

**RECEIVED**

**Oct 27 2025**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM EDGEFIELD COUNTY  
Court of Common Pleas  
Hon. R. Lawton McIntosh, Circuit Court Judge

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Appellate Case No.: 2024-001510  
Circuit Court Case No.: 2021-CP-19-00050

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Elizabeth M. Ferraro, James T. Ferraro, Edward J. Przybyl,  
Marcella Gleie, John E. Gleie, Jr., Thomas Bowes, Connie Bowes,  
Moataz Alasadi, Virginia Kirkwood, Bob Kirkwood, Paul Vichroski,  
Nydza Vichroski, James Montellese, Roxann Montellese,  
Individually, Derivatively, and on Behalf of all the Mount Vintage  
Homeowners Association Members,.....Respondents,

v.

LL of SC, LLC, Raiford Topsail Island Investments, LLC, TR Sales  
Plantation, LLC, and Mount Vintage Plantation Homeowners  
Association, Inc. a/k/a Mount Vintage Homeowners Association, Inc.....Defendants,

Of which LL of SC, LLC, Raiford Topsail Island  
Investments, LLC, and TR Sales Plantation, LLC, are the .....Appellants.

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**RESPONDENTS’ PROVISIONAL RETURN IN OPPOSITION TO  
APPELLANTS’ MOTION TO COMPEL SETTLEMENT AND MOTION FOR  
CONTINUANCE**

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Justin O’Toole Lucey, Esq. (SC Bar No. 15438)  
Anna Scarborough McCann, Esq. (SC Bar No. 102314)  
Collin H. Fuller, Esq. (SC Bar No. 103439)  
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*Attorneys for Plaintiffs/Respondents*

Plaintiffs-Respondents, Elizabeth M. Ferraro, *et. al*, individually, and derivatively on behalf of the Mount Vintage Homeowners Association, (collectively, “Respondents”), by and through undersigned counsel, submit this Provisional Return in Opposition to the Motion to Compel Settlement and Motion for a Continuance of the oral arguments scheduled in this matter (“Appellants’ Motions”) filed by Appellants LL of SC, LLC (“LL”), Raiford Topsail Island Investments, LLC (“RTI”), and T R Sales Plantation, LLC (“T R Sales”) (collectively “Appellants”) late on October 24, 2025.<sup>1</sup>

Oral arguments are scheduled in this matter for November 5, 2025. In the interest of expediency, Respondents are submitting this Provisional (and summary) Return in Opposition to Appellants’ Motions to present these issues to the Court as quickly as possible, to be followed by a more complete return. Put simply, an explicit financial contingency in the parties’ October 7, 2025, Mediation Settlement Agreement (“Mediation Settlement Agreement”) has not been satisfied. Therefore, at this time, there is no settlement agreement for this Court to enforce, and there is no basis to continue the oral arguments set for November 5, 2025, which should continue as scheduled.

**I. THE FINANCIAL TRANSACTION CONTINGENCY IN SECTION 4 OF THE PARTIES’ MEDIATION SETTLEMENT AGREEMENT WAS NOT SATISFIED; THEREFORE, AT THIS TIME, THERE IS NO SETTLEMENT FOR THIS COURT TO COMPEL**

The Mediation Settlement Agreement reached between the parties on October 7, 2025, contains a list of terms and conditions titled “Ex. A to Mt. Vintage Settlement Agreement” (“Terms and Conditions”) attendant to the Mediation Settlement Agreement which the parties agreed was

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<sup>1</sup> Appellants appended an offer of compromise made by Respondents to their Motion to Compel. Respondents will be moving to strike this Addendum Exhibit, as it was an offer of compromise protected by the South Carolina Rules of Evidence and is not competent evidence of anything, except that Appellants were on notice that the contingency was not satisfied.

a “material and negotiated term of th[e] agreement.” (See fn. 1, Mediation Settlement Agreement, appended hereto as “**Attachment A**”). Paragraph 4 of the Terms and Conditions exhibit provides as follows:

[Agreement] contingent on *disclosure* and *acceptance* of all non-public, material financial transactions (not including any previously disclosed in audits or minutes).

