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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CLARENDON COUNTY
CIRCUIT COURT

Kristi F. Curtis, Circuit Court Judge

Case No. 2017-CP-14-00127
Appellate Case No. 2024-001875

Palmetto Air Plantation Homeowners Association, Inc.....Respondent,

v.

Kim Bevier, ...Appellant.

AMENDED RECORD ON APPEAL – VOLUME I

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ELECTRONICALLY FILED - 2018 Mar 20 10:52 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

STATE OF SOUTH CAROLINA) COUNTY OF CLARENDON)) Palmetto Air Plantation) Homeowners Association, Inc.,)) Plaintiff,)) vs.) Kim E. Bevier,) Defendant.)	IN THE COURT OF COMMON PLEAS OF THE THIRD JUDICIAL CIRCUIT CIVIL ACTION NO.: 2017-CP-14-00127 ORDER

The Defendant, filed a motion to amend his Amended Answer to the Amended Complaint. The proposed amendment includes a Counterclaim. The motion was heard on the 21st day of February, 2018. Steven S. Mckenzie, attorney for the plaintiff was present as well as Thomas E. Player Jr., attorney for the defendant.

The complaint alleges that defendant violated residential restrictive covenants applicable to his property. The existing Amended Answer admits that the property is subject to the said covenants. The proposed amendment seeks to deny, rather than admit, the application of the covenants to the defendant's property.

The proposed amendment also seeks by way of counterclaim a Declaratory Judgment as to the ability of the Plaintiff to impose, and if so, the amount of, any damages, assessments and penalties imposed or sought to be imposed upon the Defendant or his property by the plaintiff as a result of the alleged violations.

DISCUSSION

The amendment of pleadings in is governed by Rule 15, SCRCP, which, in relevant part of 15(a) provides:

> A party may amend his pleading once as a matter of course at any time before or within 30 days after a responsive pleading is served or, if the pleading is one to which no responsive pleading is required and the action has not been placed upon the trial roster, he may so amend it at any time within 30 days after it is served. Otherwise a party may amend his pleading only by leave

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> of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party.

The defendant does not consent and vigorously objects to and opposes the motion to amend; consequently, the defendant may only amend his answer by leave of the Court, upon a determination that the proposed amendments do not prejudice the Plaintiff.

A motion to amend is addressed to the discretion of the trial judge, and the party opposing the motion has the burden of establishing prejudice. Tanner v. Florence County Treasurer, 336 S.C. 552, 521 S.E.2d 153 (1999).

The prejudice Rule 15(a) envisions is a lack of notice that the new issue is to be tried and a lack of opportunity to refute it. Stanley v. Kirkpatrick, 357 S.C. 169, 174, 592 S.E.2d 296, 298, 2003 WL 23147408 (2004).

CONCLUSION AND ORDER

Having considered this matter, and notwithstanding the vigorous, able and persuasive argument of Plaintiff's counsel, the Court finds an absence of prejudice to the Plaintiff, which would warrant a denial of the motion. Therefore,

Defendant's motion is GRANTED.

February 2018

George M McFaddin, Jr.
Circuit Court Judge

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Clarendon Common Pleas

Case Caption: Palmetto Air Plantation Homeowners Associations, Inc VS Kim E Bevier

Case Number: 2017CP1400127

Type: Order/Other

So Ordered

S/George M. McFaddin, Jr., #2759

ELECTRONICALLY FILED - 2018 Dec 17 11:40 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE THIRD JUDICIAL CIRCUIT
COUNTY OF CLARENDON	)	CASE NUMBER: 2017-CP-14-00127
	)	
PALMETTO AIR PLANTATION HOMEOWNERS ASSOCIATION, INC.,	)	
	)	
Plaintiff,	)	
	)	**ORDER FOR PARTIAL**
vs.	)	**SUMMARY JUDGMENT.**
KIM E. BEVIER,	)	
	)	
Defendant.	)	

This matter came before the Court pursuant to Plaintiff's motion for partial summary judgment. The parties submitted memorandums in support of their positions and stipulated that the matter be heard without oral argument. After reviewing the memorandums, deposition testimony and the Court file, the Court would rule as follows regarding the Plaintiff's motion for partial summary judgment.

STANDARD OF REVIEW

Rule 56(c), SCRCP, provides that a trial court may grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." *Hancock v. Mid-South Mgmt,* Co., *Inc.,* 381 S.C. 326, 329-30, 673 S.B.2d 801, 802 (2009). "At the summary judgment stage of

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litigation, the court does not weigh conflicting evidence with respect to a disputed material fact." S.C. *Prop. & Gas. Guar Ass'n v. Yensen,* 345 S.C. 512, 518, 548 S.E.2d 880, 883 (Ct App. 2001). "The purpose of summary judgment is to expedite the disposition of cases *Long Grove at Seaside Farms, LLC v. Long Grove...,* 2012 WL 10890587 ... © 2018 Thomson Reuters. No claim to original U.S. Government Works. 3 which do not require the services of a fact finder." *Gauld v. O'Shaugnessy Realty Co.,* 380 S.C. 548,558, 671 S.E.2d 79, 85 (Ct. App. 2008). The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. *Id.* Once the party moving for summary judgment meets the initial burden of showing the absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Id.* at 558-59, 671 S.E.2d at 85. Rather, the nonmoving party must present specific facts showing a genuine issue for trial. *Id.* at 559, 671 S.E.2d at 85.

FACTUAL BACKGROUND

On or about July 11, 2001, the property in question became subject to "Declaration of Covenants, Conditions and Restrictions Palmetto Air Plantation Clarendon County, South Carolina" (hereinafter "Covenants"). Said Covenants were filed in the Clarendon County Courthouse in Deed Book A435 at page 223 on or about July 11, 2001 (See Amended Complaint and Second Amended Answer wherein it was alleged and admitted by the Defendant that the Covenants were filed. Also, find a copy of the Covenants at Exhibit 2 to the Deposition of the Defendant dated April 4, 2018). The Defendant, Kim S. Bevier, purchased two lots within Palmetto Air Plantation on September 26, 2003. Said

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lots are subject to the aforementioned Covenants ." The Defendant in Paragraph 4 of his Second Amended Answer to Amended Complaint states the following: "Paragraph five is admitted to the extent it alleges that the Declaration of Covenants, Conditions and Restrictions Palmetto Air Plantation Clarendon County, South Carolina were filed as alleged and that the defendant purchased two lots as alleged. The allegation that the lots are subject to the alleged covenants is denied."

On May 21, 2003, prior to signing the contract of sale, W.C. Coffey, Jr., Esquire wrote a letter to the Defendant and his now deceased wife. In the letter, Mr. Coffey references the two lots (Lots 33 & 34) that were later purchased by the Defendant. Mr. Coffey further references a meeting between himself, the Defendant and his late wife wherein the three met. Mr. Coffey specifically mentions: "It is obvious that you have considered this carefully and I appreciate your questions regarding the Restrictive Covenants" (See Exhibit 1 to the April 4, 2018 deposition of the Defendant).

The Defendant and Plaintiff entered into a contract of sale for two lots on May 23, 2003 (See Exhibit 4 to the April 4, 2018 deposition of the Defendant). The Contract of sale signed by Kim Bevier and his wife on May 23, 2003. Page paragraph 4 is captioned "Restrictive Covenants" and states: "This property is subject to all visible and recorded easements, right-of-way, and covenants, including those Restrictive Covenants dated 11 July 2001 recorded in the office of RMC for Clarendon County in Deed Book A-444 at Page 26.";

At closing, a Preliminary Attorney's Title Certificate provided to Mr. & Mrs. Bevier on September 25, 2003. Said certificate states in paragraph 3 the following:

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"Restrictive Covenants recorded in the office of the Clerk of Court for Clarendon County in Deed Book A-444 at Page 26 and Deed Book A-435 at 223." (See Preliminary Attorney's Title Certificate at Exhibit 6 in the deposition of the Defendant dated April4, 2018).

On October 24, 2003, the Final Attorney's Title Certificate was mailed to the Defendant. It States in paragraph 3 the following: Restrictive Covenants recorded in the office of the Clerk of Court for Clarendon County in Deed Book A-444 at Page 26 and Deed Book A-435 at 223."

During the April 4, 2018 deposition of the Defendant, the following exchange took place between the Plaintiff's attorney and the Defendant:

Q. All right. So, let 's go back to your contention that the Covenants-I want to get a clear understanding from you why the Covenants don't----aren't applicable to you."

A. Because they never been bound to the property that I purchased.

Q. All right. Explain that to me because I'm having a hard time with your understanding of the law.

A. okay. My lay understanding of this is that any Restrictive Covenants need to be either stipulated in a conveyance or referenced in a conveyance if recorded elsewhere. None of those things happened when Joe sold all the land as Mid Eastern Truck Wash sold all land to Palmetto Air Plantation, LLC. Okay?

A. All right. Joe at that point in time, lost his rights as Declarant because more than twenty-five(25) - he retained zero percent of the lots at that time. He can't act as a declarant after he sold all of the property. (See April 4, 2018 deposition of the

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Defendant page 53, lines 5-25).

A. So you ask---why I don't believe the covenants apply to my land---that's the first reason is that he lost all right to be Declarant and God on that property after he sold it to Palmetto Air Plantation, LLC. Palmetto Air Plantation, LLC gave me a general Warranty Deed: Okay? Not subject---! guess it's subject to restrictions, zoning, easements and all that jazz that apply, but it did again, it did not bind the covenants to my property and, indeed I don't think they could unless they refiled themselves . (See April 4, 2018 deposition of the Defendant page 54, lines 13-25).

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The Plaintiff seeks partial summary judgment regarding the Defendant's contention that the Covenants filed on July 11, 2001 **do not run** with his property.

Restrictive covenants differ from contracts in that they "run with the land," meaning that they are enforceable by and against later grantees. 17 S.C. Jur. *Covenants§* 18 (2005). Restrictive covenants that require grantees to pay assessments for the upkeep of a particular parcel of property are held to be real covenants which "touch and concern" land, and therefore, run with the land. *Epting v. Lexington Water Power* Co., 177 S.C. 308, 314-317, 181 S.E. 66, 69-70 (1935); 17 S.C. Jur. *Covenants§§* 18 and 19.

There are several ways in which restrictive covenants may be created. The most common means are: (1) by deed; (2) by declaration; and (3) by implication from a general plan or scheme of development. 17 S.C. Jur. *Covenants* § 60. The initial restrictive covenants applicable to the Defendant were created by the Declaration of Covenants when MidEastern Truck Wash, Inc. (Declarant) executed and recorded the

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Declaration of Covenants, Conditions and Restrictions Palmetto Air Plantation Clarendon County, South Carolina recorded at Deed Book A435 at page 223 on or about July 11, 2001. See *Smith v. Comm'rs of Pub. Works of City of Charleston,* 312 S.C. 460, 466, 441 S.E.2d 331, 335 (Ct.App.1994); 17 S.C. Jur. *Covenants§* 8. Restrictive covenants will be enforced unless they are indefinite or contravene public policy. *Sea Pines Plantation* Co. *v. Wells,* 294 S.C. 266, 270, 363 S.E.2d 891, 894 (1987).

The Covenants here were filed in the Clarendon County RMC Office in Deed Book A435 at page 223 on or about July 11, 2001 (See Amended Complaint and Second Amended Answer wherein it was alleged and admitted by the Defendant that the Covenants were filed. See also, filed copy of the Covenants at Exhibit 2 of the Defendant's April 4, 2018 deposition).

This exact issue (e.g. whether or not restrictive covenants were binding on a purchaser regardless of whether or not the covenants were actually noticed in the deed) was before the Court of Appeals in *Harbison Community Ass'n, Inc. v. Mueller459* S.E.2d 860 (Ct. App. 1995). In that case the Court Appeals stated the following:

> The circuit court also reversed the magistrate because the Declaration's fee assessment provisions were not recited in the Muellers' deed, and therefore the Muellers were not bound by them. **This was an error. A covenant is enforceable against a subsequent grantee, even if not in the grantee's deed, if the grantee has actual or constructive notice of the covenant. 20 Am.Jur.2d Covenants, Conditions, and Restrictions § 26 (1965). A homeowner is charged with constructive notice of any restriction properly recorded within the chain of title. Carolina Land Co. v. Bland, 265 S.C. 98,217 5.E.2d 16 (1975). The Declaration was recorded and noted in the J.C. Roy Company deed, within the Muellers' chain of title. Thus, the Muellers had constructive notice of the Declaration. Moreover, Mr. Mueller testified he had actual notice of the**

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Declaration. Accordingly, the Muellers are bound by the terms of the Declaration, and the circuit court erred, as a matter of law, in finding the Muellers not bound by the covenant because it was not in their deed (emphasis added).

In this case, the Defendant had constructive notice of the Covenants by virtue of the fact that the Covenants were filed before the purchase of the Defendant's lots in Deed Book A435 at page 223 on or about July 11, 2001 (See Amended Complaint and Second Amended Answer wherein it was alleged and admitted by the Defendant that the Covenants were filed and See also, filed copy of the Covenants at Exhibit 2 of the Defendant's April 4, 2018 deposition).

The Defendant also had actual notice of the Covenants by virtue of the following: On May 21, 2003, prior to signing the contract of sale, W.C. Coffey, Jr., Esquire wrote a letter to the Defendant and his now deceased wife. In the letter, Mr. Coffey references the two lots (Lots 33 & 34) that were later purchased by the Defendant. Mr. Coffey further references a meeting between himself, the Defendant and his late wife wherein the three met. Mr. Coffey specifically mentions: "It is obvious that you have considered this carefully and I appreciate your questions regarding the Restrictive Covenants" (See Exhibit 1 to the April 4, 2018 deposition of the Defendant).

The Defendant and Plaintiff entered into a contract of sale for two lots on May 23, 2003 (See Exhibit 4 to the April 4, 2018 deposition of the Defendant). The Contract of sale signed by Kim Bevier and his wife on May 23, 2003. Page paragraph 4 is captioned "Restrictive Covenants" and states: "This property is subject to all visible and recorded easements, right-of-way, and covenants, including those Restrictive Covenants dated

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11 July 2001 recorded in the office of RMC for Clarendon County in Deed Book A-444 at Page 26."; At closing, a Preliminary Attorney's Title Certificate provided to Mr. & Mrs. Bevier on September 25, 2003. Said certificate states in paragraph 3 the following: "Restrictive Covenants recorded in the office of the Clerk of Court for Clarendon County in Deed Book A-444 at Page 26 and Deed Book A-435 at 223." (See Preliminary Attorney's Title Certificate at Exhibit 6 in the deposition of the Defendant dated April 4, 2018). On October 24, 2003, the Final Attorney's Title Certificate was mailed to the Defendant. It States in paragraph 3 the following: Restrictive Covenants recorded in the office of the Clerk of Court for Clarendon County in Deed Book A-444 at Page 26 and Deed Book A-435 at 223."

The Court would find that the Defendant had actual and constructive knowledge of the Covenants. Therefore this Court grants partial summary judgment to the Plaintiff regarding the Defendant's contention and defense that the Covenants herein do not "run" with the lots he purchased from the Plaintiff because the Covenants were not recited in his deed when he purchased the property from Palmetto Air Plantation, LLC. As a result, the Covenants referenced herein are enforceable against the Defendant and the Defendant's contention that they are unenforceable against him is without merit.

For the aforementioned reasons, partial summary judgment is granted in favor of the Plaintiff.

AND IT IS SO ORDERED.

R. FERRELL COTHRAN, JR.
PRESIDING JUDGE
THIRD JUDICIAL CIRCUIT

December_____, 2018

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Clarendon Common Pleas

Case Caption:	Palmetto Air Plantation Homeowners Associations, Inc VS Kim E Bevier
Case Number:	2017CP1400127
Type:	Order/Summary Judgment

So Ordered

s/ R. Ferrell Cothran, Jr., 2144

Electronically signed on 2018-12-14 11:23:25 page 10 of 10

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON	)	
Palmetto Air Plantation Homeowners Association, Inc.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	C/A NO. 2017-CP-14-00127
Kim E. Bevier,	)	
	)	
Defendant.	)	

This matter is before the Court pursuant to Rule 59 (e) SCRCP. The Defendant seeks an Order of this Court amending or altering its Order of December 17, 2018.

Pursuant to Rule 59 (f) SCRCP, this Court determines that the motion to alter or amend may be decided on briefs filed by the parties and without oral argument.

Having duly considered the motion to alter or amend of the Defendant, this Court has determined that its original Order dated December 17, 2018, is fully supported by the law and the evidence and is hereby ratified and reconfirmed. The motion to alter or amend the earlier Order is therefore DENIED.

AND IT IS SO ORDERED.

Manning, South Carolina

Dated:_____

_____
R. Ferrell Cothran, Jr.
Judge, Third Judicial Circuit

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Clarendon Common Pleas

Case Caption: Palmetto Air Plantation Homeowners Associations, Inc VS Kim E Bevier

Case Number: 2017CP1400127

Type: Order/Other

So Ordered

s/ R. Ferrell Cothran, Jr., 2144

Appeals Court

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

Palmetto Air Plantation Homeowners Association, Inc.,
Respondent,

v.

Kim E. Bevier, Appellant.

Appellate Case No. 2019-000516

Appeal From Clarendon County
R. Ferrell Cothran, Jr., Circuit Court Judge

Unpublished Opinion No. 2022-UP-361
Heard February 9, 2022 – Filed September 21, 2022

AFFIRMED

Thomas E. Player, Jr., of Player & McMillan, LLC, of Sumter, for Appellant.

Steven Smith McKenzie, of Coffey & McKenzie, PA, of Manning, for Respondent.

PER CURIAM: In this civil action, Kim E. Bevier appeals the circuit court's grant of partial summary judgment in favor of Palmetto Air Plantation Homeowners Association, Inc. (Palmetto Air). Bevier argues the circuit court

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Beth Rosenberg, Clerk Supreme Ct. S.C.

erred in finding his property was subject to the Palmetto Air subdivision restrictive covenants. We affirm.

FACTS AND PROCEDURAL HISTORY

This case arises out of an action by Palmetto Air seeking enforcement of restrictive covenants against Bevier. The parties have stipulated to the following facts. On July 11, 2001, Mid-Eastern Truckwash Inc. (Mid-Eastern) filed a declaration of covenants, conditions, and restrictions (the Declaration of Covenants) with the Clarendon County Register of Deeds office for the as-yet-to-be developed Palmetto Air subdivision.[1] Thereafter, on October 9, 2001, Mid-Eastern conveyed the land comprising the Palmetto Air subdivision to Palmetto Air; the deed contained covenants of general warranty but did not reference the Declaration of Covenants. Subsequently, Palmetto Air mortgaged the subdivision property to Edward G. Gibbons in February 2002; the mortgage included covenants of general warranty without reference to the Declaration of Covenants. The Palmetto Air subdivision plat was recorded on September 19, 2003.

The parties also stipulated Bevier contracted to purchase two lots in the Palmetto Air subdivision in May 2003, which Palmetto Air conveyed to Bevier by general warranty deed on September 26, 2003, without reference to any restrictive covenants.[2] Prior to purchasing the lots, Bevier spoke with an attorney who sent a letter to him referencing his consideration of the Palmetto Air restrictive covenants. The contract of sale contained a provision stating the conveyance was subject to the Declaration of Covenants. Both the preliminary and final title certificates for Bevier's two lots indicated the lots were subject to the Declaration of Covenants.

Palmetto Air filed a summons and complaint in April 2017, as amended in June 2017, alleging Bevier violated several sections of the Declaration of Covenants. In his amended answer, Bevier denied his lots were subject to the Declaration of Covenants. At his April 2018 deposition, Bevier stated he was aware of the restrictive covenants when he purchased his lots. He explained his intention in

---

[1] The Palmetto Air subdivision was developed as a community for "aviation enthusiasts" and was built around an airstrip. The Declaration of Covenants allowed for each lot adjoining the taxiway right-of-way to construct a hangar for the storage of private aircraft.

[2] The parties did not provide this court with a copy of any other deed conveying property in the Palmetto Air subdivision.

purchasing them was to live on an airport. Thereafter, Palmetto Air moved for partial summary judgment on the issue of whether, as a matter of law, the absence of reference to restrictive covenants in Bevier's deed made the Declaration of Covenants unenforceable against Bevier. The parties agreed that Palmetto Air's motion for partial summary judgment would be heard without oral argument. The circuit court granted partial summary judgment in favor of Palmetto Air, finding the Declaration of Covenants was enforceable against Bevier. Specifically, the circuit court determined the restrictive covenants were created when Mid-Eastern executed and recorded the Declaration of Covenants. It further determined Bevier had actual and constructive knowledge of the Declaration of Covenants. Bevier filed a Rule 59(e), SCRCP motion to reconsider, which the circuit court denied.

ISSUE ON APPEAL

Did the circuit court err in holding Bevier's property was subject to the Declaration of Covenants when the restrictive covenants were never referenced in a conveyance deed or other severance of title?

STANDARD OF REVIEW

"When reviewing an order granting summary judgment, the appellate court applies the same standard as the trial court." *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). "Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law." *Id.* "In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party." *Id.*; *see also* Rule 56(c), SCRCP. "When an appeal involves stipulated or undisputed facts, an appellate court is free to review whether the trial court properly applied the law to those facts." *J.K. Constr., Inc. v. W. Carolina Reg'l Sewer Auth.*, 336 S.C. 162, 166, 519 S.E.2d 561, 563 (1999). "In such cases, the appellate court owes no particular deference to the trial court's legal conclusions." *Id.*

LAW AND ANALYSIS

Bevier argues restrictive covenants are servitudes of the property encumbered in favor of the property benefited thereby; and thus, until there is separation of some portion of the property accompanied by the imposition of covenants, no dominant and servient estates exist and the owner is capable of conveying fee simple title unencumbered. He contends that notwithstanding the recordation of the Declaration of Covenants, as long as all the property described therein was under

the same ownership, the property was unencumbered. Therefore, the restrictive covenants were never created because they were not referenced in a severance of title. We disagree.

We hold the circuit court did not err in granting partial summary judgment in favor of Palmetto Air. Viewing the facts in the light most favorable to Bevier, we conclude there is no genuine issue of material fact concerning whether the Declaration of Covenants was enforceable against Bevier. First, we find the filing and recording of the Declaration of Covenants created the restrictive covenants. *See Smith v. Comm'rs of Pub. Works of City of Charleston*, 312 S.C. 460, 466, 441 S.E.2d 331, 335 (Ct. App. 1994) ("Restrictive covenants are commonly created by a declaration of restrictive covenants, which is executed and recorded in the same manner as a deed."); *see also* 17 S.C. Jur. *Covenants* § 60 (2022) ("The most common means of creating restrictive covenants are by deed, declaration, and by implication from a general plan or scheme of development."). The fact the Declaration of Covenants was not referenced in a deed within Bevier's chain of title had no impact on the validity of the creation of the restrictive covenants. *See* 17 S.C. Jur. Covenants § 63 (2022) ("Where a grantor recorded an agreement containing restrictions and a plat of a residential subdivision, and later executed deeds that did not contain the restrictions, the court ruled that the failure to mention the restrictions in the deeds was of no legal significance since the restrictions were of record." (citing *Flinkingshelt v. Johnson*, 258 S.C. 77, 81, 187 S.E.2d 233, 235 (1972) (stating it "[wa]s of no legal significance whether the restrictions were mentioned in a deed or not [when] they were of record[] and known to most purchasers"))); *cf. Davey v. Artistic Builders, Inc.*, 263 S.C. 431, 436, 211 S.E.2d 235, 236 (1975) (finding acreage not referenced in a subdivision plat was not subject to the recorded declaration of covenants imposing restrictive covenants on the subdivision).

Second, we find the parties intended Bevier to be subject to the Declaration of Covenants when Bevier possessed both actual and constructive notice of the restrictive covenants at the time he purchased his lots. *See Harbison Cmty. Ass'n, Inc. v. Mueller*, 319 S.C. 99, 103, 459 S.E.2d 860, 863 (Ct. App. 1995) ("A covenant is enforceable against a subsequent grantee, even if not in the grantee's deed, if the grantee has actual or constructive notice of the covenant."); *Maxwell v. Smith*, 228 S.C. 182, 197, 89 S.E.2d 280, 287 (1955) ("The subdivision and development . . . was pursuant to a general scheme of improvement intended to insure the use of the property as an attractive residential area. In furtherance of this purpose [the grantor] imposed upon the area certain specific restrictions and conditions, including a covenant that nothing should be done on any lot 'which

shall be or become an annoyance or nuisance to the neighborhood'. By their purchases within the subdivision, the [grantees] became parties to the restrictive covenants, and among them and the [grantor] the[r]e arose mutuality of covenant and consideration."). Bevier's discussion of the restrictive covenants with an attorney prior to his purchase of the lots; the inclusion of the Declaration of Covenants in both the preliminary and final title certificates; the provision in Bevier's contract of sale noting the conveyance was subject to the Declaration of Covenants; and, Bevier's admission during his deposition that he was aware of the restrictive covenants when he bought his lots—and stated intent of purchasing property in the Palmetto Air subdivision to live on an airport—establish Bevier had actual notice of the restrictive covenants. Moreover, Bevier had constructive notice of the restrictive covenants because the Declaration of Covenants was properly recorded within his chain of title when Mid-Eastern filed and recorded it with the Clarendon County Register of Deeds office before it conveyed the land to Palmetto Air. *See Harbison Cmty. Ass'n*, 319 S.C. at 103, 459 S.E.2d at 863 ("A homeowner is charged with constructive notice of any restriction properly recorded within the chain of title."); *Howorka v. Harbor Island Owners' Ass'n*, 292 S.C. 381, 386, 356 S.E.2d 433, 436 (Ct. App. 1987) (finding homeowner had constructive notice of a declaration of covenants by virtue of its recordation against the burdened property). Accordingly, we conclude the parties intended Bevier to be bound by the restrictive covenants when Bevier had actual and constructive notice of the Declaration of Covenants at the time he purchased property in the Palmetto Air subdivision.

Based on the foregoing, we hold the Declaration of Covenants is enforceable against Bevier even though no deed in Bevier's chain of title referenced restrictive covenants. Accordingly, the circuit court's grant of partial summary judgment in favor of Palmetto Air is

AFFIRMED.

WILLIAMS, C.J., and KONDUROS and VINSON, JJ., concur.

ELECTRONICALLY FILED - 2022 Oct 31 12:11 PM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

STATE OF SOUTH CAROLINA) COUNTY OF CLARENDON)) Palmetto Air Plantation) Homeowners Association, Inc.,)) Plaintiff,)) vs.) Kim E. Bevier,) Defendant.)	IN THE COURT OF COMMON PLEAS OF THE THIRD JUDICIAL CIRCUIT CIVIL ACTION NO.: 2017-CP-14-00127 CONSENT ORDER FOR WITHDRAWAL OF COUNSEL

By and with the consent of the parties, it is hereby,

ORDERED:

1. Thomas E. Player, Jr. is relieved as counsel for Defendant;
2. All proceedings in this action are stayed for 45 days from the date hereof in order for Defendant to secure replacement counsel should he desire to do so.

____October, 2022

Honorable George M. McFaddin, Jr.
Circuit Court Judge

We so Move:

Thomas E. Player, Jr.
Attorney for Defendant

Kim E, Bevier, Defendant

Steven S, McKenzie
Attorney for Plaintiff

ELECTRONICALLY FILED - 2022 Oct 31 12:11 PM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127



Clarendon Common Pleas

Case Caption:	Palmetto Air Plantation Homeowners Associations, Inc VS Kim E Bevier
Case Number:	2017CP1400127
Type:	Order/Consent Order

So Ordered

s/ R. Kirk Griffin 2768

ELECTRONICALLY FILED - 2022 Oct 21 11:56 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

STATE OF SOUTH CAROLINA) COUNTY OF CLARENDON)) Palmetto Air Plantation) Homeowners Association, Inc.,)) Plaintiff,)) vs.) Kim E. Bevier,) Defendant.)	IN THE COURT OF COMMON PLEAS OF THE THIRD JUDICIAL CIRCUIT CIVIL ACTION NO.: 2017-CP-14-00127 CONSENT ORDER FOR WITHDRAWAL OF COUNSEL

By and with the consent of the parties, it is hereby,

ORDERED:

1. Thomas E. Player, Jr. is relieved as counsel for Defendant;
2. All proceedings in this action are stayed for 45 days from the date hereof in order for Defendant to secure replacement counsel should he desire to do so.

6 October, 2022

Honorable George M. McFaddin, Jr.
Circuit Court Judge

We so Move:

Thomas E. Player, Jr.
Attorney for Defendant

Kim E. Bevier, Defendant

Steven S. McKenzie
Attorney for Plaintiff

ELECTRONICALLY FILED - 2024 Jul 17 9:06 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

STATE OF SOUTH CAROLINA COUNTY OF CLARENDON PALMETTO AIR PLANTATION HOMEOWNERS ASSOCIATION, INC., Plaintiff, vs. KIM E. BEVIER, Defendant.	)	IN THE COURT OF COMMON PLEAS OF THE THIRD JUDICIAL CIRCUIT CASE NUMBER: 2017-CP-14-00127 **FINAL ORDER**

DATE OF HEARING	:	April 1, 2024
PRESIDING JUDGE	:	Kristi Fisher Curtis
ATTORNEY FOR PLAINTIFF	:	Steven S. McKenzie
ATTORNEY FOR DEFENDANT	:	Pro Se
COURT REPORTER	:	

This matter came before the Court pursuant to Plaintiff's request for a Final Hearing. The Court heard the testimony of the parties and witnesses as well as the evidence that was introduced at trial. After the conclusion of the case, the Court took the matter under advisement. After reviewing testimony, evidence submitted and the Court file, the Court would rule as follows regarding the case before it.

PROCEDURAL HISTORY

This action was commenced by the filing of a Summons and Complaint on April 17, 2017. Along with the Complaint, Plaintiff sought injunctive relief by filing a Motion for a Temporary Restraining Order on April 18, 2017. On June 6, 2017, The Honorable R. Ferrell Cothran, Jr. granted Plaintiff's request for a Temporary Restraining Order.

Defendant filed his Answer to the original Complaint on June 16, 2017. By agreement, Plaintiff filed an Amended Summons and Complaint on June 28, 2017.

ELECTRONICALLY FILED - 2024 Jul 17 9:06 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

Defendant filed his Answer to the Amended Summons and Complaint on July 7, 2017. Three months later, Defendant filed a Motion to Amend his Amended Answer. A hearing was held on March 20, 2018, in which the Court granted Defendant's Motion to Amend his Answer. On March 22, 2018, Defendant filed his Second Amended Answer and Counterclaim.

On July 19, 2018, Plaintiff filed a Motion for Partial Summary Judgment. The parties agreed to a stipulation of facts on August 21, 2018, and agreed that the Motion for Partial Summary Judgment would be heard without oral argument (R. pp. 113-115). The Court granted Partial Summary Judgment in favor of Plaintiff. Defendant filed a Motion to Reconsider which was denied by the Court on February 28, 2019. Defendant appealed the ruling to the South Carolina Court of Appeals. The Court of Appeals upheld the Order for Partial Summary Judgment on September 21, 2022.

After the Court of Appeals' decision, Defendant's attorney moved to be relieved as attorney for Defendant, and that Motion was granted by the Court. Defendant has been *pro se* since that Order was filed.

FACTUAL BACKGROUND

On or about July 11, 2001, the property in question became subject to "Declaration of Covenants, Conditions and Restrictions Palmetto Air Plantation Clarendon County, South Carolina" (hereinafter "Covenants"). Said Covenants were filed in the Clarendon County Courthouse in Deed Book A435 at page 223 on or about July 11, 2001 (See Amended Complaint and Second Amended Answer wherein it was

ELECTRONICALLY FILED - 2024 Jul 17 9:06 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

alleged and admitted by Defendant that the Covenants were filed. Also, find a copy of the Covenants at Exhibit 2 to the Deposition of Defendant dated April 4, 2018). Defendant, Kim S. Bevier, purchased two lots within Palmetto Air Plantation on September 26, 2003. Said lots are subject to the aforementioned Covenants ." Defendant in Paragraph 4 of his Second Amended Answer to Amended Complaint states the following: "Paragraph five is admitted to the extent it alleges that the Declaration of Covenants, Conditions, and Restrictions Palmetto Air Plantation Clarendon County, South Carolina were filed as alleged and that the defendant purchased two lots as alleged. The allegation that the lots are subject to the alleged covenants is denied."

Plaintiff alleged that Defendant, in violation of Article IV Section 4.1 and 4.3 of the Covenants, has been using his home in Palmetto Air Plantation for a commercial endeavor. More specifically, Plaintiff alleged that Defendant had been renting his home/rooms out to overnight guests through Airbnb.

Plaintiff also alleged that Defendant is the owner of large breed dog (bullmastiff). Plaintiff alleged that it received complaints from homeowners within Palmetto Air Plantation that Defendant's dog had been running at large, unrestrained, and excessively barking. Plaintiff alleged that this violates Sections 5.10 and 5.11 of the Covenants.

Plaintiff further alleged that Defendant installed an underground electrical fence in an attempt to restrain the dog. Plaintiff alleged that the installation of the underground fence violated Article V. Section 5.16. of the Covenants.

ELECTRONICALLY FILED - 2024 Jul 17 9:06 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

Plaintiff finally alleged that Defendant was issued a Clarendon County Building Permit for his property on March 30, 2010. Plaintiff alleged that Article IV. Section 4.12 of the Covenants states in pertinent part "....within one year after the issuance of a Building Permit, the Lot Owner shall have his property sown in grass and have planted foundation landscaping around the dwelling and other accessory buildings in accordance with the proposed landscaping plan previously submitted and approved by the Board." Plaintiff alleged that Defendant submitted a landscaping plan to the Board that was approved, but Defendant has failed to implement the plan.

Plaintiff seeks damages for Defendant's violation of the Covenants as well as attorney's fees and costs incurred as a result of the violations of the Covenant by Defendant.

Defendant contends that the Covenants do not apply to him or his property, and he also contends that Plaintiff does not have the legal standing to bring an action against him. Defendant believes that the Covenants do not name Plaintiff as the governing body for enforcement of the Covenants. Defendant's contention is that the Covenants name Palmetto Air Plantation Property Owner's Association, Inc. as the name of the homeowner's association and not the Plaintiff, Palmetto Air Plantation Homeowners Association, Inc.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The Court finds that the Covenants at issue in this case are applicable to the Defendant's property. Judge Cothran ruled on this issue previously, and that ruling was affirmed by the South Carolina Court of Appeals. The South Court of Appeals

ELECTRONICALLY FILED - 2024 Jul 17 9:06 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

stated the following in its opinion:

> By their purchases within the subdivision, the [grantees] became parties to the restrictive covenants, and among them and the [grantor] there arose mutuality of covenant and consideration. Bevier's discussion of the restrictive covenants with an attorney prior to his purchase of the lots; the inclusion of the Declaration of Covenants in both the preliminary and final title certificates; the provision in Bevier's contract of sale noting the conveyance was subject to the Declaration of the Covenants; and, Bevier's admission during his deposition that he was aware of the restrictive covenants when he bought his lots and stated his intent of purchasing property in Palmetto Air Subdivision to live on an airport-establish Bevier had actual notice of the restrictive covenants. **Moreover, Bevier had constructive notice of the restrictive covenants because the Declaration of Covenants were properly recorded within his chain of title...Based on the foregoing, we hold the Declaration of Covenants is enforceable against Bevier.... (emphasis added).**
>
> *See Palmetto Air v. Bevier*; Unpublished Opinion No. 2022-UP-361.

The Court of Appeal's opinion makes any argument by Bevier concerning the applicability and enforceability of the Covenants against his property a moot point and *res judicata*.

After the Court of Appeals ruling, Defendant argued for the first time that the Covenants are not applicable to him because the Plaintiff is not the named homeowner's association as is stated in the Covenants. The Covenants state in Section 1.7 as follows: "Association shall mean the Palmetto Air Plantation Owners Association, Inc." Plaintiff's name is Palmetto Air Plantation Homeowners Association, Inc. The difference in the names is "Owners" in the Covenants versus "Homeowners" in the Plaintiff's name. Having failed to raise this issue previously to the Circuit Court or to the Court of Appeals when arguing against the applicability of the Covenants to his property, the Court finds that Defendant cannot now rely on the difference in the names

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as a defense.

The court further finds that Plaintiff has met its' burden of proving by a preponderance of the evidence that Defendant has violated the covenants by operating an Airbnb at the property, in allowing his dog to run at large, and in failing to implement the landscaping plan as approved by the Board.

The Court would find and conclude as follows:

1. Defendant is permanently enjoined from operating any short-term rentals from his property;
2. Defendant must remove the dog from his property or strictly comply with the Covenants. Failure to remove the dog or to restrain him within a fence, enclosure, or to keep him on a leash when outside of the home or fenced enclosure after the date of this Order will subject the Defendant to a $100.00 per day fine as per the Covenants;
3. Defendant must implement the landscaping plan previously submitted and approved by Plaintiff within 30 days of the date of this Order or be subject to a $100.00 per day fine as per the Covenants;
4. The Court awards Plaintiff the past due HOA dues and assessments as itemized in Plaintiff's Exhibit 11 in the amount of $8,615.11;
5. The Court awards the Plaintiff attorney's fees in the amount of $44,450.00 as itemized in Plaintiff's Exhibit 10. The Court finds that these to be reasonable and appropriate, and thoroughly substantiated.

AND IT IS SO ORDERED.

KRISTI F. CURTIS
PRESIDING JUDGE
THIRD JUDICIAL CIRCUIT

July ____, 2024

ELECTRONICALLY FILED - 2024 Jul 17 9:06 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

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Clarendon Common Pleas

Case Caption: Palmetto Air Plantation Homeowners Associations, Inc VS Kim E Bevier

Case Number: 2017CP1400127

Type: Order/Judgment For Relief

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

ELECTRONICALLY FILED - 2024 Oct 29 10:37 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

STATE OF SOUTH CAROLINA COUNTY OF CLARENDON PALMETTO AIR PLANTATION HOMEOWNERS ASSOCIATION, INC., Plaintiff, v. KIM E. BEVIER, Defendant.	IN THE COURT OF COMMON PLEAS CASE NO.: 2017-CP-14-00127 **ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION**

A bench trial in this matter was heard on April 1, 2024. Defendant seeks reconsideration of the court's final order in this matter, filed July 17, 2024. After considering Defendant's Motion and Plaintiff's Reply, the motion is denied.

LEGAL STANDARD

The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to "reconsider matters properly encompassed in a decision on the merits." *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). Consequently, a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 22, 602 S.E.2d 772, 779 (2004). A party may wish to file such a motion when he believes the court misunderstood, failed to fully consider, or failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. *Elam,* 361 S.C. at 24, 602 S.E.2d at 779.

Defendant argues that Plaintiff is not a valid entity to enforce the covenants against Defendant, and that the Covenants themselves are invalid. The court finds Defendant's argument is barred by the doctrine of *res judicata*, as the S.C. Court of Appeals has already ruled that

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Defendant's property is subject to these Covenants. In its opinion upholding the Circuit Court's order granting partial summary judgment in favor of Plaintiff, the Court of Appeals stated:

> The circuit court granted partial summary judgment in favor of Palmetto Air, finding the Declaration of Covenants was enforceable against Bevier. Specifically, the circuit court determined that the restrictive covenants were created when Mid-Eastern executed and recorded the Declaration of Covenants. It further determined Bevier had actual and constructive knowledge of the Declaration of Covenants. . . . Moreover, Bevier had constructive notice of the restrictive covenants because the Declaration of Covenants was property recorded within his chain of title when Mid-Eastern filed and recorded it with the Clarendon County Register of Deeds office before it conveyed the land to Palmetto Air.

The doctrine of *res judicata* operates to bar a litigant "from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." *Hilton Head Center v. S.C. Pub. Serv. Comm'n*, 294 S.C. 9, 362 S.E.2d 176 (1987). Both the Circuit Court and the Court of Appeals addressed Plaintiff's Motion for Summary Judgment on the issue of whether Defendant's property is subject to the Covenants at issue in this suit, and both found that the Covenants at issue here were enforceable against Defendant. Defendant could have raised this issue before Judge Cothran or the Court of Appeals. Defendant was represented by very able counsel both at the Summary Judgment stage and at the Court of Appeals. Defendant cannot keep silent before the circuit court on the very issue before it, wait until the issue has gone all the way up to the Court of Appeals, only to advance a different argument on the exact same issue after the Court of Appeals has made its ruling.

Defendant has not shown that the court misunderstood, failed to fully consider, or failed to rule on an argument or issue before the court. As such, the motion is DENIED.

AND IT IS SO ORDERED.

_____
Circuit Court Judge

_____, 2024

ELECTRONICALLY FILED - 2024 Oct 29 10:37 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

ELECTRONICALLY FILED - 2024 Oct 29 10:37 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

Clarendon Common Pleas

Case Caption: Palmetto Air Plantation Homeowners Associations, Inc VS Kim E Bevier

Case Number: 2017CP1400127

Type: Order/Other

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

STATE OF SOUTH CAROLINA)
)
COUNTY OF CLARENDON)
)
PALMETTO AIR PLANTATION HOMEOWNERS ASSOCIATION, INC)
Plaintiff(s))
)
vs.)
)
KIM E. BEVIER)
Defendant(s))

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

_____-CP - _____- _____

Submitted By: STEVEN S. MCKENZIE
Address: 2 N. BROOKS STREET, MANNING, SC

SC Bar #: 6919
Telephone #: 803-435-8847
Fax #: 803-435-8915
Other:
E-mail: SMCKENZIE@CCMLAWSC.COM

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check all that apply)*

**If Action is Judgment/Settlement do not complete*

☐ **JURY TRIAL** demanded in complaint. ☒ **NON-JURY TRIAL** demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Fraud/Bad Faith (150)
- ☐ Failure to Deliver/ Warranty (160)
- ☐ Employment Discrim (170)
- ☐ Employment (180)
- ☒ Other (199) VIOLATION OF COVENANTS

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20____-NI-_____-_____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299) _____

Torts – Personal Injury
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Assault/Battery (370)
- ☐ Slander/Libel (380)
- ☐ Other (399) _____

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499) _____

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599) _____

Administrative Law/Relief
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899) _____

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Other (799) _____

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999) _____

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699) _____
- ☐ Sexual Predator (510)
- ☐ Permanent Restraining Order (680)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Pre-Suit Discovery (670)

ELECTRONICALLY FILED - 2017 Apr 17 11:32 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

Submitting Party Signature: / Steven S. McKenzie **Date:** 4/13/17

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

ELECTRONICALLY FILED - 2017 Apr 17 11:32 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

ELECTRONICALLY FILED - 2017 Apr 17 11:32 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

STATE OF SOUTH CAROLINA,	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON	)	
	)	
PALMETTO AIR PLANTATION HOMEOWNERS ASSOCIATION, INC	)	SUMMONS
Plaintiff,	)	
	)	
vs.	)	FILE NO.
	)	
KIM E BEVIER	)	
Defendant.	)	

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

MANNING, South Carolina

/ Steven S. McKenzie

Plaintiff/Attorney for Plaintiff

Dated: March 12, 2017

Address: STEVEN S. MCKENZIE
COFFEY & MCKENZIE
ATTORNEYS FOR THE PLAINTIFFS
2 N. BROOKS STREET
MANNING, SC 29102
803-435-8847 TELEPHONE
803-435-8915 FACSIMILE

SCCA 401 (5/02)

ELECTRONICALLY FILED - 2017 Apr 17 11:32 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

ELECTRONICALLY FILED - 2017 Apr 17 11:32 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	THIRD JUDICIAL CIRCUIT
COUNTY OF CLARENDON)	DOCKET NO.: 17-CP-14-_____
)	
PALMETTO AIR PLANTATION)	
HOMEOWNERS ASSOCIATION INC.,)	
)	
Plaintiff,)	
)	
vs)	**COMPLAINT**
)	**(Non-Jury)**
KIM E. BEVIER,)	
)	
)	
Defendant.)	
)	

The Plaintiff herein complaining of the acts and omissions of the Defendant would show upon this Honorable Court as follows:

1. That the Plaintiff is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Clarendon County, South Carolina.

2. The Defendant is a citizens and residents of the County of Clarendon, State of South Carolina.

3. The Plaintiff would show that this Court has jurisdiction over the subject matter and persons/entities involved in this action and venue is proper.

4. The Plaintiff would show that it is a corporation existing solely for the purpose to secure the values and amenities for the homeowners of land within the development known as Palmetto Air Plantation.

