

THE STATE OF SOUTH CAROLINA
IN THE Supreme COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Allison R. Lee, Circuit Court Judge

Case No. 07-CP-40-8107
Court of Appeals Opinion No. 2013-UP-237

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S.C. Supreme Court

On Petition for a Writ of Certiorari
to the South Carolina Court of Appeals

Place on the Greene Homeowners Assoc., Inc. Petitioner,

v.

W.G.R.Q., LLC, Easy Coin Laundry, Inc.,
Eva Nell Berry, and Jeffrey O. Kenney, ... Respondents.

APPENDIX

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Place on the Greene Homeowners Association, Inc.,
Respondent,

v.

W.G.R.Q., LLC, Easy Coin Laundry, Inc., Eva Nell
Berry, and Jeffrey O. Kenney, Appellants.

Appellate Case No. 2011-197186

Appeal From Richland County
Alison Renee Lee, Circuit Court Judge

Unpublished Opinion No. 2013-UP-297
Heard February 6, 2013 – Filed July 3, 2013

REVERSED

Blake A. Hewitt and John S. Nichols, both of Bluestein,
Nichols, Thompson & Delgado, of Columbia, for
Appellants.

William M. Spillane and James B. Richardson, Jr., both
of Columbia, for Respondent.

PER CURIAM: W.G.R.Q, LLC, Easy Coin Laundry, Inc., Eva Nell Berry, and Jeffrey O. Kenney, collectively, (Appellants) owners of commercial units in Place on the Greene, appeal the trial court's order enforcing a restrictive covenant. We reverse.

We hold the trial court erred in finding the Place on the Greene Homeowners Association's (HOA's) action to enjoin Appellants' violations of a restrictive covenant was not barred by laches. *Chambers of S.C., Inc. v. Cnty. Council for Lee Cnty.*, 315 S.C. 418, 421, 434 S.E.2d 279, 280 (1993) ("Under the doctrine of laches, if a party, knowing his rights, does not seasonably assert them, but by unreasonable delay causes his adversary to incur expenses or enter into obligations or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights."); *Hallums v. Hallums*, 296 S.C. 195, 198, 371 S.E.2d 525, 527 (1988) (defining laches as "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done"); *Richey v. Dickinson*, 359 S.C. 609, 612, 598 S.E.2d 307, 309 (Ct. App. 2004) ("The party asserting laches has the burden of showing negligence, the opportunity to act sooner, and material prejudice."). Appellants entered into obligations they would not have otherwise if the HOA had timely enforced the restrictive covenant. In addition, Appellants would suffer financial losses if the covenant is enforced now. We further find the HOA's delay in enforcing the restrictive covenant for two decades after the violations started is not excused by the HOA board members' attempts to appease the board member who was one of the developers and the general lack of initiative of board members.

As we find the HOA's action is barred by laches, we need not address Appellants' remaining issues. See *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating appellate court need not address remaining issues when disposition of prior issue is dispositive).

REVERSED.

HUFF, WILLIAMS, and KONDUROS, JJ., concur.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Allison R. Lee, Circuit Court Judge

Case No. 07-CP-40-8107

RECEIVED

JUL 18 2013

SC Court of Appeals

Place on the Greene Homeowners Assoc., Inc. . . . Respondent,

v.

W.G.R.Q., LLC, Easy Coin Laundry, Inc.,
Eva Nell Berry, and Jeffrey O. Kenney, ... Appellants.

PETITION FOR REHEARING

Respondent respectfully petitions for a rehearing on the following grounds:

1. The Court failed to identify the scope of its review of the circuit court's decision and thereby overlooked or misapprehended the fact that review is limited to the question of whether the circuit court abused its discretion in rejecting the defense of laches. Having failed to identify its limited scope of review, the Court then substituted its judgment for that of the circuit court on the question of whether the defense of laches was proven. The issue before the Court was not whether the Court would sustain the defense of laches if the Court were to try the case *de novo*. The issue was whether the circuit court abused its discretion in rejecting the defense, an entirely different question.

2. The Court overlooked the fact that the covenants provide as follows:

No waiver by Association. The failure of Association or of the owner of a unit to enforce any right, provision, covenant or condition which may be granted by this Master Deed or other above-mentioned documents shall not constitute a waiver of the right of the Association or of the owner of a unit to enforce such right, provision, covenant or condition in the future.

Master Deed, Art. XIX § 4, p. 23, R. 265. Having overlooked this provision of the Master Deed, the Court failed to analyze its application to the facts of the case and failed to conclude that this no-waiver provision precluded the defense of laches.

3. The Court misapprehended the evidence on the question of detrimental reliance and overlooked the fact that no such evidence was presented. The Court found that the appellants "entered into obligations they would not have otherwise if the HOA had timely enforced the restrictive covenants." There is no testimony or other evidence that the appellants entered into any obligations of any kind. The only conduct which could possibly constitute detrimental reliance was the appellants' purchase of their respective units in the first place. None of the appellants testified that they would not have purchased their units if the covenants had been enforced earlier.

There was no expert or lay testimony that the appellants or any of them paid more than fair market value for their units. Fair market value is always based upon the assumption that any and all applicable restrictions will be enforced in the future. In particular, the appellant W.G.R.Q. purchased its three units as a small part of a purchase of numerous pieces of property for an undifferentiated lump sum. No value was assigned to the purchase price of the three units.

The only detriment claimed by the appellant Kinney was that he would suffer financial loss if his bar were to be closed. This is simply another way of saying that future violation of the restriction is expected to be as profitable as past violation. This does not constitute detrimental reliance upon past failure to enforce the restriction.

In finding that the appellants would suffer financial losses if the restriction is enforced, the Court overlooked the fact that there is no expert or lay testimony of how much, if any, the fair market value of the appellants' units might be reduced if the restrictions were enforced. For example, the appellant Easy Coin claimed that it would lose a "verbal contract" for the sale of its unit if the restriction were enforced. This appellant failed to present any evidence that the "verbal contract" sales price exceeded

fair market value, or even the amount of the alleged sales price.

There is no evidence of how much the appellants profited from the failure to enforce the covenants earlier. If the appellants' violation of the covenants did in fact increase the purchase price of their units and render them more valuable, then the continued violation of the covenants resulted in greater ongoing profits from the rent derived from the units. So far from being the victims of detrimental reliance, the appellants have profited unfairly from the unlawful operation of businesses in their units for the entire time that the covenants were not enforced.

Detrimental reliance requires *reliance*. Reliance requires knowledge. The Court overlooked the absence of any evidence that the appellants W.G.R.Q., LLC, Easy Coin Laundry, Inc., or Kenney knew of the restrictions, in which case they could not possibly have relied upon the Association's failure to enforce them earlier. The appellant Berry did have actual knowledge of the restrictions and gambled that neither the Association nor another apartment owner would seek to enforce the restrictions thereafter. This was not detrimental reliance but a calculated risk.

4. The Court overlooked the fact that each day that the restrictive covenant is violated is a separate and continuing violation of State law. It is the public policy of this State, adopted by the General Assembly, that condominium covenant restrictions be *strictly complied with*.

Each co-owner shall comply strictly . . . with the covenants, conditions and restrictions set forth in the Master Deed Failure to comply with any of the same shall be grounds for . . . injunctive relief

S.C. Code Ann. § 27-31-170. As was the case in *Kneale v. Bonds*, 317 S.C. 262, 452 S.E.2d 840 (Ct. App. 1994):

Both the [condominium] By-Laws and the Horizontal Property Act provide that the Master Deed should be strictly enforced.

Id. at 267, 452 S.E.2d at 842. This is not a case of a structure built in violation of a restriction, with no further violations. This is a case of ongoing, fresh violations of State

law each day that these bars and restaurants operate.

For these reasons the respondent petitions the Court to rehear the case and to find that the circuit court did not abuse its discretion in rejecting the defense of laches.

Respectfully submitted,

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July 18, 2013.

The South Carolina Court of Appeals

Place on the Greene Homeowners Association, Inc.,
Respondent,

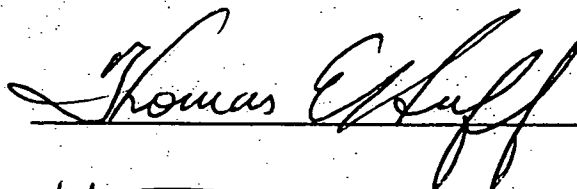
v.

W.G.R.Q., LLC, Easy Coin Laundry, Inc., Eva Nell
Berry, and Jeffrey O. Kenney, Appellants.

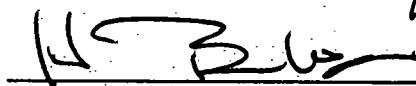
Appellate Case No. 2011-197186

ORDER

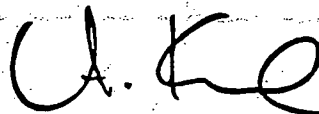
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



J.

Columbia, South Carolina

cc:

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Blake Alexander Hewitt
John S. Nichols

FILED

August 22, 2013

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison R. Lee, Circuit Court Judge

Case Nos. 2007-CP-40-8107 through -8110

Place on the Greene Homeowners
Association, Inc., ... Respondent,

v.

W.G.R.Q., LLC, Easy Coin Laundry, Inc.,
Eva Nell Berry, and Jeffrey O. Kenney, ... Appellants.

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SCANNED

RICHLAND COUNTY
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JEANETTE E. MCBRIDE
C.C.P. & G.S.

Rec'd
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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Place on the Greene Homeowners
Association, Inc.,

Civil Action No.: 2007-CP-40-8107
2007-CP-40-8108
2007-CP-40-8109
2007-CP-40-8110

Plaintiff,

v.

ORDER

W.G.R.Q., LLC, Easy Coin Laundry, Inc.,
Eva Nell Berry, and Jeffrey O. Keeney,

Defendants.

This matter came before the Court by way of a non-jury trial on April 9, 2009. Plaintiff Place on the Greene Homeowners Association, Inc. ("HOA") was represented by William M. Spillane, Esquire. Defendant Easy Coin Laundry, Inc. ("Easy Coin") was represented by Jamie M. Best, III, Esquire and Defendants W.G.R.Q., LLC, Eva Nell Berry, and Jeffrey ("Jeff") O. Keeney were represented by Brian Boger, Esquire. Testimony was heard from the following witnesses: Karen Greiner, HOA President and owner of a residential unit at Place on the Greene; Larry Phipps, former HOA board member and owner of a residential unit at Place on the Greene; Laura Nichols, former HOA board member and owner of Landmark Resources, LLC; the managing company of Place on the Greene; Lloyd Reese, owner of Blue Cactus Café; Blair Monroe, owner of Unit A; Jeff Keeney, owner of Unit B; Marsha Berry, proprietor of Tavern on the Greene Restaurant; and David Rodarte, managing partner of W.G.R.Q., LLC.

BACKGROUND

This action was commenced by the filing of a Summons and Complaint against each Defendant on December 4, 2007. In its Complaint, HOA seeks a permanent injunction preventing Defendants from operating their businesses in violation of restrictive covenants contained in the Master Deed plus enforcement costs and attorney's fees. On January 17, 2008, Defendants W.G.R.Q., LLC, Eva Nell Berry, and Jeffrey O. Keeney filed their Answers and Counterclaims asserting affirmative defenses including waiver, equitable estoppel, and laches and asserting a counterclaim against Plaintiff for the recovery of attorney's fees. Defendant Easy Coin filed its Answer and Counterclaim on January 9, 2008 generally denying the allegations of

and
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the Complaint, asserting defenses of waiver, equitable estoppel, and statute of limitations and counterclaiming against Plaintiff for the recovery of attorney's fees. Plaintiff HOA filed its Reply to Defendants' Counterclaims on January 26, 2009 generally denying the equitable defenses and specifically denying the allegations of the counterclaims. Upon consent of the parties, these four cases were consolidated for purpose of trial.

FINDINGS OF FACT

After considering all of the testimony presented by the witnesses together with the exhibits submitted the Court makes the following findings of fact:

1. Place on the Greene is a South Carolina Horizontal Property Regime ("Regime") established under S.C. Code Ann. §§ 27-31-10 through 27-31-300, et seq. ("South Carolina Horizontal Property Act").
2. Plaintiff Place on the Greene Homeowners Association, Inc. ("HOA") is a non-profit corporation organized and existing under the laws of the State of South Carolina. HOA is duly authorized to manage the affairs and enforce the restrictive covenants and By-Laws of the Regime.
3. The Regime was established by the filing and recording of the Master Deed on September 14, 1984 in the Office of the Register of Deeds for Richland County in Deed Book D-711 at Page 1. A first amendment to the Master Deed was executed and recorded on September 20, 1984 in Deed Book D-711 at Page 673. The first amendment recorded the "as built" survey of the project. No other amendments to the Master Deed have been filed.
4. Defendants are record owners of seven of the eight commercial condominium units on the ground floor of the Regime property. Units A, B, C, D, F, G, and H are the subject of this suit.
5. The Master Deed subjects the Regime's residential and commercial condominium units to covenants, restrictions, uses, limitations, easements, and obligations.
6. Article X, Section 3 of the Master Deed restricts the use of the commercial condominium units in the Regime to "general office space and limited service establishments." Article X, Section 3 further provides:

The use shall comply with all ordinances and zoning regulations promulgated by the City of Columbia and the Rules and Regulations of the Board of Directors. The Rules and Regulations, among other things, however, shall provide that no restaurant or

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food establishment engaged in the preparation or delivery of food, no pool hall, game room, bar, lounge, or retail shop that relies on a volume of walk-in patrons shall be permitted.

7. Each of the commercial condominium units is currently being operated as a restaurant, bar or other retail business. Unit A, owned by Easy Coin Laundry, Inc., is currently leased to the Pita Pit Restaurant. Unit B, owned by Jeff Keeney, is being operated as Tavern on the Greene Bar. Units C and D, owned by Eva Nell Berry, are being operated as Tavern on the Greene Restaurant. Unit F, owned by W.G.R.Q., LLC, is being operated as Five Points Tobacco store. Units G and H, owned by W.G.R.Q., LLC, are being operated as Blue Cactus Café.

8. On June 25, 2007, Plaintiff sent each Defendant a cease and desist letter informing Defendants that they were operating their businesses in violation of use restrictions stated in the Master Deed and demanding that the use restriction violations cease. This letter informed Defendants that if they did not comply with the HOA's demand, the HOA would pursue legal action to enforce the restrictions.

9. Defendants have continued to operate their businesses in violation of the Master Deed.

10. The prohibited businesses and their predecessors have operated these commercial condominium units in violation of the restrictions for an extended period of time.

Unit A was deeded by the Developer to Craig B. Stoneburner on November 8, 1985. Unit A was vacant from 1985 until 1988. Easy Coin Laundry, Inc. operated in Unit A from 1988 to 1999 and purchased the unit from Mr. Stoneburner in 1990. Easy Coin closed in 1999 and the Pita Pit Restaurant opened in 2000.

Unit B was deeded by the Developer to Craig B. Stoneburner on November 8, 1985. Mr. Stoneburner sold Unit B to EHM Investments, LLC on February 24, 2004. EHM Investments, LLC sold Unit B to Jeff Keeney in November 30, 2005. Tavern on the Greene Bar operated in Unit B at the time of the hearing.

Units C and D were deeded from the Developer to Clarence D. Bain, III on October 29, 1984. Initially, a hair salon operated in the units, but it closed after a short period and the units remained vacant until 1991. There were two lender foreclosures. Eva Nell Berry was deeded a one-third (1/3) interest in Units C and D on December 12, 2002 and acquired full title to the property in 2006. Tavern on the Greene Restaurant operated in Units C and D at the time of the hearing.

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Unit F was deeded from the Developer to Roy A. Powell, Jr. on November 8, 1985. Powell sold the unit to Defendant W.G.R.Q., LLC in May 2002. Prior to 2002, the Sub Pub Restaurant operated in Unit F. Five Points Tobacco operated in Unit F at the time of the hearing.

Units G and H were deeded from the Developer to Roy A. Powell on November 8, 1985. In May 2002, W.G.R.Q., LLC purchased Units G and H from Mr. Powell. The Blue Cactus Café has operated in Units G and H before 2002.

11. All commercial units were conveyed by the Developer subject to, among other things, the provisions of the Master Deed and all exhibits attached.
12. At least one restaurant operated in violation of the restrictions as early as 1995. According to the minutes from the HOA Annual Meeting held on March 24, 1995, the meeting was held at Bo-D's Restaurant, a restaurant "located in the building."
13. Laura Nichols served on the HOA Board from 1985 to 1995. She testified the board members knew the commercial condominium units were being operated in violation of the restrictive covenants. Ms. Nichols testified that the Board did not approve the violations but the Board did not believe it could stop the violations.
14. The operation of Defendants' businesses in violation of the restrictive covenants has caused problems that the HOA had to address. Mr. Larry Phipps, former HOA board member and owner of a residential unit, testified these problems include security issues, health concerns, safety concerns, unfair appropriation of the water bill, noise, loitering, and litter. Employees of the restaurants leave the back door unlocked or slightly ajar and this allows vagrants access to the building. The trash generated by the restaurants is excessive and adds to the pest problem in the building. The increased foot traffic and loitering outside the ground floor generate safety concerns and contribute to the noise problem. He testified that the HOA bears the cost of the building's water bill and the amount of the bill has increased due to the operation of the restaurants.
15. Ms. Karen Greiner, former HOA President, testified the HOA received complaints from residents and all of the resident complaints trace back to the operation of businesses in the commercial condominium units. Mr. Blair Monroe, owner of Unit A, received no complaints from homeowners about the Pita Pit Restaurant prior to the 2007 cease and desist letter sent by the HOA.

16. Mr. David Rodarte, managing partner of W.G.R.Q., LLC, did not know prior to 2007 the operation of businesses in the commercial units was a concern for the HOA. Ms. Marsha Berry, owner of Tavern on the Greene Restaurant, did not know her business operated in violation of the restrictions until June 2007 when she received the cease and desist letter. Mr. Jeff Keeney, owner of Tavern on the Greene Bar, received no notice that his business was operating in violation of the restrictions from the HOA until 2007.

17. On several occasions members of the Board discussed amending the Master Deed to lift the restaurant and bar restriction. These amendments were never approved or filed.

18. Article XVIII of the Master Deed provides that the deed "may be amended by the vote of at least seventy-five (75%) percent of the total percentage interest of all co-owners, cast in person or by proxy at a meeting duly held in accordance with the provisions of the By-Laws"

19. In 1985, an amendment to the Master Deed was proposed. The proposed amendment would have removed the ban on restaurants, bars, food delivery establishments, game rooms, pool hall, and lounges from Article X, Section 3 of the Master Deed and would have allowed the Board of Directors to approve the operation of a particular business in the commercial condominium units at its discretion.

20. On November 25, 1985, the HOA's Property Manager wrote the residential unit owners informing them of a HOA members' special meeting to be held by absentee ballot for the purpose of voting on the proposed Master Deed Amendment. Despite the attempt to revise the Master Deed in 1985, the Master Deed was not amended.

21. An annual HOA meeting was held on March 21, 1991. The minutes of this meeting state that Beau Powell, HOA Board Member, offered a motion to amend the By-laws to allow the Board at its discretion to allow uses prohibited by the Master Deed. The minutes reflect that a special election would be held because less than 75% of the owners were present as required to amend the Master Deed.

22. Several HOA meetings have been held since 1991. The minutes from the HOA Annual Meetings in March 1993 and March 1995 do not mention any proposed amendments to lift the restaurant restriction. The notice of the 2003 HOA Annual Meeting sent to owners does not mention amendments to the Master Deed among those listed as topics of discussion. The minutes from the 2003 HOA Annual Meeting were not provided to the Court.

23. In 2007, Ms. Berry inquired about an amendment to lift the restaurant restriction but was told that an amendment would be unlikely because it was difficult to encourage residents to attend the homeowner's meeting required to amend the Master Deed.

24. Article XIX, Section 1 provides that "[f]ailure to comply with any of the terms of this Master Deed or other restrictions and regulations contained in the Articles of Incorporation, By-Laws of Association, or its rules and regulations, shall be grounds for relief which many include . . . injunctive relief." Article XIX, Section 3 permits the HOA to recover reasonable attorney's fees "[i]n any proceeding arising because of an alleged default by the owner of any unit."

25. Article XIX, Section 6 states "the failure of the Grantor . . . to enforce any right, privilege, covenant or condition which may be granted to them . . . by this Master Deed . . . shall not constitute waiver of the right . . . to enforce such right, provision, covenant or condition in the future."

CONCLUSIONS OF LAW

Based upon the above findings of fact, the court makes the following conclusions of law:

1. "A restriction on the use of property must be created in express terms or by plain and unmistakable implication, and all such restrictions are to be strictly construed, with all doubt resolved in favor of the free use of property." Taylor v. Lindsey, 332 S.C. 1, 498 S.E.2d 862 (1998). Words of a restrictive covenant will be given the common, ordinary meaning attributed to them at the time of their execution. Id.

2. The Regime established the Master Deed and subjected all residential and commercial units to the restrictive covenants.

3. Article X, Section 3 of the Master Deed expressly restricts the use of the commercial condominium units to "general office space and limited service establishments" and prohibits the operation of restaurants/bars, establishments engaged in the preparation of food, and retail shops that rely on a volume of walk-in patrons.

4. The restrictions apply to the commercial units and the Defendants are operating or leasing their property to businesses that operate in violation of Article X, Section 3.

5. Property owners are charged with constructive notice of any restriction properly recorded in their chain of title. Harbison Community Ass'n, Inc. v. Mueller, 319 S.C. 99, 103, 459 S.E.2d 860, 863 (Ct. App. 1995). Each conveyance to the commercial unit property owners subjected the property to the provisions of the Master Deed. The landowners operating the seven

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commercial units were put on constructive notice of the contents and restrictions of the Master Deed.

6. The Master Deed provides that the owners of each unit shall be governed by and shall comply with the provisions of the Master Deed, the Articles of Incorporation, and the By-Laws. Article XIX, Section 1 states that "[f]ailure to comply with any of the terms of [the] Master Deed or other restrictions and regulations" constitutes grounds for relief including an action for monetary damages or injunctive relief.

7. Generally, equitable relief is available only when there is no adequate remedy at law. Milliken & Co. v. Morin, 386 S.C. 1, 685 S.E.2d 828 (Ct. App. 2009). Restrictive covenants are construed like contracts and may give rise to actions for breach of contract. Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 361, 628 S.E.2d 902, 913 (Ct. App. 2006). A party seeking a remedy for breach of a restrictive covenant may ask for money damages at law or an injunction in equity. Marathon Finance Co. v. HHC Liquidation Corp., 325 S.C. 589, 608, 483 S.E.2d 757, 768 (Ct. App. 1997) (citing Gouveia v. Tazbir, 37 F.3d 295 (7th Cir. 1994)).

8. A permanent injunction may be granted to prevent the violation of restrictive covenants. Hunnicut v. Rickenbaker, 268 S.C. 511, 234 S.E.2d 887 (1977). An action to enforce restrictive covenants by injunctive relief is an action in equity. Seabrook Is. Prop. Owners Ass'n v. Marshland Trust, Inc., 358 S.C. 655, 661, 596 S.E.2d 380, 383 (Ct. App. 2004). The decision to grant an injunction is ordinarily left to the sound discretion of the trial court. County of Richland v. Simpkins, 348 S.C. 664, 668, 560 S.E.2d 902, 904 (Ct. App. 2002).

9. In determining whether to grant an injunction to enforce restrictive covenants, a court must balance the equities of the parties. Sea Pines Plantation Co. v. Wells, 294 S.C. 266, 363 S.E.2d 891 (1987) (holding a court must balance the equities once it finds a restrictive covenant has been violated). Although a serious threat of irreparable injury usually must be shown to obtain an injunction, irreparable injury is not an independent requirement for obtaining a permanent injunction. 27 S.C. Jur. Injunctions § 12.

10. Courts should also consider equitable doctrines when determining whether to enforce a restrictive covenant and enjoin a landowner from using land in a manner that violates the covenant. Buffington v. T.O.E. Enterprises, 383 S.C. 388, 680 S.E.2d 289 (2009).

11. Property owners possess a right to be free from activity that interferes with the use and enjoyment of their property. AJG Holdings, LLC v. Dunn, 382 S.C. 43, 52, 675 S.E.2d 505, 509 (Ct. App. 2009) (holding subdivision property owners established irreparable harm required for preliminary injunction where property owners showed business' violation of restrictive covenants interfered with their right to the use and enjoyment of their property). Plaintiff provided evidence that Defendants' activities interfere with the owners' right to use and enjoy their property. At trial, Larry Phipps testified that the operation of Defendants' restaurants and businesses in violation of the restrictions raised security, health, and safety concerns that the HOA had to address. Laura Nichols received numerous complaints from residents regarding the Defendants' businesses. Despite multiple discussions to amend the Master Deed to lift the restriction on restaurants, food establishments, bars and lounges, the Board never amended the Master Deed. The Master Deed subjecting the units to the restrictions was in each Defendant's chain of title. Defendants were put on constructive notice of the restrictions when they purchased the property or leased the units.

12. The issuance of a permanent injunction would require the Defendants to close the businesses they currently operate in the commercial condominium units. Defendants failed to prove that enforcing the restrictions would result in any hardship to them, other than loss of revenue. While the loss of revenue may be a hardship, each owner had notice of the restrictions in the Master Deed and there is no evidence that any of the owners determined whether the business could legally operate. Blair Monroe, owner of Unit A, testified in 2009 that the lease to Pita Pit Restaurant expired in November 2010 and he would suffer economic loss if a permanent injunction was granted. Jeff Keeney testified that he derives his income from the operation of Blue Cactus Café at Units G and H and would be financially affected by the issuance of a permanent injunction. Lloyd Reese, owner of Blue Cactus Café, testified he derives his income from the operation of his restaurant. David Rodarte, managing partner of W.G.R.Q., LLC testified that it would be unjust to enforce the restrictions 20 years after the businesses began operating in violation of the Master Deed. al
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13. Defendants have asserted equitable estoppel as a defense to Plaintiff's request for relief. Defendants contend that Plaintiff should be estopped from enjoining Defendants' use of the property because Plaintiff represented it had no desire to enforce the restrictions and observed

the violations of the restrictions for 15 to 20 years and made no objection while allowing Defendants to "invest time and money into their units and ventures."

14. South Carolina law recognizes the doctrine of equitable estoppel. Equitable estoppel applies if a person, by his actions, conduct, words, or silence which amounts to a representation, or a concealment of material facts, causes another to alter his position to his prejudice or injury. Rushing v. McKinney, 370 S.C. 280, 633 S.E.2d 917 (Ct. App. 2006). To establish the defense of equitable estoppel, the defendant must prove the following by the preponderance of the evidence: (1) the plaintiff engaged in conduct amounting to a false representation or concealment of facts, or conduct calculated to convey the impression that the facts are different or inconsistent with those the party subsequently attempts to assert; (2) the plaintiff had the intention or expectation that the conduct will be acted upon by the defendant; (3) the plaintiff possessed knowledge, actual or constructive, of the real facts; (4) the defendant lacked the knowledge and the means of knowledge of the truth as to the facts in question; (5) the defendant relied upon the conduct of the plaintiff; and (6) the defendant changed his position to his prejudice. Brading v. County of Georgetown, 327 S.C. 107, 114, 490 S.E.2d 4, 7 (1997).

15. Defendants claim Plaintiff's inaction or silence amounts to a representation that it would not enforce the restrictions and Defendants relied on this representation to their prejudice. Estoppel by silence arises when one party observes another dealing with his property in a manner inconsistent with his rights and makes no objection while the other party changes his position based on the party's silence. Queen's Grant II Horizontal Prop. Regime v. Greenwood Development Corp., supra, at 358, 628 S.E.2d at 911.

16. The Defendants have failed to prove that Plaintiff is barred from asserting its claim on the basis of equitable estoppel. Defendants contend that Plaintiff represented it had no desire to enforce the restrictions given its inaction for numerous years. Testimony was presented that the HOA did not bring suit to enforce the restrictions until 2007. The HOA concedes it delayed in bringing suit to enforce the restrictions for various reasons including "budget restraints, other litigation against the Developer related to stucco, a necessary special assessment for roof replacement, confusion as to its rights, confusion because of Property Management company changeovers, naiveté on the part of volunteers, uncompensated inexperienced members, pressure from and misguidance by commercial unit owning member(s) of the Board, and a high Board member turnover rate." Plaintiff admits it knew restaurants were being operated in violation of

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the restrictions as early as 2000. Despite attempts to amend the restrictions, seventy-five percent (75%) of the homeowners never agreed to amend the Master Deed to lift the prohibition on restaurants.

17. Defendants have failed to prove they lacked knowledge of the facts and relied upon HOA's inaction in enforcing the restrictions to their prejudice. Blair Monroe, Jeff Keeney, Marsha Berry, and David Rodarte testified they first learned of the use restrictions in 2007. David Rodarte testified that it would be unjust to enforce the restrictions 20 years after restaurants began operating in the commercial condominium units. The Master Deed appears in each Defendants' chain of title and subjects the units to the restrictions. Defendants had notice of the restrictive covenants when they were deeded the property or when they entered into a lease on the property and operated their businesses at their own peril. They relied on the previous course of dealing but no representations were made that the HOA would not enforce the restrictive covenants. Defendants did not change their position in reliance on the inaction of the Plaintiff. Defendants did not make any significant improvements to the property or enter into any long term commitments, leases, or contracts to operate their businesses in the commercial units. Defendants have failed to prove they lacked knowledge of the facts and that they relied on and were prejudiced by Plaintiff's inaction in enforcing its rights.

18. Defendants also assert laches as an affirmative defense to the injunctive relief sought by HOA. Laches is the delay in asserting a legal right for an unreasonable length of time in circumstances permitting assertion of the right and signifying abandonment or surrender of the right by one who later seeks to enforce it. Strickland v. Strickland, 375 S.C. 76, 650 S.E.2d 465 (2007): The party seeking to establish laches must prove the following: (1) a delay; (2) that was unreasonable under the circumstances; and (3) prejudice. Robinson v. Estate of Harris, 389 S.C. 360, 698 S.E.2d 801 (2010). A party's delay is not a mere lapse of time but negligence and an opportunity to have acted sooner. Chambers of S.C., Inc. v. County Council for Lee County, 315 S.C. 418, 434 S.E.2d 279 (1993). A party may be prejudiced from unreasonable delay after incurring expenses, entering into obligations, or otherwise detrimentally changing his position. Skipper v. Perrone, 382 S.C. 53, 674 S.E.2d 510 (Ct. App. 2009).

19. Whether a plaintiff is barred by laches is to be determined in light of the circumstances in each particular case. Rabon v. Mali, 289 S.C. 37, 40, 344 S.E.2d 608, 610 (1986). A party is

not necessarily barred from enforcing restrictive covenants where a previous deviation of the restrictions has been allowed. Id.

20. Most Defendants have operated their businesses in violation of the restrictive covenants for at least 10 years. Unit A was a coin operated laundry from 1988 to 1999 before becoming the Pita Pit Restaurant in 2000. Units C and D were operated as Tavern on the Greene Restaurant beginning in 1999, and Tavern on the Greene Bar (Unit B) opened in 2005. Prior to 2002, Unit F was operated as the Sub Pub restaurant. Unit F is currently leased by Five Points Tobacco Store. Prior to 2002, Units G and H were operated as Blue Cactus Café. However, in 2007, each owner had actual knowledge of the HOA's intent to enforce its rights and had actual notice it was in violation of the restrictions.

21. The HOA concedes it delayed in bringing suit to enforce the restrictions for several reasons including budget restraints, the naiveté of the Board, and involvement in other litigation. The HOA knew or had reason to know in 2000 that the property was being put to use in violation of the restrictive covenants. The HOA did not file suit to enforce the restrictive covenants until 2007.

22. Although Defendants have proved that the HOA delayed in asserting its rights, Defendants failed to prove this delay was unreasonable under the circumstances and any delay was to their prejudice. Blair Monroe, Jeff Keeney, Marsha Berry, and David Rodarte testified they did not receive notice or any complaints of the restriction violations until they received the demand letter in June 2007. They had constructive notice of the restrictions in their deeds. At trial, Blair Monroe, owner of Unit A testified that the lease to Pita Pit Restaurant expired in November 2010 and he would suffer economic loss if a permanent injunction was granted. Jeff Keeney testified that he derives his income from the operation of Blue Cactus Café at Units G and H and would be financially affected by the issuance of a permanent injunction. David Rodarte testified it would be unjust for the HOA to enforce the restrictions years after the restaurants began operating in violation of the Master Deed. No testimony was presented that the restaurant owners or landlords made any significant improvements to the property. Defendants were put on constructive notice of the restrictions contained in the Master Deed. Defendants presented no other evidence that they would be prejudiced by the issuance of the permanent injunction other than that they would be financially affected. Defendants want to rely on their ignorance of the contents of the Master Deed as evidence they were misled. One cannot

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avoid the contents of the document by failing to read it. Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 1993) (a party who signs a contract or other written document cannot avoid the effect of the document by claiming he did not read it). Thus, Defendants knew they operated in violation of the restrictions and were not lulled into a false sense of security. They were on notice to inquire about the restrictions. These circumstances are not sufficient to find that Plaintiff's delay in seeking relief was unreasonable under the circumstances and to the prejudice of Defendants. The Plaintiff is not barred by laches from seeking injunctive relief.

23. Defendants contend Plaintiff waived its right to enforce the restrictions. Waiver is the "voluntary and intentional relinquishment or abandonment of a known right." Strickland v. Strickland, 375 S.C. 76, 650 S.E.2d 465 (2007).

24. Generally, the party claiming waiver must show that the party against whom waiver is asserted possessed, at the time, actual or constructive knowledge of his rights or of all the material facts upon which his rights depended. Heritage Federal Sav. & Loan v. Eagle Lake and Golf Condominiums, 318 S.C. 535, 458 S.E.2d 561 (Ct. App. 1995). Waiver may be express or implied by a party's conduct or actions inconsistent with the continued assertion of a right. Parker v. Parker, 313 S.C. 482, 443 S.E.2d 388 (1994); Provident Life and Acc. Ins. Co. v. Driver, 317 S.C. 471, 451 S.E.2d 924 (Ct. App. 1994).

25. Defendants failed to prove that HOA expressly waived its right to enforce the restrictions. Defendants rely on HOA's inaction to establish that HOA impliedly waived its right to enforce the restrictions. The "no waiver" clause in Article XIX, Section 4 of the Master Deed provides that the Association's failure to enforce any right, covenant or condition shall not constitute a waiver of the Association's right to enforce such in the future. The "no waiver" clause in the Master Deed clearly and expressly reserves the right of the HOA or any unit owner to enforce a right, provision, covenant or condition. This clause is enforceable and Plaintiff is not barred from seeking injunctive relief on the basis of waiver.

26. In its Answer, Defendant Easy Coin Laundry asserts statute of limitations as a defense to the relief sought by Plaintiff. Statute of limitations does not apply to actions in equity. Dixon v. Dixon, 362 S.C. 388, 608 S.E.2d 849 (2005) (citing Anderson v. Purvis, 220 S.C. 259, 67 S.E.2d 80 (1951) (holding that the Court's power to do equity transcends the limitations of the statute of limitations)). Because HOA's action to enforce the restrictions by injunctive relief is an action in equity, the statute of limitations is inapplicable.

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27. Plaintiff and Defendants seek to recover attorney's fees and costs incurred. In their Answers and Counterclaims, each Defendant asserts a counterclaim for attorney's fees against Plaintiff.

28. Generally, a party cannot recover attorney's fees unless authorized by contract or statute. Historic Charleston Holdings, LLC v. Mallon, 381 S.C. 417, 673 S.E.2d 448 (2009).

29. Plaintiff contends Defendants' operation of their businesses in violation of the restrictions constitutes a default entitling them to attorney's fees and costs under Article XIX, Section 3. Article XIX provides that owners of each unit are governed by the provisions of the Master Deed and a default by the owner entitles HOA to the relief outlined in Article XIX. Article XIX, Section 3 of the Master Deed provides that "[i]n any proceeding arising because of an alleged default by the owner of any unit, the Association, if successful, shall be entitled to recover the costs of the proceedings, and such reasonable attorney's fees as may be determined by the Court, but in no event shall the owner of any unit be entitled to attorney's fees." Defendants urge the Court to construe Article XIX, Section 3 as a "loser pays" provision and grant the Defendants attorney's fees and costs in the event the Defendant prevails. In addition, Defendants Eva Berry, W.G.R.Q., LLC, and Jeff Keeney contend Article XIX, Section 3 is a clause of adhesion that should not be enforced.

30. The Master Deed does not specifically define what actions constitute default. "Default" has been defined as the omission or failure to perform a legal or contractual duty. Black's Law Dictionary (9th ed. 2009). Here, Defendants owed a legal/contractual duty to refrain from operating a business in violation of restrictive covenants. Defendants' actions constitute default for purposes of Article XIX.

31. An adhesion contract is a standard form contract offered on a "take-it-or-leave-it" basis with terms that are not negotiable. Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 644 S.E.2d 663 (2007) (citing Munoz v. Green Tree Fin. Corp., 343 S.C. 531, 541, 542 S.E.2d 360, 365 (2001)). Article XIX, Section 3 is part of the Master Deed establishing Place on the Greene as a Horizontal Property Regime under South Carolina law. The clause is not the type of provision recognized as unenforceable. Simpson v. MSA of Myrtle Beach, *supra*, at 669-70, 644 S.E.2d at 25-28 (holding that arbitration clause contained in an automobile trade-in and sales contract formed with automobile dealership was part of an adhesion contract).

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32. Plaintiff submitted an Affidavit of Attorney's Fees showing incurred costs in the amount of \$1,269.42. Rule 54(d) generally permits a prevailing party to recover cost including all filing and recording fees, all sheriffs' fees incurred for service, and all service of process fees and costs. Plaintiff is entitled to recover costs in the amount of \$1,269.42.

33. Plaintiff submitted an Affidavit of Attorney's Fees and invoices showing incurred fees in the amount of \$7,260. South Carolina case law delineates several factors relevant to determining the reasonableness of an award of attorney's fees. Such factors include the following: (1) the nature, extent, and difficulty of the legal services rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the beneficial results accomplished; and (6) the fee customarily charged in the locality for similar legal services. Blumberg v. Nealco., Inc., 310 S.C. 492, 494, 427 S.E.2d 659, 660 (1993) (citing Collins v. Collins, 239 S.C. 170, 122 S.E.2d 1 (1961)); Clardy v. Bodolosky, 383 S.C. 418, 428, 679 S.E.2d 527, 532 (Ct. App. 2009) (citing Jackson v. Speed, 326 S.C. 289, 307, 486 S.E.2d 750, 759 (1997)). According to his Affidavit, Mr. Spillane spent approximately 48.4 hours preparing for trial, participating in trial, and drafting post-trial submissions in this matter. Mr. Spillane has practiced law for more than 23 years and charged the Plaintiff a rate of \$150 per hour. In light of these factors, attorney's fees and costs in the amount of \$8,529.42 are reasonable.

34. Plaintiff is entitled to recover \$1,269.42 in costs and \$7,260 in attorney's fees collectively against all Defendants.

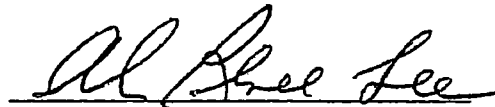
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ORDER

Based upon the foregoing, it is hereby **ORDERED** that Plaintiff's claim for injunctive relief to enforce the restrictive covenants is **GRANTED**; and

IT IS FURTHER ORDERED that Plaintiff is entitled to recover costs in the amount of \$1,269.42 and attorney's fees in the amount of \$7,260. Defendants are jointly and severally liable for the attorney's fees and costs.

AND IT IS SO ORDERED.



ALISON RENEE LEE
Presiding Judge

July 1, 2011
Columbia, South Carolina

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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Place on the Greene Homeowners
Association, Inc.,)

Case No.: 2007-CP-40-

Plaintiff)

vs.)

COMPLAINT
(Non-Jury)

W.G.R.Q., LLC,)

Defendant.)

2007 DEC -4 PM 1:52
BARBARA A. SCOTT
C.C.C. & S.

The Plaintiff, complaining of the Defendant herein, would respectfully show the Court:

1. The Plaintiff, Place on the Greene Homeowners Association, Inc. (hereinafter "Association"), is a South Carolina non-profit corporation and is duly authorized to manage the affairs and enforce the restrictive covenants and By-Laws of Place on the Greene Horizontal Property Regime (hereinafter "Regime"). The Plaintiff's place of business is Richland County, South Carolina.
2. Place on the Greene is a South Carolina Horizontal Property Regime established under the South Carolina Horizontal Property Act (Sections 27-31-10 through 27-31-300 Code of Laws of South Carolina, as amended).
3. The Regime was established by the filing and recording of the Regime's Master Deed and By-Laws on September 14, 1984, in the Office of the Register of Deeds for Richland County in Book D-711, at Page 1. A first amendment to the Master Deed dated September 20, 1984, was recorded on September 20, 1984, in Deed Book D-711 at Page 673.
4. The Master Deed subjected the Regime's residential and commercial units to covenants, conditions, restrictions, uses, limitations, easements and

obligations—all in furtherance of a plan for the improvement of the Regime property. These covenants and restrictions run with the land and bind any person having at any time any interest or estate in any Unit.

5. The Plaintiff Association is charged with the responsibility to enforce any right, provision, covenant, restriction or condition of the Master Deed and By-Laws.
6. The Defendant is the record owner of commercial condominium units in the Regime. The units are more specifically described as:

Units F, G, and H in the PLACE ON THE GREENE HORIZONTAL PROPERTY REGIME located in the City of Columbia, County of Richland, State of South Carolina, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act (Section 27-31-10, et seq. S.C. Code Ann. (1976), as amended) by Master Deed dated September 12, 1984 and recorded in the Office of the RMC for Richland County in Deed Book D-711 at Page 1, et seq. Which units are shown on the Building Plans prepared for Place on the Greene by Comprehensive Architects and attached to the Master Deed and incorporated herein by reference and made a part hereof. A first amendment to said Master Deed was dated September 20, 1984 and recorded September 20, 1984 in Deed Book D-711 at Page 673

TMS Numbers: Unit F- 11385-01-03
Unit G- 11385-01-02
Unit H- 11385-01-01

These units shall hereinafter be referred to as the "Property."

7. Upon information and belief, the Defendant is South Carolina Limited Liability Company, with its principal place of business in Richland County, South Carolina.
8. The Property, the enforcement of restrictions against which is the subject of this action, is located in Richland County, South Carolina.

**FOR A FIRST CAUSE OF ACTION
(Permanent Injunction)**

9. The Plaintiff repeats the allegations of paragraphs one (1) through eight (8) as if fully stated verbatim herein.
10. Article X, Section 3 of the Master Deed restricts the use of the commercial condominium units in the Regime. Each unit is restricted to general office space and limited service establishments. The owners and his agents, servants, invitees, and tenants are bound by those restrictions. The units' uses are further restricted by the Rules and Regulations of the Board of Directors of the Plaintiff corporation. The Rules and Regulations, among other things, however, shall provide that no restaurant or establishment engaged in the preparation or delivery of food, no pool hall, game room, bar, lounge, or retail shop that relies on a volume of walk-in patrons shall be permitted.
11. In contravention of the Master Deed, the Defendant has allowed the operation of restaurants and /or bars, doing business by the names of "Subway, Subpub" and "Blue Cactus Café", on the Property. The restaurant/bar and/or café business activity on the Property is in direct violation of the covenants of the Master Deed and constitutes an event of default thereunder by the Defendant.
12. Upon information and belief, the Defendant, as Landlord, has profited from the existence and continuation of the restricted/prohibited activity on the Property.
13. The Plaintiff has informed the Defendant of these restriction violations on the Property and has made demand on the Defendant that the prohibited activity

cease and desist. But, the Defendant has not stopped the prohibited activity and, therefore, the Plaintiff must bring this legal action to enforce the covenants and stop the violation.

14. The Plaintiff is informed and believes it is entitled to an Order of a permanent injunction against the Defendant enjoining the continuance of the restricted and prohibited activity by the Defendant and/or its agents or tenants.

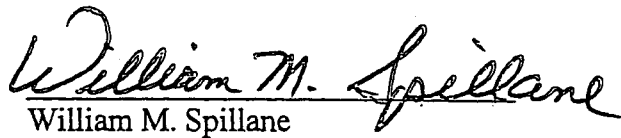
15. Article XIX, Sections 1 and 3 of the Master Deed further states that failure to comply with its terms or other rules and regulations or By-Laws of the Plaintiff Association shall be grounds for relief which may include an action for injunctive relief which relief may be sought by the Plaintiff association . In any proceeding arising because of an alleged default by the owner of any unit, the Association, if successful, shall be entitled to recover the costs of the proceedings, and such reasonable attorney's fees as may be determined by the Court.

16. The Plaintiff believes it is entitled to an Order of the Court awarding Plaintiff judgment against the Defendant for its costs and reasonable attorney's fees in pursuit of this action against the Defendant.

WHEREFORE THE PLAINTIFF PRAYS that the Court:

1. Issue a Permanent Injunction against the Defendant prohibiting the current restaurant/bar/café business activity and similar comparable activity (prohibited by the Covenants of the Master Deed) from being conducted on or about the Property.

2. Award the Plaintiff Judgment against the Defendant for the Plaintiff's costs of this action plus reasonable attorney's fees.
3. Grant such other relief as is just, equitable and proper.


William M. Spillane

S.C. Bar No. 5284

Attorney for Plaintiff,
Place on the Greene Homeowners
Association, Inc.

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Columbia, South Carolina
October 15, 2007

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Place on the Greene Homeowners	)	Case No.: 2007-CP-40-
Association, Inc.,	)	
Plaintiff	)	
	)	COMPLAINT
vs.	)	(Non-Jury)
	)	
Easy Coin Laundry, Inc.	)	
	)	
Defendant.	)	

2007 DEC-4 PM 1:54
BARBARA A. JUDGE
C.C.C. & G.S.

The Plaintiff, complaining of the Defendant herein, would respectfully show the Court:

1. The Plaintiff, Place on the Greene Homeowners Association, Inc. (hereinafter "Association"), is a South Carolina non-profit corporation and is duly authorized to manage the affairs and enforce the restrictive covenants and By-Laws of Place on the Greene Horizontal Property Regime (hereinafter "Regime"). The Plaintiff's place of business is Richland County, South Carolina.
2. Place on the Greene is a South Carolina Horizontal Property Regime established under the South Carolina Horizontal Property Act (Sections 27-31-10 through 27-31-300 Code of Laws of South Carolina, as amended).
3. The Regime was established by the filing and recording of the Regime's Master Deed and By-Laws on September 14, 1984, in the Office of the Register of Deeds for Richland County in Book D-711, at Page 1. A first amendment to the Master Deed dated September 20, 1984, was recorded on September 20, 1984, in Deed Book D-711 at Page 673.
4. The Master Deed subjected the Regime's residential and commercial units to covenants, conditions, restrictions, uses, limitations, easements and

obligations—all in furtherance of a plan for the improvement of the Regime property. These covenants and restrictions run with the land and bind any person having at any time any interest or estate in any Unit.

5. The Plaintiff Association is charged with the responsibility to enforce any right, provision, covenant, restriction or condition of the Master Deed and By-Laws.
6. The Defendant is the record owner of a commercial condominium unit in the Regime. The unit is more specifically described as:

Unit A in the PLACE ON THE GREENE HORIZONTAL PROPERTY REGIME located in the City of Columbia, County of Richland, State of South Carolina, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act (Section 27-31-10, et seq. S.C. Code Ann. (1976), as amended) by Master Deed dated September 12, 1984 and recorded in the Office of the RMC for Richland County in Deed Book D-711 at Page 1, et seq. Which units are shown on the Building Plans prepared for Place on the Greene by Comprehensive Architects and attached to the Master Deed and incorporated herein by reference and made a part hereof. A first amendment to said Master Deed was dated September 20, 1984 and recorded September 20, 1984 in Deed Book D-711 at Page 673

TMS Number: 11385-01-08

This unit shall hereinafter be referred to as the "Property."

7. Upon information and belief, the Defendant is South Carolina Corporation with its principal place of business located in Richland County, South Carolina.
8. The Property, the enforcement of restrictions against which is the subject of this action, is located in Richland County, South Carolina.

**FOR A FIRST CAUSE OF ACTION
(Permanent Injunction)**

9. The Plaintiff repeats the allegations of paragraphs one (1) through eight (8) as if fully stated verbatim herein.
10. Article X, Section 3 of the Master Deed restricts the use of the commercial condominium units in the Regime. Each unit is restricted to general office space and limited service establishments. The owners and his agents, servants, invitees, and tenants are bound by those restrictions. The units' uses are further restricted by the Rules and Regulations of the Board of Directors of the Plaintiff corporation. The Rules and Regulations, among other things, however, shall provide that no restaurant or establishment engaged in the preparation or delivery of food, no pool hall, game room, bar, lounge, or retail shop that relies on a volume of walk-in patrons shall be permitted.
11. In contravention of the Master Deed, the Defendant has allowed the operation of a restaurant/sandwich shop, doing business by the name of "Pita Pit" on the Property. The restaurant/sandwich shop business activity on the Property is in direct violation of the covenants of the Master deed and constitutes an event of default thereunder by the Defendant.
12. Upon information and belief, the Defendant, as Landlord, has profited from the existence and continuation of the restricted/prohibited activity on the Property.
13. The Plaintiff has informed the Defendant of these restriction violations on the Property and has made demand on the Defendant that the prohibited activity cease and desist. But, the Defendant has not stopped the prohibited activity

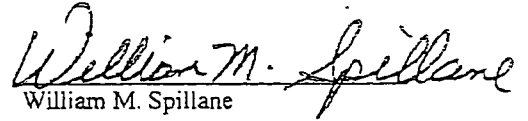
and, therefore, the Plaintiff must bring this legal action to enforce the covenants and stop the violation.

14. The Plaintiff is informed and believes it is entitled to an Order of a permanent injunction against the Defendant enjoining the continuance of the restricted and prohibited activity by the Defendant and/or its agents or tenants.
15. Article XIX. Sections 1 and 3 of the Master Deed further states that failure to comply with its terms or other rules and regulations or By-Laws of the Plaintiff Association shall be grounds for relief which may include an action for injunctive relief which relief may be sought by the Plaintiff association. In any proceeding arising because of an alleged default by the owner of any unit, the Association, if successful, shall be entitled to recover the costs of the proceedings, and such reasonable attorney's fees as may be determined by the Court.
16. The Plaintiff believes it is entitled to an Order of the Court awarding Plaintiff judgment against the Defendant for its costs and reasonable attorney's fees in pursuit of this action against the Defendant.

WHEREFORE THE PLAINTIFF PRAYS that the Court:

1. Issue a Permanent Injunction against the Defendant prohibiting the current restaurant/sandwich shop (Pita Pit) business activity or any comparable activity from being conducted on or about the Property.
2. Award the Plaintiff Judgment against the Defendant for the Plaintiff's costs of this action plus reasonable attorney's fees.

3. Grant such other relief as is just, equitable and proper.


William M. Spillane

Attorney for Plaintiff,
Place on the Greene Homeowners
Association, Inc.
S.C. Bar No. 5284

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Columbia, South Carolina
October 9, 2007

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Place on the Greene Homeowners)
Association, Inc.,)

Case No.: 2007-CP-40-

Plaintiff)

COMPLAINT
(Non-Jury)

vs.)

Eva Nell Berry,)

Defendant.)

The Plaintiff, complaining of the Defendant herein, would respectfully show the Court:

1. The Plaintiff, Place on the Greene Homeowners Association, Inc. (hereinafter "Association"), is a South Carolina non-profit corporation and is duly authorized to manage the affairs and enforce the restrictive covenants and By-Laws of Place on the Greene Horizontal Property Regime (hereinafter "Regime"). The Plaintiff's place of business is Richland County, South Carolina.
2. Place on the Greene is a South Carolina Horizontal Property Regime established under the South Carolina Horizontal Property Act (Sections 27-31-10 through 27-31-300 Code of Laws of South Carolina, as amended).
3. The Regime was established by the filing and recording of the Regime's Master Deed and By-Laws on September 14, 1984, in the Office of the Register of Deeds for Richland County in Book D-711, at Page 1. A first amendment to the Master Deed dated September 20, 1984, was recorded on September 20, 1984, in Deed Book D-711 at Page 673.
4. The Master Deed subjected the Regime's residential and commercial units to covenants, conditions, restrictions, uses, limitations, easements and

obligations—all in furtherance of a plan for the improvement of the Regime property. These covenants and restrictions run with the land and bind any person having at any time any interest or estate in any Unit.

5. The Plaintiff Association is charged with the responsibility to enforce any right, provision, covenant, restriction or condition of the Master Deed and By-Laws.
6. The Defendant is the record owner of commercial condominium units in the Regime. The units are more specifically described as:

Units C and D in the PLACE ON THE GREENE HORIZONTAL PROPERTY REGIME located in the City of Columbia, County of Richland, State of South Carolina, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act (Section 27-31-10, et seq. S.C. Code Ann. (1976), as amended) by Master Deed dated September 12, 1984 and recorded in the Office of the RMC for Richland County in Deed Book D-711 at Page 1, et seq. Which units are shown on the Building Plans prepared for Place on the Greene by Comprehensive Architects and attached to the Master Deed and incorporated herein by reference and made a part hereof. A first amendment to said Master Deed was dated September 20, 1984 and recorded September 20, 1984 in Deed Book D-711 at Page 673

TMS Numbers: Units C and D - 11385-01-05

These units shall hereinafter be referred to as the "Property."

7. Upon information and belief, the Defendant is a citizen and resident of Richland County, South Carolina.
8. The Property, the enforcement of restrictions against which is the subject of this action, is located in Richland County, South Carolina.

FOR A FIRST CAUSE OF ACTION
(Permanent Injunction)

9. The Plaintiff repeats the allegations of paragraphs one (1) through eight (8) as if fully stated verbatim herein.
10. Article X, Section 3 of the Master Deed restricts the use of the commercial condominium units in the Regime. Each unit is restricted to general office space and limited service establishments. The owners and his agents, servants, invitees, and tenants are bound by those restrictions. The units' uses are further restricted by the Rules and Regulations of the Board of Directors of the Plaintiff corporation. The Rules and Regulations, among other things, however, shall provide that no restaurant or establishment engaged in the preparation or delivery of food, no pool hall, game room, bar, lounge, or retail shop that relies on a volume of walk-in patrons shall be permitted.
11. In contravention of the Master Deed, the Defendant has allowed the operation of a restaurant/bar and/or pool hall, doing business by the name of "Tavern on the Greene" on the Property. The restaurant/bar and/or pool hall business activity on the Property is in direct violation of the covenants of the Master deed and constitutes an event of default thereunder by the Defendant.
12. Upon information and belief, the Defendant, as Landlord, has profited from the existence and continuation of the restricted/prohibited activity on the Property.
13. The Plaintiff has informed the Defendant of these restriction violations on the Property and has made demand on the Defendant that the prohibited activity cease and desist. But, the Defendant has not stopped the prohibited activity

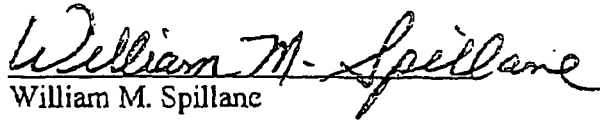
and, therefore, the Plaintiff must bring this legal action to enforce the covenants and stop the violation.

14. The Plaintiff is informed and believes it is entitled to an Order of a permanent injunction against the Defendant enjoining the continuance of the restricted and prohibited activity by the Defendant and/or its agents or tenants.
15. Article XIX, Sections 1 and 3 of the Master Deed further states that failure to comply with its terms or other rules and regulations or By-Laws of the Plaintiff Association shall be grounds for relief which may include an action for injunctive relief which relief may be sought by the Plaintiff association . In any proceeding arising because of an alleged default by the owner of any unit, the Association, if successful, shall be entitled to recover the costs of the proceedings, and such reasonable attorney's fees as may be determined by the Court.
16. The Plaintiff believes it is entitled to an Order of the Court awarding Plaintiff judgment against the Defendant for its costs and reasonable attorney's fees in pursuit of this action against the Defendant.

WHEREFORE THE PLAINTIFF PRAYS that the Court:

1. Issue a Permanent Injunction against the Defendant prohibiting the current restaurant/bar and/or pool hall (Tavern on the Greene) activity or any comparable activity in violation of the Covenants of the Master Deed from being conducted on or about the Property.

2. Award the Plaintiff Judgment against the Defendant for the Plaintiff's costs of this action plus reasonable attorney's fees.
3. Grant such other relief as is just, equitable and proper.


William M. Spillane

S.C. Bar No. 5284

Attorney for Plaintiff,
Place on the Greene Homeowners
Association, Inc.

1903 Gadsden Street, Suite 202
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Email: wmsatty@bellsouth.net

Columbia, South Carolina
October 10, 2007

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Place on the Greene Homeowners
Association, Inc.,)

Case No.: 2007-CP-40-

Plaintiff)

COMPLAINT
(Non-Jury)

vs.)

Jeffrey O. Kenney,)

Defendant.)

The Plaintiff, complaining of the Defendant herein, would respectfully show the Court:

1. The Plaintiff, Place on the Greene Homeowners Association, Inc. (hereinafter "Association"), is a South Carolina non-profit corporation and is duly authorized to manage the affairs and enforce the restrictive covenants and By-Laws of Place on the Greene Horizontal Property Regime (hereinafter "Regime"). The Plaintiff's place of business is Richland County, South Carolina.
2. Place on the Greene is a South Carolina Horizontal Property Regime established under the South Carolina Horizontal Property Act (Sections 27-31-10 through 27-31-300 Code of Laws of South Carolina, as amended).
3. The Regime was established by the filing and recording of the Regime's Master Deed and By-Laws on September 14, 1984, in the Office of the Register of Deeds for Richland County in Book D-711, at Page 1. A first amendment to the Master Deed dated September 20, 1984, was recorded on September 20, 1984, in Deed Book D-711 at Page 673.
4. The Master Deed subjected the Regime's residential and commercial units to covenants, conditions, restrictions, uses, limitations, easements and

2007 DEC -4 PM 1:56
BARBARA A. SOUTHER
C.C.C. & S.

Richland County

obligations—all in furtherance of a plan for the improvement of the Regime property. These covenants and restrictions run with the land and bind any person having at any time any interest or estate in any Unit.