(emphasis added) (hereinafter referred to as “Financial Contingency”) (See Attachment A at p. 6, Ex. A at 4).

The Financial Contingency was a condition precedent to Respondents’ performance under the Mediation Settlement Agreement. “If a contract contains a condition precedent, that condition must either occur or it must be excused before a party’s duty to perform arises.” *Alexander’s Land Co., L.L.C. v. M & M & K Corp.*, 390 S.C. 582, 596, 703 S.E.2d 207, 214 (2010) (internal citations and quotations omitted). “The question of whether a provision in a contract constitutes a condition precedent is a question of construction dependent on the intent of the parties to be gathered from the language they employ.” *Brewer v. Stokes Kia, Isuzu, Subaru, Inc.*, 364 S.C. 444, 449, 613 S.E.2d 802, 805 (Ct. App. 2005) (internal citations and quotations omitted).

Here, the use of the language “contingent on” in the Financial Contingency clearly and unequivocally created a condition precedent. See *M & M Grp., Inc. v. Holmes*, 379 S.C. 468, 477, 666 S.E.2d 262, 266 (Ct. App. 2008) (“The use of the language “is contingent upon” is unequivocal and patently indicates the parties’ respective obligations to buy and sell the business are contingent on Holmes’ ability to secure financing. No other meaning could be deduced from such clear and commonly used language.”).

The Financial Contingency was triggered in part by previously undisclosed financial matters and transactions. For example, an employment agreement entered between Mount Vintage HOA and an employee had been previously undisclosed. The employment agreement was a non-

standard agreement which provided for a substantial payout to the employee in certain circumstances (a/k/a a “Golden Parachute.”). This employment agreement was not disclosed to the Mount Vintage Membership in meeting minutes, was not disclosed to the auditors, and was only provided to counsel for Respondents at the end of the October 7<sup>th</sup> Mediation.

The contingent liability created by the employment agreement is material—potentially in excess of Three Hundred Thousand and 00/100 Dollars (\$300,000.00)—which is more than the cash consideration offered by the Appellants to settle this matter. As is required by the Financial Contingency, this financial liability had to be disclosed and *accepted*. The liability was not accepted; the Financial Contingency was not satisfied; and, therefore, the condition precedent did not occur and was not excused. Because the condition precedent did not occur, no “duty of immediate performance by the promisor can arise.” *Springs & Davenport, Inc. v. AAG, Inc.*, 385 S.C. 320, 326, 683 S.E.2d 814, 816–17 (Ct. App. 2009).

As a further example, it has also come to light that the Appellants misrepresented the amount of debt being forgiven, failed to disclose a pending suit for racial discrimination, and other financial irregularities.<sup>2</sup>

Here, the performance Appellants seek is for Respondents to, *inter alia*, dismiss the Trial Court Case with prejudice, thereby rendering the Appeal, and the oral arguments, moot. As

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<sup>2</sup> Appellants’ Motions state that Respondents “have not done anything” in furtherance of honoring their Settlement obligations. (*See* Mot. to Compel at 2; Mot. to Cont. at 1). Appellants know that this is provably false, as Respondents have been in near-constant e-mail communication with counsel for the Appellants to gain access to the MV HOA’s books and to discuss other conditions precedent to the Mediation Settlement Agreement and have participated in at least two (2) teleconferences between counsel to discuss the instant financial irregularities and other matters. It is unclear to the undersigned why Appellants wish to portray the opposite to this Court, other than to portray Respondents in a negative light.

explained *supra*, Appellants cannot compel Respondents' performance, and the oral arguments should go on as scheduled.

**II. BECAUSE THE FINANCIAL CONTINGENCY HAS NOT BEEN SATISFIED, THERE IS PRESENTLY NO ENFORCEABLE MEDIATION SETTLEMENT AGREEMENT AND ORAL ARGUMENTS SHOULD PROCEED AS SCHEDULED.**

Appellants seek to continue the oral arguments scheduled for November 5, 2025, in the hope that this Court will enforce the Mediation Settlement Agreement despite the clear non-occurrence of a condition precedent.

