION OF VALUE

Value Indication:

Sales Comparison Approach to Value

\$11,090,000

The Sales Comparison Approach to Value is based on the assumption that no prudent purchaser would pay more for a property than the cost to acquire a property of similar utility in the competing market. This approach renders a reliable estimate of value when there are several recent sales of similar properties in the market. We have researched the market and found sales of reasonably comparable properties. The value indication by the Sales Comparison Approach to Value is considered to be reliable.

Based on the appraisers' investigation, analyses and conclusions, an opinion has been formed that the Market Value "As Is" of the fee simple estate of the subject property, as of February 28, 2021, was:

ELEVEN MILLION NINETY THOUSAND DOLLARS

\$11,090,000

MARKETING TIME/EXPOSURE PERIOD

Based on sales included in this report and our files, the marketing time/exposure period for the subject property is estimated to be about 12 to 18 months. It should be noted that marketing time/exposure period is a function of several variables including list price and marketing strategies. This marketing time/exposure period estimate is based on the value reported and competent marketing.

QUALIFICATIONS

Lisa D. Nimmich, MAI
Nimmich & Associates, LLC
P.O. Box 2372
Mount Pleasant, South Carolina 29465

Phone: (843) 881-9447

Education:

B.S. Degree – Business Administration	
Major Emphasis: Marketing	
University of South Carolina, Columbia, South Carolina	1980

Continued Education:

Accounting Management/Intermediate Accounting	
College of Charleston, Charleston, South Carolina	1983

Professional Studies:

Hall Institute of Real Estate	1979
Fortune Real Estate Academy	2003

Appraisal Institute:

Course IA-I	Real Estate Appraisal Principles	1983
Course IB-I	Basic Valuation Procedures	1984
Course IB-A	Capitalization Theory & Techniques – Part A	1985
Course IB-B	Capitalization Theory & Techniques – Part B	1985
Course 2-3/8-3	Standards of Professional Practice	1986
Course 2-1	Case Studies in Real Estate Valuation	1986
Course 2-2	Valuation Analysis and Report Writing	1987
	Demonstration Appraisal Report – Commercial	1990
	Comprehensive Examination	1991
Course 410/420	Standards of Professional Practice	1996
Course 430	Standards of Professional Practice	2001
Course 400	National USPAP Update	2004
Course 400	National USPAP Update	2005
Course 400	National USPAP Update	2007
Course 400	National USPAP Update	2009
Course 400	National USPAP Update	2012
Course 400	National USPAP Update	2014
Course 400	National USPAP Update	2016
Course 400	National USPAP Update	2018
Course 400	National USPAP Update	2020
Seminar:	Rates, Ratios & Reasonableness	1993

QUALIFICATIONS (Cont.) – Lisa D. Nimmich, MAI

Seminar: Appraising Troubled Properties	1993
Seminar: Appraising Retail Properties	1995
Seminar: Fair Lending & the Appraiser	1996
Seminar: The Appraiser as Expert Witness	1996
Seminar: Subdivision Analysis	1996
Seminar: The Hi-tech Appraisal Office	1997
Seminar: Eminent Domain & Condemnation	1998
Seminar: Appraisal Office Management	1998
Seminar: Internet Search Strategies for Real Estate Appraisal	1998
Seminar: Litigation Skills for the Appraiser	1999
Seminar: Loss Prevention Program for Real Estate Appraisers	1999
Seminar: Data Confirmation & Data Confirmation Methods	2000
Seminar: The State of the Profession	2001
Seminar: Valuation of Small, Mixed-Use Properties	2001
Seminar: Marketing & Appraising Historic Properties	2002
Seminar: Real Estate Finance, Value, and Investment Performance	2005
Seminar: Condo Hotels – Introduction to an Emerging Market	2005
Seminar: Introduction to Income Capitalization	2005
Seminar: Eminent Domain in South Carolina	2006
Seminar: AI Reports: Summary Appraisal Report Residential	2006
Seminar: AI Reports: Summary Appraisal	2006
Seminar: Business Practices and Ethics	2006
Seminar: Business Practices and Ethics	2009
Seminar: Business Practices and Ethics	2016
Seminar: Business Practices and Ethics	2020
Seminar: Agency Perspectives: The Challenges of Easements, Eminent Domain, & Right-of-Way	2006
Seminar: Appraiser Tightrope – Scope of Work Rule	2007
Seminar: Inverse Condemnation: An Appraisers Dilemma	2007
Seminar: Spotlight on USPAP: Hypothetical Conditions & Extraordinary Assumptions	2007
Seminar: Effective Banker-Appraiser Communication	2007
Seminar: Analyzing Distressed Real Estate	2008
Seminar: Maintaining Control: Dealing with Client Pressure, Identity Theft, and Appraisal Report Tampering	2008
Seminar: Condominiums, Cooperatives & PUDS	2008
Seminar: An Introduction to Appraising Commercial Green Buildings	2010
Seminar: Valuation of Green Residential Properties	2010
Seminar: Appraising from Blueprints & Specifications	2010
Seminar: Perspectives from Commercial Review Appraisers	2011
Seminar: Form 1004MC: Accurately Analyzing and Reporting Market Rebounds	2011
Seminar: Appraising Convenience Stores	2011
Seminar: Curriculum Overview - Residential	2012