5. The Plaintiff would show that on or about July 11, 2001 the property in question became subject to "Declaration of Covenants, Conditions and Restrictions

ELECTRONICALLY FILED - 2017 Apr 17 11:32 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

Palmetto Air Plantation Clarendon County, South Carolina" (hereinafter "Covenants"). Said Covenants were filed in the Clarendon County Courthouse in Deed Book A435 at page 223 on or about July 11, 2001. The Defendant, Kim S. Bevier, purchased two lots within Palmetto Air Plantation on September 26, 2003. Said lots are subject to the aforementioned Covenants

6. The Plaintiff would show that the Defendant, in violation of Article IV Section 4.1 and 4.3 of the Covenants has been using his home in Palmetto Air Plantation for a commercial endeavor in violation of said of Covenants. The Plaintiff would show that the Defendant has been put on notice of his violations of the Covenants by the Plaintiff and he has refused to stop commercial activity on property owned by him in Palmetto Air Plantation for commercial activity. The Plaintiff is informed and believes that the Defendant has been renting his home/rooms out to overnight guest through a business owned by him known as Air B&B. The Plaintiff would show that said business activities are strictly prohibited by the Covenants.

7. The Plaintiff would show that the Defendant is the owner of large breed dog (bullmastiff). The Plaintiff has received complaints from homeowners within Palmetto Air Plantation that the Defendant's dog has been running at-large, unrestrained and excessively barking. The Plaintiff would show that it has asked the Defendant to restrain the dog and stop the excessive barking. The Plaintiff would show that the dog is still not properly restrained and continues to excessively bark in violation of Sections 5.10 and 5.11 of the Covenants.

ELECTRONICALLY FILED - 2017 Apr 17 11:32 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

FOR A FIRST CAUSE OF ACTION.
TEMPORARY/PERMANANET
RESTRAINING ORDER PURSUANT TO
SCRCP RULE 65.

8. Your Plaintiff would show that it is entitled to an Order of this Court granting the following relief under South Carolina Rules of Civil Procedure Rule 65:

9. An Order Restraining the Defendant from conducting business activity On, from, near any property owned by him within Palmetto Air Plantation in violation of the Restrictive Covenants of Palmetto Air Plantation both temporary and permanently.

FOR A SECOND CAUSE OF ACTION
REMOVAL OF THE BULLMASTIFF DOG
FROM PALMETTO AIR PLANATATION

10. The Plaintiff would show that the Defendant have violated the covenants by allowing a large breed dog, bullmastiff, to roam freely upon the property known as Palmetto Air Plantation. The Plaintiff would show that the animal in question is a large dog and intimidates and scares the residents of Palmetto Air Plantation and that the continued running at large of the animal is in violation of State and County laws as well as the Covenants of Palmetto Air Plantation.

11. The Plaintiff would show that the aforementioned animal barks excessively and that the Defendant has been requested by the Plaintiff to remove the dog so as not to disturb the peaceful enjoyment of Palmetto Air Plantation by the animal of the owners of adjacent property.

FOR A THIRD CAUSE OF ACTION
ATTORNEY'S FEES AND COSTS

12. The Plaintiff would show that the Defendant is fully aware of his violations

ELECTRONICALLY FILED - 2017 Apr 17 11:32 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

of the Covenants as outlined in this Complaint. The Defendant has been asked to comply with all of the complaints contained herein. Said notice to the Defendant has been provided to him verbally and in writing.

13. The Plaintiff is informed and believes that he is entitled to both attorney's fees and costs for the necessity to bring this action to enforce the Covenants of Palmetto Air Plantation.

WHEREFORE, having fully set forth their grounds for relief, the Defendants pray that this Honorable Court inquire herein and grant it the relief requested above.

COFFEY & MCKENZIE, PA

/ Steven S. McKenzie

April 12, 2017

BY:_____

Steven S. McKenzie
Attorneys for the Plaintiff
2 North Brooks Street
Manning, South Carolina 29102
(803) 435-8847 (telephone)
(803) 435-8915 (facsimile)
smckenzie@ccmlawsc.com

ELECTRONICALLY FILED - 2017 Apr 17 11:32 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

STATE OF SOUTH CAROLINA)
)
COUNTY OF CLARENDON)

VERIFICATION

JOE WITT and , being duly sworn, say that they are the Petitioners herein, and have read the foregoing Petition and know the contents thereof, that the same is true of their own knowledge, except as matters therein stated to be alleged on information and belief; and to those matters they believe them to be true.

SWORN to and Subscribed before me)
this 13th day of April , 2017)
)
Notary Public for South Carolina)
)
My Commission expires: 3/29/23)

Signature of Petitioner

SCCA/403

ELECTRONICALLY FILED - 2017 Apr 18 10:16 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
DOCKET NO.: 17-CP-14-_____

PALMETTO AIR PLANTATION HOMEOWNER'S ASSOCIATION, INC.

Plaintiff,

vs.

KIM E. BEVIER,

Defendant.

NOTICE OF MOTION AND MOTION FOR TEMPORARY RESTRAINING ORDER PURSUANT TO SCRCP RULE 65.

TO: THE DEFENDANT, KIM E. BEVIER, ABOVE NAMED:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, through its attorneys, Coffey & McKenzie, PA, of the Clarendon County Bar, will move before the Presiding Circuit Court Judge of the Third Judicial Circuit, on the_____ day of _____, 2017, at _____ _____.m., at the County Courthouse located at for an Order:

1. Restraining the Defendant from operating in commercial business activities out his home located within Palmetto Air Plantation with a physical address of 1144 Mullet Drive, Manning South Carolina;

2. Restraining the Defendant from displaying allowing his dog (Bullmastiff) to roam at large on Palmetto Air Plantation and to stop said animal from excessively barking;

3. For an Order awarding temporary attorney's fees and costs;

4. For such other relief the Court may deem just and necessary.

COFFEY & MCKENZIE, PA

April 12, 2017

BY: / Steven S. McKenzie

Steven S. McKenzie
Attorneys for the Plaintiff
2 North Brooks Street
Manning, South Carolina 29102
(803) 435-8847 (telephone)
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Smckenzie @ccmlawsc.com

ELECTRONICALLY FILED - 2017 Apr 18 10:16 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

STATE OF SOUTH CAROLINA

COUNTY OF CLARENDON

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
DOCKET NO.: 17-CP-14-_____

PALMETTO AIR PLANTATION
HOMEOWNER'S ASSOCIATION, INC.

Plaintiff,

vs.

KIM E. BEVIER,

Defendant.
_____)

AFFIDAVIT OF JOE WITT

SWORN TO and before me this ____ day of April, 2017, the deponent sayeth as follows:

My name is Joe Witt. I am the President of the Board of the Palmetto Air Plantation Homeowner's Association, Inc.

In late 2016, it came to the attention of the Board that the Defendant (Mr. Bevier) was operating a business through Air B&B out of his home. The sole purpose of the business is to rent out the home/rooms of Mr. Bevier located at 1144 Mullet Drive, Manning South Carolina. Said home and property owned by Mr. Bevier is located within Palmetto Air Plantation and is subject to the Restrictive Covenants in regards to all property located within Palmetto Air Plantation. The Defendant is well aware of this prohibition because he has been warned verbally by the Board and in writing by the Board through the Board's attorney. Since being warned, the Defendant has continued to rent out his home in violation of the Covenants. This past weekend (April 7, 2017 through April 10, 2017), the Defendant rented his home and/or rooms out of his home to guest.

This past Sunday (April 9, 2017) I personally observed the large breed dog (Bullmastiff) owned by the Defendant roaming free on the property under the supervision of Palmetto Air Plantation Homeowner's Association. The dog is very intimidating and can be aggressive. The Defendant has been warned verbally and in writing about the dog and the Defendant refuses to control the dog's barking and roaming.

As President of the Board of the Plaintiff in this matter, I would ask the Court for

a restraining order that prohibits the Defendant from renting out his home for commercial purposes. I would ask that the Court restrain and enjoin the Defendant from allowing his dog to roam free on the property of Palmetto Air Plantation. I would ask the Court for an award of attorney's fees and costs for the necessity of bringing this action. I am attaching a copy of the Restrictive Covenants to my affidavit for review by the Court.

FURTHER the deponent sayeth not

Joe Witt

SWORN to and before me
this 13th day of April, 2017

Notary Public for the State of SC
My commission expires; 3/29/23

ELECTRONICALLY FILED - 2017 Apr 18 10:16 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

ELECTRONICALLY FILED - 2017 Jun 16 9:17 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE THIRD JUDICIAL CIRCUIT
COUNTY OF CLARENDON	)	CIVIL ACTION NO.: 2017-CP-14-00127
Palmetto Air Plantation Homeowners Association, Inc.,	)	
Plaintiff,	)	
vs.	)	ANSWER
Kim E. Bevier,	)	
Defendant.	)	

The Defendant, answering the Complaint, alleges:

As a First Defense

(General Denial)

1. The Defendant denies each allegation of the Complaint not hereinafter specifically admitted.

2. Paragraphs 1, 2, 3, 4 and 5 are admitted.

3. As to the allegations of Paragraph 6, this Defendant admits only so much of Paragraph 6 as alleges that his said property has been leased for overnight guests and that he utilized a service known as "Airbnb" in connection therewith. The Defendant denies, however, that such usage of his property is in violation of the Covenants.

4. As to the allegations of Paragraph 7, this Defendant admits that he is the owner of a large breed dog, an English Mastiff. He denies, however, that he permits the dog to run at large and denies that the dog barks excessively. The Defendant denies that the dog, which is confined by an underground electrical fence which communicates with a collar worn by the dog, violates the Restrictive Covenants.

ELECTRONICALLY FILED - 2017 Jun 16 9:17 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

5. The Defendant denies the allegations of Paragraphs 8, 9, 10, 11, 12 and 13.

As a Second Defense

(Lashes)

The relief requested in the complaint is barred by the Doctrine of Lashes.

As a Third Defense

(Lack of Standing)

The prosecution of this action was not authorized by the plaintiff corporation and the plaintiff therefore lacks standing to prosecute the same.

As a Fourth Defense

(Ultra Vires Act)

The defendant is informed believes that the corporation has never adopted by-laws and, consequently, is unable to perform as a corporation; is unable to authorize any one to act on behalf of the corporation and unable to authorize the prosecution of this action.

WHEREFORE, this defendant prays that the Complaint be dismissed and the Defendant be awarded attorney's fees and costs for the defense of this Action.

June 16, 2017

s/Thomas E. Player, Jr.
S.C. Bar Number 4478
Player & McMillan, L.L.C.
305 North Main Street
Sumter, South Carolina 29150
803-775-2306 *(office)*
803-436-5960 *(fax)*
tommyplayer@playermcmillan.com
Attorney for the Defendant Kim E. Bevier

ELECTRONICALLY FILED - 2017 Jun 28 11:44 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CIVIL CASE NO: 2017-CP-14-00127
COUNTY OF CLARENDON	)	
PALMETTO AIR PLANTATION HOMEOWNERS ASSOCATIONS,INC.	)	
	)	
Plaintiff,	)	
	)	**AMENDED**
vs.	)	**SUMMONS**
	)	**NON-JURY**
KIM E. BEVIER,	)	
	)	
Defendant.	)	

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscribers, Coffey & McKenzie, PA, at their offices, No. 2 North Brooks Street, Manning, South Carolina, within thirty (30) days after the service hereof, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff will apply to the Court for a judgment by default against you for the relief demanded in the Complaint.

COFFEY & MCKENZIE, PA

/ Steven S. McKenzie

By:_____

Steven S. McKenzie
Attorneys for the Plaintiff
2 North Brooks Street
Manning, South Carolina 29102
(803) 435-8847 (Telephone)
(803) 435-8915 (Facsimile)
smckenzie@ccmlawsc.com

June 28, 2017

ELECTRONICALLY FILED - 2017 Jun 28 11:44 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	THIRD JUDICIAL CIRCUIT
COUNTY OF CLARENDON)	DOCKET NO.: 17-CP-14-_____
)	
PALMETTO AIR PLANTATION)	
HOMEOWNERS ASSOCIATION INC.,)	
)	
Plaintiff,)	
)	**AMENDED**
vs)	**COMPLAINT**
)	**(Non-Jury)**
KIM E. BEVIER,)	
)	
)	
Defendant.)	
)	

The Plaintiff herein complaining of the acts and omissions of the Defendant would show upon this Honorable Court as follows:

1. That the Plaintiff is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Clarendon County, South Carolina.

2. The Defendant is a citizens and residents of the County of Clarendon, State of South Carolina.

3. The Plaintiff would show that this Court has jurisdiction over the subject matter and persons/entities involved in this action and venue is proper.

4. The Plaintiff would show that it is a corporation existing solely for the purpose to secure the values and amenities for the homeowners of land within the development known as Palmetto Air Plantation.

5. The Plaintiff would show that on or about July 11, 2001 the property in question became subject to "Declaration of Covenants, Conditions and Restrictions

ELECTRONICALLY FILED - 2017 Jun 28 11:44 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

Palmetto Air Plantation Clarendon County, South Carolina" (hereinafter "Covenants"). Said Covenants were filed in the Clarendon County Courthouse in Deed Book A435 at page 223 on or about July 11, 2001. The Defendant, Kim S. Bevier, purchased two lots within Palmetto Air Plantation on September 26, 2003. Said lots are subject to the aforementioned Covenants

6. The Plaintiff would show that the Defendant, in violation of Article IV Section 4.1 and 4.3 of the Covenants has been using his home in Palmetto Air Plantation for a commercial endeavor in violation of said of Covenants. The Plaintiff would show that the Defendant has been put on notice of his violations of the Covenants by the Plaintiff and he has refused to stop commercial activity on property owned by him in Palmetto Air Plantation for commercial activity. The Plaintiff is informed and believes that the Defendant has been renting his home/rooms out to overnight guest through a business owned by him known as Air B&B. The Plaintiff would show that said business activities are strictly prohibited by the Covenants.

7. The Plaintiff would show that the Defendant is the owner of large breed dog (bullmastiff). The Plaintiff has received complaints from homeowners within Palmetto Air Plantation that the Defendant's dog has been running at-large, unrestrained and excessively barking. The Plaintiff would show that it has asked the Defendant to restrain the dog and stop the excessive barking. The Plaintiff would show that the dog is still not properly restrained and continues to excessively bark in violation of Sections 5.10 and 5.11 of the Covenants. The Plaintiff is informed and believes that the Defendant may have installed an underground electrical fence in an attempt to curtail the dog's traversing

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unrestrained travels. The Plaintiff would show that any fence installed by any homeowner is governed by Article V. Section 5.16. and that any fence installed on property of a homeowner must be approved by the Architectural Control Committee. The Plaintiff would show that the Defendant failed to receive prior approval for any fence located on his property.

8. The Plaintiff would show that the Defendant was issued a Clarendon County Building Permit for his property on March 30, 2010. Article IV. Section 4.12 of the Covenants states in pertinent part "....within one year after the issuance of a Building Permit, the Lot Owner shall have his property sown in grass and have planted foundation landscaping around the dwelling and other accessory buildings in accordance with the proposed landscaping plan previously submitted and approved by the Board." The Plaintiff would show that the Defendant submitted to the Board a landscaping plan (Paula Bishop) to the Board that was approved, but the Defendant has failed to implement the plan.

FOR A FIRST CAUSE OF ACTION.
TEMPORARY/PERMANANENT
RESTRAINING ORDER PURSUANT TO
SCRCP RULE 65.

9. The Plaintiff realleges and would incorporate paragraphs one through eight above as if fully set forth herein.

10. Your Plaintiff would show that it is entitled to an Order of this Court granting the following relief under South Carolina Rules of Civil Procedure Rule 65:

11. An Order Restraining the Defendant from conducting business activity On, from, near any property owned by him within Palmetto Air Plantation in violation of

ELECTRONICALLY FILED - 2017 Jun 28 11:44 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

the Restrictive Covenants of Palmetto Air Plantation both temporary and permanently.

FOR A SECOND CAUSE OF ACTION
REMOVAL OF THE BULLMASTIFF DOG
FROM PALMETTO AIR PLANATATION

12. The Plaintiff realleges and would incorporate paragraphs one through eleven above as if fully set forth herein.

13. The Plaintiff would show that the Defendant have violated the covenants by allowing a large breed dog, bullmastiff, to roam freely upon the property known as Palmetto Air Plantation. The Plaintiff would show that the animal in question is a large dog and intimidates and scares the residents of Palmetto Air Plantation and that the continued running at large of the animal is in violation of State and County laws as well as the Covenants of Palmetto Air Plantation.

14. The Plaintiff would show that the aforementioned animal barks excessively and that the Defendant has been requested by the Plaintiff to remove the dog so as not to disturb the peaceful enjoyment of Palmetto Air Plantation by the animal of the owners of adjacent property.

FOR A THIRD CAUSE OF ACTION
FAILURE TO PROVIDE LANDSCAPING
PER THE COVENANTS

15. The Plaintiff realleges and would incorporate paragraphs one through fourteen above as if fully set forth herein.

16. The Plaintiff would show that the Defendant has failed to abide the Covenants by failing to provide landscaping to the two lots owned by him. The Plaintiff would further show that the Defendant provided a landscaping plan to the Board that was

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approved. The Plaintiff would show that the landscaping was to be in place on the Defendant's two lots within one year of the issuance of the Building Permit by Clarendon County. The Plaintiff would show that the landscaping should have been in place no later than March 30, 2011.

17. The Plaintiff would show that because of the failure of the Defendant to abide the Covenants in failing to landscape his two lots, the Plaintiff is entitled to a penalty of $100.00 per day per lot from March 30, 2011 until the Defendant landscapes his lots in accordance with the plan he submitted to the Board. The Plaintiff would show that Article IV. Section 4.12 provides for a $100.00 per day assessment per lot for the Defendant's violation of the Covenants.

FOR A FOURTH CAUSE OF ACTION
ATTORNEY'S FEES AND COSTS

18. The Plaintiff realleges and would incorporate paragraphs one through seventeen above as if fully set forth herein.

19. The Plaintiff would show that the Defendant is fully aware of his violations of the Covenants as outlined in this Complaint. The Defendant has been asked to comply with all of the complaints contained herein. Said notice to the Defendant has been provided to him verbally and in writing.

20. The Plaintiff is informed and believes that it is entitled to both attorney's fees and costs for the necessity to bring this action to enforce the Covenants of Palmetto Air Plantation. The Plaintiff would show that Article XII. Section 12.4 of the Covenants allows the Board to recover the attorney's fees and costs against the Defendant for his violation of the Covenants.

WHEREFORE, having fully set forth their grounds for relief, the Defendants pray that this Honorable Court inquire herein and grant it the relief requested above.

COFFEY & MCKENZIE, PA

/ Steven S. McKenzie

June 28, 2017

BY:_____

Steven S. McKenzie
Attorneys for the Plaintiff
2 North Brooks Street
Manning, South Carolina 29102
(803) 435-8847 (telephone)
(803) 435-8915 (facsimile)
smckenzie@ccmlawsc.com

ELECTRONICALLY FILED - 2017 Jun 28 11:44 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

ELECTRONICALLY FILED - 2017 Jul 07 4:24 PM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE THIRD JUDICIAL CIRCUIT
COUNTY OF CLARENDON	)	CIVIL ACTION NO.: 2017-CP-14-00127
	)	
Palmetto Air Plantation Homeowners Association, Inc.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ANSWER to AMENDED COMPLAINT
	)	
Kim E. Bevier,	)	
Defendant.	)	

The Defendant, answering the Amended Complaint, alleges:

As a First Defense

(General Denial)

1. The Defendant denies each allegation of the Complaint not hereinafter specifically admitted.

2. Paragraphs 1, 2, and 3, are admitted.

3. Paragraph 4 is denied.

4. Paragraph five is admitted.

5. As to the allegations of Paragraph 6, this Defendant admits only so much as alleges that his said property has been leased for overnight guests and that he utilized a service known as "Airbnb" in connection therewith. The Defendant denies, however, that such usage of his property is in violation of the Covenants.

6. As to the allegations of Paragraph 7, this Defendant admits that he is the owner of a large breed dog, an English Mastiff. He denies, however, that he

ELECTRONICALLY FILED - 2017 Jul 07 4:24 PM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

permits the dog to run at large and denies that the dog barks excessively. The Defendant denies that the dog, which is confined by an underground electrical fence which communicates with a collar worn by the dog, violates the Restrictive Covenants. The defendant denies that the underground electrical fence is subject to approval by the Architectural Control Committee.

7. So much of paragraph 8 is admitted as alleges that a building permit was issued to the defendant in 2010. The defendant further admits that the covenants require that the foundation landscaping be accomplished within one year and that the lawn be improved with grass. The defendant admits that he has been unable to fully implement the landscaping plan referred to therein but has installed foundation landscaping and the property has grass.

8. The Defendant denies the allegations of Paragraphs 10, 11, 13, 14, 16, 17.

9. So much of paragraph 19 is admitted as alleges are implies that the defendant was informed that he violated the covenants. The defendant denies that he was fully informed of any such violations since the defendant denies that he has violated the covenants.

10. Paragraph 20 is and is denied.

As a Second Defense

(Lashes)

11. The relief requested in the complaint is barred by the Doctrine of Lashes.

ELECTRONICALLY FILED - 2017 Jul 07 4:24 PM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

As a Third Defense

(Lack of Standing)

12. The prosecution of this action was not authorized by the plaintiff corporation and the plaintiff therefore lacks standing to prosecute the same.

As a Fourth Defense

(Ultra Vires Act)

13. The defendant is informed believes that the corporation has never adopted by-laws and, consequently, is unable to perform as a corporation; is unable to authorize any one to act on behalf of the corporation and unable to authorize the prosecution of this action.

As a Fifth Defense

(Unenforceable Penalty)

14. The penalty alleged in the complaint is unenforceable since it is not reasonably related to any damages sustained by the plaintiff.

WHEREFORE, this defendant prays that the Complaint be dismissed and the Defendant be awarded attorney's fees and costs for the defense of this Action.

July 7, 2017

s/Thomas E. Player, Jr.
S.C. Bar Number 4478
Player & McMillan, L.L.C.
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Attorney for the Defendant Kim E. Bevier

ELECTRONICALLY FILED - 2017 Jul 21 9:47 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	OF THE THIRD JUDICIAL CIRCUIT
COUNTY OF CLARENDON)	CIVIL ACTION NO.: 2017-CP-14-00127
)	
Palmetto Air Plantation)	
Homeowners Association, Inc.,)	
)	
Plaintiff,)	AMENDED
)	
vs.)	ANSWER to AMENDED COMPLAINT
)	
Kim E. Bevier,)	
Defendant.)	

The Defendant, by way of Amended Answer to the Amended Complaint, alleges:

As a First Defense

(General Denial)

1. The Defendant denies each allegation of the Complaint not hereinafter specifically admitted.

2. Paragraphs 1, 2, and 3, are admitted.

3. Paragraph 4 is denied.

4. Paragraph five is admitted.

5. As to the allegations of Paragraph 6, this Defendant admits only so much as alleges that his said property has been leased for overnight guests and that he utilized a service known as "Airbnb" in connection therewith. The Defendant denies, however, that such usage of his property is in violation of the Covenants.

6. As to the allegations of Paragraph 7, this Defendant admits that he is the owner of a large breed dog, an English Mastiff. He denies, however, that he

ELECTRONICALLY FILED - 2017 Jul 21 9:47 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

permits the dog to run at large and denies that the dog barks excessively. The Defendant denies that the dog, which is confined by an underground electrical fence which communicates with a collar worn by the dog, violates the Restrictive Covenants. The defendant denies that the underground electrical fence is subject to approval by the Architectural Control Committee.

7. So much of paragraph 8 is admitted as alleges that a building permit was issued to the defendant in 2010. The defendant further admits that the covenants require that the foundation landscaping be accomplished within one year and that the lawn be improved with grass. The defendant admits that he has been unable to fully implement the landscaping plan referred to therein but has installed foundation landscaping and the property has grass.

8. The Defendant denies the allegations of Paragraphs 10, 11, 13, 14, 16, 17.

9. So much of paragraph 19 is admitted as alleges are implies that the defendant was informed that he violated the covenants. The defendant denies that he was fully informed of any such violations since the defendant denies that he has violated the covenants.

10. Paragraph 20 is and is denied.

As a Second Defense

(Lashes)

11. The relief requested in the complaint is barred by the Doctrine of Lashes.

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As a Third Defense

(Lack of Standing)

12. The prosecution of this action was not authorized by the plaintiff corporation and the plaintiff therefore lacks standing to prosecute the same.

As a Fourth Defense

(Ultra Vires Act)

13. The defendant is informed believes that the corporation has never adopted by-laws and, consequently, is unable to perform as a corporation; is unable to authorize any one to act on behalf of the corporation and unable to authorize the prosecution of this action.

As a Fifth Defense

(Unenforceable Penalty)

14. The penalty alleged in the complaint is unenforceable since it is not reasonably related to any damages sustained by the plaintiff.

ELECTRONICALLY FILED - 2017 Jul 21 9:47 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

As a Sixth Defense

(Statute of Limitations)

15. The Claims of Plaintiff are barred by the three year Statute of Limitations contained in SC Code Sections 15-2-530(1) and15-2-530(3).

WHEREFORE, this defendant prays that the Complaint be dismissed and the Defendant be awarded attorney's fees and costs for the defense of this Action.

July 21, 2017

s/Thomas E. Player, Jr.
S.C. Bar Number 4478
Player & McMillan, L.L.C.
305 North Main Street
Sumter, South Carolina 29150
803-775-2306 *(office)*
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tommyplayer@playermcmillan.com
Attorney for the Defendant Kim E. Bevier

ELECTRONICALLY FILED - 2017 Oct 25 3:21 PM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	OF THE THIRD JUDICIAL CIRCUIT
COUNTY OF CLARENDON)	CIVIL ACTION NO.: 2017-CP-14-00127
)	
Palmetto Air Plantation)	
Homeowners Association, Inc.,)	
)	
Plaintiff,)	MOTION TO AMEND/SUPPLEMENT
)	
vs.)	ANSWER to AMENDED COMPLAINT
)	
Kim E. Bevier,)	
Defendant.)	

The Defendant, pursuant to Rule 15(a) SCRCP, hereby moves to amend the Answer to the Amended Complaint. The proposed Second Amended Answer to the Amended Complaint and Counterclaim and Defendant's Memorandum are annexed hereto and incorporated by reference. The substance of the amendment is to challenge the creation of, and burdening the defendant's property with, the restrictive covenants alleged in the complaint. Counsel certifies that a good faith effort to resolve this motion was made prior to filing.

October 25, 2017

s/Thomas E. Player, Jr.
S.C. Bar Number 4478
Player & McMillan, L.L.C.
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Attorney for the Defendant Kim E. Bevier

ELECTRONICALLY FILED - 2017 Oct 25 3:21 PM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	OF THE THIRD JUDICIAL CIRCUIT
COUNTY OF CLARENDON)	CIVIL ACTION NO.: 2017-CP-14-00127
)	
Palmetto Air Plantation)	
Homeowners Association, Inc.,)	
)	MEMORANDUM IN SUPPORT of
Plaintiff,)	MOTION to AMEND/SUPPLEMENT
)	AMENDED
vs.)	ANSWER to AMENDED COMPLAINT
)	and
)	COUNTERCLAIM
Kim E. Bevier,)	
Defendant.)	

The Defendant, submits this memorandum in support of his motion to amend his Amended Answer to the Amended Complaint. The proposed amendment includes a Counterclaim.

SUBSTANCE OF PROPOSED AMENDMENTS

1. The basis of the complaint is that the defendant has violated restrictive covenants to which his property is subject. The existing Amended Answer admits certain allegations of the complaint as to the application of restrictive covenants to his property. Since the filing of the existing response, a review of title history shows that, while a Declaration of Covenants was filed by a predecessor in title, prior to the conveyance to defendant (and including the deed to defendant) no deed from the declarant or a successor in interest to the declarant incorporates the covenants directly or indirectly. The proposed amendment seeks to deny, rather than admit, the existence of the covenants.

2. The proposed amendment seeks by way of counterclaim a Declaratory Judgment the ability of the Plaintiff to impose, and if so, the amount of any

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damages, assessments and penalties imposed or sought to be imposed upon the Defendant or his property. Defendant's counsel was informed by Plaintiff's counsel on September 14, 2017, that at a meeting held on September 2, 2017, defendant had been assessed $1,064,200.00 for violation of the covenants.

DISCUSSION

Rule 15, SCRCP, provides:

A party may amend his pleading once as a matter of course at any time before or within 30 days after a responsive pleading is served or, if the pleading is one to which no responsive pleading is required and the action has not been placed upon the trial roster, he may so amend it at any time within 30 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party.

A motion to amend is addressed to the discretion of the trial judge, and the party opposing the motion has the burden of establishing prejudice. Tanner v. Florence County Treasurer, 336 S.C. 552, 521 S.E.2d 153 (1999).

The prejudice Rule 15 envisions is a lack of notice that the new issue is to be tried and a lack of opportunity to refute it. Stanley v. Kirkpatrick, 357 S.C. 169, 174, 592 S.E.2d 296, 298, 2003 WL 23147408 (2004).

Defendant submits that plaintiff would not suffer "prejudice" within the meaning of the rule. The only discovery which has taken place is written discovery directed to

Plaintiff by Defendant. The pleading sought to be amended was filed less than four months prior to this motion.

CONCLUSION

Because the Plaintiff would not be prejudiced by the amendment, the motion should be granted.

October 25, 2017

s/Thomas E. Player, Jr.

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ELECTRONICALLY FILED - 2018 Mar 22 2:32 PM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	OF THE THIRD JUDICIAL CIRCUIT
COUNTY OF CLARENDON)	CIVIL ACTION NO.: 2017-CP-14-00127
)	
Palmetto Air Plantation)	
Homeowners Association, Inc.,)	
)	
Plaintiff,)	
)	SECOND AMENDED
vs.)	ANSWER to AMENDED COMPLAINT
)	and
)	COUNTERCLAIM
Kim E. Bevier,)	
Defendant.)	

The Defendant, by way of Second Amended Answer to the Amended Complaint and by way of Counterclaim alleges:

As a First Defense

(General Denial)

1. The Defendant denies each allegation of the Complaint not hereinafter specifically admitted.

2. Paragraphs 1, 2, and 3, are admitted.

3. Paragraph 4 is denied.

4. Paragraph five is admitted only to the extent it alleges that the "Declaration of Covenants, Conditions and Restrictions Palmetto Air Plantation Clarendon County, South Carolina" were filed as alleged and that the defendant purchased two lots as alleged. The allegation that the lots are subject to the alleged covenants is denied.

5. As to the allegations of Paragraph 6, this Defendant admits only so much as alleges that his said property has been leased for overnight guests and

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that he utilized a service known as "Airbnb" in connection therewith. The Defendant denies, however, that such usage of his property is in violation of the Covenants in that his property is not encumbered by said Covenants and that if such covenants were valid such usage would not be violation thereof.

6. As to the allegations of Paragraph 7, this Defendant admits that he is the owner of a large breed dog, an English Mastiff. He denies, however, that he permits the dog to run at large and denies that the dog barks excessively. The Defendant denies that the dog, which is confined by an underground electrical fence which communicates with a collar worn by the dog, violates the terms of the Restrictive Covenants, if valid, which is denied. The defendant denies that the installation of an underground electrical fence would require approval by the Architectural Control Committee if said covenants were valid, which is denied.

7. So much of paragraph 8 is admitted as alleges that a building permit was issued to the defendant in 2010. The defendant further admits that the covenants, if valid, which is denied, require that the foundation landscaping be accomplished within one year and that the lawn be improved with grass. The defendant admits that he submitted the plan as alleged but has been unable to fully implement the landscaping plan referred to therein but has installed foundation landscaping and the property has grass.

8. The Defendant denies the allegations of Paragraphs 10, 11, 13, 14, 16, and 17.

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9. So much of paragraph 19 is admitted as alleges or implies that the defendant was informed that he violated the covenants. The defendant denies that he was fully informed of any such violations since the defendant denies that he has violated the covenants.

10. Paragraph 20 is and is denied.

As a Second Defense

(Lashes)

11. The relief requested in the complaint is barred by the Doctrine of Lashes.

As a Third Defense

(Lack of Standing)

12. The prosecution of this action was not authorized by the plaintiff corporation and the plaintiff therefore lacks standing to prosecute the same.

As a Fourth Defense

(Ultra Vires Act)

13. The defendant is informed believes that the Plaintiff corporation has never adopted by-laws and, consequently, is unable to perform as a corporation; is unable to authorize any one to act on behalf of the corporation and unable to authorize the prosecution of this action.

As a Fifth Defense

(Unenforceable Penalty)

14. The penalty alleged in the complaint is unenforceable in that it is not reasonably related to any damages sustained by the plaintiff.

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As a Sixth Defense

(Statute of Limitations)

15. The Claims of Plaintiff are barred by the three year Statute of Limitations contained in SC Code Sections 15-2-530(1) and15-2-530(3).

As a Seventh Defense

(Statute of Frauds)

16. The claims alleged by the Plaintiff are barred by SC Code § 32-3-10(4) in that no writing signed by Defendant subjects his property to the alleged Restrictive Covenants.

As an eighth Defense and Counterclaim

17. The Plaintiff claims the right to impose assessments, penalties, damages and liens against Defendant's property as a result of alleged violations of the covenants mentioned in the complaint. Should it be determined that the covenants are valid and that any such assessments, penalties, damages and liens are appropriate, the Defendant seeks a declaratory judgment as to the amount which may reasonably be imposed.

As a Ninth Defense and Counterclaim

(Attorney Fees and Costs)

18. The Defendant seeks attorney fees and costs incurred in defending this action.

WHEREFORE, this defendant prays that the Complaint be dismissed and the Defendant be awarded attorney's fees and costs for the defense of this Action.

October 25, 2017

s/Thomas E. Player, Jr.
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ELECTRONICALLY FILED - 2018 Apr 05 10:50 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	THIRD JUDICIAL CIRCUIT
COUNTY OF CLARENDON)	DOCKET NO.: 17-CP-14-_____
)	
PALMETTO AIR PLANTATION)	
HOMEOWNERS ASSOCIATION INC.,)	
)	
Plaintiff,)	
)	REPLY TO SECOND
)	AMENDED ANSWER
vs)	
KIM E. BEVIER,)	
)	
)	
Defendant.)	
)	

The Plaintiff replying to the Second Amended Complaint and Counterclaim of the of the Defendant would show upon this Honorable Court as follows:

FOR A FIRST RESPONSE TO THE DEFENDANT'S SECOND AMNEDED ANSWER GENERAL DENIAL.

1. The Plaintiff would deny the Defendant's Second Amended Answer in its entirety.

FOR A SECOND RESPONSE TO THE DEFENDANT'S SECOND AMENDED ANSWER WAIVER

2. The Plaintiff realleges and would incorporate paragraphs one through eleven above as if fully set forth herein.

3. The Plaintiff would show that the Defendant waived any defense and or defect that he alleges may have occurred in the performance of his deed by his conduct.

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FOR A THIRD RESPONSE TO THE DEFENDANT'S SECOND AMENDED ANSWER LACHES

4. The Plaintiff realleges and would incorporate paragraphs one through three above as if fully set forth herein.

5. The Plaintiff would show that the Defendant's reliance upon any alleged defect in any deed that conveyed the property in question to him is barred by the equitable Doctrine of Lashes.

FOR A THIRD RESPONSE TO THE DEFENDANT'S SECOND AMENDED ANSWER MISTAKE

6. The Plaintiff realleges and would incorporate paragraphs one through five above as if fully set forth herein.

7. The Plaintiff would show that the Defendant is fully aware of his of the Restrictive Covenants that were in place and had full knowledge of all Restrictive Covenants. Any mistake in not placing the Restrictive Covenants in the Deed was a scrivener's mistake and does not discharge the Defendant from his responsibilities there under.

FOR A FOURTH RESPONSE TO THE DEFENDANT'S SECOND AMENDED ANSWER ATTORNEY'S FEES

8. The Plaintiff is informed and believes that it is entitled to both attorney's fees and costs for the necessity to bring this action to enforce the Covenants of Palmetto Air Plantation. The Plaintiff would show that Article XII. Section 12.4 of the Covenants

allows the Board to recover the attorney's fees and costs against the Defendant for his violation of the Covenants.

WHEREFORE, having fully set forth ITS for reply, the Plaintiff prays that this Honorable Court inquire herein and grant it the relief requested above.

COFFEY & MCKENZIE, PA

April 5, 2018

BY: **/ Steven S. McKenzie**

Steven S. McKenzie
Attorneys for the Plaintiff
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ELECTRONICALLY FILED - 2018 Jun 14 2:07 PM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE THIRD JUDICIAL CIRCUIT
COUNTY OF CLARENDON	)	CASE NUMBER: 2017-CP-14-00127
	)	
PALMETTO AIR PLANTATION HOMEOWNERS ASSOCIATION, INC.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**MOTION FOR PARTIAL SUMMARY JUDGMENT**
	)	
KIM E. BEVIER,	)	
	)	
Defendant.	)	
	)	

TO: THOMAS W. PLAYER, JR., ESQUIRE, ATTORNEY FOR THE DEFENDANT

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, by and through their undersigned attorney, will move before the Presiding Judge for the Third Judicial Circuit, at Manning, South Carolina on the tenth (10^{th}) day after service hereof, or at such time and place as is convenient to the Court and counsel, for Judgment pursuant to Rule 12(c) and 56 of the *South Carolina Rules of Civil Procedure.* This motion is based upon the fact that there is no material issue of fact regarding the Defendant's assertion in his Second Amended Answer to Amended Complaint and Counter-claim that the Declaration of Covenants, Conditions and Restrictions Palmetto Air Plantation Clarendon County, South Carolina are not enforceable against the Defendant due to the fact that the Defendant's deed to the property does do not apply to two lots purchased by the Defendant because the deed does not take exception to the restrictive covenants.

Said Motion is based upon the following:

1. The Plaintiff would show that on or about July 11, 2001 the property in question became subject to "Declaration of Covenants, Conditions and Restrictions Palmetto Air Plantation Clarendon County, South Carolina" (hereinafter "Covenants").

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Said Covenants were filed in the Clarendon County Courthouse in Deed Book A435 at page 223 on or about July 11, 2001. The Defendant, Kim S. Bevier, purchased two lots within Palmetto Air Plantation on September 26, 2003. Said lots are subject to the aforementioned Covenants ."

2. The Defendant in Paragraph 4 of his Second Amended Answer to Amended Complaint states the following: "Paragraph five is admitted to the extent it alleges that the Declaration of Covenants, Conditions and Restrictions Palmetto Air Plantation Clarendon County, South Carolinal were filed as alleged and that the defendant purchased two lots as alleged. The allegation that the lots are subject to the alleged covenants is denied."

3. The Contract of sale signed by Kim Bevier and his wife on May 23, 2003. Page paragraph 4 is captioned "Restrictive Covenants" and states: "This property is subject to all visible and recorded easements, right-of-way, and covenants, including those Restrictive Covenants dated 11 July 2001 recorded in the office of RMC for Clarendon County in Deed Book A-444 at Page 26.";

4. Preliminary Attorney's Title Certificate provided to Mr. & Mrs. Bevier on the date of closing, September 25, 2003. It States in paragraph 3 the following: "Restrictive Covenants recorded in the office of the Clerk of Court for Clarendon County in Deed Book A-444 at Page 26 and Deed Book A-435 at 223.";

5. On October 24, 2003, the Final Attorney's Title Certificate was mailed to the Defendant. It States in paragraph 3 the following: Restrictive Covenants recorded in the office of the Clerk of Court for Clarendon County in Deed Book A-444 at Page 26 and Deed Book A-435 at 223.";

6. The Defendant served as a Board member for the Plaintiff at least twice since he purchased the property and just before this action started he was a board member of the HOA;

The Plaintiff would move for partial summary judgment as to the issue of, as a matter of law, does the absence of reference to the restrictive covenants in the deed from the Plaintiff to the Defendant make the restrictive covenants unenforceable as to the Defendant.

The motion will be supported by the pleadings of the parties, depositions, answers to discovery received, relevant South Carolina Statutory and Case law and any supporting affidavits filed prior to the Motion.

COFFEY & MCKENZIE, PA

/ Steven S. McKenzie

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Manning, South Carolina
June 13, 2018

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ELECTRONICALLY FILED - 2018 Jul 19 3:31 PM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

STATE OF SOUTH CAROLINA COUNTY OF CLARENDON PALMETTO AIR PLANTATION HOMEOWNERS ASSOCIATION, INC., Plaintiff, vs. KIM E. BEVIER, Defendant.	IN THE COURT OF COMMON PLEAS OF THE THIRD JUDICIAL CIRCUIT CASE NUMBER: 2017-CP-14-00127 **MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT.**

STANDARD OF REVIEW

Rule 56(c), SCRCP, provides that a trial court may grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." *Hancock v. Mid-South Mgmt, Co., Inc.*, 381 S.C. 326, 329-30, 673 S.B.2d 801, 802 (2009). "At the summary judgment stage of litigation, the court does not weigh conflicting evidence with respect to a disputed material fact." *S.C. Prop. & Cas. Guar Ass'n v. Yensen*, 345 S.C. 512, 518, 548 S.E.2d 880, 883 (Ct App. 2001). "The purpose of summary judgment is to expedite the disposition of cases *Long Grove at Seaside Farms, LLC v. Long Grove*..., 2012 WL 10890587... © 2018 Thomson Reuters. No claim to original U.S. Government Works. 3 which do not require the services

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of a fact finder." *Gauld v. O'Shaugnessy Realty Co.*, 380 S.C. 548,558, 671 S.E.2d 79, 85 (Ct. App. 2008). The party seeking summary judgment has me burden of clearly establishing the absence of a genuine issue of material fact Id. Once the party moving for summary judgment meets the initial burden of showing the absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Id.* at 558-59, 671 S.E.2d at 85. Rather, the nonmoving party must present specific facts showing a genuine issue for trial. *Id.* at 559, 671 S.E.2d at 85.

FACTUAL BACKGROUND

The Plaintiff would show that on or about July 11, 2001 the property in question became subject to "Declaration of Covenants, Conditions and Restrictions Palmetto Air Plantation Clarendon County, South Carolina" (hereinafter "Covenants"). Said Covenants were filed in the Clarendon County Courthouse in Deed Book A435 at page 223 on or about July 11, 2001 (See Amended Complaint and Second Amended Answer wherein it was alleged and admitted by the Defendant that the Covenants were filed. Also, find a copy of the Covenants at Exhibit 2 to the Deposition of the Defendant dated April 4, 2018). The Defendant, Kim S. Bevier, purchased two lots within Palmetto Air Plantation on September 26, 2003. Said lots are subject to the aforementioned Covenants ." The Defendant in Paragraph 4 of his Second Amended Answer to Amended Complaint states the following: "Paragraph five is admitted to the extent it alleges that the Declaration of Covenants, Conditions and Restrictions Palmetto Air Plantation Clarendon County, South Carolina were filed as alleged and that the defendant purchased two lots as alleged. The allegation that the lots are subject to the alleged covenants is denied."

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On May 21, 2003, prior to signing the contract of sale, W.C. Coffey, Jr., Esquire wrote a letter to the Defendant and his now deceased wife. In the letter, Mr. Coffey references the two lots (Lots 33 & 34) that were later purchased by the Defendant. Mr. Coffey further references a meeting between himself, the Defendant and his late wife wherein the three met. Mr. Coffey specifically mentions: "It is obvious that you have considered this carefully and I appreciate your questions regarding the Restrictive Covenants" (See Exhibit 1 to the April 4, 2018 deposition of the Defendant).

The Defendant and Plaintiff entered into a contract of sale for two lots on May 23, 2003 (See Exhibit 4 to the April 4, 2018 deposition of the Defendant). The Contract of sale signed by Kim Bevier and his wife on May 23, 2003. Page paragraph 4 is captioned "Restrictive Covenants" and states: "This property is subject to all visible and recorded easements, right-of-way, and covenants, including those Restrictive Covenants dated 11 July 2001 recorded in the office of RMC for Clarendon County in Deed Book A-444 at Page 26.";

At closing, a Preliminary Attorney's Title Certificate provided to Mr. & Mrs. Bevier on September 25, 2003. Said certificate states in paragraph 3 the following: "Restrictive Covenants recorded in the office of the Clerk of Court for Clarendon County in Deed Book A-444 at Page 26 and Deed Book A-435 at 223." (See Preliminary Attorney's Title Certificate at Exhibit 6 in the deposition of the Defendant dated April4, 2018).

On October 24, 2003, the Final Attorney's Title Certificate was mailed to the Defendant. It States in paragraph 3 the following: Restrictive Covenants recorded

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in the office of the Clerk of Court for Clarendon County in Deed Book A-444 at Page 26 and Deed Book A-435 at 223."

During the April 4, 2018 deposition of the Defendant, the following exchange took place between the Plaintiff's attorney and the Defendant:

Q. All right. So, let's go back to your contention that the Covenants—I want to get a clear understanding from you why the Covenants don't----aren't applicable to you."