Appellants filed the instant Appeal on the eve of trial. In accepting the Appeal, the Court stated “[t]here shall be a presumption against granting extensions in this case and it will be placed on the roster as soon as practicable.” (*See* Order, Oct. 9, 2024, Case No.: 2024-001510).

Respondents submit that proceeding with the oral arguments as scheduled will not be an undue drain on the Court's time or resources and conversely would prejudice Respondents' ability to get this case to trial. This is Appellants' Appeal; presumably, Appellants are prepared to argue it. Respondents should not be prejudiced by Appellants' failure to honor a condition precedent in the Mediation Settlement Agreement *and again* by the delay which continuing the oral arguments would have on the ultimate trial of this case. Respondents are ready and willing to appear before this Court on November 5, 2025, and ask that the arguments continue as scheduled.

**CONCLUSION**

Respondents respectfully request that this Court deny Appellants' Motion to enforce the Mediation Settlement Agreement and deny Appellants' request for a Continuance of the oral arguments scheduled for November 5, 2025.

Signature on following page.

Respectfully,

*s/ Anna S. McCann*

Justin O'Toole Lucey, Esq. (SC Bar No.: 15438)

Anna Scarborough McCann, Esq. (SC Bar No 102314)

Justin O'Toole Lucey, P.A.

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[amccann@lucey-law.com](mailto:amccann@lucey-law.com)

*Attorneys for Plaintiffs/Respondents*

October 27, 2025

Mount Pleasant, South Carolina

# ATTACHMENT A

Elizabeth Ferraro, *et al.* v. LL of SC, LLC, *et al.*  
2021-CP-19-00050  
*In re* Mediation  
Settlement Agreement

**Settling Party:** LL of SC, LLC, T R Sales Plantation, LLC and Raiford Topsail Island Investments, LLC ("Developer Entities") (& all Affiliates etc)

**Settlement Amount:** TWO HUNDRED NINETY-NINE THOUSAND AND 00/100 DOLLARS (\$299,000.00), DEBT FORGIVENESS IN THE APPROXIMATE AMOUNT OF ONE MILLION, TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$1,250,000.00), TRANSFER OF ONE HUNDRED FIFTY-ONE (151) MT. VINTAGE LOTS AND THE MOUNT VINTAGE SALES OFFICE & PROPERTY)<sup>1</sup>

In consideration of the payment of the above amount by or on behalf of Settling Party, Plaintiffs agree to settle and release all claims, acquit and forever discharge Defendants, their principals, agents, servants, representatives, successors, assigns, and affiliates from Plaintiffs' claims in the above-cited case (and probate case) and to dismiss this matter with prejudice.

The Parties shall execute a mutual general release. Plaintiffs shall indemnify and hold harmless Settling Parties per attached terms.

Any dispute as to the language of the Settlement Documents will be submitted to the Court or Mediator for final and binding resolution.

Once signed, this agreement shall be irrevocable and a filed copy hereof shall be enforceable by the contempt powers of the Court. Electronic copies of signatures are enforceable. Payment is to be made and documents signed by November 7, 2025, to Justin O'Toole Lucey, PA, as attorney for Plaintiffs, Federal I.D. No.: 57-0959667.

Dated October 7, 2025

-SIGNATURES ON FOLLOWING PAGE-



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<sup>1</sup> See attached Exhibit A detailing settlement terms, incorporated herein by reference as a material and negotiated term of this agreement.

We Agree:

Plaintiffs Elizabeth M. Ferraro; James T. Ferraro; Edward J. Przybyl; Marcella Gleie; John E. Gleie, Jr.; Thomas Bowes; Connie Bowes; Moataz Alasadi; Virginia Kirkwood; Bob Kirkwood; Paul Vichroski; Nydza Vichroski; James Montellese; and Roxann Montellese, Individually, and Derivatively on behalf of the Mount Vintage Homeowners Association.