QUALIFICATIONS (Cont.) – Lisa D. Nimmich, MAI

Seminar: Curriculum Overview – General	2012
Seminar: Fundamentals of Separating Real Property, Personal Property, and Intangible Business Assets	2012
Seminar: Case Studies in Appraising Green Residential Buildings	2013
Seminar: Introduction to Green Buildings: Principles and Concepts	2013
Seminar: Online Cool Tools: New Technology for Real Estate Appraisers	2014
Seminar: Eminent Domain & Condemnation	2016
Seminar: Forecasting Revenues	2016
Seminar: Comparative Analysis	2016
Seminar: Data Verification Methods	2018
Seminar: Small Hotel/Motel Valuation	2018
Seminar: Comparative Analysis	2018
Seminar: Online Cool Tools: New Technology for Real Estate Appraisers	2020
Seminar: Introduction to Green Buildings: Principles & Concepts	2020
Seminar: Fundamentals of the Uniform Standards for Federal Land Acquisitions	2020
Construction Cost Estimating – Trident Technical College	1985

Prior Experience:

Nimmich & Associates, LLC	Present
Nimmich, Anderson & Associates	1994-2002
Lisa D. Nimmich & Associates	1994-1994
Paul K. Moore & Associates, Inc. (Previously part of Atlantic Appraisals)	1991-1994
Atlantic Appraisals	1989-1991
Attaway, Thomson, Jeffers & Associates	1987-1989
Attaway, Thompson & Associates	1983-1987

Certifications:

South Carolina State Certified General Real Estate Appraiser CG-162	1992
North Carolina State Certified General Real Estate Appraiser A1777	1991
Georgia State Certified General Real Estate Appraiser 259066	2003

Professional Associations:

Appraisal Institute (MAI)	1991
Member of Charleston Trident Board of Realtors – Licensed Real Estate Broker	
Member of Commercial Investment Division of the Charleston Trident Board of Realtors	
Member of Town of Mount Pleasant Commercial Design Review Board	

QUALIFICATIONS (Cont.) – Lisa D. Nimmich, MAI**Appraisal Experience Includes:**

-Apartments	-Dormitories
-Condominium Development	-Banks
-Subdivision Development	-Condemnation
-Shopping Centers	-Convenience Stores
-Restaurants	-Historical Properties
-Office Buildings	-Warehouses
-Acreage	-Manufacturing
-Special Purpose Properties	-Trucking Terminals
-Hotels	

Partial List of Clients:

-Bank of America	-US Navy/NAVFAC
-Wells Fargo Bank	-City of Charleston
-RBC Centura Bank	-Charleston County
-First Citizens Bank	-SC Dept. of Natural Resources
-Synovus Bank	-SC Department of Transportation
-BB&T	-General Services Administration
-The Bank of South Carolina	-FDIC
-Crestar Bank	-Wal Mart
-Southcoast Community Bank	-Fluor Daniel
-Community First Bank	-First Citizens Bank
-SunTrust Bank	-International Paper Company
-Regions Bank	
-PNC Bank	
-South State Bank	
-Fifth Third Bank	
-Southern First Bank	