A. Because they never been bound to the property that I purchased.

Q. All right. Explain that to me because I'm having a hard time with your understanding of the law.

A. okay. My lay understanding of this is that any Restrictive Covenants need to be either stipulated in a conveyance or referenced in a conveyance if recorded elsewhere. None of those things happened when Joe sold all the land as Mid Eastern Truck Wash sold all land to Palmetto Air Plantation, LLC. Okay?

A. All right. Joe at that point in time, lost his rights as Declarant because more than twenty-five(25) – he retained zero percent of the lots at that time. He can't act as a declarant after he sold all of the property. (See April 4, 2018 deposition of the Defendant page 53, lines 5-25).

A. So you ask---why I don't believe the covenants apply to my land---that's the first reason is that he lost all right to be Declarant and God on that property after he sold it to Palmetto Air Plantation, LLC. Palmetto Air Plantation, LLC gave me a general Warranty Deed: Okay? Not subject---I guess it's subject to restrictions, zoning, easements and all that jazz that apply, but it did again, it did not bind the covenants to my

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property and, indeed I don't think they could unless they refiled themselves . (See April 4, 2018 deposition of the Defendant page 54, lines 13-25).

ARGUMENT

The Plaintiff seeks partial summary judgment regarding the Defendant's contention that the Covenants filed on July 11, 2001 do not run with his property.

Restrictive covenants differ from contracts in that they "run with the land," meaning that they are enforceable by and against later grantees. 17 S.C. Jur. *Covenants* § 18 (2005). Restrictive covenants that require grantees to pay assessments for the upkeep of a particular parcel of property are held to be real covenants which "touch and concern" land, and therefore, run with the land. *Epting v. Lexington Water Power Co.*, 177 S.C. 308, 314-317, 181 S.E. 66, 69-70 (1935); 17 S.C. Jur. *Covenants* §§ 18 and 19.

There are several ways in which restrictive covenants may be created. The most common means are: (1) by deed; (2) by declaration; and (3) by implication from a general plan or scheme of development. 17 S.C. Jur. *Covenants* § 60. The initial restrictive covenants applicable to the Defendant were created by the Declaration of Covenants when MidEastern Truck Wash, Inc. (Declarant) executed and recorded the Declaration of Covenants, Conditions and Restrictions Palmetto Air Plantation Clarendon County, South Carolina recorded at Deed Book A435 at page 223 on or about July 11, 2001. See *Smith v. Comm'rs of Pub. Works of City of Charleston*, 312 S.C. 460, 466, 441 S.E.2d 331, 335 (Ct.App.1994); 17 S.C. Jur. *Covenants* § 8. Restrictive

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covenants will be enforced unless they are indefinite or contravene public policy. *Sea Pines Plantation Co. v. Wells*, 294 S.C. 266, 270, 363 S.E.2d 891, 894 (1987).

The Covenants here were filed in the Clarendon County RMC Office in Deed Book A435 at page 223 on or about July 11, 2001 (See Amended Complaint and Second Amended Answer wherein it was alleged and admitted by the Defendant that the Covenants were filed. See also, filed copy of the Covenants at Exhibit 2 of the Defendant's April 4, 2018 deposition).

This exact issue (e.g. whether or not restrictive covenants were binding on a purchaser regardless of whether or not the covenants were actually noticed in the deed) was before the Court of Appeals in *Harbison Community Ass'n, Inc. v. Mueller* 459 S.E.2d 860 (Ct. App. 1995). In that case the Court Appeals stated the following:

> The circuit court also reversed the magistrate because the Declaration's fee assessment provisions were not recited in the Muellers' deed, and therefore the Muellers were not bound by them. **This was an error. A covenant is enforceable against a subsequent grantee, even if not in the grantee's deed, if the grantee has actual or constructive notice of the covenant. 20 Am.Jur.2d Covenants, Conditions, and Restrictions § 26 (1965). A homeowner is charged with constructive notice of any restriction properly recorded within the chain of title. Carolina Land Co. v. Bland, 265 S.C. 98, 217 S.E.2d 16 (1975). The Declaration was recorded and noted in the J.C. Roy Company deed, within the Muellers' chain of title. Thus, the Muellers had constructive notice of the Declaration. Moreover, Mr. Mueller testified he had actual notice of the Declaration. Accordingly, the Muellers are bound by the terms of the Declaration, and the circuit court erred, as a matter of law, in finding the Muellers not bound by the covenant because it was not in their deed (emphasis added).**

In this case, the Defendant had constructive notice of the Covenants by virtue of the fact that the Covenants were filed before the purchase of the Defendant's lots in Deed

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Book A435 at page 223 on or about July 11, 2001 (See Amended Complaint and Second Amended Answer wherein it was alleged and admitted by the Defendant that the Covenants were filed and See also, filed copy of the Covenants at Exhibit 2 of the Defendant's April 4, 2018 deposition).

The Defendant also had actual notice of the Covenants by virtue of the following: On May 21, 2003, prior to signing the contract of sale, W.C. Coffey, Jr., Esquire wrote a letter to the Defendant and his now deceased wife. In the letter, Mr. Coffey references the two lots (Lots 33 & 34) that were later purchased by the Defendant. Mr. Coffey further references a meeting between himself, the Defendant and his late wife wherein the three met. Mr. Coffey specifically mentions: "It is obvious that you have considered this carefully and I appreciate your questions regarding the Restrictive Covenants" (See Exhibit 1 to the April 4, 2018 deposition of the Defendant).

The Defendant and Plaintiff entered into a contract of sale for two lots on May 23, 2003 (See Exhibit 4 to the April 4, 2018 deposition of the Defendant). The Contract of sale signed by Kim Bevier and his wife on May 23, 2003. Page paragraph 4 is captioned "Restrictive Covenants" and states: "This property is subject to all visible and recorded easements, right-of-way, and covenants, including those Restrictive Covenants dated 11 July 2001 recorded in the office of RMC for Clarendon County in Deed Book A-444 at Page 26."; At closing, a Preliminary Attorney's Title Certificate provided to Mr. & Mrs. Bevier on September 25, 2003. Said certificate states in paragraph 3 the following: "Restrictive Covenants recorded in the office of the Clerk of Court for Clarendon County in Deed Book A-444 at Page 26 and Deed Book A-435 at 223." (See Preliminary

Attorney's Title Certificate at Exhibit 6 in the deposition of the Defendant dated April 4, 2018). On October 24, 2003, the Final Attorney's Title Certificate was mailed to the Defendant. It States in paragraph 3 the following: Restrictive Covenants recorded in the office of the Clerk of Court for Clarendon County in Deed Book A-444 at Page 26 and Deed Book A-435 at 223."

The Plaintiff would show that the Defendant had actual and constructive knowledge of the Covenants and would ask this Court for partial summary judgment as to the Defendant's contention that the Covenants do not "run" with the lots he purchased because the Covenants were not recited in his deed when he purchased the property from Palmetto Air Plantation, LLC.

COFFEY & MCKENZIE, PA

/ Steven S. McKenzie

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Manning, South Carolina
July 19, 2018

ELECTRONICALLY FILED - 2018 Jul 19 3:31 PM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

ELECTRONICALLY FILED - 2018 Aug 21 2:59 PM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

STATE OF SOUTH CAROLINA) COUNTY OF CLARENDON)) Palmetto Air Plantation) Homeowners Association, Inc.,)) Plaintiff,)) v) Kim E. Bevier,) Defendant.)	IN THE COURT OF COMMON PLEAS OF THE THIRD JUDICIAL CIRCUIT CIVIL ACTION NO.: 2017-CP-14-00127 STIPULATION OF FACTS

The parties, by the signature of the attorneys below, submit to the Court this Stipulation of Facts for its assistance in consideration of the Plaintiff's Motion for Partial Summary Judgment. The stipulation is limited in the sense that the parties, by stipulating the accuracy of the statements and the authenticity of the documents mentioned herein do not concede their relevancy as to any particular issue.

1. The property in question is a portion of an 82.91 acre tract of land shown on a plat recorded in plat book A17 at page 6, conveyed to MidEastern Truck Wash, Inc. By Edward G. Gibbons on November 18, 1996, by deed recorded in the office of the Register of Deeds for Clarendon County (ROD) in Deed Book A-305 at Page 28 and a 22.22 acre tract conveyed to MidEastern Truckwash Inc by Marion Moore, et al, on May 9, 1997, by deed recorded in the office of the register of deeds for Clarendon County in Deed Book A319 at page 82.
2. In the connection with the purchase from Gibbons, a mortgage, recorded in Book 287, Page 208 was given to him.
3. In connection with the purchase from Moore, a mortgage recorded in Book 301 at Page 297 was given to Joe P Moore, et al. The mortgage has the same legal description (22.22 acres). This mortgage was subsequently assigned to John C. Land, III, by assignment recorded in book 301, at page 297.
4. On July 11, 2001, the restrictive covenants referred to in the complaint titled "Declaration of Covenants, Conditions and Restrictions Palmetto Air Plantation Clarendon County, South Carolina" (DCCR) were filed in the office of the ROD in Deed Book A435 at Page 223. It references Tax Map Parcel 223-00-02-005.

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5. By deed dated October 9, 2001, recorded in Book A-452 at Page 144, MidEastern Truckwash, Inc. conveyed to Palmetto Air Plantation, LLC, the 82.91 acre tract purchased from Gibbons and the 22.22 acre tract purchased from Moore. Descriptions are identical to the acreage descriptions contained in the deeds into MidEastern Truckwash. The deed does not mention any restrictive covenants, nor does it incorporate by reference the Declaration of Covenants. The deed contains covenants of general warranty. It states that the Moore mortgage which was assigned to Land and the Gibbons Mortgage are assumed by the grantee.
6. By mortgage recorded February 8, 2002, in Book 465 at Page 134 Palmetto Air Plantation, LLC, granted to Edward G. Gibbons a mortgage using the acreage descriptions from the Gibbons and Moore deeds. The mortgage has covenants of general warranty and no reference to the DCCR or other restrictions.
7. Prior to and shortly before signing a contract to purchase the property, the Defendant met with Attorney W. C. Coffee Jr. During that meeting, the restrictive covenants were discussed.
8. On May 21, 2003, prior to signing the contract of sale W. C. Coffee, Jr., Esquire, wrote a letter to the Defendant and his now deceased wife enclosing a copy of the proposed contract of sale. In that letter, Mr. Coffee references the meeting and the Defendant's questions during the meeting regarding restrictive covenants.
9. On May 23, 2003, the Plaintiff and his then wife entered into a written contract for the purchase of lots 33 and 34. Paragraph 4 is captioned "Restrictive Covenants" and states: "This property is subject to all visible and recorded easements, rights-of-way, and covenants, including those restrictive covenants dated 11 July, 2001, recorded in the office of the RMC for Clarendon County in that Deed Book A-444 at page 26" Paragraph 5, in part reads: "the Seller shall furnish to the Purchaser a general warranty deed to lots 33 and 34, conveying good, marketable, fee simple title, free and clear of all liens and encumbrances."
10. At closing, a preliminary attorney's title certificate of Mr. Coffee was provided to Mr. Mrs. Bevier on September 25, 2003. Said certificate states in paragraph 20 of the exceptions the following: "restrictive covenants recorded in the office of the clerk of court for Clarendon county in deed book A-444 at page 26 and deed book A-435 at page

223" (the A-435 Page 223 pertains to wetlands and an agreement with the Army Corp of Engineers)

11. The Subdivision Plat of Palmetto Plantation Subdivision was recorded on September 19, 2003, in Book E1008 Page 6
12. Lots 33 and 34 were conveyed to Plaintiff and his then wife by general warranty deed recorded on September 26, 2003, in Deed Book 509 at Page 264. The deed does not mention restrictive covenants nor incorporate any by reference.
13. On October 24, 2003, the attorney's Final Title Certificate of Mr. Coffee was mailed to the Defendant. It states that the property is subject to the restrictive covenants recorded in the office of the clerk of court for Clarendon County in Deed Book A-444 at Page 26.

/ Steven S. McKenzie

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STATE OF SOUTH CAROLINA) COUNTY OF CLARENDON)) Palmetto Air Plantation) Homeowners Association, Inc.)) Plaintiff,) vs.)) Kim E. Bevier,) Defendant.)	IN THE COURT OF COMMON PLEAS OF THE THIRD JUDICIAL CIRCUIT CIVIL ACTION NO: 2017-CP-14-00127

DEFENDANT'S MEMORANDUM IN OPPOSITION TO SUMMARY JUDGEMENT

ELECTRONICALLY FILED - 2018 Aug 25 10:27 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

ELECTRONICALLY FILED - 2018 Aug 25 10:27 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

STATE OF SOUTH CAROLINA) COUNTY OF CLARENDON)) Palmetto Air Plantation) Homeowners Association, Inc.)) Plaintiff,) vs.)) Kim E. Bevier,) Defendant.)	IN THE COURT OF COMMON PLEAS OF THE THIRD JUDICIAL CIRCUIT CIVIL ACTION NO: 2017-CP-14-00127 **SCHEDULE OF EXHIBITS**

Exhibit A..... 9

Exhibit B..... 12

Exhibit C..... 17

Exhibit D..... 39

Exhibit D-1..... 41

Exhibit E..... 49

Exhibit F..... 51

Exhibit G..... 56

Exhibit H..... 60

Exhibit I..... 64

Exhibit J..... 70

Exhibit K..... 75

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Exhibit M..... 90

Exhibit N..... 98

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STATE OF SOUTH CAROLINA) COUNTY OF CLARENDON)) Palmetto Air Plantation) Homeowners Association, Inc.,)) Plaintiff,)) vs.) Kim E. Bevier,) Defendant.)	IN THE COURT OF COMMON PLEAS OF THE THIRD JUDICIAL CIRCUIT CIVIL ACTION NO.: 2017-CP-14-00127 DEFENDANT'S MEMORANDUM IN OPPOSITION TO SUMMARY JUDGMENT

STATEMENT OF THE CASE

The complaint alleges a violation of real property restrictive covenants. The pleadings, as joined, raise the question as to whether Defendant's property is subject to the restrictive covenants. The Plaintiff's Motion for Partial Summary Judgment seeks a determination by the court that, as a matter of law, Defendant's property is subject to the restrictive covenants.

FACTS-TIMELINE

1. November 18, 1996. Plantation Air Plantation Subdivision is part of a 22.22 acre tract mentioned below and an 82.91 acre tract of land shown on a plat recorded in plat book A17 at page 6, conveyed to MidEastern Truck Wash, Inc. By Edward G. Gibbons on November 18, 1996, by deed recorded in the office of the Register of Deeds for Clarendon County (ROD) in Deed Book A-305 at Page 28 (Exhibit A). In connection with the purchase from Gibbons, a mortgage, recorded in book 287, page 208 was given to him.
2. May 9, 1997. The 22.22 acre tract was conveyed to MidEastern Truckwash, Inc. by Marion Moore, et al, by deed recorded in the office of the ROD in Deed Book A319 at Page 82 (Exhibit B). In connection with the purchase from Moore, a mortgage recorded in Book 301 at Page 297 to Joe P Moore, et al. was given to the grantors. The mortgage has the same legal description (22.22 acres) and was subsequently assigned to John C. Land, III, by assignment recorded in Book 301, at Page 297.
3. July 11, 2001, a document titled "Declaration of Covenants, Conditions and Restrictions Palmetto Air Plantation Clarendon County, South Carolina" (hereafter DCCR) were filed

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in the office of the ROD in Deed Book A435 at Page 223 (Exhibit C). MidEastern Truckwash, Inc. is the Declarant and designated in the ROD indexes as both the "from" and "to" party. It references Tax Map Parcel 223-00-02-005.

4. October 9, 2001, by deed recorded in book A-452 at page 144 (Exhibit D), MidEastern Truckwash, Inc. conveyed to Palmetto Air Plantation, LLC, the 82.91 acre tract purchased from Gibbons and the 22.22 acre tract purchased from Moore. Descriptions are identical to the acreage descriptions contained in the deeds into MidEastern truck wash. The deed does not contain any restrictive covenants, nor does it incorporate by reference the DCCR. The deed contains covenants of general warranty. It states that the Moore mortgage, which was assigned to Land, and the Gibbons Mortgage are assumed by the grantee.
5. February 8, 2002. By mortgage recorded, in Book 465 at Page 134 (Exhibit D-1) Palmetto Air Plantation, LLC, mortgaged to Edward G. Gibbons the 82.91 acre tract purchased from Gibbons and the 22.22 acre tract purchased from Moore. Descriptions are identical to the acreage descriptions contained in the deeds into MidEastern Truckwash. The mortgage contains no restrictive covenants, nor does it reference the DCCR. Palmetto Air Plantation, LLC, the mortgagor warrants (page three paragraph one) "Mortgagor is lawfully seized of said property in fee simple and has a perfect right to convey the same; there are no encumbrances or liens whatsoever on said property except this mortgage unless otherwise stated on the face hereof." No encumbrances are listed.
6. September 19, 2003, The Subdivision Plat of Palmetto Air Plantation Subdivision (Exhibit E) was recorded in Book E1008 Page 6 on. This Plat references Clarendon County Tax Parcel 140-00-05-063. It does not mention any restrictive covenants.
7. September 26, 2003, Lots 33 and 34 were conveyed to Defendant and his then wife by general warranty deed recorded, in Deed Book 509 at page 264 (Exhibit F). The deed does not mention restrictive covenants nor incorporate by reference the DDRC.

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law. To withstand a motion for summary judgment "in cases applying the preponderance of the evidence burden of proof, the non-moving

party is only required to submit a mere scintilla of evidence." *Hancock v. Mid–South Mgmt. Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). Savannah Bank, N.A. v. Stalliard, 400 S.C. 246, 250, 734 S.E.2d 161, 163, (2012)

LEGAL DISCUSSION

1. DOCTRINES OF MERGER AND UNITY OF TITLE RENDER THE RECORDATION OF THE DECLARATION OF COVENANTS MEANINGLESS

a. Restrictive covenants upon real estate are contractual in nature and, like any other contract, binds the parties thereto. (emphasis added) Hynes Family Tr. v. Spitz, 384 S.C. 625, 629, 682 S.E.2d 831, 833, (Ct. App. 2009) (Exhibit G). One cannot contract with himself. Recording of a Declaration of Covenants, without more, creates nothing. "It takes two to tango." (in reference to creation of easement) Davidson v. Robertson, No. 2:13-CV-1972-DCN, 2015 WL 1056975, (D.S.C. Mar. 10, 2015) (Exhibit H)

b. Like easements, restrictive covenants which run with the land, are servitudes of the property encumbered (the servient tenement) in favor of the property benefited thereby (the dominant tenement). There can be no doubt that, if the owner of the servient estate over which a right of way exists, acquires the fee–simple title to the dominant estate, the right of way is extinguished, because "The essential ingredient of a right of way would be wanting; it would not be a right of way over another's land, but over his own land." Haselden v. Schein, 167 S.C. 534, 166 S.E. 634, 635 (1932) (Exhibit I)

c. The recording of the DCCR is the equivalent to the recordation of an easement from a grantor to himself. Recordation of an instrument serves no purpose other than providing constructive notice. They remained ineffective absent a conveyance subjecting the severed property to the covenants. Recordation does not elevate the covenants to any status beyond that absent the recording. MidEastern, at the time of recording owned all the property referenced in the declaration. Clearly, reserved unto MidEastern was the right to abandon the covenants, and ignore them completely and convey the property unencumbered by them.

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d. By general warranty deed dated October 9, 2001, recorded in book A-452 at page 144, (Exhibit D) MidEastern Truckwash, Inc. conveyed to Palmetto Air Plantation, LLC, the 82.91 acre tract purchased from Gibbons and the 22.22 acre tract purchased from Moore. Descriptions are identical to the acreage descriptions contained in the deeds into MidEastern. Clearly, immediately prior to the conveyance, MidEastern owned fee simple title to the property and the ability to convey it unburdened by the DCCR. The deed does not mention restrictive covenants, nor does it incorporate by reference the DCCR. The deed contains covenants of general warranty thqugh it states that the Moore mortgage which was assigned to Land and the Gibbons mortgage are assumed by the grantee. Following the conveyance it was owned in fee simple by Palmetto Air Plantation, LLC and not subject to the DCCR. Following the conveyance, Palmetto Air Plantation, LLC, mortgaged the property to Edward Gibbons. The mortgage contains a general warranty and specifically provides that the property is free of encumbrances. (Exhibit D-1 page 3, paragraph1) A general warranty in a deed of conveyance embraces the covenant that it is free from all encumbrances not excepted from its provisions. Lancaster v. Smithco, Inc., 246 S.C. 464, 468, 144 S.E.2d 209, 210 (1965) (Exhibit J). A restrictive covenant running with the land is an encumbrance that violates a covenant against encumbrances 20 Am. Jur. 2d Covenants, Etc. § 95

e. The deed to the Defendant (Exhibit F) contains covenants of general warranty with no exceptions. It does not mention restrictive covenants nor incorporate by reference the DCCR.

2. MERGER OF CONTRACT INTO DEED

a. Defendant does not, by addressing this issue, concede that the contract or any other document related thereto or the closing of the purchase, other than the conveyance deed is admissible evidence and reserves, with the exception as to authenticity, all objections thereto.

b. An agreement to convey real estate is merged into in the deed and the deed alone (emphasis added) regulates the rights and liabilities of the parties. Shoney's, Inc.

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v. Cooke, 291 S.C. 307, 310, 353 S.E.2d 300, 302 (Ct. App. 1987) (Exhibit K)
Windham v. Riddle, 381 S.C. 192, 202, 672 S.E.2d 578, 583, (2009) (Exhibit L)

c. In Windham, the property owner, Covington, by survey divided his property into two large tracts. Though shown as separate the on the survey, they shared a common irrigation pond and the equipment. He sold the first tract to Windham under an installment sale contract payable over a ten-year period. The contract allowed the purchaser immediate possession but provided for the retention of an easement by the seller for use of the irrigation equipment, pond and access thereto in connection with the operation of a farm on the tract retained. Before the payout of the installment sale contract, the other tract was sold to Riddle. Thereafter, upon payment of the installment sale contract, the property was deeded Windham. In the Windham deed, the same language as contained in the contract of sale was used, thereby reserving to the seller, Covington, the easements mentioned in the contract of sale though Covington no longer owned the adjoining property the easements were intended to benefit. Though Windham and Riddle used the irrigation system jointly for a considerable period of time before and after the deed to Windham, a dispute arose and Windham commenced a declaratory judgment action to have the court determine whether Riddle had an easement. The court ruled that because the wording of the Wyndham deed reserved the easement to the seller, Covington, who no longer owned the adjoining property, the easement, if any, was one in gross, rather than one appurtenant and, consequently, did not benefit Riddle. Though evident that the easements were intended to benefit both properties, Chief Justice Beatty, acknowledging that the decision may seem inequitable, recognized the importance of adherence to "current property jurisprudence." The jurisprudence adhered to and thereby dictating the outcome was three-fold. One, the terms of the contract of sale, merged into the deed and the deed controlled regardless of the intent evident from the terms of the contract; two, that, though all parties had knowledge of the contract and its terms, the easement was created, not by the contract, but by the deed; and, third, the easement reserved to the "seller" in the deed did not run with the land because it did not have a terminus on property of the seller, Covington, (a

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requirement for an easement running with the land) at the time of the deed, the time of the easement's creation.

d. If the contract were relevant, it would not be helpful to the Plaintiffs position. Paragraph four thereof states that the conveyance is subject to the DCCR. The following paragraph states "the Seller shall furnish to the Purchaser a general warranty deed to lots 33 and 34, conveying good, marketable, fee simple title, free and clear of all liens and encumbrances." This is obviously inconsistent and renders the contract ambiguous, requiring an interpretation which least restricts the property. Where language in a plat reflecting an easement is capable of more than one construction, that construction which least restricts the property will be adopted. Hamilton v. CCM, Inc., 274 S.C. 152, 263 S.E.2d 378 (1980). Windham v. Riddle, 381 S.C. 192, 202, 672 S.E.2d 578, 583, (2009) (Exhibit L)

3. ESTOPPEL BY NOTICE

a. In his memorandum counsel cites the case of Carolina Land Co. v. Bland, 265 S.C. 98, 105–06, 217 S.E.2d 16, 19–20 (1975) (Exhibit M) in support of his Summary Judgment position that "knowledge of the existence of the DCCR" equates to "bound by the covenants." The information imparted to the Defendant by Mr. Coffee was that the property, prior to the conveyance to the Defendant, was subject to the restrictive covenants. For the reasons detailed above, the property was not so encumbered, though, no doubt Mr. Coffee, believed them to be, and in turn, so informed the Defendant, but that erroneous belief is not a substitute for referencing them in the Deed to the Defendant. With due respect to counsel's able argument, the decision Carolina Land does not turn on the notice aspect but the fact that the recorded document, the survey which included the easement in question, was referred to, incorporated into, and the basis for the legal description in the deed from a predecessor in title. Notably, it was the deed referencing the survey plat not the recording of the plat which created the easement.

> "We have held that where a deed describes land as is shown as a certain plat, such becomes a part of the deed. It is generally held that when the owner of land has it subdivided and platted into lots and

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streets and sells **and conveys lots with reference to the plat**, he thereby dedicates said streets to the use of such lot owners, their successors in title and the public. Blue Ridge Realty Co. v. Williamson, 247 S.C. 112, 145 S.E.2d 922. We also held in the cited case that the purchaser of lots with reference to the plat of the subdivision acquired every easement, privilege and advantage shown upon said plat, including the right to the use of all the streets, near or remote, as laid down on the plat by which the lots were purchased. We also held as between the owner, who has conveyed lots according to a plat, and his grantee or grantees, the dedication is complete **when the conveyance is made**, even though the street is not accepted by the public authorities. Carolina Land Co. v. Bland, 265 S.C. 98, 105–06, 217 S.E.2d 16, 19–20 (1975)" (Emphasis Added) (Exhibit M)

It is obvious that the outcome of Carolina Land would have been different had the survey plat been simply recorded but never referenced in a conveyance as is the case with the DCCR in question.

b. Estoppel does not aid the Plaintiff but supports the Defendant's position. "Estoppel by deed is a bar which precludes a party to a deed and his privies from asserting as against the other and his privies any right or title in derogation of the deed, or from denying the truth of any material fact asserted in it" Hipps v. Hipps, 288 S.C. 564, 568, 343 S.E.2d 669, 672 (Ct. App. 1986) (Exhibit N)

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CONCLUSION

The defendant submits that for the reasons stated herein, the Defendant's property was not encumbered by the DCCR and, therefore, the Motion for Partial Summary Judgment should be denied. Alternatively, the defendant submits that the motion should be denied because the case warrants further factual development.

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EXHIBIT A

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REVENUE STAMP S.C. COLLECTED $ 123.20 CLARENDON COUNTY, S.C.

State of South Carolina

County of Clarendon

DEED

KNOW ALL MEN BY THESE PRESENTS, THAT Edward G. Gibbons (hereinafter called "Grantor"), for and in consideration of the sum of Five and no/100 ($5.00) Dollars and other consideration to the Grantor in hand paid at and before the sealing of these presents, by MidEastern Truck Wash, Inc. of Post Office Box 777, Manning, South Carolina 29102 (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 the Grantee, his heirs, successors and assigns:

All that piece, parcel or tract of land, lying, being and situate in School District Number 20 of the County of Clarendon, State of South Carolina, containing 82.91 acres, according to the plat hereinafter referred to and bounding and measuring as follows: On the Northeast by lands of New Covenant Holiness Church and by lands of Joseph Palmer Moore; on the Southeast by lands of Lettie D. Johnson and by lands of Janie and Clyde Wilkes, Jr., the run of Fellowship Branch being the line; on the Southwest by lands of Joe P. Moore, et al. and by lands of Fellowship Ranchette Subdivision; on the North by lands of Cecil D. Sheets and by lands of Hugh T. Martin; on the Southwest by lands of Hugh T. Martin; on the Northwest by the right of way of U.S. Highway 301.

STATE OF SOUTH CAROLINA DOCUMENTARY STAMP TAX 231.20

For a more particular description of said lot, reference may be had to a plat made by DuValle W. Elliott, RLS, dated 14 March 1996, recorded in the Office of the Clerk of Court for Clarendon County in Plat Book A-17 at Page 10.

Said lot being a portion of the lands conveyed to Edward G. Gibbons by deed of M. L. Eadon, Jr., dated 17 April 1984, recorded 31 January 1986 in the Office of the Clerk of Court for Clarendon County in Deed Book A-134 at Page 630.

Said lot being a portion of Tax Map Parcel Numbers 167-00-05-063-00 and 167-00-05-064-00.

This conveyance is made subject to easements and restrictions of record and otherwise affecting the property.

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

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the Grantee, his Heirs, Successors and Assigns forever.

And the Grantor does hereby bind himself and his heirs, to warrant and forever defend all and singular the premises unto the Grantee, His Heirs, Successors, and Assigns against himself and his heirs and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

00053962 11/19/1996 B:A0305 P:28

Any reference in 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.

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal.

Date: November 18, 1996

Signed, Sealed and Delivered
in Presence of:

Ricci Land

Joanna L Pierce

(Seal)
EDWARD G. GIBBONS

(Seal)

State of South Carolina

County of Clarendon

PROBATE

PERSONALLY appeared before me the undersigned witness, who, being duly sworn, says that (s)he saw the within-named Grantor sign, seal and deliver the within Deed; and that (s)he with the other witness whose signature appears above witnessed the execution thereof.

SWORN to before me November 18, 1996

Ricci Land
Witness

Joanna L. Pierce (SEAL)
Notary Public for South Carolina
My Commission expires: 4/5/2003

00053962 W LPP
FILED, RECORDED, INDEXED
11/19/1996 11:36A
Bk:A0305 Pg:28
RecFee:10.00 DocSt:291.20
CoRevSt:123.20 Pages:2
R M C DEPARTMENT CLARENDON CO
Beulah G. Roberts, Clerk of Court

00053962 11/19/1996 B:A0305 P:29

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EXHIBIT B

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State of South Carolina

County of Clarendon

DEED

KNOW ALL MEN BY THESE PRESENTS, THAT Marion Moore, Joe P. Moore, Marie M. Land and Virginia Sauls Threatt (hereinafter called "Grantor"), for and in consideration of the sum of Five and no/100 ($5.00) Dollars and other consideration to the Grantor in hand paid at and before the sealing of these presents, by Mid-Eastern Truck Wash, Inc. of Post Office Box 777, Manning, South Carolina 29102 (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 the Grantee, his heirs, successors and assigns:

All that piece, parcel or tract of land containing 22.22 acres,.more or less, which is the remainder of a 53 acre tract of land described as follows:

All that piece, parcel or tract of land, with buildings and improvements thereon, lying, being and situate in the County of Clarendon, State of South Carolina, containing 53 acre, more or less, as per plat of G. T. Floyd, Surveyor, dated 14 December 1918, of what is known as the "Arnold, McLeod and King Tracts" bounded as follows: On the Northeast by Lot Numbers 3 and 10 on the aforesaid plat; on the Southeast by lands of W. M. Lewis; on the Southwest by lands of A. Weinberg and Lot Number 5 on the aforesaid plat; on the Northwest by lands of Richbourgh, from which it is separated by the Manning to Summerton Public Road.

Said premises having been conveyed to Marion Moore, Joe P. Moore, Marie M. Land and M. L. Sauls by deed of Marion Moore, Joe P. Moore and Marie M. Land, dated 6 March 1972, recorded in the Office of the Clerk of Court for Clarendon County in Deed Book A-48 at Page 493. The said M. L. Sauls having conveyed his interest in the above described property to M. L. Sauls, III and Virginia Sauls Threatt by deed dated 25 September 1975, recorded in the Office of the Clerk of Court for Clarendon County in Deed Book A-70 at Page 258.

Said premises being designated as Clarendon County Tax Map Parcel Number 140-00-05-044-00.

This conveyance is made subject to easements and restrictions of record and otherwise affecting the property.

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

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the Grantee, his Heirs, Successors and Assigns forever.

00057225 06/13/1997 B:A0319 P:82

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And the Grantor does hereby bind himself and his heirs, to warrant and forever defend all and singular the premises unto the Grantee, His Heirs, Successors, and Assigns against himself and his heirs and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

Any reference in 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.

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal.

Date: May 9, 1997

Signed, Sealed and Delivered
in Presence of:

Debbie C. Seaman

Mary Ridgeway

Marion Moore (Seal)
Marion Moore

Joe P. Moore (Seal)
Joe P. Moore

Marie M. Land (Seal)
Marie M. Land

~~M. L. Sauls, III~~ (Seal)
~~M. L. Sauls, III~~

Virginia Sauls Threatt (Seal)
Virginia Sauls Threatt

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State of South Carolina

County of Clarendon

PROBATE

PERSONALLY appeared before me the undersigned witness, who, being duly sworn, says that (s)he saw the within-named Grantor sign, seal and deliver the within Deed; and that (s)he with the other witness whose signature appears above witnessed the execution thereof.

SWORN to before me May 9, 1997

Witness

(SEAL)

Notary Public for South Carolina
My Commission expires: 2-8-2000

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FILED, RECORDED, INDEXED
06/13/1997 04:49P
Bk:A0319 Pg:82
RecFee:10.00 St Fee:156.00
Co Conv Fee:66.00 Pages:4
R M C DEPARTMENT CLARENDON CO
Beulah G. Roberts, Clerk of Court

LOCATION

Map #	Sub Map Block	Parcel	Sub Parcel
140	00	05	044 00

TC BY ASSESSOR

Norma A. Andrews

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STATE OF SOUTH CAROLINA)
) **AFFIDAVIT**
COUNTY OF CLARENDON)

PERSONALLY APPEARED BEFORE ME the undersigned, who being duly sworn, deposes and says:

Property located at _____, bearing Clarendon County Tax Map Parcel Number 140-00-05-044-00 was transferred by Marion Moore, Joe P. Moore, Marie M. Land and Virginia Sauls Threatt to Mid-Eastern Truck Wash, Inc. on May 9 1997.

The transaction was (check one):

XX An arm's length real property transaction and the sales price paid or to be paid in money or money's worth was $ 60,000.00.

_____ NOT an arm's length real property transaction and the fair market value of the property is $_____*.

The above transaction is exempt, or partially exempt, from the recording fee as set forth in S.C. Code Ann. §12-24-10 et.seq. because the Deed is : _____.

As required by Code §12-24-70, I state that I am a responsible person who was connected with the transaction as: ATTORNEY.

I further understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than One thousand and no/100 ($1,000.00) Dollars or imprisoned not more than one (1) year, or both.

Bobbie C. Reaves
BOBBIE C. REAVES

SWORN to before me this _____
day of _____, 19____

_____(Seal)
Notary Public for South Carolina
My Commission Expires:_____

* The fee is based on the real property's value. Value means the realty's fair market value. In arm's length real property transactions, this value is the sales price to be paid in money or money's worth (e.g. stocks personal property, other realty, forgiveness of debt, mortgages assumed or placed on the realty as a result of the transaction). However, a deduction is allowed from this value for the amount of any lien or encumbrance existing on land, tenement, or realty before the transfer and remaining on it after the transfer.

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EXHIBIT C

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
PALMETTO AIR PLANTATION
CLARENDON COUNTY, SOUTH CAROLINA

This Declaration of Covenants, Conditions and Restrictions is made this 11th day of July, 2001 by MidEastern Truckwash, Inc., a South Carolina Corporation hereinafter referred to as the "Declarant".

WHEREAS, the Declarant is the owner of a track of land located south of the right of way of U.S. Highway 301 between the City of Manning and Interstate Highway 95. The property contains approximately 45 lots, private access roads, FAA approved run-way measuring approximately *150* feet by 3,720 feet and 45 residential lots being a portion of Clarendon County Tax Map Parcel No. 223-00-02-005, all of which shall be reflected on a plat of the sub-division prepared by Duvalle W. Elliott. The Declarant's purpose is to develop a community for aviation enthusiast that promotes peaceful living, protects investments and provides the use of a private one-way gated entrance and Common Areas for the benefit all Owners.

WHEREAS, the Declarant desires to insure the values and amenities in said development, to prevent future impairment thereof, and to provide for the maintenance of all Common Areas, by subjecting the real property contained in the subdivision together with any additions to said property to the covenants, restrictions, easement, charges, and liens hereinafter set forth each of which is and are for the benefit of the property of each of the Owners.

WHEREAS, the Declarant deems it desirable for the efficient preservation of the values and amenities in said development to create an Owners Association that will be delegated the powers of maintaining and administrating the development properties and facilities and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created by incorporating a non-profit corporation under the laws of the State of South Carolina entitled Palmetto Air Plantation Property Owners Association, Inc.

NOW THEREFORE, the Declarant does hereby declare that all of the property shown as lots 1 through 45, ponds, airstrip, roadways and rights-of-way on a subdivision plat to be prepared by Duvalle W. Elliott and recorded in the Office of the RMC for Clarendon County, including Lot 19 of said sub-division as reflected on a plat made by Duvalle W. Elliott, dated March 30, 2001, recorded in the Office of the Clerk of Court for Clarendon County, in Plat Book S0050 at Page 571 and shall be held, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements and declarations that shall run with real property and be binding on all parties owning any right, title and interests in said real property or part thereof, their heirs, successors and assigns and shall inure to the benefit of each Owner thereof.

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ARTICLE I
Definitions

Section 1.1 **Adjoining Land** shall mean and refer to land contiguous with the Property, whether or not owned by Declarant, which is or may be made subject to this Declaration.

Section 1.2 **Annexation** shall mean and refer to the process by which any portion of the Expansion Property or Adjoining Land are made subject to this Declaration.

Section 1.3 **Architectural Control Committee (ACC)** shall mean and refer to a committee formed to maintain the quality and architectural harmony of improvements to the Development.

Section 1.4 **Architectural Guidelines** shall mean and refer to the guidelines and rules established and supplemented from time to time by the Architectural Control Committee

Section 1.5 **Articles or Articles of Incorporation** shall mean and refer to the Articles of Incorporation of the Association which will have been filed with the Secretary of State to create the Association.

Section 1.6 **Assessments** shall mean and refer to annual, special and default assessments levied pursuant to this Declaration.

Section 1.7 **Association** shall mean the Plantation Air Plantation Property Owners Association, Inc. (PAP) a non-profit South Carolina corporation.

Section 1.8 **Board of Directors** shall mean and refer to the Board of Directors of the Association, which is the governing body of the Association.

Section 1.9 **By-Laws** shall refer to the By-Laws of Palmetto Air Plantation Property Owners Association, Inc. Attached to the Declaration and incorporated herein by this reference.

Section 1.10 **Palmetto Air Plantation** shall mean and refer to the planned community created by this Declaration.

Section 1.11 **Common Areas** shall mean any and all real and personal property including roadways, rights of ways, ponds, wetland preservations, and aircraft runways now and hereinafter owned by the Association for the common use and enjoyment of the owners.

Section 1.12 **Declarant** shall mean and refer to MidEastern Truckwash, Inc., a South Carolina Corporation and its successors-in-title and assigns. It is expressly understood and declared that there shall be only one person or legal entity entitled to exercise the right and power of the "Declarant" and Joe Witt is initially designated to be that person.

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Section 1.13 **Improvements** shall mean and refer to all buildings and structures, parking areas, fences, walls, hedges, plantings, pools, driveways, ponds, lakes, recreational facilities, signs, changes in any exterior color or shape, excavation and all other site work including without limitation grading, road construction, utility improvement, removal of trees or plantings, and any new exterior construction or exterior improvement which may be included in the foregoing. "Improvements" does not include turf, shrub or tree repair or replacement of a magnitude which does not change exterior colors or exterior appearance. "Improvements" does include both original improvements and all later changes and improvements.

Section 1.14 **Licensor** shall mean and refer to MidEastern Truckwash, Inc., a South Carolina Corporation which owns the runway and will issue licenses for the use of the runway. Lot Owners and their invitees shall be permitted to use the runway without the necessity of a license from the Licensor.

Section 1.15 **Lot** shall mean and refer to any plot of land within the Palmetto Air Plantation whether or not improvements are constructed thereon, which shall constitute a single family dwelling. The ownership of each Lot shall include all the rights, title and interest of an Owner in the Common Property, which shall include without limitation, membership in the Association.

Section 1.16 **Maintenance Fund** shall mean and refer to the fund created by assessments and fees levied pursuant to this Declaration.

Section 1.17 **Members** shall mean and refer to any person or entity holding membership in the Association.

Section 1.18 **Mortgage** shall mean and refer to any mortgage, deed to secure debt, deed of trust, and any and all similar instruments used for the purpose of encumbering real property in this Development as security for the payment or satisfaction of an obligation.

Section 1.19 **Owner** shall mean and refer to the record Owner, whether one or more persons, of the fee simple title to a Lot located within the Development, and entitled to one vote per Lot as a member of the Palmetto Air Plantation Property Owners Association, Inc., but excluding those having such interest merely as security for the performance of an obligation.

Section 1.20 **Plat** shall mean and refer to any plat depicting the subdivision or any lot therein, filed in the Office of the RMC for Clarendon County, State of South Carolina, as such plat may be amended from time to time by the Declarant.

Section 1.21 **Property** shall mean and refer to the Property initially subject to this Declaration and any additional Real Property from time to time subject to these Covenants pursuant to the provisions of this Declaration.

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Section 1.22 **Runway** shall mean that property located at the center of the subdivision used for the purpose of aircraft takeoffs and landings.

Section 1.23 **Taxiway** shall mean and refer to those right-of-ways radiating from the runway or otherwise as shown on the plat for the purpose of providing access for aircraft to and from the runway.

ARTICLE II
The Association

Section 2.1 **Dedication of Common Areas.** Declarant may hereafter convey to the Association certain parts of the property as Common Areas intended for common use by the owners in Palmetto Air Plantation Property Owners Association, Inc.. Such designated areas shall, upon conveyance, be dedicated to the common use and enjoyment of Owners, and their families, guests, tenants, and invitees.

Section 2.2 **Responsibility for Common Area.** Subject to the rights of the Owners set forth in this Declaration, the Association shall be responsible for the management and control of the Common Area dedicated under Section 2.1 above and all improvements in the Common Area (including equipment related thereto), and shall keep it in good, clean and attractive condition and repair consistent with the requirements of a first class residential and recreational community, pursuant to the terms and conditions of this Declaration.

Section 2.3 **Membership.** Every Owner, by virtue of being an Owner and for as long as he is an Owner, shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot or Lots. No Owner, whether one or more persons, shall have more than one membership regardless of the number of Lots owned, but all of the persons owning each Lot shall be entitled to rights of membership and of use and enjoyment appurtenant to such ownership. The combination of two Lots will be considered a single Lot for membership and assessment purposes. The Articles of Incorporation and Bylaws of the Association may set forth additional classifications of membership, which Members may or may not be Owners.

Section 2.4 **Membership and Voting Rights.** Each Member shall be entitled to one vote per membership. When more than one person holds an interest in any Lot, all such persons shall constitute one Membership. The vote for such Membership shall be exercised as the Owners among themselves determine, and the Secretary of the Association shall be notified of such designation prior to any meeting. Any Owner of a Lot may lease the same and assign his membership right to the tenant, provided that a copy of the Instrument of Assignment is furnished to the Secretary of the Association prior to any meeting at which the tenant exercises the voting right of membership. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, Bylaws, and Architectural Guidelines, and the Restrictions and Covenants of the property. The lease shall obligate the tenant to comply with the foregoing and upon the tenants failure to do so he/she may be evicted by the Declarant or the Owners Association Board of Directors.

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Section 2.5 Rules and Regulations. The Association from time to time and subject to the provisions of this Declaration, may adopt, amend and repeal rules and regulations, to be known as "Association Rules," governing, among other things, the following:

a. The Use of Open Space,
b. The Use of Private Roads,
c. Collection and Disposal of Garbage and Trash,
d. The Posting of Maximum Speeds for Vehicular Traffic and Other Traffic Rules,
e. The Types of Vehicles and Times when any Vehicles (including Commercial Vehicles), may be permitted to use the road within Palmetto Air Plantation or any other area of the property.
f. The Schedule of Fines for Infractions of the Association Rules or the Project Documents.

Section 2.6 Ownership of Personal and Real Property for Common Use. The Association, through action of its Board may acquire, hold and dispose of tangible and intangible personal property and real property.

Section 2.7 Implied Rights and Obligations. The Association may exercise any other rights or privileges given to it expressly by the Declaration, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association under this Declaration or reasonably necessary to effectuate any such right of privilege. The Association shall perform all of the duties and obligations imposed upon it expressly by the Palmetto Air Plantation Documents, together with every other duty or obligation reasonably to be implied from the express provisions of the Palmetto Air Plantation Documents where reasonably necessary to satisfy any such duty of obligation.