5. The Plaintiff Association is charged with the responsibility to enforce any right, provision, covenant, restriction or condition of the Master Deed and By-Laws.
6. The Defendant is the record owner of a commercial condominium unit in the Regime. The unit is more specifically described as:

Unit B in the PLACE ON THE GREENE HORIZONTAL PROPERTY REGIME located in the City of Columbia, County of Richland, State of South Carolina, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act (Section 27-31-10, et seq. S.C. Code Ann. (1976), as amended) by Master Deed dated September 12, 1984 and recorded in the Office of the RMC for Richland County in Deed Book D-711 at Page 1, et seq. Which units are shown on the Building Plans prepared for Place on the Greene by Comprehensive Architects and attached to the Master Deed and incorporated herein by reference and made a part hereof. A first amendment to said Master Deed was dated September 20, 1984 and recorded September 20, 1984 in Deed Book D-711 at Page 673

TMS Number: 11385-01-07

This unit shall hereinafter be referred to as the "Property."

7. Upon information and belief, the Defendant is a citizen and resident of Richland County, South Carolina.
8. The Property, the enforcement of restrictions against which is the subject of this action, is located in Richland County, South Carolina.

**FOR A FIRST CAUSE OF ACTION
(Permanent Injunction)**

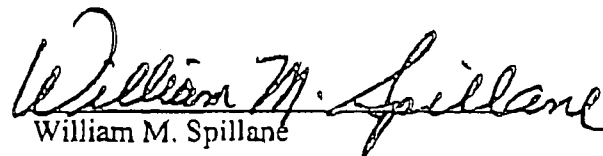
9. The Plaintiff repeats the allegations of paragraphs one (1) through eight (8) as if fully stated verbatim herein.

10. Article X, Section 3 of the Master Deed restricts the use of the commercial condominium units in the Regime. Each unit is restricted to general office space and limited service establishments. The owners and his agents, servants, invitees, and tenants are bound by those restrictions. The units' uses are further restricted by the Rules and Regulations of the Board of Directors of the Plaintiff corporation. The Rules and Regulations, among other things, however, shall provide that no restaurant or establishment engaged in the preparation or delivery of food, no pool hall, game room, bar, lounge, or retail shop that relies on a volume of walk-in patrons shall be permitted.
11. In contravention of the Master Deed, the Defendant has allowed the operation of a restaurant/bar and/or pool hall, doing business by the name of "Tavern on the Greene" on the Property. The restaurant/bar and/or pool hall business activity being conducted on the Property is in direct violation of the covenants of the Master deed and constitutes an event of default thereunder by the Defendant.
12. Upon information and belief, the Defendant, as Landlord, has profited from the existence and continuation of the restricted/prohibited activity on the Property.
13. The Plaintiff has informed the Defendant of these restriction violations on the Property and has made demand on the Defendant that the prohibited activity cease and desist. But, the Defendant has not stopped the prohibited activity and, therefore, the Plaintiff must bring this legal action to enforce the covenants and stop the violation.

14. The Plaintiff is informed and believes it is entitled to an Order of a permanent injunction against the Defendant enjoining the continuance of the restricted and prohibited activity by the Defendant and/or its agents or tenants.
15. Article XIX, Sections 1 and 3 of the Master Deed further states that failure to comply with its terms or other rules and regulations or By-Laws of the Plaintiff Association shall be grounds for relief which may include an action for injunctive relief which relief may be sought by the Plaintiff association . In any proceeding arising because of an alleged default by the owner of any unit, the Association, if successful, shall be entitled to recover the costs of the proceedings, and such reasonable attorney's fees as may be determined by the Court.
16. The Plaintiff believes it is entitled to an Order of the Court awarding Plaintiff judgment against the Defendant for its costs and reasonable attorney's fees in pursuit of this action against the Defendant.

WHEREFORE THE PLAINTIFF PRAYS that the Court:

1. Issue a Permanent Injunction against the Defendant prohibiting the current restaurant/bar and/or pool hall activity, or any comparable activity in violation of the covenants of the Master Deed from being conducted on or about the Property.
2. Award the Plaintiff Judgment against the Defendant for the Plaintiff's costs of this action plus reasonable attorney's fees.
3. Grant such other relief as is just, equitable and proper.


William M. Spillane

S.C. Bar No. 5284

Attorney for Plaintiff,
Place on the Greene Homeowners
Association, Inc.

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Columbia, South Carolina
October 9, 2007.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	
	)	
Place on the Greene Homeowners,	)	
Association, Inc.	)	C/A No.: 2007-CP-40-8107
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
W.G.R.Q., LLC,	)	ANSWER AND COUNTERCLAIM
	)	
Defendant.	)	
	)	

FILED
 2008 JAN 17 PM 12:49
 BARBARA A. SCOTT
 C.C. & G.S.

The Defendant, W.G.R.Q., LLC, answering the Complaint of the Plaintiff, would respectfully show unto the Court the following:

FOR A FIRST DEFENSE
(General Denial)

1. That answering the Complaint, the Defendant would specifically deny any allegations not hereinafter admitted and would demand strict proof thereof.
2. The Defendant would admit paragraphs one through eight of the complaint.
3. The Defendant would admit so much of paragraphs nine through sixteen of the complaint insofar as the Plaintiff is has standing to bring this action, but would deny the remaining allegations and demand strict proof thereof and would crave reference to the defenses which the Defendant alleges herein.

FOR A SECOND DEFENSE
(Equitable Estoppel)

4. The Defendant reiterates and re-alleges all defenses hereto.

5. The Defendant would allege that the area where this property is located is a commercial part of the Five Points portion of the City of Columbia, specifically on Greene Street, directly across from "Andy's Deli". The Five Points area has a rich history of commercial development dating back almost one hundred years.

6. That the Defendant herein is the landlord of the restaurants known as "The Blue Cactus", "Subway" and "Sub Pub" which were approved by the City of Columbia as restaurants for well over ten years. The Defendant has made substantial improvement to the property, including, but not limited to, compliance with the City of Columbia code for fire prevention, water usage, restroom facilities, trash removal, satellite or cable television, and food service requirements. These improvements and/or permits were made and issued while the Plaintiff watched and did nothing to stop or prevent the construction of and use of a restaurant.

7. That the Plaintiff allowed the Defendant to make the improvements and operate as restaurants to the Plaintiff's own detriment, that is to say the Plaintiff has been at fault for not enjoining the Defendant from the first time it was opened as restaurants years ago.

8. That the Defendant has been prejudiced by the Plaintiff's lack of prosecution of the restrictions in that he has made the substantial improvements and has been able to make a living and become part of the local iconic commercial environment in the Five Points area.

9. That the Defendant is informed and believes that the doctrine of equitable estoppel applies, and as such, the Plaintiff's case should be dismissed.

FOR A THIRD DEFENSE
(Waiver)

10. The Defendant reiterates and re-alleges all defenses hereto.

11. That the Plaintiff Association had actual or constructive knowledge of the fact that the Defendant was in violation of the restrictive covenants especially since the Defendant's restaurants are at the entrance level of the condominium development. The Plaintiff knew and has known about these commercial establishments for over a decade.

12. That by definition the Plaintiff Association had knowledge of its rights to enjoin the Defendant from the first time a meal was served over a decade ago; the Association did nothing for the past ten years.

13. That having done nothing for well over ten years and knowing of its rights to do something long ago, the Plaintiff Association has waived its rights and the Defendant is entitled to the defense of waiver and is informed and believes that the Plaintiff's case should be dismissed.

FOR A FOURTH DEFENSE
(Laches)

14. The Defendant reiterates and re-alleges all defenses hereto.

15. The Defendant is informed and believes that the Plaintiff did not reasonably seek to avail itself of the means it had at hand for the enforcement of the restriction that it now seeks to enforce.

16. That the Plaintiff, as alleged herein, sat idly by while it had the tools to stop the commercial development and did nothing for over ten years.

17. That the Defendant had built a business and invested substantial assets and work to make the restaurants successful and has therefore been prejudiced and disadvantaged by this action for injunction.

18. The Defendant is informed and believes that the doctrine of laches applies as a defense and the Plaintiff's case should be dismissed.

FOR A FIFTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Attorney's fees)

19. That the Defendant is informed and believes that the Association restriction and covenants in Article XIX, Section 3 provides for attorney's fees in a "loser pays" fashion, but does not allow the winner, in the event a "unit owner" prevails, to collect their attorneys' fees. As such the section is unfair and prejudicial to a unit owner who has a justiciable cause and defense. Further, the clause is one of adhesion and without and choice of negotiation and is void of consideration and should therefore, at a minimum, be a true "loser pays" paragraph.

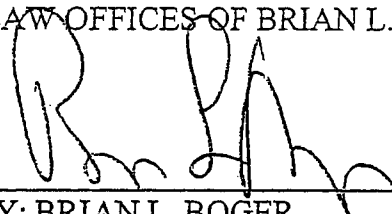
20. That the Defendant is further informed and believes that the association has used funds from the association dues, part of which are paid by the Defendant, to essentially sue "on of its own" without any recourse by the Defendant to stop paying his association dues. This runs afoul of fairness in that the Defendant has no avenue to collect his attorney's fees in the event he is successful.

21. The Defendant is informed and believes that this Court should treat Article XIX Section 3 as a loser pays provision, and in the event the Defendant prevails, the Defendant herein requests attorney's fees and costs be granted to the Defendant from the Plaintiff Association.

WHEREFORE, Defendant prays that this Court inquire into the matters herein, dismiss the Complaint of the Plaintiff, grant judgment to the Defendant and, after inquiry, grant the Defendant his attorney's fees to be paid by the Plaintiff, and for such other and further relief as

the Court deems just and proper:

LAW OFFICES OF BRIAN L. BOGER

A handwritten signature in black ink, appearing to read 'Brian L. Boger', is written over a horizontal line.

BY: BRIAN L. BOGER

1331 Elmwood Ave. Suite 210

PO Box 65

Columbia, SC 29202

803-252-2880

Fax: 803-254-5025

brian@brianboger.com

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

DOCKET NUMBER: 2007-CP-40-8108

Place on the Greene Homeowners
Association, Inc.,

Plaintiff(s),

vs.

Easy Coin Laundry, Inc.,

Defendant(s).

Answer and Counterclaim

BARBARA A. SCOTT
C.C. & G.S.

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Defendant, by and through its undersigned counsel, answers the Complaint of Plaintiff as follows:

1. For each and every allegation not hereinafter admitted, denied, explained or otherwise qualified, same is denied and strict proof demanded thereof.

For a First Defense

2. Defendant reiterates paragraph 1 above as if repeated herein verbatim.
3. With regard to the allegations contained in paragraphs 1, 2, 3, 5, 6, 7, 8, 10, and 13, same are admitted.

4. With regard to allegations contained in paragraph 4, Defendant admits so much of said allegations as refers to the initial imposition of restrictions, covenants, conditions and limitations, etc. in the Master Deed, however, Defendant specifically denies that these would "bind any person at any time having an interest in any unit" since enforcement of these restrictions are subject to being waived, estopped from enforcement or denied enforcement by the doctrine laches.

5. With regard to the allegations contained in paragraph 11, Defendant admits so much

COPY

of said allegation as can be construed to allege that "Pita Pit" is its tenant, however, has been for some seven (7) years, during which time no objection has been raised by Plaintiff to within Defendant over said usage.

6. With regard to the allegations contained in paragraph 12, Defendant does not admit any profit from the current use of the property nor does he admit that the current use of the property is restricted or prohibited since Plaintiff has never sought to enforce the restriction. There are other such businesses in the regime and as previously stated, this business has been in operation for some seven years.

7. The allegations contained in paragraphs 14 and 16 are denied.

8. The allegations contained in paragraph 15 with regard to what is stated in the Article referred to in the Master Deed would be admitted, however, Defendant does not believe Plaintiff would be entitled to recover costs, attorney fees, or any other damages due to their own inactions.

For a Second Defense, Laches

9. Defendant reiterates paragraphs 1 thru 8 above as if repeated herein verbatim.

10. That Defendant purchased his unit in 1990.

11. That Defendant operated a self-service coin laundry in said unit for at least three years prior to purchase, and for approximately nine (9) years thereafter.

12. That Plaintiff never objected to nor informed Defendant his use of his unit as a self serve coin laundry was prohibited.

13. That Defendant leased the unit to his current tenant in November 2000 and that sandwich shop has been in the unit since that time.

14. That Plaintiff has had actual notice of the business(es) operated in the Defendant's

unit and has taken no action to attempt any enforcement of the restrictions.

15. That Plaintiff should be barred by the doctrine of laches from any enforcement at this time.

For a Third Defense, Equitable Estoppel

16. Defendant reiterates paragraphs 1 thru 15 above as if repeated herein verbatim.

17. That Defendant has a right to rely upon the Plaintiff as the entity charged with the duty of enforcement of restrictions if placed upon use of said property, to act in a timely manner in such instances.

18. As stated above, no notice of alleged violation or prohibited activity was ever issued to Defendant or its tenants except immediately prior to this filing.

19. That by failing to attempt enforcement of the alleged restrictions within a reasonable time, Plaintiff should be estopped from seeking enforcement at this time and denied the relief sought.

For a Fourth Defense, Waiver

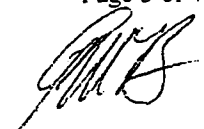
20. Defendant reiterates paragraphs 1 thru 19 above as if repeated herein verbatim.

21. That also Plaintiff's failure to object to Defendant's use, or that of Defendant's tenant over these many years, constitutes a waiver of Plaintiff's rights in attempted enforcement of the restrictions originally imposed upon the premises as against any current, longstanding owner, such as Defendant, or its tenant.

For a Fifth Defense

22. Defendant reiterates paragraphs 1 thru 21 above as if repeated herein verbatim.

23. Defendant pleads the statute of limitations as a bar to the relief sought by Plaintiff.



By Way of Counterclaim

24. Defendant reiterates paragraphs 1 thru 23 above as if repeated herein verbatim.

25. Defendant would counterclaim as against Plaintiff for attorney fees and costs associated with the defense of this suit since Defendant's tenants have a business operation currently in existence in excess of seven (7) years as a restaurant/sandwich shop. Prior to that time Defendant itself operated a coin laundry which generated a great deal of foot traffic in and out of its business, to which Plaintiff never objected.

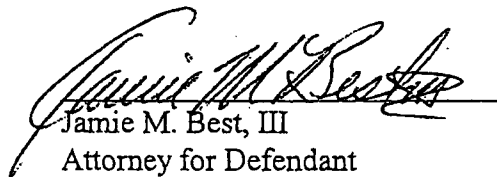
26. During all these years no one has, until recently, notified Defendant of any objection, nor have they made any demand for cessation of the current or previous business activities within the unit owned by Defendant.

27. That as such, Defendant deems this action to be frivolous and without merit and believes itself entitled to attorney fees and costs.

Wherefore, having fully answered the Complaint of Plaintiff, Defendant prays this court inquire into the things and matters alleged between the parties and issue its Order:

- A. Denying Plaintiff the relief sought in its Complaint; and
- B. Granting Defendant reasonable attorney fees and costs in this matter.

ALLEN & BEST



Jamie M. Best, III
Attorney for Defendant
6116 Garners Ferry Road
Post Office Box 9507
Columbia, SC 29290-0507
(803) 776-8380 Office
(803) 776-2988 Fax

January 9th 2008

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

Place on the Greene Homeowners,
Association, Inc.)

C/A No.: 2007-CP-40-8109

Plaintiff,)

vs.)

Eva Nell Berry,)

Defendant.)

COMPLAINT

(Non-Jury)

FILED
2008 JAN 17 PM 2:49
BARBARA A. SCOTT
C.C.C. & S.

The Defendant, Eva Nell Berry, answering the Complaint of the Plaintiff, would respectfully show unto the Court the following:

FOR A FIRST DEFENSE

(General Denial)

1. That answering the Complaint, the Defendant would specifically deny any allegations not hereinafter admitted and would demand strict proof thereof.
2. The Defendant would admit paragraphs one through eight of the complaint.
3. The Defendant would admit so much of paragraphs nine through sixteen of the complaint insofar as the Plaintiff is has standing to bring this action, but would deny the remaining allegations and demand strict proof thereof and would crave reference to the defenses which the Defendant alleges herein.

FOR A SECOND DEFENSE

(Equitable Estoppel)

4. The Defendant reiterates and re-alleges all defenses hereto.

5. The Defendant would allege that the area where this property is located is a commercial part of the Five Points portion of the City of Columbia, specifically on Greene Street, directly across from "Andy's Deli". The Five Points area has a rich history of commercial development dating back almost one hundred years.
6. That the Defendant herein is the landlord of the restaurant/bar known as Tavern on the Greene which was approved by the City of Columbia as a restaurant and bar for well over ten years. The Defendant has made substantial improvement to the property, including, but not limited to, compliance with the City of Columbia code for fire prevention, water usage, restroom facilities, trash removal, satellite or cable television, and food service requirements. These improvements and/or permits were made and issued while the Plaintiff watched and did nothing to stop or prevent the construction of and use of a restaurant and bar.
7. That the Plaintiff allowed the Defendant to make the improvements and operate as a restaurant and bar to the Plaintiff's own detriment, that is to say the Plaintiff has been at fault for not enjoining the Defendant from the first time it was opened as a restaurant/bar years ago.
8. That the Defendant has been prejudiced by the Plaintiff's lack of prosecution of the restrictions in that she has made the substantial improvements and has been able to make a living and become part of the local iconic commercial environment in the Five Points area.
9. That the Defendant is informed and believes that the doctrine of equitable estoppel applies, and as such, the Plaintiff's case should be dismissed.

FOR A THIRD DEFENSE
(Waiver)

10. The Defendant reiterates and re-alleges all defenses hereto.

11. That the Plaintiff Association had actual or constructive knowledge of the fact that the Defendant was in violation of the restrictive covenants especially since the Defendant's restaurant is at the entrance level of the condominium development. The Plaintiff knew and has known about this commercial establishment for over a decade.

12. That by definition the Plaintiff Association had knowledge of its rights to enjoin the Defendant from the first time a meal or beer was served over a decade ago; the Association did nothing for the past ten years.

13. That having done nothing for well over ten years and knowing of its rights to do something long ago, the Plaintiff Association has waived its rights and the Defendant is entitled to the defense of waiver and is informed and believes that the Plaintiff's case should be dismissed.

FOR A FOURTH DEFENSE

(Laches)

14. The Defendant reiterates and re-alleges all defenses hereto.

15. The Defendant is informed and believes that the Plaintiff did not seasonably seek to avail itself of the means it had at hand for the enforcement of the restriction that it now seeks to enforce.

16. That the Plaintiff, as alleged herein, sat idly by while it had the tools to stop the commercial development and did nothing for over ten years.

17. That the Defendant had built a business and invested substantial assets and work to make the restaurant/bar successful and has therefore been prejudiced and disadvantaged by this action for injunction.

18. The Defendant is informed and believes that the doctrine of laches applies as a defense and the Plaintiff's case should be dismissed.

FOR A FIFTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Attorney's fees)

19. That the Defendant is informed and believes that the Association restriction and covenants in Article XIX, Section 3 provides for attorney's fees in a "loser pays" fashion, but does not allow the winner, in the event a "unit owner" prevails, to collect their attorneys' fees. As such the section is unfair and prejudicial to a unit owner who has a justiciable cause and defense.

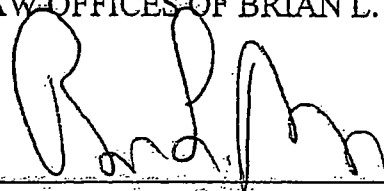
Further, the clause is one of adhesion and without choice of negotiation and is void of consideration and should therefore, at a minimum, be a true "loser pays" paragraph.

20. That the Defendant is further informed and believes that the association has used funds from the association dues, part of which are paid by the Defendant, to essentially sue "on of its own" without any recourse by the Defendant to stop paying her association dues. This runs afoul of fairness in that the Defendant has no avenue to collect her attorney's fees in the event she is successful.

21. The Defendant is informed and believes that this Court should treat Article XIX Section 3 as a loser pays provision, and in the event the Defendant prevails, the Defendant herein requests attorney's fees and costs be granted to the Defendant from the Plaintiff Association.

WHEREFORE, Defendant prays that this Court inquire into the matters herein, dismiss the Complaint of the Plaintiff, grant judgment to the Defendant and, after inquiry, grant the Defendant her attorney's fees to be paid by the Plaintiff, and for such other and further relief as the Court deems just and proper.

LAW OFFICES OF BRIAN L. BOGER



BY: BRIAN L. BOGER

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STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

Place on the Greene Homeowners,
Association, Inc.)

C/A No.: 2007-CP-40-8110

Plaintiff,)

vs.)

Jeffrey O. Kenney,)

ANSWER AND COUNTERCLAIM

Defendant.)

FILED
2008 JAN 17 PM 12:49
BARBARA A. SCOTT
C.C. & G.S.

The Defendant, Jeffrey O. Kenney, answering the Complaint of the Plaintiff, would respectfully show unto the Court the following:

FOR A FIRST DEFENSE

(General Denial)

1. That answering the Complaint, the Defendant would specifically deny any allegations not hereinafter admitted and would demand strict proof thereof.
2. The Defendant would admit paragraphs one through eight of the complaint.
3. The Defendant would admit so much of paragraphs nine through sixteen of the complaint insofar as the Plaintiff is has standing to bring this action, but would deny the remaining allegations and demand strict proof thereof and would crave reference to the defenses which the Defendant alleges herein.

FOR A SECOND DEFENSE

(Equitable Estoppel)

4. The Defendant reiterates and re-alleges all defenses hereto.

5. The Defendant would allege that the area where this property is located is a commercial part of the Five Points portion of the City of Columbia, specifically on Greene Street, directly across from "Andy's Deli". The Five Points area has a rich history of commercial development dating back almost one hundred years.
6. That the Defendant herein is the landlord of the restaurant/bar known as Tavern on the Greene which was approved by the City of Columbia as a restaurant and bar for well over ten years. The Defendant has made substantial improvement to the property, including, but not limited to, compliance with the City of Columbia code for fire prevention, water usage, restroom facilities, trash removal, satellite or cable television, and food service requirements. These improvements and/or permits were made and issued while the Plaintiff watched and did nothing to stop or prevent the construction of and use of a restaurant and bar.
7. That the Plaintiff allowed the Defendant to make the improvements and operate as a restaurant and bar to the Plaintiff's own detriment, that is to say the Plaintiff has been at fault for not enjoining the Defendant from the first time it was opened as a restaurant/bar years ago.
8. That the Defendant has been prejudiced by the Plaintiff's lack of prosecution of the restrictions in that she has made the substantial improvements and has been able to make a living and become part of the local iconic commercial environment in the Five Points area.
9. That the Defendant is informed and believes that the doctrine of equitable estoppel applies, and as such, the Plaintiff's case should be dismissed.

FOR A THIRD DEFENSE
(Waiver)

10. The Defendant reiterates and re-alleges all defenses hereto.

11. That the Plaintiff Association had actual or constructive knowledge of the fact that the Defendant was in violation of the restrictive covenants especially since the Defendant's restaurant is at the entrance level of the condominium development. The Plaintiff knew and has known about this commercial establishment for over a decade.

12. That by definition the Plaintiff Association had knowledge of its rights to enjoin the Defendant from the first time a meal or beer was served over a decade ago; the Association did nothing for the past ten years.

13. That having done nothing for well over ten years and knowing of its rights to do something long ago, the Plaintiff Association has waived its rights and the Defendant is entitled to the defense of waiver and is informed and believes that the Plaintiff's case should be dismissed.

FOR A FOURTH DEFENSE
(Laches)

14. The Defendant reiterates and re-alleges all defenses hereto.

15. The Defendant is informed and believes that the Plaintiff did not seasonably seek to avail itself of the means it had at hand for the enforcement of the restriction that it now seeks to enforce.

16. That the Plaintiff, as alleged herein, sat idly by while it had the tools to stop the commercial development and did nothing for over ten years.

17. That the Defendant had built a business and invested substantial assets and work to make the restaurant/bar successful and has therefore been prejudiced and disadvantaged by this action for injunction.

18. The Defendant is informed and believes that the doctrine of laches applies as a defense and the Plaintiff's case should be dismissed.

FOR A FIFTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Attorney's fees)

19. That the Defendant is informed and believes that the Association restriction and covenants in Article XIX, Section 3 provides for attorney's fees in a "loser pays" fashion, but does not allow the winner, in the event a "unit owner" prevails, to collect their attorneys' fees. As such the section is unfair and prejudicial to a unit owner who has a justiciable cause and defense. Further, the clause is one of adhesion and without and choice of negotiation and is void of consideration and should therefore, at a minimum, be a true "loser pays" paragraph.

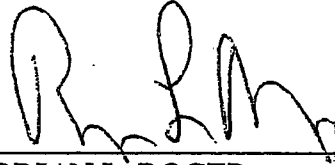
20. That the Defendant is further informed and believes that the association has used funds from the association dues, part of which are paid by the Defendant, to essentially sue "on of its own" without any recourse by the Defendant to stop paying his association dues. This runs afoul of fairness in that the Defendant has no avenue to collect his attorney's fees in the event he is successful.

21. The Defendant is informed and believes that this Court should treat Article XIX Section 3 as a loser pays provision, and in the event the Defendant prevails, the Defendant herein requests attorney's fees and costs be granted to the Defendant from the Plaintiff Association.

WHEREFORE, Defendant prays that this Court inquire into the matters herein, dismiss the Complaint of the Plaintiff, grant judgment to the Defendant and, after inquiry, grant the Defendant his attorney's fees to be paid by the Plaintiff, and for such other and further relief as the Court

deems just and proper.

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STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF RICHLAND —) 2007-CP-40-08107
) 2007-CP-40-08108
) 2007-CP-40-08109
) 2007-CP-40-08110

PLACE ON THE GREENE)
HOMEOWNERS ASSOCIATION, INC.)
) PLAINTIFF
) vs.) TRANSCRIPT OF RECORD
))
W.G.R.Q., LLC, EASY COIN)
LAUNDRY, INC., EVA NELL BERRY,)
and JEFFREY O. KEENEY)
) DEFENDANTS —)

April 9, 2009
Columbia, South Carolina

B E F O R E:

HON. ALISON RENEE LEE, Judge.

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

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Attorney for the Plaintiff

BRIAN L. BOGER, ESQ.
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Official Court Reporter

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EXHIBITS

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1 (WHEREUPON, Plaintiff's Exhibits Nos. 1-8 were
2 marked for identification only.)

3 THE COURT: We have before us this morning four
4 cases. They're Docket Nos. 2007-CP-40-8107, Place on the
5 Greene Homeowners Association versus W.R.G.Q., LLC (sic);
6 2007-CP-40-8108, Place on the Greene Homeowners
7 Association versus Easy Coin Laundry, Incorporated; Docket
8 No. 2007-CP-40-8109, Place on the Greene Homeowners
9 Association versus Eva Nell Berry; and 2007-CP-40-8110,
10 Place on the Greene Homeowners Association versus Jeffrey
11 Keeney.

12 In all four of these cases the plaintiff is
13 represented by William Spillane; is that correct?

14 MR. SPILLANE: Yes, your Honor.

15 THE COURT: And the defendants are represented
16 by Brian Boger with the exception of Easy Coin Laundry,
17 Incorporated, who is represented by Jamie Best; is that
18 correct, gentlemen?

19 MR. BOGER: Yes, Your Honor.

20 MR. BEST: Yes, Your Honor.

21 THE COURT: I understand that while there is no
22 formal motion in the file to consolidate all these cases,
23 that that's what the parties would propose to do for
24 purposes of trial today; is that correct?

25 MR. SPILLANE: Your Honor, we've discussed it.

1 We can see similar issues, similar law, few differences,
2 and I'll make the motion to consolidate at this point all
3 four.

4 THE COURT: Is there any objection from counsel?

5 MR. BOGER: None, your Honor.

6 MR. BEST: None, your Honor.

7 THE COURT: Okay. And I've read in the file --
8 the only thing that's in the file is basically the
9 summons, the complaint, the answers, counterclaim and
10 reply to counterclaims. And I think that's in all four
11 cases if I'm not mistaken, if I read them correctly. And
12 I believe the allegations are basically the same as to all
13 four cases. There might be a few differences, of course,
14 based upon the filings, but it appears to be mostly the
15 same issues to be addressed in all four cases.

16 MR. BEST: That's our understanding also, Your
17 Honor.

18 THE COURT: Okay.

19 MR. SPILLANE: I believe so, Your Honor.

20 As a matter for the Court, there should be
21 certificates of service.

22 THE COURT: Yes, I'm sure there are. I'm sure
23 there are certificates of service in the file. I look at
24 those, but I don't pay a lot of attention to them. If
25 there's an answer, I don't bother to look to see if it's

1 been served properly because I assume that that will be
2 raised in the answer by some other formal pleadings. So I
3 believe that there are, in fact, certificates of service
4 in the file.

5 Is there anything else we need to take up before
6 we get started?

7 MR. SPILLANE: No, Your Honor.

8 We've identified Plaintiff's first eight
9 exhibits and made group exhibits a number of times,
10 grouping, for instance, the chain of title, four different
11 chains of title, and grouping some demand letters, but I
12 think we're ready to go.

13 THE COURT: Okay. There's nothing else from the
14 defendants at this point?

15 MR. BOGER: Not at this point, Your Honor.

16 THE COURT: Then if you'd like to make opening
17 statements you certainly can. It's up to you.

18 MR. SPILLANE: Your Honor, I would plan to do
19 so, if I may.

20 THE COURT: Okay.

21 MR. SPILLANE: May it please the Court.

22 I'm William Michael Spillane representing a
23 homeowners association that runs a high rise I call it.
24 It's a five-story residential and commercial complex down
25 on Greene Street right at the edge of the university and

1 at the edge of Five Points.

2 I think the facts of this case are going to be
3 pretty straight, and I think anybody can interpret the
4 facts. The homeowners association simply wants an
5 injunction to stop the types of commercial activity that
6 are in the commercial units.

7 The high rise is four stories residential and on
8 the first floor, there are eight units that are labeled
9 commercial units in the master deed and there's certain
10 restrictions on the commercial units that you'll find out
11 about.

12 The violations I don't think my client even
13 challenges. There's clearly some restaurants in there and
14 the answers even say there's some restaurants, and it's
15 our contention that the restaurants are prohibited. So
16 that's pretty much straight.

17 What we want the Court to do is do right and
18 uphold the master deed. That would be a permanent
19 injunction against the type of activity conducted in those
20 commercial units and we're asking for costs to the
21 association. It's pretty simple.

22 However, when you look into the history of the
23 case, and I think both sides are going to talk a lot about
24 the history of the case, how people took deeds, what was
25 there when they took their deeds, how it got there and

1 what they're doing now and so on and so forth, the case
2 really is about the development and that's what we want
3 the Court to focus on.

4 In the seventies, the condominiums started
5 spouting up everywhere and we had a Horizontal Property
6 Act set in place in the state to stop developer abuse and
7 got that cleaned up and this condo, Place on the Greene,
8 is like the second generation I would call condo units.
9 However, on the first floor, it got complicated with
10 commercial units that are in the master deed.

11 The key to this case is the master deed. And
12 we're going to go into the restrictions, why the
13 restrictions are there, why the restrictions are enforced,
14 and why there are certain specific restrictions, how they
15 come about, and really why. We're going to go into the
16 role of the master deed and we're going to talk about why
17 it takes 75 percent of the majority of owners, ownership
18 interest, to change the master deed. And once you do
19 that, you have to have a meeting to vote and record it at
20 the courthouse and everybody's got to be noticed. And
21 we'll talk about the only single change of the master
22 deed.

23 We're going to talk about the role of the board
24 of the association as the enforcer of the covenants.
25 Basically our position is the following: Like a

1 policeman, he is the enforcer of the speed limit. And he
2 might let me go 70 in the 40 every day as I go past him,
3 but he's letting me get away with a violation. He has no
4 authority since he's administrative branch of
5 government -- the policeman, the executive branch -- no
6 authority whatsoever to change the law on speeding and on
7 violating that speeding limit every time I go.

8 We're going to go into the role of the no-waiver
9 clause in the master deed and the reasons, the specific
10 reasons based on development history there is a no-waiver
11 clause. There's very good reason and the Court will see
12 it.

13 We're going to go into what homeowners boards
14 do, what their makeup is and what their problems are.

15 We're basically asking the Court to do right, to
16 shut down the businesses that are clearly prohibited.

17 We've got some defendants here, they're nice
18 people, we've got no gripe with them. It's the type of
19 business that they're running at that particular location.

20 It's tough, it's a tough history to this case.
21 You're going to find it all out, but we're now stepping to
22 the plate and asking the Court to enjoin this activity,
23 basically restaurants and bars, that are in seven of the
24 eight units.

25 The eight units on the first floor from left to

1 right are labeled A, B, C, D, E, F, G, H, from the left to
2 the right facing the condominium unit. Unit E is not part
3 of the lawsuit. Don't even know who owns Unit E. The
4 board at this time feels there's no violation of the
5 covenant and restrictions in Unit E.

6 So in closing my opening, I'd ask the judge and
7 the Court to hear what these clients have to say and
8 understand the reason, please, for the 75 percent changing
9 rule.

10 The case is really about democracy and how we
11 won't let a small select group of people control the
12 destiny of the majority to the majority's detriment. And
13 it's a democratic case and it goes deeper than you see on
14 the ground. Clearly anybody walking by can make a
15 decision on this case and say there's restaurants there,
16 the master deed says no restaurants, bars. Anybody can do
17 that. But we have a case in equity court and we're asking
18 the judge to do equity between the homeowners association
19 that didn't jump on these restaurants right away, and
20 that's an understatement, and some businessmen that own
21 those commercial units that are clearly in violation.
22 We're asking the judge to stop it and award court fees and
23 costs to these plaintiffs.

24 Thank you, Your Honor.

25 THE COURT: Mr. Boger.

1 MR. BOGER: May it please the Court, Your Honor.
2 I'll be brief.

3 It's interesting that Mr. Spillane talked about
4 doing equity, because that's what the defendants want.
5 They have owned these commercial establishments, some of
6 them for 15 years, and they've never been, with the
7 exception of an 11 percent no settlement, ever been
8 challenged in any way to open these restaurants.

9 The law is simply dead against them. We can
10 argue the law for the defendants in this case, but doing
11 equity would certainly be equitable estoppel -- that's
12 what our argument is -- waiver and laches. Those are our
13 three defenses.

14 We will establish through the evidence in this
15 case that the plaintiff has allowed these businesses to
16 run, regardless of what their restrictions say about
17 waiver being not an option, they've let them run for 15
18 years and suddenly out of the blue it comes along and they
19 want these things shut down.

20 My clients are in commerce, they pay their
21 taxes, they have good running businesses and continue to
22 run businesses in a deep recession, and to shut them down
23 would be inequity.

24 THE COURT: Mr. Best.

25 MR. BEST: Your Honor, in judicial economy I am

1 fully in line with Mr. Boger's opening statement.

2 THE COURT: Thank you.

3 Mr. Spillane, you may present your first
4 witness.

5 MR. SPILLANE: Yes, Your Honor. I'd call Karen
6 Greiner to the stand.

7 KAREN GREINER, after being duly sworn, testified
8 as follows:

9 THE CLERK: Please have a seat there, ma'am.
10 Speak into the microphone and state your full name for the
11 record.

12 THE COURT: And please spell your last name.

13 THE WITNESS: Greiner, G-R-E-I-N-E-R. Karen
14 Greiner.

15 DIRECT EXAMINATION

16 BY MR. SPILLANE:

17 Q Ms. Greiner, where do you live?

18 A I live in Richland County, Columbia, South Carolina.

19 Q Do you live at Place on the Greene?

20 A No, I do not.

21 Q Do you own a unit --

22 A Yes, I do.

23 Q -- at Place on the Greene?

24 A I do.

25 Q A residential unit?

1 A It is. It is.

2 Q And when did you purchase that?

3 A We purchased that back in May of 2002.

4 Q What is your occupation?

5 A I'm an advertising executive, write and produce ad
6 campaigns, that sort of thing.

7 Q That's interesting.

8 A Yes, sir.

9 Q You said "we" to the purchase question. Who did you
10 purchase it with?

11 A My husband and I. My husband and I purchased it.

12 Q And why did you purchase it?

13 A Well, actually we had -- I had read where Senator
14 Hollings was going to get a big old chunk of money to redo
15 Five Points and I had a son who was entering Carolina and
16 a daughter two years after that and I thought -- actually,
17 I read the classifieds as kind of a hobby and I happened
18 to see the condominium and it just seemed like a really
19 awesome price. So we went to look at it and just thought
20 it would be a good investment and my son could live there
21 and perhaps my daughter later.

22 Q What's your role with the homeowners association
23 today?

24 A I'm the president of the homeowners association.

25 Q You're president, you're the plaintiff's president?

1 A Right now, uh-huh.

2 Q How long have you lived in Columbia?

3 A My whole life.

4 Q Okay.

5 A I'm fifty-something.

6 Q How did you become active in the --

7 A Well, when I bought the condo -- this is going to
8 make me seem a little dumb at the time, but when my
9 husband and I went and looked at it, I didn't really
10 realize that the commercial units were even part of the
11 whole Place on the Greene, because you're buying it as a
12 residence so it didn't really dawn on me. You kind of
13 walk past them and get on the elevator and go up. And at
14 the time the condominium complex really needed some
15 repairs, you know, and I've remodeled homes and I just
16 like that kind of challenge. So I thought, wow, we could
17 buy this and then I could help them fix it up.

18 Actually, the first floor behind the commercial
19 units, which again I didn't realize they were part of it,
20 was like the worst looking. Anyway, so the idea was that
21 I could help remodel it. And so --

22 Q So I take it there were --

23 A So I got on the board so that I could have some
24 say-so way back then.

25 Q All right. So there are residential units also on

1 the first floor; is that correct?

2 A There are on the other side, yeah.

3 Q The back side?

4 A On the back side.

5 Q Do they face Greene Street?

6 A No.

7 Q You're familiar with the commercial units now; is
8 that correct?

9 A Yeah. I got real familiar with them when I got on
10 the board. I thought, oh, this is part of it.

11 Q How did you become a board member?

12 A I just said I wanted to be one.

13 Actually, this is my first experience ever with
14 a condominium or being on a board. And it's really
15 actually kind of tough to get people to be on the board
16 because it's kind of a volunteer and everybody's busy and
17 doesn't have time. And so I just said I wanted to be on
18 the board.

19 Q And who did you say that to?

20 A Landmark -- Weston really at the time. They send out
21 a thing about the annual meeting and you go to the annual
22 meeting and "Does anybody want to be on the board?" I mean
23 that kind of thing.

24 Q Western?

25 A Weston at the time.

1 Q What was their role?

2 A They were the property management company at the
3 time. But actually just a few months after we bought the
4 condo, it switched to Landmark.

5 Q Weston was the property management so you got on the
6 board and then --

7 A Went to the annual meeting and they were like,
8 "Anybody want to be on the board?" And you stand up and
9 you say a little bit about yourself and that was kind of
10 it.

11 Q So how did you help when you got on the board?

12 A I didn't know anything. I didn't even know that
13 those units were part of Place on the Greene. I mean, it
14 sounds kind of stupid, but you didn't think of it like
15 that because it's a residence.

16 Q Tell me about the board meeting. Who runs the
17 meeting?

18 A Well, the management company kind of does up a little
19 agenda.

20 There's always kind of a challenge of just you
21 want people on the board that are going to actually come
22 to the meetings and help out a little bit. So, you know,
23 we have old business -- you have meetings. We read the
24 minutes from the last meeting, we go over the financials,
25 we have old business and then new business.

1 And you talk about all of the -- just the
2 problems. And that's when I learned -- well, I had, of
3 course, found out they're commercial now, but all the
4 problems, the trash, the bugs. I mean everything's --
5 security, it all goes back to those commercial units. So
6 that's how I started becoming familiar with the commercial
7 units.

8 Q Did the board meeting discuss problems?

9 A All the time.

10 Q And those problems again were you said bugs and trash
11 and what else?

12 A Security, noise, all the things that the residents
13 complained about, or my son complained about too.

14 Q And you traced those problems back somewhere and I
15 missed that.

16 A Well, they go back to the commercial units because
17 they're the ones that generate a lot of trash and because
18 of the food and the bugs. I mean, it's just a lot --
19 people that just live don't have quite as many things to
20 deal with.

21 Actually, my husband and I owned a restaurant so
22 I'm real familiar with restaurants.

23 Q Okay. Thank you. So what did you do?

24 A You know, I was like -- I just couldn't believe that
25 you could -- that you could -- that anybody could agree to

1 having a bunch of people living above a place that could
2 stay open until 2 or 3 in the morning and have loud music.
3 I mean, it's just like, how can this be? How can this be?
4 I just -- I don't know.

5 I mean, I would ask the management company and
6 the whole answer was just always, "Well, they've just
7 always been there. They've just been there." I was like,
8 "Well, but are they supposed to be there?"

9 It just seemed like nobody in their right mind
10 would agree to have, you know, people living right above
11 or behind stuff that was open so long. I just didn't get
12 it.

13 Q What are the names of these businesses, do you know?

14 A The Place on the Greene, The Pita Pit, The Blue
15 Cactus, you know, the --

16 Q Well, The Place on the Greene is the homeowners
17 association. What is the name -- do you know the names of
18 the other businesses?

19 A Oh, Tavern on the Greene. I'm sorry. Not Place on
20 the Greene, Tavern on the Greene.

21 Q So then what did you do? You're frustrated?

22 A Well, I am frustrated. It kind of -- you know, I got
23 back on the board the first year and, you know, just after
24 a few years of, you know, people telling me that that's
25 just the way it is, it's like but, you know, it just

1 doesn't make any sense.

2 So I literally got a copy of the deed, the
3 master deed, and had been told that my main job as a board
4 member was to uphold the master deed. And I'm like, okay,
5 well, you know, maybe we could change whatever's in there
6 so that these commercial people won't be there. I mean,
7 we've got to do something because it's never -- it's
8 always -- it's just always -- we're just always going to
9 have all these problems.

10 Q Let me, if I could --

11 A Okay.

12 Q -- show you what's been marked Plaintiff's Exhibit 1.
13 Do you recognize that?

14 A This is our master deed. Absolutely.

15 MR. SPILLANE: All right. Thank you.

16 I move --

17 MR. BEST: Without objection, Your Honor. We
18 stipulate that those have already been marked.

19 THE COURT: To all the exhibits or just the
20 plaintiff's exhibits?

21 MR. BEST: To Plaintiff's 1 through 8, what was
22 pre-marked.

23 THE COURT: They're all eight admitted, then.

24 (WHEREUPON, Plaintiff's Exhibits Nos. 1-8 were
25 admitted into evidence.)

1 MR. SPILLANE: Your Honor, I have other copies
2 of this master deed. If I could have the certified one
3 with the Court while she looks at the copy.

4 THE COURT: Certainly.

5 BY MR. SPILLANE:

6 Q I'm giving you an exact copy of what is Plaintiff's
7 1.

8 THE COURT: She can take the one with the
9 sticker on it. It makes no difference to me.

10 BY MR. SPILLANE:

11 Q Okay. I interrupted you rudely when you're talking
12 about "so I got the master deed" I think is what you said.

13 A I did. I got the master deed because I --

14 Q Where did you get the master deed?

15 A Actually, when you close on the condo, my lawyer had
16 put it on the back of my file with my paperwork on the
17 condo and it was actually in there, the master deed.

18 Q And what were your -- you had a question or
19 frustration?

20 A Well, the thought process was, okay, so, you know,
21 either we could maybe change whatever's allowing these
22 people to be there -- well, actually that's what I really
23 thought I was going to do. But I got the master deed and
24 I started kind of going through it and I got to a part
25 that was about the commercial units and it was like -- I

1 mean, I was expecting it to be in language that I couldn't
2 understand because I don't know that much about legal. In
3 fact, this is my first time ever in a courtroom, so I'm a
4 little nervous.

5 Q What part did you come to?

6 A The part where it talks about and it says really
7 plainly "no restaurants." And I'm like, well, Mark,
8 listen to this, I mean, because it wasn't hard to
9 understand. Let me see.

10 Q Could you direct the Court to the page and to the
11 section --

12 A Right. Exactly.

13 Q -- you're talking about.

14 A Right. This is the part that I found. And actually,
15 I didn't look for anything else because I thought it was
16 pretty clear. It's on page 13.

17 THE COURT: One moment, Ms. Greiner.

18 THE WITNESS: Uh-huh.

19 THE COURT: If you would move back from the
20 microphone a little bit.

21 THE WITNESS: Oh, I'm sorry.

22 THE COURT: Either that or turn them down
23 because your voice is carrying into the courtroom next
24 door.

25 THE WITNESS: Oh, my gosh. I'm so sorry.

1 THE COURT: It's fine.

2 THE WITNESS: I'm sorry.

3 THE COURT: Either just push them down so that
4 you're not speaking directly into them. I think your
5 voice is loud enough that --

6 THE WITNESS: Without them. I hear you. I've
7 been told that. I'm sorry.

8 THE COURT: Thank you.

9 I'm sorry. Go ahead.

10 BY MR. SPILLANE:

11 Q You're excited about being here?

12 A Well, I mean, I've been working towards it for a long
13 time. But anyway.

14 Q Okay. I understand you're excited, but we can all
15 hear. Good acoustics.

16 A Okay.

17 Q So you found something you told us on page what?

18 A It was on page 13.

19 Q Can you show us?

20 A Section 3. It's the third piece down. Section 3.
21 And it says "condominium commercial unit." And if you
22 read it, it says -- is it okay to read it, the little
23 part?

24 Q Sure.

25 A Okay. "Each condominium commercial unit is hereby

1 restricted to general office space and limited service
2 establishments by the owner thereof and his agent,
3 servant, invitees, licensees, and patrons. The use shall
4 comply with all the ordinances and zoning regulations
5 enumerated by the City of Columbia and the rules and
6 regulations of the board of directors. The rules and
7 regulations, among other things, however, shall provide
8 that no restaurant or establishment engaged in the
9 preparation or delivery of food, no poolhall, game room,
10 bar, lounge, or retail shop that relies on a volume of
11 walk-in patrons shall be permitted."

12 Q And did you say that's as far as you went?

13 A Yes.

14 Q Then what did you do?

15 A Well, at the next board meeting I told them that we
16 didn't need to amend anything, it's here right plain as
17 day. And I still got a lot of resistance in terms of
18 just -- I just decided that I was going to try and uphold
19 the master deed because that was what I'm supposed to do
20 as a board member and it states clearly what it stated.

21 Q What did the board do ultimately?

22 A Well, actually I informed the board that I was going
23 to try to talk to a few lawyers. I was going to try and
24 find out if, in my limited knowledge, if it seemed as cut
25 and dried to them and then I was going to try and get

1 lawyers to come and talk to the board because I knew I
2 couldn't get them to do it on my own, because we're a
3 board, there's five of us. I'd have to get them to agree
4 that, you know, we should do this, we should uphold the
5 master deed.

6 So I talked to a few lawyers, eventually had
7 them come and, you know, say you came and saw, you know,
8 spoke to the board on your interpretation of, you know --
9 I was trying to see if we could take it to the legal step
10 to make it happen.

11 Q All right. But you had contacted other attorneys
12 prior to that?

13 A I did. I did. I did.

14 Q What were the reasons the board was reluctant?

15 A Well, you know, when you have a condominium, the idea
16 is you have to agree when it comes to repairs and spending
17 money. And you have a regime fee so money is put in a
18 pool. It was really a question of most of the time
19 feeling like, you know, we just don't have the money, we
20 can't spend the money on hiring a lawyer to try and uphold
21 the master deed. And I tried to -- my goal was to make
22 them understand -- as I see it, that's the whole reason
23 you have a board of directors is to uphold the master deed
24 and to do what's best for the building and the residents.
25 And, you know, all these people complaining about noise at

1 3 in the morning and complaining about bugs and trash, you
2 know, it was like you could never -- you couldn't have a
3 whole lot of success as long as there were restaurants and
4 bars in the bottom of the building, the first floor of the
5 building.

6 Q So what are you asking this Court to do?

7 A I'm asking them to give an injunction so that those
8 businesses have to cease and desist and that we go back to
9 living by the master deed which says that, you know, you
10 can have general office space.

11 You know, nobody minds if there's a business
12 there from 9 to 5, 9 to 6, and it's a, you know, just a
13 little few people coming in and out type of stuff or a
14 limited service. It would be like a great little spot for
15 like even a little law firm would be great, I think.

16 Q Has the board spent money on this action?

17 A We have. We have. And we actually -- in order to
18 make it happen, we had to agree that there was a cap.
19 We'll try and uphold the master deed and fight this thing
20 to a -- you know, but we won't go beyond that because we
21 have limited resources. We're not, you know, we just have
22 the regime fee stuff.

23 So, yeah, that's what I would like, to cease and
24 desist.

25 Q All right. Is there anything else you want?

1 A You know, I don't really feel like we should have to
2 pay the costs. I'd kind of like for the Court to ask that
3 they pay -- that the homeowner association doesn't have to
4 pay for these fees.

5 Q What's the basis of you saying that the association
6 shouldn't pay?

7 A Well, if you didn't have to go through courts to
8 uphold -- I mean, I tried just showing this to people. We
9 sent out a complaint to the owners because it's not really
10 the people that run it as much as the owners, because if
11 they read their master deed, they would see that they're
12 not supposed to lease their building to those types of
13 places.

14 Q Let me show you Plaintiff's Exhibit 8 and ask you if
15 you recognize that.

16 A Exactly. This was step one. We sent a letter to the
17 owners saying, you know, we want you to quit having those
18 types of -- leasing those types of businesses to your
19 tenant.

20 Q Those are my letters; is that correct?

21 A Correct.

22 Q How were those letters sent out?

23 A Certified mail. Absolutely.

24 Q And what's the date on those letters, the first one
25 at least?

1 A The date is June 25th, 2007.

2 MR. SPILLANE: I think all of these are
3 admitted.

4 THE COURT: Yes, sir.

5 BY MR. SPILLANE:

6 Q Are you familiar with the amendment process for the
7 master deed, for the restrictions in the master deed?

8 A In other words, if we wanted to amend the master
9 deed?

10 Q Yes.

11 A I know you have to have 75 percent.

12 Q Seventy-five percent of what?

13 A Of the owners agree that they want to amend the
14 master deed.

15 Q Let me direct your attention to page 21.

16 A All right. All right. I'm there.

17 Q Do you have that section?

18 A Are you talking about the amendment of the master
19 deed?

20 Q Yes?

21 A XV111.

22 Q That's Roman Numeral 18. Basically what does it say?

23 A "This master deed may be amended by the vote of at
24 least 75 percent of the total percentage interest of all
25 co-owners cast in person or by proxy at the meeting."

1 Or by proxy, yeah. That means, you know, if you
2 can't be there you can -- somebody can vote on your
3 behalf.

4 Q All right. And when did the amendment become
5 effective?

6 A Shall become effective upon recordation of the
7 written -- in other words, it has to be pretty official.
8 It has to be put on record by a lawyer.

9 Q All right. We'll let the Court look at that.

10 In your experience, have there -- and you're
11 still president now, correct?

12 A I'm president now. I got on the board back then and
13 I've remained on the whole time.

14 Q You've served how many years?

15 A Four, five, six, seven, eight -- this is my sixth
16 year.

17 Q Are you elected every year?

18 A You are. You are.

19 Q What's the term of a board member?

20 A A year.

21 Q How many board members are there?

22 A Five.

23 Q Do you know who they are right now?

24 A I do know who they are. Myself, Jerry West, Michael
25 Dover, Tim O'Brien and Brian Smith. We had two new ones

1 this year.

2 Q You had two new ones coming on?

3 A Uh-huh.

4 Q Jerry West, what does he do? Do you know his
5 occupation?

6 A I really don't. I mean I know he's in some kind of
7 management stuff.

8 Q Okay. The next person, who is that?

9 A Michael Dover.

10 Q Do you know his occupation?

11 A Michael works at Carolina First.

12 Q All right. And the next guy?

13 A Is Tim O'Brien. He's a new -- he's new.

14 Lot of times -- actually, he was kind of like
15 me. He bought a condo and so I think that's why he wanted
16 to be on the board. He just recently purchased a condo.

17 Q Okay. How old is he?

18 A He's kind of a young guy. He's about thirty-ish
19 looking.

20 Q And who else?

21 A One other guy, Brian Smith.

22 Q What does he do?

23 A You know, I thought he was a doctor, but when I
24 called Michelle to see if she knew, she didn't know. I'm
25 not sure. But he, too, recently had purchased a

1 condominium.

2 That's usually the way -- I mean that's how I
3 got on too. It's like, oh, well, let me see what's going
4 on and how I can make sure that the best interest is being
5 served for the residents, I guess.

6 Q Were there any requests to the board during your time
7 to change the -- to amend the master deed, the
8 restrictions?

9 A You know, I have to tell you that it was really more
10 me saying, "Come on, guys, we're supposed to uphold this."

11 You know, my first thought when I first, very
12 first went to the master deed was going to be trying to do
13 an amendment because I assumed that those commercial
14 people could be there. I mean, so no, we didn't talk
15 about an amendment because step one was just to uphold
16 what's there. I mean, it was already in black and white.
17 It was always there. We didn't have to amend it. So no.

18 Q Do you feel the association's given up its rights to
19 crack down on the restaurants and bars?

20 A Not at all. I mean, that doesn't make any sense. I
21 mean, no, no, we haven't given up our right.

22 I'll admit that the board of directors -- or I
23 can only speak for Place on the Greene, but I mean people
24 are just giving of their time freely, you're not paid
25 anything. You know, there's not a lot of initiative. I

1 don't know any way to put it.

2 But I mean, I had to push through an initiative
3 to get the first floor retiled because that carpet from
4 where the -- was just disgusting.

5 I mean, it's kind of a -- the building was
6 really becoming kind of run down and it was just not a
7 good thing when I first got there. And so I knew if we
8 could do some things it would help. And there's just not
9 a lot of initiative.

10 And I don't think we should be penalized,
11 because we're just a group of people, five people, that
12 constantly changes year after year. I mean, I've been on
13 the board the longest of anybody, or a lot of people.

14 Q Let me direct your attention to page 22.

15 A All right.

16 Q And two specific sections on page 22 of the master
17 deed. That's Article XI at the bottom of 21.

18 A Right.

19 Q Section 3.

20 A All right. Costs.

21 Q What's your understanding of that?

22 A "In any proceeding" --

23 Q Just tell me your understanding of that.

24 A Oh, it just means that we shouldn't have to pay to
25 uphold the master deed.

1 Q Who should have to pay?

2 A The people that were violating it.

3 Q You truly feel the defendants here, which is Pita
4 Pit, Tavern on the Greene, Blue Cactus, I think, the
5 restaurant --

6 A Uh-huh.

7 Q -- you truly feel they're violating the restrictions?

8 A Absolutely. Absolutely. And just because you've
9 gotten away with something for a long -- I mean, it's
10 still not right. It's still not supposed to be happening.

11 Q Do you feel you have any ulterior motives here?

12 A None whatsoever except for, again, I go back to -- I
13 don't think you could find anybody that would -- a group
14 of 75 percent -- 75 percent of any group of owners that
15 would say, yeah, that's a good idea, let's have a bar
16 that's open until 2 and 3 in the morning, what a great
17 idea, and a couple more restaurants that create all this
18 trash. I mean, nobody is going to agree. It made no
19 sense that that was a possibility.

20 Q And you feel you're right in this case; is that
21 correct?

22 A Absolutely I'm right.

23 And, you know, I mean, I know the economy's bad,
24 but they're -- it's just that that building is always
25 going to have issues that we, as a board of directors, we

1 can't overcome these. They're just too massive, they're
2 too big a problem.

3 Q All right. Let me direct your attention to Section 4
4 on page 22.

5 A Uh-huh.

6 Q What's your understanding of Section 4 of Article
7 XIX, Roman Numeral XIX, that's 19, Section 4.

8 A You know, that's a really good one, I mean, because
9 it was probably put in there because -- the association is
10 kind of not a very strong group of people, so you
11 shouldn't be able to get by just because we haven't done
12 our duty in a more timely fashion, I guess.

13 Q Has the association incurred expenses in this
14 lawsuit?

15 A We have. We have. And that was probably the thing I
16 went out on a limb the biggest for. But, you know, we
17 have expenses around \$5,500, between five thousand and six
18 thousand, you know, because --

19 Q At this point?

20 A -- there still legal fees and -- yeah, exactly.
21 Uh-huh.

22 MR. SPILLANE: Thank you. Answer any questions
23 the other attorneys have.

24 THE WITNESS: Oh, all right.

25 THE COURT: Mr. Boger.

1 MR. BOGER: May it please the Court, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. BOGER:

4 Q Ms. Greiner, you've been on the board longer than
5 anybody?

6 A Well, I mean, I did out the list of the different
7 people and Karen Denning was on there for about three and
8 a half years. Her son graduated so she was no longer on
9 the board. But, yeah, I've have been on there -- this is
10 my sixth year.

11 Q And since you've been on the board the longest you
12 would have access to the records of the history of this
13 association; isn't that right?

14 A Access to the history, yeah, yeah.

15 Q Is there a book somewhere that has all the minutes in
16 it?

17 A Not exactly. I would say kind of more recent ones,
18 but we were actually up in a -- like an attic looking for
19 old minutes and stuff.

20 People don't do the greatest job in the world
21 with that part. I guess because it always changing.

22 Q So the only records you ever looked at was what was
23 produced over the past six years; is that your testimony?

24 A Yeah. I mean, I have the ones from when I've been on
25 the board.

1 And like I say, when we hired the lawyer, the
2 idea was is we were supposed to go and find all the
3 records to give to him to see if, you know, he could find
4 anything. So we dug up some and there wasn't some real
5 perfect little -- all these records. It was just kind of
6 a hodge-podge of stuff that we passed on.