QUALIFICATIONS

Franklin B. Sewell, MAI
Nimmich & Associates, LLC
P.O. Box 2372
Mount Pleasant, South Carolina 29464

Phone: (843) 284-3090

Education:

B.A. Degree - Psychology Major Emphasis: Cognitive/Experimental University of North Carolina - Wilmington Wilmington, North Carolina	1991

Professional Studies:

Introduction to Real Estate Principles	1994
Real Estate Law	1994
Course R-1 Real Estate Appraisal Principles	1994
Real Estate Finance	1995
Course R-2 Basic Valuation Procedures	1995
Course R-3 Standards of Professional Practice	1995
Course G-1 Capitalization Theory & Techniques - Part A	1995
Course G-2 Capitalization Theory & Techniques - Part B	1996
Course G-3 Case Studies in Real Estate Valuation	1996
Seminar: Internet and the Appraiser	1997
Seminar: Guideline for Residential Building Systems Inspection	1998
Seminar: 4.7 Basic Residential HUD Appraisal Requirements	1999
Course L-3 Uniform Standards of Professional Practice	2001
Seminar: Appraising Condominiums	2002
Course CE-NSU National USPAP Update	2003
Course 410 Uniform Standards of Professional Practice	2004
Course 420 Business Practices and Ethics	2004
Seminar: Rates and Ratios	2004
Broker A & B	2005
Course CE-NSU National USPAP Update	2006
The Valuation of Partial Interests	2006
Course 510 Advanced Income Analysis	2007
Course CE-NSU National USPAP Update	2008
NAR Code of Ethics Training - Commercial Track	2008
Commercial Finance and Investment Analysis	2009
Course 520 Market Analysis and Highest and Best Use	2010
Business Practices and Ethics	2010
Course CE-NSU National USPAP Update	2010
Advanced Concepts and Case Studies	2011

QUALIFICATIONS (Cont.) - Franklin B. Sewell, MAI

Course CE-NSU National USPAP Update	2012
General Appraiser Report Writing & Case Studies	2013
Appraisal of Self-Storage Facilities	2014
Course CE-NSU National USPAP Update	2014
Course CE-1375 Forest Valuation for Non-Foresters	2014
Course DE-1188 Appraisal Math and Statistics	2016
Course DE-1127 Green Building for Appraisers	2016
Course DE-1129 Introduction to Legal Descriptions	2016
Course CE-NSU National USPAP Update	2016
Course DE-1379 Appraisal of Fast Food Facilities	2018
Course DE-1549 Basic Hotel Appraising - Limited Service Hotels	2018
Course DE-1511 Advanced Hotel Appraising - Full Service Hotels	2018
Course CE-NSU National USPAP Update	2018
Course DE-1668 Basic Construction Review	2020
Course DE-1671 Defensible Appraising	2020
Course CE-NSU National USPAP Update	2020

Prior Experience:

Nimmich & Associates, LLC	2002 - Present
Nimmich, Anderson & Associates	1996 - 2002

Certifications:

South Carolina State Certified General Real Estate Appraiser CG-2877	1999
South Carolina Real Estate Commission: Licensed Broker-in-Charge 26030	2005
North Carolina State Certified General Real Estate Appraiser A8089	2016