ARTICLE III
Architectural Control Committee

Palmetto Air Plantation is designed as a private residential community with architectural controls which allows aircraft owners and pilots convenient access to the runway. To insure that the property will be developed harmoniously and that consistency is maintained, an Architectural Control Committee will formulate, review and control a comprehensive landscape plan, street lighting, signs, fencing, parking and site improvements. The initial Architectural Control Committee shall consist of one member, Joe Witt or his designee. In the event of the failure and ability for any reason of Joe Witt to act, the vacancy created shall be filled temporarily or permanently as necessary by his designee. At such time the development is fifty (50%) per cent completed, the above member may relinquish his powers of the Architectural Control Committee to the Owners Association. At that time Joe Witt, may choose to continue his position on the new Architectural Control Committee and two (2) other members shall be appointed by the Board of Directors of the Association. The new Architectural Control Committee shall consist of three (3) members and shall promulgate such rules and guidelines as may be necessary to carry out the purpose of the Declaration.

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The Architectural Control Committee shall

3.1. regulate the external design, appearance, and location of the Properties and Lots and any improvements thereof

3.2. adopt architectural guidelines and programs consistent with covenants and restrictions.

3.3 inspect for compliance with these guidelines.

3.4 adopt procedures for the exercise of its duties.

3.5. maintain complete and accurate records of all actions taken

Notwithstanding anything to the contrary contained herein, the Architectural Control Committee or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application of enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the community.

ARTICLE IV
Architectural Guidelines and Rules

Section 4.1 Land Use. All Lots shall be used for residential purposes only and common recreational purposes auxiliary thereto and for no other purpose. No Lot shall be used a right-of-way, street or road, or access to any property not included within the Properties of this Development without the consent of the Declarant. Only one family may occupy a Lot as a principal residence at any one time. No structure except as herein provided shall be erected, altered, placed or permitted to remain on any Lot other than one (1) detached single family dwelling or residence. Such accessory buildings or hangar may not be constructed prior to the completion of the dwelling unless waived by the ACC and then limited to a one year completion deadline. Furthermore the accessory building or hangar shall comply with all other restrictions contained herein for the main dwelling, including, but not limited to, exterior requirements, setback lines and permanent demolitions. A guest suite or a like facility may be included as part of the main dwelling or accessory building, but such suite may not be rented or leased except as part of the entire premises including the main dwelling. Furthermore no airplane hangar shall be used as a residence without the consent of the Declarant or Board of Directors of the Homeowners Association

Section 4.2 Partition of Combination of Lots. No Lot shall be subdivided or its boundary lines changed except with prior written approval of the Declarant. Declarant, however, hereby expressly reserves the right to replat any Lot or Lots. Declarant's consent shall be conditioned upon payment by the Owner or Owners concerned of all expenses incident to giving the consent, including legal and accounting fees. Every agreement and recorded instrument for combination of Lots shall make adequate provisions for the adjustment of voting rights and liability for payment of assessments appurtenant to or imposed upon such Lots. Whether combined or unchanged, each Lot shall be

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conveyed, transferred, gifted, devised, bequeathed, encumbered or otherwise disposed of, as the case may be, with all appurtenant rights and interests created by law or this Declaration, including the membership in any association and all the rights thereof.

Section 4.3 **Commercial Businesses Prohibited.** No commercial business of any type shall be permitted; however, nothing herein contained shall be construed as preventing the Declarant from erecting and maintaining facilities of a commercial, recreational or community nature or facilities incident to the use of the runway, taxiway and easements. This should not exclude any home office, but no customer, clients, or patients can be seen on residential premises. Also, this should not exclude work done on non-owned aircraft so long as such work is done inside a hangar and the completed aircraft confirms with all requirements as set forth in these covenants. No one, other than the Declarant, can allow the use of the airport or runway for commercial activity or for self-enterprise.

Section 4.4 **Common Area.** The Common Area shall be owned by the Declarant or the Association and no Owner shall bring any action for partition or division of the Common Area by acceptance of a deed or other instrument of conveyance or assignment, each Owner shall be deemed to have specifically waived such Owner's right to institute or maintain a partition action or any other action designed to cause a division of the Common Area, and this section may be pleaded as a bar to any such action. Any Owner who shall institute or maintain any such action shall be liable to the Declarant or the Association, and hereby agrees to reimburse the Declarant or the Association for its costs, expenses and reasonable attorney's fees in defending any such action.

Section 4.5 **Architectural Control.** No dwelling unit, hangar or other building shall be erected, placed or altered on any Lot until the plans for each showing locations of the units on the Lot and the landscaping plan for the Lot have been submitted to and approved by the Architectural Control Committee. Such plans shall be reviewed as to quality of workmanship and materials, harmony of external design with existing dwelling units and hangars, and as to location with respect to topography and finish grade elevation, and house, hangar and other buildings shall be of similar architectural design, before being approved by Architectural Control Committee or its successor or assigns. No home, garage, hangar or other building may be constructed on any Lot unless such work meets all County Codes then in existence. A copy of the builder or contractor's license must be submitted with construction plans to the ACC.

Section 4.6 **Dwelling Size.** Each single story dwelling on a Lot shall have a heated square foot area of 2000 square feet minimum. No dwelling unit shall be permitted on any Lot that has a ground floor area of the main structure, exclusive of porches, patios, hangars and garages of less than 1,800 square feet on the first floor for a one and one-half story, split-level, or two story dwellings. All multi-level dwellings shall have a minimum of 2,800 square feet. All house/hangar combinations shall include a minimum of 1,800 square feet of heated living area, exluding hangar, shop or storage portion of the structure. All structures must be built with eaves and over-hangs and have a residential characteristic. PROVIDED HOWEVER, single family,one-store residential structures of 1,600 square feet may be permitted on Lots 42,-43 and 44 of the subdivision. All dwellings shall contain a place for parking for at least two vehicles in an enclosed garage.

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Section 4.7 **Location.** In order to assure that all structures will be located with regard to the topography of each individual Lot, taking into consideration the elevation contours of the Lot, the location of adjoining dwellings, and similar considerations, the Declarant or the ACC reserves unto itself, its successors and assigns, the right to control absolutely and solely to decide the precise site and location of any structure, improvements, and utilities upon all Lots and every Lot within the Development: PROVIDED, HOWEVER, that such location shall be determined only after reasonable opportunity is afforded the Owner to recommend a specific site, and in any event all buildings (including eaves, decks, patios and steps) shall be constructed beyond the minimum setback lines. All structures shall be located in compliance with the rules and ordinances of Clarendon County Planning Commission.

Section 4.8 **Structure Material.** Unless specifically otherwise approved in writing by the ACC, all structures constructed or placed on any Lot shall be built of substantially new materials and no used structures shall be relocated or placed on any such Lot. No dwelling shall have an exterior surface composed of asbestos siding, exposed concrete block, cinder block, or other similar material. Vinyl siding products will be considered on a case by case basis.

Section 4.9 **Kind of Home.** No mobile or manufactured homes of any kind, or any home having the same general appearance, shall be permitted on any Lot. No building or structure of a temporary nature, trailer, tent, shack, garage or other out-building shall be erected or maintained on any Lot at any time. Furthe more, no building shall be permitted on any Lot unless it is erected on a solid foundation of brick or masonry from the ground level to the first floor level. PROVIDED HOWEVER, that modular construction shall be permitted with approval of the ACC.

Section 4.10 **Driveways.** Vehicular driveways and walkways shall be constructed of concrete, brick, asphalt or reconstituted rubber services. If any driveway is to cross a drainage ditch, the Owner shall be required to install, at his own expense, all necessary culverts and coverings prior to the commencement of any other construction on the Lot.

Section 4.11 **Drainage.** No Owner shall do or permit any work, construct any improvements, place any landscaping or suffer the existence of any condition whatsoever which shall alter or interfere with the drainage pattern of the Property, except to the extent such alteration and drainage pattern is approved in writing by the Declarant, and except for the rights reserved to Declarant to alter or change the drainage patterns.

Section 4.12 **Continuity of Construction.** All structures approved by the ACC must be completed insofar as the exterior finish is concerned within 12 months from the date of issuance of a building permit for said structure. The ACC may waive this requirement if construction delays have been caused by strikes, war, fire, or Acts of God which render the completion of construction within such time impossible. All improvements commenced on the Property shall be prosecuted diligently to completion and shall be completed within 12 months of commencement, unless an exception is granted in writing by the ACC. If an Improvement is commenced and construction is then abandoned for more than ninety (90) days or if construction is not completed within required 12 month period, then after notice and hearing as provided in the By-Laws, the ACC may impose a fine of not less than One Hundred ($100.00) Dollars per day on the Owner of the Lot. Furthermore, prior

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to occupancy of the dwelling or within one year after the issuance of a Building Permit, the Lot Owner shall have his property sown in grass and have planted foundation landscaping around the dwelling and other accessory buildings in accordance with the proposed landscaping plans previously submitted and approved.

Section 4.13 **Reconstruction.** Any building on any Lot which is destroyed in whole or in part by fire, windstorm, flood or other Act of God must be rebuilt, or all debris from such building removed and the Lot restored to the condition it was in prior to commencement of construction of such building with reasonable promptness; PROVIDED HOWEVER, that any such reconstruction must be commenced within 3 months from the date of such destruction or if no reconstruction is to occur, then all such debris must be removed and the Lot restored to its prior condition within 2 months of such destruction.

Section 4.14 **Construction Traffic.** Construction traffic is prohibited on the Common Area runway, and tie down areas. The failure of a Lot Owner to prevent construction traffic associated with his Lot from entering upon the Common Area runway, and tie down areas shall make that Lot Owner liable for any necessary repairs caused by construction traffic upon these areas. Lot Owners shall specifically include a clause in their construction contracts prohibiting contractor equipment from entering upon the Common Areas, runway, taxiway, and tie down areas.

Section 4.15 **Hangar Specifications.** Each Lot adjoining the taxiway right-of-way may have a hangar for the storage of private aircraft. Such hangars, if constructed, must be compatible in appearance with the residential unit. The hangar must be a fully enclosed building with approved and operational doors which do not face the street. No T-Hangar shall be constructed and all separate hangars must be rearward of the mean center line of the house and away from the street side of the Lot. Free standing hangar shall not exceed 3,600 square feet of interior space, including workshop, restroom, storage area and any other purpose. The hangar may be built before the dwelling house only when permitted by the ACC, but substantial completion of the dwelling insofar as the exterior finish is concerned must be accomplished within 12 months from the date of the issuance of the Building Permit for hangar structures.

ARTICLE V
Restrictions and Covenants

Section 5.1 **Failing to Comply.** In the event the Owner of any Lot shall fail to comply with any of the below mentioned criteria, or fails to maintain the premises and the exterior of the improvements situated thereon, or permits litter and debris to accumulate on his Lot, or allows hedges or other plantings to obscure the view of the street traffic, or fails to comply with any other reasonable fire preventive requirements, the Declarant, through its agents and employees, shall have the right to enter upon such premises and to repair, maintain, rehabilitate and restore the exterior of any improvements situated thereon and/or clean or clear any Lot of debris, or take any other steps necessary to remove litter and debris, or take any other steps necessary to meet reasonable fire preventive regulations; PROVIDED HOWEVER, that the Declarant, or its agents, shall first give written notice to the Owner of said Lot of its intention to make such repairs or of its intention to

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perform such clearing, maintenance or rehabilitation work, affording the Owner of said Lot 30 days in which to make said necessary repairs, maintenance, or clearing work. If at the end of this period the work to be performed has not been done by the Owner, then the Declarant, or its agents, shall have the right, as set forth herein, to make such repairs, etc. Nothing herein contained shall be construed to grant to the Declarant or its agents, any right to enter into or inside of any building located on any Lot without the consent of the Owner thereof. Any costs incurred by the Declarant, or its agents, in enforcing and carrying out the performance of this paragraph shall be charged against the Owner of said Lot, and a lien may be created on said Lot until the Declarant, or its agents, has been paid in full for all costs incurred.

Section 5.2 **Maintenance.** All Owners shall keep their Lots, whether occupied or unoccupied, free of all tall grass, dead, diseased or decaying trees, weeds, trash, rubbish, and debris and keep all Lots in a neat and attractive condition. All improvements erected on Lots shall be maintained in a clean, neat and orderly condition and in a good state of maintenance and repair.

Section 5.3 **Toxic Disposal Prohibited.** Disposal on the site of any substances which may be considered toxic or environmentally sensitive is expressly prohibited. Disposal of any substances which may contaminate the ground water of this subdivision or the surrounding area is prohibited. These substances include, for example, but are not limited to, paints, solvents, cleaning fluids, paint strippers, fuel and oil.

Section 5.4 **Unsightly Materials Prohibited.** No rubbish, garbage, debris, junk, junk vehicles, or unsightly material shall be deposited on any of the Lots at any time except building material during the course of construction on the site. All rubbish, waste, or garbage shall be kept in sanitary containers, and shall be removed from the premises at least once a week. No dismembered aircraft parts nor nonoperative aircraft are to be left about the premises.

Section 5.5 **Hazardous Activities.** Nothing shall be done or kept on any Lot or in the Common Area which will increase the rate of insurance on the Common Areas or any other Lot without the prior written consent of the Declarant or the Association. No Owner shall permit anything to be done or kept on his Lot or in the Common Areas which would result in the cancellation of insurance on any part of the Common Areas, or which would be in violation of any law.

Section 5.6 **Nuisance.** No noxious or offensive activity shall be conducted upon any Lot or in any dwelling nor shall anything be done thereon or therein which may be or may become an annoyance or nuisance to the neighborhood.

Section 5.7 **Outside Toilets.** Outside toilets or privies are expressly prohibited, except where required for construction purposes.

Section 5.8 **Wall Hangings.** An Owner shall not cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, balconies or windows of his Dwelling or exterior buildings which may adversely affect the appearance of Palmetto Air Plantation without the prior written approval of the Architectural Control Committee.

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Section 5.9 **Children.** Children will be the direct responsibility of their parents or legal guardians, including full supervision of them while within the Development and including full compliance by them with this rule and with all other rules and regulations of the Association. All children under twelve (12) years of age must be accompanied by a responsible adult when entering and/or utilizing any recreational facility. In order to control the overall appearance of the community, no swing sets, play sets, sandboxes, basketball backboards, tree houses, animal houses or animal pens shall be erected so as to be visible from any roadway or adjoining property, unless approved in advance by the ACC.

Section 5.10 **Pets.** Pets and other animals shall neither be kept nor maintained in or about the properties except in accordance with the following. Commercial breeding or feeding of horses, cattle, goats, hogs, sheep or poultry; the operation of a commercial dairy; dog boarding kennel or veterinary hospital; and the operation of a commercial livery or boarding stable for horses; or a riding academy; and the keeping of any hog or milk cow or horse, are strictly prohibited. It is understood, however, that this restriction shall not be construed to prohibit the keeping of a limit of three (3) domestic animals (canine or feline) for family pleasure, provided that domestic animals must be restrained by fence or other appropriate protective restraint. This restraint should be from the farthest possible point from the adjoining property, and all appropriate measures must be taken by the Lot Owner to eliminate and prevent offensive odors and any unsightly accumulations from said animals. Noisy animals, such as incessantly barking dogs, must be controlled by their Owners. No pet shall be permitted outside of its Owners Lot unless attended by an adult or child of more than ten (10) years of age and said pet must be on a leash of reasonable length. At no time are any unattended domestic animals or pets allowed on the runway or taxiway easements.

Section 5.11 **Noise.** No Owner shall make or permit any disturbing noises on their Lot by himself or his family, servants, employees, agents, or visitors, nor permit any conduct by such persons that will interfere with the rights, comforts or convenience of other Owners. There shall be no discharging of firearms or fireworks on the premises.

Section 5.12 **Electronic Equipment.** No electronic equipment may be permitted in or on any Lot which interferes with the television or radio reception of another Lot.

Section 5.13 **Satellite Dish.** No awning, canopy, shutter, enclosure; satellite dish or other projection shall be attached to or placed upon the outside wall or roof of any structure or on the Lot, except by the approval of the Architectural Control Committee. Small, inconspicuous satellite dishes will be most compatible.

Section 5.14 **Vehicles and Parking.** No Owners vehicles shall be parked on any street. No boat, motor home, travel trailer or any other recreational vehicle or commercial truck may be stored outside over night on any Lot for a period of more than seven (7) days. Furthermore, no wrecked or junked motor vehicle or vehicles without current licence plates shall be placed upon the premises and no commercial vehicles shall be parked overnight in the subdivision without the consent of the ACC. No motor vehicle or aircraft of any kind, at any time, shall be parked or tied down on any of the taxiways or runways, roadways or right-of-ways except when permitted by the Architectural Control Committee.

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Section 5.15 **Fuel Storage.** It is acknowledged that the Declarant will establish a fuel area between Lot 18 and Lot 19 at the end of the runway. Except for that designated area, no bulk storage of flammable, combustible or explosive fluids, chemicals or substances shall be allowed in any Dwelling, or on any Lot, or on the Common Areas, except that small quantities of fuels used for common activities such as lawn mowing, BBQ grills and other like activities may be kept when stored in a manner which minimizes the risk of fire or explosion. Lot Owners may not store bulk quantities of fuels used for aviation purposes on Lots or in buildings. Aviation fuels may be available in connection with the facility located adjacent to the runway.

Section 5.16 **Fences and Hedges.** The erection or installation of fences and hedges may be permitted with the consent of the Architectural Control Committee which shall directly control the location and type of said facility. No barbed wire fencing will be permitted at any time.

Section 5.17 **Signs.** No signs of any character shall be erected, pasted, posted, or displayed upon or about any Lot or part of any Lot, or Common Area, without the written permission of the ACC. The ACC shall have the right, in its sole discretion, to prohibit or to restrict and control the size, construction, material, wording, location and height of all signs and may summarily remove and destroy all unauthorized signs. Declarant and Lot Owners, however, may post temporary "For Sale" or "For Rent" signs on the Properties and these signs must be approved before being put on any Lot. No sign shall be attached to any tree or shrubbery All signs must be professionally lettered, and may not contain the price of the house or Lot. Furthermore, signs used by a builder during construction or informational signs by the Declarant shall be allowed.

Section 5.18 **Clothes Lines.** No clothing, laundry, or wash shall be aired or dried on any portion of the Lots in an area with a substantial exposure to view from any other Lot or street. Drying areas will be permitted only in locations approved by the Architectural Control Committee and only when substantially protected from view of screening or fencing approved by the Architectural Control Committee.

Section 5.19 **Flag Poles.** Flag Poles are permitted, provided the pole is not more than 15 feet in height, unless otherwise approved by the Architectural Control Committee.

Section 5.20 **Antennas.** No radio or television aerial or antenna or any other external electronic equipment or devices may be installed or maintained on any exterior of any structure erected on a Lot unless the location, size, and design has been approved by the ACC. Said antennae or equipment shall be subject to FAA and FCC regulations concerning obstructions placed in the vicinity of airports. Furthermore, all electrical, telephone, and other utility lines shall be run underground.

Section 5.21 **Outdoor Lighting.** One or more hospitality light standards, of a design approved by the ACC, may be located within the front yard of any Owner's property. Any outdoor lighting positioned and installed by a Lot Owner shall be of such a nature and type so as not to present a hazardous or confusing condition to night air operations which may be conducted from said airport and be shaded so as not to create a nuisance to any other Lot Owner.

Section 5.22 **Mail Boxes.** Each dwelling shall have a standard house number, mail box and paper box with a design and location approved by the ACC.

Section 5.23 **Swimming Pools.** No non-permanent or "above ground" pools may be placed, maintained or kept on any Lot.

Section 5.24 **Wells and Water Removal.** No wells shall be drilled, dug or installed except with the approval of the Architectural Control Committee.

Section 5.25 **Access.** There shall be no overland vehicular access to any Lot except from designated road and taxi-ways lying within the Common Areas. The Declarant, its agents or employees shall have access to each Lot from time to time during reasonable working hours, upon oral or written notice to the Owner, as may be necessary for the maintenance, repair or replacement of any portion of the Common Areas, or facilities situated upon such Lot which serve another Owners Lot. The Declarant or its agent shall also have access to each Lot at all times without notice as may be necessary to make emergency repairs to prevent damage to the Common Areas or another, Lot.

Section 5.26 **Amendments to Regulations.** Reasonable regulations governing the use of the Common Areas and external appearance of all structures erected on the Lots may be made and amended from time to time by the Declarant or the Architectural Control Committee; PROVIDED HOWEVER, that all such regulations and amendments thereto shall be approved by a majority vote of the Directors of the Owners Association before the same shall become effective.

Section 5.27 **Ponds and Waterways.** Any Lot not adjoining a pond shall gain access to the pond through Common Areas of the subdivision only. Provided no pond shall be used for swimming or for the operation of motor boats. Boating use shall be limited to canoes, kayaks and small electric driven fishing boats.

ARTICLE VI
Aircraft and Hangar Restrictions, and Parking

Section 6.1 **Type of Aircraft.** Only conventional, general aviation aircraft shall be permitted. No jet, or ultra light aircraft shall be permitted. The Lot Owners, their heirs or assigns hereby relinquish any and all rights to complain, object or take any legal remedies to stop the function of normal aviation use and related activities in the development. The airplane hangar or tie down space on each Lot shall be limited strictly to private use and only by the Owner of the property or tenant on which the hangar or tie down space is located except as permitted herein. No person who is not a member of the Association or a tenant of a member of the Association shall be permitted to store, tie down or hangar any aircraft in the subdivision without the consent of the Board of Directors of the Owners Association. The Board of Directors will have the authority to specify the terms and conditions under which a non-member aircraft may be stored, hangared or tied down.

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Section 6.2 **Airport Hangars.** All hangars are subject to the Architectural Control Committee approval, and must be architecturally compatible with the primary structure on the Lot. All aircraft hangars must be constructed in conjunction with or subsequent to the construction of a residence. Hangars may be detached from or attached to a primary structure in accordance with local building regulations.

Section 6.3 **Two or More Aircraft.** If two or more aircraft are owned by Lot Owner, one aircraft, not stored in the hangar, may be secured with tie downs adequate for the size and weight of the aircraft. Until a dwelling and hangar are under construction or built, no aircraft shall be tied down on the Lot unless approved by the ACC. The one tied-down aircraft must be in airworthy condition as defined by the current Federal Aviation Regulations (FAR's) except as permitted by the Board of Directors in writing. The tied out aircraft must be in a good state of repair and appearance.

Section 6.4 **Unattended Aircraft.** No aircraft shall be parked on any part of the runway, taxiway or easements and all aircraft parked or left for any period of time unattended within Lots shall be securely tied down. If any aircraft is found within any Lot, not tied down and unattended, the Board of Directors or its agents may, but are not obligated to, secure it at the expense of the Owner of said aircraft.

Section 6.5 **Run-ups.** "Run-ups" and testing of engines within residential areas should be limited to the hours of 8:00 am and 6:00 pm. But in any event the "run-up" shall not be done in such a manner as to cause inconvenience or damage to the property of others. This shall not prohibit normal take offs and landings at any time.

Section 6.6 **Stunt Flying.** No low-level flying stunts nor other hazardous activities will be permitted about the subdivision. Each Owner is required to strictly observe all Federal, State and Local Statues, Regulations or Ordinances relative to the operation of civil aircraft.

Section 6.7 **Speed Limits.** Aircraft shall taxi at less than 15 miles per hour on all taxiways. Pilots are cautioned to avoid increasing engine RPM to high levels as part of our noise abatement program and to avoid blowing sand and dirt on following aircraft and in residential areas.

Section 6.8 **Taxi-Way Courtesy.** Moving aircraft shall have the right-of-way at all times. Automotive traffic must yield at all taxiway crossings and on dual purpose streets. No taxiways other than those designated by Declarant as combination street/taxiways shall be used by any vehicle other than aircraft or aircraft service vehicles, unless pursuant to a valid access permit granted by the Association. No aircraft shall have a right-of-way on taxiways, and all aircraft on taxiways must anticipate use of passing areas for approaching aircraft.

Section 6.9 **Commercial Business.** No commercial aircraft business shall be permitted on a Lot. This should not exclude work done on non-owned aircraft so long as such work is done inside a hangar and the completed aircraft conforms with all requirements as set forth in these covenants.

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Section 6.10 **Storing Parts.** There shall be no storage of dismantled or disabled aircraft on the Lots or the Common Areas. Aircraft being repaired and aircraft parts must be kept within an enclosed hangar building which has been approved by the Architectural Control Committee. Parts of aircraft, including but not limited to, fuselages, wings, engines, horizontal and vertical stabilizers, ailerons, rudders, landing gear and spare parts may not be stored in yards where visible from the street, taxiway, or adjoining Lots, but must be stored inside the hangar or other building approved by the ACC.

ARTICLE VII
Runway Assurances and Operations

Section 7.1 **Operation.** Every Lot Owner or Lessee or Grantee of any property now or hereafter subject to this Declaration by acceptance of a Deed, Lease or other Conveyance thereof hereby agrees the runway and taxiway shall remain and be maintained as such until such time as at least eighty (80%) per cent of the members and Declarant consents to its dissolution or operation is interrupted or terminated by Local, State or Federal authority.

Section 7.2 **Complaints.** As this is an aviation community, Owners understand, and agreed, that Lot Owners, their heirs, or assigns relinquish any right to complain, object, or take any legal remedies to stop aviation related activities in the Development.

Section 7.3 **Control of Runway.** The Licensor, MidEastern Truckwash, Inc., shall have the right to control the use of the runway and taxiway and may prohibit the use of the runway or taxiway by any aircraft deemed unsafe to either the life or health of individuals or the condition and maintenance of the field by virtue of its size, design or state of repair

Section 7.4 **Withholding of Use.** The Declarant or the Association shall have the right to withhold from, restrict, or charge an individual assessment for the use of the Common Area, including the runway, to any Owner:

a) Who is in default in the payment of any assessment fee; or

b) Who, in the judgment of the Declarant or the Owners Association, uses the Common Areas or his aircraft in a negligent manner or in a manner harmful to the rights of other users; or

c) Who, in general, violates the published rules and regulations of the Association.

ARTICLE VIII
Easements and Setbacks

Section 8.1 **Setback Requirements.** No house or building may be constructed within 75 feet of the centerline of any designated street, or taxiway or runway boundary. A 40 foot clear zone easement shall be established along all Lot lines facing the runway where no aircraft may be parked, no trees or other obstacles allowed in this area. A 5 foot easement along all sides of Lots and along

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sides adjoining any designated streets are reserved for underground utilities and drainage purposes. All setbacks and side Lot lines shall be in compliance with the rules and regulations of Clarendon County Planning Commission and Architectural Control Committee.

Section 8.2 **During Construction.** During the development period, the Declarant or its agent reserves a blanket easement and right on, over and under the ground within the Property to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any grading of the soil, or to take any other similar action reasonably necessary, following which the Declarant or its agent shall restore the affected property to its original condition as near as possible. The Declarant or its agent shall give reasonable notice of intent to take such action to all affected Owners, unless, in the opinion of the Declarant or its agent, any emergency exists which precludes such notice. The Declarant or its agent, however, in the exercise of such easement rights shall not disturb any living dwelling or other substantial improvement upon any property.

Section 8.3 **Maintenance.** In order to implement effective insect and woods fire control, the Declarant reserves for itself and its agents the right to enter upon any Lot on which a residence has not been constructed and upon which no landscaping plan has been implemented (with prior written approval of the ACC for such plan), such entry to be made (at the expense of the Owner of the Lot), by personnel with tractors or other suitable devices for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, or other unsightly growth, which in the opinion of the Declarant detracts from the overall beauty, setting and safety of the Property. Such entrance shall not be deemed a trespass. The Declarant and its agents may likewise enter upon such land to remove any trash which has collected on such Lot without such entrance and removal being deemed a trespass. The provisions in this paragraph shall not be construed as an obligation on the part of the Declarant to mow, clear, cut or prune any Lot nor to provide garbage or trash removal services.

ARTICLE IX
Insurance

Section 9.1 **By the Declarant or Association.** The Declarant or Association or its duly authorized agent shall have the right and power to obtain insurance to the extent reasonably available for all improvements on the Common Areas against loss or damage in an amount sufficient to cover 100 percent (100%) of the replacement cost of any repair or reconstruction work in the event of damage or destruction from any reasonable hazard. The Declarant may also obtain a broad form public liability policy covering all Common Areas. In the event of damage or destruction to property insured by the Declarant by fire or other casualty, the Declarant or its agent shall, upon receipt of the insurance proceeds contract to rebuild or repair such damaged or destroyed portions of the property to as good a condition as formerly enjoyed. In the event the insurance proceeds are insufficient to pay all costs of repairing or rebuilding of such destroyed improvement, the Declarant or its agents shall levy a special assessment against all Owners to make up such deficiency. In the event the insurance proceeds exceed the cost of repair, the excess proceeds shall be distributed to the respective Owners and Mortgagees as their interests appear.

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Section 9.2 **Liability Insurance by Declarant or Association.** The Declarant or Association shall have the right and power to obtain a comprehensive policy of public liability insurance insuring the Association and its Members for all liability for property damage, bodily injury or death in connection with the operation, maintenance and use of the Common Area within Palmetto Air Plantation.

Section 9.3 **By the Owner.** It shall be the individual responsibility of each Owner to provide, as he sees fit, insurance on the improvements on his Lot in the event of damage or destruction from all reasonable hazards. Each Owner shall provide as he sees fit homeowners liability insurance, theft and other insurance covering personal property damage or personal liability loss.

Section 9.4 **Aircraft Liability Insurance.** Every Owner or user of an aircraft which is based on the Property shall provide the Licensor or the Association or their agent with a current Certificate of Insurance for aircraft liability before they can use the runway. Failure to provide the Certificate of Insurance and to maintain such insurance shall result tin the automatic suspension of the Owner or user's right to use the Common Area including the runway.

ARTICLE X
Maintenance Assessments

Section 10.1 **Creation of the Lien and Personal Obligation for Assessments.** Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed, is deemed to covenant and agree to pay to the Association:

(a) Annual assessments or charges as provided in this Declaration for the purpose of funding the maintenance fund.

(b) Special assessment for capital improvements and other purposes as stated in this Declaration; such annual and special assessments to be fixed, established and collected from time to time as provided below.

(c) Default assessments which may be assessed against an Owner's Lot pursuant to this Declaration or the Palmetto Air Plantation Homeowners Associations Rules or Regulations or because the Association as incurred an expense on behalf of the Owners under the Association Documents. The annual, special and default assessments, together with interest, costs and reasonable attorney's fees, shall be a charge upon the land and shall be a continuing lien upon the Lot against which each such assessment is made until paid. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the Owner of such Lot at the time when the assessment fell due.

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Section 10.2 Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and occupants of Palmetto Air Plantation and for the improvement and maintenance of the Common Area, including but not limited:

(a) to keep the Common Areas clean and free from debris and to maintain any amenities located thereon in a clean and orderly condition, to maintain the landscaping thereon in accordance with the highest standards for private parks including any necessary removal and replacement of landscaping, and to repair, replace, and provide for additions to the improvements as stated in the Declaration or Association Documents.

(b) to pay all taxes, if any, levied against the Common Areas and any properties owned by the Association.

(c) to install and maintain any light fixtures along roads and streets in the Development to provide street lighting therefore, as may be approved by the Association.

(d) to erect and maintain entrance signs at the entrances to the Development and signs on the Common Areas, said signs to be of standard construction and quality.

(e) to pay the premiums on all hazard insurance carried by the Association on the Common Areas and all public liability insurance carried by the Association pursuant to the By-Laws.

(f) to provide such security services as may be deemed reasonably necessary for the protection of the Common Areas from theft, vandalism, fire and damage from animals.

(g) to provide such garbage removal services as may be approved by the Association for all Lots.

Section 10.3 Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots, except the Board may provide for a reduced assessment to be paid by those Lot Owners whose property is undeveloped. PROVIDED HOWEVER, the Owners of undeveloped Lots are assessed on a uniform basis. All payments shall be applied first to cost, then to late charges, then to interest and then to delinquent assessments.

Section 10.4 Effect of Non-payment of Assessment; Lien; Remedies of Association. Any Association installment, whether pertaining to an annual, special or default assessment, which is not paid within thirty (30) days of its due date shall be delinquent. In the event that an assessment installment becomes delinquent, the Association, in its sole discretion may take any or all of the following actions:

(a) Assess a late charge of at least fifteen percent (15%) per delinquency.

(b) Suspend the voting rights of the Owner during any period of delinquency.

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(c) Accelerate all remaining assessment installments for the fiscal year in question so that unpaid assessments for the remainder of the year shall be due and paid at once.

(d) Bring legal action against any Owner personally obligated to pay the delinquent installments.

(e) File a statement of lien with respect to the Lot, and foreclose as set forth below:
The Association may file a statement of lien by recording with the Clerk of Court's Office of Clarendon County, South Carolina, a written statement with respect to the Lot, setting forth the name of the Owner, the legal description of the Lot, the name of the Association, and amount of the delinquent assessments then owing, which statement shall be duly signed and acknowledged by the President or Vice-President of the Association or by the Manager, and which shall be served upon the Owner of the Lot by mail to the address of the Lot or at such other address as the Association may have in its records for the Owner. Thirty (30) days following the mailing of such Notice, the Association may proceed to foreclose the statement of lien in the same manner as provided for foreclosure of mortgages under the statutes of the State of South Carolina. Such lien shall be in favor of the Association and shall be for the benefit of all other Owners. In a foreclosure action, the Association shall be entitled to recover as a part of the action the interest, costs and reasonable attorney's fees with respect to the action. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot. The remedies herein provided shall not be exclusive and the Association may enforce any other remedies to collect delinquent assessments as may be provided by law.

Section 10.5 **Subordination of the Lien.** The lien of the assessments provided for in this Declaration shall be subordinate to the lien of any first mortgage. The lien of the assessments shall be superior to and prior to any homestead exemption provided now or in the future by laws of the State of South Carolina. No sale or transfer of any Lot pursuant to a decree of foreclosure or by a Public Trustee's foreclosure or any other proceeding or deed in lieu of foreclosure for the purpose of enforcing a first mortgage shall extinguish the lien of such assessments as to installments which become due prior to such sale or transfer, and the amount of such extinguished lien may be reallocated and assessed to all Lots as a common expense at the direction of the Board of Directors. No sale or transfer shall relieve the purchaser or transferee of a Lot from liability for, nor the Lot from the lien of any assessments made after the sale or transfer.

ARTICLE XI
Duration and Amendments

Section 11.1 **Term.** The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change covenants and restrictions, in whole or in part, or to terminate the same.

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Section 11.2 **Amendments.** So long as the Declarant owns twenty-five (25%) per cent of the unsold Lots in the subdivision it shall have the right and authority to modify and amend these covenants and restrictions without liability or notice or joinder of any other party provided such modifications and amendments do not violate the ordinances of Clarendon County Planning Commission. Subsequently amendments to this Declaration may be adopted by the membership of the Property Owners Association in the same manner and upon the same vote as required for amendments to the By-Laws of the Property Owners Association.

Section 11.3 **Effective on Recording Any Modification or Amendment.** Shall be immediately effective upon recording in the R.M.C. Office for Clarendon County, South Carolina, a copy of such amendment or modification, executed and acknowledged by the necessary number of Owners (and by Declarant, as required), together with a duly authenticated Certificate of the Secretary of the Board stating that the required number of consents of Owners were obtained and are on file in the office of the Association.

ARTICLE XII
Enforcement of Covenants

Section 12.1 **Violations Deemed a Nuisance.** Every violation of this Declaration of Covenant is deemed to be a nuisance is subject to all the remedies provided for the abatement of the violation. In addition, all public and private remedies allowed at law or in equity against anyone in violation of these Covenants shall be available

Section 12.2 **Who May Enforce.** Any action to enforce these restrictions may be brought by Declarant or the Board of the Owners Association or any Property Owner in the subdivision.

Section 12.3 **No Liability.** No member of the Board of Directors, Declarant, the Manager, or the Architectural Control Committee or any Owner shall be liable to any other Owner for the failure to enforce any of the restrictive covenants.

Section 12.4 **Recovery of Costs.** If legal assistance is obtained to enforce any of the provisions of the restrictions, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the restrictions or the restraint of violations of the restrictions, the prevailing party shall be entitled to recover all costs incurred by it in such action, including reasonable attorney's fees as may be incurred, or if suit is brought, as may be determined by the Court.

ARTICLE XIII
Expansion

Section 13.1 **Reservation of Right to Expand.** Declarant shall expand the effect of this Declaration to include all of the Expansion Property which the Declarant may choose to add to the subdivision. The Declarant shall have the unilateral right to transfer to any other person this right

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and to expand by instruments duly recorded. Declarant shall pay all taxes and other governmental assessments relating to the Expansion of property.

IN WITNESS WHEREOF, Mideastern Truckwash, Inc. has hereunto set its hands and seals, the day and year first above written.

WITNESS:

MIDEASTERN TRUCKWASH, INC.

BY: JOE WITT
ITS: PRESIDENT/DECLARANT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CLARENDON)

PROBATE

PERSONALLY APPEARED BEFORE ME, the undersigned witness and made oath that s/he saw the within named Mideastern Truckwash, Inc., sign, seal and its act and deed, deliver the within written Declaration of Covenants, Conditions and Restrictions for the uses and purposes therein mentioned and that s/he with the other witness above witnessed the execution thereof.

Witness

SWORN to before me this 11th day of July, 2001

Notary Public for South Carolina
My Commission Expires: 4/4/11

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EXHIBIT D

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STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, That, MidEastern Truckwash, Inc. the "Grantor" in the State aforesaid, for and in consideration of the sum of Five ($5.00) Dollars, and the Assumption of a Mortgage to Edward G. Gibbons, dated 18 November 1996, recorded in Mortgage Book 287 at Page 208, having a balance of Ninety One Thousand Two Hundred Eighty One and 00/100ths ($91,281.00) Dollars and the Assumption of a Mortgage, dated 9 May 1997, to Joe P. Moore, et al, recorded in Mortgage Book 301 at Page 234, assigned to John C. Land, III in Mortgage Book 301 at Page 297, having a balance of Thirty Seven Thousand One Hundred Eighty Six and 00/100th ($37,186.00) Dollars, consideration paid to the Grantor by Palmetto Air Plantation, L.L.C., P. O. Box 777, Manning, South Carolina 29102 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:

All that piece, parcel or tract of land, lying, being and situate in School District Number 20 of the County of Clarendon, State of South Carolina, containing 82.91 acres, according to the plat hereinafter referred to and bounding and measuring as follows: On the Northeast by lands of New Covenant Holiness Church and by lands of Joseph Palmer Moore; on the Southeast by lands of Lettie D. Johnson and by lands of Janie and Clyde Wilkes, Jr., the run of Fellowship Branch being the line; on the Southwest by lands of Joe P. Moore, et al. And by lands of Fellowship Ranchette Subdivision; on the North by lands of Cecil D. Sheets and by lands of Hugh T. Martin; on the Southwest by lands of Hugh T. Martin; on the Northwest by the right of way of U.S. Highway 301.

For a more particular description of said lot, reference may be had to a plat made by DuValle W. Elliott, RLS, dated 14 March 1996, recorded in the Office of the Clerk of Court for Clarendon County in Plat Book A-17 at Page 6.

Said premises having been conveyed to MidEastern Truckwash, Inc. by Deed of Edward G. Gibbons, dated 18 November 1996, recorded in the Office of the RMC for Clarendon County in Deed Book A-305 at Page 28. For Tax Map Parcel Number, see below.

ALSO, all that piece, parcel or tract of land, lying, being and situate in School District No. 2 of Clarendon County, South Carolina, containing 22.22 acres and bounding now or formerly as follows: On the Northeast by the tract above described; on the Southeast by lands of Lettie Johnson; on the Southwest by

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lands of Alfred Blanding Estate: on the Northwest by lands of Ernest L. Rauber, and lands of Ray and Rita Lamothe.

Said tract having been conveyed to MidEastern Truckwash, Inc. by Deed of Marion Moore, et al. dated 9 Mary 1997, recorded in the Office of the Clerk of Court for Clarendon County in Deed Book A-319 at Page 82.

The above tracts being designated as Clarendon County Tax Map Parcel No. 140-00-05-063.

Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise appertaining.

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the said Grantee, Palmetto Air Plantation, L.L.C., its Heirs and Assigns forever.

And the Grantor does hereby bind itself and its Heirs, Personal Representatives and Assigns, 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 9th day of October, 2001.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Carol P. Bochette
1st Witness

Mary Ann Moore
2nd Witness

MIDEASTERN TRUCKWASH, INC.

BY: Joseph M. Witt
Joseph M. Witt, President

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STATE OF SOUTH CAROLINA)
)
COUNTY OF CLARENDON)

PROBATE

PERSONALLY APPEARED BEFORE ME the undersigned witness and made oath that s/he saw the within named Grantor's 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
9th day of October, 2001.

Betty A. Usry (L.S.)
Notary Public for South Carolina

Carol P. Bachelor
1st Witness Sign Again

My Commission Expires: 4/4/12

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10/22/2001 03:28:38PM
Bk:A0452 Pg:00144
RecFee:10.00 St Fee:334.10
Co Conv Fee:141.35 Pages:4
R M C DEPARTMENT CLARENDON CO
Beulah G. Roberts, Clerk of Court

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EXHIBIT D-1

ELECTRONICALLY FILED - 2018 Aug 25 10:27 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

Lot#25

FOR PARTIAL RELEASE OF MORTGAGE, RECORDED
3-7-06 SEE MTGE BOOK 675, PAGE 38

MORTGAGE OF REAL ESTATE

STATE OF SOUTH CAROLINA, }
County of CLARENDON }

TO ALL WHOM THESE PRESENTS MAY CONCERN: PALMETTO AIR PLANTATION, LLC

Address: P.O. BOX 777, MANNING, SC 29102
(hereinafter referred to as Mortgagor) SEND(S) GREETING:

WHEREAS, the Mortgagor is well and truly indebted unto EDWARD C. GIBBONS, 511 E. HILLS STREET, MANNING, SC 29102 (hereinafter referred to as Mortgagee), as evidenced by the Mortgagor's promissory note dated FEBRUARY 8, 2002 20

in the sum of ONE HUNDRED TWENTY-FIVE THOUSAND FOUR HUNDRED TWELVE AND NO/100 DOLLARS ($125,412.00) with interest from date of said note payable as and at the rate(s) provided in said note, and upon the terms and conditions therein stated as will more fully appear by reference thereto, except that unless sooner paid, the final payment of principal and interest shall be due on FEBRUARY 8, 2017

This mortgage also secures all existing indebtedness of mortgagor (or of any one or more of the parties designated herein as mortgagor) to mortgagee (including but not limited to the above described note) evidenced by promissory notes or any other instruments and all renewals, modifications, extensions, deferments or other rearrangements thereof, together with interest thereon as provided therein. (2) all future advances that subsequently may be made to mortgagor (or to any one or more of the parties designated herein as mortgagor) with the written consent of the remainder of said parties to be evidenced by promissory notes or any other instruments, and all renewals, modifications, extensions, deferments or other rearrangements thereof, together with interest thereon as provided therein, and future advances, if any, to be made solely at the option of mortgagee, and (3) all other indebtedness of mortgagor (or of any one or more of the parties designated herein as mortgagor) to mortgagee now due or to become due or hereafter contracted, and all renewals, modifications, extensions, deferments or other rearrangements thereof, together with interest thereon as provided for. THE MAXIMUM PRINCIPAL AMOUNT OF ALL EXISTING INDEBTEDNESS, FUTURE ADVANCES AND ALL OTHER INDEBTEDNESS OUTSTANDING AT ANY ONE TIME NOT TO EXCEED ONE HUNDRED TWENTY-FIVE THOUSAND FOUR HUNDRED TWELVE AND NO/100 DOLLARS, plus interest thereon, attorney's fees, court costs, and any advances necessary for the protection of the security of the premises, such as, but not limited to, advances for taxes and insurance premiums, all of which are secured by this mortgage. It is understood and agreed by all parties hereto that the execution by mortgagee and the acceptance by mortgagee of any notes, renewal notes or other instruments or the agreement by mortgagee to any modifications, extensions, deferments or other rearrangements as contemplated in this paragraph or elsewhere herein shall not be construed as payment of any indebtedness hereby secured (whether or not, among other changes in terms, the interest rate or rates remain the same after the time for payment is thereby extended or terminated), and shall not discharge the lien of this mortgage which is to remain in full force and effect until the total indebtedness secured hereby has been paid in full. All terms of other instruments executed in this paragraph or elsewhere herein shall remain unmodified and in full force and effect as to mortgagor, its successors and assigns, until the total indebtedness secured is paid in full.

NOW KNOW ALL MEN, that mortgagor, in consideration of the debt as evidenced by the above described note and for better securing the payment thereof to mortgagee, according to the terms of said note, and the performance of the conditions and covenants herein contained, and to secure any other indebtedness now existing or to the payment of which the property described in the paragraph next above or elsewhere herein and also in consideration of the sum of One Dollar to mortgagor in hand paid by mortgagee, receipt whereof is hereby acknowledged, has granted, bargained, sold and released, by these presents does grant, bargain, sell and release to the mortgagee, its successors and assigns, the following described lands, including but not limited to all trees, timber, structures, fixtures and improvements now and hereafter thereon, TO-WIT

SEE EXHIBIT 'A' - LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF.