7 Q Let me show you this document and see if you
8 recognize that document.

9 A No, sorry.

10 Q You've never seen that before?

11 A Unh-unh. But I could sit here and read it if you'd
12 like.

13 Q Well, I'm going to ask you to, but let me find my
14 place first.

15 A Okay.

16 Q That's dated March 21, 1991, isn't it?

17 A 1991, yeah, yeah.

18 Q You didn't have that record; is that right?

19 A Again, I didn't -- when we were going to gather stuff
20 to give to the lawyer --

21 Q I understand. You did the best you could.

22 A Perfect, right.

23 Q But in that document you're looking at, look at the
24 part that says "new business" which is about three
25 quarters of the way down the page.

1 A Okay. All right.

2 Q And if you can just read that, the first couple of --
3 well, just read that whole little paragraph for me.

4 A "Beau Powell addressed the vacancy problems of the
5 commercial units due to the restrictions as stated in the
6 master deed. Restaurants, which are prohibited, have
7 worked well in other similar buildings. He offered the
8 motion to amend the bylaws to allow the board at its
9 discretion to allow other usage. Due to there being less
10 than 75 percent, the motion will go to the homeowners in a
11 special election. The additional caveat was made there
12 would not be beer or wine sold without food consumption."

13 I think that's a rule -- but yeah. Okay.

14 Q So that's out of the minutes that you either didn't
15 have or couldn't find; is that right?

16 A Yeah. I mean, they might be in that box.

17 Q That seems to say, doesn't it, that there is a motion
18 on the table to amend the bylaws to allow restaurants to
19 be there as long as they serve beer and wine with food
20 consumption; isn't that right?

21 A Amend the bylaws. Is the bylaws the same as the
22 deed, the same deal?

23 Q I'm not supposed to answer your questions, but yes.

24 A Okay.

25 Q So that's one you didn't have; is that right? In

1 your investigation in looking through the attic and so
2 forth, you didn't have that one?

3 A I don't think so.

4 Q Okay. Now let me show you another document. Take a
5 look at that one.

6 A All right.

7 Q Now, the date at the top of that is March 22nd, 1993;
8 is that right?

9 A Right. Right.

10 Q And if you'll look at once again where it says "new
11 business," what does that say?

12 A "The Duck In restaurant has notified the board of its
13 intent to build a deck in front of the commercial units
14 currently occupied by G&A Jewelers and the Columbia Tan
15 Spa. This property is owned by the City of Columbia and
16 the deck will have to be approved by the zoning
17 department. The opinion of those present at the meeting
18 was that the deck, done properly, could be an asset to the
19 building."

20 Q Okay. That's good. You've got the part.

21 A Okay.

22 Q So it looks like that the first one I showed you was
23 dated 1991; is that right?

24 A Right. Uh-huh.

25 Q And the second one is March of '93 --

1 A Right.

2 Q -- which is two years later?

3 A Right.

4 Q And it appears that The Duck In is a restaurant now
5 in Tavern on the Greene, isn't it?

6 A Uh-huh.

7 Q And they're going to build a deck in front of those
8 commercial units; isn't that right?

9 A Right.

10 Q And no objection from the homeowners association;
11 isn't that right?

12 A Or at least those five people on the board, yeah.

13 Q Well, if there were a problem with the entire
14 association, wouldn't they have come to the board and
15 said, gee, there's something going on here, there's a
16 restaurant that's come in, I want to stop this?

17 A No. It doesn't really work like that because there's
18 some owner residents, but the great majority are leased.

19 Q Wouldn't the board, however, have done something in
20 its power to stop a restaurant had it not already approved
21 a restaurant in 1992?

22 A I don't know. I think maybe these people -- I don't
23 know. I don't know.

24 Q You just don't know. And part of the reason you
25 don't know is you don't have access to the history that

1 apparently the defendants have; is that right?

2 A Well, people on the board don't know a lot. I mean,
3 we're just people.

4 Q Okay. Now, let me show you the next document,
5 March 25th -- March 24th, 1995. See if you recognize that
6 document.

7 A Nope. Again, I didn't get in there until May of
8 2002.

9 Q Well, and if you would, this is once again the annual
10 meeting, isn't it?

11 A In 1995 this is the annual meeting.

12 Q Okay. And if you'll read the first line, where does
13 it say the meeting was held?

14 A At Beau Dee's restaurant.

15 Well, you know, I definitely knew that there's
16 been restaurants there a long time. I think that was the
17 reason why people just -- on the board were like, well,
18 it's always been there, it's always been there. So, I
19 mean, I don't dispute that there's been restaurants there.

20 Q Well, if you're the -- if you've been there the
21 longest, you've been there six years --

22 A Uh-huh.

23 Q -- and you can't find old records that have history
24 of it, is it possible that records existed that tacitly
25 approved of restaurants and bars and that you just didn't

1 know --

2 A Well, even if they approved them, they didn't get the
3 deed changed. It says plain as day, no restaurants
4 allowed. I mean, that's all that I'm going by.

5 Q But there was not an amendment made and, once again,
6 you don't have any history because you're just people?

7 A Yeah. There was not an amendment done.

8 Q Okay.

9 A Had there been, then we might have, as the current
10 board, attempted to do an amendment so that there couldn't
11 be restaurants, I guess.

12 MR. BOGER: Beg the Court's indulgence.

13 BY MR. BOGER:

14 Q Now, you came on in '02 again?

15 A No, I bought the unit in '02. I actually was -- our
16 annual meetings are in December and that's when we vote,
17 and so December of '03. So the board for '04 was when I
18 first came on.

19 Q And this restaurant/bar has been a problem for a long
20 time; is that right?

21 A Yeah. Once I found -- yeah. I mean, it's part of
22 Place on the Greene. It's not just there.

23 Q And has that been a focus of some of the meetings?

24 A You know, not really because there's just this, Well,
25 they've just always been there, they've just always been

1 there, they've just always been there. So no, there's
2 not -- I mean, I have to honestly tell you that I am the
3 one that after reading the master deed said, you know --
4 that spearheaded this, well, let's uphold the master deed.
5 Let's try and just uphold the master deed and do what
6 we're supposed to do.

7 Q Let me show you this document, if I may. If you can
8 just identify that for me.

9 A December '03, Clawson's Inn.

10 Q And what does it -- give me just a second.

11 The problems in the middle of that are -- the
12 topics are re-election of officers, budget, roof repairs,
13 revision of rules and regulations, fines and penalties,
14 pigeon problems, and results of pet preference by owners.
15 Is that the problems in those three?

16 A Right.

17 Q The restaurant is not on the table in '03, is it?

18 A No.

19 Q In fact, without me going through all of these --

20 A The restaurants are never on the table.

21 Q It's never been on any --

22 A No, because they've just been there.

23 Q At any annual meeting that has not been an issue, has
24 it?

25 A Unh-unh. No. I mean, it just -- no.

1 Q So this is just sort of your spearheading, this
2 termination of the restaurants?

3 A No. This is me upholding the master deed.

4 Q Okay.

5 A Or looking at what should or shouldn't be. This is
6 me going, there is nobody in their right mind that would
7 say I want to live above -- that's all that is.

8 MR. BOGER: Your Honor, I would --

9 THE WITNESS: I mean all along I will tell you
10 that lots of people that live there say they don't like
11 it.

12 MR. BOGER: Object to anything that --

13 THE WITNESS: Oh, sorry.

14 MR. BOGER: I would like to move to mark the
15 exhibits which I have given her, and I think there are
16 four. Did anybody keep count?

17 THE WITNESS: Oh, I'm sorry. One, two --

18 THE COURT: Any objection?

19 THE WITNESS: Actually, there might be five.

20 MR. BOGER: I will do them individually, Your
21 Honor, unless there's an objection.

22 MR. SPILLANE: Your Honor, I plan to call Deane
23 Chavous later to signing two of these.

24 We have no objection to their admission as four
25 exhibits. Are they all separate?

1 THE COURT: There are four?

2 MR. BOGER: There are four. Two pages need to
3 be stapled together.

4 MR. SPILLANE: They seem to be the business
5 records of the association.

6 THE COURT: Just give the court reporter an
7 opportunity to mark them before you start back.

8 (WHEREUPON, Defendant's Exhibits Nos. 1-4 were
9 marked for identification and received into
10 evidence.)

11 MR. BOGER: Your Honor, that all the questions I
12 have for Ms. Greiner.

13 THE COURT: Anything from you, Mr. Best?

14 MR. BEST: Yes, Your Honor, just a few.

15 CROSS-EXAMINATION

16 BY MR. BEST:

17 Q Ms. Greiner?

18 A Yes.

19 Q A couple of times you have made the statement that
20 who in their right mind would want to live above that?

21 A Uh-huh.

22 Q Isn't it primarily college students that live at
23 Place on the Greene?

24 A You know, it's a combination, which I was kind of
25 pleased to see.

1 Q But there are a lot of college kids that live there?

2 A Yeah, there are. It's right there at the university.

3 You can walk to class. It's perfect.

4 Q Whose duty is it to follow through with the amendment
5 process in that master deed? Isn't it yours?

6 A The board of directors.

7 Q Yours now?

8 A Are you asking me if I was going to make an
9 amendment would it be my job?

10 Q If you were to make an amendment, isn't it your
11 responsibility to follow through to see that the
12 recordation takes place?

13 A I guess. I mean, I'll be honest, when you're on a
14 board of condominiums you don't know a whole lot, but yes,
15 I would assume if you uphold the deed or you amend the
16 deed, that it's up to you.

17 Q All right. In the first exhibit that Mr. Boger
18 showed you --

19 A Uh-huh.

20 Q -- I think it's March of '91.

21 A Uh-huh.

22 Q It says a special vote is going to be taken.

23 A Uh-huh.

24 Q Do you have the results of that vote?

25 A I mean in '91 I wasn't even -- do I have the results?

1 Q You are the board, ma'am. Does the board have those
2 records?

3 A I don't think so. I'd have to look.

4 Q So if I further understand your testimony, the way
5 you read these restrictions is that if you can get
6 75 percent this year and 75 percent next year, you can
7 flip-flop this thing any way you want to?

8 A No. I don't think so.

9 Q That's the way you testified.

10 A Oh, yeah. I mean, if I could get 75 percent of the
11 people to say they don't want restaurants down there,
12 yeah, that would -- but I didn't need to do that because
13 it already said it in the master deed.

14 Q All right. Now, in 2004, is that the year that you
15 ran for the board?

16 A Yeah. Well, actually December of 2003, which yes,
17 I'm on the board starting in '04, January of '04.

18 Q And did in '04 the board for Place on the Greene
19 publish some new rules and regulations?

20 A We were always trying to do -- you know, we were
21 trying to -- with students living there, yeah, we had good
22 rules and regulations, as does every place.

23 Q Can you identify that document for me?

24 A It's the rules and regulations that my guess is
25 Michelle typed up.

1 Q And if you would, turn to the last page and cite the
2 date at the bottom that shows the revision date.

3 A 1-04.

4 Q Do you take that to be January '04?

5 A I do.

6 MR. BEST: Okay. We'd move this as Defendant's
7 whichever next number, your Honor.

8 THE WITNESS: You know, we're always thinking in
9 terms of residents because that's what we consider
10 ourselves, residents, people living there.

11 BY MR. BEST:

12 Q But you don't live there?

13 A My son and his wife and little boy, but they moved
14 out. So now I'm renting it or leasing it.

15 MR. SPILLANE: They appear to be the rules and
16 regs of Place on the Greene in '04. No objection.

17 THE COURT: Mr. Boger, there's no objection from
18 you?

19 MR. BOGER: No, ma'am.

20 THE COURT: So that will be Defendant's Exhibit
21 5. If you'll give the court reporter time to mark it,
22 please.

23 (WHEREUPON, Defendant's Exhibit No. 5 was marked
24 for identification and received into evidence.)

25 BY MR. BEST:

1 Q On your page two, Ms. Greiner, is that where the
2 actual rules and regulations start or is that on page one
3 of what you have?

4 A Renting of unit, parking. One, two, three is on my
5 front page.

6 Q All right. One, two, three. Item three deals with
7 solicitation?

8 A Uh-huh.

9 Q And, if you would, read the first sentence of that,
10 please.

11 A "Businesses shall not advertise their product,
12 services or functions in the common areas of Place on the
13 Greene."

14 Q Okay. And then go on to your page two and item
15 number four.

16 A Annoyances?

17 Q Correct. In the second paragraph of that, beginning
18 with the words "after 10 p.m."

19 A Right.

20 "Noise from televisions, stereo equipment,
21 people, et cetera, should be kept to a minimum at all
22 times, especially during the hours of 10 p.m. through
23 8 a.m. After 10 p.m., customers of the commercial units
24 must be served within the business location" -- well,
25 that's because they're always spilling out, being loud --

1 "outside commercial units. Any tables or chairs for
2 commercial units are to be brought in by 10 p.m. to
3 decrease the loitering problem."

4 Do you want me to keep reading, "Columbia
5 Police"?

6 Q No, ma'am, I don't.

7 A Okay.

8 Q The rules in '04 make specific provisions for
9 operation of commercial units, do they not?

10 A Oh, absolutely. When I first got there, that's the
11 deal, they've just been here and they've always been. So
12 we're trying to make the best of the situation.

13 Q And you made specific mention of how they should
14 serve their customers and they're serving them what?

15 A What are they serving them?

16 Q Yes, ma'am.

17 A Food and drink.

18 MR. BEST: Thank you, ma'am.

19 I don't have any further questions, your Honor.

20 THE COURT: Any redirect?

21 MR. SPILLANE: Yes, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. SPILLANE:

24 Q Ms. Greiner, did the board vote to bring this
25 lawsuit?

1 A Yes, we did.

2 Q Do you consider yourself spearheading the lawsuit?

3 A I consider myself bringing it to the board's
4 attention, that it's our job to uphold the master deed and
5 we just need to do it no matter how long it's not been
6 done. So yes, I was the one that continued to point that
7 out.

8 Q Let me show you Defendant's Exhibit 1.

9 A All right.

10 Q And under "new business" it mentions Beau Powell.

11 A Uh-huh.

12 Q Do you know who that was?

13 A I've learned that he was actually the developer.

14 Q All right. You don't really know who he is, right?

15 A No, I don't. I mean, I don't know him, no.

16 Q And it says he addresses the vacancy problem for the
17 commercial units due to the restrictions in the master
18 deed.

19 A Uh-huh.

20 Q What were the restrictions in the master deed?

21 A That you couldn't have a restaurant. It was just for
22 general office use and limited service establishments.

23 Q All right. The second sentence says that it worked
24 in similar buildings. It says --

25 A Worked well in similar buildings.

1 Q Listen to my question. He offered the motion to
2 amend the bylaws.

3 Is the restaurant restriction in the bylaws or
4 the master deed?

5 A The master deed.

6 Q All right.

7 A That's why I asked that other lawyer.

8 Q Are the bylaws part and amended to the master deed?

9 A Hold on one second. Let me look and see if it says
10 bylaws.

11 Yes. There are bylaws. But there's nothing
12 about the restaurants in there I don't believe.

13 Q Would amending the bylaws change the master deed?

14 A I don't think so.

15 MR. BOGER: Object, Your Honor. She doesn't
16 know the answer.

17 THE WITNESS: I don't. I mean, the master deed
18 is the main thing that was set up so that it would be a
19 good property.

20 BY MR. SPILLANE:

21 Q All right. Let's stop and find the bylaws which are
22 attached in the master deed.

23 A And I see those.

24 Q All right. If you could give me the page.

25 A It's right after the certification of incorporation.

1 It's right here.

2 Q All right. What page?

3 A It's right after the certification. You know, the
4 whole master deed and then there's some drawings of the
5 building and then there's a certification and then there's
6 bylaws. Page 46 is what it's stamped.

7 Q Page 46 it's stamped. That's the bylaws?

8 A Correct.

9 Q Could you find where it talks about amending the
10 bylaws?

11 A Hold on. I've looked at this.

12 MR. BOGER: Your Honor, if it will help, we'll
13 stipulate that the bylaws may be amended.

14 THE COURT: It's page 52.

15 BY MR. SPILLANE:

16 Q Page 52.

17 A Sorry. I'm looking. The writing is kind of little.

18 Q All right. Page 52, Exhibit J-7, page seven, talks
19 about amendments in Article XIV, 14. How are the bylaws
20 amended?

21 A "These bylaws may be amended at a regular or special
22 meeting of the members by vote or a majority of a quorum
23 of members present in person or by proxy."

24 Q All right. So they would be amended by a majority --

25 A Right.

1 Q -- of the people; is that correct?

2 A A quorum, yes.

3 Q Quorum of the interests represented?

4 A Uh-huh.

5 Q And we said earlier the master deed would be amended
6 by a super majority; is that correct?

7 A Right.

8 Q What was that number?

9 A Seventy-five percent.

10 Q All right. Do you know if this motion ever went to
11 the homeowners in a special election? Someone had a
12 motion it seems maybe?

13 A From back in '91?

14 Q Yes.

15 A No.

16 Q You weren't on it then, were you?

17 A Seems like when we got a copy of this it would have
18 been in there.

19 Q Can the board amend the bylaws?

20 A Yeah. I mean, if you have enough support.

21 Q Does the board have to get a majority vote of the
22 people?

23 A Yes. Yes, they do.

24 Q Defendant's Exhibit 3, I want to show you -- I think
25 it's in that attachment.

1 A That was one of the letters. That's all I have.

2 Q Defendant's Exhibit 3 --

3 A He took them all back.

4 Q Okay. I've got 5.

5 A It's the only one I have.

6 MR. BOGER: Which one is that?

7 MR. SPILLANE: That's the annual meeting.

8 BY MR. SPILLANE:

9 Q I'll show you Defendant's Exhibits 3 and 5.

10 A Okay.

11 Q This was an annual meeting; is that correct?

12 A Right.

13 Q From '95?

14 A Right.

15 Q Before you came on, right?

16 A Right.

17 Q Are issues discussed in the board that never get to
18 the agenda at the annual meeting?

19 A Oh, absolutely.

20 Q Who sets the agenda for the annual meeting?

21 A You know, since I've been on the board, the property
22 management company.

23 Q Okay. Do you know of any amendments that were passed
24 by the people during your tenure, amendments to the master
25 deed that didn't get recorded at the courthouse?

1 A No.

2 Q Do you know of any amendments that were passed by the
3 people during your eight years -- not eight years. How
4 many years, eight?

5 A Six.

6 Q Six -- that were passed by the people? Were there
7 any amendments to the master deed?

8 A No.

9 Q Do you know of any amendments to the bylaws that were
10 passed by the people during your time?

11 A No.

12 Q All right. Let me show you Defendant's 5, rules and
13 regulations.

14 And Mr. Best asked you about limiting hours and
15 telling them to take in tables and all.

16 Did the board try to control the situation?

17 A Yeah. It seemed like the next -- I mean I had just
18 gotten on the board, but yeah, at least limit things,
19 sure.

20 Q Is there any -- who passes the rules and regulations?

21 A The board of directors.

22 Q Can the rules and regulations overtake or trump the
23 master deed?

24 A Not at all, no.

25 MR. SPILLANE: Thank you, Ms. Greiner.

1 THE COURT: You may step down.

2 THE WITNESS: All right.

3 MR. BOGER: Recross, Your Honor?

4 THE COURT: Oh, I'm sorry. Yes.

5 MR. BOGER: I will be brief.

6 RECROSS-EXAMINATION

7 BY MR. BOGER:

8 Q On page 16 of the these amendments -- excuse me, of
9 the master deed --

10 A Uh-huh.

11 Q Can you find that pretty quickly?

12 A I can. Page 16. All right. You mean the stamp or
13 the one at the bottom?

14 Q The stamped one at the bottom.

15 A The stamp.

16 Q The stamp, I'm sorry.

17 A That's okay. That's the page where it talks about
18 the commercial units?

19 Q Yes, ma'am. I'm going to try to just limit my
20 questioning.

21 You see where it says "in the preparation or
22 delivery of food"?

23 A Okay. Let me find that.

24 Q It's about the sixth or seventh line down on that
25 paragraph. "Engaged in," it begins "engaged"?

- 1 A And you're in Section 3?
- 2 Q Yes, ma'am.
- 3 A Okay.
- 4 Q About six or seven lines down. And I'll just read it
5 for you.
- 6 A Okay.
- 7 Q "Engaged in the preparation or delivery of food, no
8 poolhall, game room, bar, lounge, or retail shop that
9 relies on a volume of walk-in patrons shall be permitted."
10 Is that correct, that's what it says?
- 11 A Right. Right. Right.
- 12 Q And in the pictures, which I think are marked as
13 Exhibit 8 --
- 14 A Uh-huh.
- 15 Q -- there's a picture of the ATT store; isn't that
16 right?
- 17 A There is.
- 18 Q And it's heavy walk-in, wouldn't you agree?
- 19 A Not really. I mean it's open 9 to 5, I guess, for
20 people that have phone issues that come and go.
- 21 Q So there's walk-in traffic?
- 22 A There is.
- 23 Q And you've chosen and you're spearheading this
24 lawsuit not to sue them; isn't that right?
- 25 A Correct.

1 Q Okay. And you, as the spearhead of this lawsuit, did
2 not find until today that there was minutes in 1991, in
3 1993, which tacitly approved of the restaurant and bar;
4 isn't that correct? You didn't find those records, did
5 you?

6 A No. I mean, I'm sure there's a reason why they're
7 there and had been all these years. There's no doubt.

8 Q Could the reason be that you didn't find them because
9 of the poor recordkeeping on the board of directors'
10 behalf?

11 A Oh, I think every board in America has poor
12 recordkeeping, you know, but we do have our master deed.

13 MR. BOGER: That's all the questions I have.

14 THE COURT: Anything further from anybody?

15 You may step down. Thank you.

16 You may call your next witness.

17 MR. SPILLANE: We'd call Larry Phipps.

18 LARRY PHIPPS, after being duly sworn, testified
19 as follows:

20 THE CLERK: Please have a seat here, sir. State
21 your full name for the record and please spell your last.

22 THE WITNESS: My name is Larry Phipps. Last
23 name is P-H-I-P-P-S.

24 DIRECT EXAMINATION

25

1 BY MR. SPILLANE:

2 Q Mr. Phipps, what's your occupation?

3 A I write a couple of sports football magazines and
4 have a small janitorial service.

5 Q What is your connection with Place on the Greene?

6 A I have been a resident for about eight years.

7 Q Were you ever on the board?

8 A For a little over a year, yes, sir.

9 Q What unit?

10 A 508.

11 Q 508?

12 A That's correct.

13 Q What type of businesses are being run at Place on the
14 Greene starting from left to right facing the building in
15 the commercial unit?

16 A Starting with Unit A would be the Pita Pit and then
17 Tavern on the Greene has three units and then you have the
18 ATT store and you have the new store, the tobacco shop,
19 and then you have The Blue Cactus.

20 Q All right. Let's start with A. What's the Pita Pit
21 do?

22 A They are basically a sandwich shop, I believe. I've
23 actually never been in there, but as far as I can tell
24 they're a sandwich shop. I see a lot of people going in
25 and out with sandwiches up until, you know, 3 a.m. in the

1 morning the business stays open.

2 Q Do you have a menu from there?

3 A I certainly do.

4 Q Would you identify that? Is this the only one you
5 have, Mr. Phipps?

6 A Yes, sir.

7 MR. BEST: It's looks like a menu, Your Honor.

8 MR. SPILLANE: I will introduce this as
9 Plaintiff's 9.

10 THE COURT: Without objection.

11 (WHEREUPON, Plaintiff's Exhibit No. 9 was marked
12 for identification and received into evidence.)

13 BY MR. SPILLANE:

14 Q Do you have any other menus?

15 A Yes, I have a menu from The Blue Cactus.

16 Q Where did you get this menu?

17 A That was pulled from the Internet.

18 Q It was pulled from the Internet?

19 A Yes, sir.

20 Q When did you do that?

21 A Last night.

22 MR. BEST: No objection.

23 MR. SPILLANE: I would submit this as
24 Plaintiff's 10.

25 THE COURT: Without objection.

1 (WHEREUPON, Plaintiff's Exhibit No. 10 was
2 marked for identification and received into
3 evidence.)

4 BY MR. SPILLANE:

5 Q Mr. Phipps, I show you a set of pictures that have
6 been marked Plaintiff's Exhibit 7. Would you identify
7 those, please?

8 A These are photos that I took a couple of weeks ago --
9 I guess a few days ago, showing the front of the Place on
10 the Greene.

11 Q Are they pictures of Place on the Greene?

12 A Correct.

13 MR. SPILLANE: I move to admit that as
14 Plaintiff's 11, that group.

15 THE COURT: I thought that was Exhibit 7?

16 MR. SPILLANE: Stipulated.

17 THE COURT: I thought that was Exhibit 7?

18 MR. SPILLANE: I'm sorry. You're right.

19 THE COURT: It's already entered.

20 BY MR. SPILLANE:

21 Q Mr. Phipps, looking through those pictures, do they
22 adequately depict the front of the Place on the Greene
23 building?

24 A Most certainly.

25 Q All right. You have some other pictures from the

1 back in that group. What are those? You have a dumpster,
2 I believe.

3 A That's the dumpster area for the entire complex, both
4 residential and commercial.

5 Q Okay. Do you have a menu from Tavern on the Greene?

6 A No, I do not. From what I understand, all they have
7 is a menu that's on a chalkboard. And there was some
8 question regarding that on a separate occasion that I have
9 knowledge of to be able to say that.

10 Q Okay. Are you familiar with restrictive covenants --

11 A Yes, sir.

12 Q -- at Place on the Greene. What do the restrictive
13 covenants allow for in your understanding?

14 A They do not allow for bars and restaurants.

15 Q All right. Businesses, some businesses operating
16 there are bars and restaurants and serve food; is that
17 correct?

18 A That's correct.

19 Q Does ATT -- I guess it's ATT in Unit E, do they serve
20 food?

21 A They do not.

22 Q Serve beer?

23 A They do not.

24 Q Serve wine?

25 A They do not.

1 Q Are they noisy?

2 A In the times that I've lived there, they actually are
3 not very busy at all. There's not much foot traffic going
4 in and out of there. So no, I would say that they're not.

5 Q Do customers loiter in front?

6 A No.

7 Q They close up at what time, do you know?

8 A I believe it's 6 o'clock every evening except for
9 Saturday. I think they close a little bit earlier on
10 Saturday.

11 Q Do they generate a lot of garbage?

12 A No.

13 Q Are you familiar with the problems with the
14 commercial units at Place on the Greene?

15 A Yes, I am.

16 Q How are you familiar with those problems?

17 A Well, of course, I live there and I live on -- right
18 above the businesses basically. I'm on the street side
19 the same as they are.

20 Q List for me or tell me about the problems. And if
21 you can be specific to one unit. Mention either the unit
22 or the name of the business. I think we talked about Pita
23 Pit and Blue Cactus.

24 A Well, first of all, I think it definitely presents a
25 security problem. For example, the employees of these

1 businesses, they have access to the secured areas of the
2 building. And now when they are going in and out of the
3 building, the secured part of it, for example, taking out
4 garbage, when they go down to the garage area, come off
5 the elevator, that is a real opportunity for a vagrant or
6 any other unauthorized person to come into the building.
7 And I know that this happens because when I go down the
8 elevator at night, sometimes I will run into people that I
9 recognize as not being residents of that building, should
10 not be in that building, and I will either call the police
11 or I will question them. So I think it definitely affects
12 the security.

13 For example, the Pita Pit, for example. At the
14 Pita Pit, they have a real bad habit of leaving their back
15 door, which goes into the secured hallway, they have a bad
16 habit of leaving that door unlocked and slightly ajar.
17 This is a big security problem. Someone could go into the
18 Pita Pit, order a sandwich or act like they're ordering a
19 sandwich and go straight through the back door right into
20 the secured entrance. So I think this is a big security
21 problem.

22 Q Security, all right.

23 A Let me also say this.

24 I used to, and still do on occasion, check the
25 stairwell at around 2 a.m. in the morning. There would be

1 no vagrants in there. But then the next morning at 9 a.m.
2 there would be vagrants there. So somehow vagrants were
3 accessing that building.

4 Q All right. So the front doors, the front door
5 entrance is locked after a certain hour; is that what I'm
6 concluding?

7 A Well, no. What happens is you have -- to enter the
8 building you go through a set of double doors and then you
9 come to a secured entrance. So the lobby area is
10 unsecured. But to get into the secured section, the first
11 floor hallway, you have to go through the secured door.

12 Q Okay. Security, fine. What other problems?

13 A Health concerns. These businesses, Pita Pit, Blue
14 Cactus, Tavern on the Greene, they roll their garbage down
15 the hallway on to the elevator, and I don't think anybody
16 sitting in this courtroom right now would want to get on
17 an elevator or be in a hallway with a bunch of trash. So
18 I see that as a health concern.

19 And then you've got the food preparation and the
20 food storage by these restaurants. That's going to add to
21 the pest problems we have. We do have a roach problem. A
22 few years ago we had to actually pay quite a bit of money
23 to have the roaches eradicated. So that adds to the pest
24 problem.

25 And then another problem we have, this dumpster

1 area is very small.

2 Q Do you have pictures of the dumpster area in that
3 package?

4 A Sure.

5 Q You have a dumpster area in the back of the building,
6 right?

7 A Right.

8 Q Is that near the parking lot?

9 A Right. It's basically in the covered parking garage.
10 It's on the outside part of that.

11 And what I want to mention about this is from
12 time to time, we will have vagrants that will go through
13 that dumpster and pull out the bags in particular of Pita
14 Pit -- they love the Pita Pit food -- and leave a complete
15 mess back there. So not only is there not sufficient
16 garbage capacity there, we also have a problem with
17 vagrants going through that garbage and leaving it smeared
18 all around the garbage area itself.

19 We also have a problem when the city comes to
20 pick up that dumpster, and keep in mind, this dumpster is
21 solely -- is basically for the commercial units as well as
22 for the residents, not near enough capacity. For example,
23 if you go over there right now, you're going to see where
24 the dumpster was picked up last night by the city, there
25 is a large garbage bag of something -- I didn't have time

1 to check it, but there's a large garbage bag that had
2 fallen out when the city truck picked up the dumpster.

3 So -- and plus, there's some bottles down in
4 that area as well as we speak.

5 Q What are the other problems?

6 A Well, the other problems are safety concerns. And by
7 safety concerns, what I'm talking about is these
8 businesses increase the foot traffic in the area and then
9 this foot traffic turns into crowds that congregate. And
10 quite naturally, you know, if you have any type of
11 business that's going to stay open late at night in the
12 Five Points area, you're going to have crowds congregate
13 in that area.

14 We have that problem with Tavern on the Greene,
15 especially now that you have the no smoking inside the
16 building. You'll have groups of people standing out there
17 'til 2, 3 a.m. in the morning talking. Sometimes it turns
18 into much more than talking. You can actually hear every
19 word they say all the way up to the fifth floor.

20 Now, when there's a little confrontation or when
21 there's, you know, people get drunker and drunker, you're
22 going to have -- you know, the noise escalates.

23 For example, two weeks ago there was a gentleman
24 standing in the crowd, I caught the last part of it from
25 my window, but apparently there was an argument between

1 him and maybe it looked like a vagrant guy. It almost
2 turned into the fight.

3 And, of course, we have had fights out there
4 before. I'm not saying those fights were with the patrons
5 from Tavern on the Greene, but certainly any time you have
6 people congregating in the area and they're drinking, you
7 do have the potential of violence and for fights. So I
8 see that as a traffic concern.

9 There's actually been occasions when residents
10 in the units have actually been arguing with people on the
11 street. This really happened a lot when Sub Pub was in
12 existence.

13 Q Where is Sub Pub?

14 A Sub Pub was in -- it would have been in F. And that
15 would be in the area where we have that patio, the
16 concrete patio. That business would stay open sometimes
17 until 5 a.m. in the morning.

18 During the South Carolina/Alburn football game
19 on a Thursday night, I had to call the police five times
20 because of all the noise that was generated from patrons
21 of Sub Pub.

22 Q Sub Pub's gone, though, right?

23 A Sub Pub's gone, right.

24 Q Who's in there now?

25 A They just moved in there now. I think it's like a

1 tobacco shop or something like that.

2 Q What do they sell? Just a tobacco shop. What do
3 they sell there?

4 A I think it's, you know, tobacco. Maybe they sell
5 candy bars, I don't know.

6 Q But is it general office?

7 A I wouldn't guess it would be general office.

8 Q What else? You talked about security, garbage,
9 safety.

10 A I want to mention, too, under safety concerns that I
11 also see these businesses with the high amount of traffic
12 that they have and with the type of business they are, I
13 see that as an increase in the potential for fire as well.

14 Q Fire?

15 A Fire. And I think that's definitely a legitimate
16 safety concern.

17 Q Okay.

18 A Again, another problem I have is like the residents
19 of the other units are basically subsidizing all the
20 excessive water.

21 Q Excessive what?

22 A Water.

23 Q Water?

24 A Yes, sir.

25 Q Tell me about the water arrangement.

1 A Well, the water arrangement, basically the way the
2 master deed is set up, really I don't think the commercial
3 units are actually -- since they weren't considered to
4 be -- there's not supposed to be any businesses in there
5 that use a great amount of water, there's really not a
6 differential in what they're paying and then the other
7 owners are really not paying.

8 Q Do you as a residential owner pay a separate water
9 bill?

10 A No, I do not.

11 Q Who pays the water bill?

12 A The association pays it.

13 Q Do the commercial units pay a separate water bill?

14 A They do not.

15 Q Who pays the water bill?

16 A Funds from the association through the property
17 management.

18 Q So a general office water bill you conclude is less
19 than -- would be less than a restaurant water bill; is
20 that what you're saying?

21 A Certainly.

22 Q You say they're subsidizing. Is there a noise
23 problem?

24 A Yes, sir. You know, I know this year I've called at
25 least five times about noise generated by Tavern on the

1 Greene, called the police. When I call the police, they
2 tell me there's many reports and complaints regarding 2002
3 Greene Street. I do not have a copy of those. They are
4 public record.

5 Q Noise from what?

6 A Noise from basically the crowds congregating in front
7 of the building. And, of course, this is the problem we
8 have.

9 Let's take, for example, you've got Place on the
10 Greene is on one side of Greene Street. On the other side
11 of Greene Street you don't have any open bars, any
12 businesses that stay open past 9 p.m.

13 When you look at the two, the noise differential
14 is quite striking. The people on the other side of the
15 street since nothing is open late at night, people simply
16 walk by. They don't congregate. They keep on going from
17 the Five Points area back towards the university area. We
18 don't have that on our side of the street simply because
19 we've got businesses that stay open until 2, 3, 4 o'clock
20 in the morning.

21 Q Who are these people congregating?

22 A They would be patrons from, you know, the different
23 businesses that are there now. In particular right now
24 you'd be talking about Tavern on the Greene and Pita Pit.

25 Q What other problems?

1 A Another concern that I have is regarding the
2 insurance on the building. Quite naturally the insurance
3 premiums I would assume would be higher because of the
4 risk.

5 MR. BEST: Object to his assumptions, Your
6 Honor.

7 THE COURT: Sustained as to the assumptions.

8 BY MR. SPILLANE:

9 Q Mr. Phipps, do you pay insurance, property insurance
10 on the building because of your unit?

11 A Yes, through the regime fee.

12 Q Who pays the bill?

13 A The property management company.

14 Q Does the insurance company know these restrictions
15 are being violated?

16 A I cannot testify to that. I would hope they do
17 because I would hate to think that the entire building
18 could go up in smoke and not have proper coverage.

19 Q Okay. What about the front doors and back doors?
20 Are they a danger? Are they a problem, opened and closed?

21 A Yes, sir.

22 Q What's the issue?

23 A Well, in particular in the garage area, there's
24 immediate access to the building once those garage doors
25 open. If you have businesses staying open late at night

1 and employees of those businesses using those entrances or
2 exits, whatever you want to call them, then you have the
3 potential for unauthorized people entering the building.
4 And then you have to question, well, you wouldn't think
5 that any employee would knowingly allow somebody to enter,
6 but at the same time, these vagrants in Five Points are
7 very cunning. They know every trick in the book and once
8 that door is compromised in the least, they know how to
9 take advantage of it.

10 Q You were on the board for one year, two years,
11 something like that?

12 A It was about a year and three or four months.

13 Q And you've been following the board activity?

14 A Somewhat, I guess.

15 Q What were the issues when you were on the board?

16 A Well, when I took over, the building was in pretty
17 rough shape. Many rules and regulations were either
18 needed or not enforced.

19 There were physical problems, the most expensive
20 of which was a -- we had to replace the entire roof. We
21 did not have the funds at that time to do that so we had
22 to have a special assessment, which was not very popular
23 with the other homeowners.

24 We had issues with pets. You know, just a wide
25 variety of problems that we had to deal with.

1 Q Do you concur in the board's activity in bringing
2 this suit? Do you agree with it?

3 A Yes, I do. Not only because it's what is written in
4 the master deed but also because of the practical
5 experience of what I've observed, what I've heard. And in
6 my opinion, the reason that the framers of this master
7 deed put this in here was because of the same things that
8 I'm experiencing as a resident.

9 MR. SPILLANE: Thank you, Mr. Phipps. I have no
10 further questions.

11 THE COURT: Mr. Boger.

12 CROSS-EXAMINATION

13 BY MR. BOGER:

14 Q Mr. Phipps, were you on the board in 1991?

15 A I was not.

16 Q Have you had access to the records from the time you
17 were on the board?

18 A I did not.

19 Q Did you find anywhere the 1991 and 1993 minutes when
20 you were on the board?

21 A I did not.

22 Q Okay. So you don't know what the board did during
23 that time, do you?

24 A That's correct.

25 Q What year did you move in?

1 A It was February of 2001, I believe.

2 Q February of 2001?

3 A Correct.

4 Q And when did you get elected to the board?

5 A The first election, I guess, was maybe 2002 or so.

6 Q And when did you leave the board?

7 A About a year later.

8 Q You did not have a six-year tenure like Ms. Greiner?

9 A I did not, no.

10 Q As you stand at the railroad track where the train
11 comes by and look down towards Five Points, this building
12 is on the right; isn't that right?

13 A That's correct.

14 Q And it would be a fair statement, wouldn't it, to say
15 the students leave Five Points and come up that sidewalk?

16 A They come up that sidewalk as well as across the
17 street.

18 Q And it would also be fair to say that right behind
19 the building is a bar called Pavlov's; is that correct?

20 A That seems correct. Right behind the building
21 there's a parking lot. Behind the building to the right
22 as you're facing Greene Street would be Pavlov's.

23 Q So behind the building to the right is Pavlov's?

24 A Right.

25 Q And once again standing on the railroad tracks, to

1 your right would be another restaurant?

2 A Salty Nut.

3 Q Salty Nut. Those are all -- those two restaurants,
4 that restaurant and bar are right within 50 yards of that
5 building; isn't that right?

6 A Yes.

7 Q And if you once again stand at the railroad tracks
8 and go down the hill and turn right where Starbucks is,
9 you go a little bit further and maybe another 50 yards
10 there's a bar called Delaney's; isn't that right?

11 A That's right.

12 Q So patrons from Delaney's, Pavlov's, and Salty Nut
13 are within, once again, a 50-yard proximity to your
14 building; isn't that right?

15 A That would be correct.

16 Q Isn't it true that water meters could be set up to
17 have the water for the Pita Pit and The Blue Cactus and
18 the Tavern on the Greene to have their own separate water
19 meters; isn't that true?

20 A I wouldn't know that. I'd have to see what's in the
21 master deed.

22 Q Okay.

23 A For me to categorially say that, I could not.

24 Q Did you know that those three restaurants are zoned
25 general commercial?

1 A What three restaurants?

2 Q Pita Pit, Blue Cactus, and Tavern on the Greene.

3 A They're zoned what?

4 Q General commercial.

5 A I'm not familiar with their zoning. So I couldn't
6 answer that.

7 Q You don't know that.

8 Did you know that the board sued its old board
9 when the stucco problem came about?

10 A No, I'm not familiar with that.

11 Q Okay. You're familiar with the stucco that came off
12 the building?

13 A In general terms. I'd heard briefly about it.

14 Q And there was a lawsuit that took place between the
15 board then and the old board. You're not familiar with
16 that?

17 A No.

18 Q Now, you own a -- what is it that you do again?

19 A I write a couple of sports magazines and have a small
20 janitorial service.

21 Q And you also repair credit?

22 A I do what?

23 Q Repair credit.

24 A I've never repaired credit. I don't know where you
25 got that.

1 Q Do you know -- have you ever done anything like how
2 to protect yourself if divorce is inevitable?

3 A No.

4 Q No? Let me show you your website.

5 A Oh, you're talking about the book I wrote, "Financial
6 Sense." That's a book I wrote on that website.

7 Q And in that book or in that website that I'm showing
8 you, it says you do "how to repair your credit;" is that
9 right?

10 A You know, I haven't messed with this for like four
11 years. I probably should have taken it off the website.

12 As far as what I wrote, as far as the context of
13 what I was saying how to repair your credit in that
14 particular deal, it wasn't -- as far as I can recall, it
15 wasn't anything other than general statements, you know,
16 things that -- you know, just general commentary.

17 Q So your answer to my question a few minutes ago about
18 credit repair, you've never done anything like that, that
19 was a wrong answer, wasn't it?

20 A Yes.

21 Well, when you say I do credit repair, I really
22 didn't do credit repair. I didn't have a business.

23 What you're talking about here, these are topics
24 that are in a book that I wrote.

25 Q Well, now, that was taken off the Web in October of

1 '08. You can see that at the bottom.

2 A I understand.

3 Q Is it still on the Web today?

4 A It's still on the Web today. And I'd completely
5 forgotten about it. I haven't done anything with that
6 book as far as sales or anything since maybe 1999, 2000,
7 2001, something like that.

8 Q Would you consider -- let me strike that.

9 Have you walked down to the Sub Pub when it was
10 there and accosted patrons of that place when they were
11 trying to get a sandwich?

12 A No.

13 Q You've never done that?

14 A Never.

15 Q Do you consider this lawsuit sort of your lawsuit
16 too?

17 A I think I benefit from the lawsuit, yes, sir.

18 Q Have you done things to these restaurant owners,
19 accosted customers, talked people out of going in there?

20 A Never.

21 Q Never done that?

22 A Never.

23 Q Never done credit repair?

24 A I've never repaired anybody's credit.

25 Q So that was a mistake a few minutes ago, wasn't it?

1 A What are you talking about?

2 Q When I asked you if you repaired credit and you said
3 no, but your website says you do?

4 A Again I'll mention to you, my website, what you're
5 talking about in this particular section, it tells you
6 that in the book, you will discover these things.

7 I've never counseled anyone for credit repair,
8 I've never counseled anyone for divorce. These are simply
9 chapters and information in the book.

10 MR. BOGER: I don't have any further questions.

11 MR. BEST: And I have no questions of this
12 witness, Your Honor.

13 THE COURT: Thank you. Any redirect?

14 MR. SPILLANE: Thank you, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. SPILLANE:

17 Q Mr. Phipps, you're familiar with the deed
18 restrictions on the property that Pavlov's is located?

19 A No, sir, I'm not.

20 Q Are you familiar with the deed restrictions on
21 Delaney's, Starbucks or Salty Nut's property?

22 A No, sir.

23 Q Are you familiar with the zoning for those
24 properties?

25 A No, sir, other than the fact that they exist.

1 Q Do you understand this case to be a zoning case or an
2 injunction case to enforce restrictions?

3 A I think what he was referring to is completely
4 irrelevant. This is simply to enforce the provisions of
5 the master deed.

6 Q When you said you'd benefit from the lawsuit, what
7 did you mean?

8 A Well, I don't mean that I -- you know, what I'm
9 talking about is in the lawsuit, if the provisions are
10 upheld, then I think that that makes the property a more
11 desirable property. I think I'd benefit from the fact
12 that I don't have to listen to the noise. I don't have to
13 be concerned about security. I don't have to be concerned
14 about the health concerns.

15 Q Do you think your property value would increase?

16 A I think it would help somewhat.

17 Q What about the value of the commercial property?
18 Assuming an injunction were issued, what do you think
19 about that?

20 MR. BOGER: Your Honor, he's not an expert to
21 assess value.

22 THE COURT: I'd sustain the objection.

23 MR. SPILLANE: I'm not asking as an expert, Your
24 Honor. I'm asking --

25 THE COURT: You need to lay a foundation.

1 MR. SPILLANE: Excuse me?

2 THE COURT: I think you'd need to lay a
3 foundation.

4 MR. SPILLANE: All right. Thank you. No
5 further questions.

6 THE COURT: You may step down. Thank you.

7 At this time we'll take a lunch break. Let's
8 come back at about 2:10 and we'll continue on.

9 Anything we need to take up before we leave for
10 lunch?

11 Hearing none --

12 MR. SPILLANE: Excuse me?

13 THE COURT: Is there anything we need to take up
14 before we leave for lunch?

15 MR. SPILLANE: I don't believe so.

16 THE COURT: Okay. Then we'll see you back about
17 2:10.

18 (A lunch break was taken.)

19 THE COURT: Is there anything we need to take up
20 before we begin back?

21 MR. SPILLANE: I don't believe so, Your Honor.

22 MR. BEST: I don't believe so, Your Honor.

23 MR. BOGER: No, Your Honor.

24 THE COURT: Then, Mr. Spillane, you may call
25 your next witness.

1 MR. SPILLANE: We'd call Laura Nichols.

2 LAURA NICHOLS, after being duly sworn, testified
3 as follows:

4 THE COURT: Thank you. If you'd please have a
5 seat and state your full name, please.

6 THE WITNESS: Laura Nichols.

7 DIRECT EXAMINATION

8 BY MR. SPILLANE:

9 Q Ms. Nichols, where do you live?

10 A Richland County, Columbia, South Carolina.

11 Q Okay. What is your occupation?

12 A Real estate broker in charge.

13 Q What is your connection with Landmark Resources?

14 A I'm the owner and broker in charge.

15 Q All right. Is Landmark Resources the current
16 property manager at Place on the Greene?

17 A Yes, sir.

18 Q And what does Landmark Resources do for Place on the
19 Greene?

20 A We are employed by the board of directors and the
21 owners to enforce the rules and regulations, to do as
22 we're directed by the board of directors, to pay the
23 bills, clean the building, collect the regime fees.

24 Q Do you manage other complexes?

25 A Yes, sir.

1 Q How many?

2 A We have about 14, including Place on the Greene, that
3 we manage.

4 Q Are they condominium projects, if I remember right?

5 A Yes, sir.

6 Q How did you get started with Place on the Greene?

7 A I was hired by Security Federal Savings and Loan to
8 assist them in the development and the marketing of Place
9 on the Greene.

10 Q And when was that?

11 A In '83.

12 Q 1983?

13 A 1983.

14 Q And what did you do in that capacity?

15 A I recommended the architect, who was my husband, who
16 did the architectural plans for Place on the Greene.

17 In doing so I was able to talk with the
18 developer, Security Federal, Beau Powell and Craig
19 Stonebruner, about who we were going to market the
20 property to, what their concepts were, help develop the
21 floor plans, make recommendations, put together the
22 marketing materials, structured the advertising, took the
23 calls, sold the units, closed them.

24 Q And you had an office somewhere to do that?

25 A We originally started at where 950, the Five Points

1 bar is. Frank Barcow leased a space.

2 We renovated it there at the corner of Harden
3 and Greene Street initially. And then once the units
4 started selling, then we were never actually on site, but
5 we were right down the street during construction.

6 Q Was this a pre-sale?

7 A It was a pre-sale, yes.

8 Q How many pre-sold before construction?

9 A It had to be 50 percent sold before construction.

10 Q Did you meet that goal?

11 A Yes.

12 Q How did they sell?

13 A Rapidly.

14 Q Really?

15 A Yes.

16 Q Had you been involved in pre-sales for other outfits
17 like that?

18 A Yes, I have.

19 Q How did it compare?

20 A The other property was on Hilton Head that I did
21 pre-construction sales for.

22 The market had changed because of the tax laws a
23 little bit, but this sold much better, I think, than the
24 one -- there was just not much competition near the
25 University of South Carolina, so it ended up being highly

1 sought after.

2 Q Are you familiar with this brochure?

3 A Yes. That's the building.

4 Q Can you identify that?

5 A That's the original and only Place on the Greene
6 sales brochure that we used in the marketing of the
7 product.

8 MR. BOGER: No objection.

9 (WHEREUPON, Plaintiff's Exhibit No. 11 was
10 marked for identification and received into
11 evidence.)

12 THE COURT: That's exhibit number?

13 MR. SPILLANE: Eleven.

14 BY MR. SPILLANE:

15 Q Plaintiff's 11 is now a Place on the Greene sales
16 brochure.

17 Ms. Nichols, the first insert seems to be the
18 building; is that correct?

19 A Yes, sir.

20 Q Is that an accurate depiction of the building as
21 proposed?

22 A Yes, sir.

23 Q You say your husband was the architect?

24 A Yes, sir.

25 Q Okay. Who was the market target for Place on the

1 Greene?

2 A When we were developing, when Security Federal and
3 Craig Stonebruner and Beau Powell, when we originally
4 started, we really designed the units and the concept was
5 for professionals to be living downtown and working
6 downtown. That was our market target initially in the
7 original before we actually started selling the units.

8 Q Did that target change or what?

9 A Once they went on the market, there was a lot of
10 parents that started contacting us because of the location
11 convenient to the University of South Carolina and so the
12 buyers turned out -- there were certainly professional
13 people that purchased, because again, that's who we
14 originally targeted, but the parents of students ended up
15 reaching us and became really the buyers of a lot of them.

16 Q Do you remember the price range?

17 A I'm not sure that -- and I'm not sure that that's
18 even in here. It may be.

19 Price range started from thirty-eight nine to
20 seventy-four nine.

21 Q What was your understanding of the first floor setup?
22 Of course, your husband's the architect so you would be
23 familiar with that; is that correct?

24 A Correct.

25 Q Did you see the plans?

1 A Yes, sir.

2 Q What was your understanding of the first floor?

3 A The first floor -- Security Federal was really
4 primarily instrumental and what their concept was is for
5 that first floor to be office space, general office.

6 Again, because it's going to be residential
7 professional kind of people, they felt like because it
8 fronted on Greene Street, that it could be used for
9 general office, a CPA or a lawyer or someone that would be
10 open in normal business hours.

11 Q Nine to five?

12 A Nine to five, yes, sir.

13 Q Now you keep mentioning Security Federal. What was
14 their role?

15 A They were the developer and lender of the project, 50
16 percent of the developer.

17 Q You mentioned two other men also.

18 A Beau Powell and Craig Stonebruner were the other part
19 of the developers.

20 Q Beau Powell and Craig Stonebruner?

21 A Correct.

22 Q And what was their role?

23 A I'm not -- they were partners in the development.
24 They did a lot of overseeing. I know with the
25 construction they were on the site and they talked with

1 the contractor. What their exact relationship with
2 Security Federal and how their inter-operations were I
3 couldn't tell you.

4 Q Was this any different than other developments that
5 you've had?

6 A No.

7 Q Had you had other developments with commercial units
8 on the ground floor or on a separate floor?

9 A No.

10 Q All right. Did the commercial units get marketed at
11 about the same time?

12 A They never -- they were there, but they really were
13 not marketed. We didn't solicit commercial businesses.
14 They were available. Only two of the units were sold by
15 Landmark Resources. They never sold. It's really the
16 residential units that were really marketed and sold by
17 the marketing plan that Security Federal laid out.

18 Q So you're saying of the eight commercial units, only
19 two were sold by your sales company?

20 A Correct.

21 Q Were any changes made in the architectural
22 development during construction that you know of, of
23 significance?

24 A When the commercial -- the hair salon bought units C
25 and D where Tavern on the Greene is. The change was that

1 they took out that center wall because it was one owner.
2 They went back to the architect, because again it was
3 under construction, and eliminated a wall.

4 And then I know that there was, which really
5 wasn't public record, but I know because of my
6 relationship with the architect that there were changes
7 made by Beau Powell on the type of stucco that was used
8 that was not specified by the architect.

9 Q But the stucco wouldn't go to anything in the master
10 deed, did it?

11 A No, sir.

12 Q Did it become a problem later?

13 A I did become a problem later.

14 Q You said a hair salon was in C and D?

15 A Correct.

16 Q Now facing -- I'm standing on Greene Street and I'm
17 going left to right, that's is A, B, C, and D?

18 A Correct.

19 Q And then the next spot would be the front door; is
20 that correct?

21 A That's correct.

22 Q Tell me about the hair salon.

23 A It was an individual that ran a hair salon and opened
24 up there in the space.

25 Q And that was the first business?

1 A That was the first business.

2 Q That's interesting. What happened to the hair salon?

3 A It wasn't as much business as he felt like he needed
4 and closed it up after several years.

5 Q All right. Now, are you familiar with the board of
6 directors of the Place on the Greene Homeowners
7 Association?

8 A Yes, sir.

9 Q And do you have a copy of the master deed?

10 A I do.

11 Q All right. With the understanding that that is just
12 a copy, not a certified copy, let me direct you to Exhibit
13 I which is stamped page 41.

14 A Yes, sir.

15 Q Is that -- that appears to be the Articles of
16 Incorporation filed with the Secretary of State, I assume,
17 back then?

18 A Yes, sir.

19 Q Is that correct?

20 A Correct.

21 Q I direct you to Article Roman Numeral IV, Purpose and
22 Powers of the Association.

23 A Yes, sir.

24 Q What does that first sentence refer to?

25 A It talks about the specific purpose for which it is

1 formed is to administer and enforce all covenants,
2 conditions and restrictions for the maintenance,
3 preservation, architectural control, and general
4 appearance at Place on the Greene.

5 Q Why do we put restrictions on property anyway?

6 A To protect all the owners. It's to protect their
7 value. It's to have a level playing field so all owners
8 can feel comfortable in going into something owned by a
9 group of people.

10 Q Does it help in marketing to individuals that they
11 know there are quality control restrictions?

12 A Yes, sir, it does.

13 Q All right. I refer you to the next page which is
14 page two of the Articles of Incorporation, Article XI,
15 Roman Numeral XI, Board of Directors.

16 It says here, "Shall consist of five directors."

17 We heard earlier testimony that there are five
18 directors. Are there still just five directors?

19 A Yes.

20 Q And are they filled as one-year terms?

21 A Yes, sir.

22 Q Has there been any change in the master deed as to
23 the length of terms of the directors?

24 A No, sir.

25 Q Do some directors get reelected for a second, third,

1 and fourth year?

2 A Yes, sir.

3 Q You're familiar with Karen Greiner. She said she was
4 on six years or so, I forget.

5 A Yes, sir.

6 Q Is that normal?

7 A If somebody's willing to serve, it's normal.

8 Q What do you mean "if someone's willing to serve"?

9 A In an association because it's totally volunteering,
10 it's very difficult to get owners to be willing to
11 participate and contribute their time.

12 Q But you have to be an owner, right?

13 A You have to be an owner.

14 Q Can you be just a commercial owner and be on the
15 board?

16 A Can you be a commercial owner?

17 Q Yes. Do you let commercial owners on the board?

18 A If they would like to be on the board, they could
19 have been on the board, yes.

20 Q There's no prejudice against them?

21 A No, sir.

22 Q And who elects the board?

23 A At the annual meeting they're elected by the owners.

24 Q And you've conducted some and helped conduct some of
25 those annual meetings, haven't you?

1 A Yes, sir.

2 Q How long has your company, Landmark Resources, been
3 the property managing company?

4 A Since 2000.

5 Q So you've conducted or at least help conducted at
6 least eight annual meetings; is that correct?

7 A Yes, sir.

8 Q Have there been any special meetings of everybody?

9 A No, not that I can remember.

10 Q I direct you to that Article XI, Board of Directors,
11 and you see the names there of three people in the
12 Security Federal building. Do you know those people,
13 Horton, Huntley and Deek?

14 A I know two of them.

15 Q Okay. Who are they? Who do you know and what do
16 they do?

17 A Ed Horton was my immediate contact through -- he's
18 the one that hired me to do the marketing and development.
19 Harry Huntley was their counsel who wrote the master deed.

20 Q All right. Harry Huntley wrote the master deed. You
21 don't know Carol Ann Deek?

22 A I don't know Carol.

23 Q Their address is in the Security Federal building.
24 The last two are members of the board you've already
25 referred to, Roy A. Powell, Jr.

1 A Which he goes by Beau Powell.

2 Q That's my next question.

3 A Yes.

4 Q He's known as Beau Powell. And Craig B. Stonebruner.

5 A Correct. They were partners.

6 Q You knew them and you said earlier you worked with
7 them?

8 A I knew them through -- I did not know them prior to
9 Place on the Greene.

10 Q Okay. And their address as listed on this Articles
11 of Incorporation are in the Keenan building?

12 A Correct. They had an office there in the Keenan
13 building.

14 Q And that's the high rise here in downtown; is that
15 correct?

16 A Correct.

17 Q Is Keenan Real Estate in there?

18 A Correct.

19 Q What's Keenan Real Estate do, do you know?

20 A They're commercial. They have a commercial realty.
21 They do homeowners associations. They sell and list
22 commercial buildings and do property management.

23 Q Okay. You say they do homeowners associations. You
24 mean what?

25 A They manage homeowners associations. They were --

1 Keenan Company was the first property management company
2 for Place on the Greene.

3 Q All right. Keenan Company existed at that time, they
4 were the first property manager for Place on the Greene?

5 A Correct.

6 Q And when would they have started?

7 A When the developers turned it over to a management
8 company, which was in December of '85, our first annual
9 meeting.

10 Q All right. Now, you are on -- you have been on the
11 board of directors in the past for Place on the Greene?

12 A Yes, sir.

13 Q And you are not currently on the board of directors?

14 A No, sir.

15 Q And why not?

16 A Because Landmark Resources is the management company,
17 there would be a conflict of interest.

18 Q All right. I can understand that.

19 When were you on the board?

20 A Not until the second year. The developers controlled
21 the property and elected not -- even though I was
22 nominated, I was not chosen by the developer, by Craig and
23 Beau to serve on the first board. I started on the second
24 year.

25 Q All right. On the second year of the board being

1 free from the developer you got elected to the board?