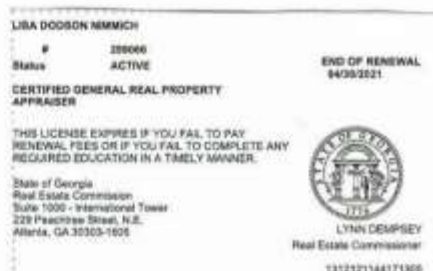
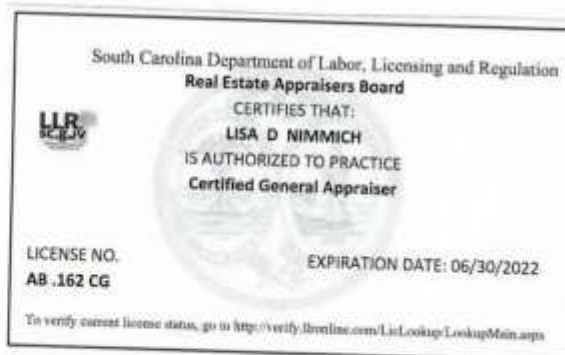
Professional Associations:

Appraisal Institute (MAI)
 Member of Charleston Trident Association of Realtors – Licensed Real Estate Broker

QUALIFICATIONS (Cont.) - Franklin B. Sewell, MAI

Appraisal Experience Includes:

-Apartments	-Federal Government Buildings
-Acreage	-Mixed-Use Properties
-Office Buildings	-Manufacturing
-Convenience Stores	-Condominium Development
-Banks	-Restaurants
-Churches	-LIHTC Properties
-Warehouses	-Industrial Properties
-Retail Properties	-Single Family Residential
-Shopping Centers	-Special Purpose Properties
-Municipal Properties	-Automotive Dealerships
-Historical Properties	-Condemnation



ADDENDA

ADDENDUM A

NIMMICH & ASSOCIATES, LLC
REAL ESTATE APPRAISALS

February 16, 2021

Mrs. Keita White
1570 East New York Avenue, #2A
Brooklyn, NY 11212

RE: Appraisal of:
The Mitchellville Tract
R510-005-000-0007-0000 - 26.46 Acres
R510-005-000-0192-0000 - 2.57 Acres
R510-005-000-007A-0000 - 1.05 Acres
Located on Mitchellville Road
Hilton Head Island, South Carolina

Dear Ms. White:

In accordance with your request, I am sending you this letter of engagement for an appraisal of the above referenced property on Mitchellville Road, Hilton Head Island, South Carolina. The delivery date will be no later than March 10, 2021, or three weeks from engagement. Please sign this letter and return it via email. The fee is \$4,200 and a retainer of \$2,100 is requested. The balance of the fee will be due within 15 days of delivery of the appraisal via email.

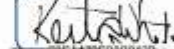
The compensation for this report is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result or the occurrence of a subsequent event. The appraisal assignment is not based on a requested minimum valuation, a specific valuation, or the approval of a loan. I hereby certify that I have no interest in the subject property.

Respectfully submitted,



Lisa D. Nimmich, MAI
SC State Certified General
Real Estate Appraiser CG-162
NC State Certified General
Real Estate Appraiser A1777
Georgia State Certified General
Real Estate Appraiser 259066

DocuSigned by:



Keita White

ADDENDUM B

5
11
Harrison
3/20

RECORDED
2016 Jun -16 04:23 PM
Beaufort
BEAUFORT COUNTY AUDITOR

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) CASE NO. 2008-CP-07- 04542

PETER HARRISON,)

Plaintiff,)

-versus-)

ORDER

ROSE YOUNG, STANLEY ROBERTS,)
MARY ROBERTS, ROSS HARRISON,)
WILLIAM HARRISON, JOYCE)
HARRISON, WILLIAM HARRISON, JR.,)
if living, and if deceased,)
their heirs at law, next of kin)
and distributes, and all other persons claim-)
ing under, by or through them; and, also all)
other persons unknown having or claiming)
any right, title, estate or interest in, or lien)
upon the real property described in the)
Complaint herein, being designated)
collectively as JOHN DOE and MARY)
ROE, including any defendants who may be)
deceased, and including all minors, persons)
in the Armed Forces, insane persons, all)
other persons under any other disability who)
might have or claim to have any right, title,)
or interest in or lien upon the real estate)
described in the Complaint herein,)

Defendants.)