Signed: \_\_\_\_\_  
Name: *Justin Lucey, Esq.*  
Title: Counsel for Plaintiffs

Signed: \_\_\_\_\_  
Name: Elizabeth M. Ferraro  
Title: Named Homeowner Plaintiff

Signed: \_\_\_\_\_  
Name: James T. Ferraro  
Title: Named Homeowner Plaintiff

Signed: \_\_\_\_\_  
Name: Edward J. Przybyl  
Title: Named Homeowner Plaintiff

Signed: \_\_\_\_\_  
Name: Marcella Gleie  
Title: Named Homeowner Plaintiff

Signed: \_\_\_\_\_  
Name: Bob Kirkwood  
Title: Named Homeowner Plaintiff

Signed: \_\_\_\_\_  
Name: Paul Goldhorn  
Title: Homeowner Client

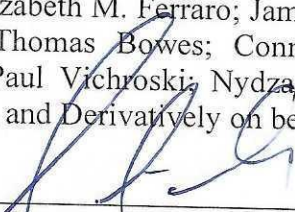
Signed: \_\_\_\_\_  
Name: Rita Brinkman  
Title: Homeowner Client

We Agree:



We Agree:

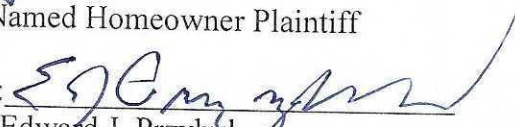
Plaintiffs Elizabeth M. Ferraro; James T. Ferraro; Edward J. Przybyl; Marcella Gleie; John E. Gleie, Jr.; Thomas Bowes; Connie Bowes; Moataz Alasadi; Virginia Kirkwood; Bob Kirkwood; Paul Vichroski; Nidza Vichroski; James Montellese; and Roxann Montellese, Individually, and Derivatively on behalf of the Mount Vintage Homeowners Association.

Signed:   
Name: *Justin Lucey, Esq.*  
Title: Counsel for Plaintiffs



Signed:   
Name: Elizabeth M. Ferraro  
Title: Named Homeowner Plaintiff

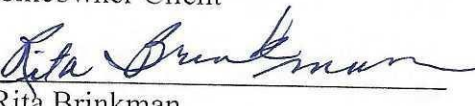
Signed:   
Name: James T. Ferraro  
Title: Named Homeowner Plaintiff

Signed:   
Name: Edward J. Przybyl  
Title: Named Homeowner Plaintiff

Signed:   
Name: Marcella Gleie  
Title: Named Homeowner Plaintiff

Signed: \_\_\_\_\_  
Name: Bob Kirkwood  
Title: Named Homeowner Plaintiff

Signed:   
Name: Paul Goldhorn  
Title: Homeowner Client

Signed:   
Name: Rita Brinkman  
Title: Homeowner Client

We Agree:

Defendants LL of SC, LLC, T R Sales Plantation, LLC and Raiford Topsail Island Investments, LLC ("Developer Entities")

Signed: \_\_\_\_\_

Name: Steven Edward Buckingham, Esq.

Title: Counsel for Defendants

Signed: \_\_\_\_\_

Name:

Title: Counsel for Defendants

Signed: Shirley Gabriel

Name: SHIRLEY GABRIEL

Role: Christy McDaniel

Signed: Andrew McDaniel

Name: Andrew McDaniel

Role:

Signed: Patricia

Name: Patricia

Role:

Signed: Franklin Gabriel

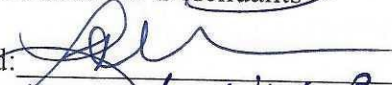
Name: Franklin Gabriel


Role:

Franklin Gabriel  
FRANKLIN GABRIEL


Defendants LL of SC, LLC, TR Sales Plantation, LLC and Raiford Topsail Island Investments, LLC ("Developer Entities")

Signed:   
Name: Steven Edward Buckingham, Esq.  
Title: Counsel for Defendants

Signed:   
Name: ~~Leigh Ann Wagner~~ Leigh Ann Wagner, LLC, Topsail & TR Sales  
Title: ~~Counsel for Defendants~~