2 A When they were free of the control of the proxies,
3 correct.

4 Q All right. And how long did you stay on the board?

5 A Until about 1995 off and on. I can't say I was on it
6 every year, but pretty much consistently until 1995.

7 Q So is that '86 to '95?

8 A Correct.

9 Q And were you on it later? Did you ever go back on
10 the board?

11 A No, sir.

12 Q Do you know or are you familiar with any changes or
13 restrictions?

14 A I know that there were requests for changes, but none
15 ever passed and none were ever made.

16 Q How would that process go?

17 A Well, there is a master deed. It's pretty
18 straightforward about any changes being approved by
19 75 percent of the owners. If that happened, if you got an
20 approval, then the approved amendment would be given to
21 the attorney that's handling the association affairs,
22 evictions or whatever collections that you're doing, and
23 you would have it recorded in the courthouse if there was
24 ever anything that had gotten approved.

25 Q All right. What were the topics of the proposed --

1 you said you heard of a few during your years.

2 A There was Beau Powell. When the association was
3 turned over to the owners that first year, only the two
4 commercial spaces had actually sold. The other ones had
5 remained vacant. Beau Powell had wanted to change the way
6 the master deed read. He wanted to be able to have other
7 types of businesses other than commercial because they
8 weren't selling and they weren't renting to just the
9 office spaces originally laid out in the master deed.

10 And there was requests later on about changing
11 the master deed to allow animals. There was a big to-do
12 about that that didn't get passed, to allow pets in the
13 building.

14 Those were the two major things other the years
15 that have been addressed.

16 Q All right. As manager of Landmark, do you have
17 control of the corporate records for Place on the Greene,
18 the homeowners association?

19 A I have what's passed on from management company to
20 management company and control of what we've generated
21 since we started managing.

22 Q And give me a history of the management companies if
23 you could. You said initially it was Keenan.

24 A Ferris Richardson was the first manager with Keenan
25 Company, then Steve Taylor with Keenan Company. Steve

1 started his own business and then it went to Deane Chavous
2 Realtors.

3 Q About when?

4 A I'm not exactly sure. I would say the early
5 nineties, '89, '90 it went to Deane Chavous. And then
6 from Deane Chavous it went to Weston Management around
7 '97, '98. And then in 2000 it went to Landmark Resources.

8 Q Let me show you two of the same letters. Do you
9 recognize those?

10 A This is a letter that --

11 Q Do you recognize them?

12 A Yes.

13 Q Tell me what it is.

14 A It is a letter that was produced by Keenan Company
15 requesting --

16 Q Well, don't tell me about what it says.

17 A Okay. A letter from the manager of Keenan Company
18 was that managing Place on the Greene.

19 Q All right. You've answered that. And is that letter
20 kept in the regular course of business activity for Place
21 on the Greene?

22 A It was in their documents that were passed on,
23 correct.

24 Q All right. It was in the documents that were passed
25 on by prior management companies?

1 A Correct.

2 MR. BOGER: We don't have any objection, Your
3 Honor.

4 THE COURT: It's Plaintiff's Exhibit No. 12?

5 MR. SPILLANE: Yes.

6 (WHEREUPON, Plaintiff's Exhibit No. 12 was
7 marked for identification and received into
8 evidence.)

9 BY MR. SPILLANE:

10 Q Ms. Nichols --

11 A Yes, sir.

12 Q -- I'm going to hand you Plaintiff's Exhibit 6 which
13 we've represented to the Court as a certified true copy of
14 the chain of title to Units F, G, and H. Are you familiar
15 with those units?

16 A Yes, sir.

17 Q F, G, and H?

18 A Yes, sir.

19 Q Who owned those units?

20 A Beau Powell, Roy A. Powell, Jr., the developer.

21 Q Roy Powell. How -- I thought you said the developer
22 owned them. Did Greene Street Partnership not sell them
23 or do you remember?

24 A They did not sell and in the final ending of the
25 development, Beau Powell took the four spaces on the right

1 side of the front door and Craig took the two spaces on
2 the left side of the building, A and B, as part of their
3 payment in the development.

4 Q Okay. So I'm facing Place on the Greene from Greene
5 Street. Beau Powell got a deed you say for the spaces to
6 the right?

7 A Correct.

8 Q Four you stated, and the spaces to the left, the
9 first two closest to the door were already a hair salon;
10 is that correct?

11 A Correct.

12 Q So far left would be A and B went to Stonebruner?

13 A Correct.

14 Q All right. That helps me understand that.

15 Let me see that deed.

16 And I direct you to the deed from Greene Street
17 Partnership, an indenture deed recorded in Richland County
18 as a Deed 767, page 629, to be a deed to Roy A. Powell,
19 Jr. of a number of units on the 200 level, F, G, and H,
20 and ask you to look at that.

21 Are you familiar with deeds?

22 A Yes, sir.

23 Q Okay. Is what I said just true?

24 A Yes, sir.

25 Q If you flip to the second page of the deed, what date

1 did Mr. Powell take F, G, and H commercial units? What is
2 the date on that deed?

3 A April of -- no, wait a minute.

4 November the 8th of 2085 -- of 1985, excuse
5 me.

6 Q November 8th, 1985?

7 A Correct.

8 Q Was that about the time the developers were winding
9 down?

10 A Yes, sir.

11 Q And it was your understanding that he took those
12 three units plus some units on the second floor or one on
13 the fifth floor; is that correct?

14 A The unsold properties, yes.

15 Q Oh, so he took the unsold properties?

16 A Correct.

17 Q And if we're just talking commercial, he took the
18 ones to the right?

19 A Correct.

20 Q F, G, and H. I thought there were four to the right.
21 Maybe I'm --

22 A There are four to the right. I'm not sure.

23 Q We'll catch up with that.

24 Now, I direct you to the exhibit in front of
25 you, the letter from November 25th, 1985.

1 A Yes, sir.

2 Q You just testified on November 8th, 1985, that Mr.
3 Powell got Units F, G, and H?

4 A Correct.

5 Q As part of the wind-down. Does that summarize right?

6 A Yes, sir.

7 Q Now, what is this letter? And I shut you down
8 earlier. Now you can talk about this letter.

9 "Dear Place on the Greene Owners" from
10 November 25th, 1985. What's the import? What's going on
11 here?

12 A That this meeting will be held by absentee ballot.
13 It was a request trying to get the commercial spaces
14 changed to allow something other than just office space
15 which had originally been recorded.

16 Q And this letter is from whom?

17 A Ferris Richardson, the property manager that worked
18 with Keenan Company that was hired by the developers to do
19 the homeowners association management that first year.

20 Q This is on Keenan Company letterhead, is it not?

21 A It is.

22 Q All right. The first part of the letter talks about
23 voting on a proposed master deed amendment and what's the
24 underlying sentence say?

25 A "This meeting will be held by absentee ballot."

1 Q Have you ever been familiar with a homeowners meeting
2 or a general meeting held by absentee ballot?

3 A No, not really because this was done prior to it even
4 being turned over to the owners. So our first annual
5 meeting was not until December of '85. So this letter
6 seems a little odd, of trying to get things changed by
7 absentee ballot, people that have just purchased, that it
8 hadn't even been -- a board hadn't even been elected other
9 than the designated board in the master -- in the other
10 document, Section I-F, that stated Security Federal, Beau
11 Powell and Craig Stonebruner.

12 Q You did have the fourth board as explained in Exhibit
13 I that we went to earlier which was the Articles of
14 Incorporation which lists the first board.

15 A Correct.

16 Q So this was during the first board running the regime
17 in September of '84; is that correct?

18 A Yes, sir, prior to it being turned over to the
19 owners.

20 Q All right. Now let's go -- "the amended version
21 would read." What did they want the amended version to
22 read? And I direct you to the last two lines on the front
23 page.

24 A It says, "The use of the commercial space shall be at
25 the discretion of the board of directors regarding the

1 type of business."

2 They were wanting the board to be able to
3 determine the type of business and the type of operation.

4 Q And who were "they" on the board?

5 A They were the developers.

6 Q And that's three from Security Federal and two
7 from -- at least in the Keenan building, Powell and
8 Stonebruner, right?

9 A Right.

10 Q All right. The second paragraph, first full
11 paragraph there, states what? Read it for the Court.

12 A Starting at "this amendment"?

13 Q Yes.

14 A "This amendment has been proposed to allow the board
15 of directors to use their discretion in approving
16 businesses for the commercial space. It is intended to
17 protect you as a homeowner from any business operation
18 that would not be in your best interest."

19 Q What do you think about that phrase?

20 A I don't think it was a true statement.

21 Q Do you remember this? Do you remember this proposal?

22 A I remember efforts by Beau Powell and Craig
23 Stonebruner to change the use on a very regular basis.

24 Q On a regular basis you say?

25 A It came up at a lot of board meetings, yes.

1 Q Okay. So what units did Craig Stonebruner get? You
2 said to the left.

3 A A and B.

4 Q A and B. And I show you a deed to Craig Stonebruner
5 for Unit A coming out of Greene Street Partnership, which
6 is in Exhibit A, Plaintiff's Exhibit 3. What is the date
7 on this deed? I think you're going to have to go to the
8 third page.

9 A November 8th, 1985.

10 Q So November 8th, 1985, they wound down. I guess they
11 got rid of the commercial unit; is that correct?

12 A That's correct.

13 Q And on November 25th, 1985, 17 days later, they're
14 asking for an amendment; is that correct?

15 A Correct.

16 Q You weren't on the first board?

17 A Correct.

18 Q You got on the second board?

19 A Correct.

20 Q While you were on the second board, was there any
21 litigation you knew about?

22 A Later, yes.

23 Q Significant litigation?

24 A Significant litigation was when we -- ten years --
25 once Beau Powell got off of the board, the board finally

1 sued the developer for the stucco problems we were having.

2 There was continuous problems with water coming
3 into the building because there was not proper expansion
4 joints put in the stucco. Beau Powell had an ability to
5 convince the board, oh, we'll caulk it, we'll do this,
6 continued putting things off.

7 After the ten years Beau got off the board, the
8 board then finally sued the developer and tried to sue the
9 previous board for insurance purposes to try to get
10 insurance money to help cover the problems that we were
11 having with the stucco. But the statute of limitations
12 has run out and it didn't produce anything or any relief
13 for the owners.

14 Q You said Beau Powell had been off the board ten
15 years?

16 A Correct.

17 Q And then the board sued the developer?

18 A Correct. The builder.

19 Q The builder?

20 A The builder, the architect, correct.

21 Q Why ten years?

22 A Statute of limitations.

23 Q On construction?

24 A Correct.

25 Q What happened to that? Were you sued? Was your

1 husband sued?

2 A He was sued. That's when I resigned from the board
3 so there would be no conflict of interest and they could
4 talk freely about their pursuing the lawsuit. I withdrew
5 myself from the board in order for there not to be a
6 problem.

7 Q And is that the same lawsuit Mr. Boger was referring
8 to earlier, or do you not know?

9 A It is.

10 Q So they did name the board in your recollection?

11 A It was the decision of the board to try to name the
12 previous board to be able to get insurance to help cover
13 the cost of the litigation.

14 Q Okay. And that suit went down the tubes because of
15 the statute of limitations; is that correct?

16 A It did.

17 Q I show you Defendant's Exhibit 1 which is a
18 homeowners meeting, general, March 21, 1991.

19 A Yes, sir.

20 Q Have you had a chance to review that document?

21 A Only briefly.

22 Q All right. I direct your attention strictly to the
23 new business section two-thirds of the way down.

24 A Yes, sir.

25 Q "Beau Powell addressed the vacancy problems with the

1 commercial units."

2 Did he own the commercial units at that time?

3 A Yes, sir.

4 Q And who else owned them besides himself?

5 A Craig Stonebruner. I'm not sure who all the other
6 owners were.

7 Q And there was one unit owned by the hair salon
8 fellow, I guess earlier, whoever that was?

9 A I don't think he owned it then. I think that it
10 possibly had been sold. But I know Craig and Beau still
11 owned commercial spaces.

12 Q All right. And according to this document, this is
13 the minutes, Mr. Powell said, "Commercial units were
14 vacant." Is that your recollection of the status of the
15 units?

16 A Yes, sir.

17 Q There was nobody in them, no businesses?

18 A I can't say there were no businesses, but that he had
19 some that were vacant.

20 Q Did they have trouble renting the commercial units?

21 A Yes.

22 Q Why?

23 A Because the office people didn't have enough parking
24 at Place on the Greene to accommodate the businesses.

25 Q The office people. How much parking do you need?

1 A Well, there was -- the parking on Greene Street's
2 changed several times, but there's only one reserved
3 parking space per unit.

4 Q And the commercial unit had how many reserved spaces?

5 A One parking space.

6 Q Okay. And so it's your testimony that they had
7 trouble renting it to general office because of a
8 limitation of parking?

9 A That certainly was what -- the feedback that we got.

10 Q All right. Was there an attempt to change the master
11 deed to give the commercial spaces more parking?

12 A There wasn't any -- no, there wasn't.

13 Q There wasn't any more spaces, were there? That would
14 be fruitless?

15 A Correct.

16 Q Was there an attempt to change the master deed --
17 according to these minutes, what was the plan?

18 A He offered a motion to amend the bylaws to allow the
19 board at its discretion to allow other uses is what he was
20 proposing.

21 Q And other uses would be what? What did they
22 specifically refer to here?

23 A To allow people to sell food and beer and wine, or
24 allow beer and wine to be sold. The additional caveat was
25 made that there would be beer or wine -- there would not

1 be any beer or wine sold without food consumption.

2 Q So there's an attempt, or at least a discussion, in
3 March of '91 about changing, amending the bylaws?

4 A Correct.

5 Q Do the bylaws restrict the commercial units?

6 A No, sir.

7 Q What restricts the commercial units?

8 A The master deed.

9 Q And how do you change those?

10 A With 75 percent vote of the owners agreeing to
11 change.

12 Q Can the board change the bylaws?

13 A No.

14 Q Can the board change the master deed?

15 A No.

16 Q How do the bylaws get changed?

17 A The bylaws have to be changed by 75 percent or more
18 of the owners agreeing to change it.

19 Q Listen carefully. I asked you earlier how the master
20 deed gets changed and that's 75 percent, you said that.
21 How would the bylaws get changed?

22 A Fifty percent plus one.

23 Q Of whom?

24 A Of the owners.

25 Q Of the owners. So the board of directors cannot

1 change either, right?

2 A Correct.

3 Q And then it says, "Due to there being less than 73 or
4 75 percent present." So what does that mean, do you know?

5 A I'm not sure, because this was certainly in March.
6 The annual meetings were in December. But again, it --

7 Q This is a homeowners meeting. It says it's an annual
8 meeting in March.

9 A That was held in March.

10 Q Okay.

11 A Master deed -- okay.

12 Q "The motion will go to the homeowners in a special
13 election."

14 Did you ever know of any special election --

15 A There was not.

16 Q -- over this? There was none? You were present at
17 the time?

18 A I was present.

19 Q You were on the board?

20 A I was on the board.

21 Q Yes. You were a board member present in these
22 minutes, right?

23 A Right.

24 Q So there's another attempt in '91 to get around the
25 bylaws in the master deed; is that correct?

1 A That's correct.

2 Q And that's Defendant's Exhibit 1?

3 A Correct.

4 Q Do you remember anything to do with the Duck In
5 restaurant from Defendant's Exhibit 2, March of '93, the
6 annual meeting minutes?

7 A I don't remember anything specifically about The Duck
8 In. They weren't there that long, in the building.

9 Q The annual meeting was March as best you can
10 recollect?

11 A Correct.

12 Q What was going on here with the commercial units?

13 MR. BEST: Your Honor, I think that calls for
14 speculation on this witness's part and I would object.
15 She's trying to get into the minds of -- I know she's got
16 a background in real estate and marketing and whatnot;
17 however, she's trying to jump from there to what was in
18 two men's minds, Mr. Stonebruner and Mr. Powell. She's
19 got no way of doing that for us.

20 THE COURT: You need to rephrase the question.

21 MR. SPILLANE: All right. We'll break it down.

22 BY MR. SPILLANE:

23 Q What would happen in the meetings with respect to the
24 commercial units? Tell me what happened.

25 A Beau Powell was the board member and he was certainly

1 the developer and the other board members know and he was
2 able to intimidate and control the other board members to
3 look at things that would best serve him.

4 Q Did he need to get his commercial units rented?

5 A Yes.

6 Q Did he ever get them rented?

7 A Yes.

8 Q All right. Let's talk about the commercial units,
9 starting from the left.

10 Pita Pit, A. How did that become Pita Pit?

11 A I don't know how. It originally started off as a
12 laundromat.

13 Q A laundromat.

14 A And then Pita Pit. I don't know when that changed
15 hands.

16 Q And who owned that?

17 A Craig Stonebruner.

18 Q And Craig Stonebruner was one of the developers on
19 the board?

20 A He was not on the board, but he was one of the
21 developers.

22 Q He was one of the developers.

23 A He was on that original board.

24 Q He was on the original board, but not later.

25 He wasn't on your second board, was he?

1 A No.

2 Q All right. Did he develop Easy Coin Laundry? Is
3 that the name of it?

4 A I don't know. He owned the space. I don't know if
5 he owned Easy Coin Laundry.

6 Q All right. That's Unit A. Unit B, C, and D are now
7 Tavern on the Greene. Give me the history as you know it
8 from the board meetings about those units.

9 A B was -- at one time was a shoe store. And then once
10 the shoe store closed, it was purchased and then
11 eventually incorporated into Tavern on the Greene. They
12 put a pool table and some other things in there.

13 The original being in C and D was the hair
14 salon. Once it went vacant, it was vacant for awhile and
15 then John Hicks --

16 Q John Hicks?

17 A John Hicks was the instrument that came in and
18 approached Deane Chavous who was the regime manager and
19 made the request to be able to serve beer and wine, which
20 Blue Cactus was in the far unit and had been for awhile
21 and also wanted to serve beer and wine.

22 Q About when was that?

23 A That was in the mid-nineties.

24 Q Did these two developer people still own those units
25 at that time?

1 A I wasn't the association manager so I don't know when
2 that actually transpired, but Beau Powell I know still
3 owned some and I know Craig -- I don't know if they owned
4 all of them or what they still owned at that time.

5 Q So you're saying John Hicks became the owner of C and
6 D?

7 A I don't know if that's the name that he used, if it's
8 Liberty Funding or if it was actually in John Hicks or
9 some other LLC partnership, but he was certainly the one
10 that owned it.

11 Q Okay. What did the board do when the restaurants
12 started and went up, when Tavern on the Greene and Pita
13 Pit were on the left side of the front, what did the board
14 do?

15 A Again, Tavern on the Greene was not until later. The
16 Blue Cactus had been there before that was there and so
17 the board just sort of thought that they didn't have
18 anything else to do, that it was already existing and they
19 didn't realize that they had the right to stop them.

20 Q Blue Cactus it's my understanding had to make an
21 alteration to put a ventilating system for the grill of
22 some sort, right?

23 A Correct. Beau Powell came to the board and convinced
24 them to allow a hole to be put through the stucco, which
25 there was a lot of concern about, but he convinced them

1 that it wasn't a problem and it was needed for this
2 business and it would not create a problem structurally
3 and it wouldn't create any other kind of problem. And
4 they believed him.

5 Q And the board believed him?

6 A Uh-huh.

7 Q So what did the board do?

8 A They went along with Beau Powell's request.

9 Q Did they look the other way or did they give written
10 permission or what?

11 A I don't know if it was written, but they certainly
12 authorized him to put in the vent into the building and
13 cut a hole which is still there.

14 Q Was there any trial period on this deal?

15 A Once the vent's cut, the vent's cut. There's not a
16 trial period.

17 Q No, I mean on the restaurant itself, on Blue Cactus?

18 A There was never anything -- there was never really
19 even any permission given for the restaurant. It was
20 really just requested the ventilation that was necessary
21 for them to be able to operate. I don't know that the
22 board ever gave permission for the restaurant to be there
23 or was asked if it could or if I couldn't.

24 Q And who did this?

25 A Beau Powell.

1 Q He was the owner; is that correct?

2 A Correct.

3 Q How did you vote? Did it take a vote?

4 A They did take a vote, and I voted against it. All
5 the other board members voted for it and it was passed to
6 allow the venting.

7 Q Did the board think they could do that?

8 A They thought that they could. Beau Powell told them
9 they could.

10 Q Did you know otherwise?

11 A Well, it's certainly against the master deed and
12 there were a lot of other issues, but I guess that it was
13 just a losing battle.

14 Q What did you mean, "a lot of other issues"?

15 A Again, we still had stucco issues, we had roof
16 issues, we had all kinds of issues. Window issues, water
17 penetrating through windows. Just there were always a lot
18 of issues. Cleaning. Just --

19 Q Who were the board members at that time? Were they
20 competent, incompetent?

21 A They were -- two of them lived in the building:
22 Vicki Wingate, Richard Peterson. They were business
23 people. They were not real estate people. They don't
24 even know -- they certainly agreed to the master deed, but
25 I don't know if they actually understood what their

1 responsibilities were, as I'm not sure that most board
2 members understand what their responsibilities are.

3 Q Did you find that common since you've had many
4 boards?

5 A Yes, it is common.

6 Q Is this a typical problem or an exceptional problem?

7 A Well, the board not knowing what their real
8 responsibilities are and what they can do and what they
9 can't do I think is probably pretty common.

10 Q What's the budget for the board? Was it financially
11 in good shape or poor?

12 A Well, it's like most boards, there's not a lot of
13 money and you always -- it was still a fairly new
14 building. Again, we were having a lot of water intrusions
15 and they were caulking windows. That was Beau Powell's
16 suggestion of how to repair that. But -- so they were
17 spending money that wasn't really planned or budgeted for.
18 So I think that they were in fair shape. They weren't in
19 great shape.

20 Q How many presidents were on the board during your
21 management period from 2002 until today? How many
22 different presidents, do you know?

23 A Probably five, six. Karen, I guess, has been
24 president for three years.

25 MS. GREINER: Actually six.

1 MR. SPILLANE: No. Stay quiet.

2 MS. GREINER: Sorry.

3 BY MR. SPILLANE:

4 Q Defense Exhibit 5 has to do with rules and
5 regulations. Are you familiar with that?

6 A Yes, sir.

7 Q Is that Place on the Greene?

8 A It is.

9 Q The rules and regulations?

10 A It is.

11 Q It talks about parking, children, signs, pets, trash
12 liability, solicitation, they didn't want the businesses
13 advertising in the corridor?

14 A Correct.

15 Q What were the problems created by the restaurants?

16 A Trash, bugs, noise. Noise is probably the biggest.
17 It's a nuisance to those living above, particularly the
18 bar and the music.

19 The people being able to -- doors being propped
20 open.

21 An attempt with those living in the building to
22 provide them some kind of security, which is something
23 that was sold originally in the concept of the development
24 was the fact that it was a locked, secure building, people
25 being able to come and go. We added cameras at a later

1 time, again trying to give people a comfort level for
2 their daughters and their -- whomever was living there.

3 A lot of trash was generated by the commercial
4 spaces and the noise, I think, are the predominant
5 problems.

6 MR. SPILLANE: If I could have five minutes,
7 Your Honor, a short recess to review some notes, I'd
8 appreciate it.

9 THE COURT: Let's take a break.

10 Ms. Nichols, during this break you may not
11 discuss your testimony with anyone. You've not completed
12 your testimony so it would be inappropriate to discuss it
13 at this time.

14 Let's take an afternoon break, a brief break,
15 and we'll come back and continue on.

16 (A break was taken.)

17 THE COURT: Yes, sir, you may continue.

18 BY MR. SPILLANE:

19 Q Ms. Nichols, the Place on the Greene Homeowners
20 Association calls for one-year terms for the board of
21 directors. Do you find that unusual or normal in your
22 experience?

23 A I find it unusual.

24 Q What's the -- what do you experience in other boards?

25 A Normally it's two or three-year terms.

1 Q Do most homeowner associations have staggered terms?

2 A Yes.

3 Q Did Beau Powell ever indicate to the board that these
4 restaurants wouldn't be a problem?

5 A Yes.

6 Q Are you trying to be fair today with respect to the
7 history? Have you told the whole truth?

8 A Yes, sir.

9 Q Did the board rely or did you offer your real estate
10 background when these issues came up?

11 A I certainly offered my opinion. Beau Powell had more
12 background. He was the one that was in charge of the
13 contractor and with the developer and asserted that power
14 over the board to fight what anybody else's concerns were.
15 He intimidated the board.

16 Q He intimidated the board?

17 A Yeah. I think that they were naive and I think he
18 intimidated them. He knew more than they did. He was in
19 charge and they just sort of accepted and trusted him.

20 Q I notice on page four in the master deed the
21 commercial units were limited to 600 square feet. But you
22 said C and D was pre-purchased by one person?

23 A Correct.

24 Q And does that mean it became 1200 square feet?

25 A Correct.

1 Q Was the wall ever built between C and D?

2 A No.

3 Q Is the wall there now, do you know?

4 A No.

5 Q And that C and D is where Tavern on the Greene is
6 two-thirds located?

7 A Yes, sir.

8 Q Did you try to uphold the master deed in those board
9 minutes all those years ago?

10 A Yes.

11 Q What did you do?

12 A Well, I'm only one vote. I certainly voiced my
13 opinion, my concerns, but I was only one vote.

14 MR. SPILLANE: No further questions. Answer any
15 questions defense counsel has, please.

16 THE COURT: Yes, sir, Mr. Boger.

17 MR. BOGER: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. BOGER:

20 Q Just by way of clarification, I think you said you
21 came on as property manager in the year 2000?

22 A I think so, yes.

23 Q Would 2003 be better?

24 A It could be.

25 Q That's what the letter of December of '02 says,

1 you're coming on in January of '03. That clarifies that?

2 A Thank you, yes.

3 Q Have you ever had a drink at The Blue Cactus?

4 A No.

5 Q Do you know they serve beer and wine in there?

6 A Yes.

7 Q Have you ever been in there?

8 A Yes.

9 Q So the board, through the board of which you were a
10 member, had knowledge, very intimate knowledge of the fact
11 that these restrictions were violated?

12 A I don't think they did.

13 Q You don't think the board knew that the restrictions
14 were violated?

15 A I don't think they did. Most people don't ever read
16 master deeds.

17 Q But you knew?

18 A I certainly was opposed to a lot of the things that
19 happened, uh-huh.

20 Q And you knew that the master deed was being violated?

21 A I knew that it wasn't being followed by the letter of
22 the law, correct.

23 Q And you were a member of the board?

24 A Some of the time, yes.

25 Q Well, almost ten years?

1 A Correct.

2 Q So you were a member of the board in 1991 --

3 A Yes.

4 Q -- when Defendant's Exhibit 1 was written?

5 A Uh-huh.

6 Q And you were a member of the board in 1993 when
7 Defendant's Exhibit 2 was written?

8 A Correct.

9 Q And you were there knowing full well it violated the
10 restrictions?

11 A Correct.

12 Q Okay. Now, do you -- and I'm not blaming this on
13 you, but just as a board in general, do you think that
14 they had any fault for not doing something in 1991, 1993?
15 Do you place any blame for them not doing something about
16 this?

17 A They were naive and I don't think they knew that they
18 could do anything.

19 Beau Powell ran -- was never president, was only
20 a board member, but he was very vocal and very dominant
21 and I -- he had the ability to make them believe that it
22 was okay.

23 Q But once again, you were a board member and knew that
24 that wasn't --

25 A I was one vote and I usually voted -- I voted against

1 Tavern on the Greene, I voted against beer and wine, I
2 voted against the vent, but I was only one vote.

3 Q So the board acquiesced to these restaurants being
4 there?

5 A They -- it wasn't the restaurants. I don't think
6 that the board was ever asked if a restaurant could go in
7 there. They were asked about the vent and they were asked
8 about beer and wine, but I don't know that they were ever
9 asked if it's okay if a restaurant goes in.

10 Q Well, let me show you Defendant's Exhibit 2. This is
11 the one from March 22nd, 1993, about the paragraph that
12 says "new business." Read that for me.

13 A "The Duck In restaurant has notified the board of its
14 intent to build a deck in front of the commercial units."

15 Do you want me to read the whole paragraph?

16 Q Well, but certainly -- my point is, in 1993, the Duck
17 In had to have been there in '92, right?

18 A Correct. But they were never -- never asked for
19 permission to be there.

20 Q Well, in 1991 --

21 A They asked for a deck.

22 Q No, 1991. That's 1993 they asked for a deck.

23 Let me find Defense Exhibit 1 and I'll show that
24 to you.

25 Once again, go to "new business" and read that

1 part.

2 A "Beau Powell addressed the vacancy problem of the
3 commercial units due to the restrictions as stated in the
4 master deed. Restaurants, which are prohibited, but had
5 worked well in other similar buildings. He offered the
6 motion to amend the bylaws to allow the board at its
7 discretion to allow other uses. Due to there being less
8 than 75 percent, the motion will go to the homeowners in a
9 special election. The additional caveat was made that
10 there would be no -- there would be beer or -- there would
11 not be beer or wine sold without food consumption."

12 Q And that's exactly what happened, isn't that right,
13 beer and wine was sold with food consumption at Tavern on
14 the Greene and now Pita Pit; isn't that right?

15 A There were restaurants. In fact, I think Blue Cactus
16 had been operating as a restaurant and didn't have beer
17 and wine. Blue Cactus and Tavern on the Greene --

18 Q I'm sorry.

19 A That's okay -- and Tavern on the Greene sort of came
20 to the board together, or John Hicks, in the request to be
21 able to do beer and wine and that was when they said,
22 well, you need to have food, we really don't want it just
23 to be a bar, we want it -- if you want to be able to serve
24 a glass of wine with a meal --

25 Q I understand.

1 A -- and that was the pretense that they came to the
2 board. And again, they were sort of already there. The
3 board is just trying to appease the question that's
4 answered, not go to the master deed and say you aren't
5 supposed to be here at all.

6 Q Okay. Once again, you're a board member, you're
7 there, and we're a democracy in America, and I think the
8 term Mr. Spillane used earlier, you could have gone, could
9 you not, to other members who lived there and said, you
10 know, there's something going on with this board, I'm
11 resigning, and we need to stop these restaurants and
12 they're violating the master deed? And certainly the
13 board, through you, acquiesced, although you opposed it,
14 but you could have done things to stop this in 1991, could
15 you not, hindsight?

16 A No. Again, my voice was one. Beau Powell's voice
17 was much louder, much stronger, much more authoritative
18 that it wasn't a problem and because of that, they didn't
19 talk about it not being -- it being against the master
20 deed. They didn't talk about -- it was done in a trying
21 to get along. It wasn't -- they didn't think about the
22 repercussions and the fact that they weren't upholding the
23 master deed until Karen started.

24 Q And that went on for 15 years for Blue Cactus?

25 A Uh-huh.

1 Q They've been in business 15 years. That's going to
2 be his testimony.

3 A Uh-huh.

4 Q Fifteen years they've been operating, quote,
5 "illegally," while the board did nothing. I mean, it's a
6 fact, isn't it?

7 A Yeah. Are there complaints? There were -- Blue
8 Cactus did not pre-date --

9 Q I'm sorry, answer my question. What did -- did the
10 board do anything until this lawsuit for 15 years?

11 A Not legally, no.

12 Q Okay. And they had knowledge through you at least
13 that they could have done something as a board member?

14 A No, not through me.

15 Q Well, you knew, you're a real estate -- you're a
16 broker, aren't you?

17 A It's in the master deed. It was certainly available
18 to everyone. It's in the master deed.

19 Q Public knowledge, isn't it?

20 A It was -- they were in violation of the master deed
21 as well as they knew it also.

22 Q "They" meaning Beau Powell?

23 A Duck In, Beau Powell, Blue Cactus. I would think
24 that they signed the same master deed.

25 MR. BOGER: If you could give us a moment, Your

1 Honor.

2 (Pause.)

3 MR. BOGER: Please answer anything Mr. Best has,
4 Ms. Nichols.

5 CROSS-EXAMINATION

6 BY MR. BEST:

7 Q Ms. Nichols, when Mr. Spillane asked you earlier
8 about some of the problems created by the restaurants; you
9 mentioned security, vandalism, I believe, and that kind of
10 thing. You mentioned roaches and that kind of --

11 A Mentioned what?

12 Q Cleanliness, roaches, bugs crawling in?

13 A Uh-huh.

14 Q Did you also mention security?

15 A Uh-huh.

16 Q I think it's in our Exhibit No. 1, Defense Exhibit
17 No. 1, did you not have a discussion with Mr. Chavous in
18 1991 about the amount of vandalism had decreased and the
19 security guard being shared with Plaza Center on big USC
20 weekends?

21 A Uh-huh. Yes.

22 Q And that three video cameras seemed to have been a
23 deterrent?

24 A Was for awhile.

25 Q Okay. And a big USC weekend, what significance does

1 that have?

2 A Well, vandalism was not just in the building. There
3 was vandalism in the parking lot. That was really
4 different than security, even though that security breach
5 of commercial spaces going and coming, they propped doors
6 open, we moved them, but there was a reduction in cars
7 being broken into by having a security guard.

8 Q Were there any commercial customers' businesses there
9 in 1991 other than the hair salon possibly?

10 A I don't know. I don't remember exactly which
11 commercial -- when the commercial buildings -- obviously
12 Blue Cactus was there.

13 Q Maybe not in 1991, and I'm asking you. That's when
14 Mr. Powell was wanting apparently a second vote to amend
15 the restrictions, okay? So you were there. Am I helping
16 you remember?

17 A I'm not exactly sure what commercial properties were
18 there in '91.

19 Q But my point is, there was a problem with security in
20 1991 and vandalism in 1991, was there not?

21 A I think the only thing we said was vandalism. I'm
22 not -- did it say security?

23 Q It said the security had helped.

24 A The security officers had helped with the vandalism
25 that happened in the parking lot.

1 Q Right. Now, in the initial plans, in the initial
2 floor plans, were there plans for two dumpsters? Weren't
3 there two dumpsters at the building for a long period of
4 time?

5 A In that back area, correct.

6 Q And now there's only one, according to previous
7 testimony?

8 A That's all that's there right now.

9 Q And referring to Defense Exhibit 1, you stated that
10 in the special vote, due to there being less than
11 75 percent, which it would have taken to amend the
12 restrictions in the master deed, even though the
13 non-lawyer used the term "bylaws" here, you said that vote
14 never took place?

15 A I said the vote never got approved.

16 Q You said never had the vote in 1991. Did I
17 misunderstand you that you said they never had that
18 special vote?

19 A They never had a special meeting. As far as I know,
20 it never got approved. It was approached to the owners a
21 couple of times. It never got approved, it never got
22 authorized by the owners.

23 Q Okay. And the restrictions go further than just
24 cover no restaurants and no bars, do they not?

25 A Restrictions in the master deed?

1 Q The restrictions in the master deed. I hope we all
2 know we're talking about restrictions in the master deed.
3 Do they cover more than just bars and restaurants?

4 A The master deed covers the governing of the entire
5 building, the entire property.

6 Q The prohibitions. I mean, we've brought a lawsuit
7 here. We're all here on this lawsuit. And I'll try to
8 make myself a little more clear. I apologize for that.

9 In the restrictions for the commercial units,
10 which is on page 16, I think subparagraph three if I
11 remember, it said commercial office space and limited
12 service establishments, but it goes further and specifies
13 a number of prohibited activities, does it not?

14 A It does.

15 Q Specifically, no restaurants, no bars, no lounges, no
16 poolhalls?

17 A Uh-huh.

18 Q No nothing that relies on heavy foot traffic or
19 walk-in patrons?

20 A Correct.

21 Q Or words to that effect, correct?

22 A Yes, sir.

23 Q Easy Coin Laundry, my client, do you recall what kind
24 of laundry they had there?

25 A A coin laundry.

1 Q Was it -- did it have an attendant?

2 A No.

3 Q Was it open 24/7?

4 A Yes.

5 Q Relied on foot traffic, didn't it?

6 A Undesirable foot traffic, correct.

7 Q You never took any action against that, did you?

8 A Craig Stonebruner was approached and again --

9 Q Ma'am, was action taken?

10 A We never took any legal action.

11 MR. BEST: Thank you.

12 That's all I have. Thank you, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. SPILLANE:

15 Q Ms. Nichols, a few follow-up questions.

16 Who owned and set up Easy Coin Laundry?

17 A Craig Stonebruner owned the space.

18 Q He owned the commercial space?

19 A The commercial space.

20 Q And he was one of the developers?

21 A Correct.

22 Q Defendant's Exhibit 1 talked about the new business
23 and I want to go back to that because I want to get
24 cleared up that new business paragraph.

25 A Yes.

1 Q I want to get real clear what we're talking about.

2 We talked about vacancy problems, restaurants
3 that worked well in other similar buildings, and a motion
4 to amend the bylaws was offered at an annual meeting; is
5 that correct?

6 A Correct.

7 Q Can the bylaws change the master deed?

8 A No, sir.

9 Q So if those members at that annual meeting voted to
10 change the bylaws to amend to allow restaurants, what
11 would the vote threshold be?

12 A Seventy-five percent.

13 Q No, what would the vote be for the bylaws?

14 A It'd be 50 percent plus one.

15 Q All right. However, it indicates that there was less
16 than 75 percent present of the ownership. How much is
17 needed to amend the master deed?

18 MR. BOGER: Your Honor, he's already asked these
19 questions on direct earlier. We're plowing the same old
20 ground. I object.

21 THE COURT: I'll let him ask it this time, but
22 it has been stated several times, so we can move on.

23 BY MR. SPILLANE:

24 Q Since there wasn't enough present at the annual
25 meeting, they did not hold a vote; is that correct?

1 A They did not.

2 Q That's what the minutes said. Therefore, they
3 decided this motion will go to the homeowners in a special
4 election, right?

5 A Correct.

6 Q And you were asked by defense counsel, he questioned
7 whether you knew about any of the special elections being
8 held. Was it held?

9 A There was not a special election held.

10 Q Had there been a special election held, would it be
11 by mail and proxy or by another meeting?

12 A Well, a special election held implies to me that it
13 would be an actual meeting.

14 Q All right. Do you remember the 1985 attempt on
15 November 25, 1985, by Ms. Ferris Richardson's letter?

16 THE COURT: It's right here.

17 MR. BOGER: Your Honor, this is that same ground
18 we're plowing again.

19 BY MR. SPILLANE:

20 Q Do you remember that?

21 THE COURT: I'll overrule the objection.

22 BY MR. SPILLANE:

23 Q Do you remember that attempt?

24 A Yes, sir.

25 Q Was that attempt by mail and proxy or by a special

1 held called meeting of the members?

2 A By mail.

3 Q And it says on it, does it not, this will be by --
4 this will be held by absentee ballot?

5 A Correct.

6 Q Now, my question is to you, if this letter went out,
7 not like you're saying another special meeting, if it went
8 out to amend the bylaws, what percentage would they have
9 needed to change the bylaws?

10 A Seventy-five percent.

11 Q No.

12 A Fifty percent -- of the bylaws? Fifty percent
13 because plus one.

14 Q You're confused, aren't you?

15 A Well, bylaws, yes.

16 Q This is confusing, isn't it?

17 A Yes.

18 Q You would not agree with defense counsel when he was
19 claiming the board acquiesced, you used the word
20 "appease." What did you mean?

21 A They were trying -- they tried to appease Beau
22 Powell, they tried to make it work. They're sympathetic
23 because the commercial spaces or some of them -- not all
24 of the commercial spaces, but some of them were vacant and
25 they tried to accommodate his request to not cause

1 conflict and difficulties within the board and within the
2 association. That wasn't what they wanted to do.

3 Q So they tried to accommodate the owner of the units,
4 the commercial units; is that correct?

5 A Correct.

6 Q They tried appease the owners of the commercial
7 units?

8 A Correct.

9 MR. SPILLANE: No further questions. Thank you.

10 MR. BOGER: Limited recross, Your Honor.

11 RECROSS-EXAMINATION

12 BY MR. BOGER:

13 Q When your husband got sued, you got off the board and
14 resigned?

15 A Resigned, yes.

16 Q You saw the conflict of interest and resigned from
17 the board?

18 A Correct.

19 Q But you did not resign from the board from 1985 to
20 1995 when these things that Beau Powell was intimidating
21 and convincing people to do on the board took place; isn't
22 that correct?

23 A Correct.

24 MR. BOGER: Okay. Thank you. That's all I
25 have.

1 THE COURT: You may step down.

2 Anything further from the plaintiff?

3 MR. SPILLANE: We rest.

4 THE COURT: Anything from defense?

5 MR. BEST: Your Honor, if we may have a moment.

6 (Pause.)

7 MR. BOGER: We'll call the first witness if Your
8 Honor, please.

9 THE COURT: Yes, sir.

10 MR. BOGER: I'd call Lloyd Reese.

11 LLOYD REESE, after being duly sworn, testified
12 as follows:

13 THE COURT: Thank you. You may have a seat.

14 DIRECT EXAMINATION

15 BY MR. BOGER:

16 Q You are Lloyd Reese?

17 A Yes, sir.

18 Q And where do you live?

19 A I live out in Woodfield Park, Columbia.

20 Q And you're the owner of The Blue Cactus?

21 A Yes, sir.

22 Q Now, you're not the landlord of The Blue Cactus --

23 A No.

24 Q -- but you operate the business?

25 A Yes, sir.

1 Q And what is The Blue Cactus?

2 A It's a restaurant that has evolved into a
3 Korean-Cuban-Asian-Thai-Mexican cuisine, with heavy on the
4 vegetarian.

5 Q Do you serve beer and alcohol, beer and wine?

6 A No. When I went through --

7 Q I don't know if the judge heard your answer. You do
8 not?

9 A No.

10 Q Go ahead.

11 A I reserved the right to request it later when I was
12 at zoning, but I preferred, if possible, to make a living
13 without the problems of selling alcohol.

14 Q So you never sold it?

15 A No, no.

16 Q And how long have you been in business?

17 A I opened business May of 1994.

18 Q And you've been in business all that time?

19 A Oh, yes, sir.

20 Q Fifteen years?

21 A Right.

22 Q And how did you -- tell me about the vent that got
23 cut. Were you there when that happened?

24 A Yes. The -- to make a -- to put a vent in over where
25 the stove unit is was cut through the wall, the fan was

1 put inside my unit, and just the air itself exhausts out
2 on the alleyway. As trucks come up and down and the
3 driveway isn't level and they lean the trucks toward the
4 building and they hit the building all the time and
5 nothing that extends out three or four inches stays on the
6 outside of the building.

7 Q It's been that way for 15 years, too, right?

8 A Oh, yes.

9 Q And that was authorized by whoever at the Place on
10 the Greene, right?

11 A I would have to assume.

12 Q Nobody stopped you?

13 A No.

14 Q Did you hide the fact that there was a vent being
15 cut?

16 A No. It was pretty evident.

17 Q Do you have a business license from the city?

18 A Yes.

19 Q How long have you had it?

20 A About 15 years in May.

21 Q And you pay every year?

22 A Yes.

23 Q How many employees do you have?

24 A I have my wife, my daughter part-time, my son
25 part-time, two sister-in-laws part-time.

1 Q Your family works there?

2 A Yes.

3 Q And is there any -- do you make your living any other
4 way?

5 A I'm retired military, but no, the family income comes
6 from the restaurant.

7 Q What -- when you served in the military, where did
8 you serve?

9 A I was -- spent almost 22 years in Berlin, the
10 demilitarized zone, in reconnaissance and ambush patrols,
11 spent a year in Vietnam, all this infantry time.

12 Q And was your dream always to open a restaurant?

13 A No.

14 Q What did you want to do?

15 A I wanted to retire.

16 Q And what's your clientele like during the day and the
17 evening?

18 A The -- it's a -- there's one of the professors at USC
19 that teaches the hotel/restaurant tourism uses us as one
20 of the examples of a business that's able to get
21 everything from lawyers to young hippies sitting at tables
22 next to each other and as diverse a clientele outside of
23 the Highway Department that you'll ever find.

24 Q And how late are you open?

25 A We stop people coming in at 9 o'clock at night. We

1 finish cooking generally around 10 and we leave between
2 midnight and 1 o'clock.

3 Q And you're back there in the morning at what time?

4 A We leave the house at 9 o'clock, go down and buy
5 vegetables, buy whatever, and we open at 11. And we do
6 this five days a week.

7 Q Okay. You're off Saturday and Sunday?

8 A Sunday and Monday.

9 Q Sunday and Monday.

10 Now, what kind of bug eradication do you use?

11 A Well, when I opened, I swept up about a half a bushel
12 of dead bugs and I treated myself a combination of bait of
13 contact poison and did that for about six years and then I
14 hired a company to come in and do the weekly bait and to
15 treat.

16 Q And you don't have a bug problem at your restaurant?

17 A We don't have an infestation of bugs. We will on
18 occasion see one. We don't know if they come in in boxes
19 or they come from upstairs or across the hall or, in some
20 cases, they walk in the front door.

21 Q When you opened this business, who did you talk with
22 about opening it?

23 A I took a -- went around to the businesses around me
24 and brought a little sheet of paper with the statement
25 that I was going to open a restaurant and they had two

1 places they could sign, either they didn't have a problem
2 or they had a problem, and I went about a two-block area
3 around and I think I had two people that said they didn't
4 want it. Both of them run restaurants.

5 Q And are you a member of the Five Points Merchants
6 Association?

7 A No, sir. I run a restaurant, I'm busy.

8 Q Did you have any issues with other restaurants around
9 you? Do you have any problems with other restaurants
10 around you?

11 A No.

12 Q And you have relied on this being a restaurant for a
13 living, haven't you?

14 A Yes. My daughter's husband is not able to work right
15 now, so it feeds her and her four children, my wife,
16 myself.

17 Q Now, you see Mr. Phipps here in the courtroom sitting
18 down back here. Do you recognize him?

19 A Yes, sir.

20 Q Have you had a problem with him?

21 A The problem I've had with Mr. Phipps has all been
22 indirect in that I've never been directly confronted.

23 I have observed him when he walked out of the
24 building one day and informed the city engineer that they
25 were going to have to take the sidewalk up and completely

1 redo it because it was not to his satisfaction and that
2 there would be fights in front and that the -- it would
3 not be acceptable.

4 And later when the calls started coming in
5 through the crime hotline tips, it was almost verbatim as
6 far as fights in front of the building, one of which was
7 when the police lieutenant was standing there talking to
8 the retired federal officer that run the restaurant next
9 door when the fight was reported breaking out.

10 Q So you were a witness to there being -- not being a
11 fight there, but a fight being reported?

12 A Yes.

13 Q Okay. Did you ever see Mr. Phipps accost any
14 customers of the Sub Pub next door to you when it was
15 opened?

16 A During the time that Mr. Phipps is up and around is
17 normally later in the evening and that's when I'm busy,
18 and I don't recall.

19 MR. BOGER: Fair enough. Answer any questions
20 by Mr. Spillane.

21 THE COURT: Mr. Best, do you have any questions?

22 MR. BEST: No, Your Honor, not of this witness.

23 THE COURT: Mr. Spillane.

24 CROSS-EXAMINATION

25 BY MR. SPILLANE:

1 Q Mr. Reese, I thank you for your service to the
2 country.

3 Who was the owner when you began your
4 restaurant?

5 A Roy Powell.

6 Q Roy Powell. Who is the owner now?

7 A David Dwarty.

8 Q Have you had any other owners?

9 A No.

10 Q When did Roy Powell deed, I guess, ownership to David
11 Dwarty?

12 A I don't really know. I wasn't privy to that.

13 Q Do you have any evidence that the vent was
14 authorized?

15 A It's there. It was inspected by the city inspectors,
16 and it is.

17 Q City inspectors have authorized it; is that correct?

18 A The city inspectors have inspected it, passed its
19 installation and said it met code.

20 Q That's the fire code, the building code?

21 A I would assume.

22 Q Okay. When you surveyed the surrounding businesses
23 prior to you opening up, you did that for what purpose?

24 A The hearing was at the zoning. When you open a
25 restaurant in Five Points you have to go through zoning

1 because of the concerns of parking, and the Five Points
2 Merchants Association didn't oppose my opening and there
3 was no one there that spoke in or spoke out against it.

4 Q So that was the zoning approval?

5 A Yes.

6 Q And what is the concern with parking?

7 A The people who have existing businesses own the
8 on-street parking and they don't want anyone else to use
9 it.

10 Q How much off-street parking do you have?

11 A I have the assigned space that the business has.
12 There is -- and assigned for each unit there are two other
13 spaces that float with the business units and that's used
14 so that we don't have to tow someone immediately when we
15 come to work when one of the students park there.

16 Q And you say you have one space because of your
17 rental?

18 A Yes, per unit there's one space assigned.

19 Q So you're in two units, are you not?

20 A Yes.

21 Q Two bays?

22 A Yes.

23 Q So you've got two spaces at Place on the Greene?

24 A Yes, sir.

25 Q I didn't understand who assigned the three other

1 spaces and where.

2 A There are two extra spaces, commercial unit, that is
3 used by the commercial units in addition to one space per
4 individual unit.

5 Q So each commercial unit has two extra spaces?

6 A No. There are a total of two extra spaces.

7 Q A total of two for all eight bays?

8 A Yes.

9 Q Okay. I understand. And that's Place on the Greene
10 spaces?

11 A That is Place on the Greene spaces as opposed to the
12 open spaces Place on the Greene has that are unassigned.

13 Q And I didn't follow you about in case a student parks
14 in your assigned space. Could you say that again?

15 A When someone parks in the wrong space, the vehicle is
16 normally towed when the person comes up that wants to use
17 that space. In an attempt to avoid that, the other two
18 spaces were added so that there would be a place to park
19 when you go to work and not have to tow a student
20 immediately.

21 Q Okay. So my understanding is that of the eight
22 commercial space units, each one has one space, and then
23 all of those eight share just two others?

24 A Yes.

25 Q Two floating spaces?

1 A Yes.

2 MR. SPILLANE: Thank you. No further questions.

3 MR. BOGER: No redirect, Your Honor.

4 THE COURT: And just to be clear, this business
5 operates spaces F, G, and H or --

6 MR. BOGER: G and H.

7 THE COURT: That's all I have. You may step
8 down.

9 MR. BOGER: May we excuse Mr. Reese, Your Honor?

10 THE COURT: I don't have any objection.

11 Any objection?

12 MR. SPILLANE: No objection.

13 MR. BOGER: He's got to go cook.

14 MR. BEST: Your Honor, I'd call Blair Monroe.

15 BLAIR MONROE, after being duly sworn, testified
16 as follows:

17 THE COURT: Thank you. If you'd have a seat and
18 state your full name, please.

19 THE WITNESS: My name is Blair Monroe.

20 THE COURT: Yes, sir.

21 MR. BEST: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MR. BEST:

24 Q Mr. Monroe, you go by Barry, don't you?

25 A I do.

1 Q You live in Columbia, do you not?

2 A I do live in Columbia.

3 Q But you do not live at Place on the Greene?

4 A I do not.

5 Q As a matter of fact, you own one of the commercial
6 units at Place on the Greene?

7 A That's correct.

8 Q Is that Unit A?

9 A That's correct.

10 Q And that brings us up to the present time is where
11 The Pita Pit is presently located?

12 A That's correct.

13 Q All right. What -- and you're here in the capacity
14 as representative of the company, in fact, that owns Unit
15 A?

16 A That's correct.

17 Q And that company is Easy Coin Laundry, Incorporated?

18 A That's right.

19 Q And you're currently president of that company?

20 A That's right.

21 Q All right. And Easy Coin first went into Unit A
22 when?

23 A In 1988.

24 Q And that was on a rental basis?

25 A That's right. We rented it to start with.

1 Q You were a tenant of Mr. Stonebruner?

2 A That's right.

3 Q And then in 1990 you purchased it?

4 A That's right.

5 Q And you operated your coin laundry from 1988 through
6 about what time?

7 A 1999.

8 Q At which point you shut it down?

9 A That's right.

10 Q And was it a profitable venture for you to have a
11 coin laundry there?

12 A Yes, it was.

13 Q And did you, in fact, have an extra share of the
14 water bill at Place on the Greene?

15 A Yes, we did. We put in a separate meter when we
16 opened up the coin laundry.

17 Q So Unit A put in a separate water meter to take care
18 of the additional water. So that is not an issue as far
19 as Unit A is concerned?

20 A No.

21 Q All right. Now, you bought it in 1990. Did you have
22 an attendant there at the coin laundry?

23 A Never did.

24 Q How often would you go by or your representative go
25 by and collect the money?

1 A We probably went in three times a week to check it
2 out. Had somebody clean it once a day. That's pretty
3 much it.

4 Q And was it -- you said it was profitable for you.
5 What were your hours of operation?

6 A 24/7. We stayed open almost all night, all day, all
7 the time.

8 Q Okay. And during your tenure there from 1988 through
9 approximately 1999 --

10 A Yeah.

11 Q -- were you ever complained about or receive any
12 complaints from the homeowners board?

13 A We had a couple of leaks, but other than that, we
14 never had any kind of problems.

15 Q Did they say that you were an undesirable tenant?

16 A Not that I'm aware of.

17 Q You heard about the parking around there, there's not
18 much parking. Was it walk-in traffic that you relied on
19 as Easy Coin Laundry?

20 A One hundred percent.

21 Q What was next-door to you when you went into that
22 unit?

23 A A Birkenstock shoe store.

24 Q A retail store?

25 A Right.

1 Q They rely on walk-in traffic, foot traffic?

2 A Foot traffic, yeah.

3 Q There have been a number of restaurants down there
4 since about 1991 or '92, have there not?

5 A Yeah. I think it's been a carousel, yes.

6 Q And now Pita Pit is leasing from you Unit A?

7 A Yes. They started in 2000, I believe.

8 Q And they're in their second five-year term which will
9 expire I believe you said?

10 A November of 2010, I believe.

11 Q And that's not your only livelihood, is it, Mr.
12 Monroe?

13 A No, it's not.

14 Q But you do have from your present tenant an interest
15 in purchasing your unit, do you not?

16 A That's true, we do.

17 Q And are you selling it about for what you paid for it
18 or substantially more or substantially less than what you
19 paid for it in these negotiations that you're thinking
20 about?

21 A Substantially more.

22 Q So there would be an economic loss to you in the
23 event of an injunction in this case --

24 A That's true.

25 Q -- because you'd lose that sale?

1 A That's right.

2 Q Are you copied with notices from the homeowners
3 association such as the annual meetings and the minutes
4 and proxies and that kind of thing?

5 A Right. We get the minutes and when the meeting is
6 going to be.

7 Q Is the board or the management company required to
8 notify you if your tenant is doing something that is not
9 up to their standards?

10 A I'm not sure what the board's responsibility is on
11 there.

12 Q Do you get such notifications?

13 A Yes, we do. We have gotten a few.

14 Q Did you get one in reference to The Pita Pit?

15 A Yes, we've gotten one or two.

16 Q And the issue in that was?

17 A One issue was trash getting caught in the chute. I'm
18 not sure of the setup, but something about boxes got
19 wedged in there and they thought it was from The Pita Pit.

20 Q Have you been aware that security is an issue in that
21 building?

22 A Yes. It's kind of an area of town where there's
23 considerable vagrancy and the kids have kind of trashed
24 things, so I would imagine, yeah, I'm aware of that.

25 Q And this has been going on since you operated your

1 laundry there?

2 A Yes.

3 Q Did you -- strike that.

4 Did you ever get a notification from the
5 management company or the homeowners for Place on the
6 Greene that you and/or your tenant were in violation of
7 the restrictions in the master deed until you received
8 Mr. Spillane's letter in 2007?

9 A Never did.

10 Q Do you believe they've waived their right to pursue
11 this?

12 MR. SPILLANE: Objection, Your Honor. Legal
13 opinion.

14 THE COURT: Rephrase the question.

15 MR. BEST: Ma'am?

16 THE COURT: Rephrase the question.

17 BY MR. BEST:

18 Q Do you think it's fair for them to come all these
19 number of years later and tell you you've got to get out
20 or your tenant's got to get out, Barry?

21 A No. After 20 years, no, I don't think that's proper
22 at all.

23 Q Am I charging you a fee in this?

24 A Yes, you are.

25 Q Do you remember what my hourly rate is?

1 A Not exactly.

2 Q For you?

3 A Well, probably just a couple hundred dollars an hour
4 is all.

5 Q I showed you the bill earlier, Mr. Monroe. Did you
6 hide it?

7 A No, I didn't hide it. I do remember seeing it. It's
8 around here.

9 Q You do remember seeing it?

10 A Yeah.

11 Q I think I turned it over.

12 Now, this was prepared what date?

13 A The date on this is Monday, April 6th, 2009, for
14 \$2,030.

15 Q Okay. That does not include today's time?

16 A That's correct.

17 Q What time did we start this morning at Mr. Boger's
18 office?

19 A 9:30.

20 Q And we came over here and we got started here at 11?

21 A Yes.

22 Q Took maybe an hour and a half break for lunch?

23 A Right.

24 Q How many more hours do you think we'll work?

25 A Well, we're pushing about seven it looks like now.

1 Q Okay. Now, are you aware in the restrictions in the
2 master deed it says that you as owner can't get your
3 attorney's fees?

4 A I've seen that.

5 Q But the association can?

6 A I've seen that.

7 Q That isn't fair either, is it?

8 A No, sure isn't.

9 Q And you're asking this Court to consider awarding you
10 attorney fees, are you not?

11 A I am.

12 Q And that's based on the equity -- the inequity of
13 what the homeowners association is trying to do to your
14 tenant and these other similar-situated tenants; is that
15 right?

16 A That's correct.

17 MR. BEST: I'd offer my bill to date plus seven
18 hours at \$200 an hour as this defendant's exhibit whatever
19 number.

20 THE COURT: Any objection?

21 MR. SPILLANE: No objection, Your Honor.

22 Are we going to have examination on this later
23 if it comes up?

24 THE COURT: You can certainly cross-examine him
25 on it.

1 That's Defendant's 6.

2 (WHEREUPON, Defendant's Exhibit No. 6 was marked
3 for identification and received into evidence.)

4 MR. BEST: Mr. Monroe, I don't believe I have
5 any questions, but the other attorneys may. Thank you.

6 THE COURT: Mr. Best, any questions?

7 I'm sorry, Mr. Boger?

8 MR. BOGER: No, ma'am.

9 THE COURT: Mr. Spillane.

10 CROSS-EXAMINATION

11 BY MR. SPILLANE:

12 Q Mr. Monroe, you stated that you purchased it in 1990
13 from Mr. Stonebruner; is that correct?

14 A That's correct.

15 Q Did you have a written contract with him?

16 A Yes, we did.

17 Q Did you have a closing?

18 A Yes, we did.

19 Q And did you have a closing attorney?

20 A Yes, we did.

21 Q And who was that?

22 A I can't recall at the time.

23 Q Do you know where the closing was?

24 A No.

25 Q Did you select the attorney?

1 A No. I'll have to tell you at that time my father was
2 involved in the business as well and he's passed away, so
3 I'd have to dig to find that information out.