BEAUFORT COUNTY SC - ROD
BK 3488 Pgs 1724-1728
FILE NUM 2016028726
06/06/2016 01:49:14 PM
REC'D BY rwebb RCPT# 812748
RECORDING FEES \$11.00

ADD DMP Record 6/7/2016 04:06:19 PM
BEAUFORT COUNTY TAX MAP REFERENCE
Dist Map SMap Parcel Block Week
R510 005 000 0007 0000 00

This is an action to quiet and clear title to real estate which is located on Hilton Head Island, Beaufort County, South Carolina. The action was initiated with the filing of a Summons and Complaint, which was filed in the office of the Clerk of Court for Beaufort County on November 20, 2008. All of the allied and ancillary pleadings were also filed in the office of the Clerk of Court for Beaufort County. All of the Defendants in this action were properly served, either personally, by certified mail, return receipt requested, signed by addressee only, or by

Page 1 of 5

Certified - A True Copy

Jerri Ann Roseaneau
Jerri Ann Roseaneau - Clerk of Court
Beaufort County, SC - Melissa Kilby

Book3488/Page1724 CFN#2016028726

acceptance of service by their attorney. An Answer and Counterclaim was filed by Derek Gilbert on behalf of the defendant, Georgia V. Harrison. The counterclaim of the defendant, Georgia V. Harrison basically alleges the undivided fractional interest as set forth in a previous Order quieting the same title to the subject property (Civil Action #88-CP-07-974), to which the Plaintiff filed a Reply. The Estate of Rose Young was represented by Antonia T. Lucia. None of the other Defendants filed any Answers or responsive pleadings in this matter, and they are, therefore, in default. The Plaintiff's attorney has filed an Affidavit of Default. Bernard McIntyre of the Beaufort County Bar was appointed as Guardian ad Litem, and he has appeared and filed his Answer submitting the rights of all unknown persons, and persons suffering from any disabilities to be protected by the Court.

A hearing was held before me on July 1, 2009 at 8:30 a.m. Present at the hearing was Peter Harrison, plaintiff, along with his attorney, Louis O. Dore, Charles Edward Young, along with his attorney, Antonia T. Lucia, and Georgia Harrison, along with her attorney, Derek Gilbert. All of the testimony was received without objection, and all of the exhibits were entered without objection. Now, having heard all of the testimony in this case, and having reviewed all of the exhibits, I now find the following as matters of fact:

1. There was a previous action to quiet said title with respect to the same property which is the subject of this action, and a Final Amended Order filed on January 23, 1991 (Civil Action #88-CP-07-974). Under the terms of that Amended Final Order, it was determined that the various undivided ownership interests in the subject property were as follows (See Paragraph 4, Page 48, Amended Order):

Ethel Rivers	50%
Rose Young	12.5%
Sadie M. Harrison	12.5%

Stanley Roberts	12.5%
Mary Roberts	12.5%
TOTAL:	100%

2. Ethel Rivers transferred and conveyed her 50% ownership interest to Peter Harrison, Ross L. Harrison and William S. Harrison by deed recorded in the office of the RMC for Beaufort County at Deed Book 598, Page 1461.
3. By deed dated May 26, 1998, Sadie M. Harrison transferred and conveyed her 12.5% ownership interest in the subject property to Peter Harrison, Ross L. Harrison and William S. Harrison. This deed is recorded in the office of the RMC for Beaufort County at Deed Book 2706, Page 1227.
4. Mary Roberts died intestate, pre-deceased by her husband, Gerald Roberts, and leaving as her sole surviving heir at law her son, Stanley Roberts.
5. Ross L. Harrison died leaving a valid trust instrument by which his sole beneficiary of his estate was his wife, Georgia Harrison.
6. William S. Harrison died intestate leaving as his sole surviving heirs at law his wife, Joyce Ellen Harrison, and his son William S. Harrison, III.
7. Rose Young died intestate, however, her estate was duly probated and administered in the Probate Court for Beaufort County. Charles Elmer Young, husband of the decedent, Rose Young, disclaimed any ownership interest that he had in the subject property at the time of the administration of the estate of Rose Young. The sole beneficiaries of Rose Young, pursuant to the administration of her estate are as follows, in equal shares:

Page 3 of 5

Adrienne Kirkland, Carol Bush, Diane Mendheim, Charles Edward Young, Robert Young, Denise Davidson, Rose Hampton, and Victoria Young.