Lot#29
FOR PARTIAL RELEASE OF MORTGAGE, RECORDED
11-6-2003 SEE MTGE BOOK 659, PAGE 83

Lot#37+38
FOR PARTIAL RELEASE OF MORTGAGE, RECORDED
11-1005 SEE MTGE BOOK 658, PAGE 184

Lot#32
FOR PARTIAL RELEASE OF MORTGAGE, RECORDED
4-25-06 SEE MTGE BOOK 683, PAGE 19

Lot#31 (1 of 2 pieces)
FOR PARTIAL RELEASE OF MORTGAGE, RECORDED
11-10-05 SEE MTGE BOOK 684, PAGE 113

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Lot#24
FOR PARTIAL RELEASE OF MORTGAGE, RECORDED
11-05 SEE MTGE BOOK 636, PAGE 19

Lot 36
FOR PARTIAL RELEASE OF MORTGAGE, RECORDED
5/6/2005 SEE MTGE BOOK 628, PAGE 41

Lot #39
FOR PARTIAL RELEASE OF MORTGAGE, RECORDED
12-04 SEE MTGE BOOK 591, PAGE 23

FOR PARTIAL RELEASE OF MORTGAGE, RECORDED
26-2003 SEE MTGE BOOK 558, PAGE 42

FOR PARTIAL RELEASE OF MORTGAGE, RECORDED
SEE MTGE BOOK 615, PAGE 95

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EXHIBIT 'A' - LEGAL DESCRIPTION

All that piece, parcel or tract of land, lying, being and situate in School District Number 20 of the County of Clarendon, State of South Carolina, containing 82.91 acres, according to the plat hereinafter referred to and bounding and measuring as follows: On the Northeast by lands of New Covenant Holiness Church and by lands of Joseph Palmer Moore; on the Southeast by lands of Lettie D. Johnson and by lands of Janie and Clyde Wilkes, Jr., the run of Fellowship Branch being the line; on the Southwest by lands of Joe P. Moore, et al. And by lands of Fellowship Ranchette Subdivision; on the North by lands of Cecil D. Sheets and by lands of Hugh T. Martin; on the Southwest by lands of Hugh T. Martin; on the Northwest by the right of way of U.S. Highway 301.

For a more particular description of said lot, reference may be had to a plat made by DuValle W. Elliott, RLS, dated 14 March 1996, recorded in the Office of the Clerk of Court for Clarendon County in Plat Book A-17 at Page 6.
For Tax Map Parcel Number and Derivation, see below.

ALSO, all that piece, parcel or tract of land, lying, being and situate in School District No. 2 of Clarendon County, South Carolina, containing 22.22 acres and bounding now or formerly as follows: On the Northeast by the tract above described; on the Southeast by lands of Lettie Johnson; on the Southwest by lands of Alfred Blanding Estate; on the Northwest by lands of Ernest L. Rauber, and lands of Ray and Rita Lamothe.

Said tracts having been conveyed to PALMETTO AIR PLANTATION, INC., by deed of MidEastern Truckwash, Inc., October 9, 2001, recorded in the Office of the Clerk of Court for Clarendon County in Deed Book A-452 at Page 144.

The above tracts being designated as Clarendon County Tax Map Parcel No. 140-00-05-063.

LESS, AND EXCEPTING, HOWEVER, Lot 19, as shown on a plat prepared by DuValle W Elliott, RPLS, drawn July 30, 2001, as recorded in the Office of said Clerk in Plat Book S-50 at page 599. Said lot 19 having previously been conveyed to Michael K. Huitzenga and Juvy Y. Huitzenga by deed from MidEastern Truck Wash, Inc., and Joseph M. Witt, dated August 1, 2001, as recorded in the Office of said Clerk in Deed Book A-446 at Page 008.

Lot #45 Palmetto Air Plantation
FOR PARTIAL RELEASE OF MORTGAGE, RECORDED
12/2/16 SEE MTGE BOOK 465, PAGE 134

FOR PARTIAL RELEASE OF MORTGAGE, RECORDED
SEE MTGE BOOK ___, PAGE ___

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FOR PARTIAL RELEASE OF MORTGAGE, RECORDED
SEE MTGE BOOK ___, PAGE ___

Lot #45 Palmetto Air Plantation
FOR PARTIAL RELEASE OF MORTGAGE, RECORDED
11/14/17 SEE MTGE BOOK 465, PAGE 135

Lot #16 (1.52 acres)
FOR PARTIAL RELEASE OF MORTGAGE, RECORDED
5/16/17 SEE MTGE BOOK 446, PAGE 80

ELECTRONICALLY FILED - 2018 Aug 25 10:27 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

TOGETHER with all and singular the rights, members, hereditaments, and appurtenances to the said premises belonging or in any wise incident or appertaining.

TO HAVE AND TO HOLD all and singular the said premises unto mortgagee, its successors and assigns in fee simple forever. Mortgagor hereby binds himself, his heirs, executors, administrators, successors and assigns, to warrant and forever defend all and singular the said premises unto the mortgagee, its successors and assigns, from and against mortgagor, his heirs, executors, administrators, successors and assigns, and all other persons whomsoever lawfully claiming or to claim the same or any part thereof.

PROVIDED ALWAYS, NEVERTHELESS, and it is the true intent and meaning of the parties to these presents, that if mortgagor shall well and truly pay, or cause to be paid unto mortgagee, its successors or assigns, the total indebtedness secured hereby, with interest thereon as aforesaid, and shall perform all terms, conditions and covenants according to the true intent of said note, any other instrument above referred to and this mortgage and any other instrument securing said note or other instrument above referred to, all of which are hereby made a part hereof, then this mortgage shall cease, determine, and be utterly null and void; otherwise it shall remain in full force and effect.

For the considerations aforesaid, mortgagor covenants as follows:

1. Mortgagor is lawfully seized of said property in fee simple and has a perfect right to convey same; there are no encumbrances or liens whatsoever on said property except this mortgage unless otherwise stated on the face hereof.

2. Mortgagor will insure, and keep insured as required by mortgagee from time to time, all buildings now and hereafter on said land against such risks, in such forms, in at least such amounts, and in such company or companies as shall be satisfactory to mortgagee, the loss, if any, to be payable to mortgagee as its interest may appear and will deliver to mortgagee a policy or policies of insurance with evidence of premium satisfactory to mortgagee attached thereto, and will promptly pay when due all premiums for such insurance. At the option of mortgagee, insurance funds may be used for restoration or repair of the damaged or destroyed buildings and insurance funds not so used shall be applied on such part of the indebtedness secured hereby as mortgagee in its sole discretion may determine.

3. Mortgagor will pay, when due and payable, all taxes, assessments and other charges that may be levied or assessed against said property, and all judgments and all other amounts that may be or become a lien thereon.

4. Mortgagor will keep in good order and condition, preserve, and repair, rebuild and restore all terraces, buildings, groves, orchards, forests, fixtures, shrubbery and other improvements, of every kind and nature, now or in said land and hereafter erected or placed thereon that may be destroyed or damaged by fire, windstorm or otherwise, and will not permit the change, injury or removal thereof, and will not commit or permit waste on said land, and will not, except with the written consent of mortgagee (which consent shall not be unreasonably withheld), use or remove, or permit the using, use or removal of, any timber or trees on said land for removal, improvement or other uses or purposes, except for firewood and other ordinary farm purposes. Mortgagor will also preserve and keep in good order and condition all trees and orchards now and hereafter growing upon the said property and will at all times properly prune the trees and orchards against loss or damage by fire, all to the satisfaction of the mortgagee.

5. Mortgagor covenants that he will not perform any act which might impair or lead to impair the restrictions on the property herein described of all easements and acreage allotments now established or hereafter established on any of the property herein described.

6. Time is of the essence of the above recited note, of this instrument and of any other instrument secured hereby. If mortgagor fails to comply with any covenant, condition or agreement in this instrument or in the said note or in any instrument, renewal, deficiency or extension agreement or in any other instrument secured hereby, mortgagee may, at its option, exercise any one or more of the following rights, powers, privileges and remedies:

(a) Declare any one or more of the covenants of mortgagor in this instrument, in the said note, and in any other instrument secured hereby, and all amounts advanced by mortgagee in doing so shall be due and payable by mortgagor to mortgagee immediately without notice, and shall be secured by this instrument, and shall bear interest from the date of advance by mortgagee at the highest rate provided in any note or other instrument secured hereby.

(b) Declare all amounts secured by this instrument immediately due and payable without notice.

(c) Proceed immediately to foreclose this mortgage and to exercise such other remedies as may be authorized by law.

7. Mortgagor covenants and declares as a condition hereof and as a part of the consideration for the indebtedness secured hereby that he does hereby waive and renounce for himself, his heirs, administrators, executors, successors and assigns, all rights that now exist or that may hereafter exist under the laws of the State of South Carolina to require an appraisal of the property herein described before or after the foreclosure sale thereof, and agrees to pay the full amount of the indebtedness secured hereby, and the full amount of the deficiency in the payment thereof that may be established by the foreclosure sale of the property herein described, without requiring an appraisal of the property herein described, either before or after the foreclosure sale thereof, and without any defense or setoff because of the alleged true value of said land, or for any other reason.

8. As further security for the payment of the note herein described, all other indebtedness secured hereby, and for the performance of all the terms, conditions and covenants of said note, of any other instrument secured hereby and of this mortgage, mortgagor hereby transfers, assigns, and sets over to mortgagee all of the crops grown or growing upon the said mortgaged premises at the time of filing suit for foreclosure hereof and thereafter and all of the rents, issues and profits of the said mortgaged premises accrued and accruing at the time of filing suit for foreclosure hereof, and thereafter, and upon filing suit for foreclosure, or at any time thereafter, mortgagee shall be entitled to have a receiver appointed to take charge of the said mortgaged premises and the crops now or growing thereon, together with the said rents, issues and profits arising therefrom and hereby assigned, and hold the same subject to the order and direction of the court.

9. In the event the indebtedness secured hereby, or any part thereof, is established by or in any action for foreclosure of this mortgage, mortgagee may also recover of mortgagor, in addition to the said debt or so much thereof as shall be unpaid, a reasonable sum for the attorney of mortgagee for professional services rendered in such action, not less than ten percentum of the amount of principal, interest and all advances made or liens paid by mortgagee under the laws hereinafter set forth, such fee to be incorporated in the judgment of foreclosure in such action.

10. Mortgagor shall hold and enjoy the said premises until default in payment of any of the installments as provided in the above recited note or other instrument secured hereby, or a breach of any of the covenants or conditions of the above recited note or other instrument secured hereby, or this mortgage shall be made; however, any agent or employee of mortgagee or any person designated by mortgagee may enter upon said premises at any time for the purpose of inspecting same or for any other purpose desired by mortgagee.

11. All amounts that may hereafter be awarded for condemnation of and waste and serious injury to any of the property hereby encumbered are hereby assigned and shall be payable unto mortgagee for application, after payment therefrom of attorney's fees and expenses incurred by mortgagee and by mortgagee in connection therewith, on such part of the indebtedness secured hereby as mortgagee may determine, with respect to mortgagee to collect same.

12. In the event mortgagee becomes a party to any legal proceeding (including an action to foreclose this mortgage or to collect the debt hereby secured) involving this mortgage or the premises described herein (including but not limited to the title to the lands described above), mortgagor may also recover of mortgagor all costs and expenses reasonably incurred by the mortgagee, including a reasonable attorney's fee, which costs, expenses and attorneys' fee when paid by mortgagee shall become a part of the debt secured hereby and shall be immediately payable upon demand, and shall draw interest from the date of advance by mortgagee until paid at the highest rate provided in any note or other instrument secured hereby.

13. Mortgagor agrees as a condition hereof that all obligations, assignments, releases of real property and/or personal liability, reinstatements, renewals, deficiencies, extensions or any other agreement, in writing, made by any one or more of the parties herein designated as mortgagor with mortgagee are hereby ratified and confirmed to be all parties herein designated as mortgagor and shall extend to and be binding upon the heirs, executors, administrators, successors and assigns of all the parties herein designated as mortgagor.

14. Mortgagor agrees as a condition hereof that if a conveyance, lease or other disposition should be made voluntarily by mortgagor (or by any one or more of the parties designated herein as mortgagor) of any title or interest in and to the real property described above, or any part thereof, without the written consent of the lawful holder of this mortgage, or if such title or interest of mortgagor (or of any one or more of the parties designated herein as mortgagor) is involuntarily conveyed or transferred as the result of foreclosure of a junior lien or a levy under court order or by decree in the event of litigation involving same or transfer of title or interest resulting from death of mortgagor or any co-mortgagor, or same becomes encumbered without the written consent of the lawful holder of this mortgage, then and in either of said events, and at the option of said holder, but without notice to the mortgagor, all sums of money secured hereby shall become due and payable and in default immediately and concurrently with such conveyance, transfer, lease or other disposition, whether the same are or are not due and payable and in default by the specific terms hereof or not.

15. Mortgagor shall have the right, exercisable at its discretion so long as this mortgage is in force and effect, to forbear in writing the assignment of and transfer to mortgagee, its successors and assigns, and mortgagor hereby agrees not to at any time assign and transfer any and all rents, profits, royalties, bonuses or other considerations to be paid or accruing to mortgagor from any oil, mineral, gas, whatsoever, timber, household or other mineral of any kind and nature whatsoever, derived from, connected with or affecting the within described real property but may collect same, as trustee for the benefit of, but not duty upon, mortgagee, its successors or assigns, to collect same.

16. Mortgagor will comply with all the terms and conditions of any instrument hereinabove or hereafter executed by mortgagor in connection with the benefit secured by this mortgage.

17. If mortgagor (or either of them, if more than one), his heirs, successors or assigns, or any assignee of the indebtedness herein secured, files a petition in bankruptcy (voluntary or involuntary), for reorganization receivership or for other debtor relief of any character or kind, or is adjudged a bankrupt, then and in the event, and at the option of the mortgagee, its successors and assigns, the mortgagee, without notice to the mortgagor, shall have the right to declare all sums of money secured hereby immediately due and payable and in default whether the same are or are not due and payable and in default by the specific terms hereof or not.

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16. A default under this instrument or under any other instrument hereafter or heretofore executed by mortgagor to mortgagee shall, in the option of mortgagee, constitute a default under any one or more or all instruments executed by mortgagor to mortgagee.

IN WITNESS WHEREOF, mortgagor has hereunto set his Hand and Seal (and if mortgagor is or includes a corporation, it has caused this instrument to be executed, sealed by its corporate seal and delivered by its duly authorized officers.)

this 8TH day of FEBRUARY, 2002, 20

PALMETTO AIR PLANTATION, LLC

Signed, Sealed and Delivered
In the Presence of:

BY: _____ (Seal)
JOSEPH M. WITT, MANAGING MEMBER

_____ (Seal)

_____ (Seal)

STATE OF SOUTH CAROLINA,
County of

Personally appeared before me and made oath that he saw
the within named
sign, seal and as act and deed deliver the within mortgage; and that he, with
witnessed the execution thereof.

SWORN to and subscribed before me
this
day of , 20

_____ (L. S.)
Notary Public for South Carolina
My Commission Expires _____

STATE OF SOUTH CAROLINA,
County of CLARENDON

Personally appeared before me THE UNDERSIGNED , and made oath that
S/he saw the within named PALMETTO AIR PLANTATION, LLC., A LIMITED LIABILITY COMPANY
by JOSEPH M. WITT , as its MANAGING MEMBER and
for and as the act and deed of the said
LIMITED LIABILITY COMPANY sign, seal and deliver the within mortgage, and that S/HE
with THE SECOND WITNESS SUBSCRIBED TO ABOVE , witnessed the execution thereof.

SWORN to and subscribed before
me this 8TH day of FEBRUARY , 2002

_____ (L. S.)
Notary Public for South Carolina
My Commission Expires: 8/14/07

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RecFee:10.00 St Fee:0.00
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R M C DEPARTMENT CLARENDON CO
Beulah G. Roberts, Clerk of Court

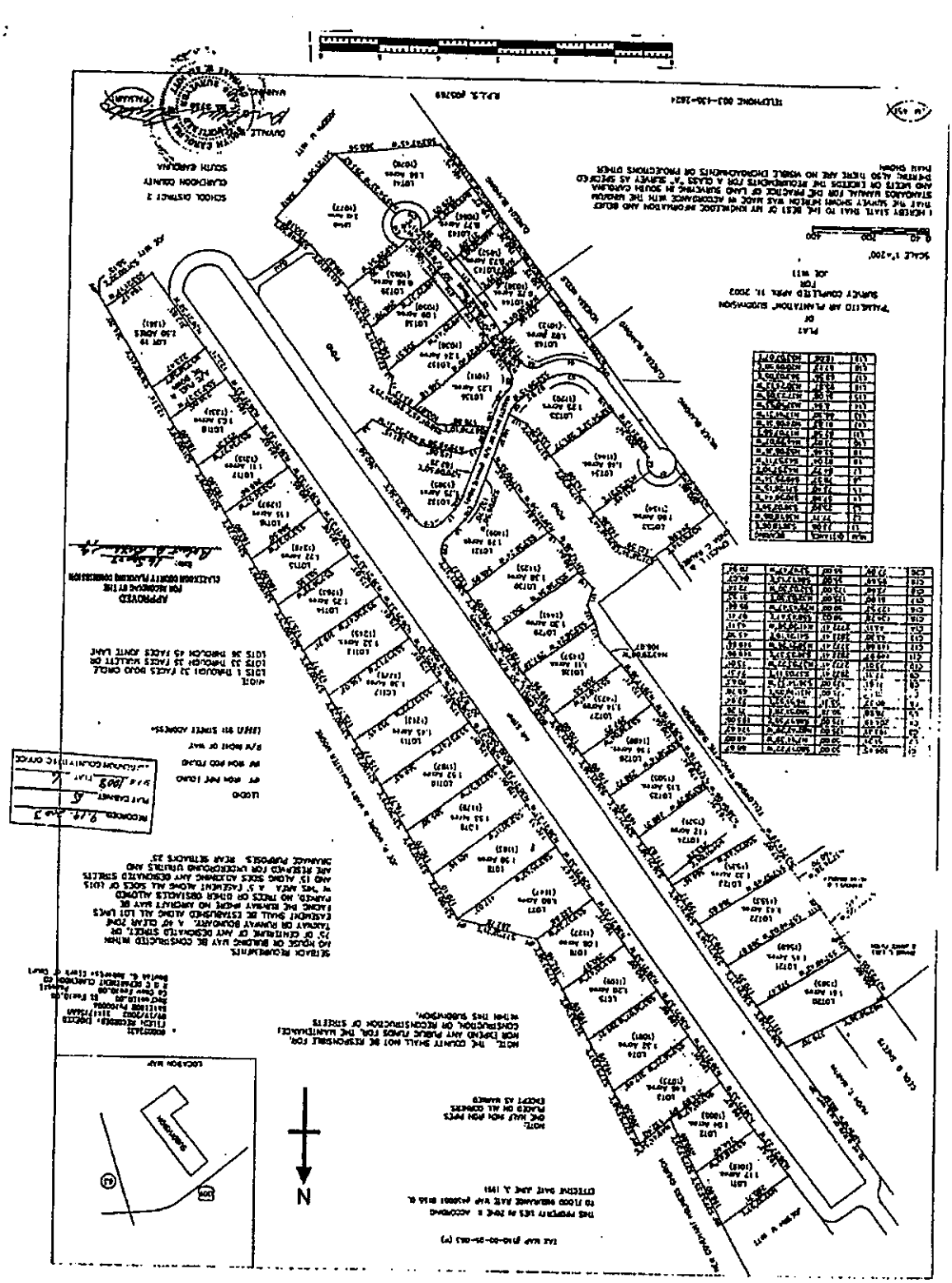
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EXHIBIT E

ELECTRONICALLY FILED - 2018 Aug 25 10:27 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127



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EXHIBIT F

ELECTRONICALLY FILED - 2018 Aug 25 10:27 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

STATE OF SOUTH CAROLINA)

COUNTY OF CLARENDON)

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, That Palmetto Air Plantation, (hereinafter whether singular or plural the "Grantor") in the State aforesaid, for and in consideration of the sum of Five and No/100ths ($5.00) Dollars and other consideration to the Grantor paid by Kim E. Bevier and Susan S. Bevier, **706 Greene Street, Camden, South Carolina 29020**, (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 Kim E. Bevier and Susan S. Bevier, as joint tenants, with the right of survivorship, and not as tenants in common, their heirs and assigns forever, the following described property to wit:

All that piece, parcel or lot of land lying, being and situate in School District No. 2 of Clarendon County, South Carolina, being designated as Lot No. 33 and Lot No. 34, Palmetto Air Plantation, containing 1.60 acres and 1.46 acres on a plat hereinafter referred to, and bounding and measuring as follows: on the Northeast by a pond and measuring thereon 506.93 feet; on the Southeast by Lot 35 on said plat and measuring thereon 261.77 feet; on the Southwest by Mullett Drive and lands of Wilver Blanding and measuring thereon a total of 539.17 feet; and on the Northwest by lands of Ernest L. and Linda C. Rauber and Fellowship Ranchette Subdivision and measuring thereon 244.98 feet.

For a more particular description of said lots, reference may be had to a plat made by DuValle W. Elliott, RPLS, dated April 11, 2002, recorded in the Office of the Clerk of Court for Clarendon County in Plat Cabinet E, Slide 1008 at Plat 6.

Said lots being a portion of the lands conveyed to Palmetto Air Plantation by deed of MidEastern Truckwash Inc. dated October 9, recorded in the Office of the Clerk of Court for Clarendon County in Deed Book A-452 at Page 144.

Said lots being a portion of Clarendon Tax Map No. 140-00-05-063-00.

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Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise appertaining.

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the said Kim E. Bevier and Susan S. Bevier as joint tenants, with the right of survivorship, and not as tenants in common, their heirs and assigns forever.

And the Grantor does hereby bind itself and its Heirs, Personal Representatives and Assigns, to warrant and forever defend all and singular the said premises unto the said Kim E. Bevier and Susan S. Bevier, their Successors 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 26 day of September, 2003.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Betty A. Clark

H. P. Bagnal

PALMETTO AIR PLANTATION

By: _____ (Seal)

Its: Pres.

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STATE OF SOUTH CAROLINA)

COUNTY OF CLARENDON)

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
26 day of Sept., 2003.

Betty C. Tisdale

Notary Public for South Carolina
My Commission Expires: 10-21-2007

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Bk:A0509 Pg:00264
RecFee:10.00 St Fee:226.20
Co Conv Fee:95.70 Pages:4
R M C DEPARTMENT CLARENDON CO
Beulah G. Roberts, Clerk of Court

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STATE OF SOUTH CAROLINA)
)
COUNTY OF CLARENDON)

AFFIDAVIT

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 being transferred is Lot 33 and 34, Palmetto Air Plantation, bearing a portion of Clarendon County Tax Map Number 140-00-05-063-00, was transferred by Palmetto Air Plantation to Kim E. Bevier and Susan S. Bevier on September 26, 2003.

3. Check one of the following. The deed is:

   a. $87,000.00 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 a distribution to a trust beneficiary.

   c. _____ exempt from the deed recording fee because (See Information section of affidavit): _____

   (If exempt, please skip items 4-7, and go to item 8 of this affidavit.)

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):

   a. X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $87,000.00.

   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 _X_ 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. Place the amount listed in item 4 above here: $87,000.00
   b. Place the amount listed in item 5 above here: _____
   (If no amount is listed, place zero here.)
   c. Subtract Line 6(b) from Line 6(a) and place result here: $87,000.00

7. The deed recording fee is based on the amount listed on Line 6(c) above and the deed recording fee due is: $321.90

8. As required by Code § 12-24-70, I state that I am a responsible person who was connected with the transaction as: _____ attorney.

I further 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.

SWORN to before me this 26 day of Sept. 2003.

Notary Public for S.C.
My Commission Expires: 10-21-2007

Responsible Person Connected with the Transaction

W.C. Coffey, Jr.
Print or Type Name Here

000097869 B:A0509 P:00267

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EXHIBIT G

ELECTRONICALLY FILED - 2018 Aug 25 10:27 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

384 S.C. 625
Court of Appeals of South Carolina.

HYNES FAMILY TRUST, and Richard W. Hynes, Trustee, Appellants,
v.
Heide SPITZ, Respondent.

No. 4594.
|
Submitted April 23, 2009.
|
Decided July 21, 2009.

Synopsis
Background: Owner of townhome unit, who discharged gutter water onto neighboring townhome owner's back yard, brought suit against neighbor to determine easement rights for water drainage. The Circuit Court, York County, S. Jackson Kimball, III, Special J., found no express easement or easement by prior use, and ordered plaintiff to disconnect gutter which drained water onto neighbor's property. Plaintiff appealed.

Holdings: The Court of Appeals, Lockemy, J., held that:

[1] express easement existed; but

[2] easement interfered with defendant's use and enjoyment of property; and

[3] there was no easement implied by prior use.

Affirmed in result.

West Headnotes (9)

[1] **Appeal and Error**
⇐Judge as factfinder below

On appeal of an action at law tried without a jury, the findings of fact of the trial court will not be disturbed unless found to be without evidence which reasonably supports the trial court's findings.

Cases that cite this headnote

[2] **Appeal and Error**
⇐Easements
Easements
⇐Questions for jury

The determination of the existence of an easement is a question of fact in a law action and subject to an "any evidence" standard of review when tried by a judge without a jury.

Cases that cite this headnote

[3] **Covenants**
⇐Nature and operation in general

Restrictive covenants upon real estate are contractual in nature and bind the parties thereto just like any other contract; they are construed like contracts, and may give rise to actions for their breach.

2 Cases that cite this headnote

[4] **Contracts**
⇐Application to Contracts in General

If a contract's language is clear and capable of legal construction, Court of Appeal's function is to interpret its lawful meaning and the intent of the parties as found in the agreement.

1 Cases that cite this headnote

[5] **Contracts**
⇐Language of Instrument

A clear and explicit contract must be construed according to the terms the parties have used, with the terms to be taken and understood in their plain, ordinary, and popular sense.

1 Cases that cite this headnote

[6] **Water Law**
⇐Easements, leases, and licenses

Express easement, permitting owner of townhome to maintain water drainage pipe across neighboring townhome owner's property, existed where townhome covenants granted each lot an easement for "storm drainage system," even though there was no uniform system of drainage in place and individual townhome owners used a variety of draining methods.

Cases that cite this headnote

[7] **Water Law**
⇐Nature and extent of rights granted in general

Express easement, permitting owner of townhome to drain water onto neighboring townhome owner's property, violated townhome covenants when water drainage materially interfered with the use, occupancy and enjoyment of neighbor's property; neighbor's back yard was always wet, water drained onto her patio, and although she wanted to extend her patio, she was unable to, due to possibility that discharged water would create problems.

Cases that cite this headnote

[8] **Easements**
⇐Implication

To establish the right to an easement implied by prior use a party must prove: (1) unity of title; (2) severance of title; (3) the prior use was in existence at the time of unity of title; (4) the prior use was not merely temporary or casual; (5) the prior use was apparent or known to the parties; (6) the prior use was necessary in that there could be no other reasonable mode of enjoying the dominant tenement without the prior use; and (7) the common grantor indicated an intent to continue the prior use after severance of title.

1 Cases that cite this headnote

[9] **Weapons**
⇐Grounds for grant or denial of license

There was no evidence of easement implied by prior use, so as to allow townhome owner to discharge his gutter water onto neighboring townhome owner's property.

1 Cases that cite this headnote

Attorneys and Law Firms

**832 John Martin Foster, of Rock Hill, for Appellants.

Alford Haselden, of Clover, and John Kevin Owens, of Spartanburg, for Respondent.

Opinion

LOCKEMY, J.

*627 The Hynes Family Trust and Richard W. Hynes (Hynes) allege the trial court erred in finding there was no express easement or easement by prior use permitting Hynes to maintain a storm water drainage pipe across Heide Spitz's (Spitz) property. We affirm in result.

FACTS

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Hynes and Spitz own adjoining townhomes in the Daybreak community in Tega Cay, South Carolina. The town homes share a common wall and are part of a single building containing three units. Hynes's town home is the middle unit, and the Spitz's town home is an end unit. Each unit is situated on a separately owned lot which extends from front to back beyond the confines of the town home itself. The Hynes property is higher in elevation than the Spitz property. Before this dispute arose, storm water from Hynes's roof was collected into his gutters and piped down the side of his unit. At the termination of the gutter, a corrugated plastic pipe was connected to another piece of pipe which ran underground and across Spitz's property out into a common area of the Daybreak community.

Around July 2004, Spitz disconnected and diverted Hynes's storm drainage system. Spitz alleged the configuration of the drainage system caused water to be discharged onto her property and interfered with her use and enjoyment of her patio. Hynes brought suit against Spitz alleging an express *628 easement existed permitting the drainage pipe to cross Spitz's property by virtue of the Declaration of Covenants, Conditions and Restrictions (Covenants) for the Daybreak community. Spitz denied the existence of any easement and counterclaimed requesting Hynes be enjoined from discharging water from his gutter onto her property. The trial court issued an order on March 21, 2007, denying Hynes's requested relief. Specifically, the trial court found that no express easement or easement by prior use existed permitting the placement of the drainage pipe across Spitz's property. The trial court also ordered Hynes to disconnect the means of discharging gutter water at the current location. This appeal followed.

STANDARD OF REVIEW

[1] [2] "On appeal of an action at law tried without a jury, the findings of fact of the trial **833 court will not be disturbed unless found to be without evidence which reasonably supports the trial court's findings." *Hardaway Concrete Co., Inc. v. Hall Contracting Corp.*, 374 S.C. 216, 223, 647 S.E.2d 488, 491 (Ct.App.2007). "The determination of the existence of an easement is a question of fact in a law action and subject to an 'any evidence' standard of review when tried by a judge without a jury." *Slear v. Hanna*, 329 S.C. 407, 410, 496 S.E.2d 633, 635 (1998).

LAW/ANALYSIS

I. Express Easement

Hynes argues the trial court erred in finding the Covenants did not provide an express easement permitting him to maintain a drainage pipe across Spitz's property. We agree.

Article 2, § 6 of the Daybreak Covenants states:

> *Storm Drainage and Sanitary Sewer Systems.* Storm drainage systems and sanitary sewer systems may be located under certain Lots throughout the Properties. Any such storm drainage and sanitary sewer systems shall be maintained in good order and repair by the Association. To the extent required to effectuate the foregoing plan, there shall be an easement in favor of each Lot for the purposes of providing connection of that Lot with the storm drainage system and sanitary sewer system most convenient thereto. *629 Each Lot shall be subject to easements in favor of all the other Lots providing for the passage through any portion of such Lot of necessary storm drainage systems and sanitary sewer systems. All of the foregoing easements are granted and reserved subject to the conditions that their use and enjoyment shall not materially interfere with the use, occupancy or enjoyment of all or any part of the Lot servient to such easements or to which such easements are appurtenant.

The trial court determined the drainage system at issue was not part of any "regularly interacting storm water drainage system." The trial court noted there was no uniform system of drainage, and homeowners in Daybreak handled drainage using a variety of methods. Furthermore, the trial court noted there was no evidence the system was ever maintained or recognized by Daybreak. Thus, the trial court concluded there was no express easement permitting Hynes to discharge his gutter water into the drainage pipe located on Spitz's property.

A. Definition of "System"

Hynes argues the trial court's definition of the term "system" is too selective. Specifically, Hynes contends the language of the Covenants refers to plural systems and thus the purpose of the Covenants was to permit multiple storm drainage systems planned and built into the

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EXHIBIT H

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2015 WL 1056975
Only the Westlaw citation is currently available.
United States District Court,
D. South Carolina,
Charleston Division.

Nancy W. DAVIDSON, Plaintiff,
v.
Eugene Moss ROBERTSON, Defendant.

No. 2:13–cv–1972–DCN.
Signed March 10, 2015.

Attorneys and Law Firms

Shawn Ryan Willis, Turner Padget Graham And Laney, Charleston, SC, for Plaintiff.

Daniel S. Mcqueeney, Jr., George Trenholm Walker, W. Andrew Gowder, Jr., Pratt-Thomas Walker, Charleston, SC, for Defendant.

Opinion

ORDER

DAVID C. NORTON, District Judge.

*1 This matter is before the court on plaintiff Nancy W. Davidson's ("Davidson") motion for reconsideration. Davidson seeks reconsideration of the court's February 2, 2015 order in which the court denied her motion for summary judgment and granted defendant Eugene Moss Robertson's motion for summary judgment.

The Fourth Circuit has recognized three grounds for amending an earlier judgment under Federal Rule of Civil Procedure 59(e): (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice. *Pac. Ins. Co. v. Am. Nat. Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir.1998). "In general reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly." *Id.* (citation and internal quotation marks omitted). A motion for reconsideration "is not a license for a losing party's attorney to get a second bite at the apple." *Bey v. Shapiro Brown & Alt, LLP*, 997 F.Supp.2d 310, 321 (D.Md.2014) (citing *Shields v. Shetler*, 120 F.R.D. 123, 125–26 (D.Colo.1988)).

Davidson's motion primarily rehashes arguments that she has previously made and the court has already rejected. However, the court briefly considers two arguments that are unique to her motion for reconsideration.

First, Davidson argues that the court should certify several questions to the South Carolina Supreme Court because South Carolina law is "clearly insufficient" to decide whether an easement existed. The court finds that South Carolina law is more than sufficient to answer that question.

The court's prior ruling with regard to the creation of an easement can be summarized with a familiar idiom: "It takes two to tango." An easement may be created by express grant. 25 Am.Jur.2d *Easements and Licenses* § 15. Easements by grant require two individuals-a grantor and a grantee. *See Black's Law Dictionary* (9th ed.2009) (defining "grant" as "[a]n agreement that creates a right or interest *in favor of a person* or that effects a transfer of a right or interest *from one person to another*." (emphasis added)); *Harbour v. S.C. Dep't of Parks, Recreation & Tourism*, 377 S.C. 86, 659 S.E.2d 151, 154 (S.C.2008) (defining "easement" as "a right of use over *another's* property." (emphasis added)); *Haselden v. Schein*, 167 S.C. 534, 166 S.E. 634, 635 (S.C.1932) (holding that without a grantee, "[t]he essential ingredient of a right of way would be wanting; it would not be a right of way over another's land, but over his own land." (citing *Pearce v. McClenaghan*, 39 S.C.L. (5 Rich.) 178, 187 (Ct.App.L.1851))); *Ten Woodruff Oaks, LLC v. Point Dev., LLC*, 385 S.C. 174, 683 S.E.2d 510, 513–14 (S.C.Ct.App.2009) ("Whether a grant in a written instrument creates an easement and the type of easement created are to be determined by ascertaining

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the intention of the *parties* as gathered from the language of the instrument ...." (emphasis added)); *Smith v. Comm'rs of Pub. Works of City of Charleston,* 312 S.C. 460, 441 S.E.2d 331, 335 (S.C.Ct.App.1994) ("An easement is the right of *one person* to use the land of *another* for a specific purpose." (emphasis added)).

*2 South Carolina law is excruciatingly clear that creation of an easement requires a grantee. The cases cited by Davidson in her motion for reconsideration are not to the contrary. In *Hynes Family Trust v. Spitz,* 384 S.C. 625, 682 S.E.2d 831 (S.C.Ct.App.2009), the court found that a declaration of restrictive covenants recorded when the dominant and servient estates were owned by the same party created an express easement. *Id.* at 833–34. However, the court did not indicate that the filing of the declaration, without more, created the easement. Rather, implicit in the court's decision is that the easement was only created because, at the time the estates were divided, the declaration evidenced the parties' intent to create an easement. The court specifically noted that "[r]estrictive covenants upon real estate ... bind the *parties* thereto just like any other contract." *Id.* at 833 (emphasis added). Davidson also cites to *Smith,* in which the court similarly found that an agreement between two parties created an express easement. 441 S.E.2d at 336.

Unlike the parties in *Hynes* and *Smith,* Davidson has not presented any evidence that the Gobies, the grantors, ever intended to convey an easement over Lot 19 to any particular grantee. When the October 2001 and March 2002 plats were filed, there was no grantee to create a right in favor of. By the time Lot 20 was conveyed to Bobby R. Creech, Jr., there was no evidence whatsoever that the parties intended to create an easement. Therefore, the October 2001 and March 2002 plats did not create an easement and it is unnecessary to certify questions to the South Carolina Supreme Court.

Davidson also argues that the court should reconsider its holding with regard to her causes of action asserting zoning violations because she has sufficiently shown that she has suffered special damages-namely, a reduction in the value of her property. Pl.'s Mot. 11. She bases this argument on her "assertion in her motion that her property value had been reduced by the zoning violations." *Id.* at 12, 441 S.E.2d 331.

The court acknowledges that "[u]nder South Carolina law, a property owner is generally qualified by the fact of ownership to give her estimate concerning the value of her property unless the owner's lack of qualification is so complete as to render that testimony entirely worthless." *State v. Brown,* 402 S.C. 119, 740 S.E.2d 493, 498 (S.C.2013) (citing *Seaboard Coast Line R.R. v. Harrelson,* 262 S.C. 43, 202 S.E.2d 4, 5 (S.C.1974)). However, "[l]egal memoranda, in the summary judgment context, are not evidence and do not support a finding that there is no genuine issue for trial." *Harrelson v. Stride Rite Children's Grp., LLC,* No. 4:10–cv–02048, 2012 WL 694033, at *2 (D.S.C. Mar.5, 2012); *see also I.N.S. v. Phinpathya,* 464 U.S. 183, 188 n. 6, 104 S.Ct. 584, 78 L.Ed.2d 401 (1984) (declining to consider "[c]ounsel's unsupported assertions in respondent's brief as evidence); *Kulhawik v. Holder,* 571 F.3d 296, 298 (2d Cir.2009) ("An attorney's unsworn statements in a brief are not evidence."); *Skyline Corp. v. NLRB,* 613 F.2d 1328, 1337 (5th Cir.1980) ("Statements by counsel in briefs are not evidence."). A conclusory statement by Davidson's counsel in his motion is clearly insufficient to survive summary judgment.

*3 The court rejects remainder of Davidson's arguments for the same reasons articulated in its February 2 order. After careful review of its February 2 order, Davidson's motion for reconsideration, and South Carolina law, the court finds no reason to reconsider its earlier order. Therefore, the court **DENIES** plaintiff's motion for reconsideration.

AND IT IS SO ORDERED.

All Citations

Not Reported in F.Supp.3d, 2015 WL 1056975

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EXHIBIT I

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167 S.C. 534
Supreme Court of South Carolina.

HASELDEN
v.
SCHEIN.

No. 13519.
|
Nov. 21, 1932.

Synopsis
Appeal from Common Pleas Circuit Court of Beaufort County; J. Henry Johnson, Judge.

Suit by M. V. Haselden against Annie Schein. From a decree for plaintiff, defendant appeals.

Affirmed.

West Headnotes (11)

[1] **Easements**
⇐Continuous and apparent easements, and notice

Rule that easement may be extinguished by conveying servient estate to purchaser without notice of easement requires intentional concealment or deception which imposed upon purchaser.

2 Cases that cite this headnote

[2] **Easements**
⇐Continuous and apparent easements, and notice

Easement of right of way held not extinguished by failure of reference to its existence in deeds to purchaser of servient estate and purchaser's grantor, where predecessors' deeds gave notice thereof, and way was in open notorious use.

1 Cases that cite this headnote

[3] **Easements**
⇐Merger

Where owner of servient estate over which right of way exists acquires title in fee to dominant estate, right of way is extinguished.

2 Cases that cite this headnote

[4] **Easements**
⇐Merger

To effectuate extinguishment of easement by unity of title, fee to dominant and servient tenements must be vested in same person at same time.

1 Cases that cite this headnote

[5] **Easements**
⇐Merger

Easement held not extinguished by merger of title where joint owner of both servient and dominant estates before easement was imposed became sole owner of servient estate and conveyed it to another before he reacquired dominant estate.

3 Cases that cite this headnote

[6] **Easements**
⇐Nature and form; injunction

Litigant may waive action for damages for obstructing easement of way and seek injunctive

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relief.

Cases that cite this headnote

[7] **Estoppel**
⇐Knowledge of facts

One cannot avail himself of estoppel if his own negligence to avail himself of information within reach brought about situation complained of.

1 Cases that cite this headnote

[8] **Estoppel**
⇐Prejudice to person setting up estoppel

"Estoppel" arises when person by his action or nonaction causes one to change his position to his hurt, and it would be inequitable to permit such person to set up claim antagonistic to one claiming estoppel.

Cases that cite this headnote

[9] **Estoppel**
⇐Prejudice to person setting up estoppel

To enforce estoppel against another, one must show he was misled to his injury by action or nonaction, or language or silence of such other.

Cases that cite this headnote

[10] **Appeal and Error**
⇐Judgment or Order

Court's statement in decree, that easement was quasi public right of way to theater, if error, held harmless, where prayer for injunctive relief was not based alone on obstruction to theater patrons' use.

Cases that cite this headnote

[11] **Appeal and Error**
⇐Remedy at law or in equity

Objection that remedy for obstructing easement is action at law for damages and not injunction, not made in trial court, comes too late.

Cases that cite this headnote

Attorneys and Law Firms

*634 Nathans & Sinkler, of Charleston, for appellant.

George W. Beckett, of Beaufort, for respondent.

Opinion

BONHAM, J.

Plaintiff, the respondent, seeks by this action to enjoin the defendant from obstructing an easement which plaintiff claims over an alleyway, on the property of the defendant, in the city of Beaufort, S. C., and seeks to recover the sum of $1,000 damages for alleged obstruction thereof.

The defendant, the appellant here, for answer denies the existence of such easement, and alleges that plaintiff is estopped to set up a claim to such easement by reason of the estoppel which had existed against plaintiff's grantor.

The matter was heard by Judge J. Henry Johnson at chambers, by consent of counsel, upon an agreed statement of facts. He filed his decree adjudging and ordering that plaintiff have an injunction against the defendant against any interference with the use of said right of way which might impair or defeat the easement, and "that she be and is hereby required to move the fence back to the line of the eastern side of the building formerly known as the Palace Market." From this decree the appeal comes to this court.

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From the "Agreed Statement of Facts," set out in the transcript of record, we condense this shorter, but sufficient, statement:

*635 The property on both sides of and including the disputed right of way was owned in fee by J. R. Bellamy and L. H. Little, Sr.; they sold to Chris Culuris a lot fronting on Bay street, in the city of Beaufort, S. C., with certain defined boundaries, and by the same deed of conveyance covenanted "that a private right of way ingress and egress four (4) feet wide and extending from Bay Street on the South to Port Republic Street on the North shall be maintained as appurtenant to the land hereby conveyed; but the same shall not be or become (evidently something left out here in recording) retain the right to maintain gates or doors in and upon the same, and to keep the same free and clear of any and all obstacles to its use as a way for the use of the occupants of the property on both sides thereof; said way to be adjacent to and west of the premises above granted and described; but nothing herein contained shall be construed to prevent the grantor herein from building over the same so long as it is open and unobstructed and ten feet high." This deed was dated April 23, 1921.

At the time of this conveyance, the property upon which this servitude was imposed was owned by the same grantors, J. R. Bellamy and L. H. Little, Sr. Subsequently, to wit, November 23, 1921, L. H. Little, Sr., conveyed to J. R. Bellamy "all his right, title and interest in and to the balance of the property, measuring thirty feet nine inches (30' 9"), being the above premises conveyed to Bellamy and Little by Epstin, less the premises heretofore conveyed to Chris Culuris." May 22, 1924, Bellamy conveyed this last-mentioned property to Beaufort Bank.

Bellamy and Little foreclosed the purchase-money mortgage given to them by Culuris, and at the sale it was bid off by J. R. Bellamy, to whom deed was made June 4, 1925.

J. R. Bellamy became insolvent and Hal R. Pollitzer was appointed receiver of his estate. By deed dated February 21, 1927, Pollitzer conveyed to M. V. Haselden, plaintiff, the property conveyed to Culuris by Bellamy and Little. This deed makes no mention of the easement appurtenant thereto.

November 10, 1927, W. J. Thomas, as receiver of Beaufort Bank, conveyed to Annie Schein the property conveyed to Beaufort Bank by J. R. Bellamy. This deed makes no reference to the easement.

The appeal assails the decree of the circuit court upon the grounds stated in seven exceptions, which appellant's counsel, in his brief, elects to treat under three heads, which method of treatment we adopt. They are:

(1) Does estoppel operate to defeat a claim of easement, or is it necessary for a merger of the dominant and servient estates to be had before the right of dominant estate in such easement can be barred?