4 Q Did you get a copy of the master deed at the time you
5 closed?

6 A I'm thinking we did.

7 Q Did you research your files to find a copy of the
8 master deed?

9 A Yes, we did.

10 Q Do you understand that the master deed restricts
11 restaurants?

12 A Yes.

13 Q Would you want a restaurant on the first floor of
14 your residence where you live?

15 A That's kind of an open question.

16 I don't think it would bother me, to tell you
17 the truth. I could go down and get a bite to eat any time
18 I wanted.

19 Q Did you have trouble leasing it after you shut down
20 Easy Coin Laundry?

21 A No. We had a for lease sign in it for maybe a couple
22 of months.

23 Q How did you come in 1988 to find that or your father
24 to find that location?

25 A We had been in this business, the coin laundry

1 business, for probably a dozen years or so before that,
2 and still are, and we noticed that there was not any type
3 of facility in the Greene Street/Five Points area. So we
4 actively looked and we saw that.

5 And I'm not sure how my dad got with
6 Mr. Stonebruner on that. I'm not sure if he had a sign
7 up, but I do remember all the infrastructure work that we
8 had to do to the unit, to put holes in the side of the
9 unit to vent the dryers and have fresh air holes put in so
10 air could come in to service the dryers. We had to put in
11 a set of steps coming up the front, cut a door in the
12 front, take out that window and put a door in. We did all
13 that in '88.

14 Q Do you have the unit under contract for sale at this
15 point?

16 A Not right now. We have a verbal contract, though.

17 MR. SPILLANE: No further questions.

18 THE COURT: Any redirect?

19 MR. BEST: No, Your Honor, no redirect.

20 THE COURT: I don't have any questions. You may
21 step down.

22 THE WITNESS: Okay.

23 MR. BOGER: I'd call Jeff Keeney to the stand,
24 Your Honor.

25 JEFF KEENEY, after being duly sworn, testified

1 as follows:

2 THE COURT: Thank you. If you'd have a seat and
3 please state your name.

4 THE WITNESS: My name is Jeff Kenney.

5 THE COURT: If you'd spell your last name,
6 please.

7 THE WITNESS: K-E-E-N-E-Y.

8 THE COURT: I'm sorry?

9 THE WITNESS: K-E-E-N-E-Y.

10 THE COURT: Thank you. Yes, sir.

11 DIRECT EXAMINATION

12 BY MR. BOGER:

13 Q Mr. Keeney, where do you live?

14 A Columbia.

15 Q And how long have you been operating Tavern on the
16 Greene?

17 A Since 1999, February 17th. It was in some of the
18 papers.

19 Q Did you have a ten-year anniversary just recently?

20 A Yes.

21 Q And is that what you do for a living?

22 A Yes.

23 Q Would you be prejudiced and injured if this place
24 were closed?

25 A Considering that I have a child on the way, it would

1 be pretty devastating.

2 Q Tell me a little bit about the business. Tell me in
3 particular about how security is handled in your facility.

4 A We have a person at the door that checks IDs to make
5 sure that no one's underage and we have bartenders that
6 work there and whoever's cooking.

7 Q And do you have security cameras inside?

8 A Yes, I do. I have security cameras facing at the
9 bar, at the front door, and pretty much covering the whole
10 area, including the kitchen.

11 Q Have you ever suggested to the homeowners association
12 that they put security cameras outside?

13 A I did. I went to one of the meetings and they were
14 complaining about the glass doors being broken, not on the
15 inside but on the front entrance, and I said, Well, there
16 seems to be a camera on the inside, why didn't they put
17 one up on the outside to kind of see what was going on,
18 but nothing's been done about it.

19 Q There's never been a security camera put on the
20 outside by the homeowners association?

21 A If there is, it hasn't done any good because I've had
22 my doors that go into the lobby broken in. I can't seem
23 to find out any information on it.

24 Q Now, we talked a little bit about vagrancy here
25 today. You've been here the whole time, haven't you?

1 A Yes.

2 Q Tell me what you do to keep "undesirables," for lack
3 of a better word, out of the building.

4 A Well, it's really bad during the wintertime when you
5 go towards the locked door and the gate into the building
6 itself, vagrants just slip right in there in the little
7 hallway and I just tell them, I say, Look, I'm not going
8 to call the police, but you got to get out of here and if
9 you don't, I will call the police.

10 And then when we take the trash out, there's
11 usually two of us to make sure nobody's coming in behind
12 us or getting into the elevator and we've got a key lock
13 to get in the elevator to come back up.

14 Q So describe for me in detail how trash is taken out.

15 A When the trash is taken out, we go out through the
16 side door, lock it behind us. We go through the locked
17 door, unlock it, close the door behind us. We go to the
18 elevator, take the elevator down, let the door close
19 behind us. We come around, dump it in the dumpster, come
20 back up, same process back upstairs.

21 Q And how many people take the trash out at one time?

22 A Most times two, sometimes one depending on how busy
23 the night was.

24 Q And the reason you do that, that process with the
25 door locking and that sort of thing is why?

1 A To make sure nobody gets in.

2 Q What do you see as a guy that's there -- well, let me
3 ask you. How long are you there? What time do you shut
4 down at night?

5 A Well, it depends on what night it is and, you know.
6 Saturdays and Sundays we shut down at 2. The rest of the
7 other nights mostly 3. Whenever we're there after that
8 it's cleaning or doing whatever.

9 But the biggest problem I see with security is
10 the college kids or whoever it is living in the building
11 put like a little piece of cardboard in the door or put a
12 trash can in front of the elevator downstairs for all
13 their friends to be able to come in. And when we go by,
14 we kick it out of the way.

15 Q Do you do that all the time?

16 A All the time. I've had people, I've told people,
17 I've seen them do it. I've said, Man, you cannot do that.
18 And they'll leave it there and I'll grab it and the door
19 will close behind me.

20 Q You're there, once again, 12 hours a day would you
21 say, maybe even more?

22 A I'm there a whole lot less here recently. I'm there
23 Monday nights until close and Friday nights until close
24 and a lot during the week during the day.

25 Q And you have an opportunity to see what kind of

1 people live there?

2 A Yes. A lot of people who live there are my
3 customers.

4 Q And what percentage of the building? There's 71
5 units, right?

6 A Right.

7 Q What percentage of those people who live there are
8 students?

9 A I couldn't give you an exact figure, but what comes
10 out of the people I see coming in and out of the building,
11 most of them appear to be young. I wouldn't say all of
12 them are college students. There are some older people
13 that live there. There's a really sweet lady that lives
14 on the fifth floor and I talk with her every time she
15 comes in, but it's mostly younger people I see.

16 Q Tell me about the sweet lady on the fifth floor. It
17 is my understanding she has cats.

18 A Well, there was -- I think there was a complaint
19 about the fact that she had cats.

20 The last time I talked with her she was actually
21 coming to me with another complaint that Mr. Phipps had
22 against me in another court and I had to bring her some
23 milk. She couldn't make it to court because she had
24 bursitis in her hip.

25 Q Now, the restrictions say no pets in the building.

1 A Right.

2 Q But she has pets?

3 A I believe she does. I've never been in her
4 apartment. I believe she does. But I've never been in
5 her apartment. I've never seen them.

6 Q Okay. But from what you understand she has cats in
7 there that are talked about a lot?

8 A From what I understand, yes, but to say that I've
9 seen them, no.

10 Q Now, what is your health score rating, the code that
11 comes up with the health department?

12 A An A. Just since the St. Patty's Day Festival we got
13 an A.

14 Q Has it ever been less than an A?

15 A If it has been less than an A, it went to -- and I'm
16 not positive on this -- I believe it went to a B for like
17 one week because we had a problem with the water heater,
18 and that's a big violation. But we had the water heater
19 fixed and that was it.

20 Q Have you -- do you have a license to do business in
21 the city?

22 A Yes.

23 Q Have you been inspected by the city before?

24 A Everything's good to go, yeah. For the trial I just
25 had, SLED came in and inspected and said everything was

1 okay.

2 Q You're totally sanctioned by every government agency
3 that you know of?

4 A Everything that I know of and every license that I
5 need to have.

6 Q You pay your taxes?

7 A I do.

8 Q You pay your employees?

9 A I do.

10 Q How many do you have?

11 A I have a manager, Chris. I have a bartender. I have
12 two door guys and the guy that works happy hour. One,
13 two, three -- six.

14 Q Before July of '07 when you got the letter from
15 Mr. Spillane, had you ever had any notice from any
16 homeowners association letter or board member telling you
17 that you were in violation of anything?

18 A Never had any idea that there was any problems. That
19 was the first I'd heard of it.

20 Q That was July of 2007?

21 A July of 2007.

22 Q And you've been in business for ten years?

23 A Since '99, yeah.

24 Q Now, within a hundred yards of your restaurant, your
25 bar and restaurant, how many other bars and restaurants

1 are there?

2 A There is -- I would say within a hundred yards there
3 is the Cellar on Greene, there is Durkins, there is
4 Mr. Friendly's, there's Salty Nut, there's Pavlov's,
5 there's CJ's, there's Dr. Rocco's, there's Garibaldi's,
6 there is Sammi's Deli, there is Saluda's. That's the best
7 I can tell you.

8 Q How about Dr. Rocco's?

9 A Dr. Rocco's on the corner.

10 Q . How about Durkins?

11 A Durkins, I'm sorry, between the Cellar on Greene and
12 Mr. Friendly's. There's a bunch of them.

13 Q All of those restaurants, do they not have patrons?

14 A Yes.

15 Q Do they walk up the sidewalk?

16 A All the time.

17 Q Especially after midnight?

18 A All the time, yeah. I mean it's starts around dinner
19 time and it doesn't stop until late at night. And there's
20 bars down on the corner at the bottom of the hill and
21 there's bars above me and there's bars across the street
22 and there's bars around the corner, and to get to them,
23 you have to walk.

24 Q Do those people talk outside the bars as well?

25 A Yeah. Everybody talks on the sidewalk.

1 Q Now, you have employed me to handle this matter, have
2 you not?

3 A Yes.

4 Q And you have agreed to pay my legal bill?

5 A Yes.

6 Q And would it surprise you that your part of my legal
7 bill is a thousand dollars?

8 A I would not like to hear it. But no, it would not
9 surprise me. We've been here all day.

10 Q And you've agreed to pay that?

11 A Yes.

12 Q And you also know that the restrictions say that you
13 can be made to pay Mr. Spillane's bill, but you can't
14 pay -- the homeowners association can't pay mine. Do you
15 understand that?

16 A I've heard that here now, yeah. It doesn't seem
17 fair.

18 Q You don't think that's fair?

19 A Not at all.

20 Q You would like to have -- you would like to have what
21 they call fee shifting and let them pay my bill?

22 A Yeah. They're the one -- yeah.

23 Q And you understand you're responsible for my bill
24 which is now a thousand dollars?

25 A Yes. Thank you.

1 MR. BOGER: Let me talk to co-counsel right
2 quick, Your Honor.

3 THE COURT: Mr. Best, any questions?

4 MR. BEST: I don't have any, Your Honor.

5 MR. BOGER: I have nothing further for Mr.
6 Keeney, Your Honor.

7 THE COURT: Mr. Spillane.

8 CROSS-EXAMINATION

9 BY MR. SPILLANE:

10 Q Good afternoon, Mr. Kenney.

11 You own Unit B; is that correct?

12 A Yes, sir.

13 Q Is that the only unit you own?

14 A Yes, sir.

15 Q Are you the owner of Tavern on the Greene?

16 A Yes, sir.

17 Q Okay. And do you think the pet lady should be
18 enjoined from having those pets and cats if she has them?

19 A I don't think that is my call to make.

20 Q Okay. The other bars you mentioned and your counsel
21 mentioned and listed within the area, do they have
22 residences above them, Pavlov's and those ones you
23 mentioned?

24 A No. Pavlov's and Salty Nut are about 50 yards away
25 from some of the residences and I know that Sammi's Deli

1 has residents above it. I'm not really sure about any of
2 the others. Mostly not the others I would say.

3 Q Have you made any arrangements to share fees with the
4 multiple clients Mr. Boger is representing?

5 A Yes, I have.

6 Q Do you have more trash or less trash than a general
7 office operation?

8 A I would say maybe more trash depending on how much
9 paperwork they're doing in the office.

10 Q Has Tavern on the Greene ever been cited, fined, or
11 reprimanded for not serving food?

12 A We were fined for not serving food. It was something
13 that we did go to court for. We got it fixed. It was a
14 problem -- they came in right before St. Patty's Day and
15 we had food in one freezer the lady did not see. We had
16 ice in the other freezer so we would not have to pay for
17 the ice on St. Patty's Day because that's what we run out
18 of most.

19 Q Did you pay the fine?

20 A I did.

21 Q Do you have music in Tavern on the Greene?

22 A I do.

23 Q What's your percentage of receipts connected with
24 food versus beer and wine? Do you have liquor?

25 A I do have liquor, yes.

1 Q Beer, wine, and liquor on one side and food on the
2 other. What percentage?

3 A The percentage I couldn't tell you exactly. I know
4 it's low. When they took the smoking ban and they said
5 they were going to let bars operate with just smoking if
6 their food sales were less than 15 percent, then yeah, I
7 thought smoking was more important than food sales. When
8 that all changed, I tried to get my food sales back up,
9 which has not succeeded.

10 Q What percentage are food sales right now?

11 A I would say probably less than five percent.

12 Q At Tavern on the Greene?

13 A Yeah. But I don't know anybody in town whose
14 business is not struggling now.

15 Q So you do mostly beer, wine and liquor?

16 A I'm doing whatever I can to keep the doors open right
17 now. And whatever food I can sell, I try to sell.

18 Q Have you ever been violated for any liquor license
19 requirement?

20 A Not that I know of.

21 Q Have you ever been cited?

22 A Not that I know of.

23 Mr. Phipps just took me to court for trying
24 to -- for me not to get my liquor license renewed.

25 Q Do you have live music?

1 A No.

2 Q Do you have loud music?

3 A It depends on what you call loud. I don't think it's
4 loud.

5 We've had the police come to the door and they
6 look at us and I say, "Is that too loud?" and they say
7 "no" and they walk away because there's a mysterious
8 caller that complains about it.

9 Q When did you find out that you can't have beer and
10 wine and liquor and food in the unit?

11 A When did I find out?

12 Q Yes.

13 A I guess when this whole thing started. But it was a
14 bar a few years before me and a restaurant, I believe,
15 before that and just kind -- when I came in, my lawyer
16 looked at the paperwork and said we're good to go, let's
17 sign, and we bought the place. It was already operating
18 as a bar when I bought it.

19 Q You did have your own lawyer at the closing?

20 A Yes.

21 Q And you purchased from EMH Investments, LLC in '05;
22 is that correct?

23 A I'm sorry, my Unit B?

24 Q Yes.

25 A Yes.

1 Q And you own Units C and D also?

2 A No, only Unit B.

3 Q You rent C and D?

4 A I do.

5 Q And from whom do you rent C and D?

6 A Marsha Berry.

7 Q Marsha Berry. Did you discuss this issue with her
8 when you received my letter?

9 A I did.

10 Q So your testimony is the first time you found out
11 about the restriction was in '07 when you got my letter?

12 A Pretty much.

13 Q June of '07?

14 A Yes.

15 Q As you read the restrictions, do you feel like you're
16 in violation of the restrictions?

17 A I believe the violations are something that
18 happened -- that's been going on way too long. I don't
19 feel that I'm in violation.

20 Q Right now you don't feel you're in violation?

21 A I feel that I'm not going by the bylaws, but I feel
22 that that's something that should have been addressed a
23 long time ago before the business was bought ten years ago
24 and I don't hear anything about it and it was running
25 before that and they didn't hear anything about it.

1 Q Who is EHM Investments, do you know?

2 A I believe, if I'm not mistaken, that was Stonebruner
3 Properties. Or the person that bought it from Stonebruner
4 Properties, I bought it from them.

5 Q I think the deed chain will reflect that on
6 February 24th, Mr. Stonebruner deeded it to EMH,
7 Investments, LLC.

8 A February 24th of what year?

9 Q Of 2004.

10 A 2004. That sounds like about when I bought it from
11 him.

12 Q And were you operating at that time?

13 A Yes.

14 Q And you said you've been there ten years?

15 A Yes.

16 Q And then it was sold to you?

17 A Yes.

18 Q In '05?

19 A In '05 he wanted to sell. And actually the real
20 estate agent was a customer of mine and she said he wanted
21 to sell and would you like to buy it and I said yeah.

22 Q What did you pay for it?

23 A I want to say \$69,000. I'm not positive on that
24 number, but that's what I want to say.

25 Q Did anybody tell you it was restricted to general

1 office?

2 A Unh-unh.

3 Q Would you have bought it had you known it was
4 restricted to general office?

5 A No. It was a shoe store. It was already going as
6 another business.

7 Q At that time?

8 A At that time.

9 Q Ten years ago?

10 A No, in '05. Before '05 it was a shoe store and then
11 it was vacant and that's when I got it and -- or no, I
12 sorry. I got it, rented it in '99. Before that it was a
13 shoe store.

14 Q So you rented it in '99, that's ten years, and it was
15 a shoe store before that?

16 A Yes.

17 Q And how did you come to -- you said you looked around
18 or is that some other testimony I'm confusing? How did
19 you come to open a tavern?

20 A I had been working in the restaurant business pretty
21 much since I was 18 years old and wanted to give it a shot
22 myself. A buddy of mine lived here in Columbia and they
23 wanted to get out, we wanted to get in, we made a deal.

24 Q So you began in '99 the restaurant and beer, or
25 95 percent beer, liquor and wine began in '99?

1 A Yes. The food sales, I believe, were a little higher
2 then.

3 Q And where did you start? Did you start in B or C and
4 D or --

5 A Started in C and D, expanded into B.

6 Q Okay. And when did you -- you started in C and D in
7 '99?

8 A Yes.

9 Q And how did you get --

10 A We rented B and I had an agreement with the landlord
11 at the time, who I cannot recall his name from C and D,
12 and from Stonebruner saying that if I took the wall out
13 for that to go with it, I would be responsible for
14 replacing that if anything ever happened to the business.

15 Q So you purchased -- you rented C and D and took the
16 wall out?

17 A I rented C and D and I rented B. And I talked with
18 both landlords saying that I wanted to take the wall out
19 to expand and I would be responsible for the cost of
20 replacing that wall.

21 Q Did you pursue in '99 or at any time the possibility
22 of getting the restrictions changed?

23 A No.

24 Q Why not?

25 A Because it was already a bar. I just figured that

1 was the way it was. And there was already a shoe store
2 and there was already a restaurant down there. There was
3 already a cell phone place there.

4 MR.. SPILLANE: Thank you, sir. I have no
5 further questions.

6 THE COURT: Any redirect?

7 MR. BOGER: Very briefly.

8 REDIRECT EXAMINATION

9 BY MR. BOGER:

10 Q Mr. Keeney, it was a bar when you bought it, right?

11 A Yes.

12 Q And what was the name of that bar?

13 A It was Dubbs. I believe, if I'm not mistaken, it was
14 on the Prairie Chicken Corporation, but it was Dubbs.

15 Q And before that, is that where the Duck In was?

16 A I'm not sure about that. That was before my time in
17 Columbia, but I believe that's where it was.

18 Q Okay.

19 A And I believe there was a Mexican place, if I'm not
20 mistaken, that was there also.

21 Q Was that called Rio Bandito?

22 A That's it.

23 Q So Rio Bandito, Dubbs, Duck In, and Tavern on the
24 Greene?

25 A Right.

1 Q A 15-year history?

2 A I would say.

3 MR. BOGER: Okay. That's all I have.

4 MR. SPILLANE: One other item, Your Honor, if
5 you can bear with me.

6 THE COURT: Yes, sir.

7 RECROSS-EXAMINATION

8 BY MR. SPILLANE:

9 Q Mr. Stonebruner owned B right up to the time he sold
10 to you? Either it was in his name or for one year as EHM
11 Investments?

12 A I believe that's the case, yes.

13 Q He owned it?

14 A Yes.

15 MR. SPILLANE: Thank you.

16 THE COURT: You may step down.

17 MR. BOGER: Your Honor, I'd call Marsha Berry.

18 MARSHA BERRY, after being duly sworn, testified
19 as follows:

20 THE COURT: Thank you. If you'd have a seat and
21 please state your full name.

22 THE WITNESS: Marsha Berry.

23 DIRECT EXAMINATION

24 BY MR. BOGER:

25 Q Ms. Berry, where do you live?

- 1 A Prosperity, South Carolina.
- 2 Q And you are the landlord or owner of B?
- 3 A No, sir.
- 4 Q Help me out.
- 5 A C and D. And it's actually my mother's now.
- 6 Q Okay. You owned C and D?
- 7 A Yes, sir.
- 8 Q And you and your mother have owned it for years?
- 9 A Yes, sir.
- 10 Q And that's where Tavern on the Greene -- that's your
- 11 tenant, he owns a third of it and you own two-thirds of
- 12 the space; is that correct?
- 13 A I own C and D and then he owns B.
- 14 Q So if Tavern on the Greene is B, C, and D --
- 15 A Yes, sir.
- 16 Q -- then you are the owner of two-thirds of that space
- 17 where Tavern is; is that correct?
- 18 A Correct.
- 19 Q And you as a landlord, did you know anything about
- 20 these restrictions until July of '07?
- 21 A No, sir. It was June, I think, wasn't it?
- 22 Q I'm sorry, June of '07.
- 23 A Okay. It was June. And we received the notice.
- 24 When it came in, then I called -- I called Landmark
- 25 Resource and speak to Michelle and that's when I asked

1 what did I need to do because I wasn't going to kick a man
2 out of a business he's been in for I thought over ten
3 years when they were telling me I had to get him out of
4 there in like almost 60 days. This man had been in
5 business forever. That just wasn't right. So I just
6 needed to know what I needed to do. And she said that she
7 didn't represent me, that she represented the board, and
8 that the best thing for me to do was get an attorney.

9 Q Okay. Would you be at some disadvantage or injury or
10 prejudiced by the closing of this?

11 A My mother would be.

12 What happened, my mother bought it from me
13 because it was actually to help her because she's very ill
14 and so I needed income for her in order to take care of
15 her.

16 Q So it would prejudice your mother greatly?

17 A Greatly.

18 Q Now, let's just talk about your mother. You take
19 care of her all the time now; is that right?

20 A Correct. In fact, my neighbor is tending to her
21 right now because the sitter who's normally there had a
22 funeral today and so I asked the neighbor, because she has
23 to have care.

24 Q Your mother does?

25 A Yes.

1 Q 24/7?

2 A Well, she's on a little Medi alert. So as long as
3 I'm at home, because I only live two doors down from her,
4 as long as I'm at home then she can be left during the
5 evening unless she's very, very ill and then I stay with
6 her. But during the day while I'm teaching, she -- I have
7 a sitter.

8 Q Okay. So you teach during the day?

9 A Yes, sir.

10 Q And take care of your mother at night?

11 A Yes, sir.

12 Q Okay. And did you receive any notice because I think
13 that's what you mean, but let me just make sure, you
14 didn't know anything about this violating any restrictions
15 until June of '07; is that correct?

16 A I don't -- when the original closing of the deal,
17 when we were closing, I had an attorney and the attorney
18 then said there is a clause in here that they're not
19 supposed to be like bars and stuff and I looked at the
20 person I was buying it from -- and I apologize, I cannot
21 remember his name -- and I said, "Has this been a
22 problem?" and he looked at me and said, "Absolutely not."
23 He said, "This bar was there before I even bought it."
24 And I said "okay," and that's what happened.

25 Q And how many years ago would that have been?

1 A Gosh, I don't remember when it was purchased. I want
2 to think maybe '02. I'm really not sure. I'm really not
3 sure.

4 Q Okay. And so for at least five years before you got
5 notice that there was a problem, you didn't know of a
6 notice?

7 A Right. We never had anything -- no one ever said
8 that Jeff had to get out at all.

9 MR. BOGER: I don't have any further questions.

10 THE WITNESS: Can I say something? May I,
11 please?

12 BY MR. BOGER:

13 Q I'm sorry, I've got one more thing for you anyway, if
14 I can just come back.

15 You've also agreed to pay my bill; is that
16 right?

17 A Yes, sir.

18 Q And your part is about a thousand dollars. Does that
19 sound about right?

20 A I guess so, if that's what -- yes, sir.

21 Q And it's being split between you and Mr. Rodarte and
22 Mr. Keeney; is that right?

23 A Yes, sir.

24 Q It's about \$3,000 total?

25 A Sounds right.

1 Q You're familiar with the fact that the homeowners
2 association documents say that you can only pay
3 Mr. Spillane's bill but they can't be made to pay mine?

4 A And that's one of the things I wanted to say.

5 Q Yes, ma'am. Go ahead and say it.

6 A It's the fact that we pay the regime -- you know, the
7 commercial units pay a larger portion of the regime fee to
8 my knowledge and so I don't understand. I mean, we're
9 paying to be sued. I mean, that's just what it is. We're
10 paying to be sued. And it's not right. That's number
11 one.

12 The number two thing about the amendment to the
13 little section, in the '07 meeting I was there, and if you
14 remember I said, "Why can't we get that changed? That
15 should be changed because these businesses have been
16 there." And I was told, "Well, you can't even get people
17 to come to these meetings and you have to have at least
18 75 percent." I mean, we were told that in that '07
19 meeting.

20 I wasn't able to make the 2008 meeting because
21 of my mother, I mean I just couldn't come, and I had been
22 to other meetings at the Clawson Inn, if you remember.

23 And I also said at the '07 meeting that if
24 someone would not be elected on the board that I would do
25 it except that I do live far away and I wouldn't be able

1 to meet all the time because I knew I couldn't.

2 Q Because you live in Prosperity and take care of your
3 mother?

4 A Well, I live in Prosperity, right, and there are just
5 times that I can't -- you know, with school, I might have
6 a meeting after school. I mean, there's just times I just
7 can't do that. And now I certainly can't do it because of
8 my mother.

9 Q Otherwise you would have volunteered to serve on the
10 board?

11 A Right.

12 MR. BOGER: I don't have anything else.

13 THE COURT: Mr. Best.

14 MR. BEST: No questions, Your Honor.

15 THE COURT: Mr. Spillane.

16 MR. SPILLANE: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. SPILLANE:

19 Q Ms. Berry, your mother is the landlord on C and D; is
20 that correct?

21 A Yes, sir.

22 Q But did you ever have an interest in C and D?

23 A Yes, sir.

24 Q How did you have an interest in C and D?

25 A I actually purchased it with a friend of mine and my

1 mother had like a third of it and it was all a real estate
2 type thing. I just read it in the paper, for sale by
3 owner, property at Place on the Greene, and at the time I
4 didn't even know it was a bar.

5 Q All right. Our chain of deed shows Berry Tart
6 Properties conveyed two-thirds to Eva Nell Berry.

7 Eva Nell Berry is your mom, correct?

8 A Yes.

9 Q Berry Tart Properties was your general partnership
10 with you and Ms. Tart; is that correct?

11 A Correct.

12 Q And that deed was in what year, do you remember?

13 A I don't.

14 Q September 26th of 2006; is that correct?

15 A When the original one or --

16 Q Your deed to your mom.

17 A Okay. That's probably right.

18 Q I believe I'm correct, your partnership deeded it to
19 your mom in 26 September of 2006.

20 A Okay.

21 Q All right. Now, you mentioned a complaint you made
22 in the '07 meeting.

23 A Yes, sir.

24 Q And I didn't hear what that complaint was about.

25 A All I said is, why didn't we make -- why didn't we

1 change the master deed in order so that these businesses
2 could stay in business.

3 Q So what businesses could stay in business?

4 A The restaurants, the bars, the places like that.

5 Q So that's the 2007 meeting after my --

6 A Notice.

7 Q -- my notice letter, my statement letter?

8 A Yes, sir.

9 Q Okay. Now I understand.

10 If you had deeded your interest to your mother
11 in September of 2006, how did you become involved in the
12 2007 owners meeting?

13 A I take care of my mother's business. My mother
14 doesn't probably even have a clue that she's -- has that
15 business. I mean, I did everything in order to get funds
16 for my mother to take care of her.

17 I'm not understanding your question, I'm
18 assuming.

19 Q All right. It seems you were not an owner in 2007
20 but you attended the owners meeting?

21 A My mother surely couldn't.

22 Q Excuse me?

23 A My mother couldn't, so yes, sir, I did.

24 Q That's all I need to understand. Thank you.

25 The deed to Berry Tart Properties according to

1 the official records was December of 2002. Would that be
2 about right?

3 A Yes, sir, that sounds right.

4 Q From Robert A. Alexander?

5 A That's it.

6 Q Do you know who he was?

7 A That's who I bought the piece of property from. I
8 just could not remember his name, but it was Alexander.

9 Q And you had an attorney?

10 A Yes, sir.

11 Q And the attorney told you you can't have bars?

12 A Well, that was pretty much after the fact, yes. It
13 was after the fact. You know, I mean, we had already
14 signed papers, everything was already done, and she was
15 giving me the master deed and just said, you know, "In
16 this master deed I just want to let you know this is
17 stated." And I said, "Do you think it's going to be a
18 problem?" And she's, you know, like, "Well, this bar's
19 been here forever," you know. And I looked at -- I want
20 to call him Bobby -- I think his name was Bobby Alexander
21 now -- and I said, "Have you ever had a problem with it?"
22 And he said "no." And I don't know how long he had owned
23 it.

24 Q Well, the deed, the deeds are public record and the
25 Court has them and won't go further back because I think C

1 and D, you've heard testimony C and D were the only ones
2 that originally were sold by the developers, sold to the
3 public and was a hair salon.

4 But the attorney didn't tell you that it
5 wouldn't be a problem, did he?

6 A She.

7 Q She.

8 A She didn't say that it would and she didn't say that
9 it would not. She said she just would -- she pretty much
10 made me think that it probably wouldn't be since it had
11 been there so long. Of course, I wouldn't have thought it
12 either. To me, Tavern on the Greene is a landmark of Five
13 Points.

14 Q And it was operated as Tavern on the Greene when you
15 purchased it --

16 A Purchased it, yes, sir.

17 Q -- in your general partnership?

18 A Yes, sir.

19 Q And it was operated as Tavern on the Greene when
20 Mr. Alexander had it?

21 A To my knowledge, yes, sir, it was.

22 Q Well, that's when you purchased?

23 A Right.

24 Q You mentioned the original closing with the attorney,
25 talking to Mr. Boger. What did you mean by the original

1 closing? Were there two or three?

2 A Well, I had the closing when it was -- when myself
3 and Lisa purchased it and then I had the closing when I
4 purchased it for my mother, when it was swapped over.

5 Q You did get a copy of the master deed when you and
6 Lisa purchased it as a partnership, right?

7 A Yes, sir.

8 Q All right. Who handled the closing when you deeded
9 two-thirds interest to -- the partnership deeded
10 two-thirds interest to your mother?

11 A The same attorney.

12 Q The same attorney?

13 A Yes, sir.

14 Q Okay. And you live in Prosperity?

15 A Yes, sir.

16 Q Would you like to have a Tavern on the Greene on the
17 first floor of your residence?

18 A It wouldn't bother me due to the fact that I would
19 have, you know, I've already known that it was there. I
20 mean, so many of these people have moved in after the
21 fact. After Tavern on the Greene and The Blue Cactus and
22 all these other places, they've moved in after the fact.
23 And most of them have purchased it for an investment, you
24 know, just like I did and just like I've turned it over
25 for my mother to have an investment. I mean, if I ever

1 thought any of this was going to come up, I certainly
2 would never have done that for my mother, never.

3 Q All of this surprised you, didn't it?

4 A Absolutely.

5 Q It's a mess?

6 A Well, it is a mess, and it's ridiculous. I mean,
7 you're getting ready to put people out of business that
8 have been there, that have been there longer than the
9 tenants. It's just not right. And that's what I said
10 from the get-go, it's just not right.

11 Q Have been there longer than what tenants?

12 A Than so many of the tenants that are causing the
13 problem.

14 Q Are you talking about the residential owners or --

15 A Correct.

16 Q The residential owners?

17 A Correct.

18 Q Not the commercial tenants?

19 A Not the commercial tenants.

20 Q Do the commercial tenants cause any problems?

21 A Well, I haven't heard of any of them yet.

22 Q And the residential tenants, what problems do they
23 cause?

24 A At the '07 meeting with the security, it was not
25 about -- the security was not the problem of the bar or

1 the restaurants. The security problem was coming in with
2 the tenants coming into the door and allowing other people
3 behind them to come in also. That was a problem. They
4 were trying to come up with like a pass card and things
5 like that, but they just really wanted to inform the
6 tenants not to allow the other people to come in. But it
7 wasn't the bars and it wasn't the restaurants. And I was
8 at that '07 annual meeting.

9 MR. SPILLANE: Thank you. No further questions.

10 THE COURT: Any redirect?

11 MR. BOGER: No, Your Honor.

12 THE COURT: You may step down.

13 MR. BOGER: Your Honor, I have one more witness
14 and he will be hopefully as brief as Ms. Berry.

15 THE COURT: Yes, sir.

16 MR. BOGER: Is it okay?

17 THE COURT: If he's quick.

18 MR. BOGER: Yes, ma'am.

19 DAVID RODARTE, after being duly sworn, testified
20 as follows:

21 THE COURT: Thank you. If you'd have a seat and
22 please tell me your name.

23 THE WITNESS: David Rodarte, R-O-D-A-R-T-E.

24 THE COURT: Thank you.

25 DIRECT EXAMINATION

1 BY MR. BOGER:

2 Q Mr. Rodarte, you live here in Columbia also?

3 A Yes, sir, I do.

4 Q And you are the owner of the space where Blue Cactus
5 operates?

6 A Actually I'm a managing partner of W.G.R.Q., LLC, and
7 we own F, G, and H.

8 Q And G and H is where The Blue Cactus is?

9 A The Blue Cactus, that's correct.

10 Q And F is where there's now a tobacco shop?

11 A They just put a tobacco -- it's like a little
12 convenience store that sells cigars, cigarettes, soft
13 drinks. No alcohol.

14 Q And that recently opened?

15 A Just did, March 1st.

16 Q And that has heavy foot traffic; is that correct?

17 A Oh, yes.

18 Q The Blue Cactus, you bought that space, you bought
19 all three of those spaces in '05?

20 A '02.

21 Q And you bought it from whom?

22 A Beau Powell.

23 Q Beau Powell, the infamous --

24 A The developer.

25 Q And did he tell you that there was any problem with

1 the restrictions at that time?

2 A It never came up. I became aware of it when we got
3 served by Mr. Spillane. I read it and I talked to my
4 partners and I said, "Look at this," and so we got a copy
5 of the deed and it was there.

6 And we bought a lot of property from Mr. Powell.
7 And so when we bought it, we bought places by the center,
8 we bought some units from the kiddie condos we called
9 them, a couple of houses on campus, a six-plex on campus,
10 two office buildings.

11 He was doing an exchange, so we cut a deal as an
12 investment. I have two partners and we bought a lot of
13 real estate from him as an investment. It was designed to
14 help us retire one day.

15 And so we didn't look at every deed. We just
16 knew that both -- Sub Pub was there. He showed me the
17 contracts. They had about three more years left on their
18 contract. He showed me the contract for Blue Cactus.

19 And he works different than I do. I'm an
20 engineer and I'm very -- actually I'm a very detailed
21 person. His contract was just like, he didn't do new
22 contracts, he just kind of changed the date and initialed
23 them, and so I knew that Blue Cactus had been there a long
24 time. And I met Lloyd and we're looking for businesses
25 that could sustain themselves, that would be there for us

1 in the future so we could generate monthly retirement
2 income, and that's why we bought them.

3 We sold the kiddie condos upstairs because we
4 thought that the building was run down. The carpets were
5 nasty. It just wasn't the kind of place that I wanted to
6 even rent, much less own. So we sold those. We just
7 fixed them up and flipped them.

8 Q You sold them?

9 A We just kept the commercials. We thought that was
10 the best property then that was there.

11 Q And if this were shut down, would you be injured or
12 prejudiced or disadvantaged?

13 A Severely. Severely. We spent -- we paid a lot of
14 money for what we bought.

15 Q And it produces income for you and your partners?

16 A Correct. Right now it's just covering the debt
17 service.

18 Q Paying the bank?

19 A Paying the bank.

20 Q Did -- until June of 2007, did you know anything? I
21 think you answered, but did you know that this was a
22 problem?

23 A I had no idea.

24 Q And you knew The Blue Cactus had been there for some
25 ten years before you --

1 A Ten years before. Yeah, when we bought it in 2002,
2 about seven years.

3 And so I got to know Lloyd. I'm a military guy
4 myself and realized he was retired and he's a good hard
5 working man, I can tell you that. He's got a good
6 business.

7 Q In fact, you went to West Point?

8 A That's correct.

9 Q And finished in what year?

10 A 1974.

11 Q And you also have agreed between you, Ms. Berry and
12 Mr. Keeney to pay my bill; is that right?

13 A That's correct.

14 Q And it's a thousand dollars per person, about three
15 thousand dollars total?

16 A It's very fair.

17 Q And you know that the restrictions say that you have
18 to pay Mr. Spillane's bill but they can't be made to pay
19 mine. How do you feel about that?

20 A I know I brought that up to you initially.

21 I was going to hold off, hold from paying my
22 regime fees for that main reason because I didn't think it
23 was fair that I was paying money to sue myself and I was
24 going to hold them in escrow, and you told me not to, so I
25 paid them.

1 Q Against your better judgment I made you pay your
2 fees?

3 A Yes.

4 Q Made you pay your regime fees.

5 And do you know that the commercial units pay a
6 little more in regime fees than the residents do?

7 A You know, I look at them -- I just -- I look at the
8 expenses and, you know, you've just got to pay what they
9 tell you to pay. I think they're -- I don't know what the
10 other people pay, to be honest with you.

11 MR. BOGER: I don't have any other questions.
12 Answer any questions by Mr. Spillane.

13 THE COURT: Mr. Best, any questions?

14 MR. BEST: Your Honor, no questions.

15 THE COURT: Mr. Spillane.

16 MR. SPILLANE: Thank you.

17 CROSS-EXAMINATION

18 BY MR. SPILLANE:

19 Q Mr.. Rodarte, is that the correct pronunciation?

20 A Rodarte, yes, sir.

21 Q W.G.R.Q. Units F, G, and H, that has a convenience
22 store in it now?

23 A Well, he calls it Five Points Tobacco. He's got fine
24 cigars, a humidor, he sells cigarettes, soft drinks. It's
25 like -- I consider it like a little convenience store

1 basically. He's got toilet paper, toothpaste.

2 Q Milk and cheese and stuff?

3 A I don't think he's -- no, I don't think he's got any
4 milk or cheese. It's strictly soft drinks and items that
5 don't spoil.

6 Q You purchased directly from Mr. Powell I think the
7 record reflects on May 24th, 2002; is that about right?

8 A I knew it was 2002.

9 Q And you said he was doing an exchange.

10 A He was tired of managing a lot of properties.

11 When you're -- I own a lot of real estate as an
12 investor and it's a little bit of a headache when you've
13 got a lot of properties, a lot of calls, and he had been
14 doing it for a long time and he was tired of it himself.
15 So he was trying to sell a lot of property at one time to
16 do a 1035 exchange so he wouldn't have to pay taxes and he
17 was going to buy a Walgreen's and clip coupons, as the
18 term goes, just get a check for 20 years from Walgreen's.

19 Q He was going to do what about Walgreen's?

20 A He bought a Walgreen's is my understanding and
21 just -- about a 20-year lease, so he was -- we feel we got
22 a fair price because we bought a lot of stuff that we
23 didn't want, but we bought stuff we wanted as well, but it
24 was his way of getting to roll over all the money without
25 paying taxes. Very legal.

1 Q And who was fixing up and flipping? Is that you?

2 A No, I don't flip. I try to hold. I buy and hold. I
3 buy rental properties.

4 We fixed up three kiddie condos, the small units
5 upstairs. We had -- I don't know which units they were.
6 We just -- when you looked at the condition of the
7 hallways, we just didn't want to be associated with that,
8 with the housing portion of it. So we fixed them up and
9 we just sold them just to get them out of our inventory.

10 Q Your deed does reflect you bought the different
11 parcels and it says in your deed, "To have and to hold
12 subject to easements and restrictions of record."

13 Did Mr. Powell tell you about restrictions?

14 A No.

15 Q Did your attorney tell you about restrictions?

16 A No.

17 Q Did you have your own attorney?

18 A Yes, we did.

19 Q And he showed you the Sub Pub and a lease that went a
20 couple of more years, the same as Blue Cactus; is that
21 correct?

22 A Correct.

23 Q Is that how he marketed it to you and sold it to you?

24 A No. We were aware that he was trying to sell a
25 couple of million dollars worth of real estate and you had

1 to buy all. You couldn't buy it piecemeal, you had to buy
2 everything he wanted to sell because it was an exchange.
3 So we bought a lot of stuff we didn't want to buy the
4 stuff we did want. It was just a mass purchase.

5 Q It was a package deal?

6 A A package deal. Take it or leave it.

7 Q Did you get a copy of the master deed from your
8 attorney at the time?

9 A I don't recall.

10 Q Like with Ms. Berry, the issue of the restrictions
11 being a problem never came up?

12 A No, sir.

13 Q Were you surprised by my letter and suit?

14 A Very much so.

15 Q And this is mess as Ms. Berry said; is that right?

16 A You know, I'll survive. I'm more concerned about my
17 tenants, Lloyd's family, my new tenant now that's going
18 into business, so I think it's unjust.

19 Q It's unjust to enforce the restrictions?

20 A To enforce them 20 years after the fact.

21 Q Have you ever talked to Mr. Powell since my letter,
22 my letter from June of '07 for the suit?

23 A I have not seen Mr. Powell since we closed. I
24 wouldn't even recognize him.

25 Q Oh, you didn't know him before?

1 A No, sir.

2 Q How did you get in contact with him?

3 A I think one of my investment partners, he's a real
4 estate broker, and I think he was aware of it, heard it
5 through the real estate network, I guess.

6 Q And who is that?

7 A Bud Kenny.

8 MR. SPILLANE: I have no further questions.

9 Thank you.

10 MR. BOGER: Nothing further from the defense,
11 Your Honor.

12 THE COURT: You may step down.

13 Anything further from the defendants?

14 MR. BOGER: None from Berry, W.G.R.Q., or
15 Mr. Keeney, Your Honor.

16 MR. BEST: And none from Easy Coin Laundry, Your
17 Honor.

18 THE COURT: Any rebuttal from the plaintiff?

19 MR. SPILLANE: No, Your Honor, I have no
20 rebuttal witnesses.

21 THE COURT: Yes, sir.

22 MR. SPILLANE: We would like -- I assume we're
23 going to do a closing?

24 THE COURT: What I would like to do in lieu of
25 closing is to ask you all to prepare proposed orders that

1 would incorporate the information that you would place in
2 the closing.

3 And in particular, I've heard the testimony. I
4 am particularly interested in the law that you all would
5 plan to cite to me. And so in lieu of those arguments, I
6 would ask that you prepare proposed orders, if that's
7 acceptable.

8 MR. SPILLANE: I had planned for a brief closing
9 besides going into the law because the defenses are
10 law-specific theories.

11 THE COURT: I think you can.

12 MR. SPILLANE: But if I can be broad in the
13 order.

14 THE COURT: You can certainly be broad in the
15 order and you can incorporate all of those arguments as
16 well as the appropriate findings of fact and conclusions
17 of law. And I will ask that you submit them to me in
18 electronic format.

19 MR. BEST: Which electronic format, Your Honor,
20 PDF?

21 THE COURT: No. Word format.

22 You can e-mail it to me or you can give it to me
23 on disc or flash drive.

24 The address is ALeeLC@sccourts.org. And if you
25 can -- and I will even give you the opportunity to respond

1 to the other side's order. If you can send me your order
2 by, let's say, Monday, April 20th, with any response by
3 the 27th, and I will review them at that particular
4 time, if that's acceptable.

5 MR. BEST: That's acceptable.

6 MR. SPILLANE: The dates are acceptable, but
7 you're not going to allow any closing; is that correct?

8 THE COURT: I would prefer if you would
9 incorporate it in that argument.

10 MR. SPILLANE: All right.

11 THE COURT: And that way -- I will -- trust me,
12 I will read everything you provide to me. So you can make
13 your arguments as short or as long as you'd like. I will
14 review all of the information that you give to me as well
15 as review all of the exhibits because I've not had a
16 chance to do that. And then that way I can dissect it and
17 consider it and cut and paste it as I think would be
18 appropriate based upon the arguments and the law and the
19 evidence.

20 MR. SPILLANE: One question.

21 THE COURT: Yes, sir.

22 MR. SPILLANE: With respect to attorney's fees,
23 the figures will be updated given certain bills can be
24 submitted. Where would that come in? On a separate
25 hearing later or --

1 THE COURT: Depending on what the ruling is.

2 I guess after you've prepared your order, you
3 can do an affidavit on attorney's fees and submit it and
4 I'll consider it. And that's for both sides. If you'll
5 submit your affidavits --

6 MR. BEST: Well, Your Honor, it's how Your Honor
7 wants to treat it, but for the record, we would object.
8 Mr. Spillane hasn't put up anything other than his fee and
9 there's no evidence in the record and we've totally shut
10 down the case.

11 Now, Mr. Boger and I -- and the trial's not
12 bifurcated. So I would be willing to make that statement
13 if you wish to rule on it now, certainly we can update
14 things later on, but that would be -- other than the bare
15 statement that the association has agreed to pay it, he's
16 had no -- not a penny's put in as far as the amount.

17 MR. SPILLANE: Your Honor, I think Ms. Greiner
18 testified as to her latest review of the latest -- of the
19 invoice for five thousand something. She wasn't --

20 THE COURT: It was between five thousand and six
21 thousand dollars.

22 MR. BEST: I only heard her say they agreed on a
23 cap.

24 THE COURT: I have written down in my notes,
25 legal fees, I wrote down between five thousand and six

1 thousand dollars.

2 MR. BEST: Then I'm corrected on my memory of
3 the evidence, Your Honor.

4 THE COURT: All right. She may have testified
5 to a more specific figure, that I did not catch the
6 specific figure, but I remember the cap was, I think, six
7 I think is what it was.

8 MR. BOGER: That's fine, Your Honor.

9 THE COURT: Anything further?

10 MR. SPILLANE: I don't remember the cap. I've
11 talked to the clients before that, I think probably in the
12 board meeting. I didn't object when she mentioned the
13 cap. I asked her about it at lunch.

14 THE COURT: I think her testimony was that they
15 had proposed a cap. I don't -- but I'll go based upon
16 what's contained in my notes and, if I need to, my law
17 clerk's notes. And if you all can recall specific
18 testimony differently, if I need to check that, then I
19 guess I'll find a way to do that.

20 MR. SPILLANE: Well, let me get the dates.

21 You want the order by Monday, April 20th, the
22 response by -- we're to send it to the other party?

23 THE COURT: Yes.

24 MR. SPILLANE: Response by the 27th?

25 THE COURT: It gets sent to me on the 20th as

1 well as to opposing counsel. Any response will be on the
2 27th. And at the time of the 27th, you need to provide me
3 your affidavit for attorney's fees. Because at that
4 particular point I will cut off any further legal work
5 subject to anything that may come up after that point.

6 MR. SPILLANE: And the response, does it also go
7 to the other party?

8 THE COURT: Yes.

9 MR. SPILLANE: Thank you, Your Honor.

10 THE COURT: And you need not reply to their
11 response. Because I assume that you would not agree with
12 it and so there's no need to hear another argument.

13 MR. BEST: Your Honor, before we pack up, I know
14 the bailiff is making sure we've got all the exhibits.

15 THE COURT: Yes. Please let's make sure all the
16 exhibits are here before anybody walks off. I have two of
17 them in my hand.

18 MR. SPILLANE: There is one other item, Your
19 Honor.

20 THE COURT: Yes, sir.

21 MR. SPILLANE: There was a motion that I'm not
22 sure you ruled on it.

23 Are you denying Mr. Best's motion?

24 MR. BEST: Actually I withdrew it, I think.

25 MR. SPILLANE: Thank you.

1 THE COURT: All right. And I'm sure that the
2 defendants will provide me particular information about
3 their request for attorney's fees as well.

4 Since you made that argument through the
5 testimony of your witnesses, I assume that you will
6 provide me ample information about that as well.

7 MR. BOGER: We will.

8 THE COURT: As well as all the other issues. I
9 just want to make sure that there's case law or something,
10 some equitable argument that can be supported, if that's
11 what you're requesting.

12 Anything else?

13 Hearing nothing --

14 MR. SPILLANE: You're reading that clause
15 different than I, but I will --

16 THE COURT: And I understand. And I'm not --
17 and please don't assume that I'm making any decisions
18 because I'm asking for specific information. I just want
19 to make sure that it's not going to be an argument that
20 will not be supported by some statutory or case law
21 authority.

22 MR. SPILLANE: There are.

23 THE COURT: Okay. And I just want to make sure
24 that -- sometimes people assume that judges know a whole
25 lot more than what they know, and I like all the arguments

1 to be amply supported and include every argument that you
2 want to make so that I have all the information that I
3 have to consider what's been done, what's being asked.

4 Thank you.

5 (The proceedings were concluded.)

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, CAROL M. THUEME, RPR, Official Court Reporter for the 11th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Richland County, South Carolina, on the 9th day of April, 2009.

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

December 20, 2011



CAROL M. THUEME, RPR
Circuit Court Reporter

Plaintiff's Exhibit 1:
The Master Deed
(Excerpts)

(4) occupants; (d) the rights of any lessee or sublessee of any unit shall be bound by the covenants, conditions, and restrictions set forth in the Master Deed, By-Laws, Articles of Incorporation and any Rules and Regulations adopted by the Association; (e) a unit owner is not relieved of his primary obligation to pay assessments to the Association.

Notwithstanding the foregoing, the provisions of this Article shall not apply to a holder of a first mortgagee who is in possession of a unit following a default in such mortgage, a foreclosure proceeding or deed in lieu of foreclosure.

Section 3. Condominium Commercial Unit. Each condominium commercial unit is hereby restricted to general office space and limited service establishments by the owner thereof and his agents, servants, invitees, licensees and patrons. The use shall comply with all ordinances and zoning regulations promulgated by the City of Columbia and the Rules and Regulations of the Board of Directors. The Rules and Regulations, among other things, however, shall provide that no restaurant or establishment engaged in the preparation or delivery of food, no pool hall, game room, bar, lounge, or retail shop that relies on a volume of walk-in patrons shall be permitted. Neither the owner nor his agents, servants, invitees, licensees, and patrons shall use the unit either on a temporary or permanent basis as a sleeping accommodation. Except as reserved to Grantor, no condominium commercial unit shall be divided or subdivided into smaller units nor any portion sold or otherwise transferred. This paragraph shall not prohibit a condominium commercial unit owner from leasing his unit; however, said leasing shall be in accordance with Article X, Section 2. Each condominium commercial unit may be entitled to have an entrance way directly onto Greene Street if the plans are approved by the Board of Directors. The construction of the entrance way shall also be subject to the zoning laws and other laws of the City of Columbia. The cost of the construction of the entranceway shall be borne exclusively by the owner of the condominium commercial unit desiring the entranceway.

Section 4. Common Elements. The Common Elements shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the units.

Section 5. Lawful Use. No immoral, improper, offensive or unlawful use shall be made of any unit or of the common elements, nor any part thereof, and all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction of the Condominium shall be observed. No owner of any unit shall permit anything to be done or kept in a unit, or on the common elements which will increase the rate of insurance on the Condominium.

Section 6. Insurance. No owner shall permit any use of his unit or make any use of the Common Elements that will increase the cost of insurance upon the condominium project.

Section 7. Nuisances. No use or practice which is either an annoyance, obstruction or interference with the peaceful possession and proper use of the condominium by the unit owners shall be allowed. All parts of the condominium shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed to accumulate or any fire hazard allowed to exist. No nuisance shall be allowed upon the condominium property.

Section 8. Employees. No employees, customers, or patrons of a condominium commercial unit shall be allowed to use the Common Elements reserved exclusively for use by the owners of residential condominium units.

default by the owner or owners of any unit shall entitle Association or the owner or owners of other unit or units to the following relief:

Section 1. Failure to Comply with Master Deed, Etc. Failure to comply with any of the terms of this Master Deed or other restrictions and regulations contained in the Articles of Incorporation, By-Laws of Association, or its rules and regulations, shall be grounds for relief which may include without intending to limit the same, an action to recover sums due for damages, injunctive relief, foreclosure of lien or any combination thereof and which relief may be sought by Association or, if appropriate, by an aggrieved owner of a unit against the Association or the owner of another unit.

Section 2. Liability for Negligence. The owner or owners of each unit shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, or by that of any member of his family, or his or their guests, employees, agents or leasees, but only to the extent that such expense is not met by the proceeds of insurance carried by Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of a unit or its appurtenances. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation.

Section 3. Costs. In any proceeding arising because of an alleged default by the owner of any unit, the Association, if successful, shall be entitled to recover the costs of the proceedings, and such reasonable attorney's fees as may be determined by the Court, but in no event shall the owner of any unit be entitled to such attorney's fees.

Section 4. No Waiver by Association. The failure of Association or of the owner of a unit to enforce any right, provision, covenant or condition which may be granted by this Master Deed or other above mentioned documents shall not constitute a waiver of the right of Association or of the owner of a unit to enforce such right, provision, covenant or condition in the future.

Section 5. Rights to be Cumulative. All rights, remedies and privileges granted to Association or the owner or owners of a unit pursuant to any terms, provisions, covenants or conditions of this Master Deed or other above mentioned documents, shall be deemed to be cumulative and the exercise of any one or more shall not be deemed to constitute an election of remedies nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be available to such party as in law or in equity.

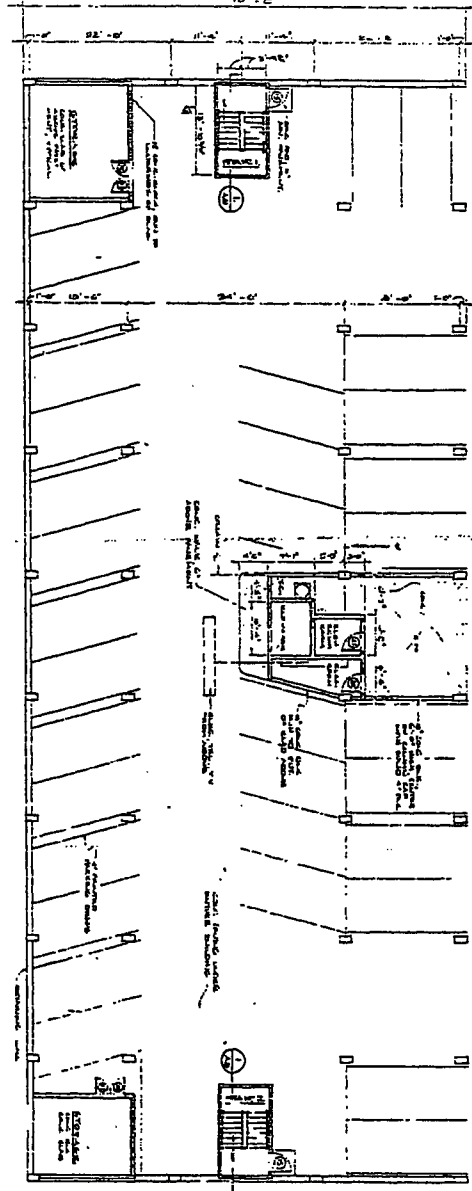
Section 6. No Waiver by Grantor or Lender. The failure of the Grantor herein or the lender to enforce any right, privilege, covenant or condition which may be granted to them, or either of them, by this Master Deed or other above mentioned document shall not constitute waiver of the right of either of said parties to thereafter enforce such right, provision, covenant or condition in the future.

ARTICLE XX

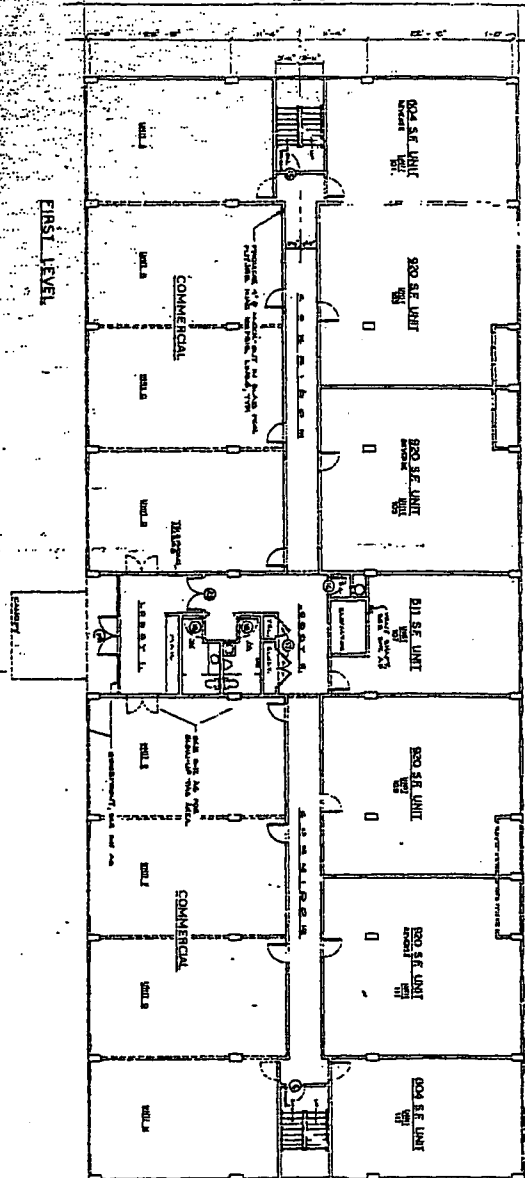
VOTING RIGHTS

There shall be one person with respect to each condominium residential unit and condominium commercial unit who shall be entitled to vote at any meeting of the unit owners. Such person shall be known as a voting member and is hereafter referred to as a voting member. If a unit is owned by more than one individual, the owners of said unit shall designate one of them as the voting

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GROUND LEVEL



FIRST LEVEL

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TITLE TO REAL ESTATE
The E. L. Bryan Company, Columbia, S. C.