Signed:   
Name: LINDA RAIFORD  
Role: AS TRUSTEE / PR OF ESTATE

Signed:   
Name: CHARLES FLIPLET  
Role: AS TRUSTEE / PR OF ESTATE

Signed:   
Name: LEIGH ANN WAGNER  
Role: AS TRUSTEE

Signed: \_\_\_\_\_  
Name: \_\_\_\_\_  
Role: \_\_\_\_\_

^^

Ex. A to Mt. Vintage Settlement Agreement

1. Consideration being paid by Defendants & Affiliates ("Defendants"):
  - a. All Defendants' Mt. Vintage Real Estate being conveyed to Assoc free & clear less 4 lots
    - i. 151 lots net<sup>1</sup>
    - ii. Sales office
    - iii. Lots M25, M34, N60 & N61 being retained by Defendants & No HOA dues till resale
    - iv. each party to bear ordinary buyer/seller closing expenses
  - b. All HOA developer debt & accrued interest to be forgiven estimated to be in the amount of \$1.25m
  - c. \$299k cash paid by Defendants to Assoc
2. Developer will relinquish or transfer (at Plaintiffs' discretion) Developer Rights to Association and relinquish Class A voting rights to homeowners.
3. Defendant to cooperate through counsel in Court Approval and Transition Matters, including
  - a. Cooperate in the complete change of Board and ACC membership to occur at time of Court approval;<sup>2</sup> Expansion of Board to 7 members;
  - b. Guardrails being included in Court Approval<sup>3</sup>; and,
  - c. Foregoing cooperation to occur at no expense to Defendants.
4. Agent contingent on disclosure and acceptance of all non-public, material financial transactions (not including any previously disclosed in audits or minutes)
5. Defendants will turn over all Association and Association-related records in their custody, possession, or control, including all access to and licenses with QuickBooks.
6. This settles all claims by the Assoc and the individual plaintiffs for matters occurring before the date of the dismissal with prejudice and result in
  - a. a complete release by the Plaintiffs (Assoc & Individuals) to Defendants; and,
  - b. dismissal w prejudice.
  - c. "Full, complete, and mutual releases of Raiford, his estate, his heirs and devisees, his trusts and trustees, Leigh Ann Wagher, LL of SC, Topsail, TR Sales, and any and all other Raiford corporate entities, including each and every of their members or managers, officers, directors, shareholders, agents, and employees. The release herein given must be given by Plaintiffs, both individually and derivatively, as well as the HOA;"

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<sup>1</sup> -Understanding options exist for Stanley Martin and Hurricane on 2 lots at commercially reasonable prices,

<sup>2</sup> Change of Board and ACC membership is a major term of this agreement.

<sup>3</sup> E.g, provisions to govern transition matters which are not adequately addressed in the existing covenants.

7. Plaintiffs will hold harmless and indemnify solely for 1) its representation that it/they rightfully bring the derivative claims being settled hereunder; and 2) the Assoc will indemnify against any future claims by the Assoc or individual Plaintiffs for matters occurring before this settlement.
8. No HOA transactions shall occur outside of the normal course of business between the signing of this document & the Court approval absent prior disclosure and consult with Plaintiffs' Counsel
9. Non-disparagement – The parties agree not to disparage each other; provided, however, the parties acknowledge that this can be difficult to control or enforce in the context of a Rule 23 action; and regardless of the foregoing, no violation shall be actionable unless its both intentional and published in mass print or online mass media or email blasts or similar
10. Additional terms:
  - a. Dismissal of the case in circuit court with prejudice and the appeal, and the withdrawal of Plaintiffs' creditors claim and petition in probate court, as well as the cessation of all other or future participation in probate proceedings.
  - b. After the final order is entered, no party hereto will ever contact any opposite party hereto for any purpose for the rest of their natural lives.