(2) Was the easement so limited that it did not include the right of user by patrons of a picture house on the rear of the lot, the interference with such user being the basis of plaintiff's claim for injunction?

(3) Do the pleadings and facts as agreed on entitle plaintiff to relief by injunction, or is his remedy by an action at law for damages?

Appellant's contention under the first head is that the circuit judge erred in holding that there was no merger of the dominant and servient estates in Bellamy, but that, if there was no merger, nevertheless plaintiff is estopped to claim the easement because his predecessor in title, Bellamy, was estopped to claim it for the reason that Bellamy had conveyed the servient tenement to Beaufort Bank without stating in the deed that it was subject to this easement, and the bank had conveyed it to the defendant without making any mention of the easement. Hence, if Bellamy was estopped, the plaintiff, as his successor in title of the dominant estate, is estopped.

Was there a merger? Or, more strictly speaking, was there an extinguishment of the easement?

The contention of the appellant is that it was extinguished (1) by the uniting in Bellamy of the title in fee to the dominant and servient estates; or (2) by the conveyance of the servient tenement to Annie Schein without notice of the easement.

Was the title to the dominant and servient estates ever vested in Bellamy at one and the same time? When the easement came into existence, the dominant and servient estates were owned by Bellamy and Little. Their deed of conveyance to Culuris imposed upon their own land an easement in favor of the land conveyed to Culuris. The Culuris property became the dominant estate. Thereupon Bellamy bought the interest of Little in the servient estate. This he conveyed to Beaufort Bank, which in turn conveyed it to Annie Schein. When he reacquired the title to the property which he and Little had sold to Culuris, the title to the servient estate was in the bank. It never was in Bellamy at the same time that he owned the dominant estate.

[1] There can be no doubt that, if the owner of the servient estate over which a right of way exists, acquires

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the fee-simple title to the dominant estate, the right of way is extinguished, because "The essential ingredient of a right of way would be wanting; it would not be a right of way over another's land, but over his own land." Pearce v. McClenaghan, 5 Rich. 178, 187, 55 Am. Dec. 710.

"An easement is extinguished if the titles to both the dominant and servient tenements become vested in fee in the same person, since the user corresponding to the easement is exercised over one's own land, rather than over that of another, and is a mere ordinary incident of the right of ownership." The Modern Law of Real Estate, Tiffany, vol. 1, p. 734.

*636 [2] The plain deduction from this language is that, in order to effectuate the extinguishment of an easement by unity of title, the fee to the dominant and servient tenements must be vested in the same person at the same time.

2. Was the easement here involved extinguished by the conveyance of the servient tenement to one who had no notice of the easement?

The answer to this question involves the consideration of the doctrine of estoppel. It appears from statements contained in the transcript of record that, when Bellamy conveyed the servient tenement to Beaufort Bank, the deed of conveyance contained no reference to the easement; and when Thomas, receiver of the Beaufort Bank, conveyed the same property to this defendant, his deed likewise made no reference to the easement. From these premises it is contended that Bellamy, who reacquired the title to the dominant estate, was estopped to assert the existence of the easement, and the plaintiff, as his successor in title, is now so estopped.

[3] [4] [5] [6] Estoppel arises when one by his action, or his failure to act, or by his speaking, or his failure to speak, has caused one to change his position to his hurt, and it would be inequitable to permit the other to assert a position or set up a claim antagonistic to the one who claims the estoppel. In order, however, that one may enforce an estoppel against another, he must show that he was misled to his injury by the action or the nonaction, or the language or the silence of that other. It is not enough that he might have been so misled, he must actually have been misled. Nor can one avail himself of the rule of estoppel if his own negligence to avail himself of information, the sources of which were in his reach, has brought about the situation of which he complains. In this present case there is an absence of proof that the defendant was misled by the fact that no reference was made of the easement in the deed of Bellamy to the bank, and that of Thomas, receiver, to appellant, of the existence of the easement. But these deeds gave her notice that the origin of the title to her lot was in Bellamy and Little. The deed from Little to Bellamy of his interest in the servient tenement which deed was on record, gave express notice of the existence of the easement. The deed from Bellamy and Little to Culuris, which created the easement, was also on record. The rule of the law that an easement may be extinguished by the conveyance of the servient estate without notice to the purchaser, of the easement, carries with it the idea that there has been an intentional concealment or deception which imposed upon the purchaser. No such thing is shown here. Moreover, the right of way was in open and notorious use; the slightest inquiry on the part of defendant would have apprised her of its nature, its extent, and that it was appurtenant to the property which she was buying and to which it was immediately adjacent.

[7] [8] We do not think the easement was extinguished by merger of title nor by the failure to refer in the deed of Bellamy to the bank and that of Thomas, receiver, to the defendant to the existence of the easement.

It is elaborately and forcefully argued that, where one whose title is defective has conveyed and warranted it, a good title later acquired by him passes to his grantee by the warranty. There is no denial of this just rule of the law. We think it has no application here. There is no defect in the title to the servient estate. Defendant received exactly what Bellamy had and that which he received under the deed from Little to him, which expressly stated that the right of way remained intact.

[9] The issue stated in the second question propounded in the appellant's brief is aimed at the statement in the circuit decree that the easement which is of a notorious character involved the use of the strip in question as a quasi public right of way for ingress and egress to a moving picture theater, etc.

The attack seems the refinement of criticism. If the language used was erroneous, it is harmless. The prayer for relief by injunction is not predicated alone upon the ground that the obstruction of the alleyway by defendant obstructed the use of it by patrons of the moving picture theater. Paragraph 5 the complaint is to this effect: "That the purpose of said easement was to permit ingress and egress from Bay Street to the business buildings on the rear of the lot conveyed by Bellamy and Little to Chris Culuris, and access from the rear of that portion of the property fronting South on Bay Street, all of which was and is of great value to said dominant estate."

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Paragraph 6 declares that the business conducted in the building on the rear or northern side of said lot is a motion and talking picture theater, access to which can only be had through the right of way.

Paragraph 7 of the complaint is to the effect: "That prior to this action the defendant built upon the four foot easement, a right of way, a fence materially constricting the width of the said right of way and obstructing the use thereof and rendering the same less valuable to plaintiff and his tenants as a way of ingress and egress, and constructing in said fence two large gates opening out and upon plaintiff's adjacent property."

Nowhere is found authority for the assumption that no other personal or business interests were served by the use of the alleyway than that of the patrons of the theater. If the patrons were prevented from reaching the theater, the interests of the owners of the theater were necessarily injured. The deed granting the easement expressly provided *637 that the alley shall be "kept free and clear of any obstacles to its free use as a way for the use of the occupants of the property on both sides thereof." Plaintiff is one of such occupants.

The third and last question suggested by appellant's brief is this: "Do the pleadings and facts as agreed on entitle plaintiff to relief by injunction, or is his remedy by an action at law for damages?"

[10] [11] We are frank to say that, if this issue had been opportunely made, it would have merited consideration. We think the general practice is to bring such suits on the law side of the court in an action for damages. If damages be found, the court issues its order to carry out such finding. But we know of no rule which prevents a litigant frown waiving the suit in the law court; and that is what appellant has done. This question was not raised by demurrer or answer, and was never presented to or passed upon by the circuit court. On the contrary, defendant consented that the matter should be heard by the circuit judge at chambers, on an agreed statement of facts. The objection comes too late.

It is the judgment of this court that the judgment of the circuit court be affirmed.

BLEASE, C. J., STABLER and CARTER, JJ., and W. C. COTHRAN, A. A. J., concur.

All Citations

167 S.C. 534, 166 S.E. 634

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EXHIBIT J

ELECTRONICALLY FILED - 2018 Aug 25 10:27 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

246 S.C. 464
Supreme Court of South Carolina.

Walker M. LANCASTER and Thelma S. Lancaster, Appellants,
v.
SMITHCO, INC., Respondent.

No. 18402.
|
Sept. 23, 1965.

Action by grantees for breach of general warranty. The County Court, Spartanburg County, Charles M. Pace, J., entered tered judgment on directed verdict for grantor, and grantees appealed. The Supreme Court held that reference in deed to plat in connection with description of lot did not incorporate notation thereon as to gas pipeline company's easement so as to exclude easement from covenant of general warranty absent showing of intention that notation on plat should act as exclusion of easement from covenant, and that fact that grantees sold property for more than their purchase price did not extinguish grantees' claim for breach of general warranty in view of proof that increased value may have resulted from improvements added by grantees and general increase in building costs.

Reversed and remanded.

West Headnotes (8)

[1] **Covenants**
⇐General Warranty

General warranty in deed embraces covenant that property is free from all encumbrances not excepted from its provisions.

Cases that cite this headnote

[2] **Covenants**
⇐Defenses

Knowledge by grantee of defect in grantor's title is no defense to action on grantor's warranty of title.

Cases that cite this headnote

[3] **Deeds**
⇐Reference to Surveys, Maps, and Plats, and Records Thereto

Question as to purpose and effect of reference to plat in deed is ordinarily one as to intention of parties to be determined from whole instrument and circumstances surrounding its execution.

4 Cases that cite this headnote

[4] **Deeds**
⇐Reference to Surveys, Maps, and Plats, and Records Thereto

Reference in deed to plat in connection with description of lot made plat part of deed for purpose of showing boundaries, metes, courses and distances of property conveyed. Code 1962, § 60-208.

4 Cases that cite this headnote

[5] **Municipal Corporations**
⇐Plats and Surveys by Public Authority

A "plat" is not an index to encumbrances.

Cases that cite this headnote

[6] **Covenants**
⇐Easements

Mere reference in deed to plat for descriptive purposes does not incorporate notation thereon as to easement held by third party so as to exclude such easement from covenant against encumbrances in absence of clear intention that it so operate.

4 Cases that cite this headnote

[7] **Covenants**
⇐General Warranty

Reference in deed to plat in connection with description of lot did not incorporate notation thereon as to gas pipeline company's easement so as to exclude easement from covenant of general warranty absent showing of intention that notation on plat should act as exclusion of easement from covenant.

2 Cases that cite this headnote

[8] **Covenants**
⇐Defenses

That grantees sold property for more than their purchase price did not extinguish grantees' claim for breach of general warranty in view of proof that increased value may have resulted from improvements added by grantees and general increase in building costs.

Cases that cite this headnote

Attorneys and Law Firms

*465 **209 Johnson & Smith, Spartanburg, for appellants.

Carlisle, Brown & Carlisle, Spartanburg, for respondent.

Opinion

*466 **210 PER CURIAM.

This controversy between the parties has resulted in two prior appeals. 238 S.C. 15, 119 S.E.2d 145; 241 S.C. 451, 128 S.E.2d 915.

The plaintiffs brought the present action to recover for the alleged breach of the general warranty in a deed to real estate. The complaint alleged that a house and lot was conveyed by the defendant to the plaintiffs without exception as to an outstanding easement for a gas pipeline across the property, and that the covenant in the deed against encumbrances was thereby breached. The defendant, in addition to denying that the plaintiffs had suffered any damage, alleged in its answer, as a second defense, that the lot conveyed was described in the deed 'as shown' on a recorded plat, upon which the easement was noted; and that, since the easement was shown on the plat, the conveyance was thereby made subject to the easement and constituted an exception thereof from the covenant against encumbrances. Upon the trial of the case, both the plaintiffs and the defendant made timely motions for a directed verdict. The motion of the defendant was granted and this appeal followed. Error is charged both in the granting of defendant's motion for a directed verdict in its favor and in the refusal of that of the plaintiffs.

The motion of the defendant for a directed verdict was made upon the grounds that (1) the easement in question *467 was excluded from the general warranty in the deed and (2) the question of damages had become moot because of the sale by the plaintiffs of the property involved. The lower court granted the defendant's motion only upon the first ground, but questions arising under the second have also been preserved on appeal by an additional sustaining ground filed by the defendant.

The defendant conveyed to the plaintiffs on June 21, 1956, by fee simple general warranty deed, a lot of land in Spartanburg County. The lot was part of a subdivision and was referred to in the deed 'as Lot No. 10, Block 'C', as shown on plat by Gooch & Taylor, Surveyors, dated January 27, 1953 and recorded in Plat Book 29, page 198, 199 and 200 R.M.C. Office for Spartanburg County.' The lot was then described by the correct metes and bounds, showing its dimensions as 80 x 240.1 feet.

The record shows that, at the time of the execution of the foregoing deed, Transcontinental Gas Pipeline Corporation held an easement, ninety feet in width across the lot conveyed to the plaintiffs, for the purpose of installing and maintaining an underground gas pipeline thereon. The easement was acquired on November 21,

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1949 and was duly recorded upon the public records.

There was no specific mention or express exception in the deed to plaintiffs concerning the foregoing easement, but the surveyor showed on the plat a dotted line across the property in question with the words 'Transcontinental Gas Pipeline Corp.' written thereon and a notation 'For right-of-way easement. See 16, N-354,' the latter being the book and page number where the easement was recorded.

The plaintiffs contend that, since the easement was not expressly noticed in the deed, its existence constituted a breach of the general warranty. The defendants on the other hand take the position, sustained by the lower court, that the reference to the recorded plat in the description of the deed incorporation the plat, and the references thereon to the *468 easement, as a part of the description of the property, so as to make the conveyance subject to the easement and exclude the easement from the general warranty.

[1] It is well settled that the general warranty in a deed of conveyance embraces the covenant that it is free from all encumbrances not excepted from its provisions. Lessly v. Bowie, 27 S.C. 193, 3 S.E. 199; Jeter v. Glenn, 9 Rich. 374.

It is not questioned in this case that the easement was an encumbrance which would **211 fall within the covenant against encumbrances unless excluded from its provisions by the terms of the deed.

[2] Neither are we concerned in this action with whether the plaintiffs had or were charged with knowledge of the easement. For, as held in Sanders v. Boynton, 112 S.C. 56, 98 S.E. 854, 'It is settled, upon reason and authority, that knowledge by the grantee of a defect in his grantor's title is no defense to an action on the grantor's warranty of the title. Such knowledge may be the grantee's chief reason for requiring the warranty, and he may rely more upon his grantor's warranty than upon his own knowledge of the title.'

Nor is any question of estoppel or dedication involved as was the case in Corbin v. Cherokee Realty Co., 229 S.C. 16, 91 S.E.2d 542.

The first question to be decided then is whether the mere reference in the description of the property to the recorded plat, upon which the easement was shown, constituted an exclusion of the easement from the covenant against encumbrances.

[3] The question as to the purpose and effect of a reference to a plat in a deed is ordinarily one as to the intention of the parties to be determined from the whole instrument and the circumstances surrounding its execution.

*469 [4] The only reference in the deed in this case to the plat was in connection with the description of the lot. There can be no doubt that such reference to the recorded plat made it a part of the deed for the purpose of showing the boundaries, metes, courses and distances of the property conveyed. Section 60-208, 1962 Code of Laws; Lynch v. Lynch, 236 S.C. 612, 115 S.E.2d 301.

[5] [6] A plat, however, is not an index to encumbrances, and the mere reference in a deed, as in this case, to a plat for descriptive purposes does not incorporate a notation thereon as to an easement held by a third party so as to exclude such easement from the covenant against encumbrances in the absence of a clear intention that it so operate.

[7] It is not contended in this appeal that there was any other fact or circumstance present which would indicate an intention that the notation on the plat, as to the easement held by the third party, should act as an exclusion of the easement from the covenant. Under these circumstances, the easement in question was clearly within the covenant and the lower court was in error in directing a verdict for the defendant.

The defendant contends however that the judgment of the lower court should be affirmed upon the ground that the question of damages has now become moot.

[8] The plaintiffs purchased the property from the defendant in June 1956 for the sum of $12,500.00. During the trial of the case in 1963, the plaintiffs sold the premises for $13,500.00, or the sum of $1000.00 more than they paid for it. Only a small portion of the testimony has been included in the record, but it is agreed that there was testimony that the plaintiffs had made additional expenditures on the property since its purchase by them and that building costs had increased in that period from 10% to 15%. It is the position of the defendant that the sale of the property seven years later for an amount in excess of the *470 purchase price conclusively shows that the plaintiffs have suffered no damage from the existence of the easement in question.

We do not think that the sale of the property for an amount in excess of the purchase price extinguished the claim of the plaintiffs. The record before us fails to show the relevancy of the value of the property at the time of the sale in 1963 to the issue of damages for the breach of

the covenant. Assuming its relevancy however, the testimony shows that the increased value may have resulted from improvements **212 added by the plaintiffs and a general increase in building costs, factors which could not inure to the benefit of the defendant in the assessment of damages in the instant case.

The judgment of the lower court is accordingly reversed and the cause remanded for a new trial. South Carolina Elec. & Gas Co. v. Aetna Ins. Co., 233 S.C. 557, 106 S.E.2d 276.

Reversed and remanded.

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246 S.C. 464, 144 S.E.2d 209

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EXHIBIT K

ELECTRONICALLY FILED - 2018 Aug 25 10:27 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

291 S.C. 307
Court of Appeals of South Carolina.

SHONEY'S, INC., a Tennessee Corporation, and First Federal Savings & Loan Association, Respondents,
v.
Raymond R. COOKE, James T. Wiggins, M.D., Paul Franklin Chumley, George H. Fann, and T.D. Ravenel, Jr., Appellants.

No. 0876.
|
Heard Dec. 10, 1986.
|
Decided Feb. 9, 1987.

Landowners brought action against adjoining landowners for declaration that property was owned free from all restrictions except those of public record. The Common Pleas Court, Lexington County, Walter J. Bristow, Jr., J., entered judgment in favor of landowners and adjoining landowners appealed. The Court of Appeals, Goolsby, J., held that: (1) sales agreement containing restrictions on use of land merged into deed which did not contain any such restrictions; (2) restrictions did not constitute a "collateral agreement" outside the doctrine of merger; and (3) there was no implied reciprocal negative easement.

Affirmed.

West Headnotes (10)

[1] **Deeds**
⇐Merger of Previous Agreements

Acceptance by purchaser of deed tendered by vendor merged agreement to convey into the deed absent proof by clear and convincing evidence that parties did not intend to merge sales agreement in deed.

Cases that cite this headnote

[2] **Deeds**
⇐Merger of Previous Agreements

Evidence of vendor's intent to develop professional office complex on large tract of land and of language in option and sales contracts restricting use of property to professional buildings did not show intent that sales contract be merged into deed which conveyed a portion of tract and which contained no restriction on use of land.

1 Cases that cite this headnote

[3] **Deeds**
⇐Merger of Previous Agreements

Collateral agreement is not necessarily merged in subsequent deed.

Cases that cite this headnote

[4] **Deeds**
⇐Merger of Previous Agreements

For agreement to be collateral and thus not merged in deed, it must be independent and distinct from main contract, must be consistent with provisions of main contract, and must be such an agreement as parties could not reasonably be expected to embody in main contract but would naturally make as separate agreement.

Cases that cite this headnote

[5] **Deeds**
⇐Merger of Previous Agreements

Stipulation in executory contract for sale of land to limit use of land is not a "collateral agreement" outside the doctrine of merger.

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Cases that cite this headnote

[6] **Covenants**
⇐Nature and Grounds in General

Restrictive covenant may arise by implication from language of deeds or from conduct of parties.

Cases that cite this headnote

[7] **Covenants**
⇐Restrictions on Use of Property

For reciprocal negative easement to arise by implication, implication must be plain and unmistakable.

2 Cases that cite this headnote

[8] **Covenants**
⇐Restrictions on Use of Property

Four elements to establish reciprocal negative easement by implication are common grantor, designation of land or tract subject to restrictions, general plan or scheme of restriction in existence for designated land or tract, and restrictive covenants that run with the land.

2 Cases that cite this headnote

[9] **Covenants**
⇐Restrictions on Use of Property

In determining whether reciprocal negative easement has been created, court should consider language found in deeds and surrounding circumstances, and all doubts regarding creation of implied reciprocal negative easement must be resolved in favor of freedom of land from servitude.

Cases that cite this headnote

[10] **Covenants**
⇐Restrictions on Use of Property

No reciprocal negative easement was created by implication from plat indicating that land was intended to be developed for 'professional offices, from sales contracts containing such restrictions, nor from development in conformity with asserted restrictions, where seven deeds conveying parcels from the tract contained no restriction.

1 Cases that cite this headnote

Attorneys and Law Firms

**301 *308 D. Cravens Ravenel, of Belser, Baker, Barwick, Ravenel, Toal & Bender, Columbia, for appellants.

Michael W. Tighe and Susanne A. Hawkins, of Callison, Tighe, Rush, Robinson & Anastasion, Columbia, for respondents.

Opinion

GOOLSBY, Judge:

This is a declaratory judgment action brought by the respondent First Federal Savings and Loan Association and Shoney's, Inc., seeking an order declaring that **302 certain property owned by First Federal and subject to a contract of sale to Shoney's is free from all restrictions, except those of public record. The appellants are the owners of other property purchased from the same tract from which the property belonging to First Federal was sold. The trial judge rendered judgment in favor of First Federal and Shoney's giving them the declaration that they sought. We affirm.

The issues on appeal are whether the acceptance of a deed

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tendered in performance of an agreement to convey certain property merged the agreement to convey in the deed and whether the property is subject to an implied reciprocal negative easement.

*309 Lexington Park Associates, a South Carolina Limited Partnership, purchased a 6.5 acre tract of land in Lexington County to develop a professional office complex. It recorded a plat of the property that divides the tract into nine lots. Eight of the lots front on a street referred to on the plat as "Professional Avenue." A legend on the plat states that it is a "plat ... of Lexington Office Plaza."

Lexington Park gave Lexington County Savings and Loan Association, which financed the development of the 6.5 acre tract for Lexington Park, a written option to buy three lots reflected on the plat. The option recites that the property "has, or will have restrictions limiting its use to professional office type commercial businesses, including bank type institutions...."

Lexington Savings thereafter exercised its option and bought the three lots from Lexington Park. The deed conveying these lots to Lexington Savings states that the "conveyance is made subject to all ... restrictions ... and covenants of record...." At the time of the conveyance, however, there were no restrictions or covenants of record. Indeed, Lexington Park never recorded any restrictions or covenants limiting the use of the nine lots shown on the plat.

When it purchased the three lots, Lexington Savings intended to build a bank building thereon; however, adverse conditions prevented it from doing so. Lexington Savings eventually merged with First Federal.

Shoney's contracted to buy the three lots from First Federal after First Federal determined it had no use for the property. Shoney's intends to build a restaurant and motel upon the property.

Lexington Park also conveyed lots from the 6.5 acre tract to the appellants Raymond R. Cooke, James T. Wiggins, George H. Fann, T.D. Ravenel, Jr., and Paul Franklin Chumley. The conveyances to Cooke, Fann, and Ravenel were made pursuant to written contracts of sale. Fann's and Ravenel's contracts contain a reference to restrictions but Cooke's contract does not. None of the deeds conveying a lot or lots from the 6.5 acre tract to the appellants contains a restriction limiting the use of the property.

The appellants improved their lots by building thereon a pharmacy, a physician's office, dentists' offices, a veterinarian's office, and an insurance office.

*310 First Federal and Shoney's initiated this action seeking a declaration that the property is free from any restriction that would prevent its use as a motel and restaurant. The appellants counterclaimed seeking a declaration that all lots conveyed from the 6.5 acre tract by Lexington Park are subject to a covenant restricting their use to professional offices and that the restaurant and motel proposed by Shoney's are inconsistent with a use of that kind.

The case was heard by the trial judge sitting without a jury. He implicitly found that Lexington Savings' acceptance of the deed tendered in performance of Lexington Park's agreement to convey, which is embodied in the option, merged the agreement to convey in the deed and that the deed alone now regulates the rights and liabilities of the parties. He expressly found that Lexington Park abandoned either at or prior to the time of its conveyance of the property to Lexington Savings its intention **303 to impose a common scheme of development upon the 6.5 acre tract and that there is no implied reciprocal negative easement that would prevent the use of First Federal's property as a motel and restaurant.

I.

We discuss first the appellants' arguments regarding merger.

a.

The appellants maintain that Lexington Savings' acceptance of Lexington Park's deed in performance of the agreement to convey the three lots did not extinguish the antecedent agreement to restrict the use of the three lots because the parties did not intend for a merger to occur.

In *Charleston & Western Carolina Railway Co. v. Joyce,* 231 S.C. 493, 99 S.E.2d 187 (1957), the Supreme Court fully discussed the doctrine of merger. They observed, while quoting from *Snyder v. Roberts,* 45 Wash.2d 865, 871, 278 P.2d 348, 352 (1955), and from 55 Am.Jur. *Vendor and Purchaser* § 327 at 756 (1946):

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"The doctrine of merger is founded upon the privilege, which parties always possess, of changing their contract obligations by further agreements prior to performance. *311 The execution, delivery, and acceptance of a deed varying from the terms of the antecedent contract indicates an amendment of the original contract, and generally the rights of the parties are fixed by their expressions as contained in the deed. [Citations omitted.]"

"... Where there is no mistake or fraud a deed executed subsequently to the making of an executory contract for the sale of land is generally regarded as conclusive evidence of a previous modification of the executory contract. A deed executed subsequent to the making of an executory contract for the sale of land supersedes that contract...."

231 S.C. at 504-05, 99 S.E.2d at 193.

In *Hughes v. Greenville Country Club,* 283 S.C. 448, 322 S.E.2d 827 (Ct.App.1984), we noted that this state recognizes the contrary intent exception to the merger doctrine. We held in *Hughes,* however, that "the party denying merger has the burden of proving by clear and convincing evidence that merger was not intended." 283 S.C. at 451, 322 S.E.2d at 828.

[1] Here, then, the acceptance by Lexington Savings of the deed tendered by Lexington Park in performance of its agreement to convey the three lots to Lexington Savings from the 6.5 acre tract merged the agreement to convey in the deed absent proof by clear and convincing evidence that the parties did not intend to merge the agreement to convey in the deed.

[2] To establish a contrary intent, the appellants point to the title of the tract and the name of the street shown on the plat, Lexington Park's intent to develop a professional office complex on the 6.5 acre tract, the loan made by Lexington Savings to Lexington Park to finance the development of the 6.5 acre tract, the language in the option and in two of the contracts of sale that restricts the use of the property to professional buildings or offices, Lexington Savings' original intention to build a savings and loan office building on its lots, and the uses made by the appellants of their respective lots since acquiring them.

On the other hand, there is evidence of an amendment to *312 the original contract between Lexington Park and Lexington Savings beyond the mere execution, delivery, and acceptance of a deed that varies from the terms of their antecedent contract. Lexington Park recorded not one but seven deeds without ever placing upon the public record any restriction limiting the use of the 6.5 acre tract. Further, one of the three contracts of sale Lexington Park entered into with other parties makes no reference to any restriction limiting the use of the property. Also, one of the developers of Lexington Office Plaza, when he was called to testify, proved unable to explain **304 why a restriction limiting the use of the tract was never recorded.

Under these circumstances, we agree with the view of the trial judge, implicitly stated, that the appellants failed to prove by clear and convincing evidence that merger was not intended when Lexington Park executed and delivered and Lexington Savings accepted a deed at variance with the option.

b.

The appellants also maintain that the stipulation in the purchase agreement that the three lots either had or would have "restrictions limiting [their] use to professional office type commercial businesses, including bank type institutions," constitutes a collateral agreement that survives the deed.

[3] Another exception to the general rule that a deed made in full execution of a contract of sale of land merges the provisions of the contract in the deed is the exception that a collateral agreement is not necessarily merged in the subsequent deed. 26 C.J.S. *Deeds* § 91c at 845-46 (1956). The appellants, however, also failed to establish this exception by clear and convincing evidence.

[4] [5] To constitute a "collateral agreement," the agreement must be independent and distinct from the main contract, be consistent with the provisions of the main contract, and be such an agreement as the parties could not reasonably be expected to embody in the main contract but would naturally make as a separate agreement. *Chertkof v. Spector Baltimore Terminal, Inc.,* 263 Md. 550, 284 A.2d 215 (1971). A stipulation in an executory contract for the *313 sale of land to limit the use of the land to be conveyed hardly fits this definition. *See Marron v. Scarbrough,* 44 Tenn.App. 414, 314 S.W.2d 165 (1958) (doctrine of merger applied where a written contract of sale did not reflect an oral agreement that for ten years the purchaser would not mine any gravel from the premises except for residential purposes and that if any gravel were

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removed the purchaser would fill and level holes and pits so that the property could be used for residential purposes); *Men About Town v. Budde,* 292 Ky. 394, 166 S.W.2d 305 (1942) (execution of a deed expressly stating that property could not be used for other than residential or agricultural purposes rendered unenforceable a prior representation that the restriction would not be enforced against a purchaser).

II.

The appellants next argue that a restriction limiting the use of First Federal's property to "professional office type commercial businesses" arose by implication.

[6] [7] [8] [9] "Generally speaking, a restrictive covenant may arise by implication from the language of the deeds, or from the conduct of the parties." 20 Am.Jur.2d *Covenants, Conditions, and Restrictions* § 173 at 732 (1965). For a reciprocal negative easement to arise by implication, the implication must be plain and unmistakable. *Edwards v. Surratt,* 228 S.C. 512, 90 S.E.2d 906 (1956). Our Supreme Court requires four elements to establish a reciprocal negative easement by implication. There must be: (1) a common grantor; (2) a designation of the land or tract subject to restrictions; (3) a general plan or scheme of restriction in existence for the designated land or tract; and (4) restrictive covenants that run with the land. *Bomar v. Echols,* 270 S.C. 676, 244 S.E.2d 308 (1978). In determining whether a reciprocal negative easement has been created, the court should consider the language found in the deeds and the surrounding circumstances. *Nance v. Waldrop,* 258 S.C. 69, 187 S.E.2d 226 (1972). All doubts regarding the creation of an implied reciprocal negative easement must be resolved in favor of the freedom of land from servitude. *Bomar v. Echols, supra.*

*314 [10] Here, no language in any of the seven deeds conveying the lots reflected on **305 the subdivision plat limits the use of the property to professional offices or businesses. In fact, the omission of such a restriction from each of the seven deeds tends to show either that no general scheme exists [*Pitts v. Brown,* 215 S.C. 122, 54 S.E.2d 538 (1949)] or that, if a general scheme did exist, the grantor abandoned it. *See* 20 Am.Jur.2d *Covenants, Conditions,* and *Restrictions* § 177 at 741 (1965) (omission of restrictions in some of the conveyances of lots in a subdivision being developed under a general scheme of restrictions may constitute an abandonment or waiver of the restrictions when considered in connection with other circumstances). Furthermore, this omission, particularly when coupled with the fact that not all of the agreements to convey seek to limit the use of the property to be conveyed, enforces the inference that the restriction represents a personal contract only. *Pitts v. Brown, supra.*

We recognize that a recorded plat of the 6.5 acre tract professes to be a "plat ... of Lexington Office Plaza" and shows a street named "Professional Avenue." But the plat shows no restrictions of any kind and the grantor, when conveying lots in reference to the plat, imposed no restrictions on any of them. Without more, simply giving names to a recorded plat and to a street shown thereon does not establish a general plan or scheme. *Cf. Summers v. Beeler,* 90 Md. 474, 45 A. 19 (1899) (a general plan or scheme was not shown where, among other things, the recorded plat from which lots were sold did not show any restrictions and no restrictions were imposed on some of the lots first sold).

We also recognize that the appellants developed their lots in conformity with a professional office or business restriction; however, a "reciprocal negative easement[ ] cannot arise and fasten upon one lot simply by reason of other lot owners conforming to a general plan." 20 Am.Jur.2d *Covenants, Conditions,* and *Restrictions* § 173 at 735 (1965).

Accordingly the judgment is,

AFFIRMED.

BELL and CURETON, JJ., concur.

All Citations

291 S.C. 307, 353 S.E.2d 300

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EXHIBIT L

ELECTRONICALLY FILED - 2018 Aug 25 10:27 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

The

381 S.C. 192
Supreme Court of South Carolina.

Dorothy WINDHAM, Respondent,
v.
Donald Allen RIDDLE and Jennifer D. Riddle, Petitioners.

No. 26586.

Heard Oct. 7, 2008.

Decided Jan. 20, 2009.

Synopsis

Background: Property owner sought a declaratory judgment and injunctive relief against neighbors, asserting that easement granted to seller of property in contract of sale and deed was an easement in gross, and that neighbors had no right to the easement. The trial court, Orangeburg County, Olin D. Burgdorf, Master-in-Equity, determined that neighbors had an appurtenant easement for irrigation purposes. Property owner appealed. The Court of Appeals, 370 S.C. 415, 635 S.E.2d 558, reversed.

Holdings: On certiorari review, the Supreme Court, Beatty, J., held that:

[1] contract of sale did not create easement, and

[2] deed did not create an appurtenant easement.

Affirmed.

West Headnotes (14)

[1] **Easements**
⇐Nature and Elements of Right

An "easement" is a right which one person has to use the land of another for a specific purpose, and gives no title to the land on which the servitude is imposed.

4 Cases that cite this headnote

[2] **Easements**
⇐Nature and Elements of Right

An easement is not an estate in lands in the usual sense.

Cases that cite this headnote

[3] **Easements**
⇐Exception or Reservation

An easement may be created by reservation in a deed.

Cases that cite this headnote

[4] **Deeds**
⇐Intention of Parties

In construing a deed, the intention of the grantor must be ascertained and effectuated, unless that intention contravenes some well settled rule of law or public policy.

4 Cases that cite this headnote

[5] **Deeds**
⇐Language of Instrument

In determining the grantor's intent, a deed must be construed as a whole and effect given to every part if it can be done consistently with the law.

3 Cases that cite this headnote

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[6] **Easements**
⇐Easements Appurtenant or in Gross

An "easement in gross" is a mere personal privilege to use the land of another; the privilege is incapable of transfer.

1 Cases that cite this headnote

[7] **Easements**
⇐Easements Appurtenant or in Gross

An "appurtenant easement" inheres in the land, concerns the premises, has one terminus on the land of the party claiming it, and is essentially necessary to the enjoyment thereof.

6 Cases that cite this headnote

[8] **Easements**
⇐Easements Appurtenant or in Gross

An appurtenant easement passes with the dominant estate upon conveyance.

3 Cases that cite this headnote

[9] **Easements**
⇐By Express Grant or Reservation

Where language in a plat reflecting an easement is capable of more than one construction, that construction which least restricts the property will be adopted.

4 Cases that cite this headnote

[10] **Easements**
⇐Express Grant

Installment contract for sale of property did not create an easement in favor of vendor who owned adjoining tract, since vendor retained legal title to both adjoining tract and sold property until purchaser paid off purchase price.

Cases that cite this headnote

[11] **Vendor and Purchaser**
⇐Effect of Executory Contract on Title to Property

Under an installment land contract, legal title to the subject property is not transferred to the buyer until the purchase price is satisfied.

Cases that cite this headnote

[12] **Easements**
⇐Ways

Deed conveying title to property did not create an appurtenant easement in favor of adjoining tract, since easement did not have a terminus on property owned by vendor; deed reserved easement to vendor, who had conveyed adjoining tract prior to conveying title to owner of purported servient estate.

Cases that cite this headnote

[13] **Easements**
⇐Easements Appurtenant or in Gross
Easements
⇐Express Grant

The inherent nature of an installment land contract, an unrecorded document, precludes the creation of an appurtenant easement at the point the contract is entered into by the parties; with

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an installment land contract, the seller retains legal title until the purchase price is fully paid, and thus, an installment land contract is not tantamount to a conveyance.

Cases that cite this headnote

[14] **Deeds**
⇐Nature and Requisites of Conveyance in General
Vendor and Purchaser
⇐Effect of Executory Contract on Title to Property

Two-part procedure of an installment land contract, requiring not only a contract of sale but also a deed to convey ownership to the property after the purchase price has been satisfied, serves a legitimate purpose for all parties involved in installment land contracts.

Cases that cite this headnote

Attorneys and Law Firms

**579 Pete Kulmala, of Harvey & Kulmala, of Barnwell, for Petitioners.

Clinch H. Belser, Jr. and Michael J. Polk, of Belser & Belser PA, of Columbia, for Respondent.

Opinion

Justice BEATTY:

*195 In this declaratory judgment action brought by Dorothy Windham, the master-in-equity found Donald and Jennifer Riddle (the Riddles) have an appurtenant easement for access and irrigation purposes across Windham's property. The Court of Appeals reversed the master-in-equity's holding. *Windham v. Riddle,* 370 S.C. 415, 635 S.E.2d 558 (Ct.App.2006). This Court granted the Riddles' petition for a writ of certiorari to review the Court of Appeals' decision. We affirm.

FACTUAL/PROCEDURAL HISTORY

The Riddles and Windham are adjacent property owners in Orangeburg County. Both parties purchased their property from a common grantor, Danny Covington. Covington purchased the combined property in 1991 from Edisto Farm Credit. Marvin Davis, the previous owner, had used the property as a dairy farm. In 1992, Covington had the property surveyed and divided into two tracts, 1–A and 1–B.

On November 15, 1992, Covington and Windham entered into a contract of sale for the approximately 142.38 acre tract 1–B (the **580 Windham tract). Pursuant to the terms of the contract, Windham agreed to purchase the tract in monthly installments over a ten-year period but was allowed to pre-pay the balance without penalty. During the period of these payments, Windham was allowed full possession and occupancy of the property. After Windham satisfied the purchase price, Covington agreed to deliver "good and marketable title" to Windham. In addition to these terms, the contract provided in part:

> Seller to have a 50' easement of ingress and egress for the purpose of operating and maintaining an irrigation system. [S]aid easement to be centered over existing underground piping. Seller agrees not to pump pond lower than 4' below *196 full stage. Existing overhead utilities easement to remain as is. When possible seller to run system at times convenient to buyer. Buyer not restricting use more than 36 hours at a given time. Seller to have all rights to use waters in pond. Seller and buyer mutually agree to use pond dam and canal as an easement. [S]eller providing buyer 25' easement for ingress and egress to canal through existing woods road.

After entering into the contract of sale, Windham and her family used the tract as a family retreat, and they visited every other weekend. Covington continued to farm on tract 1–A.

In June of 1993, Covington leased a portion of the 257.49 acre tract 1–A (the Riddle tract) to the Riddles, who

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began using the land to operate a dairy farm. In the spring of 1994, Covington and the Riddles installed an aboveground irrigation system over the existing underground piping on the Windham tract. The pumping station for the irrigation system is located on the pond that Windham owns and transports water to the Riddle tract. Access to the pump is controlled by a locked gate on the Windham tract.

On November 17, 1997, Covington conveyed tract 1–A in its entirety to the Riddles. The deed provided in pertinent part:

> Said conveyance is subject to a 30–foot easement, a 50–foot irrigation easement, a 25–foot access easement along existing woods road and a canal, all as set forth and shown on the above-referenced plat.

On December 15, 1998, pursuant to the installment contract, Covington deeded the tract to Windham after she paid off the purchase price. The deed stated in relevant part:

> Said conveyance is subject to a (fifty) 50 foot easement of ingress and egress for the purpose of operating and maintaining an irrigation system and an agreement as to the use of said irrigation easement and irrigation system as set forth in that certain Contract of Sale by and between Danny Covington a/k/a J. Danny Covington, as Seller and Dorothy Windham, as Buyer dated November 15, 1992 and recorded in the office the Register of Deeds for Orangeburg County on December 28, 1992....

*197 Although Windham initially allowed the Riddles to use the pond for irrigation purposes, she brought an action for declaratory judgment and injunctive relief against the Riddles on November 12, 2003, claiming the Riddles exceeded the use of the easement as contemplated by Covington and Windham in the contract of sale. In her Complaint, Windham specifically alleged the Riddles: allowed their livestock to roam on Windham's property; destroyed Windham's fences, gates, and security devices; operated the irrigation system for excessive periods of time which created a nuisance; obtained waters from Windham's property without any legal right; and allowed third parties access to the Windham property for "unauthorized purposes." As the basis for her action, Windham asserted the easement created in the contract of sale and resulting deed was an easement in gross and, thus, the Riddles had no right to this easement. In response, the Riddles asserted Windham was estopped from denying the validity of the easement. The Riddles also claimed the easement was appurtenant to the Riddle tract.

After a trial, the master-in-equity found that the contract of sale between Windham and Covington, in conjunction with the Windham and Riddle deeds, established "various easements for the purpose of irrigating Tract 1–A, the Riddle property." The master further **581 held the easements were appurtenant to the Riddle tract and, therefore, passed to the Riddles when Covington conveyed the land to them. Additionally, the master concluded that Windham could not maintain an action for trespass because the Riddles, the owners of the dominant estate, did not abuse or exceed the limits of the easements. Ultimately, the master dismissed Windham's Complaint with prejudice and ordered that the "irrigation easements are appurtenant to the real estate subject to this action and exist as set forth on the recorded plats."

Subsequently, the master denied Windham's motion to alter or amend the judgment. Windham then appealed the master's decision to the Court of Appeals.

In a divided opinion, the Court of Appeals reversed the decision of the master-in-equity. *Windham v. Riddle,* 370 S.C. 415, 635 S.E.2d 558 (Ct.App.2006). The majority found the master erred by concluding that the easement at issue was *198 appurtenant rather than in gross. Prefacing its analysis with a general discussion of the differences between an appurtenant easement and an easement in gross, the majority focused on the installment land contract that was the subject of the dispute. Citing this Court's opinion in *Lewis v. Premium Investment Corporation,* the majority noted that typically in this type of contract, "the seller retains legal title until the purchase price has been fully paid, and the purchaser is entitled to immediate possession." *Id.* at 419, 635 S.E.2d at 560; *see Lewis v. Premium Inv. Corp.,* 351 S.C. 167, 170–73, 568 S.E.2d 361, 363–64 (2002) (stating that in an installment land contract, the seller retains legal title until the purchase price is fully paid and that the vendee in possession of the land is the owner of an equitable interest in the property).

Relying on the long-standing common law rule that an easement cannot exist where both the purported servient

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and dominant estates are owned by the same person, the majority found that an easement could not have been created by the 1992 contract of sale. *Id.* at 419, 635 S.E.2d at 560 (citing *Haselden v. Schein,* 167 S.C. 534, 539, 166 S.E. 634, 635 (1932)). Specifically, the majority stated, "[a]s Covington retained legal title to the Windham tract and also held title to the Riddle tract, no easement could have been created by the Windham contract of sale in 1992." *Windham,* 370 S.C. at 419, 635 S.E.2d at 560.

The majority further relied on its earlier decision in *Springob v. Farrar,* 334 S.C. 585, 514 S.E.2d 135 (Ct.App.1999). In *Springob,* Dr. Shenoy owned Lot 14, and his wife owned adjoining Lot 13, where the Shenoys' home was located. The Shenoys built a well on Lot 14 and attached it to an irrigation system serving Lot 13. In 1986, Dr. Shenoy sold Lot 14 to L.G.B., Inc. The deed from Dr. Shenoy "reserved to the Grantor" an easement on Lot 13 for use of the well on Lot 14. A house was built on Lot 14 and eventually the Farrars bought the property in 1988. The deed to the Farrars stated "this conveyance is subject to all easements, rights, reservations, restrictions, and covenants of record affecting said property." *Id.* at 587, 514 S.E.2d at 137. The Farrars' closing attorney informed them of the easement to the well located on their property. In 1989, Mrs. Shenoy sold Lot 13 to Kenneth Perry, and the South Carolina Federal Savings Bank obtained ***199** title to the lot through foreclosure. While Lot 13 was vacant, the Farrars disconnected the well on their property from the Lot 13 irrigation system and connected it to their own system serving Lot 14.

In 1993, Springob purchased Lot 13 unaware of the easement on Lot 14. After discovering the well on Lot 14, Springob demanded use of the well, but the Farrars refused. Springob brought an action for trespass and intentional interference with and obstruction of an easement. He also sought an injunction prohibiting the Farrars from further interfering with the easement. The Farrars answered, asserting the easement was personal to Dr. Shenoy and, therefore, was an easement in gross. The Court of Appeals agreed with the Farrars, finding the easement was in gross rather than appurtenant. In so holding, the Court of Appeals stated:

> In this case, L.G.B. Deed reserved an easement in favor of "the Grantor." The grantor of the L.G.B. Deed was Dr. Shenoy, the sole owner of Lot 14. Because ****582** the easement was reserved for Dr. Shenoy only, and Dr. Shenoy did not own Lot 13, the lot benefited by the easement, the requirement that an appurtenant easement have "one terminus on the land of the party claiming it" is not satisfied.

Id. at 589, 514 S.E.2d at 137–38.

Because the Windham deed referred to the language of the contract of sale, which reserved an easement in favor of "Seller" only, and Covington no longer owned the Riddle tract at the time he deeded the Windham tract, the majority further found an appurtenant easement was not created for the benefit of the Riddles as in *Springob. Windham,* 370 S.C. at 419–20, 635 S.E.2d at 560–61.