Form 14
(Revised 4-1-65)

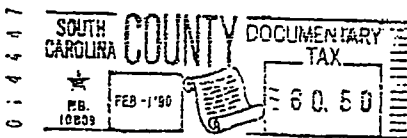
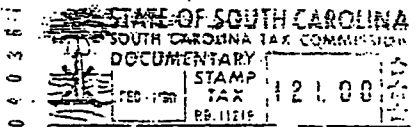
00966PAGE212

State of South Carolina,
COUNTY OF RICHLAND,

FEB 1 4 42 PM '90
FILED
MESNE CONVEYANCES
CLARA L. BARTLETT



Know All Men by These Presents, That Craig B. Stoneburner
(hereinafter whether singular or plural the "Grantor")



in the State aforesaid, for and in consideration of the
sum of Fifty-Five Thousand and No/100 (\$55,000.00) Dollars
to the Grantor paid by Easy Coin Laundry, Inc. (hereinafter
whether singular or plural the "Grantee") has granted, bargained, sold and released, and by these presents does grant,
bargain, sell and release unto the said Grantee the following described property.

EASY COIN LAUNDRY, INC., ITS SUCCESSORS AND ASSIGNS:

The premises designated as Unit A in Place on the Greene Horizontal Property Regime, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act Section 27-31-10, et seq., 1976, as amended, by Master Deed dated September 12, 1984, and recorded in Deed Book D-711 at page 1, in the Office of the RMC for Richland County which unit is shown on the Building Plans prepared for Place on the Greene by Comprehensive Architects and attached to said Master Deed. A first amendment to said Master Deed was dated September 20, 1984, recorded September 20, 1984, in Deed Book D-711 at page 673.

This being the same property conveyed to the Grantor by Deed of Greene Street Partnership dated November 8, 1985, and recorded November 8, 1985, in the Office of the RMC for Richland County in Deed Book D-767 at page 626.

Grantee's Address: Columbia, South Carolina

TMS# 11385-01-08

PLAINTIFF'S
EXHIBIT

3 4-9-09
CT

ATTEST:
A TRUE COPY
Richard W. Rada
R.M.C.

00966PAGE212

Plaintiff's Exhibit 3:
Chain of Title, Unit A

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

To HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee, Easy Coin Laundry, Inc., its successors

and Assigns forever.

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

WITNESS the Hand and Seal of the Grantor this 1st day of February in the year of our Lord one thousand nine hundred and ninety and in the two hundredth and fourteenth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

[Signature]
[Signature]

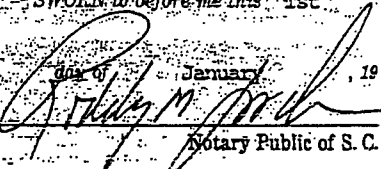
[Signature]
Craig B. Stoneburner (SEAL)
(SEAL)

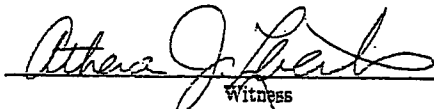
STATE OF SOUTH CAROLINA.

RICHLAND COUNTY.

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within named Grantor sign, seal and, as the Grantor's act and deed, deliver the within-written Deed for the uses and purposes therein mentioned and that s/he with the other witness whose signature appears above witnessed the execution thereof.

SWORN to before me this 1st

day of January, 19 90.

 (L.S.)
 Notary Public of S. C.
 My Commission Expires 5/29/94


 Witness

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

INDENTURE DEED

FILED
 REGISTER OF DEEDS - RICHLAND
 1985 NOV -8 PM 4:35

KNOW ALL MEN BY THESE PRESENTS, that this indenture deed made between Greene Street Partnership, a South Carolina Limited Partnership, hereinafter referred to as "Grantor" in the State aforesaid, for and in consideration of the sum of Five and no/100 (\$5.00) Dollars and other good and valuable consideration to it in hand paid at and before the sealing and delivery of these presents by Craig B. Stoneburner, hereinafter referred to as "Grantee", in the State aforesaid, (the receipt of which is hereby acknowledged) has granted, bargained, sold, and released and by these presents does grant, bargain, sell and release unto the Grantee, his heirs and assigns, the premises designated as Unit A in Place on the Greene Horizontal Property Regime, a horizontal property regime established by the Grantor pursuant to the South Carolina Horizontal Property Act, Section 27-31-10 et seq., 1976, as amended, by Master Deed dated September 12, 1984 and recorded in Deed Book D-711 at page 1 in the Office of the R.M.C. for Richland County which unit is shown on the Building Plans prepared for Place on the Greene by Comprehensive Architects and attached to said Master Deed. A first amendment to said Master Deed was dated September 20, 1984, recorded September 20, 1984 in Deed Book D-711 at page 673.

This being a portion of the identical property conveyed to the Grantor herein by deed of Security Development Corporation, Inc. dated April 30, 1984, recorded April 30, 1984 in Deed Book D-691 at page 960 in the R.M.C. Office of Richland County.

Said Dwelling Unit is conveyed together with:

1. An undivided percentage in the common elements, restricted common areas, and facilities of the property described in the Master Deed ("Common Elements") and attributable to the Units.
2. An easement for the continuance of all encroachments by the Unit on any adjoining units or common elements existing as a result of construction of the Unit or which may come into existence hereafter as a result of settling or shifting of the Unit or of the other units, after damage or destruction by fire or other casualty, or after taking in condemnation or eminent domain proceedings, or by reason of an alteration or repair to the common elements made by or with the consent of the Board.
3. An easement in common with the owners of other units to use any pipes, wires, ducts, flues, cables, conduits, public utility lines and other common elements located in any other unit or elsewhere on the Property, and serving the Unit.
4. The following rights and easements in common with the other unit owners, all as described in the Master Deed and amendments thereto: common driveway easement; all utility, service, maintenance, and recreational easements; parking easement; drainage easement; and use of the common elements.

Said units are conveyed subject to:

1. Easements in favor of adjoining units and in favor of the common elements for the continuance of all encroachments of such adjoining units or common elements on the Unit now existing

GRANTEE'S ADDRESS:

Columbia, S.C.

D 767/626

as a result of construction of units or which may come into existence hereafter as a result of settling or shifting of the Unit or of any adjoining unit or of the common elements, after damage or destruction by fire or other casualty, or after taking in condemnation or eminent domain proceedings, or by reason of an alteration or repair to the common elements made by or with the consent of the Board of Administration.

2. An easement in favor of the other units to use the pipes, wires, ducts, flues, conduits, cables, public utility lines and other common elements located in the Unit or elsewhere on the Property and serving such other units and any and all other easements, conditions and restrictions of record.

3. Exclusive rights in favor of the owner of any unit to use the parking spaces, as the same may be designated by the Board.

4. The provisions of the Master Deed, and all exhibits attached thereto, recorded simultaneously with and as a part of the Master Deed, as the same may be amended from time to time by instruments recorded in the Richland County R.M.C. Office which provisions, together with any amendments thereto, shall constitute covenants running with the land and shall bind any person having at any time any interest or estate in the Unit, his heirs and assigns, his family, servants, and visitors, as though such provisions were recited and stipulated at length herein.

By subscription to and acceptance of this Indenture Deed, Grantee acquiesces in the provisions of the Master Deed and the attached Exhibits and Schedule

The Grantor, its successors and assigns, reserves the right to amend the said Master Deed, its attachments and exhibits, as may be required by law, any title insurance company, or lending institution and to correct typographical errors, provided that such changes do not increase the Grantee's share of the common expenses nor decrease Grantee's share of the common elements.

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

TO HAVE AND TO HOLD, subject to the rights, conditions, and restrictions herein, all and singular, the said premises before mentioned, unto the said Grantee, his successors, heirs and assigns forever.

And the said Grantor does hereby bind itself and its successors, to warrant and forever defend all and singular the said premises unto the said Grantee and his heirs, successors and assigns, against itself and its successors, and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

WITNESS the hands and seals of the parties hereto, this 8th day of November, in the year of our Lord One Thousand Nine Hundred and Eighty-five, and in the two hundred and tenth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

George E. Lafaye, III

Pamela H. Walker

George E. Lafaye, III
Pamela H. Walker

GREENE STREET PARTNERSHIP

By SECURITY DEVELOPMENT
CORPORATION, INC.
Its General Partner

By [Signature]
Its Chairman
By [Signature]
Its President

GRANTEE

[Signature]
Craig B. Stoneburner

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

PROBATE

PERSONALLY appeared before me Pamela H. Walker
who being duly sworn, deposes and says that he saw the within-
named Greene Street Partnership by Security Development C-
orporation, Inc., its General Partner, sign, seal and as its
act and deed, deliver the within-written Indenture Deed, for the
uses and purposes therein mentioned and that he with
George E. Lafaye, III witnessed the execution thereof.

Pamela H. Walker

SWORN TO before me this

8th day of November, 1985.
George E. Lafaye, III (L.S.)
Notary Public for South Carolina

My Commission Expires: 6-7-87

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

PROBATE

PERSONALLY appeared before me Pamela H. Walker
who being duly sworn, deposes and says that he saw the within-
named GRANTEE, Craig B. Stoneburner, sign, seal and as his act
and deed, deliver the within-written Indenture Deed, for the uses
and purposes therein mentioned and that he with
George E. Lafaye, III witnessed the execution thereof.

Pamela H. Walker

SWORN TO before me this

8th day of November, 1985.
George E. Lafaye, III (L.S.)
Notary Public for South Carolina

My Commission Expires: 6-7-87

Plaintiff's Exhibit 4:
Chain of Title, Unit B

Instrument: 2005104115

Book/Page: R1132 1509

Date/Time: 12/19/2005 12:08:48 PM

Recorded by and to be
returned to:

Harvey, Casterline & Vallini, L.L.P.
900 Elmwood Avenue, Suite 200
Columbia, SC 29201-2058

File No. 05-26892

Book 1132-1509
2005104115 12/19/2005 12:08:48:473 Deed
Fee: \$10.00 County Tax: \$93.50 State Tax: \$221.00

2005104115 John G. Norris Richland County ROD

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that EHM INVESTMENTS, LLC, in the State aforesaid, for and in consideration of the sum of EIGHTY FIVE THOUSAND DOLLARS 00/100 (\$85,000.00), unto it in hand paid at and before the sealing of these presents by JEFFREY O. KEENEY, in the State aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell, and release unto the said JEFFREY O. KEENEY, his heirs and assigns forever, in fee simple, together with every contingent remainder and right of reversion, the following described property, to wit:

UNIT B, together with the percentage interest in the common area, in Place on the Greene Horizontal Property Regime, a horizontal property regime established by Greene Street Partnership, a South Carolina Limited Partnership, pursuant to the South Carolina Horizontal Property Act, Section 27-31-10 et seq., 1976, as amended, by Master Deed dated September 12, 1984 and recorded in Record Book D-711 at page 1 in the office of the Register of Deeds for Richland County, which unit is shown on the Buildings Plans prepared for Place on the Greene by Comprehensive Architects and attached to said Master Deed. A first amendment to said Master Deed was dated September 20, 1984, recorded September 20, 1984 and recorded September 20, 1984 in Record Book D-711 at page 673.

This being the same property conveyed to EHM Investments, LLC, by deed of Craig Stoneburner dated February 24, 2004, and recorded February 27, 2004, in the office of the Register of Deeds for Richland County in Record Book 906 at page 2824.

TMS#: 11385-01-07
Property Address: 2002 Greene Street, Unit B, Columbia, SC 29205
Grantee(s) Address: , Columbia, SC

**PLAINTIFF'S
EXHIBIT**

4 49-09
CK

This conveyance is made subject to easements and restrictions of record and otherwise affecting the property.

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

TO HAVE AND TO HOLD, all and singular, the said premises before mentioned unto the said Jeffrey O. Keeney, his heirs and assigns forever, in fee simple, together with every contingent remainder and right of reversion.

AND Grantor does hereby bind its successors and assigns, to warrant and forever defend, all and singular, the said premises unto the said Jeffrey O. Keeney, his heirs and assigns, forever, in fee simple, together with every contingent remainder and right of reversion against Grantor and Grantor's heirs, and all persons whomsoever lawfully claiming, or to claim, the same or any part thereof.

Richland County ROD

Richland County Auditor Paul Brawley 2007

WITNESS the undersigned Hand and Seal this 30th day of November 2005.

Signed, Sealed And Delivered
In The Presence Of:

1st Witness

2nd Witness

EHM INVESTMENTS, LLC

By: Taylor P. Jones {L.S.}
Taylor P. Jones, Managing Member

STATE OF SOUTH CAROLINA)

PROBATE

COUNTY OF RICHLAND)

PERSONALLY APPEARED BEFORE ME, the undersigned witness, and made oath that
he/she saw the within named EHM Investments, LLC, by its authorized agent, Sign, Seal and as
its Act and Deed deliver the within written Deed; and that he/she with the other witness
subscribed above witnessed the execution thereof.

Sworn to before me this
30th day of November, 2005

Witness

[Signature] (L.S.)

Notary Public for South Carolina

My commission expires: 4/6/2014

Prepared by, recorded by,
and to be returned to:

Clare Hungville McLean, Atty. at Law
1404 Laurel Street
Columbia, SC 29201-2516
04RE117(3)

ATTEST
A TRUE COPY
Richard W. Radtke
2. 27. 04

State of South Carolina)

County of Richland)

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that Craig Stoneburner, (hereinafter called "Grantor"), in consideration of Sixty-Five Thousand and 00/100s Dollars (\$65,000.00), to the Grantor in hand paid at and before the sealing of these presents, by EHM Investments, LLC (hereinafter called Grantee) in the State aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold, and released, and by these presents does grant, bargain, sell and release unto

EHM Investments, LLC,

All that certain piece, parcel, or lot of land, together with the improvements thereon, situate, lying, and being in the County of Richland, State of South Carolina, known and designated as Unit B in Place on the Greene Homes Horizontal Property Regime, a horizontal property regime established by Greene Street Partnership, a SC Limited Partnership, pursuant to the South Carolina Horizontal Property Act, Section 27-31-10 et. seq. of South Carolina Code of Laws, 1976, as amended and submitted by Master Deed dated September 12, 1984, and recorded in the Register of Deeds for Richland County in Deed Book D711 at page 1, which Unit is shown on the Building Plans prepared for Place on the Greene by Comprehensive Architects and attached to said Master Deed. A first amendment to said Master Deed was dated September 20, 1984, recorded in the Register of Deeds for Richland County on September 20, 1984, in Deed Book D711 at page 673.

Said Apartment Unit is conveyed together with:

1. An undivided percentage in the common elements, restricted common areas, and facilities of the property described in Master Deed ("Common Elements") and attributable to the Unit.

Book 00906-2824
2004015061 02/27/2004 11:18:39 AM Deed
Fee: \$10.00 County Tax: \$71.50 State Tax: \$169.00

Page 1 of



2004015061 John G. Norris

Richland County ROD

R906/2824

2. As easement for the continuance of all encroachments by the Unit on any adjoining units or common elements existing as a result of construction of the Apartment Unit(s) or which may come into existence hereafter as a result of settling or shifting of the Unit(s) or of the other apartment units, after damage or destruction by fire or other casualty, or after taking in condemnation or eminent domain percentages, or by reason of an alteration or repair to the common elements made by or with the Consent of the Board
3. An easement in common with owners of other Unit to use any pipe, wire, ducts, flues, cables, conduits, public utility lines and other common elements located in any other unit or elsewhere on the Property, and serving the Unit.
4. The following rights and easements in common with the other apartment owners, all as described in the Master Deed and amendments thereto: common driveway easement; all utility, service, maintenance, and recreational; easements; parking easement; drainage easement; and use of common elements.

Said unit is subject to:

1. Easements in favor of adjoining units in favor of the common elements for the continuance of all encroachments of such adjoining units or common elements on the Unit now existing as a result of construction of the units or which may come into existence hereafter as a result of settling or shifting of the Unit or of any adjoining unit or of the common elements, or after taking in condemnation or eminent domain percentages, or by reason of an alteration or repair to the common elements made by or with the Consent of the Board of Administration.
2. An easement in favor of the other units to use the pipes, wire, ducts, flues, cables, conduits, public utility line and other common elements located in the Unit(s) or elsewhere on the property and serving such other units and any and all other easements, conditions and restrictions of record.
3. Exclusive rights in favor of the owner of any unit to use the parking spaces, as the same may be designated by the Board.

4. The provisions of the Master Deed, By-Laws, and floor plans of the Regime, recorded simultaneously with and as part of the Master Deed, as the same may be amended from time to time by instruments recorded in the Richland County Register of Deeds Office which provisions, together with any amendments thereto, shall constitute covenants running with the land and shall bind any person having at any time and interest or estate in the Unit, his heirs and assigns, as though such provisions were recited and stipulated at length herein.

By subscription to and acceptance of this conveyance, grantee(s) acquiesces in the provisions of the Master Deed, By-Laws and the attached Exhibits and Schedules, as amended.

Derivation: This being the same property conveyed to Craig B. Stoneburner by deed of Greene Street Partnership, a SC Limited Partnership, dated November 8, 1985, and recorded on November 8, 1985, in the Office of the Register of Deeds for Richland County in Deed Book D767 at page 623.

TMS # 11385-01-07

Grantee's Address: _____

Columbia SC

This conveyance is made subject to any restrictions, reservations, zoning ordinances or easements that may appear of record on the recorded plats or on the premises.

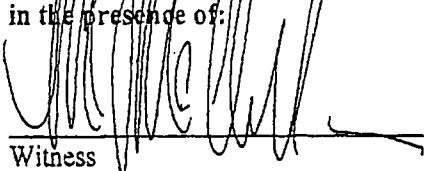
TOGETHER with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining;

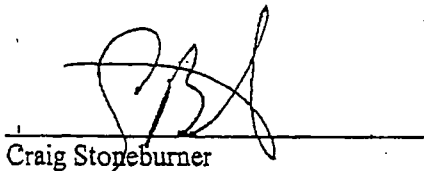
TO HAVE AND TO HOLD all and singular the premises before mentioned unto the Grantee, and the Grantee's heirs and assigns forever. And the Grantor does hereby bind the grantor and the grantor's heirs or successors, executors and administrators to warrant and forever defend all and singular said premises unto the Grantee and the Grantee's heirs or successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

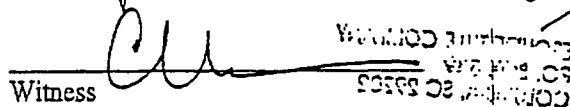
Any reference to this instrument to the singular shall include the plural, and vice versa. Any reference to one gender shall include the others, including the neuter. Such words of inheritance shall be applicable as are required by the gender of the Grantee.

WITNESS the Grantor's hands and seals this the 24 day of February, 2004.

SIGNED, SEALED AND DELIVERED
in the presence of:


Witness


Craig Stoneburner

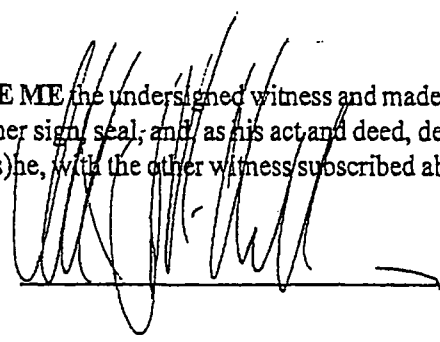

Witness

State of South Carolina)

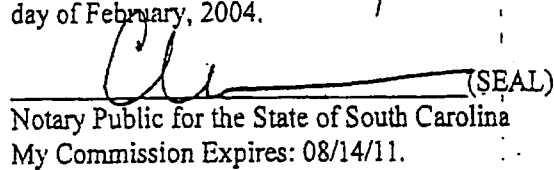
County of Richland)

PROBATE

PERSONALLY APPEARED BEFORE ME the undersigned witness and made oath that (s)he saw the within-named Craig Stoneburner sign, seal, and as his act and deed, deliver the within-written Title to Real Estate, and that (s)he, with the other witness subscribed above, witnessed the execution thereof.



SWORN to before me this 24 day of February, 2004.

 (SEAL)
Notary Public for the State of South Carolina
My Commission Expires: 08/14/11.

Richland County ROD

Richland County Auditor Paul Brawley 2007

AFFIDAVIT

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDENTURE DEED

FILED
REGISTER OF DEEDS - RICHMOND
CLARA L. BARTLETT
1985 NOV -8 PM 4:35

KNOW ALL MEN BY THESE PRESENTS, that this indenture deed made between Greene Street Partnership, a South Carolina Limited Partnership, hereinafter referred to as "Grantor" in the State aforesaid, for and in consideration of the sum of Five and no/100 (\$5.00) Dollars and other good and valuable consideration to it in hand paid at and before the sealing and delivery of these presents by Craig B. Stoneburner, hereinafter referred to as "Grantee", in the State aforesaid, (the receipt of which is hereby acknowledged) has granted, bargained, sold, and released and by these presents does grant, bargain, sell and release unto the Grantee, his heirs and assigns, the premises designated as Unit B in Place on the Greene Horizontal Property Regime, a horizontal property regime established by the Grantor pursuant to the South Carolina Horizontal Property Act, Section 27-31-10 et seq., 1976, as amended, by Master Deed dated September 12, 1984 and recorded in Deed Book D-711 at page 1 in the Office of the R.M.C. for Richland County which unit is shown on the Building Plans prepared for Place on the Greene by Comprehensive Architects and attached to said Master Deed. A first amendment to said Master Deed was dated September 20, 1984, recorded September 20, 1984 in Deed Book D-711 at page 673.

This being a portion of the identical property conveyed to the Grantor herein by deed of Security Development Corporation, Inc. dated April 30, 1984, recorded April 30, 1984 in Deed Book D-691 at page 960 in the R.M.C. Office of Richland County.

Said Dwelling Unit is conveyed together with:

1. An undivided percentage in the common elements, restricted common areas, and facilities of the property described in the Master Deed ("Common Elements") and attributable to the Units.
2. An easement for the continuance of all encroachments by the Unit on any adjoining units or common elements existing as a result of construction of the Unit or which may come into existence hereafter as a result of settling or shifting of the Unit or of the other units, after damage or destruction by fire or other casualty, or after taking in condemnation or eminent domain proceedings, or by reason of an alteration or repair to the common elements made by or with the consent of the Board.
3. An easement in common with the owners of other units to use any pipes, wires, ducts, flues, cables, conduits, public utility lines and other common elements located in any other unit or elsewhere on the Property, and serving the Unit.
4. The following rights and easements in common with the other unit owners, all as described in the Master Deed and amendments thereto: common driveway easement; all utility, service, maintenance, and recreational easements; parking easement; drainage easement; and use of the common elements.

Said units are conveyed subject to:

1. Easements in favor of adjoining units and in favor of the common elements for the continuance of all encroachments of such adjoining units or common elements on the Unit now existing

GRANTEE'S ADDRESS:

Columbia, S.C. 29201

D767/623

as a result of construction of units or which may come into existence hereafter as a result of settling or shifting of the Unit or of any adjoining unit or of the common elements, after damage or destruction by fire or other casualty, or after taking in condemnation or eminent domain proceedings, or by reason of an alteration or repair to the common elements made by or with the consent of the Board of Administration.

2. An easement in favor of the other units to use the pipes, wires, ducts, flues, conduits, cables, public utility lines and other common elements located in the Unit or elsewhere on the Property and serving such other units and any and all other easements, conditions and restrictions of record.

3. Exclusive rights in favor of the owner of any unit to use the parking spaces, as the same may be designated by the Board.

4. The provisions of the Master Deed, and all exhibits attached thereto, recorded simultaneously with and as a part of the Master Deed, as the same may be amended from time to time by instruments recorded in the Richland County R.M.C. Office which provisions, together with any amendments thereto, shall constitute covenants running with the land and shall bind any person having at any time any interest or estate in the Unit, his heirs and assigns, his family, servants, and visitors, as though such provisions were recited and stipulated at length herein.

By subscription to and acceptance of this Indenture Deed, Grantee acquiesces in the provisions of the Master Deed and the attached Exhibits and Schedules.

The Grantor, its successors and assigns, reserves the right to amend the said Master Deed, its attachments and exhibits, as may be required by law, any title insurance company, or lending institution and to correct typographical errors, provided that such changes do not increase the Grantee's share of the common expenses nor decrease Grantee's share of the common elements.

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

TO HAVE AND TO HOLD, subject to the rights, conditions, and restrictions herein, all and singular, the said premises before mentioned, unto the said Grantee, his successors, heirs and assigns forever.

And the said Grantor does hereby bind itself and its successors; to warrant and forever defend all and singular the said premises unto the said Grantee and his heirs, successors and assigns, against itself and its successors, and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

WITNESS the hands and seals of the parties hereto, this 8th day of November, in the year of our Lord One Thousand Nine Hundred and Eighty-five, and in the two hundred and tenth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

George E. Lafaye, III

Pamela H. Walker

George E. Lafaye, III
Pamela H. Walker

GREENE STREET PARTNERSHIP

By SECURITY DEVELOPMENT
CORPORATION, INC.
Its General Partner

By [Signature]
Its Chairman
By [Signature]
Its President

GRANTEE [Signature]
Craig B. Stoneburner

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

PROBATE

PERSONALLY appeared before me Pamela H. Walker
who being duly sworn, deposes and says that he saw the within-
named Greene Street Partnership by Security Development C-
orporation, Inc., its General Partner, sign, seal and as its
act and deed, deliver the within-written Indenture Deed, for the
uses and purposes therein mentioned and that he with
George E. Lafaye, III witnessed the execution thereof.

Pamela H. Walker

SWORN TO before me this

8th day of November, 1985.

George E. Lafaye, III (L.S.)
Notary Public for South Carolina

My Commission Expires: 6-7-87

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

PROBATE

PERSONALLY appeared before me Pamela H. Walker
who being duly sworn, deposes and says that he saw the within-
named GRANTEE, Craig B. Stoneburner, sign, seal and as his act
and deed, deliver the within-written Indenture Deed, for the uses
and purposes therein mentioned and that he with
George E. Lafaye, III witnessed the execution thereof.

Pamela H. Walker

SWORN TO before me this

8th day of November, 1985.

George E. Lafaye, III (L.S.)
Notary Public for South Carolina

My Commission Expires: 6-7-87

Plaintiff's Exhibit 5:
Chain of Title, Units C & D

ALL TRUE COPY
Richard A. Alexander

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

TITLE TO REAL ESTATE

(General Warranty)

KNOW ALL MEN BY THESE PRESENTS, that BERRY-TARTE PROPERTIES, a South Carolina General Partnership, whose sole and equal partners are MARCIA H. BERRY AND LISA V. TARTE (hereinafter referred to as the "Grantor"), for and in consideration of the sum of ONE HUNDRED TEN THOUSAND AND NO/HUNDREDTHS (\$110,000.00) DOLLARS, the receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto EVA NELL BERRY (hereinafter referred to as the "Grantee"), all of its undivided two-thirds (2/3) right, title, and interest, in and to the following described property, to-wit:

UNIT NOS. C AND D in PLACE ON THE GREENE Horizontal Property Regime, Richland County, South Carolina, a horizontal property regime established by Greene Street Partnership pursuant to the South Carolina Horizontal Property Regime Act, Sections 27-31-10, et seq., Code of Laws of South Carolina, 1976, as amended, and submitted by Master Deed dated September 12, 1984, and recorded on September 14, 1984, in the office of the Register of Deeds for Richland County, SC, in Deed Book D-711 at page 1; the real estate upon which said units are located is more fully described in said Master Deed and more fully shown on plat prepared for Place on the Greene by Associated Engineers and Surveyors, dated June 15, 1984, and recorded on September 12, 1984, in Plat Book 50 at page 631.

This being the same property conveyed to Berry-Tarte Properties and Eva Nell Berry by deed of Robert A. Alexander, dated December 12, 2002, and recorded December 13, 2002 in Record Book 735 at page 2865.

TMS No.: 11385-01-05

Book 1234-2614

2006088223 09/28/2006 11:11:24:933

Fee: \$10.00 County Tax: \$121.00 State Tax: \$286.00



2006088223 John G. Norris

Richland County RO

**PLAINTIFF'S
EXHIBIT**

5 49-09
OK

Grantee's Mailing Address: Eva Nell Berry
Prosperity, SC

This conveyance is made subject to taxes and assessments for the year 2006, and all subsequent years, and to all easements, covenants, restrictions and conditions of record and otherwise affecting the property, including but not limited to, rights-of-way indicated by instruments and plats of record, all other matters shown on plats of record, and to all applicable zoning and other land use regulations or restrictions of any political subdivision in which the subject property is situate.

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

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

And the Grantor does hereby bind itself and the Grantor's successors and assigns, to warrant and forever defend all and singular the said premises unto the said Grantee, her heirs, successors and assigns, against the Grantor and the Grantor's successors and assigns and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

IN WITNESS WHEREOF, the Grantor has executed this instrument this 26th day of September, 2006.

Signed, Sealed and Delivered
In Presence of:






BERRY-TARTE PROPERTIES
a South Carolina General Partnership

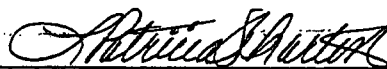
By:  (Seal)
MARCIA H. BERRY
Its: Partner
By:  (Seal)
LISA V. TARTE
Its: Partner

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

ACKNOWLEDGMENT

On this 26th day of September, 2006, before me personally came the within-named Grantor, **BERRY-TARTE PROPERTIES**, by Marcia H. Berry, its Partner, who acknowledged to me that she executed the within instrument and who is personally known to me, or who was proved to me on the basis of satisfactory evidence to be the person who executed the foregoing instrument.



Notary Public for South Carolina

My Commission expires: 01-08-11

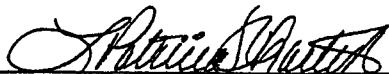
[Affix Notarial Seal]

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

ACKNOWLEDGMENT

On this 26th day of September, 2006, before me personally came the within-named Grantor, **BERRY-TARTE PROPERTIES**, by Lisa V. Tarte, its Partner, who acknowledged to me that she executed the within instrument and who is personally known to me, or who was proved to me on the basis of satisfactory evidence to be the person who executed the foregoing instrument.



Notary Public for South Carolina

My Commission expires: 01-08-11

[Affix Notarial Seal]

Instrument: 2002102580

Book/Page: R735 2865

Date/Time: 12/13/2002 12:24:26 PM

Book 00735-2865
 2002102580 12/13/2002 12:24:26 PM
 Fee: \$10.00 County Tax: \$156.20 State Tax: \$369.20

Deed



2002102580 John G. Noms

Richland County ROD

A TRUE COPY
 Registered
 Richard H. Brawley

STATE OF SOUTH CAROLINA)

TITLE TO REAL ESTATE

COUNTY OF RICHLAND)

(General Warranty)

KNOW ALL MEN BY THESE PRESENTS, that I **ROBERT A. ALEXANDER** (hereinafter referred to as the "Grantor"), for and in consideration of the sum of ONE HUNDRED FORTY-TWO THOUSAND AND NO/HUNDREDTHS (\$142,000.00) DOLLARS, the receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the following Grantees (herein so called):

EVA NELL BERRY, a one-third (1/3) right, title, and interest; and

BERRY-TARTE PROPERTIES, a South Carolina General Partnership, whose sole and equal partners are **MARCIA H. BERRY AND LISA V. TARTE**, an undivided two-thirds (2/3) right, title and interest,

in and to the following described property, to-wit:

UNIT NOS. C AND D in PLACE ON THE GREENE Horizontal Property Regime, Richland County, South Carolina, a horizontal property regime established by Greene Street Partnership pursuant to the South Carolina Horizontal Property Regime Act, Sections 27-31-10, et seq., Code of Laws of South Carolina, 1976, as amended, and submitted by Master Deed dated September 12, 1984, and recorded on September 14, 1984, in the office of the Register of Deeds for Richland County, SC, in **Deed Book D-711 at page 1**; the real estate upon which said units are located is more fully described in said Master Deed and more fully shown on plat prepared for Place on the Greene by Associated Engineers and Surveyors, dated June 15, 1984, and recorded on September 12, 1984, in **Plat Book 50 at page 631**.

This being the same property conveyed to Robert A. Alexander by deed of Liberty Funding, Inc., dated February 1, 2001, and recorded in **Record Book 480 at page 1992**.

R735/2865

TMS No.: 11385-01-05

Grantee's Mailing Address: Berry-Tarte Properties
c/o Marcia H. Berry and Lisa Tarte
Prosperity, SC

This conveyance is made subject to taxes and assessments for the year 2002, and all subsequent years, and to all easements, covenants, restrictions and conditions of record and otherwise affecting the property, including but not limited to, rights-of-way indicated by instruments and plats of record, and to all applicable zoning and other land use regulations or restrictions of any political subdivision in which the subject property is situate.

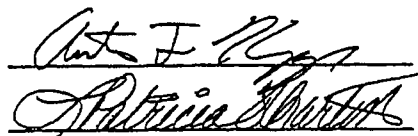
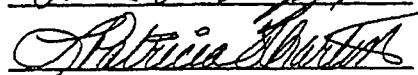
TOGETHER WITH all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantees, their heirs, successors and assigns, forever.

And the Grantor does hereby bind himself and the Grantor's heirs, successors, assigns, executors and administrators, to warrant and forever defend all and singular the said premises unto the said Grantees, their heirs, successors and assigns, against the Grantor and the Grantor's heirs, successors and assigns and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

IN WITNESS WHEREOF, the Grantor has executed this instrument this 12th day of December, 2002.

Signed, Sealed and Delivered
In Presence of:

 (Seal)
ROBERT A. ALEXANDER

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

ACKNOWLEDGMENT

On this 12th day of December, 2002, before me personally came the within-named Grantor(s), **ROBERT A. ALEXANDER**, who acknowledged to me that they executed the within instrument and who is/are personally known to me, or who were proved to me on the basis of satisfactory evidence to be the person(s) who executed the foregoing instrument.


(Signature of Notary Public)

Name: L. PATRICIA WHARTON
Notary Public for South Carolina
My Commission expires: 01-08-11

[Affix Notarial Seal]

Richland County ROD

Richland County Auditor Paul Brawley 2007

Instrument: 2001009408

Book/Page: R480 - 1992

Date/Time: 2/5/2001 3:43:37 PM

TITLE TO REAL ESTATE BY A CORPORATION

STATE OF SOUTH CAROLINA }

COUNTY OF RICHLAND }

Book 00480-1992
 2001009408 02/05/2001 15:43:37.24
 Fee: \$10.00 County Tax: \$110.00 State Tax: \$280.00



*TESTED
 A TRUE COPY
 Richard W. Landon*

KNOW ALL MEN BY THESE PRESENTS, that

LIBERTY FUNDING, INC.

A Corporation chartered under the laws of the State of South Carolina and having a principal place of business at Greenville, State of South Carolina.

in consideration of One Hundred Thousand and 00/1000 (\$100,000.00) Dollars

the receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto

ROBERT A. ALEXANDER

Heirs and/or Assigns Forever,

Units No. C & D in Place on the Greene Horizontal Property Regime, Richland County, South Carolina a horizontal property regime established by Greene Street Partnership pursuant to the South Carolina Horizontal Property Act, Sections 27-31-10 et seq., Code of Laws of South Carolina, 1976, as amended, and submitted by Master Deed dated September 12, 1984 and recorded in the RMC Office for Richland County in Deed Book d_711 at page 1 on September 14, 1984.

This being the same property conveyed to the Grantor by deed of Master in Equity for Richland County dated December 21, 2000 and recorded in the RMC Office for Richland County in Deed Book 00471 at page 1222.

This conveyance is subject to any and all existing reservations, easements, rights of way, zoning ordinances and restrictions or protective covenants of record.

Grantee's Address:

1 West Columbia, SC

Tax Map Number: *11385-01-05*

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

1 of 2

Richland County ROD

Richland County Auditor Paul Bramley 2007

2480/1992

TO HAVE AND TO HOLD, all and singular, the premises before mentioned unto the Grantee(s), and the Grantee(s) Heirs (or Successors) and Assigns forever. And the Grantor(s) do(es) hereby bind the Grantor(s) and Grantor(s) Heirs (or Successors), Executors and Administrators, to warrant and forever defend all and singular said premises unto the Grantee(s) and the Grantee(s) Heirs (or Successors) and Assigns, against the Grantor(s) and the Grantor(s) Heirs (or Successors) and against every person whomsoever lawfully claiming or to claim the same, or any part thereof. Except as to restrictions and easements of record, if any.

IN WITNESS whereof the grantor has caused its corporate seal to be affixed hereto and these presents to be subscribed by its duly authorized officers, this 1st day of Feb, 2001.

Signed Sealed and Delivered
In the presence of

Anna White
Martha Pace

A Corporation: Liberty Funding, Inc.

By: Perry S. Luthi (SEAL)
Perry S. Luthi, Vice President

(SEAL)

STATE OF SOUTH CAROLINA }

COUNTY OF GREENVILLE }

PROBATE

Personally appeared before me the undersigned witness and made oath that (s)he saw the within named Perry S. Luthi, as a duly authorized officer sign, seal and as the Grantor(s) act and deed deliver the within deed and the (s)he with the other witness subscribed above witnessed the execution thereof

SWORN to before me this 1st day of Feb, 2001

Martha Pace

Anna White (SEAL)

Notary Public in and for the State of South Carolina

My commission expires: 6-1-2005

2 of 2

Richland County ROD

Richland County Auditor Paul Brawley 2007

Instrument: 2001000128

Book/Page: R471 1221

DateTime: 1/2/2001 11:36:38 AM

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

RETURN TO:
TURNER FADGETT
POST OFFICE BOX 1473
COLUMBIA, SC 29202

ATTEST
TRUE COPY
Richard W. Radden

Deed (PUBLIC SALE)

To Whom These Presents shall concern:

I, the Master in Equity for Richland County, in the State of South Carolina, Send Greetings:

Whereas, in an action in the Court of Common Pleas in Richland County between Liberty Funding, Inc. as Plaintiff and Strategic Investments, Inc., BBC of Columbia, Inc., First Citizens Bank and Trust Company of South Carolina, South Carolina Department of Revenue, and Place On the Greene Homeowners Association, Inc., Defendants, the Master in Equity of said County by Order passed on September 18, 2000, did decree that the property described should be sold by the Master in Equity for Richland County on the terms and for the purposes mentioned in the order granted in the case; and WHEREAS; I, the undersigned, as Master in Equity for Richland County, after due advertisement of the said property for sale at public outcry, did openly and publicly, and after the matter of auction, sell the said property on October 2, 2000 for the sum of \$88,900.00, said sum being the highest amount bid.

Now, Know All Men, That I, the undersigned, as Master in Equity for Richland County, pursuant to the foregoing and also in consideration of the said bid paid as aforesaid by the said herein below named grantee, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released, and by these presents do grant, bargain, and release the following described property unto the grantee, Liberty Funding, Inc., its successors and assigns:

Unit Nos. C and D in Place on the Greene Horizontal Property Regime, Richland County, South Carolina a horizontal property regime established by Greene Street Partnership pursuant to the South Carolina Horizontal Property Act, Sections 27-31-10 et seq., Code of Laws of South Carolina, 1976, as amended, and submitted by Master Deed dated September 12, 1984 and recorded in the R.M.C. Office for Richland County in Deed Book D-711 at Page 1 on September 14, 1984.

This being the identical properties heretofore conveyed to Strategic Investments, Inc. by deed of Francis R. Dixon dated December 30, 1991 and recorded in the R.M.C. Office for Richland County in Deed Book _____ at Page _____

This being the same property conveyed by Francis R. Dixon to Strategic Investments, Inc. by deed dated December 30, 1991, and recorded in the Office of the RMC for Richland County on December 31, 1991, in Deed Book 1066 at page 017. Thereafter, Strategic Investments, Inc. conveyed the subject property unto BBC of Columbia, Inc. by deed dated April 23, 1992, and recorded in the Office of the RMC for Richland County on April 28, 1992, in Deed Book 1084 at page 158

Grantee's mailing address: 745 Wade Hampton Blvd.
Greenville, SC 29609

Book 00471-1221
2001000128 01/02/2001 11:36:38.61 Master Deed
Fee: \$10.00 County Tax: \$0.00 State Tax: \$0.00

2001000128 John G. Norris Richland County ROD

Richland County ROD

Richland County Auditor Paul Brawley 2007

2-471/1221

Instrument: 2001000128

Book/Page: R471 1221.1

Date/Time: 1/2/2001 11:36:38 AM

Together, with all and singular the hereditaments, rights, members and appurtenances whatsoever to the said property belonging or in any wise incident or appertaining, and the reversions and remainders, rents, issues, and profits thereof; and also any estate, right, title, interest, dower, possession, benefit, claim or demand therein whatsoever of all parties to the said suit and of all other persons who might rightfully claim the same or any part thereof, by, from, or under them, or either of them;

To Have And to Hold the said property, with its hereditaments, privileges, and appurtenances, unto the said grantee, its successors and assigns for their own use, benefit, and behoof, forever.

In Witness Whereon, I, the undersigned, as Master in Equity County, under and by virtue of the said order(s), have hereunto set my Hand and Seal the 21st day of December, in the year of our Lord Two Thousand.

SIGNED, SEALED AND DELIVERED
in the Presence of:

Susan M. Golston
Fristella Cornelius

Joseph M. Strickland
Master in Equity

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

PERSONALLY APPEARED Fristella Cornelius and made oath that (s)he saw Joseph M. Strickland as Master in Equity for Richland County, sign, seal, and deliver the within Deed; and that deponent together with Susan M. Golston signed their names as witnesses thereto;

SWORN to before me this 21st
day of December, 2000
Susan M. Golston (L.S.)

Notary Public for SC

My Commission expires: 7-29-03

Fristella Cornelius

Richland County ROD

Richland County Auditor Paul Brawley 2007

STATE OF SOUTH CAROLINA	AFFIDAVIT	Date of Transfer of Title
COUNTY OF RICHLAND		(Closing Date) _____

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information
2. The property is being transferred BY Joseph M. Strickland, as Master in Equity for Richland County TO Liberty Funding, Inc. ON December 21, 2000.
3. Check one of the following: *The DEED is*
 - (a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
 - (c) ☒ EXEMPT from the deed recording fee because (exemption #12-24-40 (13))
(If exempt, please skip items 4-6, and go to item 7 of this affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
 - (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ _____
 - (b) _____ The fee is computed on the fair market value of the realty which is _____
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ _____
5. Check YES _____ or NO _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES," the amount of the outstanding balance of this lien or encumbrance is \$ _____
6. The DEED Recording Fee is computed as follows:
 - (a) _____ the amount listed in item 4 above
 - (b) _____ the amount listed in item 5 above (no amount place zero)
 - (c) _____ Subtract Line 6(b) from Line 6(a) and place the result.
7. As a required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Attorney for Liberty Funding, Inc.
8. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Grantor, Grantee, or Legal Representative
connected with this transaction

Sworn to before me this 28th
day of December, 2000
Margaret H. Olsen
Notary Public for South Carolina
My Commission Expires: 1-10-2001

Stephen A. Husman, Esquire
Print or Type Name here

THE STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, THAT Francis R. Dixon in the State aforesaid, for and in consideration of the sum of Thirty-five Thousand Dollars (\$35,000.00), to me in hand paid at and before the sealing and delivery of these Presents, by Strategic Investments, Inc. in the State aforesaid (the receipt whereof is hereby acknowledged), have granted, bargained, sold and released and by these Presents do grant, bargain, sell and release unto the said

STRATEGIC INVESTMENTS, INC., ITS SUCCESSORS AND ASSIGNS FOREVER

Unit Nos. C and D in Place on the Greene Horizontal Property Regime, Richland County, South Carolina a horizontal property regime established by Greene Street Partnership pursuant to the South Carolina Horizontal Property Act, Sections 27-31-10 et seq., Code of Laws of South Carolina, 1976, as amended, and submitted by Master Deed dated September 12, 1984 and Recorded in the R.M.C. Office for Richland County in Deed Book D-711 at Page 1 on September 14, 1984.

This being the identical properties heretofore conveyed to Francis R. Dixon by deed of Resolution Trust Corporation dated July 10, 1991 and recorded in the R.M.C. Office for Richland County in Deed Book D-1042 at Page 832.

Units C and D TMS #11385-1-5

Grantee's Address: John C. Hicks
c/o Tracy Amos, CPA

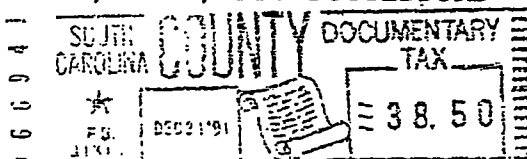
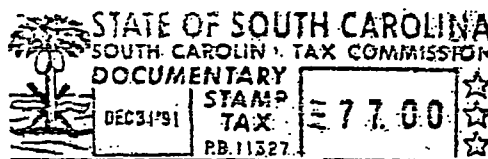
Columbia, South Carolina

The within conveyance is made subject to any easements, conditions and restrictions of record.

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

TO HAVE AND TO HOLD, all and singular, the said premises before mentioned, unto the said STRATEGIC INVESTMENTS, INC., ITS SUCCESSORS AND ASSIGNS FOREVER.

1



VOL D1066 PAGE 017

D1066/17

And I do hereby bind myself and my Heirs and Personal Representative(s), to warrant and forever defend all and singular the said premises unto the said STRATEGIC INVESTMENTS, INC., ITS SUCCESSORS AND ASSIGNS against myself and my Heirs lawfully claiming, or to claim the same or any part thereof.

WITNESS my Hand and Seal, this 30th day of December in the year of our Lord one thousand nine hundred and ninety-one and in the two hundred and sixteenth year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered
in the Presence of

Brenda S. Laiter

Francis R. Dixon (LS)
Francis R. Dixon

(LS)

THE STATE OF SOUTH CAROLINA)
County of RICHLAND)

PERSONALLY appeared before me, the below signed witness and made oath that he/she saw the within-named Francis R. Dixon sign, seal, and as his act and deed deliver the within-written Deed; and that he/she with the second witness witnessed the execution thereof.

Brenda S. Laiter (Seal)

SWORN to before me, this 30th
day of December, A.D. 1991.

Notary Public of South Carolina
My Commission Expires: _____

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

VOL D1042 PAGE 87

3:06 PM '91

QUITCLAIM DEED
PROPERTY NO: 20110

ATTES REC
A TRUE COPY
Richard W. Koo
2110

NOW, KNOW ALL MEN BY THESE PRESENTS, that Resolution Trust Corporation, a public corporation organized and existing under the laws of the United States of America, as Receiver for Security Federal Savings Bank, F.S.B. (the "Grantor"), in consideration of the premises and also in consideration of the sum of Thirty-six thousand and no/100 Dollars (\$36,000.00) to it in hand paid at and before the sealing and delivery of these presents by the "Grantee", as hereinafter defined, (the receipt whereof is hereby acknowledged) has remised, released and forever quit-claimed, and by these presents does remise, release and forever quit-claim unto Francis R. Dixon, his heirs and assigns (collectively, the "Grantee") forever, all that certain piece, parcel or lot of land, with improvements thereon, more fully described in Exhibit "A," attached hereto and incorporated herein by reference (the "Premises").

Derivation: Deed Book D-1027 at Page 947

Grantee's Address: _____

Columbia, SC

TMS # 11385-01-05

TOGETHER with, all and singular, the rights, members, hereditaments and appurtenances to the Premises belonging, or in anywise incident or appertaining thereto.

TO HAVE AND TO HOLD, all and singular, the Premises before mentioned unto the Grantee, forever, so that neither the Grantor nor its successors and assigns, nor any other person or persons claiming under it or them, shall at any time hereafter, by any way

VOL D1042 PAGE 87

D1042/832

or means, have, claim or demand any right or title to the Premises or appurtenances, or any part or parcel thereof, forever.

WITNESS the hand and seal of the Grantor, by and through its duly authorized Agent, this 10th day of July, in the year of our Lord, One Thousand Nine Hundred and Ninety-one and in the Two Hundred and Fifteenth year of the Sovereignty and Independence of the United States of America.

SIGNED SEALED AND DELIVERED
IN THE PRESENCE OF

RESOLUTION TRUST CORPORATION
AS RECEIVER FOR SECURITY
FEDERAL SAVINGS BANK, F.S.B.

R Imhrey
Witness #1

By: L. LeRoy Hill
Its: Authorized Agent

William W. Hight
Witness #2

STATE OF Georgia
COUNTY OF Fulton

PROBATE

Personally appeared before me the undersigned witness, who being duly sworn, says that (s)he saw the within-named Resolution Trust Corporation, a public corporation, by L. LeRoy Hill, its Asset Specialist, sign, seal and as its act and deed deliver the within-written Deed for the uses and purposes therein mentioned and that s/he with the other witness whose signature appears above witnessed the execution thereof.

R Imhrey
Witness #1

SWORN TO BEFORE ME this
10TH day of July, 1991.

Jane L. Hopper (L.S.)
NOTARY PUBLIC FOR

My Commission Expires July 5, 1994
Notary Public, Fulton County, Georgia.

EXHIBIT "A"

Unit Nos. C and D in Place on the Greene Horizontal Property Regime, Richland County, South Carolina, a horizontal property regime established by Greene Street Partnership pursuant to the South Carolina Horizontal Property Act, Sections 27-31-10 et. seq., Code of Laws of South Carolina, 1976, as amended, and submitted by Master Deed dated September 12, 1984 and recorded in the RMC Office for Richland county in Deed Book D-711 at Page 1 on September 14, 1984.

ATTEST
A TRUE COPY
RES. TR. CO.
STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

(Above Space for Documentary Stamp)
MASTER'S DEED

(Public Sale)

APR 15 4 13 PM '91

FILED
XESKE CONVEYANCE
CLARA L. BARNETT

RECORDED
PAID

(Filing Date Space)

To all whom these Presents shall concern:

I, Joseph M. Strickland, as Master in Equity for Richland County,
in the said State, send Greetings:

WHEREAS, in an action in the Court of Common Pleas in Richland County between

Resolution Trust Corporation, as Conservator for Security
Federal Savings, FSB, successor in interest to Security
as plaintiff/s and Federal Savings and Loan Association of South Carolina,

Clarence D. Bain, III, et al.,

as defendant/s, the Judge of said Court by Order dated January 22, 19 91

did decree that the property hereinafter described should be sold by the Master in Equity for Richland County on the
terms and for the purposes mentioned in the order(s) granted in the case; and

WHEREAS, I, the undersigned, as Master in Equity for Richland County, after due advertisement of the said property
for sale at public outcry, did openly and publicly, and after the manner of auction, sell the said property on the 3rd
day of April 19 91 for the sum of Seventy-four Thousand Six Hundred Twelve
and 91 (\$74,612.91) Dollars, said sum being the highest

amount bid at said sale and having been made by the Plaintiff, by Sam Waters, as

(Name of highest bidder and assignment, if any)

attorney for the Plaintiff and Plaintiff having paid the costs.

NOW, KNOW ALL MEN, That I, the undersigned, as Master in Equity for Richland County, pursuant to the foregoing and
also in consideration of the said bid paid as aforesaid by the said hereinbelow named grantee, the receipt whereof is
hereby acknowledged, have granted, bargained, sold, and released, and by these presents do grant, bargain, and release
the following described property unto the grantee,

Resolution Trust Corporation, as Receiver for Security Federal Savings, FSB,
Its Successors and Assigns;

PO Box 7488 Columbia, SC 29202

(Name and address of grantee/s and description of property)

Units Nos. C and D in Place on the Greene Horizontal Property
Regime, Richland County, South Carolina, a horizontal property
regime established by Greene Street Partnership pursuant to the
South Carolina Horizontal Property Act, Sections 27-31-10 et.
seq., Code of Laws of South Carolina, 1976, as amended, and
submitted by Master Deed dated September 12, 1984 and recorded in
the RMC Office for Richland County in Deed Book D-711 at page 1 on
September 14, 1984.

This being the identical property conveyed to Clarence D. Bain,
III by deed of Greene Street Partnership dated October 29, 1984
and recorded November 1, 1984 in Book D713 at Page 648.

PROPERTY ADDRESS: 2002 Green Street
Place on the Greene
Units C & D
Columbia, S.C. 29211

TMS # 11385-01-05

D1027/947

SHERRILL AND ROGERS, PC
ATTORNEYS AND COUNSELORS AT LAW
POST OFFICE BOX 262d
COLUMBIA, SOUTH CAROLINA 29202

Subject to assessments, Richland County taxes, existing easements, easements and restrictions of record, and other senior encumbrances.

TOGETHER with all and singular the hereditaments, rights, members, and appurtenances whatsoever to the said property belonging or in any wise incident or appertaining, and the reversions and remainders, rents, issues, and profits thereof; and also any estate, right, title, interest, dower, possession, benefit, claim, or demand therein whatsoever of all parties to the said suit and of all other persons who might rightfully claim the same or any part thereof, by, from, or under them, or either of them;

TO HAVE AND TO HOLD the said property, with its hereditaments, privileges, and appurtenances, unto the said grantee; his/her/its/their heirs/successors and assigns for their own use, benefit, and behoof, forever.

IN WITNESS WHEREOF, I, the undersigned, as Master in Equity for Richland County, under and by virtue of the said order(s), have hereunto set my Hand and Seal the 11th day of April, in the year of our Lord one thousand nine hundred ninety-one, and in the two hundred fifteenth and the fourteenth of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED, AND DELIVERED)

in the Presence of:

Leila B. Balliet
Joyce F. Goodwin

Joseph M. Strickland (L.S.)
As Master in Equity for Richland County

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

PERSONALLY APPEARED Leila B. Balliet and made oath that he saw JOSEPH M. STRICKLAND as Master in Equity for Richland County, sign, seal, and deliver the within Deed; and that deponent together with Joyce F. Goodwin signed their names as witnesses thereto.

SWORN to before me, this
11th day of April, 19 91

Joyce F. Goodwin (L.S.)

Notary Public for South Carolina

My Commission Expires: August 23, 1992

VOL D1027 PAGE 948

DEED
(Public Sale)

JOSEPH M. STRICKLAND
As Master in Equity for
Richland County, S.C.

—TO—

Resolution Trust Corporation,
as Receiver for Security Federal
Savings, FSB

I hereby certify that the within Deed was filed for
record in my office at 4:15
P.M. on the 16th day of April, 1991 and
was immediately entered upon the proper
indexes and duly recorded in Book D-1428 of
Deeds at page 947 in my office.

30

Clara J. Boudreau
Register of Meane Conveyances for
Richland County

I hereby certify that the within Deed has been
this 17 day of June,
1991 recorded in Book of
Deeds at page in my office.

Thomas J. Hester
Auditor for Richland County

156.00
85.80
STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

FILED
REGISTER OF DEEDS
INDENTURE DEED CLARA

1984 NOV -1 PM 1:47

AFFIDAVIT
KNOW ALL MEN BY THESE PRESENTS, that this indenture deed between Greene Street Partnership, a South Carolina Limited Partnership, hereinafter referred to as "Grantor" in the State aforesaid, for and in consideration of the sum of Five and no/100 (\$5.00) Dollars and other good and valuable consideration to it in hand paid at and before the sealing and delivery of these presents by Clarence D. Bain, III, hereinafter referred to as "Grantee", in the State aforesaid, (the receipt of which is hereby acknowledged) has granted, bargained, sold, and released and by these presents does grant, bargain, sell and release unto the Grantee, his heirs and assigns, the premises designated as Units C & D in Place on the Greene Horizontal Property Regime, a horizontal property regime established by the Grantor pursuant to the South Carolina Horizontal Property Act, Section 27-31-10 et seq., 1976, as amended, by Master Deed dated September 12, 1984 and recorded in Deed Book D-711 at page 1 in the Office of the R.M.C. for Richland County which unit is shown on the Building Plans prepared for Place on the Greene by Comprehensive Architects and attached to said Master Deed. A first amendment to said Master Deed was dated September 20, 1984, recorded September 20, 1984 in Deed Book D-711 at page 673.

This being a portion of the identical property conveyed to the Grantor herein by deed of Security Development Corporation, Inc. dated April 30, 1984, recorded April 30, 1984 in Deed Book D-691 at page 960 in the R.M.C. Office of Richland County.

Said Dwelling Units are conveyed together with:

1. An undivided percentage in the common elements, restricted common areas, and facilities of the property described in the Master Deed ("Common Elements") and attributable to the Units.
2. An easement for the continuance of all encroachments by the Units on any adjoining units or common elements existing as a result of construction of the Units or which may come into existence hereafter as a result of settling or shifting of the Units or of the other units, after damage or destruction by fire or other casualty, or after taking in condemnation or eminent domain proceedings, or by reason of an alteration or repair to the common elements made by or with the consent of the Board.
3. An easement in common with the owners of other units to use any pipes, wires, ducts, flues, cables, conduits, public utility lines and other common elements located in any other unit or elsewhere on the Property, and serving the Units.
4. The following rights and easements in common with the other unit owners, all as described in the Master Deed and amendments thereto: common driveway easement; all utility, service, maintenance, and recreational easements; parking easement; drainage easement; and use of the common elements.

Said units are conveyed subject to:

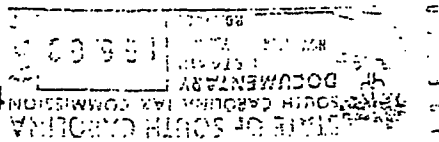
1. Easements in favor of adjoining units and in favor of the common elements for the continuance of all encroachments of such adjoining units or common elements on the Units now existing

GRANTEE'S ADDRESS:

Columbia, S.C.



304



as a result of construction of units or which may come into existence hereafter as a result of settling or shifting of the Units or of any adjoining unit or of the common elements, after damage or destruction by fire or other casualty, or after taking in condemnation or eminent domain proceedings, or by reason of an alteration or repair to the common elements made by or with the consent of the Board of Administration.

2. An easement in favor of the other units to use the pipes, wires, ducts, flues, conduits, cables, public utility lines and other common elements located in the Units or elsewhere on the Property and serving such other units and any and all other easements, conditions and restrictions of record.