I now conclude as a matter of law:

- a) The property which is the subject of this action is now owned in fee simple absolute by the following persons, having the respective ownership shares as outlined below:

Peter Harrison	20.833%
Georgia Harrison	20.833%
Joyce Ellen Harrison	10.416%
William S. Harrison, III	10.416%
Stanley Roberts	25%
Adrienne Kirkland	1.5625%
Carol Bush	1.5625%
Diane Mendheim	1.5625%
Charles Edward Young	1.5625%
Robert Young	1.5625%
Denise Davidson	1.5625%
Rose Hampton	1.5625%
Victoria Young	1.5625%

- b) That this lawsuit to quiet and clear title is regular in all respects, and all of the statutory requirements have been complied with.
- c) That all other persons except those outlined above, including any unknown persons having or claiming to have any right, title, estate, or interest in or lien upon the real estate described in the Complaint are forever barred.

The property which is the subject of this action is described as follows, to-wit:

ALL that certain piece, parcel or lot of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing 28.127 acres, more or less, and is specifically shown as Lot B on said plat which was prepared by Arthur O. Christensen, R.L.S., and designated as "Plat of Survey Number 2, No Sale", dated April 6-8, 1921, and also, on that certain plat of

R510-5-0007

Page 4 of 5

Millard Dunham, R.L.S entitled "Plat prepared for Heirs of Clara Wigfall", dated January 29, 1988, and revised on January 18, 1990. For a more complete and accurate description as to the metes, bounds, courses and distances, reference may be had to said plats.

AND IT IS SO ORDERED.



MARVIN DUKES, III, MASTER IN EQUITY
AND SPECIAL CIRCUIT COURT JUDGE FOR
BEAUFORT COUNTY

Beaufort, South Carolina

July 17, 2009

2/16
Bullard
2016

STATE OF SOUTH CAROLINA

RECORDED
2003 Aug -11 02:55 PM
Sharon W. Burns
BEAUFORT COUNTY ALDITOR

PROBATE COURT

COUNTY OF BEAUFORT

IN THE MATTER OF THE ESTATE OF GENNARO IANNAZZO

CASE NUMBER 2003ES0700238

BEAUFORT COUNTY SC - ROD
BK 01809 PG 2318
FILE NUM 2003066657
07/31/2003 12:17:45 PM
REC'D BY V GARVIN RCPT# 170972
RECORDING FEES 10.00

DEED OF DISTRIBUTION

WHEREAS, the decedent died on **November 19, 2003**; and,

WHEREAS, the estate of the decedent is being administered in the Probate Court for Beaufort County, South Carolina in File #**2003ES0700238**; and,

WHEREAS, the grantee herein is either a beneficiary or heir at law, as appropriate, of the decedent; and,

WHEREAS, the undersigned Personal Representative is the duly appointed and qualified fiduciary in this matter; and,

NOW, THEREFORE, in accordance with the laws of the State of South Carolina, the Personal Representative has granted, conveyed and released, and by these Presents does grant, convey and release unto:

Name: Anthony J. Iannazzo, his heirs and assigns, forever

Address: 25 Mitchelville Road

Hilton Head, SC 29926

the following described property:

TMS NO. R510-005-000-007A-0000

An One-Half (1/2) undivided interest in that certain, piece or tract of land, situate, lying and being of Hilton Head Island, in Beaufort County, South Carolina, containing 1.05 acres, as shown on plat entitled "Plat of Boundary Survey, prepared for: Gene A. Iannazzo, Parcel 7A, Tax Map 5, Mitchelville Road, Drayton Plantation, Town of Hilton Head Island, Beaufort County, South Carolina," dated July 11, 1988, prepared by Sea Island Engineering, M. A. Dunham, R.L.S. #11590. For a more complete description of said property, reference is made to the referred Plat.