In contrast, the dissent found that an appurtenant easement was established in the contract for the sale of the land from Covington to Windham. *Id.* at 421–22, 635 S.E.2d at 561. In reaching this conclusion, the dissent focused on when the easement was created and distinguished the instant case from *Haselden* and *Springob.* The dissent believed that the contract of sale between Windham and Covington, rather than the deed, was "the instrument that established the legal relationship between the parties" and was "the functional equivalent ***200** of a conveyance coupled with a method of financing." *Id.* at 422, 635 S.E.2d at 561.

Although the dissent believed that "no discussion of the requirement that an appurtenant easement have one terminus on the land of the party claiming" was necessary, the dissent felt compelled to distinguish *Springob* because the majority heavily relied on that decision. *Id.* at 423, 635 S.E.2d at 562.

In distinguishing that case, the dissent noted that in *Springob,* the person who reserved the easement never owned the purported dominant estate, only owning at one time the servient estate. In contrast, Covington "unquestionably owned the dominant estate at the time the contract was entered into." *Id.* at 423, 635 S.E.2d at 562. Secondly, the dissent did not find dispositive the fact that the Riddle deed did not create an appurtenant easement. The dissent reasoned that "there is no necessity to expressly mention an easement appurtenant when conveying the dominant estate." *Id.* Because "all the elements necessary for the creation of an easement appurtenant were in existence at the time the contract was entered into between Covington and Windham," the dissent concluded that the later conveyance of " 'bare legal title' was a required fulfillment of the contractual terms already set in stone." *Id.* at 423–24, 635 S.E.2d at 562.

The Riddles petitioned for and were granted a writ of certiorari for this Court to review the decision of the Court of Appeals.

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DISCUSSION

The Riddles assert the Court of Appeals erred in holding that the easement created through the sales of two parcels by Covington, a common grantor, was an easement in gross rather than an appurtenant easement. Relying primarily on the dissent, the Riddles claim that under the majority's analysis "the nature of this transaction [an installment land contract] erects an insurmountable obstacle to the easement's being recognized as appurtenant." Although the Riddles do not dispute that Covington retained "title ownership" of the servient estate after the 1992 sale to Windham, they contend the sales contract conveyed to Windham the most significant rights in the property. Thus, the Riddles' right of access "was *201 described and reserved in the 1992 sales agreement." As will be discussed, we agree with the majority opinion in the Court of Appeals' decision and specifically reject the reasoning in the dissenting opinion.

[1] [2] [3] "An easement is a right which one person has to use the land of another for a specific purpose, and gives no title to the land on which the servitude is imposed." *Douglas v. Med. Investors, Inc.*, 256 S.C. 440, 445, 182 S.E.2d 720, 722 (1971) (citations omitted). "An easement is therefore not an estate in lands in the usual sense." *Id.* An easement may be created by reservation in a deed. *Sandy Island Corp. v. Ragsdale,* 246 S.C. 414, 419, 143 S.E.2d 803, 806 (1965).

[4] [5] In construing a deed, "the intention of the grantor must be ascertained and effectuated, unless that intention contravenes some well settled rule of law or public policy." **583 *Wayburn v. Smith,* 270 S.C. 38, 41–42, 239 S.E.2d 890, 892 (1977). "In determining the grantor's intent, the deed must be construed as a whole and effect given to every part if it can be done consistently with the law." *Gardner v. Mozingo,* 293 S.C. 23, 25, 358 S.E.2d 390, 391–92 (1987). "The intention of the grantor must be found within the four corners of the deed." *Id.*

[6] [7] [8] [9] In *Tupper v. Dorchester County,* this Court distinguished between the types of easements, stating:

> The character of an express easement is determined by the nature of the right and the intention of the parties creating it. 25 Am.Jur.2d *Easements and Licenses* § 13 (1966). An easement in gross is a mere personal privilege to use the land of another; the privilege is incapable of transfer. *Sandy Island Corp. v. Ragsdale,* 246 S.C. 414, 143 S.E.2d 803 (1965). In contrast, an appurtenant easement inheres in the land, concerns the premises, has one terminus on the land of the party claiming it, and is essentially necessary to the enjoyment thereof. *Id.; Smith v. Commissioners,* 312 S.C. 460, 441 S.E.2d 331 (Ct.App.1994); *Carolina Land Company, Inc. v. Bland,* 265 S.C. 98, 217 S.E.2d 16 (1975); *Sandy Island Corp. v. Ragsdale,* supra; 12 S.C. Juris. *Easements* § 3. It also passes with the dominant estate upon conveyance. *Carolina Land Co., Inc. v. Bland,* supra. Unless an easement has all the elements *202 necessary to be an appurtenant easement, it will be characterized as a mere easement in gross. 12 S.C. Juris. *Easements* § 3(c). Where language in a plat reflecting an easement is capable of more than one construction, that construction which least restricts the property will be adopted. *Hamilton v. CCM, Inc.,* 274 S.C. 152, 263 S.E.2d 378 (1980).

Tupper v. Dorchester County, 326 S.C. 318, 325–26, 487 S.E.2d 187, 191 (1997).

[10] [11] Applying the foregoing to the facts of the instant case, we agree with the Court of Appeals' majority opinion. Under an installment land contract, legal title to the subject property is not transferred to the buyer until the purchase price is satisfied. *Lewis,* 351 S.C. at 170–73, 568 S.E.2d at 363–64. Therefore, pursuant to the Windham sales contract, Covington retained legal title to the Windham tract until 1998, when Windham paid off the purchase price. The 1998 Windham deed stated that it was subject to the easement in favor of Covington, the seller, as set forth in the 1992 sales contract. Because Covington retained legal title to both the Windham tract and the Riddle tract in 1992, an easement could not have been created by the 1992 installment land contract. *Haselden,* 167 S.C. at 539, 166 S.E. at 635.

[12] Furthermore, we agree with the Court of Appeals that the 1998 Riddle deed did not create an appurtenant easement. Before Covington conveyed legal title to Windham in 1998, he sold tract 1–A to the Riddles in 1997. Given that the Windham deed reserved the easement to Covington and he sold the dominant estate to the Riddles in 1997, the "terminus" requirement for an

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appurtenant easement was not met similar to the conveyance in *Springob*. *See Shia v. Pendergrass,* 222 S.C. 342, 351, 72 S.E.2d 699, 703 (1952) (noting the absence of a terminus on property is fatal to claim of an appurtenant easement).

In reaching this conclusion, we have carefully considered the dissenting opinion in the Court of Appeals' decision.[1] For *203 several reasons, **584 we believe that an adoption of that approach would create unforeseeable ramifications in this state's current property jurisprudence.

[13] [14] First, the inherent nature of an installment land contract, an unrecorded document, precludes the creation of an appurtenant easement at the point the contract is entered into by the parties. With an installment land contract, the seller retains legal title until the purchase price is fully paid. Thus, an installment land contract is not, as asserted by the Riddles, tantamount to a conveyance. If an appurtenant easement were created at the point the contract was entered into, problems would arise if the buyer defaulted before legal title was conveyed by a deed. The question would then become whether the easement would be extinguished when the buyer defaulted or if it transferred to the next buyer. Accordingly, we find it is essential to retain the two-part procedure of an installment land contract which requires not only a contract of sale but also a deed to convey ownership to *204 the property after the purchase price has been satisfied. Unlike the Riddles, we do not view these requirements as "technical," but rather, find they serve a legitimate purpose for all parties involved in installment land contracts. Therefore, we reject the Riddles' contention that an appurtenant easement may be created simply by entering into an installment land contract.

Secondly, we believe this radical approach to appurtenant easements is based more on efficiency than legal analysis. *See* John E. Lansche, Jr., *Ancient, Antiquated, & Archaic: South Carolina Fails to Embrace the Rule that a Grantor May Reserve and Easement in Favor of a Third Party,* 52 S.C. L.Rev. 269, 285 (2000) ("By overruling the common law, states like California and Kentucky made it easier for potential buyers conducting a title search to find encumbrances on a specific tract of land. Under the common-law rule, if a grantor wanted to reserve an easement in favor of a third party the grantor had to execute a deed of easement to that third person. Next, the grantor had to execute a deed to the grantee."). Although the common law approach may require additional steps in creating an easement in favor of a third party, it is not a task that is insurmountable. Therefore, we decline to overrule settled property law.

Finally, even though this decision may appear to be inequitable, we note the Riddles are not without other irrigation options given their property borders the Little River.[2] Thus, it is questionable whether an appurtenant easement is essentially necessary to the enjoyment of the property. *See Kershaw v. Burns,* 91 S.C. 129, 133, 74 S.E. 378, 379 (1912) ("The principle is well settled that a right of way appurtenant cannot be granted, unless it is essentially necessary to the enjoyment of the land to which it appertains."); *Ballington v. Paxton,* 327 S.C. 372, 380, 488 S.E.2d 882, 887 (Ct.App.1997) ("An appendant or appurtenant easement must inhere in the land, concern the premises, have one terminus on the land of the party claiming it, and be essentially necessary to the enjoyment thereof.").

*205 CONCLUSION

Based on the foregoing, we hold the Court of Appeals correctly found the Riddles do not have an appurtenant easement for access and irrigation purposes across Windham's property. **585 Accordingly, the decision of the Court of Appeals is

AFFIRMED.

TOAL, C.J., WALLER and KITTREDGE, JJ., concur.

PLEICONES, J., concurring in result only.

All Citations

381 S.C. 192, 672 S.E.2d 578

Footnotes

1 We have also reviewed the dissent in *Springob* and several secondary sources which have advocated for this Court to overrule the common law requirements for appurtenant easements. These authors have characterized the current easement law of South Carolina to be "academic" and "archaic." According to these authors, the trend among other

jurisdictions is to overrule the common law which would favor effectuating a grantor's intent to create an interest, *i.e.*, an easement, to a third party. *See Springob,* 334 S.C. at 595–99, 514 S.E.2d at 141–43 (Anderson, J., dissenting) (outlining cases from other jurisdictions where the appellate courts rejected the common law rule that one cannot reserve an easement to a stranger to the title); John E. Lansche, Jr., *Ancient, Antiquated, & Archaic: South Carolina Fails to Embrace the Rule that a Grantor May Reserve an Easement in Favor of a Third Party,* 52 S.C. L.Rev. 269 (2000) (addressing current easement law in South Carolina and advocating a change in the "ancient-common-law" principles); Michael A. Carbone, *The Unity of Title Doctrine and Strangers to the Title: A Slowly Dying Remnant of Ancient Common Law?,* 21 QLR 597, 599–600 n. 31 (2002) (citing *Springob* for "unity of title doctrine" (UTD) as representative of the majority rule and stating "[t]he general common law rule, though worded differently [than UTD], is that in a deed, neither a reservation nor an exception in favor of a stranger to the instrument can, by force of ordinary words of exception or reservation, create in the stranger any title, right, or interest in or respecting the land conveyed"); *see also* W.W. Allen, Annotation, *Reservation or Exception in Deed in Favor of Stranger,* 88 A.L.R.2d 1199 (1963 & Supp.2008) (discussing "[t]he broad rule grounded in the precedents and technicalities of common law, and which still generally prevails, is that in a deed neither a reservation nor an exception in favor of a stranger to the instrument can, by force of ordinary words of exception or reservation, create in the stranger any title, right, or interest in or respecting the land conveyed").

2 On cross-examination, Covington acknowledged that the Riddles' property fronts the Little River, which is the same river from which they get the water for the irrigation system.

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265 S.C. 98
Supreme Court of South Carolina.

CAROLINA LAND COMPANY, INC., et al.,
Respondents,
v.
Dr. Maynard W. BLAND and Myra D. Bland,
Appellants.

No. 20049.
|
July 1, 1975.

Synopsis
Landowners brought an action to prevent adjoining landowners from making use of a claimed street easement. The Court of Common Pleas, Greenville County, Francis B. Nicholson, J., adopted the report of a referee finding that no easement existed. On appeal, the Supreme Court, Moss, C.J., held that the easement existed and had not been abandoned.

Reversed and remanded.

West Headnotes (18)

[1] **Appeal and Error**
⇐Sufficiency of evidence

In actions in equity, findings of fact by a master, concurred in by circuit judge, are not to be disturbed on appeal unless it is shown that such findings are without evidentiary support or against clear preponderance of evidence.

Cases that cite this headnote

[2] **Deeds**
⇐Reference to surveys, maps, and plats, and records thereto

Where deed describes land as it is shown on a certain plat, such plat becomes part of the deed.

7 Cases that cite this headnote

[3] **Dedication**
⇐Sale of lands with reference to map, plat, or survey

When owner of land has it subdivided and platted into lots and streets and sells and conveys lots with reference to plat, he thereby dedicates the streets to use of such lot owners, their successors in title and the public.

5 Cases that cite this headnote

[4] **Easements**
⇐Severance of ownership of dominant and servient tenements

Purchaser of lots with reference to plat of subdivision acquires every easement, privilege and advantage shown upon the plat, including right to use of all streets, near or remote, as laid down on plat by which lots were purchased.

3 Cases that cite this headnote

[5] **Dedication**
⇐Necessity

As between landowner, who has conveyed lots according to plat, and his grantee or grantees, dedication of street is complete when conveyance is made, even though street is not accepted by public authorities.

3 Cases that cite this headnote

[6] **Easements**
⇐Severance of ownership of dominant and

servient tenements

Where property sold is described in conveyance with reference to plat or map on which streets, alleys, parks and other open areas are shown, easement therein is created in favor of grantee; such easement is deemed part of property to which grantee is entitled and of which he cannot be divested except by due process of law.

7 Cases that cite this headnote

[7] **Easements**
⇐Extent of way

Where deed which describes land as bounded by a way indicates that way extends beyond land conveyed, or there has been some other indication of extent of way, grantee acquires right to way, not merely in front of his property, but also to full extent of way as indicated.

1 Cases that cite this headnote

[8] **Easements**
⇐Extent of way

Where landowner subdivided and platted portion of his property into lots and streets and sold and conveyed lots with reference to plat, purchasers and those claiming under them acquired appurtenant easement in 30-foot street as delineated on plat.

6 Cases that cite this headnote

[9] **Easements**
⇐Easements Appurtenant or in Gross

Appurtenant easement inheres in land to which it is appurtenant, is essentially necessary to its enjoyment and passes with dominant estate, although conveyance of dominant easement does not expressly mention it.

4 Cases that cite this headnote

[10] **Easements**
⇐Transfer of right

Upon transfer of part of dominant tenement having appurtenant thereto an easement over a servient tenement, new owner of transferred part of dominant tenement acquires easement over servient tenement.

Cases that cite this headnote

[11] **Easements**
⇐Transfer of right

Where street easement was created by platting and subdivision of tract of land, later resubdivision of that dominant tenement did not destroy right of purchaser of lot under original plat to claim easement so far as easement was applicable to their property.

1 Cases that cite this headnote

[12] **Vendor and Purchaser**
⇐Facts of which record is notice

Law imputes to purchaser who proposes to acquire title to real estate notice of recitals contained in any properly recorded instrument in writing which forms link in chain of title to property proposed to be acquired.

8 Cases that cite this headnote

[13] **Easements**
⇐Continuous and apparent easements, and

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notice

Landowner was charged with constructive notice of appurtenant easement for road purposes which was reflected in subdivision plat recorded by predecessor in title.

4 Cases that cite this headnote

[14] **Easements**
⇐Abandonment or Nonuser

Easement may be lost by abandonment.

2 Cases that cite this headnote

[15] **Easements**
⇐Abandonment or Nonuser

In determining whether easement has been lost by abandonment, intention of owner to abandon is primary inquiry.

5 Cases that cite this headnote

[16] **Easements**
⇐Abandonment or Nonuser

Intention of owner to abandon easements may be inferred from acts and conduct of owner and nature and situation of property, where there appears some clear and unmistakable affirmative act or series of acts clearly indicating, either present intent to relinquish easement or purpose inconsistent with its further existence.

9 Cases that cite this headnote

[17] **Easements**
⇐Easements created by grant or reservation

Mere nonuse of easement created by deed for period however long will not amount to abandonment, but there must be other acts by owner of dominant estate conclusively manifesting either present intention to release easement or purpose inconsistent with its further existence.

2 Cases that cite this headnote

[18] **Easements**
⇐Weight and sufficiency

Evidence was insufficient to show that owners of dominant estate abandoned road easement created by subdivision plat.

Cases that cite this headnote

Attorneys and Law Firms

**17 *100 Younts, Reese & Cofield, Greenville, for appellants.

Leatherwood, Walker, Todd & Mann, Greenville, for respondents.

Opinion

*101 MOSS, Chief Justice:

It is admitted that on June 8, 1929, J. L. Locke, the predecessor in title of all of the parties to this action, acquired title to a tract of land lying on both sides of Laurens Road, now U.S. Highway 276, in the City of Mauldin, S.C.

J. L. Locke, in October, 1945, had a survey made showing the property on the westerly side of Laurens Road divided into a tract of 45.62 acres; 36 numbered lots; and a 30 foot street running between the tract and the numbered lots, a distance of 2,465.7 feet. This plat was recorded on December 13, 1951, in the R.M.C. Office for Greenville

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County, South Carolina, in Plat Book AA, Page 164.

J. L. Locke, by deed dated December 4, 1951, and recorded December 13, 1951, in the R.M.C. Office for Greenville County, conveyed to Blake P. Garrett lots 1, 2, 35 and 36, in the subdivision of the property of J. L. Locke, according to a survey and plat made by Dalton & Neves, October, 1945, and of record in the R.M.C. Office for Greenville County in Plat Book AA, Page 164. Thereafter, Blake P. Garrett conveyed a one-half interest to W. B. Parsons in the four lots above described. On February 14, 1956, a re-survey of the original four lots was made and they were cut into lots 1—8, as shown on plat of property *102 of Blake P. Garrett and W. B. Parsons, which plat was recorded May 7, 1962, in Plat Book WW, Page 267, R.M.C. Office for Greenville County. The re-survey shows lot number 7 **18 at the corner of U.S. Highway 276 and the '30 foot street', and lot number 8 abutting the rear of lot number 7 and fronting solely on the 30 foot street. Lots 7 and 8 were thereafter conveyed to Clarence O. Kittelsen by separate deeds, both of which were recorded May 7, 1962, in the R.M.C. Office for Greenville County. Dr. Maynard W. Bland and Myra D. Bland, the appellants herein, obtained title to lots 7 and 8 by deed recorded March 7, 1969, R.M.C. Office for Greenville County, which referred to the Garrett-Parsons plat, Plat Book WW, Page 267. The metes and bounds description in this deed made specific reference to the '30-foot street.' Also in this deed appeared the following: 'This conveyance is made subject to any right-of-way, or easements that may appear of record on the recorded plat(s) or on the premises.' These appellants have been in continuous possession of lots 7 and 8 from March 7, 1969, up until the time of this action.

It appears that after the death of J. L. Locke, a plat was prepared by Dalton & Neves in June, 1960, showing a tract of 70.68 acres of undeveloped land. The four lots sold to Blake P. Garrett are represented by a trapezoid shown on the southeastern corner of the plat with the notation 'sold.' By deed dated April 1, 1966, recorded in Deed Book 795, Page 461, R.M.C. Office for Greenville County, South Carolina, Carolina Land Company, Inc., acquired title to the tract of land described on the aforesaid plat. The property description in said deed included the area covered by the '30 foot street,' as shown on the J. L. Locke plat which is of record in Plat Book AA, Page 164, R.M.C. Office for Greenville County.

Carolina Land Company, Inc. proceeded to develop a portion of the land so acquired under the name of Knollwood Heights. Lot number 69, the subject of this action, is shown *103 on an addition to Section 3 of Knollwood Heights in Plat Book WWW, Page 6, R.M.C. Office for Greenville County. This lot fronts on Devon Drive and is separated at the rear from lot number 8 of the appellants by a 20 foot alley way. The distance from the 20 foot alley way across lot number 69 to Devon Drive is 164.8 feet. The 30 foot street as shown on the 1945 Locke Plat, hereinabove referred to, extends through what is now lot number 69 to Devon Drive.

In July, 1973, the appellants graded and graveled, in preparation for asphalting, a 30 foot street through lot number 69 to Devon Drive, within the bounds of the 30 foot street delineated on the 1945 Locke Plat.

Carolina Land Company, Inc., hereinafter referred to as Carolina, along with the owners of the three lots immediately across Devon Drive from lot number 69, the respondents herein, brought this action seeking to permanently enjoin the appellants from trespassing on the property of Carolina, or claiming any right, title or interest in lot number 69 of Section 3 of Knollwood Heights, and to require them to remove the gravel and restore said lot to its condition prior to the alleged trespass. The appellants admitted that they had graded and opened a 30 foot street across lot number 69, asserting their right so to do as owners of lots 7 and 8, entitling them to the use of the 30 foot street shown on the 1945 Locke Plat. They asked that the respondents be enjoined from interfering with their right to open and use said street. It should be noted that the appellants expressly limited their right to so much of the 30 foot street as crossed lot number 69 to Devon Drive.

This case was referred to the Master in Equity for Greenville County for the purpose of taking the testimony and reporting his findings of fact and conclusions of law. The Master, in obedience to such order, filed his Report on May 1, 1974, holding that the appellants had no right, title or interest in lot number 69 of the addition to Section 3 of *104 Knollwood Heights. He further concluded that Carolina Land Company, Inc. was the owner in fee simple of lot number 69 of Section 3 of Knollwood Heights and that the appellants should be permanently enjoined from trespassing upon such lot or claiming any right, title or interest therein.

**19 The basis of the Master's finding was that the proposed '30 foot street' was never opened or used and was abandoned by the only persons in interest by their actions and specifically the acts of the recutting and resubdividing by Garrett and Parsons, and the development by Carolina Land Company, Inc., of Knollwood Heights. He further held that the recutting and resubdivision by Garrett and Parsons and the subsequent conveyance by them with reference to this plat destroyed the earlier division and designation of lots shown on the 1945 Locke Plat. The Master also relied on the fact that

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Carolina Land Company, Inc. acquired title, on April 1, 1966, from the J. L. Locke estate of all of the unsold and undeveloped land according to an unrecorded plat of survey thereof made in June, 1960, and found that since there was no indication on such plat of the 30 foot street as outlined in the original 1945 Locke Plat, such constituted Record notice of the abandonment of the street through Knollwood Heights. The Master further found that the plat by which the appellants obtained title did not show the street extending from their property to Devon Drive. (Emphasis ours.)

The appellants duly excepted to the Master's findings of fact and conclusions of law. These exceptions were argued before the Honorable Francis B. Nicholson, Presiding Judge, who, by his order, overruled such and affirmed the Master's Report. It is from this order that the appellants prosecute this appeal.

The respondents, by their complaint, demand that the appellants be enjoined from trespassing upon the property of Carolina Land Company, Inc. or claiming any right, title, interest or estate in said property. This sets forth an ***105** action for equitable relief by way of injunction. Bramlett v. Young, 229 S.C. 519, 93 S.E.2d 873.

[1] We consider the questions raised by the appellants in the light of the well established rule tht in actions in equity, findings of fact by a Master, concurred in by the circuit judge, are not to be disturbed on appeal unless it is shown that such findings are without evidentiary support or against the clear preponderance of the evidence. Bishop v. Tolbert, 249 S.C. 289, 153 S.E.2d 912.

It is uncontroverted that the predecessors in title of the appellants were conveyed lots 1, 2, 35 and 36 as shown on the 1945 recorded Locke plat, on which is delineated a '30 foot street,' running along side of lot 36 and extending into other Locke property a distance of 2,465.7 feet. It is the position of the appellants that, being owners of lots 7 and 8 as shown on the Garrett-Parsons plat, hereinabove referred to, said lots being carved out of lot numbers 35 and 36 as shown on the 1945 Locke plat, hereinabove referred to, they are entitled to an easement in the 30 foot street shown on the plats because their lots abut thereon.

[2] [3] [4] [5] We have held that where a deed describes land as is shown as a certain plat, such becomes a part of the deed. It is generally held that when the owner of land has it subdivided and platted into lots and streets and sells and conveys lots with reference to the plat, he thereby dedicates said streets to the use of such lot owners, their successors in title and the public. Blue Ridge Realty Co. v. Williamson, 247 S.C. 112, 145 S.E.2d 922. We also held in the cited case that the purchaser of lots with reference to the plat of the subdivision acquired every easement, privilege and advantage shown upon said plat, including the right to the use of all the streets, near or remote, as laid down on the plat by which the lots were purchased. We also held as between the owner, who has conveyed lots according to a plat, and his grantee or grantees, ***106** the dedication is complete when the conveyance is made, even though the street is not accepted by the public authorities.

[6] From Epps v. Freeman, 261 S.C. 375, 200 S.E.2d 235, we quote the following pertinent language from 25 Am.Jur.2d Easements and Licenses, Section 26, p. 438.

> ****20 'Generally, where property sold is described in the conveyance with reference to a plat or map on which streets, alleys, parks, and other open areas are shown, an easement therein is created in favor of the grantee. Such an easement is deemed a part of the property to which the grantee is entitled and of which he cannot be divested except by due process of law.'

[7] Generally, where a deed which describes land as bounded by a way indicates that the way extends beyond the land conveyed, or there has been some other indication of the extent of the way, the grantee acquires a right to the way, not merely in front of his property, but also to the full extent of the way as indicated. 25 Am.Jur.2d Easements and Licenses, Section 25, p. 438.

[8] [9] When J. L. Locke subdivided and platted a portion of his property into lots and streets and sold and conveyed lots with reference to the plat, the purchasers and those claiming under them acquired an appurtenant easement in the 30 foot street as delineated on the plat. An appurtenant easement inheres in the land to which it is appurtenant, is essentially necessary to its enjoyment and passes with the dominant estate, although the conveyance of the dominant estate does not expressly mention it. Sandy Island Corp. v. Ragsdale, 246 S.C. 414, 143 S.E.2d 803, and Richards v. Trezvant, 185 S.C. 489, 194 S.E. 326.

As is heretofore stated, the Master held that the recutting and resubdivision by Garrett and Parsons and the subsequent ***107** conveyance by them with reference to this plat destroyed the earlier division and designation of lots shown on the 1945 Locke plat. We do not agree with this conclusion.

[10] [11] It has been held that upon transfer of a part of a

dominant tenement having appurtenant thereto an easement over a servient tenement, the new owner of the transferred part of the dominant tenement acquires the easement over the servient tenement. For the cases so holding, see 10 A.L.R.3d at page 960. It follows that even though there has been a resubbdivision of the dominant tenement, this did not destroy the right of the appellants to claim the easement so far as it is applicable to their property. The fact that a new plat of the property in question was made did not destroy the easement created on the 1945 Locke plat.

[12] Carolina Land Company, Inc. had constructive notice of the appellants' easement based upon the recorded instruments in its chain of title. The law imputes to a purchaser who proposes to acquire title to real estate notice of the recitals contained in any properly recorded instrument of writing which forms a link in a chain of title to the property proposed to be acquired. Moyle v. Campbell, 126 S.C. 180, 119 S.E. 186, and National Bank of Newberry v. Livingston, 155 S.C. 264, 152 S.E. 410.

The 1945 Locke plat, which was of record, shows a subdivision of 36 lots which, with the exception of lots 1, 2, 35 and 36, was included as part of a tract subsequently conveyed to Carolina Land Company, Inc. by the J. L. Locke estate. This plat was thus a link in the chain of title to the property so acquired and gave constructive notice of the appurtenant easement in question.

The president of Carolina Land Company, Inc. testified that, prior to the purchase of the property from the Locke estate, he had the title thereto examined. A proper search *108 of the records would have revealed the 1951 deed from J. L. Locke to Garrett and the recorded plat referred to therein. It shows a '30 foot street' running a distance of 2,465.7 feet through the tract subsequently conveyed by the Locke estate to Carolina Land Company, Inc. He also testified that every lot in the addition to Section 3 of Knollwood Heights had been sold except lot number 69, across which the '30 foot street' extended and upon which the appellants allegedly trespassed.

The record here contains the testimony of the owners of lots 68 and 70, which were **21 separated by lot 69. These two owners were called as witnesses and testified that there was a noticeable roadbed crossing lot number 69, paralleled on each side by a small depression or drainage ditch which was approximately 30 feet across from one ditch to the other and running to Devon Drive. One of these witnesses testified that the president of Carolina Land Company, Inc. offered to sell lot 69 to him at a reduced price with the understanding that it would be as it is with an existing easement thereon, over which he had no control. He further testified that the president told him that there was an old easement over this lot and he had not been able to get it resolved to the point where he could sell the property. The president of Carolina Land Company, Inc. admitted on cross-examination that he told one of these lot owners that there was a street easement across lot 69, and that if he desired to buy the lot, he would have to take it subject to such easement.

[13] It follows that Carolina Land Company, Inc. was charged with constructive notice of the appurtenant easement over what is now lot number 69. It is also conclusive from the testimony that the president of Carolina knew of the existence of the appurtenant easement and that he had been unable to sell and make good title to lot 69 because of the easement.

The appellants seek only to enforce their easement of a '30 foot street' over lot 69 so as to connect their property *109 with Devon Drive. They do not seek any rights over lots already improved and which are located beyond Devon Drive. It is conclusive from the record that lot 69 is vacant and unimproved.

The appellants challenge the finding of the lower court that the appellants' easement had been abandoned by the only persons in interest by their actions. They assert that this finding is unsupported by the evidence. We agree.

[14] [15] [16] It is well settled that an easement may be lost by abandonment and in determining such question the intention of the owner to abandon is the primary inquiry. The intention to abandon need not appear by express declaration, but may be inferred from all of the facts and circumstances of the case. It may be inferred from the acts and conduct of the owner and the nature and situation of the property, where there appears some clear and unmistakable affirmative act or series of acts clearly indicating, either a present intent to relinquish the easement, or purpose inconsistent with its further existence. Hodge v. Manning, 241 S.C. 142, 127 S.E.2d 341. Here, the burden of proof was upon the respondents to show the abandonment by clear and unequivocable evidence.

[17] The lower court emphasized that the proposed 30 foot street which would extend through lot 69 of Knollwood Heights was never opened or used although the road was outlined some years before. In Witt v. Poole, 182 S.C. 110, 188 S.E. 496, we held that the mere nonuse of an easement created by deed for a period however long will not amount to an abandonment, but there must be other acts by the owner of the dominant estate conclusively manifesting either the present intention to relinquish the easement or purpose inconsistent with its further existence.

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[18] The evidence reveals that the appellants did not purchase lots 7 and 8 until such had been rezoned for use as commercial property. It further appears that prior to such purchase they had the title examined and were *110 assured that they had an appurtenant easement for a 30 foot street across lot 69 to Devon Drive. There is nothing in the conduct of the appellants to evince an intention to abandon the easement in question. The basis upon which the lower court found abandonment was the fact that the lots in question were resubdivided, a plat thereof made with no mention of the original 1945 Locke plat. However, it should be pointed out that even on the Garrett-Parsons plat, the 30 foot street is shown by lines extending beyond **22 lot 8 of the appellants and on through a portion of what is now lot 69 of Knollwood Heights.

It is undisputed that on February 15, 1967, Carolina Land Company, Inc. conveyed out of the Locke tract a commercial lot fronting on U.S. Highway 276, by reference to a recorded plat dated February 14, 1967. Such lot is separated from the appellants property by a '30 FOOT STREET R/W' and a '20 FOOT STRIP RESERVED BY OWNER.' Carolina Land Company, Inc. had this plat made which depicts the '30 FOOT STRIP R/W' as extending beyond the westerly side of the appellants' lots and through lot number 69 and ending in close proximity to Devon Drive.

We have reviewed all of the testimony, plats and deeds, and find nothing on the part of the appellants or their predecessors in title to evince an intention to abandon the appurtenant easement created by the deed of J. L. Locke to Garrett.

We conclude that the judgment of the lower court should be reversed, and the case remanded thereto for entry of a decree granting the relief prayed for by the appellants.

Reversed and remanded.

LEWIS, BUSSEY, LITTLEJOHN and NESS, JJ., concur.

All Citations

265 S.C. 98, 217 S.E.2d 16

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EXHIBIT N

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288 S.C. 564
Court of Appeals of South Carolina.

Robert E. HIPPS, Frank T. Hipps, William G. Hipps, B. Curtis Hipps, and Martha Mae H. Clark, Respondents,
v.
Velma C. HIPPS, n/k/a Velma H. Waters, Appellant.

No. 0711.

Heard March 26, 1986.

Decided May 12, 1986.

Synopsis
Plaintiffs brought suit against widow of their deceased brother to quiet title to land. The Common Pleas Court, Greenville County, W. Daniel Yarborough, Jr., Master in Equity, entered judgment from which widow appealed. The Court of Appeals, Goolsby, J., held that decedent's siblings were estopped by deed to assert title to subject property.

Reversed and remanded.

West Headnotes (3)

[1] **Appeal and Error**
Authority to find facts

Since action to quiet title is equitable in nature and there are no concurrent findings by a circuit judge, Court of Appeals may determine facts in accordance with its own views of preponderance of evidence.

2 Cases that cite this headnote

[2] **Estoppel**
Conveyances with covenants
Estoppel
Conveyances without covenants

Estoppel by deed will arise if deed purports to convey fee and contains general warranty or if grantor specifically conveys not only his present interest but also any interest he might later acquire.

1 Cases that cite this headnote

[3] **Estoppel**
Conveyances with covenants

Although decedent's siblings conveyed only expectant interests, they were estopped by deed to decedent to assert title to subject property, where deed, which contained covenant of general warranty, clearly and unambiguously purported to convey to decedent, subject to a life estate, a fee simple title to nine acres described in deed and to grant to decedent all their interest in that property.

1 Cases that cite this headnote

Attorneys and Law Firms

**670 *565 Julius B. Aiken, Greenville, for appellant.

Melvin K. Younts and W. Barry Alford, of Young, Smith and Alford, Greenville, for respondents.

Opinion

GOOLSBY, Judge:

This is an action brought by the respondents Robert E. Hipps, Frank T. Hipps, William G. Hipps, B. Curtis Hipps, and Martha Mae H. Clark against Velma C. Hipps, the widow of their deceased brother, John Pickens Hipps, to quiet title to part of a nine-acre tract of land in Greenville County. The case was referred to the Master in Equity who, with the consent of the parties, entered a final judgment in the cause. The widow, who is known now as Velma H. Waters, appeals the master's order quieting title

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to one-half of the property. She contends that her late husband's brothers and sister are estopped by a deed to her late husband to assert title to any portion of the land. We reverse and remand.

The facts are undisputed.

In March, 1938, J.P. Hipps died leaving a will dated December 29, 1936. In Item III of the will, the testator devised a fifty-acre tract to his wife for life, then to his son, John Terrell Hipps, for life, and upon John Terrell's death to his "children, share and share alike, the share of any deceased child to go to that child's heirs."

The testator's wife predeceased him. When the testator died, he left surviving him John Terrell and John Terrell's six children, John Pickens and his four brothers and sister.

*566 On March 18, 1950, John Pickens joined with his father and with his brothers and sister in subdividing the fifty-acre tract. Each child of John Terrell received from John Terrell and from each of the other children of John Terrell a general warranty deed conveying a portion of the tract to the child.

The deed to John Pickens from his brothers and sister and his father conveyed "all [their] several rights, titles and interests in and to a tract of land ... containing [nine] acres, more or less...." Their deed describes the tract as "a portion of the lands left to J.T. Hipps by the will of his father, J.P. Hipps, for the term of his natural life and at his death to his bodily heirs."

Following the property description, the deed reads: "It is understood and agreed that this deed is one of a series in a division of the lands of J.T. Hipps and it is further understood that the said J.T. Hipps is retaining a life estate or a life interest therein." The deed's habendum recites that the property is to be held by John Pickens "and his Heirs and Assigns forever, subject to a life estate in [John Terrell]."

John Pickens took possession of the nine acres, erected improvements upon the property, paid taxes thereon, and exercised other privileges of ownership with regard to the property. His brothers and sister did **671 likewise with the property conveyed to them.

John Terrell died on January 29, 1983. At that time, however, only five of his children were alive. John Pickens had died.

John Pickens left a will devising all his property to his wife. His heirs at law are his widow and his four brothers and sister. *See* Code of Laws of South Carolina § 21–3–20(3) (1976).

The principal contention made by the brothers and sister before the master was that the conveyance to John Pickens was not intended by them and their father to be an absolute conveyance but only a division of the property showing which portion of the fifty-acre tract each of John Terrell's children would take in the event he or she survived their father, the life tenant. The widow, on the other hand, argued that her husband's brothers and sister are equitably estopped *567 from asserting any claim to the nine acres because of their conveyance to her late husband of their interest in the property.

Without directly addressing the issue of estoppel, the master found that John Terrell and his children intended by their several deeds, including the one to John Pickens, "to merely divide the land in kind to show who would get what when the life tenant died ..." and that "[t]he parcel conveyed was to be that person's share outright only if he [or she] survived the life tenant." He further concluded that, because the testator intended "for the property to go to his grandchildren after the death of the life tenant, and if any grandchild was not alive, his share was to go to that grandchild's heirs," the widow inherited only a one-half interest in the nine-acre tract since John Pickens predeceased the life tenant and died leaving in addition to the widow, four brothers and a sister. The other half of the property, the master held, passed to the brothers and sister.

[1] We think the master's findings and conclusions are clearly erroneous. Since an action to quiet title is equitable in nature [*Bryan v. Freeman,* 253 S.C. 50, 168 S.E.2d 793 (1969)] and there are no concurrent findings by a circuit judge, we may determine the facts in accordance with our own views of the preponderance of the evidence. *See Townes Associates Ltd. v. The City of Greenville,* 266 S.C. 81, 221 S.E.2d 773 (1976); *Price v. Derrick,* 262 S.C. 341, 204 S.E.2d 389 (1974).

The master's order contains much discussion about whether the remainder devised under the testator's will was contingent or vested because the master believed that if the remainder were contingent John Pickens's brothers and sister could not have conveyed any interest to him by their deed. Although we believe the remainder was vested [28 Am.Jur.2d *Estates* § 295 n. 11 at 478 (1966)], we agree with the widow that it does not matter in this instance whether the remainder was vested or not.

[2] [3] Assuming the brothers and sister conveyed to John Pickens only an expectant interest, estoppel by deed will

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arise in such a situation (1) if the deed purports to convey the fee and contains a general warranty or (2) if the grantor specifically conveys not only his present interest *568 but also any interest he might later acquire. *Wallace v. Quick,* 156 S.C. 248, 153 S.E. 168 (1930). The first situation exists here.

John Pickens's brothers and sister by their deed, which contains a covenant of general warranty, clearly and unambiguously purported to convey to John Pickens, subject to the life estate held by John Terrell, a fee simple title to the nine acres described in the deed and to grant to John Pickens all their interest in that property. In exchanging among themselves deeds that contain a covenant of general warranty and in entering into possession of their respective tracts under the deeds, the clear intention of John Pickens and his brothers and sister, and we so hold, was both to effect an immediate division of the fifty-acre tract and to surrender whatever interest each had in all the fifty acres except the portion thereof allocated to him or her.

John Pickens's brothers and sister by their deed to John Pickens therefore divested **672 themselves of whatever interest they had in the nine-acre tract; consequently, they are now, because of their deed, estopped from pursuing their claim to the property and from disputing the widow's title. Indeed, it is difficult to imagine a clearer case for the application of the doctrine of estoppel by deed. *See Blackwell v. Harrelson,* 99 S.C. 264, 84 S.E. 233 (1914) (wherein court held a son estopped to claim an interest in property which he acquired by descent where the son, as an expectant heir of his mother, in a deed containing a general warranty conveyed to his sister while his mother was still living all his interest in his mother's property); *Tunnell v. Berry,* 73 N.C.App. 222, 326 S.E.2d 288, 291 (1985), *review denied,* 313 N.C. 612, 332 S.E.2d 184 (1985) (" 'the principle of estoppel will apply when the deed shows that the grantor intended to convey and the grantee expected to acquire a particular estate ...' "); 31 C.J.S. *Estoppel* § 10 at 295 (1964) ("Estoppel by deed is a bar which precludes a party to a deed and his privies from asserting as against the other and his privies any right or title in derogation of the deed, or from denying the truth of any material fact asserted in it").

By a counterclaim, the widow alleged a breach of the deed's general warranty clause. The master did not address *569 this issue in his order. We therefore remand the case to the master for a determination of the breach of warranty issue.

REVERSED AND REMANDED.

SHAW and CURETON, JJ., concur.

All Citations

288 S.C. 564, 343 S.E.2d 669

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structure of the townhouse units. We agree.

[3] [4] [5] Restrictive covenants upon real estate are contractual in nature and bind the parties thereto just like any other contract. *Queens Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 361, 628 S.E.2d 902, 913 (Ct.App.2006). "Restrictive covenants are construed like contracts, and may give rise to actions for their breach." *Id.* "If a contract's language is clear and capable of legal construction, this Court's function is to interpret its lawful meaning and the intent of the parties as found in the agreement." *Gilbert v. Miller*, 356 S.C. 25, 31, 586 S.E.2d 861, 864 (Ct.App.2003) "A clear and explicit contract must be construed according to the terms the parties have used, with the terms to be taken and understood in their plain, ordinary, and popular sense." *Id.*

*630 Hynes contends a "system" can consist of individual units joined only by their intended purpose, rather than in physical fact. The trial court, citing Webster's Dictionary, defined the term "system" as "a regularly interacting or interdependent group of items forming a unified whole." Hynes argues this definition is too selective and contends the trial court should have considered an alternate definition from Webster's Dictionary. Hynes urged the trial court to define "system" as "a group of devices or artificial objects or an organization forming a network especially for distributing something or serving a common purpose."

**834 [6] The Covenants specifically refer to plural storm water drainage systems and do not contain any requirement that these systems be uniform. Evidence presented at trial through testimony and photographs indicates there was no uniform drainage system for Daybreak and that homeowners handled drainage using a variety of methods. We find compelling Hynes's argument that the trial court's definition of "system" is too selective. Furthermore, we find the trial court improperly relied on the lack of uniformity as a basis for finding no express easement in the Covenants. Although we find an express easement existed, we affirm the trial court's order based on the express easement's interference with Spitz's use and enjoyment of her patio.

B. Interference with Use and Enjoyment

Hynes also argues the trial court erred in finding the storm water drainage system interfered with Spitz's enjoyment of her patio. We disagree.

[7] The trial court found that even if an express drainage easement existed, it would be limited by the language of the Covenants. Article 2, § 6 of the Covenants provides that use of the easement "shall not materially interfere with the uses, occupancy or enjoyment of all or any part of the Lot servient to such easement." The trial court noted Spitz testified the drainage pipe caused water to be discharged onto her patio which interfered with her enjoyment of the property. Hynes argues the trial court's finding that the downspout and drain "always" left Spitz's property wet was not supported by any evidence. He contends Spitz was unable to say whether the *631 water on her property was a result of the drainage system. Spitz testified that she wanted to extend her patio but she couldn't because she feared the discharged water would create problems after she invested her money in the project. Accordingly, we find there was evidence in the record to support the trial court's finding that the drainage system interfered with Spitz's use and enjoyment of her property. Thus, although the Covenants grant Hynes an express easement, that easement is conditioned by the language of the Covenants because it interferes with Spitz's use, occupancy and enjoyment of her property.

C. Acknowledgement by Daybreak

Hynes also argues the trial court's finding that the Daybreak Homeowners Association (Association) failed to acknowledge and maintain the drainage system is not dispositive of his easement rights. Specifically, Hynes asserts that the trial court's finding of a lack of acknowledgement means that if the Association has not acknowledged or maintained a system, then that system does not have the right to continued existence under the Covenants. We disagree.

Hynes argues the issue of the Association's acknowledgement of or involvement in the drainage system was not plead by either party and was not raised by the trial court as an issue at trial. He contends the acknowledgement was not tried before the trial court and thus the acknowledgement issue could not serve as a basis for the trial court's decision. *See* 46 Am.Jur.2d Judgments § 2 ("[A] party may not be granted relief in the absence of pleadings to support that relief, and a judgment based on an issue not pleaded is a nullity."). Spitz contends Hynes asserted in his Complaint the existence of an express easement pursuant to Article 2, § 6 of the Covenants which included the language that any storm water drainage systems shall be maintained by the Association.

Furthermore, Spitz argues Hynes incorrectly assumed the trial court relied on a lack of acknowledgement as

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determinative of the issue of the existence of an easement. Spitz contends the trial court's reference to the lack of an acknowledgement of the drainage system by the Association was *632 significant because if the system at issue was to be considered part of a "storm water drainage system" protected by an express easement, it would have been maintained and repaired by the Association. Article 2, § 6 of the Covenants states: "[a]ny such storm drainage and sanitary sewer systems shall be maintained in good order and repair by the Association." Spitz contends the Association's lack of repairs and maintenance on the drainage system are only evidence the drainage system **835 was not part of a system contemplated by the Covenants. The trial court specifically based its ruling on the definition of "storm water drainage system" and the lack of a uniform drainage system. The trial court merely noted its finding was supported by the fact that the Association never maintained the system. Accordingly, we find the trial court's findings regarding the Association's acknowledgement and maintenance of the system were not determinative of the existence of an express easement.