3. Exclusive rights in favor of the owner of any unit to use the parking spaces, as the same may be designated by the Board.

4. The provisions of the Master Deed, and all exhibits attached thereto, recorded simultaneously with and as a part of the Master Deed, as the same may be amended from time to time by instruments recorded in the Richland County R.M.C. Office which provisions, together with any amendments thereto, shall constitute covenants running with the land and shall bind any person having at any time any interest or estate in the Units, his heirs and assigns, his family, servants, and visitors, as though such provisions were recited and stipulated at length herein.

By subscription to and acceptance of this Indenture Deed, Grantee acquiesces in the provisions of the Master Deed and the attached Exhibits and Schedules.

The Grantor, its successors and assigns, reserves the right to amend the said Master Deed, its attachments and exhibits, as may be required by law, any title insurance company, or lending institution and to correct typographical errors, provided that such changes do not increase the Grantee's share of the common expenses nor decrease Grantee's share of the common elements.

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

TO HAVE AND TO HOLD, subject to the rights, conditions, and restrictions herein, all and singular, the said premises before mentioned, unto the said Grantee, his successors, heirs and assigns forever.

And the said Grantor does hereby bind itself and its successors, to warrant and forever defend all and singular the said premises unto the said Grantee and his heirs, successors and assigns, against itself and its successors, and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

WITNESS the hands and seals of the parties hereto, this 29th day of October, in the year of our Lord One Thousand Nine Hundred and Eighty-four, and in the two hundred and ninth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Teresa K. Todd

Pamela W. Metz

GREENE STREET PARTNERSHIP

By SECURITY DEVELOPMENT
CORPORATION, INC.
Its General Partner

By John E. Quinn
Its Secretary

By ES. J. [unclear]
Its Executive Vice Pres.

George E. Lafay, III

Angela Funderburk Boney

GRANTEE

Clarence D. Bain, III
Clarence D. Bain, III

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

PROBATE

PERSONALLY appeared before me Teresa K. Todd
who being duly sworn, deposes and says that s he saw the within-
named Greene Street Partnership by Security Development
Corporation, Inc., its General Partner, sign, seal and as its
act and deed, deliver the within-written Indenture Deed, for the
uses and purposes therein mentioned and that she with Pamela W.
Metz witnessed the execution thereof.

Pamela W. Metz

SWORN TO before me this

29th day of October, 1984.

Teresa K. Todd (L.S.)
Notary Public for South Carolina

My Commission Expires: 4-4-94

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

PROBATE

PERSONALLY appeared before me Angela Funderburk Boney
who being duly sworn, deposes and says that s he saw the within-
named GRANTEE, Clarence D. Bain, III, sign, seal and as his act
and deed, deliver the within-written Indenture Deed, for the uses
and purposes therein mentioned and that she with George E. Lafay,
III witnessed the execution thereof.

Angela Funderburk Boney

SWORN TO Before me this

29th day of October, 1984.

George E. Lafay, III (L.S.)
Notary Public for South Carolina

My Commission Expires: 6-7-87

Plaintiff's Exhibit 6:
Chain of Title,
Units F, G, & H

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

ATTEST:
 A TRUE COPY
 TITLE TO REAL ESTATE
 Richard W. Powell
 R.W. Powell

KNOW ALL MEN BY THESE PRESENTS THAT

ROY A. POWELL, JR. and ALICE S. POWELL

(hereinafter "Grantor") in the state aforesaid for and in consideration of the sum of One Million Six Hundred Thousand and 00/100 Dollars (\$1,600,000.00) in hand paid at and before the sealing of these presents by

W.G.R.Q., LLC, a South Carolina limited liability company

(hereinafter referred to as "Grantee" which term shall include the singular and plural, masculine, feminine, and neuter) in the state aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold and released and by these presents do grant, bargain, sell and release unto the said Grantee:

Parcels 1-7

UNIT NUMBER 108, 110, 114, 116 205, 208 & 404, in PLAZA CENTRE HORIZONTAL PROPERTY REGIME located in the City of Columbia, County and State aforesaid, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act (Section 27-31-10, et seq., S.C. Code Ann. (1976), as amended) by Master Deed dated August 9, 1985, with appended By-Laws and Exhibits including plat and plot plans, which Master Deed including the By-Laws and Exhibits is recorded in the Office of the ROD for Richland County in Book of Deeds D753 at Page 821, et seq. The Master Deed, By-Laws, plot plan and plat above-mentioned and the records thereof, are incorporated herein and by this reference made a part hereof. Master Deed re-recorded August 20, 1985, in Deed Book D754 at page 946. These Units are conveyed subject to the provisions of the South Carolina Horizontal Property Act, and all of the provisions of the Master Deed and By-Laws as the same may be amended from time to time by instrument recorded in the Office of the ROD which provisions, together with any amendments thereto, shall constitute covenants running with the land and shall bind any person having at any time any interest or estate in the Unit, and such person's family, servants and visitors as though such provisions were recited and stipulated at length herein.

This being the same property conveyed to Roy A. Powell, Jr. by Deed of W. Hartley Powell dated and recorded on May 21, 2002 and recorded in the Office of the Register of Deeds for Richland County in Deed Book 664 at page 2056. (UNIT 205)

This being a portion of the property conveyed to Roy A. Powell, Jr. by deed of The First Service Corporation of S.C. dated September 30, 1987 and recorded October 5, 1987 in the Office of the ROD for Richland County in Deed Book D860 at page 957.

Book 00666-1570 Deed
 2002042879 05/28/2002 11:42:34 03
 Fee: \$10.00 County Tax: \$1760.00 State Tax: \$4160.00



**PLAINTIFF'S
 EXHIBIT**

This document is not to scale

6 4-9-09 CK R666/1570

TMS #11487-02-03 Unit 205
11487-02-15 Unit 208
11487-04-17 Unit 404
11487-01-14 Unit 108
11487-01-13 Unit 110
11487-01-11 Unit 114
11487-01-10 Unit 116

**ALSO
Parcels 8-13**

UNITS 203, 211, 510, F, G, and H in Place on the Greene Horizontal Property Regime, a horizontal property regime established by the Grantor pursuant to the South Carolina Horizontal Property Act, Section 27-31-10 et seq., 1976, as amended, by Master Deed dated September 12, 1984 and recorded in Deed Book D-711 at page 1 in the Office of the ROD for Richland County which Units are shown on the Building Plans prepared for Place on the Greene by Comprehensive Architects and attached to said Master Deed. A first amendment to said Master Deed was dated September 20, 1984 and recorded September 20, 1984 in Deed Book D-711 at page 673.

This being the same property conveyed to Roy A. Powell, Jr. by Deed of Greene Street Partnership, a South Carolina Limited Partnership dated and recorded on November 8, 1985 and recorded in the Office of the Register of Deeds for Richland County in Deed Book DO767 at page 629.

TMS #11385-05-03 Unit 510
11385-02-09 Unit 211
11385-02-13 Unit 203
11385-01-03 Unit F
11385-01-02 Unit G
11385-01-01 Unit H

**ALSO
Parcel 14**

All that certain piece, parcel or lot of land, with the improvements thereon, situate, lying and being in the County of Richland, State of South Carolina, the same being known as 2710 Preston Street, and having the following boundaries and measurements: On the North by Preston Street, whereon it fronts a distance of sixty-eight and two tenths (68.2') feet, more or less, on the East by property now or formerly of McNulty, whereon it measures one hundred seventy and nine tenths (170.9') feet; on the South by property now or formerly of Bostick, whereon it measures sixty-six and two tenths (66.2') feet; and on the West by property now or formerly of Bostick, whereon it measured one hundred sixty seven and nine tenths (167.9') feet.

This being the same property conveyed to Alice S. Powell by Roy A. Powell, Jr.

Richland County ROD

Richland County Auditor Paul Brawley 2007

dated and recorded October 28, 1998 in the Office of the ROD for Richland County in Record Book 216 at page 930.

TMS #11413-11-04

**ALSO
Parcel 15**

All that certain piece, parcel or lot of land with the improvements thereon, situate, lying and being in the City of Columbia, County of Richland, State of South Carolina, the same being shown as Lot 7, Block "F" on plat of Oakwood Court Subdivision by Tomlinson Engineering Co., dated April 10, 1923 and recorded in Plat Book "E" at Page 30, in the Office of the RMC for Richland County. Said lot being more particularly shown on a plat prepared for Roy A. Powell, Jr., by Benjamin H. Whetstone dated June 24, 1992.

This being the same property conveyed to Alice S. Powell by deed of Roy A. Powell, Jr. dated and recorded September 24, 1998 in the Office of the Register of Deeds for Richland County in Record Book 186 at page 424.

TMS #13901-15-06.

**ALSO
Parcel 16**

All that certain piece, parcel or lot of land with the improvements thereon, situate, lying and being in the City of Columbia, County of Richland, State of South Carolina, the same being the MAJOR PORTION OF LOT EIGHT (8), BLOCK "F", on a plat of "OAKWOOD COURT", prepared by Tomlinson Engineering Company, dated April 10, 1923, and recorded in the RMC Office for Richland County in Plat Book "E" at Page 30 (the remaining portion of Lot 8 taken for right-of-way for Millwood Avenue); also being shown on a plat prepared for Mildred R. Lewis by Robert E. Collingwood, Jr., dated September 2, 1977, and recorded in the said RMC Office in Plat Book "X" at Page 9699. Said lot being bounded and measuring as follows: On the Northeast by Millwood Avenue, whereon it fronts and measures Sixty-five (65) feet; on the Southeast by Lot 7, whereon it measures One Hundred Thirty-two and 79/100 (132.79') feet; on the Southwest by portion of Lots 12 and 13, whereon it measures Sixty-five (65) feet; and on the Northwest by Lot 9, whereon it measures One Hundred Thirty-one and 57/100 (131.57) feet.

This being the same property conveyed to Alice S. Powell by deed of Roy A. Powell, Jr. and in the Office of the Register of Deeds for Richland County in Record Book 186 at page 428.

TMS #13901-15-05

ALSO
Parcel 17

PARCEL 4: All that certain piece, parcel or lot of land with the improvements thereon, situate, lying and being in the City of Columbia, County of Richland, State of South Carolina, known as 1720 Senate Street, said lot of land being in shape a rectangular parallelogram measuring on its Northern and Southern sides each sixty-nine feet and six inches (69.6'), more or less, and on its Eastern and Western sides each one hundred fifty-six feet and six inches (156.6'), more or less, bounded North by said Senate Street; East by lands now or formerly of Metz; South by lands of Verner, formerly and on the West by lot of Wallace.

This being the same property conveyed to Alice S. Powell by deed of Roy A. Powell, Jr. dated and recorded September 24, 1989 in the Office of the Register of Deeds for Richland County in Record Book 186 at page 426.

TMS #11405-18-05

ALSO
Parcel 18

ALL that certain piece, parcel or lot of land, together with improvements thereon, situate, lying and being in the City of Columbia, County of Richland, State of South Carolina, being commonly known as 1806-1808 Green Street, and being shown and delineated on a plat prepared for C. Anderson Riley by William Wingfield, dated September 16, 1974, and recorded in the Office of the ROD for Richland County in Plat Book X at page 9258. Said lot being bounded and measuring as follows: On the Northwest by Green Street, whereon it fronts and measures 93.0 feet; on the Northeast by property now or formerly of Forest M. Routh, whereon it measures 165.0 feet; on the Southeast by an alleyway, whereon it measures 93.0 feet; and on the Southwest by an alleyway and by property now or formerly of David L. Rosmer, whereon it measures 165.0 feet.

This being the same property conveyed to Alice S. Powell by Charles Anderson Riley, Jr., Virginia Riley Bain and Louise A. Riley dated November 10, 1992 and recorded November 12, 1992 in the Office of the ROD for Richland County in Record Book D1115 at page 32.

TMS #11308-12-006

These conveyances are made subject to easements, conditions and restrictions of record affecting subject property.

Richland County ROD

Richland County Auditor Paul Brawley 2007

Grantee's mailing address:

Columbia, SC

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

TO HAVE AND TO HOLD, subject to easements and restrictions of record, all and singular the said premises before mentioned unto the said Grantee, the grantee's heirs, successors, and assigns forever, and the Grantor does hereby bind Grantor and Grantor's heirs, executors, and administrators to warrant and forever defend, subject to easements and restrictions of record, all and singular the said premises against Grantor and Grantor's heirs, executors and administrators and against any person whomsoever lawfully claiming or to claim the same, or any part thereof.

WITHIN THIS INSTRUMENT all references to the Grantor and the Grantee shall include the singular and plural, and any gender shall include all genders.

IN WITNESS WHEREOF Grantor has caused these presents to be executed on the 24th day of May, 2002.

WITNESSES:


Anne S. Conder

GRANTOR:

 (SEAL)
 Roy A. Powell, Jr. *
Alice S. Powell (SEAL)
 Alice S. Powell **

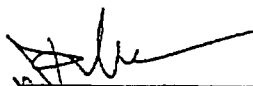
STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

PROBATE

PERSONALLY APPEARED before me, the undersigned witness made oath that (s)he saw the within named Grantors sign, seal and as their act and deed, deliver the within written deed for the uses and purposes therein mentioned, and that (s)he with the other witness whose name appears above witnessed the execution thereof.

SWORN to before me this 24th
 day of May, 2002.


 Notary Public for South Carolina
 My commission expires: _____


 Witness Phil Mims

Anne S. Conder
 Notary Public for South Carolina
 My Commission Expires May 23, 2011

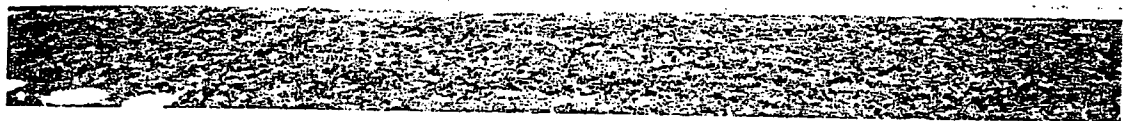
*Roy A. Powell, Jr. executes this deed to convey his ownership of Parcels 1-13;

**Alice S. Powell executes this deed to convey her ownership of Parcels 14-18;

Plaintiff's Exhibit 7: Photos













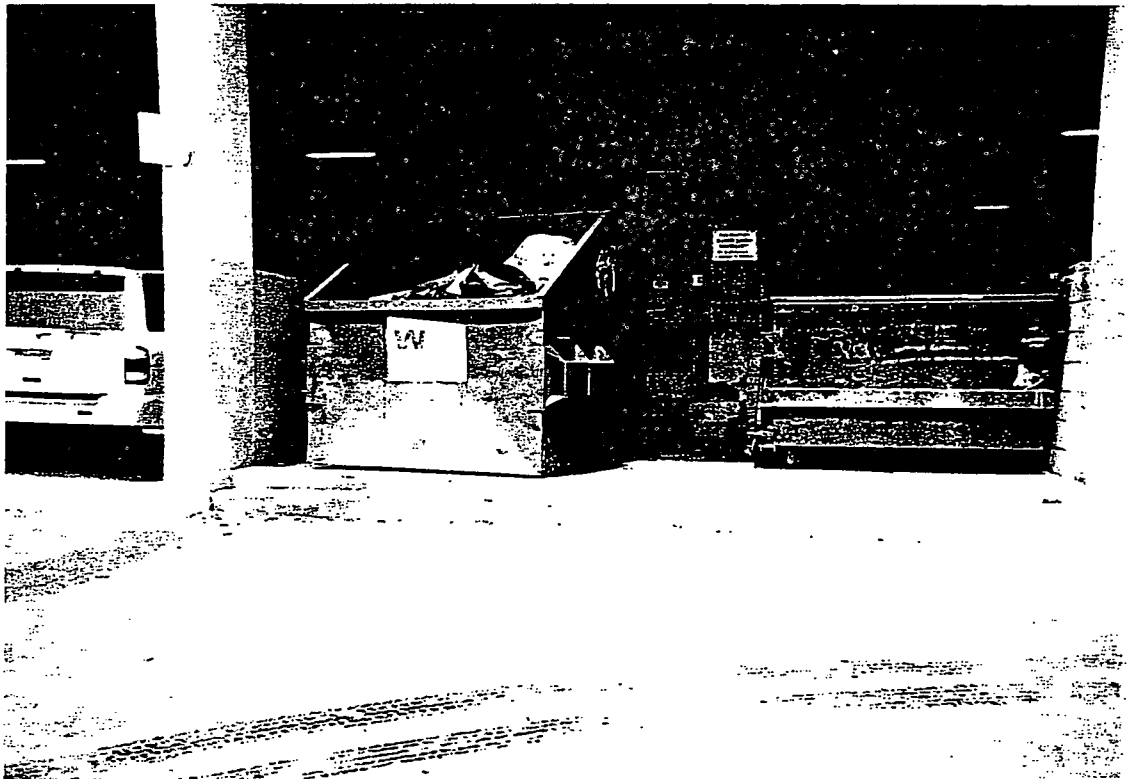
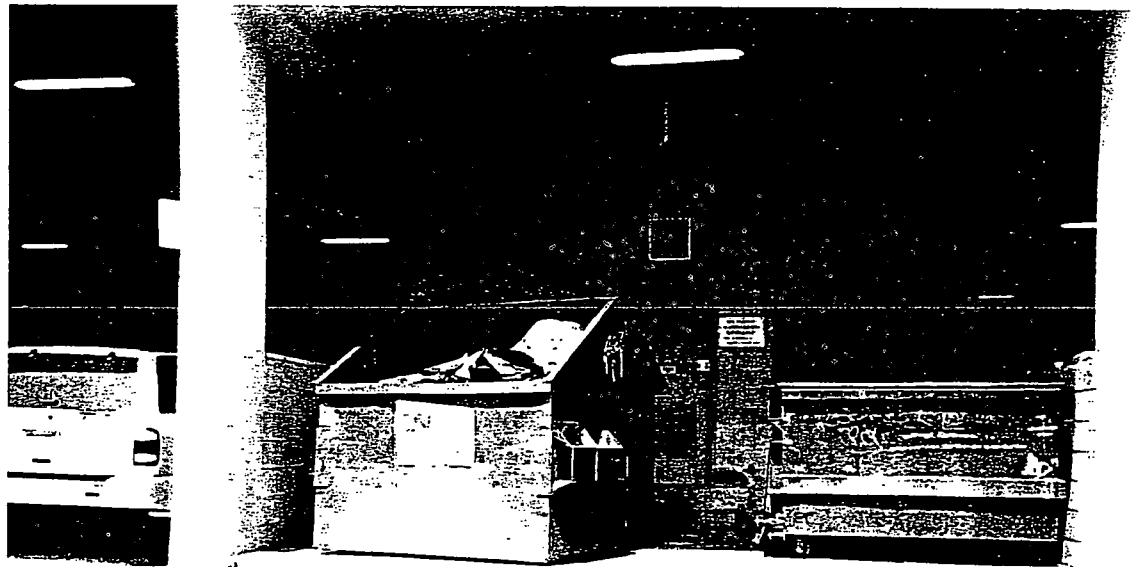














Plaintiff's Exhibit 8:
Cease and Desist Letter

Law Offices
William M. Spillane
1903 Gadsden Street
Columbia, SC 29201

Telephone:
(803) 252-9221
Facsimile:
(803) 252-4428

Please Reply To:
Post Office Box 2109
Columbia, SC 29202

June 25, 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Barry Monroe
Easy Coin Laundry

Columbia, South Carolina

Dear Mr. Monroe:

I represent Place on the Greene Homeowners Association, Inc.

This letter is formal **NOTICE** that you are in violation of the Condominium Commercial Unit use restrictions for Unit A at Place on the Greene, as stated in the Master Deed for the Horizontal Property Regime.

The commercial units are restricted to general office space and limited service establishments. The Master Deed specifically prohibits, among other businesses, bars, restaurants, lounges and pool halls. The specific wording can be found in Article X, Section 3, page 13 of the Master Deed. A copy of page 13 is enclosed for your reference.

This letter further serves as a **DEMAND** that the use restriction violation in Unit A cease and desist. The Association's Board of Directors is formally notifying you that the violation must end no later than thirty (30) days from receipt of this letter. If you do not comply with this demand, the Association shall pursue legal action to enforce the covenants and stop the violation. That legal action shall also include a request for reimbursement by you for the costs and reasonable attorneys fees incurred by the Association.

Mr. Lanny Cobb signs this letter as President of the Board of Directors of the Association.

Sincerely yours,

**PLAINTIFF'S
EXHIBIT**

William M. Spillane

William M. Spillane

WMS:kgs

Encl.

Lanny Cobb

Lanny Cobb, President

Place on the Greene Homeowners Association, Inc.

Law Offices
William M. Spillane
1903 Gadsden Street
Columbia, SC 29201

Telephone:
(803) 252-9221
Facsimile:
(803) 252-4428

Please Reply To:
Post Office Box 2109
Columbia, SC 29202

June 25, 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Jeff Kenney
Tavern on Greene

Columbia, South Carolina

Dear Mr. Kenney:

I represent Place on the Greene Homeowners Association, Inc.

This letter is formal **NOTICE** that you are in violation of the Condominium Commercial Unit use restrictions for Unit B at Place on the Greene, as stated in the Master Deed for the Horizontal Property Regime.

The commercial units are restricted to general office space and limited service establishments. The Master Deed specifically prohibits, among other businesses, bars, restaurants, lounges and pool halls. The specific wording can be found in Article X, Section 3, page 13 of the Master Deed. A copy of page 13 is enclosed for your reference.

This letter further serves as a **DEMAND** that the use restriction violation in Unit B cease and desist. The Association's Board of Directors is formally notifying you that the violation must end no later than thirty (30) days from receipt of this letter. If you do not comply with this demand, the Association shall pursue legal action to enforce the covenants and stop the violation. That legal action shall also include a request for reimbursement by you for the costs and reasonable attorneys fees incurred by the Association.

Mr. Lanny Cobb signs this letter as President of the Board of Directors of the Association.

Sincerely yours,

William M. Spillane

William M. Spillane

WMS:kgs

Encl.

Lanny W Cobb

Lanny Cobb, President

Place on the Greene Homeowners Association, Inc.

Law Offices
William M. Spillane
1903 Gadsden Street
Columbia, SC 29201

Telephone:
(803) 252-9221
Facsimile:
(803) 252-4428

Please Reply To:
Post Office Box 2109
Columbia, SC 29202

June 25, 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Marsha Berry

Prosperity, South Carolina

Dear Ms. Berry:

I represent Place on the Greene Homeowners Association, Inc.

This letter is formal **NOTICE** that you are in violation of the Condominium Commercial Unit use restrictions for Units C and D at Place on the Greene, as stated in the Master Deed for the Horizontal Property Regime.

The commercial units are restricted to general office space and limited service establishments. The Master Deed specifically prohibits, among other businesses, bars, restaurants, lounges and pool halls. The specific wording can be found in Article X, Section 3, page 13 of the Master Deed. A copy of page 13 is enclosed for your reference.

This letter further serves as a **DEMAND** that the use restriction violation in Units C and D cease and desist. The Association's Board of Directors is formally notifying you that the violation must end no later than thirty (30) days from receipt of this letter. If you do not comply with this demand, the Association shall pursue legal action to enforce the covenants and stop the violation. That legal action shall also include a request for reimbursement by you for the costs and reasonable attorneys fees incurred by the Association.

Mr. Lanny Cobb signs this letter as President of the Board of Directors of the Association.

Sincerely yours,

William M. Spillane

William M. Spillane

WMS:kgs
Encl.

Lanny Cobb

Lanny Cobb, President
Place on the Greene Homeowners Association, Inc.

Law Offices
William M. Spillane
1903 Gadsden Street
Columbia, SC 29201

Telephone:
(803) 252-9221
Facsimile:
(803) 252-4428

Please Reply To:
Post Office Box 2109
Columbia, SC 29202

June 25, 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. David Rodarte
WGRQ, LLC

Columbia, South Carolina

Dear Mr. Rodarte:

I represent Place on the Greene Homeowners Association, Inc.

This letter is formal **NOTICE** that you are in violation of the Condominium Commercial Unit use restrictions for Units F, G and H at Place on the Greene, as stated in the Master Deed for the Horizontal Property Regime.

The commercial units are restricted to general office space and limited service establishments. The Master Deed specifically prohibits, among other businesses, bars, restaurants, lounges and pool halls. The specific wording can be found in Article X, Section 3, page 13 of the Master Deed. A copy of page 13 is enclosed for your reference.

This letter further serves as a **DEMAND** that the use restriction violation in Units F, G and H cease and desist. The Association's Board of Directors is formally notifying you that the violation must end no later than thirty (30) days from receipt of this letter. If you do not comply with this demand, the Association shall pursue legal action to enforce the covenants and stop the violation. That legal action shall also include a request for reimbursement by you for the costs and reasonable attorneys fees incurred by the Association.

Mr. Lanny Cobb signs this letter as President of the Board of Directors of the Association.

Sincerely yours,

William M. Spillane

William M. Spillane

WMS:kgs
Encl.

Lanny Cobb

Lanny Cobb, President
Place on the Greene Homeowners Association, Inc.

Plaintiff's Exhibit 12:
1985 Letter Re:
Proposed Amendment
to the Master Deed

EEEEEE

PLAINTIFF'S
EXHIBIT
12 4-9-09
CX

Since 1906
The Keenan Company / Realtors
Keenan Building / 1310 Lady Street
P.O. Box 11610 / Columbia, S.C. 29211
(803) 254-2300

November 25, 1985

Dear Place On The Greene Owner:

In accordance with the By-Laws of Place On The Greene Horizontal Property Regime, notice is hereby given for the holding of a Special Homeowners Meeting for the purpose of voting on a proposed Master Deed Amendment. This meeting will be held by absentee ballot. (Ballot enclosed). For recording purposes the meeting will be held on Friday, December 27, 1985.

The proposed Master Deed amendment involves Article X, Section 3, which now reads:

Condominium Commercial Unit. Each condominium commercial unit is hereby restricted to general office space and limited service establishments by the owner of thereof and his agents, servants, invitees, licensees and patrons. The use shall comply with all ordinances and zoning regulations promulgated by the City of Columbia and the Rules and Regulations of the Board of Directors. The Rules and Regulations, among other things, however, shall provide that no restaurant or establishment engaged in the preparation or delivery of food, no pool hall, game room, bar, lounge, or retail shop that relies on a volume of walk-in patrons shall be permitted. Neither the owner nor his agents, servants, invitees, licensees, and patrons shall use the unit either on a temporary or permanent basis as a sleeping accomodation. Except as reserved to Grantor, no condominium commercial unit shall be divided or subdivided into smaller units nor any portion sold or otherwise transferred. This paragraph shall not prohibit a condominium commercial unit owner from leasing his unit; however, said leasing shall be in accordance with Article X, Section 2. Each condominium commercial unit may be entitled to have an entrance way directly onto Greene Street if the plans are approved by the Board of Directors. The construction of the entrance way shall also be subject to the zoning laws and other laws of the City of Columbia. The cost of the construction of the entranceway shall be borne exclusively by the owner of the condominium commercial unit desiring the entranceway.

The amended version would then read:

Condominium Commercial Unit. Each condominium commercial unit is hereby restricted to general office space and limited service establishments by the owner of thereof and his agents, servants, invitees, licensees and patrons. The use shall comply with all ordinances and zoning regulations promulgated by the City of Columbia and the Rules and Regulations of the Board of Directors. The use of a commercial space shall be at the discretion of the Board of Directors regarding type of business.

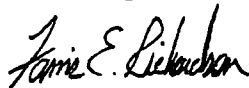
Any proposed businesses must first be approved by the Board of Directors as to type of operation. Neither the owner nor his agents, servants, invitees, licensees and patrons shall use the unit either on a temporary or permanent basis as a sleeping accomodation. Except as reserved to Grantor, no condominium commercial unit shall be divided or subdivided into smaller units nor any portion sold or otherwise transferred. This paragraph shall not prohibit a condominium commercial unit owner from leasing his unit; however, said leasing shall be in accordance with Article X, Section 2. Each condominium commercial unit may be entitled to have an entrance way directly onto Greene Street if the plans are approved by the Board of Directors. The construction of the entrance way shall also be subject to the zoning laws and other laws of the City of Columbia. The cost of the construction of the entranceway shall be borne exclusively by the owner of the condominium commercial unit desiring the entranceway.

This amendment has been proposed to allow the Board of Directors to use their discretion in approving businesses for the commercial space. It is intended to protect you as a homeowner from any business operations that would not be in your best interest.

You will find enclosed with this letter a ballot for voting purposes. Please complete the information and return it as soon as possible. The ballot is addressed and stamped for your convenience.

The Board of Directors thanks you in advance for your cooperation. If you should have any questions, please contact me at (803) 254-2300.

Sincerely,



Farris E. Richardson
Property Manager

/ah

Defendant's Exhibit 1:
March 21, 1991
Meeting Minutes

Place on the Greene Annual Homeowners' Meeting - March 21, 1991

Board Members Present: Laura Nichols, Beau Powell, Joe Rosen, and Vicki Wingate. Absent: Carolyn Stewart.

Call to Order and Roll Call: The meeting was called to order by Laura Nichols, President. Deane Chavous, Property Manager, announced proxies and members present accounted for 60% of total ownership interest.

Proof and Notice of Meeting: The secretary provided these.

Reading of Last Year's Minutes: This was waived upon a motion/seconding to accept them as written.

Reports of Officers:

Vicki Wingate, Treasurer, gave a brief report of the financial status at December 31, 1990. Income was above budget and expenses were less than budgeted, with \$5775 placed into the reserve. The annual audit by an independent CPA firm is forthcoming. Vicki Wingate and Laura Nichols, President, discussed the status of delinquencies. Through February 1991, these amounted to \$5160, of which \$3300 has been delinquent for over a year. These are three units owned by a partnership; liens are attached.

Laura Nichols also discussed capital expenditures the board has considered in the past year and their status. All windows have been caulked and no recent water damages have been identified. The roof needs to be painted, but the board has decided to hold off due to it being purely cosmetic. On another matter, bids are forthcoming on re-directing the HVAC drainage piping in the garage, whose run-off is unsightly and a health hazard. In the past year, the wallpaper in the lobby was replaced, and the elevator interior is soon to be upgraded with new formica. In the garage, the elevator entrance has been improved with a concrete ramp, paint, and the removal of HVAC compressor which partially blocked the entrance.

Laura Nichols and Deane Chavous discussed the amount of vandalism has decreased. A security guard is shared with Plaza Centre on big USC weekends, and the three video cameras have been a deterrent. A reward has been offered in the quarterly newsletter for information regarding such acts.

Old Business:

Joe Rosen reported on the successful outcome of the tax appeal he coordinated for 38 of the 63 residential owners. For example, a large 2-bedroom, 2-bath unit's tax bill was lowered 12%.

New Business:

Beau Powell addressed the vacancy problems of the commercial units due to the restrictions as stated in the Master Deed. Restaurants, which are prohibited, have worked well in other similar buildings. He offered the motion to amend the by-laws to allow the board at its discretion to allow other uses. Due to there being less than 75% present, the motion will go to the homeowners in a special election. The additional caveat was made there would not be beer or wine sold without food consumption.

Election of Board:

The following slate of officers was elected by majority: Laura Nichols, Beau Powell, Joe Rosen, John Price, and Grady Jordan.

There being no further business, the meeting was adjourned.

Respectfully Submitted,

Vicki Wingate
340 Vicki M. Wingate, Secretary

DEFENDANT'S
EXHIBIT

1 4-9-09
ck

Defendant's Exhibit 2:
March 22, 1993
Meeting Minutes

PLACE ON THE GREENE HOMEOWNERS ASSOCIATION
ANNUAL MEETING MINUTES - MARCH 22, 1993

1. ROLL CALL - VERIFICATION OF QUORUM - President Laura Nichols called the meeting to order at 6:05 p.m. All members in attendance had signed in. Those present were Laura Nichols, Iris DeMates, Grady Jordan, John Price, Michael Stahlberger and Deane Chavous. A quorum of 59.89% was represented including proxies.
2. PROOF OF NOTICE OF MEETING - Deane Chavous verified that all members had been sent notices of the Annual meeting in accordance to the Master Deed.
3. READING OF MINUTES OF PRECEEDING ANNUAL MEETING - A motion was made, seconded and passed to waive the reading of the minutes.
4. REPORTS OF THE OFFICERS - Laura Nichols reiterated the Board's decision to increase the regime fees effective January 1, 1993 due to increased operating costs in water, sewer and electricity. The increase allows for a budgeted amount of \$2000 to be added to the reserve fund in 1993. The reserve fund totalled \$5685.00 at the end of December, 1992.
5. REPORTS OF COMMITTEES - None.
5. OLD BUSINESS - None.
7. NEW BUSINESS - The Duck-In Restaurant has notified the Board of its intent to build a deck in front of commercial units currently occupied by G&A Jewelers and The Columbia Tan Spa. This property is owned by the City of Columbia and the deck will have to be approved by the zoning department. The opinion of those present at the meeting was that the deck, done properly, could be an asset to the building. Deane Chavous is currently getting bids to replace the awning and to upgrade the security cameras. These will be presented for discussion at the next Board meeting. Prices are also requested to fill pot holes in the open parking lot.
- ELECTION OF OFFICERS - A motion was made, seconded and passed to elect the following slate by acclamation: Laura Nichols, Beau Powell, John Price, John Thompson, Michael Stahlberger, Iris DeMates and Beverly Wotherspoon have agreed to attend Board meetings when possible.
- ADJOURNMENT - There being no further business, the meeting was adjourned at 7:10 p.m.

pectfully Submitted By,

Deane Chavous
Deane Chavous, CPM
Acting Secretary

Defendant's Exhibit 3:
March 24, 1995
Meeting Minutes

Place on the Greene
Homeowners Association
C/O Deane Chavous, Realtors
1600 Park Circle, Suite 106
Columbia, S.C. 29201
(803) 256-3111

Annual Meeting
March 24, 1995

The Place on the Greene Homeowners association held their annual meeting on Friday, March 24, 1995 at 7 p.m. at Bo-D's Restaurant, located in the building.

Roll Call - Verification of Quorum: President Laura Nichols called the meeting to order at 7:10 p.m. Seven homeowners were present. A quorum of 51% was represented by proxy.

Proof of Notice of Meeting: Deane Chavous verified that all members were sent notices of the annual meeting in accordance to the Master Deed.

Reading of Minutes of Proceeding Annual Meeting: A motion was made, seconded and passed to waive the reading of the minutes. All homeowners were mailed a copy of the 1994 Annual Homeowners meeting minutes.

Reports of officers and committees: President Laura Nichols gave the following up-date:

1994 Annual Meeting Follow up

1. Doors have been relocated to allow access to restrooms and not the building by patrons of commercial units. Commercial owners and tenants have been notified that they will be responsible for maintaining the restrooms.
2. Security- We now have a Richland County police officer on duty Fridays and Saturdays from 10 pm until 3 am. To reduce costs, this officer also patrols Plaza Centre. We get better service than we have had with security companies.
3. Notices were sent out offering replacement of plastic icemaker lines for \$18.00 and service of HVAC systems for \$20.00. Approximately 40 owners took advantage of these reduced rates.
4. The wallpaper and border has been replaced in the lobby.

5. The smoke detectors originally installed were electric. Some owners have replaced defective detectors with battery operated ones. It is up to the individual owner or management company to maintain the detectors.

Reports

Financial: Income budgeted for 1994 was \$66,598, collected \$68,932 for an overage of \$2,334. This is due to prepayment of fees. Expenses budgeted for 1994 was \$63,263. Actual expenses totalled \$63,808 for an overage of \$545. Water- sewer rates increased 12% and electricity rates increased 7%. We were able to offset this by reducing trash removal cost by \$1,268. We are now lease purchasing the trash compactor. In three years we will own the equipment and can further reduce the expense in this category.

Reserves: We made a contribution of \$2,333 to reserves in 1994. At the end of 1994 we had \$2,279 in a money market account and \$4994 in a certificate of deposit.

New Business

Items accomplished in 1994:

- 1) Hallways and stairwells painted
- 2) Sundeck sealed
- 3) Roof treated with sealant
- 4) Lobby wallpaper replaced
- 5) New vandal proof control panel installed in elevator
- 6) Barrier installed in garage to prevent trucks from damaging power panel
- 7) By order of the fire marshall, pull stations were removed from each floor by elevator to reduce false alarms.

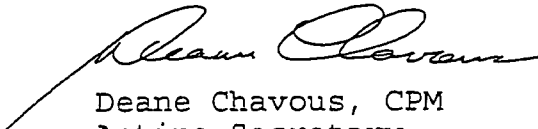
Items accomplished to date in 1995:

- 1) Security doors relocated
- 2) All hallway carpet steam cleaned
- 3) Garage area power washed

Election of Directors: A motion was made, seconded and passed to elect the following state by acclamation: Laura Nichols, John Price, Vic Moore, Richard Middleton, and Richard Peterson. Beverly Wotherspoon and Iris DeMates will serve as directors at large.

There being no further business, the meeting was adjourned.

Respectfully submitted by,


Deane Chavous, CPM
Acting Secretary
Place on the Greene
Homeowners Association

Defendant's Exhibit 5: Rules and Regulations



PLACE
ON • THE
GREENE

Rules and Regulations

All Residents, Owners and Guests
must adhere to these rules and regulations.

Violations of these Rules and Regulations are subject to fines.

Condominium living necessitates rules and regulations to insure the comfort and safety of all residents and to protect the investment of all owners.

In order to create a congenial and dignified residential atmosphere, your Board of Directors has adopted rules and regulations for the guidance of all owner, residents and guests. These rules and regulations may not please everyone entirely nor were they designed to satisfy individual personal desires. Hopefully, they will meet with the approval of a majority of owners.

1. Renting of Units

Owners are responsible for their resident's compliance with the rules and regulations of the Association. *Any violation of the rules and regulations and any fines issued will be the responsibility of the unit owner.* Unit owner (or their rental agent) is responsible for incorporating these rules and regulations into their leases and forwarding a tenant and owner acknowledgement to the Association Management Company.

2. Parking And Use Of Vehicles

Parking is by assigned parking only. Any vehicle parking in another space without permission is susceptible to towing. This space is your responsibility. If an unauthorized vehicle is parked in your space you will need to call City Garage @ 765-9780 and have the vehicle towed. When the tow truck arrives you will need some type of identification to show the driver.

Automobiles in a state of disrepair or not having current tags shall not be left on Place on the Greene property. Any automobiles not being used on a regular basis shall not be stored in the parking area. All commercial vehicles, campers, boats and trailers are prohibited from parking on any portion of the condominium property.

Because of the critical need of access for fire equipment and trash removal trucks, vehicles parked anywhere other than the marked spaces will be towed.

Motor vehicles may not be washed, waxed or repaired on the premise.

Motorcycles, mopeds and bicycles shall be parked in assigned area only and shall not be brought into hallways, elevator or into individual apartments or parked on sidewalks. Motorcycles and mopeds are not permitted in the storage rooms in the garage.

Any motor vehicle in violation of parking rules will be towed at car owner's expense.

3. Solicitation

Businesses shall not advertise their products, services or functions in the common areas of Place on the Greene. This includes using hang tags or posting anything on unit doors. Residents or unit owners may advertise their units and other personal property for sale by using only the bulletin board provided in the lobby.

DEFENDANT'S
EXHIBIT

5 4-9-09

4. Annoyances

Being thoughtful of one's neighbor is essential in a multi-family community. Therefore, excessive disturbing noises in dwellings of the common elements that interfere with the rights, comforts or other conveniences of neighbors cannot be allowed.

Noise from televisions, stereo equipment, people, etc., should be kept to a minimum at all times and especially during the hours of 10:00 p.m. through 8:00 a.m. After 10 p.m. customers of the commercial units must be served within the business location and not loitering outside commercial units. Any tables or chairs for commercial units are to be brought in by 10 p.m. to decrease this loitering problem.

The Columbia Police Department will be notified when excessive noise occurs. Owners will be held responsible and notified of complaints against their residents. Disturbances caused by any residents will result in police and/or Board action.

The use of weapons or noise makers is prohibited.

5. Pets

No pets (cats, dogs, birds, reptiles or other animals,) shall be brought, kept, maintained or harbored in the building by resident, owner or guest. Any resident currently housing a pet(s) will have until February 29, 2004 to remove said pets and come into compliance. Anyone not in compliance by or after this date will be subject to an immediate fine of \$25 per day until the pet(s) is removed from premises.

6. Signs

No sign, advertising or notices of any kind or type, including but not limited to "For Rent" and "For Sale" shall be permitted or displayed on the exterior of any residential unit nor shall be displayed in any manner as to be visible from the exterior of any unit.

7. Conduct Of Children

Parents are responsible for the general conduct of their children at all times. Damage to the common elements, limited common elements or personal property of other residents is the responsibility of the parent. Children will not be permitted to play in the hallways or parking lot at any time.

8. Exterior Items

No radio or television antenna or wiring for any such purpose may be installed on the exterior of the building. No mops, clothing, rugs, banners, or any other item shall be hung inside or outside windows or balconies in public view. No clotheslines are allowed. All window treatments from outside view should be white or off white in color.

9. Trash

Disposal of trash shall be by the use of the garbage chutes on each floor, or by the dumpster provided in the garage. Boxes, mops, brooms or other large items are not to be put into the chutes. These items must be carried down to the dumpster located in the garage. All house hold trash MUST be secured in bags. Commercial Units are not to use chute and dispose of all trash by way of dumpster.

10. Illegal Activities or Fighting

The conduction of any illegal activity or fighting on the property is prohibited.

11. Liability

The Association assumes no liability for any loss or damage to articles stored in any common or other storage area.

12. **Littering or Release of Bodily Fluids in common areas**

There is to be no littering or releasing of body fluids in any common areas which include halls, stairwells, elevator, etc. This includes but is not limited to: trash, drinks, spitting, urinating and vomiting. Violation of this rule will be considered vandalism and have an automatic fine of \$1,000.

13. **Outdoor Cooking**

Outdoor cooking with gas grills, charcoal grills or any other type of cooking device is strictly prohibited.

14. **Building Access**

The interior front door in the lobby area must remain locked at all times, as must the stairway doors opening into the garage. Propping any of these doors open is a direct violation of this rule and will result in fines. This includes commercial units propping door open for deliveries. Residents must not allow access of doors to visitors or patrons of commercial units. Elevator access from the garage is for residents only. Any resident, owner or guest allowing uninvited individuals or homeless people entry into the building is a direct violation of this rule and will result in fines.

15. **Trespassing**

Any unauthorized person found on the premises of Place on the Greene will be reported to the police and repeat violators will be prosecuted to the fullest extent of the law.

16. **Building Damage**

Any damage to common, limited common areas or other units is the responsibility of the offending party and will be considered vandalism with a minimum \$1,000 fine plus the cost of repairs. Residents or Owners are responsible for any damage caused to common areas by their guests.

17. **Fire Procedures**

If you discover a fire in your unit, please do the following:

- A. Immediately call the Fire Department (911) and tell the dispatcher the floor and unit number, as well as the buildings name and address – Place on the Greene, 2002 Greene Street.
- B. Without further delay, leave your apartment and be sure to close your door behind you.
- C. Alert the other residents on your floor by striking the nearest fire alarm along your exit route.
- D. Use the nearest stairway to leave your floor. **DO NOT USE THE ELEVATOR.**

The Penalty For Falsely Pulling A Fire Alarm OR Tampering With Any Fire Equipment Is A Fine Of \$1,000. This Is A Misdemeanor Offense Punishable by Law.

18. **Alterations**

Interior architectural alterations to units are not permitted without the written approval of the Board of Directors. Any approved alterations, additions, etc. must comply with local business codes.

No alteration or addition to any of the common elements or limited common areas shall be made by any owner or resident. All such work is the responsibility of the Board of Directors acting on behalf of the Association.

19. **Occupancy**

No one bedroom unit may be occupied by more than two persons, small (corner) two bedroom units may be occupied by no more than two persons. Large two bedroom units may be occupied by no more than three occupants.

20. **No Smoking**

There is to be NO smoking in any common areas. This includes but is not limited to lobby, elevator, hallways, stairwells, etc.

21. Rule Changes

The Board of Directors reserves the right to change or revoke existing rules and regulations and make such additional rules and regulations from time to time, as in their opinion, shall be necessary.

Residents and owners are encouraged to enforce these rules and regulations through notification of the Board, Managing Agent or Columbia Police Department, as necessary.

Violation of these Rules and Regulations will result in the following fines:

1st offense - written warning

2nd offense - \$100 fine

3rd offense - \$200 fine and possible legal action by Board of Directors

These fines are in effect for all violations except where individual fines are stated in each section.

Managing Company for Place on the Greene:

Landmark Resources, LLC
1516 Richland Street
Columbia, SC 29201
Office: (803) 799-0859

After hours emergencies: Page (803) 551-8802 this pager does not pick up numbers from some cell phones, if no call back within 10 minutes, please try a land line.

What are after hour emergencies?

1. Unknown water leaking into hallways, common areas or your unit and you are unable to contact the person above or next to you.
2. Someone trapped in elevator call 911 then call emergency number.

If you are needing to report any rule violations or need for security cameras to be checked, please call office and leave message, or on weekends page emergency number after 8:00 am.

Revised 1/04

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison R. Lee, Circuit Court Judge

Case Nos. 2007-CP-40-8107 through -8110

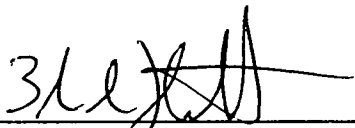
Place on the Greene Homeowners
Association, Inc., ... Respondent,

v.

W.G.R.Q., LLC, Easy Coin Laundry, Inc.,
Eva Nell Berry, and Jeffrey O. Kenney, ... Appellants.

CERTIFICATE OF COUNSEL

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


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Attorneys for Appellants

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APPEAL FROM RICHLAND COUNTY
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Place on the Greene Homeowners
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BRIEF OF APPELLANTS

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STATEMENT OF ISSUE ON APPEAL

Whether the Trial Court Erred When it Issued an Injunction Enforcing a Restrictive Covenant Instead of Holding That the Covenant Was Unenforceable Due to Waiver, Laches, or Estoppel, or Holding That Issuing an Injunction Would Be Unfair.

STATEMENT OF THE CASE

This appeal is about a restrictive covenant in the master deed for a high-rise building in Columbia. In October of 2007, the building's homeowners association filed lawsuits against four owners of commercial units in the building. Each suit claimed that the owner was allowing his or her respective unit (or unit(s)) to be used in violation a covenant that prohibits the operation of a bar, restaurant, or retail store.

Each of the defendants admitted how their units were being used. Each defendant also claimed, through various defenses, that the units had a long history of being used in violation of the covenant. The defendants further claimed that the homeowners association never registered any objection to such violations and that the claim for injunctive relief was barred by the doctrines of waiver, estoppel, and laches.

The cases were consolidated for trial and tried in front of a judge in April of 2009. See (R.p.55, pp.58-59).

The trial court issued its decision in an order signed July 1, 2011 and filed July 6, 2011. (R.p.1). This order rejected all of the equitable defenses, granted an injunction prohibiting further violation of the covenant, and awarded the homeowners association roughly \$8,500 in costs and attorney's fees under a fees and costs provision in the deed. Each defendant served and filed a notice of appeal from this order.

STATEMENT OF FACTS

The building in question is commonly referred to as the "Place on the Greene." It is a five-story residential and commercial complex on Greene Street near the University of South Carolina and the Five Points neighborhood. See (R.p.60, line 22-p.61, line 1). The first floor of the building consists of eight commercial units that face Greene Street and six residential units that face the opposite side of the building. See (R.p.61, lines 7-9) (describing the first floor); and (R.p.266) (map of first floor). The second through the fifth floors contain residential units. This appeal is a dispute between the building's homeowners association and the owners of seven of the eight commercial units.

Place on the Greene is a Horizontal Property Regime with a master deed containing restrictive covenants.¹ The covenant at issue in this case restricts the commercial units to "general office space and limited service establishments[.]" (R.p.264). It further provides:

no restaurant or establishment engaged in the preparation or delivery of food, no pool hall, game room, bar, lounge, or retail shop that relies on a volume of walk-in patrons shall be permitted.

Id. The master deed was recorded in September of 1984.

All of the commercial units in the building are violating this covenant, and they have been consistently violating it for several years.

Unit A is currently owned by a company – Easy Coin Laundry. (R.p.203, lines 5-18).

This unit is leased to a restaurant named the "Pita Pit," that has leased the unit since the year

¹Sections 27-31-10 to -440 of the South Carolina Code (2007 & Supp. 2011) contain the "Horizontal Property Act," and *Queen's Grant II Horizontal Property Regime v. Greenwood Development Corp.*, 368 S.C. 342, 360-61, 628 S.E.2d 902, 912-13 (Ct. App. 2006) contains a description of a Horizontal Property Regime — in common terms, a "condominium" development.

2000. (R.p.206, lines 6-7). Before the Pita Pit, this was a coin laundry. (R.p.203, line 21-p.204, line 7; p.205, lines 4-7). The laundry operated 24 hours a day, 7 days a week, from 1988 to 1999. (R.p.204, lines 5-7). The present owner of unit A purchased the unit in 1990. (R.p.204, lines 3-4; p.268-69). This was two years into the unit's operation as a laundry.

Tavern on the Greene — a bar/restaurant — operates in units B, C, and D. (R.p.223, lines 15-16; p.230, lines 3-5). It opened in 1999 in units C and D, and it quickly expanded into unit B. (R.p.214, lines 15-18; p.229, lines 14-16; p.230, lines 3-5). Unit B was a shoe store before it was a restaurant. (R.p.205, lines 21-23; p.229, lines 5-13). As for units C and D, the Tavern on the Greene is the latest in a series of restaurants to occupy this space. Before the Tavern on the Greene, these units housed a bar named "Dubbs." (R.p.231, lines 10-14). Before Dubbs, they were the "Duck-In." (R.p.92, lines 4-6; p.231, lines 15-16). These units originally contained a hair salon. (R.p.142, lines 24-25; p.168, lines 13-14).

The present owner of unit B purchased it in 2005. (R.p.228, lines 16-18; p.275-77). The present owner of units C and D purchased those units in 2006. (R.p.239, lines 18-20; p.286-87). Again, a bar has operated units C and D since before 1999.

Unit E is not involved in this lawsuit, but it houses an AT&T retail store. (R.p.63, line 25-p.64, line 5) (this suit does not concern unit E); (R.p.110, lines 15-22; p.61, lines 19-20); (R.p.322) (photo). It has been there since at least 1999. (R.p.230, line 21-p.231, line 3).

Units F, G, and H are owned by a limited liability company. (R.p.246, lines 4-7). A tobacco shop currently operates in unit F. (R.p.246, lines 10-13). Before the tobacco shop, this unit contained a restaurant named the "Sub Pub." (R.p.247, lines 15-18). Units G and

H are currently leased to a restaurant named "The Blue Cactus." (R.p.246, lines 8-9). The Blue Cactus opened in May of 1994, (R.p.193, lines 16-17), and there was no evidence of what was in these units before The Blue Cactus became a tenant. The present owner of these units purchased them in 2002. (R.p.246, lines 18-20).

The trial court's order was consistent with this history. The trial court found that the businesses in these commercial units had been violating the restrictive covenant "for an extended period of time." (R.pp.3-4, ¶10). The order recited testimony showing that the board of the homeowners association knew of the violations no later than 1995, see (R.p.4, ¶13), and the evidence generally established that the board took no steps toward enforcing the covenant until it sent the owners a "cease and desist letter" in 2007. See (R.pp.328-335).

In rejecting the defendant's arguments on laches, waiver, and estoppel, the court observed that the defendants were on constructive notice of the covenant because it was in their chain of title. (R.p.8, ¶11). The court also found that the defendants "did not change their position in reliance on the inaction of [the HOA board]," (R.p.10, ¶17); they "presented no other evidence that they would be prejudiced by the issuance of [an] [] injunction other than that they would be financially affected," (R.p.11, ¶22); and that because the defendants knew they were operating in violation of the covenants, they "were not lulled into a false sense of security." (R.p.12, ¶22). As for the HOA board's delay in taking any action toward enforcing the covenant, the court recited "budget restraints, the naivete of the [board], involvement in other litigation," (R.p.11, ¶21), and a "no waiver" clause in the master deed. (R.p.12 ¶25).

ARGUMENT

This case is about whether equity allows a homeowners association to enforce a restrictive covenant after the association has both actively and passively encouraged violations of the covenant for over a decade. The Court should hold that it does not.

For nearly as long as this building has been in existence, the board of directors has acquiesced in violations of the covenant. In some cases, the board openly encouraged them. Whatever the master deed says about non-enforcement not being a waiver, equity should not permit someone to enforce a rule after they encouraged its infraction for years. Equity should not allow this bait-and-switch.

In similar fashion, a request for an injunction centers on the fairness of an injunction to both sides, and though the trial court was right to take stock of an injunction's likely consequences, the court's conclusion (that the defendants' harm would just be "financial") does not support the result the court reached. Almost immediately after this building opened, the restrictive covenant crippled the marketability of the commercial units. That is why these violating uses began. The present owners (residential or commercial) purchased their units with the understanding that these uses would continue. Put differently, the residential owners bought with at least the implied understanding that they would be living over restaurants, a retail store, and a bar, and the commercial owners bought based on the express understanding that their units could house those types of businesses. An injunction gives the residential owners a windfall — it gives them *more* than they bargained for. As for the commercial owners, the opposite is true. In these circumstances, enforcing this covenant and issuing an injunction is quite *unfair*. For these reasons, the Court should reverse.

A. An Action to Enforce a Restrictive Covenant Sounds in Equity, and A Party Can Forfeit the Right to Enforce a Covenant When He Has Passively or Actively Encouraged its Violation.

This is an action in equity. See, e.g., *Buffington v. T.O.E. Enterprises*, 383 S.C. 388, 391, 680 S.E.2d 289, 290 (2009) (request for injunction to enforce restrictive covenants is in equity). In an appeal of an action in equity, this Court may find facts based on its own view of the preponderance of the evidence. *Id.* at 391, 680 S.E.2d at 290 (citing *Townes Assoc. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976)).

Restrictive covenants are disfavored and strictly construed. The source of this disfavor is “the widely held view that society’s best interests are advanced by encouraging the free and unrestricted use of land.” *Sea Pines Plantation Co. v. Wells*, 294 S.C. 266, 270, 363 S.E.2d 891, 893 (1987). In construing restrictive covenants, the Supreme Court has instructed that all doubts should be “resolved in favor of [the] free use of the property.” *Taylor v. Lindsey*, 332 S.C. 1, 4, 498 S.E.2d 862, 864 (1998). That said, the court has given clear guidance that the rule of strict construction will not be applied to defeat the plain and obvious intent of covenants. *Id.* at 4, 498 S.E.2d at 864. This body of law is presented only as background. No one disputes that this covenant prevents an owner or tenant of a commercial unit at Place on the Greene from operating a retail shop, a restaurant, or a bar.

A party may use a number of tools to defend an action to enforce a restrictive covenant. Those tools include the defenses of estoppel, waiver, and laches. The Supreme Court has explained:

Although there are technical differences in the doctrine of laches, waiver and estoppel, as applied in equitable actions for enforcement of restrictive covenants, . . . [t]he essential difference arises in whether the affirmative

defense is based on passivity (laches) or an affirmative act (waiver or estoppel).

Circle Square Co. v. Atlantis Dev. Co., 267 S.C. 618, 628, 230 S.E.2d 704, 708 (1976).

These doctrines are all affirmative defenses, and the burden of proof to establish them is on the party who presents them. *Id.* at 628, 230 S.E.2d at 708.²

B. The Place on the Greene Engaged in a Prolonged Course of Conduct That Passively and Actively Encouraged the Operation of Retail Establishments, Restaurants, and Bars.

This is what the Place on the Greene and its homeowners association did to encourage the violation of this covenant:

They never took any action to enforce the covenant until the June of 2007 “cease and desist” letters, despite the fact that there has been a walk-in business in the building since the very first sale of units C & D to the hair salon. (R.p.142, line 18-p.143, line 15). The developer even modified units C & D to accommodate the salon. *Id.* Walk-in stores have thus been in the building — without hint of enforcement — since sometime around 1985. These include a 24/7 laundry that operated from 1988 to 1999, see (R.p.204, lines 5-7), and a cell phone store that has been there since at least 1999. (R.p.230, line 21-p.231, line 3).

²Another tool a party can use to avoid a restrictive covenant is a “change of conditions” claim. A covenant will not be enforced when there has been “such a change in the character of [a] neighborhood [so] as to render the enforcement of the covenant valueless to the covenantee and oppressive and unreasonable as to the covenantor.” *Menne v. Keowee Key Prop. Owners’ Ass’n*, 368 S.C. 557, 564, 629 S.E.2d 690, 694 (2006); see also *Pitts v. Brown*, 215 S.C. 122, 54 S.E.2d 538 (1949). A trivial change in character will not suffice. There must be “so radical a change that the original purpose of the restrictive covenant can no longer be realized.” *Menne*, 368 S.C. at 564, 629 S.E.2d at 694. This theory can be used offensively (in a declaratory judgment) or defensively. See *Dunlap v. Beaty*, 239 S.C. 196, 122 S.E.2d 9 (1961) (declaratory judgment); *Holling v. Margiotta*, 231 S.C. 676, 100 S.E.2d 397 (1957) (affirmative defense). Here again, this is presented as background.

There has been a restaurant in the building since at least 1993. The evidence of this is in the minutes of the homeowners association's 1993 annual meeting which discuss "The Duck-In Restaurant." (R.p.342). The Blue Cactus opened in units G and H in 1994. Restaurants have thus operated in the building — without hint of enforcement — from at least March of 1993 (the date of the "Duck-In" minutes) to the June of 2007 "cease and desist" letters. The minutes from the homeowners association's 1995 annual meeting even recount that the meeting was held *in* one of the restaurants. See (R.p.344).

A pattern of non-enforcement is passive action, but the homeowners association's encouragement was active too. The 1993 meeting minutes record "The Duck-In Restaurant has notified the Board of its intent to build a deck in front of the commercial units currently occupied by [retail establishments]." (R.p.342). The minutes continue "[t]he opinion of those present at the meeting was that the deck, done properly, could be an asset to the building." *Id.*

The homeowners association board also gave permission for the Blue Cactus to cut a hole through the exterior of the building to accommodate the ventilation for the restaurant's grill. (R.p.169, line 20-p.170, line 13). Cutting the hole to allow the grill vent was a specific request that was made to the board and granted, by a vote. See (R.p.171, lines 3-6). Also, some time in the mid-1990's, a party approached the homeowners association with a request that the businesses be able to sell beer and wine. (R.p.168, lines 17-23). The record suggests that this request was also granted by the board via vote. (R.p.179, lines 1-2).