This being the same property conveyed to Gennaro Iannazzo and Antoinette Iannazzo, as joint tenants with rights of survivorship as tenants in common with Anthony Iannazzo and Elizabeth F. Iannazzo, as joint tenants with rights of survivorship, by Deed of Gene A. Iannazzo, dated December 28, 1993 and recorded January 12, 1994 in Deed Book 678 at Page 293 in the Office of the Register of Deeds for Beaufort County, South Carolina. The said Antoinette Iannazzo having died on January 15, 1998 and a copy of her certificate of death having been recorded in the Office of The Register of Deeds in Book 1793 at Page 2184.

This Deed of Distribution being prepared in the Law Offices of Edward E. Bullard, PO Drawer 21784, Beaufort County, Hilton Head Island, South Carolina 29925 on the 29 day of July, 2003, by Edward E. Bullard, without the benefit of title examination.

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

TO HAVE AND TO HOLD, all and singular, the said Premises/Property unto the said **Anthony J. Iannazzo**, his heirs and assigns forever.

ADD DMP Record 8/11/2003 10:25:51 AM
BEAUFORT COUNTY TAX MAP REFERENCE
Dist Map SMap Parcel Block Week
R510 005 000 007A 0000 00

FORM #400PC (1/88)
62-3-907, 62-3-908

Page 1 of

IN WITNESS WHEREOF, the undersigned, as Personal Representative of the estate of the decedent, has executed this Deed, on this 29th day of July, 2003.

SIGNED, SEALED AND DELIVERED

Estate of: Gennaro Iannazzo

IN THE PRESENCE OF

by Signature: [Signature]

John P. Iannazzo, Personal Representative

Witness: [Signature]

Witness: [Signature]

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

PROBATE

PERSONALLY appeared before me Janene Pesce and made oath that he/she saw the within named Personal Representative sign, seal, and as his act and deed, deliver the within written Deed, and that he/she with Carolyn E. Fender witnessed the execution thereof.

SWORN to before me this 29th day of July, 2003

Witness Signature: [Signature]

Sandra L. Hunter
Notary Public for South Carolina

My Commission Expires: June 21, 2009

4/10 PB
 Prepared By:
Jones, Patterson, Simpson & Newton, P.A.
 11 Arley Way, Suite 202
 Bluffton, SC 29910
 (843)706-6111
 (843)706-2030

BEAUFORT COUNTY SC - ROD
 BK 02867 PGS 2390-2402
 FILE NUM 2008000066
 01/02/2008 10:36:31 AM
 REC'D BY P BAXLEY RCPT# 524773
 RECORDING FEES 10.00
 County Tax 805.00
 State Tax 1,430.00
 Transfer Tax 1,375.00

RECORDED
 2008 Jan -16 02:16 PM

Sharon Q. Burris
 BEAUFORT COUNTY AUDITOR

TMP: R510 005 000 0192 0000

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT) TITLE TO REAL ESTATE

KNOW ALL PERSONS BY THESE PRESENTS, THAT FURMAN EZEKIEL JORDAN, JR., Trustee of the Revocable Trust of Furman Ezekiel Jordan, Jr. dated December 15, 2005 AND TERRY WINGO JORDAN, Trustee of the Revocable Trust of Terry Wingo Jordan dated December 15, 2005 ("GRANTORS") in the State aforesaid for and in consideration of the sum of Five Hundred Fifty Thousand and 00/100 DOLLARS (\$550,000.00), to GRANTORS in hand paid at and before the sealing of the presents by CURTIS BLAIR HENNESSEY AND LYNETTE M. HENNESSEY ("GRANTEES") of 12 Widewater, Hilton Head Island, SC 29926 in the State aforesaid, for which the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release, subject to the easements, restrictions, reservations and conditions ("Exceptions") set forth below, unto the said Grantees, as joint tenants with right of survivorship and not as tenants in common, their heirs and assigns, forever, in fee simple, the following described property, to wit:

SEE ATTACHED EXHIBIT "A"

621
 Hennessey 15899.020

CHANGE DMP Record 1/14/2008 12:41:14 PM
 BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R510	005	000	0192	0000	00

THIS CONVEYANCE is made subject to any applicable restrictions, reservations, zoning ordinances or easements that may appear of record in the Office of the Register of Deeds for Beaufort County, South Carolina.