or <sup>social</sup> media  
publi; <sup>social</sup> media

*[Handwritten signature]*

10-7-25

*[Handwritten signature]*

10/7/25

*[Handwritten signature]*

Ex. A to Mt. Vintage Settlement Agreement

1. Consideration being paid by Defendants & Affiliates ("Defs"):
  - a. All Defs' Mt. Vintage Real Estate being conveyed to Assoc free & clear less 4 lots
    - i. 151 lots net<sup>1</sup>
    - ii. Sales office
    - iii. Lots M25, M34, N60 & N61 being retained by Defs & No HOA dues till resale
    - iv. each party to bear ordinary buyer/seller closing expenses
  - b. All HOA developer debt & accrued interest to be forgiven estimated to be in the amount of \$1.25m
  - c. \$299k cash paid by Defs to Assoc
2. Developer will relinquish or transfer (at Plaintiffs' discretion) Developer Rights to Association and relinquish Class A voting rights to homeowners.
3. Def to cooperate through counsel in Court Approval and Transition Matters, including
  - a. Cooperate in the complete change of Board and ACC membership to occur at time of Court approval;<sup>2</sup> Expansion of Board to 7 members;
  - b. Guardrails being included in Court Approval<sup>3</sup>; and,
  - c. Foregoing cooperation to occur at no expense to Defs.
4. Agt contingent on disclosure and acceptance of all non-public, material financial transactions (not including any previously disclosed in audits or minutes)
5. Defs will turn over all Association and Association-related records in their custody, possession, or control, including all access to and licenses with QuickBooks.
6. This settles all claims by the Assoc and the individual plaintiffs for matters occurring before the date of the dismissal with prejudice and result in
  - a. a complete release by the Plaintiffs (Assoc & Individuals) to Defs; and,
  - b. dismissal w prejudice.
  - c. "Full, complete, and mutual releases of Raiford, his estate, his heirs and devisees, his trusts and trustees, Leigh Ann Wagher, LL of SC, Topsail, TR Sales, and any and all other Raiford corporate entities, including each and every of their members or managers, officers, directors, shareholders, agents, and employees. The release herein given must be given by Plaintiffs, both individually and derivatively, as well as the HOA;"

<sup>1</sup> -Understanding options exist for Stanley Martin and Hurricane on 2 lots at commercially reasonable prices,

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Publ<sup>y</sup> social  
media
10. Additional terms:
  - a. Dismissal of the case in circuit court with prejudice and the appeal, and the withdrawal of Plaintiffs' creditors claim and petition in probate court, as well as the cessation of all other or future participation in probate proceedings.
  - b. After the final order is entered, no party hereto will ever contact any opposite party hereto for any purpose for the rest of their natural lives.

*[Handwritten Signature]*  
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**Oct 27 2025**

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Of which LL of SC, LLC, Raiford Topsail Island  
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**PROOF OF SERVICE**

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Justin O’Toole Lucey, Esq. (SC Bar No. 15438)  
Anna Scarborough McCann, Esq. (SC Bar No. 102314)  
Collin H. Fuller, Esq. (SC Bar No. 103439)  
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jlucey@lucey-law.com  
amccann@lucey-law.com  
cfuller@lucey-law.com  
*Attorneys for Plaintiffs/Respondents*

The undersigned hereby certifies that on this day, October 27, 2025, she served a true copy of the within and foregoing **Respondents' Provisional Return in Opposition to Appellant's Motion to Compel Settlement and Motion for Continuance**, upon all counsel of record to this matter via electronic mail to the e-mail addresses listed on the following pages:

**Other Counsel of Record:**

Steven Edward Buckingham (S.C. Bar No. 0075089)  
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16 Wellington Avenue  
Greenville, South Carolina 29609  
864.735.0832  
[seb@buckingham.legal](mailto:seb@buckingham.legal)  
*Attorney for Appellants*

Charles A. Krawczyk, Esq.  
[charley@cak-law.com](mailto:charley@cak-law.com)  
*Attorney for Mount Vintage Plantation Homeowners Association, Inc.*

October 27, 2025  
Mount Pleasant, South Carolina

By: */s/ Anna S. McCann*  
Anna S. McCann, Esq.  
Justin O'Toole Lucey, P.A.