The 1995 annual meeting minutes recount that the building's doors were relocated so patrons of the commercial units could access the restrooms, but not the rest of the

building. (R.p.344). The minutes further recount that the “[c]ommercial owners and tenants have been notified,” presumably by the board, “that they will be responsible for maintaining the restrooms.” *Id.*

In 2004, the board of the homeowners association published “new rules and regulations.” See (R.p.99, lines 18-22) (testimony describing the rules); (R.p.347-350) (the rules themselves). These rules regulated how the businesses in the commercial units could advertise. (R.p.347) (rule titled “Solicitation”). The rules also instructed that after 10 p.m., the businesses could only serve patrons that were inside the commercial units, and that the trash from the commercial establishments was to be disposed of in a certain way. (R.p.348) (see rules titled “Annoyances” and “Trash”).

Telling someone how to take out their trash does not equal ratifying the violation of a restrictive covenant, but the homeowners association board did more than that. Here, the board engaged in a *prolonged* course of conduct — in the case of walk-in stores, 20+ years; in the case of restaurants, 12+ years — of passive and active accommodation. The board gave permission for the Duck-In to build a deck, the Blue Cactus to install its grill, and whatever bar was there to serve beer. What is more, the physical circumstances of this case — specifically, the layout of this building — should say something: this suit concerns one building and how the (very visible) street level units in that one building can be used. This is not a sprawling development where violations can go unnoticed for a period of time, and these violations were not violations that occurred in secret. For over a decade, non-conforming businesses openly occupied the commercial units, in full view of the other unit owners and the world. The owners of the residential units were directly confronted with

these violations whenever they walked in to or out of their property, and whenever they turned in or out of the parking lot.

C. The Trial Court's Analysis Was Not Faithful to These Principles, and its Conclusions with Respect to Notice of the Covenant and the Harm of an Injunction Do Not Support the Issuance of an Injunction.

The trial court's primary answer to the board's pattern of non-enforcement and encouragement was to observe that because the defendants knew they were operating in violation of the covenants, they "were not lulled into a false sense of security." (R.p.12, ¶22). With the utmost respect for the trial court, that statement directly conflicts with the law as it pertains to these equitable defenses. The trial court imputed knowledge of the covenant to the defendants because it was in their chain of title. See (R.pp.11-12, ¶22) ("One cannot avoid the contents of the document by failing to read it."). If this were the touchstone, the only defense to an action to enforce a restrictive covenant would be that the covenant is not in the defendant's chain of title. Many cases exhibit that this is not so. See, e.g., *Gibbs v. Kimbrell*, 311 S.C. 261, 428 S.E.2d 725 (Ct. App. 1993) (a covenant can be waived by conduct); *Hunnicutt v. Rickenbacker*, 268 S.C. 511, 234 S.E.2d 887 (1977) (enforcing restrictive covenants because the character of the neighborhood had not changed).

The defendants *were* "lulled into a sense of false security," but it did not come from ignorance of the covenant. Instead, it came from the board's pattern of non-enforcement and enabling. Though the court generally does not look to the parties to give it the applicable law, almost every statement the plaintiff or its witnesses made about the board's lack of diligence in policing the covenant is contrary to the law. For example, the plaintiff's trial

counsel argued that though a police officer might allow a motorist to speed by him every day, that does not effect the officer's ability to issue a speeding ticket. See (R.p.63, lines 1-7). That might be the law with respect to traffic violations, but it is not the law with respect to restrictive covenants. As another example, the current president of the homeowners association offered that the board should not be "penalized" for never having enforced the covenant because "we're just a group of people, five people, that constantly changes year after year." (R.p.85, lines 10-12). Imputed knowledge works both ways. If the commercial unit owners are to be imputed with knowledge of the restrictive covenants, the same reasoning requires that the board be imputed with knowledge of the master deed, the covenant, and that certain conduct will render restrictive covenants unenforceable.

Rabon v. Mali, 289 S.C. 37, 344 S.E.2d 608 (1986), involved several lots that were subject to a covenant restricting the lots to use for "residential purposes." An individual (Mr. Forbes) purchased four of the lots plus the single building on them and "used the premises for various businesses and for his residence from 1959 until November 1983." *Id.* at 39, 344 S.E.2d at 609. Two of Mr. Forbes's lots were exempt from the covenant, two of the lots were not, and the building was on exempt and non-exempt lots. Mr. Forbes sold the property to people who began to operate a daycare on the premises, and the neighbors filed suit.

In finding that laches applied, the Supreme Court observed "[i]t is obvious from the evidence that the residents of the Lakeside subdivision knew of the businesses operated by Forbes[,] and some of the residents were also customers." *Id.* at 39, 344 S.E.2d at 610. As it pertained to the purchasers of Mr. Forbes's properties, the Court noted they "purchased the property with knowledge of its prior commercial use," and spent money on improvements

to the property. *Id.* at 40, 344 S.E.2d at 610. The Court held that the daycare could continue, but that the new owners could not pave one of the restricted lots to serve as a parking lot for the business. The knowledge of the prior commercial use prevented enforcing the covenant.

Rabon should be useful to the present case in a couple of respects. First, it shows why the lower court's conclusion about financial harm to the defendants should have cut the other way. All of the current owners of the commercial units were witnesses at trial. The owner of unit A purchased it in 1990. See (R.p.268-69). The owner of unit B bought in 2005. See (R.p.277-77). The owner of units C & D bought in 2006. (R.p.286-87). The owner of F, G, and H bought in 2002. (R.p.308-312). All of these purchasers bought with actual or constructive knowledge of the covenant, but to be fair, all also bought with the understanding that the units could be used as they were being used and had been used for some time. Like the purchasers in *Rabon*, they bought based on a *long* history of these activities being permitted *despite* the covenant.

And by the same token, the testimonies offered by the owners of the residential units indicates that although they may not prefer to live (or own rental units) over retail stores, restaurants, and a bar, they bought their units with knowledge that those businesses were there. The current president of the homeowners association purchased her unit in May of 2002. (R.p.67, lines 2-3). Though she thought it irrational for people to purposefully live over a bar, her testimony was that she "assumed those commercial people could be there." (R.p.84, lines 11-17).³ The other residential owner that testified at trial purchased his unit

³The president of the homeowners association board does not reside in the building, and she testified that "the great majority [of the residential units] are leased." (R.p.66, lines 19-20; p.92, lines 17-18).

in 2001. (R.p.127, line 25-p.128, line 2). With the exception of the tobacco shop operating in unit F, this was years after the present tenants of the commercial units had been operating the businesses that are still there today. See (R.p.246, lines 14-15).

“A court does not automatically issue a mandatory injunction once it finds a restrictive covenant has been violated.” *Sea Pines Plantation Co.*, 294 S.C. at 274, 363 S.E.2d at 896. Instead, “[t]he court must balance the equities between the parties; and if the harm to the defendant outweighs the plaintiff’s benefit, no relief will be granted.” *Id.* at 274, 363 S.E.2d at 896.

This is how the equities balance: the commercial owners bought their units with either the incorrect assumption that these uses were permitted or the correct assumption that the restrictive covenant would not be enforced. The residential owners bought their units with these violations occurring in full view. Equity should not take away the very thing one party bargained for and, in the same stroke, give someone else *more* than their fair bargain.

The history of these commercial units should also be telling. One of the witnesses to testify at trial was the current property manager. (R.p.136, lines 13-17). This individual had also been involved with the initial development of the Place on the Greene, (R.p.137, lines 7-23), and had served on the homeowners association board “pretty consistently” from 1986 to 1995. (R.p.150, lines 4-8).

The property manager testified that the original “target market” for the residential units was professionals living and working downtown. (R.p.140, lines 2-7). Once the residential units went on the market, however, parents of college students “became [] the buyers of a lot of them.” (R.p.140, lines 9-15). As for the commercial units, the “concept”

was that the first floor would be general office space for “a CPA or a lawyer[.]” (R.p.141, lines 6-10). These units were not actively marketed and did not sell, (R.p.142, lines 12-17), and as it pertained to leasing the commercial units, parking was a substantial problem. The units were allotted only one parking space a piece. (R.p.162, line 20-p.163, line 9).

Some of the building’s developers proposed an amendment to the covenant in 1985. See (R.p.337-38). This was before the first meeting of the homeowners association board. (R.p.157, lines 3-11). The property manager testified that such proposals were made “on a regular basis.” (R.p.158, lines 22-25). One such proposal in 1991 — justified by vacancy in the commercial units — failed because less than 75% of the owners were present at the annual meeting. See (R.p.340). The property manager admitted that she was on the homeowners association board in 1993 and that she knew the deed was not being followed. (R.p.178, lines 6-11). She opined that the board was “just trying to make it work” because some of the commercial spaces were vacant. (R.p.190, line 21-p.191, line 8).

That is one thing about this case that should throw the inequity into stark contrast: this is not a case where there have been minor or inconsequential exceptions to a covenant,⁴ nor is it a case where the purpose of the covenant may yet be realized by enforcing it.⁵ All of the evidence suggests that the only valuable uses for these commercial units — in the

⁴See, e.g., *Kneale v. Bonds*, 317 S.C. 262, 452 S.E.2d 840 (Ct. App. 1994) (“A party’s waiver of the right to object to a minor violation of a covenant does not result in waiver of his right to object to a subsequent and more substantial violation”) and *Gibbs*, 311 S.C. at 261, 428 S.E.2d at 725 (party’s consent to the operation of a blueberry farm did not equal consent to the operation of an automobile repair business).

⁵See, e.g., *Flinkingshelt v. Johnson*, 258 S.C. 77, 187 S.E.2d 233 (1972) and *Dunlap*, 239 S.C. at 196, 122 S.E.2d at 9 (analyzing why the purposes of the covenants either could (*Flinkingshelt*) or could not (*Dunlap*) be realized).

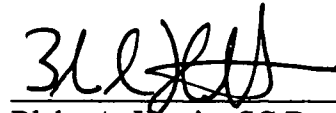
future or the past — are as retail or hospitality establishments. The fairest thing is for those uses to continue. In fact, the record in this case reflects that *none* of these units has ever contained a business that did not violate this covenant. Among all of the arguments in this case, that should be one of the most telling.

CONCLUSION

The appellants respectfully ask this Court to reverse because the trial court's conclusion does not faithfully apply the law regarding restrictive covenants and because issuing an injunction in these circumstances would be *unfair*.

October 3, 2012

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS

Allison R. Lee, Circuit Court Judge

Case No. 07-CP-40-8107
Case No. 07-CP-40-8108
Case No. 07-CP-40-8109
Case No. 07-CP-40-8110

Place on the Greene Homeowners Assoc., Inc., Respondent,

v.

W.G.R.Q., LLC, Easy Coin Laundry, Inc.,
Eva Nell-Berry, and Jeffrey O. Kenney, ... Appellants.

FINAL BRIEF OF RESPONDENT

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COUNTERSTATEMENT OF THE CASE

These four actions were commenced with the filing on December 4, 2007, of complaints by Place on the Greene Homeowners Assoc., Inc., the respondent herein, against, respectively, W.G.R.Q., LLC; Easy Coin Laundry, Inc., Eva Nell Berry, and Jeffrey O. Kenney, the appellants herein. The respondent alleged that the appellants were owners of a total of seven condominium units of Place on the Greene, a condominium regime located on Greene Street in Columbia. The respondent further alleged that businesses were being conducted in these units in violation of restrictive covenants found in the Master Deed, prohibiting the operation of restaurants, bars, and other businesses dependent upon a volume of walk-in patrons. All four appellants admitted the operation of prohibited businesses but asserted the defenses of laches, waiver, and estoppel.

The cases were consolidated and tried before the Honorable Allison R. Lee, Presiding Judge of the Fifth Judicial Circuit, on April 9, 2009. By order dated July 1, 2011 and entered on July 6, 2011, Judge Lee rejected the defenses and enjoined further operation.

The appellants timely served notice of appeal.

STATEMENT OF FACTS

Place on the Greene is a condominium regime comprised of seventy-one units in the five-storey building at 2002 Greene Street in Columbia. Sixty-three units are one- and two-bedroom residential apartments. Seven of these are located on the southern half of the street-level floor. On the northern half of street-level, facing Greene Street, are eight commercial units, seven of which are at issue in this action. At time of trial in 2009, three of these units were leased to two restaurants, Pita Pit and Blue Cactus; three were occupied by a bar, Tavern on the Greene; and one was leased to a convenience store, the Tobacco Shop.

Place on the Greene was developed in 1983–85 by Greene Street Partnership, a

limited partnership of Security Federal Savings & Loan Association and two individuals, Beau Powell and Craig Stoneburner. When the Master Deed for the condominium regime was written, the developer included a prohibition against the operation of bars or restaurants in the commercial units, as well as any "retail shop that relies on a volume of walk-in patrons" [Master Deed, Art. X § 3, p. 13, R. 264.] The intention was to limit the use of the commercial units to professional offices and the like. [R. 141.]

In November of 1985 the developer deeded six of the eight commercial units to its limited partners — two units to Mr. Stoneburner and four to Mr. Powell. Within weeks the condominium property manager (selected by the developer) wrote to the homeowners, recommending an amendment of the Master Deed to remove the prohibition of bars and restaurants in the commercial units. [R. 159.] The property manager falsely represented that this change would be for the good of the homeowners. [Pl. Ex. 12, R. 337; R. 156; R. 158.] This effort failed. Powell and Stoneburner persisted in trying to remove the restrictions, but never succeeded. [R. 90; 151; 158; 161–62.]

Powell and Stoneburner responded to their failure to abolish the prohibitions by simply ignoring them. They first began to violate the prohibitions of the Master Deed — which they themselves had written — in 1988, when Stoneburner rented his Unit A to a 24-hour laundromat [R. 203] and his Unit B to a shoe store. [R. 205.] The board of directors of the homeowners' association — dominated by board member Powell — took no action. By 1993, a jeweler and a "tan spa" occupied two of the units (not identified in the evidence). [R. 92.] By 1995, Bo-D's restaurant occupied one of the units. [R. 93.] In 1994, breaching the restrictions of the Master Deed which he co-authored, Powell rented his Units F and G to a restaurant, the Blue Cactus. [R. 193.] Several years earlier, Powell had rented Unit F to Sub Pub restaurant and bar. [R. 120–21.] In 1999, the shoe store in Unit B was succeeded by a new bar, Tavern on the Greene, which also rented Units C and D. Thus, Tavern on the Greene occupied

three of the eight commercial units. The laundromat in Unit A closed in 2000 and was replaced by a restaurant, Pita Pit. Powell sold his commercial units in 2002 to a new owner, who continued the lease of Units G and H to the Blue Cactus restaurant, and rented Unit F to a convenience store in 2009. [R. 250.]

Beau Powell knew that the restaurant, bar, laundromat, and shoe store tenants to whom he and Stoneburner rented were in violation of the Master Deed restrictions which they had adopted for Place on the Greene. [R. 90.] He likewise knew that it is the duty of the board of directors of the homeowners' association — of which he was the dominant member for ten years — to enforce those covenants. Powell was able to intimidate the board into inaction. [R. 167.] He controlled and dominated the board. [R. 167; 178.] He was louder and stronger than the other board members. [R. 181.] He was knowledgeable and authoritative. [R. 181.] Most of the other board members trusted him [R. 175] or at least wanted to appease him. [R. 190–91.] He assured them that he was within his rights to rent to the Blue Cactus and that restaurants were allowed. [R. 171; 175.] They believed him. [R. 189; 178.] The only board member who opposed him was a lone voice. [R. 178–79.] Moreover, the board had more-pressing problems of a financial nature to deal with, due mainly to the stucco which Powell had convinced the developer to substitute for the architect's recommendation [R. 143], embroiling the association in stucco litigation. [R. 159–160.] Homeowners are generally reluctant to serve on such boards and often are naive about their duties and about the legalities of condominium operation [R. 175], rendering them especially vulnerable to lingering developer influence. This was clearly true of the board members who allowed Powell and Stoneburner to violate the covenants as they did.

Each of the present owners of the eight commercial units took ownership subject to the restrictions found in the Master Deed.¹ Three of the present owners

¹ Every owner has notice of the Master Deed, of course. More than that, deeds in the chain of title of every unit involved in this suit contain the following express
(continued...)

acknowledged *actual* notice. The present owner of Unit A was given a copy of the Master Deed when he bought from Stoneburner in 1990. [R. 212.] He continued to operate his laundromat until 2000, when he rented Unit A to Pita Pit restaurant in violation of the restrictions.² The present owner of two of the three units leased to Tavern on the Greene bar was advised at closing by her attorney of the restriction against bars, but shrugged and chose to take the risk. [R. 235.] The present owner of Units F, G, and H rented Unit F to a convenience store in violation of the restrictions *after* this suit was brought to enjoin his violation with respect to the Blue Cactus restaurant in Units G and H.

All the problems generated by the restaurants and the bar — constant breaches of building security, noise and loud music every night until 3 a.m. or later, crowds and commotions on the sidewalk outside, excessive garbage, roaches — are the subject of constant complaints to the Association by the residents. [R. 71; 79.]

The bar in Units B, C, and D is open until 2 o'clock in the morning on Saturdays

¹(...continued)
agreement:

The provisions of the Master Deed . . . shall constitute covenants running with the land and shall bind any person having at any time any interest or estate in the Unit, his heirs and assigns, . . . as though such provisions were recited and stipulated at length herein. By subscription to and acceptance of this Indenture Deed, Grantee acquiesces in the provisions of the Master Deed

Pl. Ex. 3, ¶ 4, R. 272, deed of Unit A dated 11/8/85 from the developer to Stoneburner; Pl. Ex. 4, ¶ 4, R. 283, deed of Unit B dated 11/8/85 from the developer to Stoneburner; Pl. Ex. 4, ¶ 4, R. 280, deed of Unit B dated 2/24/04 from Stoneburner to EHM Investments, LLC (slight, immaterial variation in language of last sentence); Pl. Ex. 5, ¶ 4, R. 305, deed of Units C and D dated 10/29/84 from the developer to Bain; Pl. Ex. 6, deed of Units F, G, and H from the developer to Powell dated 11/8/85 (apparently inadvertently omitted from Record on Appeal).

² The present tenant, Pita Pit, is a restaurant chain with approximately ninety franchised locations nationwide. See www.pitapitusa.com, last visited 6/27/12. A sophisticated tenant such as this would surely examine the restrictive covenants before leasing a condominium unit for a restaurant.

and Sundays and 3 o'clock on the other five days of the week. [R. 217.] Pita Pit restaurant is open until 3 a.m. [R. 112.] The Blue Cactus restaurant serves until 10 p.m. but its employees do not leave until midnight or 1 a.m. [R. 196.] Crowds congregate outside the bar until it closes. [R. 120.] The noise from their commotion, arguments, confrontations, and occasional fights [R. 120] can be heard throughout the building, where the residents of sixty-three apartments are trying to sleep. The residents can hear "every word they say all the way up to the fifth floor." [R. 120.] It gets louder as the night passes. "[W]hen . . . people get drunker and drunker, you're going to have — you know, the noise escalates." [R. 120.] Frequent complaints to the police have little effect. [R. 121; 124; 226, lines 2–8.]

The vagrants who inhabit the Five Points area are adept at slipping into the building when Pita Pit employees habitually leave the back door unlocked and ajar [R. 117]; or when the bar's employees fail to lock the door behind them when they leave the building to deposit garbage in the dumpster. [R. 116; 118–19; 125–26; 173; 207; 216.]

The seventy-one apartments of Place on the Greene have only one dumpster for their garbage and trash, insufficient in capacity for the high volume of garbage generated by the restaurants and the bar. [R. 119.] The restaurants and bar deposit waste into the dumpster far out of proportion to their number of units, making the dumpster area filthy. They roll their garbage bins through the residential hallways at any hour to reach the dumpster. Vagrants rummage through the dumpster looking especially for Pita Pit food — their favorite. "[They] leave a complete mess back there." [R. 119.] "[L]eaving it smeared all around the garbage area itself."

The roach problem in the building is inevitably magnified by the restaurants and their garbage. [R. 118.]

The condominium regime pays a single water bill for all seventy-one apartments. The residents thereby subsidize the restaurants and bar in their disproportionate use of

water. [R. 122–23.]

The owners of the commercial units testified that the value of their property would drop if the provisions of the Master Deed were enforced. They did not attempt to quantify the anticipated decrease in value with expert testimony or otherwise.³ On the other side of that coin, there is likewise no evidence of the extent to which the value of the sixty-three residential units at Place on the Greene has been negatively impacted by the disregard for the clear restrictions which bind this condominium regime. One needs no expert evidence to conclude that the impact must have been substantial.

The Master Deed contains the following non-waiver clause:

No waiver by Association. The failure of Association or of the owner of a unit to enforce any right, provision, covenant or condition which may be granted by this Master Deed . . . shall not constitute a waiver of the right of the Association or of the owner of a unit to enforce such right, provision, covenant or condition in the future.

ARGUMENT

The circuit court did not abuse its discretion in rejecting the defenses of laches, waiver, and estoppel since the decision is supported by evidence and is not controlled by error of law.

The covenants of Place on the Greene plainly prohibit bars and restaurants, among other businesses. *See: Heape v. Broxton*, 293 S.C. 343, 345, 360 S.E.2d 157, 158 (Ct. App.1987) (“Where the language used in a restrictive covenant is unambiguous, there is no room for construction and the language must be enforced in accordance with its plain meaning.”).

“Restrictive covenants upon real estate are contractual in nature and bind the parties thereto just like any other contract.” *Hynes Family Trust v. Spitz*, 384 S.C. 625,

³ Units F, G, and H were a small component of a mass of properties purchased from Powell by W.G.R.Q. in 2002. [See Pl. Ex. 6, R. 308, deed from Powell to W.G.R.Q., LLC, dated 5/24/02. The conveyance was “subject to easements, conditions and restrictions of record”.] The principal of W.G.R.Q. acknowledged that his company would survive an injunction. [R. 253.]

682 S.E.2d 831, 833 (Ct. App. 2009).⁴

The duty to comply with these covenant restrictions originated in contract but is reinforced by statute. It is the public policy of this State, adopted by the General Assembly, that condominium covenant restrictions be *strictly complied with*.

Each co-owner shall comply strictly . . . with the covenants, conditions and restrictions set forth in the Master Deed Failure to comply with any of the same shall be grounds for . . . injunctive relief

S.C. Code Ann. § 27-31-170. As was the case in *Kneale v. Bonds*, 317 S.C. 262, 452 S.E.2d 840 (Ct. App. 1994):

Both the [condominium] By-Laws and the Horizontal Property Act provide that the Master Deed should be strictly enforced.

Id. at 267, 452 S.E.2d at 842.⁵

This is not a case involving a single past event, as where an Association asks the court to order removal of an offending structure which the Association failed in a timely manner to prevent. This is a case of progressively worsening, intentional, ongoing violations of the plain prohibitions of the covenants which govern conduct in this community. Each day that the appellants continue to violate the restrictions in the Master Deed is a fresh violation of Section 27-31-170 and the Master Deed.

⁴ Accord: *Taylor v. Lindsey*, 332 S.C. 1, 4, 498 S.E.2d 862, 863 (1998); *RV Resort and Yacht Club Owners Assoc. v. BillyBob's Marina, Inc.*, 386 S.C. 313, 320, 688 S.E.2d 555, 559 (2010); *Hardy v. Aiken*, 369 S.C. 160, 631 S.E.2d 539 (2006); *Sea Pines Plantation Co. v. Wells*, 294 S.C. 266, 270, 363 S.E.2d 891, 894 (1987) (restrictive covenants are voluntary contracts between the parties, and courts should enforce such contracts unless they are indefinite or violate public policy); *Houck v. Rivers*, 316 S.C. 414, 450 S.E.2d 106 (Ct. App. 1994) (same); *Seabrook Island Property Owners Assoc. v. Pelzer*, 292 S.C. 343, 347, 356 S.E.2d 411, 414 (Ct. App. 1987) ("Restrictive covenants are contractual in nature and bind the parties thereto in the same manner as any other contract.") (citing *Palmetto Dunes Resort v. Brown*, 287 S.C. 1, 336 S.E.2d 15 (Ct. App. 1985)).

⁵ The "strict enforcement" by-law found in *Kneale v. Bonds* is materially identical to Art. XIX, § 1 of the Master Deed of Place on the Greene. Pl. Ex. 1, p. 22, R. 265.

A. The circuit court did not abuse its discretion in rejecting the defense of laches.

The Association's failure to act when these violations began was due to the self-interested dominance of one of the developers on the board for the first ten years of its operation. [R. 160.] If the Association had sued Mr. Powell or Mr. Stoneburner for these violations while they still owned the units in question, the court would not have heard these developers to claim laches. As in *Maxwell v. Smith*, 228 S.C. 182, 195, 89 S.E.2d 280, 286 (1955):

[The developer], as the author of the covenant he was violating, should not be heard to insist that immediate resort to the courts is prerequisite to the enforcement of [the covenant].

The same is true of the developers' successors in interest, who inherit the unclean hands of their grantors.

After the developers had gotten away with their initial violations, a succession of unpaid, non-professional owners, serving one-year terms on the board, mistakenly regarded the early precedents as legitimate and binding.

Laches is an affirmative defense which must be pled and proved. Rule 8(c), SCRCP; *Mack v. Edens*, 306 S.C. 433, 412 S.E.2d 431 (Ct. App.1991). The determination of whether laches has been established is largely within the sound discretion of the trial court. *Emery v. Smith*, 361 S.C. 207 603 S.E.2d 598, 602 (Ct. App. 2004), citing *Brown v. Butler*, 347 S.C. 259, 265, 554 S.E.2d 431, 434 (Ct. App. 2001), and *Gibbs v. Kimbrell*, 311 S.C. 261, 269, 428 S.E.2d 725, 730 (Ct. App.1993); *Grossman v. Grossman*, 242 S.C. 298, 309, 130 S.E.2d 850, 855 (1963).

Under the doctrine of laches, if a party, knowing his rights, does not seasonably assert them, but by unreasonable delay causes his adversary to incur expenses or enter into obligations or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights. *Chambers of S.C., Inc. v. County Council for Lee County*, 315 S.C. 418, 421, 434 S.E.2d 279, 280 (1993). The party seeking to establish laches must show: (1) a delay, (2) that was unreasonable under the circumstances, and (3) prejudice. *Hallums v. Hallums*, 296

S.C. 195, 199, 371 S.E.2d 525, 528 (1988). When [circuit court] declines to make a finding of laches, that decision will not be disturbed absent an abuse of discretion. *Brown v. Butler*, 347 S.C. 259, 265, 554 S.E.2d 431, 434 (Ct. App. 2001); *Premium Inv. Corp. v. Green*, 283 S.C. 464, 473, 324 S.E.2d 72, 78 (Ct. App. 1984).

King v. James, 388 S.C. 16, 694 S.E.2d 35 (Ct. App. 2010).

The standard of review is abuse of discretion. "An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion without evidentiary support." *Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. 448, 673 S.E.2d 448 (2009). *Accord: Mazloom v. Mazloom*, 382 S.C. 307, 675 S.E.2d 746 (Ct. App. 2009); *Siau v. Kassel*, 369 S.C. 631, 632 S.E.2d 888 (Ct. App. 2006).

An abuse of discretion occurs when the circuit court's ruling is based upon an error of law, such as application of the wrong legal principle; or, when based upon factual conclusions, the ruling is without evidentiary support; or, when the circuit court is vested with discretion, but the ruling reveals no discretion was exercised; or when the ruling does not fall within the range of permissible decisions applicable in a particular case, such that it may be deemed arbitrary and capricious.

State v. McClinton, 369 S.C. 167, 169, 631 S.E.2d 895, 896 (2006).⁶

Since this action sounds in equity, this Court of Appeals may find the facts *de novo*. The facts, however, are not materially in dispute.⁷ Authority to find the facts anew is not the same as authority to substitute the discretion of the appellate court for the discretion of the court of common pleas. The authority to decide whether to issue an injunction on these facts is confided in our system to the discretion of the court of common pleas. The standard for appellate review is abuse of discretion, not trial *de novo*. Only if the defenses of the appellants have been proved as a *matter of law* may

⁶ In the case of *Appeal of Brown*, 288 S.C. 530, 535, 343 S.E.2d 649, 652 (Ct. App. 1986), the lower courts' finding of no laches was affirmed because not "manifestly erroneous."

⁷ See: *Cedar Cove Homeowners Assoc., Inc. v. DiPietro*, 368 S.C. 254, 628 S.E.2d 284, 286 (Ct. App. 2006) ("The resolution of this appeal, however, turns not on a credibility assessment, but on the application of largely undisputed facts to unambiguous restrictive covenants.").

they prevail here. Unless the only reasonable conclusion is that the Association has waived the right to complain of these continuing violations, or is guilty of laches to the prejudice of the appellants, or is estopped, this appeal must fail.

"Delay alone in the assertion of a right, without injury to the adversary, does not constitute laches." *Gibbs v. Kimbrell*, 311 S.C. 261, 269, 428 S.E.2d 725, 730 (Ct. App.1993). The defense fails unless prejudice flows from the delay. See: *Wall v. Huegenin*, 305 S.C. 100, 102, 406 S.E.2d 347, 349 (1991) ("A mere delay in time does not constitute laches. Rather, the determination must be made in light of the specific facts of each case, taking into consideration whether the other party has been prejudiced by the delay.") (holding the failure for thirteen years to exercise an option to purchase land was not unreasonable and laches did not apply); *Grossman v. Grossman*, 242 S.C. 298, 309, 130 S.E.2d 850, 855 (1963) (a delay of over seven years was reasonable where there was no prejudice to the defendant).

The appellants made no effort to demonstrate the nature or extent of any financial loss they might incur if they are required to abide by the covenants. Three of the four appellants own six of the seven commercial units in question. They are not the lessees who operate the bar, the restaurants, or the convenience store in those units.⁸ The appellants did not claim to have made improvements to their units in reliance upon non-enforcement of the covenants, or that such improvements — if any — were not amortized long ago or could not be salvaged. Since these actions were brought in 2007, the appellants have continued for five years to profit from the conduct of prohibited businesses in their units. Appellant Easy Coin renewed the expiring lease of the restaurant in Unit A three years after this action began. Appellant W.G.R.Q. leased Unit F to a convenience store long **after** this action was commenced. The appellants offered no expert evidence of diminution in value of their units if the covenants are

⁸ Appellant Kenney owns one of the three units occupied by the bar which he runs.

enforced.⁹ See: *Buffington v. T.O.E. Enterprises*, 383 S.C. 388, 393, 680 S.E.2d 289, 291 (2009) ("In our view, it would be inequitable to consider Petitioners' financial loss in purchasing and improving the land since they were on notice of the covenants when they purchased the property.").

The defenses raised by the appellants would be unavailable to them if the party seeking injunctive relief were a new owner of any one of the sixty-three residential units. Any of these owners could seek injunctive relief, with or without the participation of the Homeowners' Association. Section 27-31-170 authorizes an action for injunctive relief "... in a proper case, by an aggrieved co-owner." The Master Deed confers the same right. Pl. Ex. 1, Art. XIX, § 1, p. 22, R. 265. Now that the Master Deed restrictions — and their flagrant violation — have become generally known in the community of owners, it is inevitable that one or probably many new apartment owners would seek injunctive relief themselves if this action by the Association were deemed to be barred. In all likelihood, reversal of this judgment would only postpone, and not prevent, enforcement of the restrictions of the Master Deed. Neither our court system nor the parties to this controversy would be well-served by such a course.

B. The circuit court did not abuse its discretion in rejecting the defense of waiver.

1. *Waiver is an intentional relinquishment of a known right. Early on, most of the unpaid, non-professional board members were misled by the developer into believing that they could do nothing. Later on, their successors mistakenly assumed that any commercial operation was permitted because the precedent had been set. There was no waiver.*

The question is not whether the Association should have acted earlier to enforce the covenants of the Master Deed. The question is whether the Association's failure to act earlier was a waiver of the right **ever** to act.

The first business to open — a hair salon in Units C and D [R. 142] — was not in

⁹ Nor is there any evidence of the damage done to the value of the 63 residential units by the progressively more-obnoxious use of the commercial units, but the inevitability of that damage is obvious.

violation of the covenants because such businesses operate by appointment and do not cater to "a volume of walk-in patrons". [Master Deed, Art. X § 3, R. 264.] Violations of the covenant by the developers began soon thereafter, and have gotten progressively worse in their consequences. The first violation of the covenant restrictions was a laundromat in Stoneburner's Unit A. Laundromats typically do not generate the kinds of objectionable behavior described in the record of this case. After a shoe store, a jeweler, and short-lived restaurants, Powell rented Units F and G to the Blue Cactus restaurant in 1994. Although in violation of the covenants, the Blue Cactus closes at 10:00 p.m.

This progression culminates today with a second restaurant in Unit A and a bar in Units B, C, and D. Both of these are open until the wee hours and both generate a whole new level of obnoxious conduct, incompatible with residential use of the other sixty-three apartments. If the appellants can get away with this level of objectionable use of their units, there is nothing to stop all eight of the commercial units being converted to all-night bars and restaurants.

The failure to enforce these deed restrictions against a laundromat or a shoe store is not a waiver of the right to put a stop to all-night bars and restaurants.

2. *The non-waiver provision of the Master Deed is unambiguous and does not contravene public policy. Accordingly, it applies here.*

The Master Deed provides that a failure by the Association to enforce the provisions of the Master Deed shall not constitute a waiver of the right to enforce those provisions in the future.

No waiver by Association. The failure of Association or of the owner of a unit to enforce any right, provision, covenant or condition which may be granted by this Master Deed or other above-mentioned documents shall not constitute a waiver of the right of the Association or of the owner of a unit to enforce such right, provision, covenant or condition in the future.

Master Deed, Art. XIX § 4, p. 23, R. 265.

Non-waiver provisions of this kind are uniformly applied as written. To do otherwise would be to re-write the contract to which these parties are bound. Non-waiver provisions of this nature have been accepted and applied in cases where a condominium homeowners' association delays in seeking relief from covenant violations. A leading case is *Burke v. Voicestream Wireless Corp. II*, 207 Ariz. 393, 87 P.3d 81 (Ct. App. 2004). The court observed:

Unambiguous provisions in restrictive covenants will generally be enforced according to their terms. . . . The non-waiver provision, by its plain language, is intended to prevent a waiver based on prior inaction in enforcing the Restrictions. To hold otherwise would render the non-waiver provision meaningless and violate the expressed intention of the contract among the property owners.

87 P.3d at 86.¹⁰ Accord: *College Book Centers, Inc. v. Carefree Foothills Homeowners Ass'n*, 225 Ariz. 533, 241 P.3d 897 (Ariz. App. 2010).

The Indiana court in *Johnson v. Dawson*, 856 N.E.2d 769 (Ind. App. 2006), observed that unambiguous non-waiver clauses in restrictive covenants are routinely upheld:

[E]nforcement of the nonwaiver clause in the multiparty context allows prospective purchasers of property to rely on recorded restrictions and covenants. See *Simms v. Lakewood Village Property Owners Ass'n*, 895 S.W.2d 779, 786-87 (Tex. App. 1995). Again, restrictive covenants are permissible under Indiana law so long as they are unambiguous and their enforcement is not adverse to public policy. . . . [This clause] is an unambiguous nonwaiver clause, and its enforcement is not adverse to public policy.

¹⁰ The Arizona court's characterization of the Master Deed as a *contract* among the property owners is reminiscent of the language found in deeds in the chain of title of all seven units involved in this action.

The provisions of the Master Deed . . . shall constitute covenants running with the land and shall bind any person having at any time any interest or estate in the Unit, his heirs and assigns, . . . as though such provisions were recited and stipulated at length herein. By subscription to and acceptance of this Indenture Deed, Grantee acquiesces in the provisions of the Master Deed

See footnote 1, above.

As such, [the defendants] are barred from raising the defense of acquiescence.

856 N.E.2d at 775. *Accord: Speedway Woods Community Ass'n, Inc. v. McVey*, 925 N.E.2d 6 (Ind. App. 2910); *Lebamoff v. Twin Eagles Neighborhood Ass'n, Inc.*, 909 N.E.2d 521 (Ind. App. 2009); *Dreter v. Duitz*, 883 N.E.2d 1194 (Ind. App. 2008).

The non-waiver clause should be applied as written.¹¹

C. The circuit court did not abuse its discretion in rejecting the defense of estoppel.

The elements of equitable estoppel as related to the party being estopped are: (1) conduct which amounts to a false representation, or conduct which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) the intention that such conduct shall be acted upon by the other party; and (3) actual or constructive knowledge of the real facts. The party asserting estoppel must show: (1) lack of knowledge, and the means of knowledge, of the truth as to the facts in question; (2) reliance upon the conduct of the party estopped; and (3) a prejudicial change of position in reliance on the conduct of the party being estopped.

Strickland v. Strickland, 375 S.C. 76, 84-85, 650 S.E.2d 465, 470 (2007).

This defense fails in every particular.

The Association made no false representation to any of the appellants. The Association made no representations of any kind. The fact that the Association had not theretofore taken action to enforce the covenants with respect to earlier violations in the units being purchased by the appellants was not a representation of anything.

The appellants cannot show lack of knowledge, and the means of knowledge. On the contrary, they knew that restaurants, bars, and convenience stores were prohibited activities in the units which they intended to purchase. They were obliged to

¹¹ None of the appellants challenged the detailed rejection of their defenses by post-judgment motion. *See: AJG Holdings LLC v. Dunn*, 392 S.C. 160, 166, 708 S.E.2d 218, 222 (Ct. App. 2011); *Cullen v. McNeal*, 390 S.C. 470, 492, 702 S.E.2d 378, 389 (Ct. App. 2010); *Herron v. Century BMW*, 395 S.C. 461, 719 S.E.2d 640 (2011). In particular, there was no challenge to the finding that the non-waiver clause is conclusive on that issue.

know that the law of this State admonishes strict compliance with restrictive covenants such as these and authorizes injunctive relief in case of violation. They took a calculated risk that no effort would be made to enforce those restrictions and that they could continue to violate the restrictions in the future with impunity. They relied upon no "conduct" of the Association but took their own risk, knowing what they were doing.

A new owner of any of the sixty-three residential units could have brought an identical action at any time, in which case the appellants would have no possible defense of estoppel (or laches or waiver, for that matter).

Moreover, the non-waiver clause applies with equal force to the defense of estoppel when the estoppel is based upon inaction — what the appellants call passivity. "Where an implied waiver is involved, the distinction between waiver and estoppel is close, and sometimes the doctrines merge into each other with almost imperceptible gradations, so that it is difficult to determine the exact point where one doctrine ends and the other begins." *Janasik v. Fairway Oaks Villas Horizontal Prop. Regime*, 307 S.C. 339, 344, 415 S.E.2d 384, 388 (1992), quoting 28 AM.JUR.2D *Estoppel and Waiver* § 158 (1966). *Accord: Parker v. Parker*, 313 S.C. 482, 487, 443 S.E.2d 388, 391 (1994); *Strickland v. Strickland*, 375 S.C. 76, 86, 650 S.E.2d 465, 471 (2007). The appellants' claims of waiver and estoppel are two sides of the same coin, and the non-waiver provision applies equally to both.

D. On balance, the equities favor the Association and the sixty-three residential owners damaged by these ongoing violations.

As the final step in the process, the circuit court weighed the equities and found that the balance favored the Association.¹²

The appellants say that because they were allowed to get away with these plain

¹² "[U]pon a finding that a restrictive covenant has been violated, a court may not enforce the restrictive covenant as a matter of law. Rather, the court must consider equitable doctrines asserted by a party when deciding whether to enforce the covenant." *Buffington v. T.O.E. Enterprises*, 383 S.C. 388, 394, 680 S.E.2d 289, 292 (2009).

violations for years, the residential owners deserve this punishment and more on a permanent basis. What began with a fairly innocuous laundromat has degenerated into drunks spilling onto the sidewalks at three o'clock in the morning to smoke their cigarettes and have their arguments and fights, with the bar's sound system blasting all the while. The appellants portray themselves as the victims here. On the contrary, they have gotten away with these plain violations — and the profits which came with them — for years at the expense of the other 89% of the owners.

The appellants' principal reliance is upon the case of *Rabon v. Mali*, 289 S.C. 37, 344 S.E.2d 608 (1986). In that case a commercial building was situated on two lots which were free of restriction, but encroached upon a third lot — Lot 50 — restricted to residential use. After twenty-five years of commercial use of the building, subdivision residents sought to enjoin commercial use of the portion of the building encroaching upon Lot 50. The court found that laches barred the action. In weighing the equities, the court noted five aspects of the facts. First, the new owner of the building had spent \$43,000 on improvements. An injunction would cause "grave hardship and financial detriment" to the building owner. Second, commercial use of the portion of the building encroaching upon Lot 50 had no impact upon the residential character of the subdivision since vacant Lot 51 served as a buffer between Lot 50 and the residences of the subdivision. Third, most of the building was situated on lots not restricted to residential use but fronting on a busy four-lane boulevard. Fourth, the character of the surrounding neighborhood was changing because of the influx of businesses. Fifth, an injunction would confer "no substantial benefit or value" upon the residential owners of the subdivision.

The case at bar has nothing in common with *Rabon v. Mali*. In particular, an injunction in the *Rabon* case would have rendered the portion of the building on restricted Lot 50 entirely useless. By contrast, the injunction here only limits the commercial units to the uses allowed by the Master Deed.

The benefit of this injunction to the overwhelming majority of the owners far outweighs any detriment to the appellants in being required to comply with their contracts and with the statutory law of the State.

CONCLUSION

The appellants gambled that the court system would not hold them to their contracts and would not put a stop to their wilful, continuing violations. So far, they have been wrong. Unless this Court of Appeals finds that the court of common pleas *abused its discretion* in putting a stop to these continuing violations, the judgment must be affirmed.

Since the circuit court did not abuse its discretion in rejecting the defenses, nor in determining that the balance of equities lay with the Association, the respondent urges the Court to affirm this judgment.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison R. Lee, Circuit Court Judge

Case Nos. 2007-CP-40-8107 through -8110

Place on the Greene Homeowners
Association, Inc., ... Respondent,

v.

W.G.R.Q., LLC, Easy Coin Laundry, Inc.,
Eva Nell Berry, and Jeffrey O. Kenney, ... Appellants.

REPLY BRIEF

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ARGUMENT

I. An Action to Enforce a Restrictive Covenant Sounds in Equity, and the Standard of Review Is De Novo, Not Abuse of Discretion.

The homeowners association argues that the circuit court's decision is reviewed under the abuse of discretion standard. That is not correct.

An action to enforce a restrictive covenant sounds in equity. *Buffington v. T.O.E. Enterprises*, 383 S.C. 388, 391, 680 S.E.2d 289, 290 (2009). In an equitable action, the standard of appellate review is *de novo*. This was the holding in *Lewis v. Lewis*, a family court appeal in which the Supreme Court explains that although some of its prior decisions use the term "abuse of discretion" to describe its review of certain family court decisions, that term does not correctly describe the standard of review authorized by the South Carolina Constitution. 392 S.C. 381, 386, 709 S.E.2d 650, 652 (2011). The *Lewis* opinion notes that an appellate court will generally defer to the lower court's findings of fact because of the lower court's superior ability to assess the demeanor and credibility of witnesses, but the *Lewis* opinion also notes that "[the] standard of review does not *require* any deference." *Id.* at 388-89, 709 S.E.2d at 653-54 (emphasis added).

As the homeowners association observes, several appellate court decisions recite that the abuse of discretion standard governs appellate review of a decision whether a defendant has established the defense of laches. That language in those appellate court decisions cannot have survived the *Lewis* opinion. Two of the six cases cited to support the application of the abuse of discretion standard are family court cases and as such, are controlled by *Lewis*. See *Emery v. Smith*, 361 S.C. 207, 603 S.E.2d 598 (Ct. App. 2004) and *Grossman*

v. Grossman, 242 S.C. 298, 130 S.E.2d 850 (1963) (both cited on page 8 of the Brief of Respondent). Two more of the cases cited by the homeowners association are not family court cases, but those decisions cite to family court cases as authority for why the abuse of discretion standard applies. See *Brown v. Butler*, 347 S.C. 259, 265, 554 S.E.2d 431, 434 (Ct. App. 2001) and *Gibbs v. Kimbrell*, 311 S.C. 261, 269, 428 S.E.2d 725, 730 (Ct. App. 1993) (cited on page 8 of the Brief of Respondent). One of the two remaining cases — *Premium Investment Corp. v. Green* — does not list any authority for the abuse of discretion standard. See 283 S.C. 464, 473, 324 S.E.2d 72, 78 (Ct. App. 1984). The final case — *King v. James* — cites *Premium Investment Corp.* and *Brown v. Butler*. See *King*, 388 S.C. 16, 28, 694 S.E.2d 35, 41 (Ct. App. 2010). *Brown* relies on a family court case for the application of the abuse of discretion standard. 347 S.C. at 265, 554 S.E.2d at 434.

The Supreme Court's decision in *Lewis* controls on this point, and that case establishes the standard of review in equity cases as *de novo*. It is appropriate for this Court to take stock of the fact that the trial judge is generally in a superior decision for making credibility determinations, and it is also appropriate to impose a burden on the appellant to satisfy this Court that the preponderance of the evidence is against the trial court's findings, but these principles are merely parts of *de novo* review. See *Lewis*, 392 S.C. at 391, 709 S.E.2d at 655.

II. The Homeowners Association Asserts Several Items as "Facts" When No Such Facts Were Found by the Trial Court.

The homeowners association alleges that two of the original owners of the commercial units — Beau Powell and Craig Stonebruner — dominated and intimidated the

association's board, falsely represented that it was acceptable to violate the building's restrictive covenants, and unilaterally decided to ignore the restrictions. The homeowners association presents these allegations as facts.

The trial court never found that anyone "dominated" or "intimidated" the homeowners association board. The trial court also did not make any finding that these owners falsely represented to the members of the board that the covenants allowed for restaurants or bars to operate in the commercial units. The trial court's order mentions this alleged conduct only once, and that reference occurs when the trial court is describing the justifications that the homeowners association offered to explain its history of inaction. At trial, the homeowners association alleged its delay in asserting its rights was caused by several things including confusion as to what those rights were, confusion because of property management company changeovers, naivete on the part of the board members, a high board member turnover rate, and "pressure from and misguidance by commercial unit owning member(s) of the board." See (R.p.9, ¶16). But the court never actually found any misguidance or pressure occurred, and the court also never made a finding that this alleged action influenced the board's failure to ever take *any* action to enforce this covenant.

The trial court's order describes what actually drove its decision. It found that all of the commercial unit owners had constructive notice of the restrictions in their deeds, that none of the owners made any significant improvements to their properties, that there was no evidence of prejudice to the commercial unit owners "other than that they would be financially affected," and that the "no waiver" clause was enforceable. See (R.pp.9-12). The *de novo* standard of review certainly allows a party to ask an appellate court to find new

facts, but this Court should distinguish any of its own fact-finding from the analysis and reasoning that the trial court actually used.

III. The Fact That a Property Owner Had Prior Notice of a Restrictive Covenant Does Not Bar the Application of Estoppel or Laches; Those Defenses Rely on the Plaintiff's Silence and Delay.

As the appellants' principal brief attempted to describe, the trial court's reasoning was not faithful to the law that governs enforcing restrictive covenants, and it also was not faithful to the evidence presented at trial. For example, the trial court placed a great deal of emphasis on the fact that the owners of the commercial units had constructive notice of the covenant. This was the court's refrain for two of the equitable defenses. The court recited that the commercial unit owners could not claim estoppel because they "had notice of the restrictive covenants when they were deeded the property . . . and operated their businesses at their own peril." (R.p.10, ¶18). The commercial unit owners also could not claim laches because "[t]hey had constructive notice of the restrictions in their deed . . . [and] were on notice to inquire about the restrictions." (R.pp.11-12, ¶22).

If constructive notice was the touchstone, no party with a restrictive covenant in his or her deed could ever successfully claim laches or estoppel. Past appellate court decisions illustrate that this is not how these principles operate. In *Gibbs v. Kimbrell*, this Court described estoppel as arising when the plaintiff observes another person dealing with property in a manner inconsistent with the plaintiff's rights and makes no objection while the other party changes his position in reliance on the party's silence. 311 S.C. at 268, 428 S.E.2d at 729. This Court explained "the [plaintiff's] silence" is the critical factor that

prevents him from later seeking relief. 311 S.C. at 268, 428 S.E.2d at 729. In *Rabon v. Mali*, the Supreme Court held that laches barred part — not all — of an action to enforce a restrictive covenant because neighboring property owners knew of the improper use of the property and never expressed concern or objected. 289 S.C. 37, 40-41, 344 S.E.2d 608, 610 (1986). Laches and estoppel amplify the principle that “equity aids the vigilant and diligent,” and not those who sleep on their rights. See *Ex parte Johnson*, 371 S.C. 614, 618, 640 S.E.2d 887, 890 (Ct. App. 2006). In continually repeating that the Place on the Greene’s commercial unit owners were charged with notice of the restrictive covenant, the trial court was reciting something that does not control whether estoppel or laches applies.

IV. This Case Has More than Silence and Delay. The Homeowners Association Actively Encouraged Ongoing Violations.

The law on restrictive covenants is that they are enforceable but disfavored and that because an action to enforce a restrictive covenant sounds in equity, the court’s decision on whether to issue an injunction is governed by principles of equity including fairness doctrines like estoppel and laches. See *Buffington*, 383 S.C. at 391-93, 680 S.E.2d at 290-91 (stating all of these principles). A large part of what makes the present case unusual, and what makes enforcing this covenant unfair, is that these commercial units have continuously violated the covenant from the time this building opened, those violations have been open and apparent for all of the other property owners to see, there has never been a hint of enforcing the covenant until this lawsuit, and the homeowners association board gave its permission for some of these activities to occur. These were not secret infractions that only recently came to light; this is more than silence and delay by the plaintiff. This is a bait and switch.

This description is not puffing, this is the reality of the case. The building opened in 1985 and a coin laundry that was open 24 hours a day, 7 days a week, began operating in one of the units in 1988. (R.p.204, lines 5-7). There has been a restaurant in the building since at least 1993. (R.p.341). The homeowners association board gave permission for the Blue Cactus restaurant to cut a hole in the exterior of the building in order to allow a vent for the restaurant's grill. (R.p.169, line 20 - p.171, line 6). The board also voted in favor of the commercial units being able to sell beer and wine, and the board opined that the deck the Duck-In Restaurant wanted to build would be an "asset to the building." (R.p.168, line 17 - p.169, line 10; p.342). In 2004, the board published rules regulating how the commercial units could serve patrons and how the units could advertise. See (R.p.347-350). Through this conduct, the board was sending the message that restaurants and bars were acceptable if they operated within certain constraints.

The homeowners association would hang this conduct around the necks of Beau Powell and Craig Stonebruner, but the record tells a different story. The minutes from the board's 1993 annual meeting do not list either Powell or Stonebruner as attending the meeting, and this was the meeting where the board expressed that the Duck-In Restaurant's deck "could be an asset to the building." See (R.p.342). The 1995 meeting minutes discuss that the building's doors had been relocated to allow restroom access for patrons of the commercial units, and this was the meeting that was actually held *inside* one of the restaurants in the building. (R.p.344). Neither Powell's name nor Stonebruner's name appears anywhere in these minutes. Laura Nichols, the president of the board and the supposed "lone voice" opposing Powell and Stonebruner, called both meetings to order, and

the minutes do not contain anything suggesting that the board's action with respect to the commercial units was not unanimous. (R.pp.342-45). Ms. Nichols testified that she believed the board did not know the master deed was being violated, (R.p.177, lines 13-16), but she also was present at the 1991 board meeting where Beau Powell advocated that the building should allow restaurants, "which are prohibited." (R.p.340). These statements are not consistent. The other board members may have looked up to Beau Powell and he may have been a forceful advocate for his views, but if Powell and Stonebruner were acknowledging that these activities were prohibited and advocating for a change in the master deed, the board could not have been ignorant of the restrictive covenant.

V. A "No Waiver" Clause Should Not Protect a Party That Has Actively Encouraged Violations of a Restrictive Covenant.

Although they have some similarities, waiver, laches, and estoppel are different defenses. Waiver is a legal defense and has been described as the "voluntary and intentional relinquishment or abandonment of a known right." *Strickland v. Strickland*, 375 S.C. 76, 86, 650 S.E.2d 465, 470-71 (2007). As applied in actions to enforce restrictive covenants, the court generally determines the existence or non-existence of waiver by examining the number and character of previous infractions. See, e.g., *Kneale v. Bonds*, 317 S.C. 262, 268, 452 S.E.2d 840, 843 (Ct. App. 1994) (concluding that although the property owners had acquiesced to minor violations, they did not intend to waive their right to enforce a covenant in all circumstances). This shares some of the characteristics of the equitable defenses of laches, which is a delay in asserting a right for an unreasonable period of time, and estoppel by silence, which is silence that amounts to a representation, but laches and estoppel differ

from waiver in a material respect — prejudice. To satisfy either defense, the defendant must show a prejudicial change in his position. See *Queen's Grant II Horiz. Property Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 358-60, 628 S.E.2d 902, 912 (Ct. App. 2006).

The non-waiver clause in the master deed provides only that the failure to enforce the restrictive covenants does not amount to a waiver of the right to enforce those covenants. It says nothing about the board or another homeowner being forever empowered to enforce those covenants against activities that the board has expressly approved, and it says nothing about the body of South Carolina law which provides that finding a violation of a restrictive covenant does not end the question; the court still considers the equities in determining whether to issue an injunction. See, e.g., *Sea Pines Plantation Co. v. Wells*, 294 S.C. 266, 274-75, 363 S.E.2d 891, 896 (1987) (stating this principle). For this type of suit to truly sound “in equity,” the law has to account for the fact that a defendant might have justifiably changed his or her position based on another party’s conduct. It also has to consider that the circumstances may be such that enforcing the restrictive covenant will cause unfair harm.

The state of Arizona has reached a different conclusion. The homeowners association cites *Burke v. Voicestream Wireless Corp. II*, 87 P.3d 81 (Ariz. Ct. App. 2004) to support its argument, but the more appropriate comparison to the argument being made in this appeal is the case *College Book Centers, Inc. v. Carefree Foothills Homeowners' Association*, 241 P.3d 897 (Ariz. Ct. App. 2010). In *College Book Centers*, the party attempting to escape the no waiver clause argued that such a clause was meant only to excuse the consequences of inaction. The argument went that the clause could not apply when a homeowners association affirmatively approved of a party violating a covenant. The court of appeals of Arizona

rejected that argument. The homeowners association also cites an Indiana case, *Johnson v. Dawson*, but the principal authority in that case is the Arizona court's decision in *Burke*. See *Johnson*, 856 N.E.2d 769, 775 (Ind. Ct. App. 2006).

The reasoning of the Arizona courts should not be persuasive; South Carolina law is materially different from Arizona law. The *College Book Centers* opinion notes that in Arizona, ambiguities in restrictive covenants are *not* construed in favor of free use of property. 241 P.3d at 904. This is directly contrary to the law in South Carolina. See *Taylor v. Lindsey*, 332 S.C. 1, 4, 498 S.E.2d 862, 864 (1998) ("It is still the settled rule in this jurisdiction that restrictions as to the use of real estate should be strictly construed and all doubts resolved in favor of free use of the property[.]"). South Carolina law has traditionally observed that although it will enforce a restrictive covenant when the covenant's language is plain, even the most straightforward covenants have historically been subject to equitable defenses or offensive attack. See *Buffington*, 383 S.C. at 393, 680 S.E.2d at 291 ("[T]his Court has consistently held that courts should consider equitable doctrines when determining whether to enforce a restrictive covenant."). Treating the no waiver clause as a total bar to any relief from a covenant would change this law and eliminate the principle that even after the court finds that a restrictive covenant has been violated, it is not mandatory that the court issue an injunction. E.g., *Sea Pines Plantation Co.*, 294 S.C. at 274-75, 363 S.E.2d at 896.

VI. The Greater Weight of the Evidence Suggests That the Financial Harm to the Appellants from an Injunction Will Be Substantial, and the Equities Favor Refusing the Request for an Injunction.

This case tells the story of a building that in all respects, has never been used as it was envisioned during development. The target market for residents was professionals that were

living and working downtown, but almost immediately, several of the units were occupied by college students. (R.p.140, lines 2-15). This continues to be the case today. (R.p.92, lines 17-18) (great majority of units are leased); (R.p.98, lines 1-3) ("a lot" of college students live there). As for the commercial units, they were intended to be "general office" space, perhaps occupied by a CPA or a lawyer, but they sat vacant because those units were only allotted one parking space a piece. (R.p.141, lines 3-10; p.162, line 17 - p.163, line 9). Powell and Stonebruner did not take their units until after those units had failed to sell during development. See (R.p.153, lines 24-25). Repeated requests to change the restrictive covenants failed not because the requests lost an up-or-down vote, but because of a lack of homeowner attendance at the owner meetings.

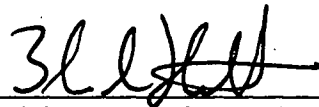
The trial court found that the owners of the commercial units would be financially affected by an injunction, and the greater weight of the evidence in the record is that those effects will be severe. The units sat vacant until non-conforming uses began, and the only uses to which these units have ever been put have been non-conforming uses. What is more, the present owners of the units bought with the understanding that the activities being conducted in those units could continue. On the other hand, the residential owners or tenants who move in this building know exactly what they are getting by moving in to the Five Points neighborhood and this specific building; they are moving in to an area where restaurants and bars are prominent, see (R.p.128, line 10 - p.129, line 15), and they cannot walk in to the front of their building without seeing that they will be living over some of the same. In these circumstances, equity favors allowing the status quo to continue.

CONCLUSION

This Court should reverse because the trial court's conclusion does not faithfully apply the law regarding restrictive covenants and because issuing an injunction in these circumstances would be *unfair*.

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Respectfully submitted,



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