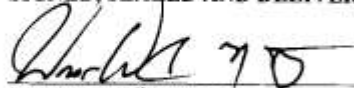
TOGETHER with all and singular, the Rights, Members, Hereditament and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Grantees, as joint tenants with right of survivorship and not as tenants in common, their heirs and assigns, forever in fee simple.

AND the within Grantors do hereby bind themselves and their Heirs, Assigns, Executors and Administrators, to warrant and forever defend, all and singular, the said Premises unto the said Grantees, their Heirs, Assigns, and Administrators, against Grantors, their Heirs and Assigns, and any persons whomsoever may come lawfully claiming, or to claim the same or any part thereof.

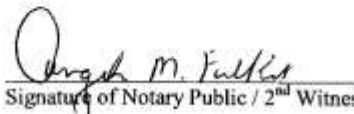
WITNESS our Hands and Seals, this 21st day of December, 2007.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:



Signature of 1st Witness


Furman Ezekiel Jordan, Jr., Trustee
Of the Revocable Trust of Furman Ezekiel
Jordan, Jr., dated December 15, 2005



Signature of Notary Public / 2nd Witness


Terry Wingo Jordan, Trustee
Of the Revocable Trust of Terry Wingo
Jordan, dated December 15, 2005

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I, the undersigned Notary Public do certify that Furman Ezekiel Jordan, Jr., Trustee of the Revocable Trust of Furman Ezekiel Jordan, Jr. dated December 15, 2005 and Terry Wingo Jordan Trustee of the Revocable Trust of Terry Wingo Jordan, dated December 15, 2005, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my official seal this the 21st day of December, 2007.

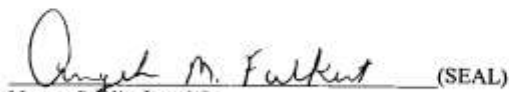
 (SEAL)
Notary Public for: SC
My Commission Expires: 7/29/09

EXHIBIT "A"

ALL that certain piece, parcel or tract of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing 2.568 acres, more or less, located on Fish Haul Road, and being shown and described as PARCEL "B" on a plat of the BEACH CITY AREA - FISH HAUL prepared by Benjamin Wilson, SC RLS #5424, dated January 17, 1983, and revised September 10, 1984, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 33 at Page 215. For a more detailed description as to courses, location, metes, bounds, etc. reference may be made to the above referred to plat of record.

TOGETHER with a thirty-three (33') foot easement for ingress and egress as set forth in Deed Book 459 at Page 2099 and for maintenance and utilities as set forth in Deed Book 461 at Page 1344; all as shown on the plat recorded in Plat Book 33 at Page 215 in the Office of the Register of Deeds for Beaufort County, South Carolina.

This being the same property conveyed to the within Grantor by Deed of Furman E. Jordan and Terry W. Jordan, recorded October 31, 2006 in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 2467 at Page 370.

RECEIVED

Jan 22 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS
HON. MARVIN H.
DUKES MASTER IN
EQUITY

APPELLATE CASE # 2023-000438

GEORGIA HARRISON, BARBARA HARRISON,
JOYCE ELLEN HARRISON, WILLIAM S. HARRISON, III,
STANLEY ROBERTS AND DIANA MENDHEIM INDIVIDUALLY
AND AS AGENT AND ATTORNEY IN FACT,

RESPONDENTS,

vs.

STEPHANIE LORRAINE KIRKLAND, GARY LAMONT KIRKLAND,
KIETA NICOLE WHITE, AND CHERYL KIRKLAND,

APPELLANTS.

CERTIFICATE OF COUNSEL

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

January 20, 2024

The Houston Law Firm LLC
1011 Bay Street, Suite 2A
Beaufort, SC 29902
Phone: 843-684-0211
chouston@houstonlawfirm.net
By: /s/ Charles E. Houston, Jr.
Charles E. Houston, Jr.
SC Bar # 2663 Fed. Bar # 1961
Attorney for Appellants

Record on Appeal – Page 689