II. Easement by Prior Use

Hynes argues the trial court erred in finding he failed to establish a drainage easement across Spitz's property by prior use. We disagree.

[8] "The determination of the existence of an easement is a question of fact in a law action and subject to an 'any evidence' standard of review when tried by a judge without a jury." *Slear v. Hanna,* 329 S.C. 407, 410, 496 S.E.2d 633, 635 (1998). Our supreme court held a party must prove the following six factors to establish the right to an easement implied by prior use:

> (1) unity of title; (2) severance of title; (2) the prior use was in existence at the time of unity of title; (3) the prior use was not merely temporary or casual; (4) the prior use was apparent or known to the parties; (5) the prior use was necessary in that there could be no other reasonable mode of enjoying the dominant tenement without the prior use; and (6) the common grantor indicated an intent to continue the prior use after severance of title.

Boyd v. Bellsouth Tel. Telegraph Co., 369 S.C. 410, 417, 633 S.E.2d 136, 139 (2006).

[9] *633 Hynes argues there is indirect evidence the drainage system has been in place since construction of the townhomes. He contends Daybreak was a planned subdivision with planned housing and draining. Hynes argues the location of the downspout, the higher elevation of his property, and the common building scheme of the subdivision lead to the conclusion that the drainage system existed at the time the townhouses were built and sold. Furthermore, Hynes contends the prior use of the drainage system was not temporary, that it was or should have been apparent to all parties, and its location indicated the grantor's intent to continue the use after the sale of the townhomes.

There is no evidence in the record establishing how long the drainage system has been in place. Hynes testified the drainage system was in place when he purchased his townhome in 1996. While Hynes introduced the deposition testimony of two prior owners of the Spitz property, their testimony did not create a complete timeline beginning with the original grant of the property to Daybreak or the original severance. These prior owners testified the drainage system was in place in the 1990s, but could not link the drainage system to the construction of the townhomes. Therefore, the record contains no evidence the drainage system has been in existence since the original division of the property.

Moreover, Hynes failed to prove the location of the drainage system was necessary to his enjoyment of his property and no other reasonable locations were available. Evidence in the record indicates Hynes could have discharged his gutter water onto his own property without unreasonable burden or expense. Spitz's structural engineering expert witness testified Hynes could have run the drainage pipe down his property line and not across Spitz's property and that the water would have drained properly.[1] Accordingly, we find there was evidence in the record to support the trial court's finding that Hynes failed to establish an easement by prior use, and we affirm the trial court's ruling.

***634 CONCLUSION**

We find there was an express easement permitting Hynes to maintain a storm water drainage pipe across Spitz's property. However, we find the easement interferes with

Spitz's use and enjoyment of her property **836 and is therefore conditioned by the language of the Covenants. Furthermore, we find Hynes failed to establish an easement by prior use permitting him to maintain a storm water drainage system across Spitz's property. Accordingly, the trial court's order is

AFFIRMED IN RESULT.

HEARN, C.J., and PIEPER, J., concur.

All Citations

384 S.C. 625, 682 S.E.2d 831

Footnotes

1 Spitz's plumber testified it would cost approximately $300 for Hynes to run the storm water drainage pipe to the rear of his property.

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STATE OF SOUTH CAROLINA) COUNTY OF CLARENDON)) Palmetto Air Plantation) Homeowners Association, Inc.,)) Plaintiff,)) vs.) Kim E. Bevier,) Defendant.)	IN THE COURT OF COMMON PLEAS OF THE THIRD JUDICIAL CIRCUIT CIVIL ACTION NO.: 2017-CP-14-00127 DEFENDANT'S MOTION TO RECONSIDER, MODIFY AND AMEND JUDGMENT RULE 59(e)

Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, the defendant hereby moves the court to reconsider and/or alter or amend its order granting partial summary judgment to the plaintiff, entered on December 17, 2018, upon the following grounds which were overlooked or not considered by the court:

1. The recording of a declaration of covenants, in and of itself, does not encumber property. The recording statutes exist to provide notice, actual or constructive. They do not validate or substitute for legal requirements for contract or property jurisprudence.
2. The conveyance of the property mentioned in the declaration, or any portions thereof, by the declarant without having limited any such conveyance, or one prior thereto, by the imposition of the covenants, is fatal to their existence as to those properties conveyed.
3. The doctrines of merger and unity of title prevent the creation of an encumbrance upon the property of the owner by the owner for the owner's benefit. An encumbrance upon the property can only come about in connection with a severance of title. Here there has never been a severance of title which included the imposition of the covenants.

The defendant incorporates by reference the memorandum submitted in opposition to the motion for partial summary judgment. For the reasons stated herein, the defendant submits that the order granting partial summary judgment should be modified so as to deny the motion for partial summary judgment.

December 21, 2018.

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ELECTRONICALLY FILED - 2019 Mar 20 4:12 PM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF CLARENDON	)	CASE NO.: 2017-CP-14-00127
PALMETTO AIR PLANTATION HOMEOWNERS ASSOCIATION, INC.	)	
Plaintiff,	)	LIS PENDENS
vs.	)	
KIM E. BEVIER,	)	
Defendant.	)	

NOTICE is hereby given that an action has been commenced and is pending in this Court by the above named Plaintiff, against the above named Defendant concerning the below described property.

That the said premises affected by this action were at the time of the commencement of this action, and at the time of filing this notice, situated in Clarendon County, South Carolina and are described as follows, to wit:

> **ALL that piece, parcel or lot of land lying, being and situate in School District No. 2 of Clarendon County, South Carolina, being designated as Lot No. 33 and Lot No. 34, Palmetto Air Plantation, containing 1.60 acres and 1.46 acres on a plat hereinafter referred to, and bounding and measuring as follows: on the Northeast by a pond and measuring thereon 506.93 feet; on the Southeast by Lot 35 on said plat and measuring thereon 261.77 feet; on the Southwest by Mullett Drive and lands of Wilver Blanding and measuring thereon a total of 539.17 feet; and on the Northwest by lands of Ernest L. and Linda C. Rauber and Fellowship Ranchette Subdivision and measuring thereon 244.98 feet.**
>
> **For a more particular description of said lots, reference may be had to a plat made by DuValle W. Elliott, RPLS, dated April 11, 2002, recorded in the Office of the Clerk of Court for Clarendon County in Plat Cabinet E, Slide 1008 at Plat 6.**
>
> **Said Lots being a portion of the lands conveyed to**

Palmetto Air Plantation by deed of MidEastern Truckwash Inc. dated October 9, recorded in the Office of the Clerk of Court for Clarendon County in Deed Book A-452 at Page 144.

Said lots being a portion of Clarendon Tax Map No. 140-00-05-063-00.

March 20, 2019

COFFEY & MCKENZIE, P.A.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Case No. 2017-CP-14-00127

Palmetto Air Plantation Homeowners Association, Inc,.....Respondent.

vs.

Kim E. Bevier,.....Appellant,

NOTICE OF APPEAL

Kim E. Bevier appeals the Orders of the Honorable R. Ferrell Cothran, Jr., granting Partial Summary Judgment, electronically signed on December 14, 2018, and E-filed on December 17, 2018, and denying the Rule 59(e) SCRCP Motion to Alter or Amend the Judjment, dated and E-filed February 28, 2019. Appellant received notice of the E-filing of the February 28, 2019 Order on February 28, 2019.

March 26, 2019

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STATE OF SOUTH CAROLINA) COUNTY OF CLARENDON)) Palmetto Air Plantation) Homeowners Association, Inc.,)) Plaintiff,)) vs.))) Kim E. Bevier,) Defendant.)	IN THE COURT OF COMMON PLEAS OF THE THIRD JUDICIAL CIRCUIT CIVIL ACTION NO.: 2017-CP-14-00127 Motion to Dissolve/Modify Temporary Restraining Order

The Defendant moves the court for the following relief:

1. The lifting of the automatic stay, if any such stay exists by virtue of the pending appeal of the order granting partial summary judgment, to the extent necessary for the consideration of the motion for the additional relief sought by this motion;
2. Dissolution of the Temporary Restraining Order (TRO) issued by the Court on June 9, 2017, upon the basis that:
    a. The Order fails to provide for security as required by **Rule 65(c) SCRCP**;
    b. A change in state law subsequent to the issuance of the Temporary Restraining Order, pertaining to Home Owner Associations, specifically the adoption of **SC Code § 27-30-110** et. seq. effective May 17, 2018, impacts the remedies sought by the complaint and the standing of Plaintiff to pursue them because the bylaws of the plaintiff association were not timely recorded with the Register of Deeds as required by the Act.
3. Alternatively, as a condition of the continuation of the TRO, that the security required by **Rule 65(c) SCRCP** be provided in the amount of $100,000.00.

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RELEVANT CASE HISTORY

This case is an action by Plaintiff, Palmetto Air Plantation Homeowners Association, Inc. (Association) seeking enforcement of restrictive covenants alleged to encumber the property of Defendant, Kim Bevier (Bevier). The complaint seeks, in addition to other relief, injunctive relief including the prohibition of the rental of the Bevier property through Airbnb.

The complaint was filed on April 17, 2017. Association also filed a motion for a temporary restraining order. The motion was heard on June 6, 2017, resulting in the issuance of the TRO on June 9, 2017, ordering Bevier to refrain from renting his property to overnight guests.

At the time of the issuance of the TRO the issue of the validity of the covenants had not been raised by Bevier, and in fact had been admitted in Bevier's initial pleadings. Bevier on October 25, 2017, moved to amend its answer in order to challenge the validity of the covenants. The motion was granted by order dated March 20, 2018.

By order of the court dated December 17, 2018, the court, pursuant to motion of Association, granted partial summary judgment, declaring that Bevier's property was encumbered by the covenants. The appeal of this order is pending in the South Carolina Court of Appeals.

APPLICABLE LEGAL ISSUES

AUTOMATIC STAY UPON APPEAL

The **Rule 241(a), SCACR** general automatic stay applicable to lower court proceedings pending an appeal does not operate to limit the consideration by the court of the Defendant's motion regarding the TRO. The rule provides:

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> As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court. **The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal.** **Rule 241(a), SCACR**

Specifically excluded from the automatic stay is "An appeal from an order granting an injunction or temporary restraining order." **Rule 241(b)(8), SCACR** The matter under appeal is the propriety of the order granting partial summary judgment as to the existence of the restrictive covenants at issue. This motion only concerns the TRO which is not involved in the appeal.

> Application of the general automatic stay would be inconsistent with this exception but even if it applied, this court has authority to lift the stay under **Rule 241(d)(1), SCACR**.
>
> **d) Procedure for Obtaining Lift of Stay or Supersedeas.**
>
> (1) Except where extraordinary circumstances make it impracticable, an **application for an order lifting the automatic stay or for supersedeas must first be made to the lower court** or administrative tribunal which entered the order or decision on appeal. (Emphasis added)

THE TRO IS SUBJECT TO MODIFICATION BY THE COURT OF COMMON PLEAS

Since the TRO is not a final order, it is subject to revision pursuant to **Rule 54(b) SCRCP**.

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CHANGE IN STATUTORY LAW SUBSEQUENT TO DATE OF TRO

The probability of prevailing on the merits is one of the criteria to be considered in determining whether a temporary restraining order should issue. Movant submits that criteria is impacted by the passage of **S.C. Code Ann. § 27-30-130** which raises an issue of the enforceability of the covenants and the standing of the Plaintiff due to the failure of Plaintiff to file with the Register of Deeds for Clarendon County by January 10, 2019, its governing documents.

> (A)(1) Except as otherwise provided in this section, in order to be enforceable, a homeowners association's governing documents must be recorded in the clerk of court's, Register of Mesne Conveyance (RMC), or register of deeds office in the county where the property is located.
>
> (2) To continue to be enforceable, any governing document not recorded prior to the effective date of this section must be recorded by January tenth of the year following the effective date of this section in the clerk of court's, Register of Mesne Conveyance (RMC), or register of deeds office in the county where the property is located.
>
> (B)(1) Rules, regulations, and amendments to rules and regulations:
>
> (a) are effective upon passage or adoption; and
>
> (b) must be made accessible to a homeowners association member upon the request of that member of the homeowners association, and, at the option of the homeowners association, via electronic mail or through methods provided by the homeowners association's bylaws that ensure actual notice, unless they are:
>
> (i) posted in a conspicuous place in a common area in the community; or
>
> (ii) available on an Internet website maintained by the homeowners association, where they may be downloaded by the homeowner.
>
> (2) In order to remain enforceable, a homeowners association's rules, regulations, and amendments to rules and regulations must be recorded in the clerk of court's, Register of Mesne Conveyance (RMC), or register of deeds office in the county in which the property is located by January tenth of each year following their adoption or amendment.

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(C) Homeowners associations in existence on the effective date of this section must record the documents required by subsections (A)(1) and (B)(2) by January tenth following the effective date of this section.

(D) The recording of the rules, regulations, bylaws, and amendments to rules and regulations are not subject to the requirements of witnesses and acknowledgements required under Section 30-5-30.

S.C. Code Ann. § 27-30-130

REQUIREMENT OF SECURITY

The TRO did not require a bond and should be dissolved unless an adequate bond is provided.

> **c) Security.** Except in divorce, child custody and non-support actions where the giving of security is discretionary, no restraining order or temporary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the State or of an officer or agency thereof. A surety upon a bond or undertaking under this rule submits himself to the jurisdiction of the court and irrevocably appoints the clerk of court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of court who shall forthwith mail copies to the persons giving the security if their addresses are known.
> **Rule 65(c) SCRCP**

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ATTORNEY CERTIFICATION

I certify that a good faith effort was made to resolve the motion before filing.

RESPECTFULLY SUBMITTED

September 22, 2019

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE THIRD JUDICIAL CIRCUIT
COUNTY OF CLARENDON	)	CIVIL ACTION NO.: 2017-CP-14-00127
	)	
Palmetto Air Plantation Homeowners Association, Inc.,	)	
	)	
Plaintiff,	)	AFFIDAVIT
	)	
vs.	)	
	)	
Kim E. Bevier,	)	
Defendant.	)	

Personally, appeared before Kim E. Bevier, who upon being duly sworn, deposes and states:

I am the defendant in this action. For the seven-month period ending July 31, 2017, I received in the way of rentals for the mother-in-law wing of my property located at 1144 Mullet Dr. Manning, SC 29102, a total of $11,939.00, representing a monthly average of $1705.00. For the six-month period, February through July, 2017, the monthly rentals averaged $1968.00.

Kim Edward Bevier

SWORN TO before me this 16th day of September, 2019.

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 2/9/28

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	THIRD JUDICIAL CIRCUIT
COUNTY OF CLARENDON)	DOCKET NO.: 17-CP-14-_____
)	
PALMETTO AIR PLANTATION)	
HOMEOWNERS ASSOCIATION INC.,)	
)	
Plaintiff,)	
)	REPLY TO MOTION TO
)	DISOLVE/MODIFY
)	TEMPORARY RESTRAINING ORDER
vs)	
KIM E. BEVIER,)	
)	
)	
Defendant.)	
)	

The Plaintiff replying to the Motion to dissolve/modify of the Defendant would show upon this Honorable Court as follows:

1. **THE ISSUES IN THE DEFENDANT'S MOTION ARE STAYED PURSUANT TO SCACR 241 AS A RESULT OF THE MATTER BEING APPEALED TO THE SOUTH CAROLINA COURT OF APPEALS.**

The Defendant's motion is based upon the fact that he believes the automatic stay pursuant to SCACR 241(b)(1) should be lifted. The Plaintiff would show that on page 8 of the Order for Partial Summary Judgment granted by The Honorable R. Ferrell Cothran, Jr. and dated December 17, 2018 states as follows in pertinent part: "The Court would find that the Defendant had actual and constructive knowledge of the Covenants. Therefore, this Court grants partial summary judgment to the Plaintiff regarding the Defendant's contention and defense that the Covenants herein do not "run" with the lots he purchased from the Plaintiff because the Covenants were not recited in his deed when he purchased the property from Palmetto Air Plantation, LLC. As a result, the Covenants

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referenced herein are enforceable against the **Defendant and the Defendant's contention that they are unenforceable against him is without merit"** (emphasis added) (See the Order for Partial Summary Judgment dated December 17, 2018).

Plaintiff would show that, as is correctly stated in the Motion of the Defendant, the matter of enforceability of the Covenants is the exact issue that has been appealed. Section 4.3 of the Restrictive Covenants filed in the RMC office for Clarendon County at Book A444, pages 26-46 (hereinafter "Covenants") and recorded on July 11, 2001 states as follows: "No commercial business of any type shall be permitted....." The Defendant is asking this Court to Rule on the following two questions: 1) require a surety bond on a temporary restraining order that has now expired with the issuance of the partial summary judgment (i.e., Judge Cothran has found that the Covenants are valid and enforceable against the Defendant. The Covenants state very plainly that commercial businesses are prohibited on the property and as a result of this finding, the TRO (Temporary Restraining Order) expired with a ruling that was adverse to the Defendant); and 2) ask this Court to address the applicability of the Covenants as a result of a change in the Statutory law of this State. Both of these matters are stayed because of the appeal by the Defendant. The Defendant would have this Court believe that the TRO and partial summary judgment granted by Judge Cothran are separate and distinct issues, they are not. When Judge Cothran granted partial summary judgment against the Defendant, the matter of the TRO was resolved by that ruling. The only issue left to be decided by the Clarendon County Court of Common Pleas is that of damages.

Judge Cothran issued his TRO on June 9, 2017 (See Temporary Restraining Order

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of Judge Cothran dated June 9. 2017). The Defendant was prohibited by the TRO from engaging in any commercial business from his home because it violated the Covenants. Judge Cothran's subsequent ruling in the Order for Partial Summary Judgment found the Covenants to be valid and enforceable. The issue of the TRO was vitiated by Judge Cothran's Order for Partial Summary Judgment that is now on Appeal.

As stated in SCACR 241(a): As a general rule, the service of appeal in a civil matter acts to automatically stay matters decided in the order, judgment....." The Plaintiff would show that the Defendant has attacked the Order of Judge Cothran on appeal. The Order of Judge Cothran declares the Covenants "valid and enforceable" against the Defendant. The TRO was effectively removed by the Order of Judge Cothran and now the enforceability of the Covenants has been appealed by the Defendant. Therefore, the issue of the TRO was resolved by the Order of Judge Cothran dated.

2. **THE ISSUE OF SURETY BOND IS NOT PROPERLY BEFORE THIS COURT.**

The only way to amend an order or request relief from an order of the Court is to file a SCRCP 59(e) motion or SCRCP 60(b) motion. The Defendant filed a SCRCP 59(e) motion on December 21, 2018 and that Motion was denied by the Court dated February 28, 2019. As a result, the issues raised in the Defendant's motion are not now properly before this Court. The only proper way to raise the issues in the Defendant's Motion is by way of SCRCP 59(e) or 60(b) motions. Defendant has filed a SCRCP 59(e) motion that has been denied. Any other issue before the Court would have to be in the form of a SCRCP 60(b) motion. In the Defendant's SCRCP 59(e) Motion, he does not address

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the issue of the TRO or the issue of the S.C. Code Ann. Section 27-30-110 et. eq. (The changes to the statute addressed in Defendant's Motion were in effect and South Carolina Law when the Defendant filed his 59(e) Motion in December of 2018). The only issue addressed by the Defendant was the enforceability of the Covenants by Judge Cothran (See Defendant's Motion to Reconsider, Modify and Amend Judgment dated December 21, 2018). Judge Cothran denied that Motion and the only remedy for denial of the SCRCP 59 (e) Motion is appeal.

For the above mentioned reasons as well as the equitable doctrines of Laches and *res judicata,* the Plaintiff would ask the Court to deny the Motion of the Defendant. The Plaintiff would also seek attorney's fees and costs for having to defend this Motion before the Court.

Respectfully Submitted,

COFFEY & MCKENZIE, PA

October 18, 2019

BY: /Steven S. McKenzie

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STATE OF SOUTH CAROLINA) COUNTY OF CLARENDON)) Palmetto Air Plantation) Homeowners Association, Inc.,)) Plaintiff,)) vs.))) Kim E. Bevier,) Defendant.)	IN THE COURT OF COMMON PLEAS OF THE THIRD JUDICIAL CIRCUIT CIVIL ACTION NO.: 2017-CP-14-00127 DEFENDANT'S MEMORANDUM IN SUPPORT OF MOTION TO DISSOLVE TEMPORARY RESTRAINING ORDER

The Defendant moves the court for the following relief:

1. The lifting of the automatic stay, if any such stay exists by virtue of the pending appeal of the order granting partial summary judgment, to the extent necessary for the consideration of the motion for the additional relief sought by this motion;
2. Dissolution of the Temporary Restraining Order (TRO) (that characterization is used due to its usage in the motion for and order granting the same but it is in reality a Temporary Injunction since it was issued after notice and a hearing) issued by the Court on June 9, 2017, upon the basis that:
    a. The TRO fails to provide for security as required by **Rule 65(c) SCRCP**;
    b. A change in state law subsequent to the issuance of the Temporary Restraining Order, pertaining to Home Owner Associations, specifically the adoption of **SC Code § 27-30-110** et. seq. effective May 17, 2018, impacts the remedies sought by the complaint and the standing of Plaintiff to pursue them because the bylaws of the plaintiff association were not timely recorded with the Register of Deeds as required by the Act.
3. Alternatively, as a condition of the continuation of the TRO, that the security required by **Rule 65(c) SCRCP** be provided in the amount of $100,000.00.

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RELEVANT CASE HISTORY

This case is an action by Plaintiff, Palmetto Air Plantation Homeowners Association, Inc. (Association) seeking enforcement of restrictive covenants alleged to encumber the property of Defendant, Kim Bevier (Bevier). The complaint seeks, in addition to other relief, injunctive relief including the prohibition of the rental of the Bevier property through Airbnb.

The complaint was filed on April 17, 2017. Association also filed a motion the following day for a TRO. The motion was heard on June 6, 2017, resulting in the issuance of the TRO on June 9, 2017, ordering Bevier to refrain from renting his property to overnight guests. The order did not require the posting of bond.

At the time of the issuance of the TRO, the defendant had not answered the complaint and the issue of the validity of the covenants had not been raised by Bevier and in fact was not raised in his initial pleadings. Bevier on October 25, 2017, moved to amend his answer in order to challenge the validity of the covenants. The motion to amend was granted by order dated March 20, 2018.

By order of the court dated December 17, 2018, the court, pursuant to motion of Association, granted partial summary judgment as to the validity of the covenants, declaring that Bevier's property was encumbered by the covenants. The appeal of this order is pending in the South Carolina Court of Appeals.

APPLICABLE LEGAL ISSUES

AUTOMATIC STAY UPON APPEAL

The **Rule 241(a), SCACR** general automatic stay applicable to lower court proceedings pending an appeal does not operate to limit the consideration by the court of the Defendant's motion regarding the TRO. The rule provides:

> As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or

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> decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court. **The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal. Rule 241(a), SCACR**

Specifically excluded from the automatic stay is "An appeal from an order granting an injunction or temporary restraining order." **Rule 241(b)(8), SCACR** The matter under appeal is the propriety of the order granting partial summary judgment as to the existence of the restrictive covenants, not the TRO, so the TRO it is not excluded from the automatic stay, under this provision, unless the appeal were the equivalent of an appeal of the TRO, which it is not. If it were the equivalent, there would be no stay and the lower court would retain jurisdiction to enforce, etc.

The present motion before the court only pertains to the TRO which is not involved in the appeal. The appeal seeks a reversal of the order granting partial summary judgment based upon the failure to include the covenants in a deed or other severance of title, the success of which would only serve to restore the status of the case to that which existed prior to the issuance of the order, and the failure of which would result in the case proceeding in the court of Common Pleas absent any issue regarding the validity of the covenants based upon the failure refer to incorporate them into a deed or severance of title, but still to be determined, all remaining issues, including whether the covenants were violated and if so what remedy, if any, should be ordered.

> Application of the general automatic stay would be inconsistent with this exception but even if it applied, this court has authority to lift the stay under **Rule 241(d)(1), SCACR**.
>
> **d) Procedure for Obtaining Lift of Stay or Supersedeas.**
>
> (1) Except where extraordinary circumstances make it impracticable, an **application for an order lifting the automatic stay or for supersedeas**

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> **must first be made to the lower court** or administrative tribunal which entered the order or decision on appeal. (Emphasis added)

THE TRO IS SUBJECT TO MODIFICATION BY THE COURT OF COMMON PLEAS

Since the TRO is not a final order, it is subject to modification pursuant to **Rule 54(b) SCRCP**, which provides that interlocutory orders are subject to modification until final judgment on all issues.

CHANGE IN STATUTORY LAW SUBSEQUENT TO DATE OF TRO

The probability of prevailing on the merits is one of the criteria to be considered in determining whether a temporary restraining order should issue. Movant submits that criteria is impacted by the passage of **S.C. Code Ann. § 27-30-130** which raises an issue of the enforceability of the covenants and the standing of the Plaintiff due to the failure of Plaintiff to file with the Register of Deeds for Clarendon County by January 10, 2019, its governing documents.

> (A)(1) Except as otherwise provided in this section, in order to be enforceable, a homeowners association's governing documents must be recorded in the clerk of court's, Register of Mesne Conveyance (RMC), or register of deeds office in the county where the property is located.
>
> (2) To continue to be enforceable, any governing document not recorded prior to the effective date of this section must be recorded by **January tenth of the year following the effective date** of this section in the clerk of court's, Register of Mesne Conveyance (RMC), or register of deeds office in the county where the property is located. (emphasis added)
>
> (B)(1) Rules, regulations, and amendments to rules and regulations:
>
> (a) are effective upon passage or adoption; and
>
> (b) must be made accessible to a homeowners association member upon the request of that member of the homeowners association, and, at the option of the homeowners association, via electronic mail or through methods provided by the homeowners association's bylaws that ensure actual notice, unless they are:
>
> (i) posted in a conspicuous place in a common area in the community; or

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(ii) available on an Internet website maintained by the homeowners association, where they may be downloaded by the homeowner.

(2) **In order to remain enforceable**, a homeowners association's rules, regulations, and amendments to rules and regulations must be recorded in the clerk of court's, Register of Mesne Conveyance (RMC), or register of deeds office in the county in which the property is located **by January tenth of each year following their adoption or amendment.** (emphasis added)

(C) Homeowners associations in existence on the effective date of this section must record the documents required by subsections (A)(1) and (B)(2) by January tenth following the effective date of this section.

(D) The recording of the rules, regulations, bylaws, and amendments to rules and regulations are not subject to the requirements of witnesses and acknowledgements required under Section 30-5-30.

S.C. Code Ann. § 27-30-130

The bylaws and first amendment (attached) were not filed until April 24, 2019.

REQUIREMENT OF SECURITY IF THE TRO IS NOT DISSOLVED.

The TRO did not require a bond and should be dissolved unless an adequate bond is provided.

> **c) Security.** Except in divorce, child custody and non-support actions where the giving of security is discretionary, no restraining order or temporary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the State or of an officer or agency thereof. A surety upon a bond or undertaking under this rule submits himself to the jurisdiction of the court and irrevocably appoints the clerk of court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of court who shall forthwith mail copies to the persons giving the security if their addresses are known.
> **Rule 65(c) SCRCP**

Though the failure to require a bond upon the initial issuance of the TRO, is not jurisdictional, the defect should be remedied if the TRO is to remain in effect. See Epps v.

Bryant, 218 S.C. 359, 62 SE2d (1950) and cases cited therein. Epps, (a case from Clarendon County by the way) was decided under the controlling statute at the time, the relevant provisions of which are practically identical to Rule 65)(c).

CONCLUSION

For the reasons set out herein, the TRO should be set aside, or if not set aside an injunction bond with adequate surety should be required to be filed with within a reasonable, but specified period set by the court.

October 29, 2019

s/Thomas E. Player, Jr.
S.C. Bar Number 4478
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Attorney for the Defendant Kim E. Bevier

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF CLARENDON	)	2017-CP-14-00127
	)	
Palmetto Air Plantation Homeowners Association.	)	
	)	
Plaintiff,	)	
	)	
vs.	)	TEMPORARY RESTRAINING ORDER
	)	
Kim E. Bevier,	)	
	)	
Defendants.	)	
	)	

This matter came before this court by way of a motion that was heard by the Honorable Ralph Ferrell Cothran, Jr. on June 6th, 2017. The plaintiff appeared and was represented by Steve McKenzie of the Clarendon County Bar. The defendant also appeared and was represented by Tommy Player of the Sumter County Bar.

The motion before the court was for a temporary restraining order restraining the defendant from operating in commercial business activities out of his home located within Palmetto Air Plantation with a physical address of 1144 Mullet Drive, Manning, SC. A temporary restraining order restraining the Defendant from allowing his dog (Bullmastiff) to roam at large on Palmetto Air Plantation and to stop said animal from excessively barking. For an order awarding temporary attorney's fees and costs. For such other relief the court may deem just and necessary.

The court has carefully considered the facts and arguments raised by the parties and orders the following:

That defendant must stop advertising his home or any rooms on his property for rent via Air B&B or any other channels of advertisement. That defendant must not sign any future contracts with boarders or take on any new boarders without the explicit permission of the Palmetto Air Plantation Homeowners Association. That all issues regarding the subject property including the defendant's dog (bullmastiff) shall be held in abeyance until final disposition of the case. That attorney's

fees will be held in abeyance until the final disposition of the case.

AND IT IS SO ORDERED.

June ____, 2017

The Honorable R. Ferrell Cothran
Chief Administrative Judge
Third Judicial Circuit

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Clarendon Common Pleas

Case Caption: Palmetto Air Plantation Homeowners Associations, Inc VS Kim E Bevier

Case Number: 2017CP1400127

Type: Order/Other

So Ordered

s/ R. Ferrell Cothran, Jr., 2144

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	OF THE THIRD JUDICIAL CIRCUIT
COUNTY OF CLARENDON)	CASE NUMBER: 2017-CP-14-00127
)	
PALMETTO AIR PLANTATION)	
HOMEOWNERS ASSOCIATION, INC.,)	
)	
Plaintiff,)	
)	**ORDER FOR PARTIAL**
vs.)	**SUMMARY JUDGMENT.**
KIM E. BEVIER,)	
)	
Defendant.)	

This matter came before the Court pursuant to Plaintiff's motion for partial summary judgment. The parties submitted memorandums in support of their positions and stipulated that the matter be heard without oral argument. After reviewing the memorandums, deposition testimony and the Court file, the Court would rule as follows regarding the Plaintiff's motion for partial summary judgment.

STANDARD OF REVIEW

Rule 56(c), SCRCP, provides that a trial court may grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." *Hancock v. Mid-South Mgmt,* Co., *Inc.,* 381 S.C. 326, 329-30, 673 S.B.2d 801, 802 (2009). "At the summary judgment stage of

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litigation, the court does not weigh conflicting evidence with respect to a disputed material fact." S.C. *Prop. & Gas. Guar Ass'n v. Yensen,* 345 S.C. 512, 518, 548 S.E.2d 880, 883 (Ct App. 2001). "The purpose of summary judgment is to expedite the disposition of cases *Long Grove at Seaside Farms, LLC v. Long Grove...,* 2012 WL 10890587 ... © 2018 Thomson Reuters. No claim to original U.S. Government Works. 3 which do not require the services of a fact finder." *Gauld v. O'Shaugnessy Realty Co.,* 380 S.C. 548,558, 671 S.E.2d 79, 85 (Ct. App. 2008). The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. *Id.* Once the party moving for summary judgment meets the initial burden of showing the absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Id.* at 558-59, 671 S.E.2d at 85. Rather, the nonmoving party must present specific facts showing a genuine issue for trial. *Id.* at 559, 671 S.E.2d at 85.

FACTUAL BACKGROUND

On or about July 11, 2001, the property in question became subject to "Declaration of Covenants, Conditions and Restrictions Palmetto Air Plantation Clarendon County, South Carolina" (hereinafter "Covenants"). Said Covenants were filed in the Clarendon County Courthouse in Deed Book A435 at page 223 on or about July 11, 2001 (See Amended Complaint and Second Amended Answer wherein it was alleged and admitted by the Defendant that the Covenants were filed. Also, find a copy of the Covenants at Exhibit 2 to the Deposition of the Defendant dated April 4, 2018). The Defendant, Kim S. Bevier, purchased two lots within Palmetto Air Plantation on September 26, 2003. Said

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lots are subject to the aforementioned Covenants ." The Defendant in Paragraph 4 of his Second Amended Answer to Amended Complaint states the following: "Paragraph five is admitted to the extent it alleges that the Declaration of Covenants, Conditions and Restrictions Palmetto Air Plantation Clarendon County, South Carolina were filed as alleged and that the defendant purchased two lots as alleged. The allegation that the lots are subject to the alleged covenants is denied."

On May 21, 2003, prior to signing the contract of sale, W.C. Coffey, Jr., Esquire wrote a letter to the Defendant and his now deceased wife. In the letter, Mr. Coffey references the two lots (Lots 33 & 34) that were later purchased by the Defendant. Mr. Coffey further references a meeting between himself, the Defendant and his late wife wherein the three met. Mr. Coffey specifically mentions: "It is obvious that you have considered this carefully and I appreciate your questions regarding the Restrictive Covenants" (See Exhibit 1 to the April 4, 2018 deposition of the Defendant).

The Defendant and Plaintiff entered into a contract of sale for two lots on May 23, 2003 (See Exhibit 4 to the April 4, 2018 deposition of the Defendant). The Contract of sale signed by Kim Bevier and his wife on May 23, 2003. Page paragraph 4 is captioned "Restrictive Covenants" and states: "This property is subject to all visible and recorded easements, right-of-way, and covenants, including those Restrictive Covenants dated 11 July 2001 recorded in the office of RMC for Clarendon County in Deed Book A-444 at Page 26.";

At closing, a Preliminary Attorney's Title Certificate provided to Mr. & Mrs. Bevier on September 25, 2003. Said certificate states in paragraph 3 the following:

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"Restrictive Covenants recorded in the office of the Clerk of Court for Clarendon County in Deed Book A-444 at Page 26 and Deed Book A-435 at 223." (See Preliminary Attorney's Title Certificate at Exhibit 6 in the deposition of the Defendant dated April4, 2018).

On October 24, 2003, the Final Attorney's Title Certificate was mailed to the Defendant. It States in paragraph 3 the following: Restrictive Covenants recorded in the office of the Clerk of Court for Clarendon County in Deed Book A-444 at Page 26 and Deed Book A-435 at 223."

During the April 4, 2018 deposition of the Defendant, the following exchange took place between the Plaintiff's attorney and the Defendant:

Q. All right. So, let 's go back to your contention that the Covenants-I want to get a clear understanding from you why the Covenants don't----aren't applicable to you."

A. Because they never been bound to the property that I purchased.

Q. All right. Explain that to me because I'm having a hard time with your understanding of the law.

A. okay. My lay understanding of this is that any Restrictive Covenants need to be either stipulated in a conveyance or referenced in a conveyance if recorded elsewhere. None of those things happened when Joe sold all the land as Mid Eastern Truck Wash sold all land to Palmetto Air Plantation, LLC. Okay?

A. All right. Joe at that point in time, lost his rights as Declarant because more than twenty-five(25) - he retained zero percent of the lots at that time. He can't act as a declarant after he sold all of the property. (See April 4, 2018 deposition of the

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Defendant page 53, lines 5-25).

A. So you ask—why I don't believe the covenants apply to my land—that's the first reason is that he lost all right to be Declarant and God on that property after he sold it to Palmetto Air Plantation, LLC. Palmetto Air Plantation, LLC gave me a general Warranty Deed: Okay? Not subject—! guess it's subject to restrictions, zoning, easements and all that jazz that apply, but it did again, it did not bind the covenants to my property and, indeed I don't think they could unless they refiled themselves . (See April 4, 2018 deposition of the Defendant page 54, lines 13-25).

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

The Plaintiff seeks partial summary judgment regarding the Defendant's contention that the Covenants filed on July 11, 2001 **do not run** with his property.

Restrictive covenants differ from contracts in that they "run with the land," meaning that they are enforceable by and against later grantees. 17 S.C. Jur. *Covenants§* 18 (2005). Restrictive covenants that require grantees to pay assessments for the upkeep of a particular parcel of property are held to be real covenants which "touch and concern" land, and therefore, run with the land. *Epting v. Lexington Water Power* Co., 177 S.C. 308, 314-317, 181 S.E. 66, 69-70 (1935); 17 S.C. Jur. *Covenants§§* 18 and 19.

There are several ways in which restrictive covenants may be created. The most common means are: (1) by deed; (2) by declaration; and (3) by implication from a general plan or scheme of development. 17 S.C. Jur. *Covenants* § 60. The initial restrictive covenants applicable to the Defendant were created by the Declaration of Covenants when MidEastern Truck Wash, Inc. (Declarant) executed and recorded the

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Declaration of Covenants, Conditions and Restrictions Palmetto Air Plantation Clarendon County, South Carolina recorded at Deed Book A435 at page 223 on or about July 11, 2001. See *Smith v. Comm'rs of Pub. Works of City of Charleston,* 312 S.C. 460, 466, 441 S.E.2d 331, 335 (Ct.App.1994); 17 S.C. Jur. *Covenants§* 8. Restrictive covenants will be enforced unless they are indefinite or contravene public policy. *Sea Pines Plantation* Co. *v. Wells,* 294 S.C. 266, 270, 363 S.E.2d 891, 894 (1987).

The Covenants here were filed in the Clarendon County RMC Office in Deed Book A435 at page 223 on or about July 11, 2001 (See Amended Complaint and Second Amended Answer wherein it was alleged and admitted by the Defendant that the Covenants were filed. See also, filed copy of the Covenants at Exhibit 2 of the Defendant's April 4, 2018 deposition).

This exact issue (e.g. whether or not restrictive covenants were binding on a purchaser regardless of whether or not the covenants were actually noticed in the deed) was before the Court of Appeals in *Harbison Community Ass'n, Inc. v. Mueller459* S.E.2d 860 (Ct. App. 1995). In that case the Court Appeals stated the following:

> The circuit court also reversed the magistrate because the Declaration's fee assessment provisions were not recited in the Muellers' deed, and therefore the Muellers were not bound by them. **This was an error. A covenant is enforceable against a subsequent grantee, even if not in the grantee's deed, if the grantee has actual or constructive notice of the covenant. 20 Am.Jur.2d Covenants, Conditions, and Restrictions § 26 (1965). A homeowner is charged with constructive notice of any restriction properly recorded within the chain of title. Carolina Land Co. v. Bland, 265 S.C. 98,217 5.E.2d 16 (1975). The Declaration was recorded and noted in the J.C. Roy Company deed, within the Muellers' chain of title. Thus, the Muellers had constructive notice of the Declaration. Moreover, Mr. Mueller testified he had actual. notice of the**

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Declaration. Accordingly, the Muellers are bound by the terms of the Declaration, and the circuit court erred, as a matter of law, in finding the Muellers not bound by the covenant because it was not in their deed (emphasis added).

In this case, the Defendant had constructive notice of the Covenants by virtue of the fact that the Covenants were filed before the purchase of the Defendant's lots in Deed Book A435 at page 223 on or about July 11, 2001 (See Amended Complaint and Second Amended Answer wherein it was alleged and admitted by the Defendant that the Covenants were filed and See also, filed copy of the Covenants at Exhibit 2 of the Defendant's April 4, 2018 deposition).

The Defendant also had actual notice of the Covenants by virtue of the following: On May 21, 2003, prior to signing the contract of sale, W.C. Coffey, Jr., Esquire wrote a letter to the Defendant and his now deceased wife. In the letter, Mr. Coffey references the two lots (Lots 33 & 34) that were later purchased by the Defendant. Mr. Coffey further references a meeting between himself, the Defendant and his late wife wherein the three met. Mr. Coffey specifically mentions: "It is obvious that you have considered this carefully and I appreciate your questions regarding the Restrictive Covenants" (See Exhibit 1 to the April 4, 2018 deposition of the Defendant).

The Defendant and Plaintiff entered into a contract of sale for two lots on May 23, 2003 (See Exhibit 4 to the April 4, 2018 deposition of the Defendant). The Contract of sale signed by Kim Bevier and his wife on May 23, 2003. Page paragraph 4 is captioned "Restrictive Covenants" and states: "This property is subject to all visible and recorded easements, right-of-way, and covenants, including those Restrictive Covenants dated

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11 July 2001 recorded in the office of RMC for Clarendon County in Deed Book A-444 at Page 26."; At closing, a Preliminary Attorney's Title Certificate provided to Mr. & Mrs. Bevier on September 25, 2003. Said certificate states in paragraph 3 the following: "Restrictive Covenants recorded in the office of the Clerk of Court for Clarendon County in Deed Book A-444 at Page 26 and Deed Book A-435 at 223." (See Preliminary Attorney's Title Certificate at Exhibit 6 in the deposition of the Defendant dated April 4, 2018). On October 24, 2003, the Final Attorney's Title Certificate was mailed to the Defendant. It States in paragraph 3 the following: Restrictive Covenants recorded in the office of the Clerk of Court for Clarendon County in Deed Book A-444 at Page 26 and Deed Book A-435 at 223."

The Court would find that the Defendant had actual and constructive knowledge of the Covenants. Therefore this Court grants partial summary judgment to the Plaintiff regarding the Defendant's contention and defense that the Covenants herein do not "run" with the lots he purchased from the Plaintiff because the Covenants were not recited in his deed when he purchased the property from Palmetto Air Plantation, LLC. As a result, the Covenants referenced herein are enforceable against the Defendant and the Defendant's contention that they are unenforceable against him is without merit.

For the aforementioned reasons, partial summary judgment is granted in favor of the Plaintiff.

AND IT IS SO ORDERED.

R. FERRELL COTHRAN, JR.
PRESIDING JUDGE
THIRD JUDICIAL CIRCUIT

December_____, 2018

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Clarendon Common Pleas

Case Caption: Palmetto Air Plantation Homeowners Associations, Inc VS Kim E Bevier

Case Number: 2017CP1400127

Type: Order/Summary Judgment

So Ordered

s/ R. Ferrell Cothran, Jr., 2144

Electronically signed on 2018-12-14 11:23:25 page 10 of 10

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BY-LAWS
OF
PALMETTO AIR PLANTATION HOMEOWNERS ASSOCIATION, INC.
(A corporation not for profit under the laws of the State of South Carolina)

1. Identity:

These are the By-Laws of Palmetto Air Plantation Homeowners Association, Inc., a non-profit corporation existing under the laws of the State of South Carolina, which has been organized for the purpose of maintaining Palmetto Air Plantation Subdivision which is reflected on a plat of the subdivision made by DuValle W. Elliott, RLS, dated 11 April, 2002, designated as Clarendon Tax Map Parcel No. 140-00-05-063-00, which common areas may be conveyed by the developer, Mid-Eastern Truckwash, Inc. to the Homeowners Association and dedicated to the common use and enjoyment of the owners, their families, guests, tenants, employees and invitees.

2. Association Responsibility for Common Areas - Subject to the rights of the Owners set forth in the Declaration of Covenants, Conditions and Restrictions of the Subdivision, the Association shall be responsible for the management and control of the common areas (including equipment related thereto) and shall keep them in good, clean and attractive condition and repair consistent with the requirements of the FAA regarding the landing strip and a first class residential area pursuant to the terms and conditions of the Declarations.

3. Membership - Every Lot Owner, by virtue of being an Owner and for as long as he or she is an Owner, shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. No Owners, whether one or more persons, shall have more than one membership per Lot owned, but all of the persons owning each Lot shall be entitled to rights of membership and of use and enjoyment appurtenant to such ownership.

4. Classes of Membership - The Association shall have two (2) classes of voting members as follows:

Class A. Class A members shall be all Owners of Lots as shown on the plat previously referenced with the exception of the Developer/Declarant and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as the Owners among themselves

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determine, and the Secretary of the Association shall be notified of such designation prior to any meeting. In the absence of such notification, the vote allocated to the lot shall be suspended in the event more than one person or entity seeks to exercise the right to vote. Furthermore, in no event shall more than one vote be cast with respect to any lot and the vote may not be split into fractions or percentages but shall be cast as one whole vote.

Class B. The Class B members shall be the Developer/Declarant and shall be entitled to four (4) votes for each lot owned by it. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

a) When the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership; or

b) Fifteen years from the date of these Covenants.

Any agent with written authorization from the Declarant shall be permitted to attend and cast all votes in behalf of the Declarant at any regular or special meeting of Palmetto Air Plantation Homeowners Association.

5. Meetings - Notice must be given to all lot owners in writing at least seven (7) days prior to any regular or special meeting of the Homeowners Association. The Secretary shall maintain a roster of all lot owners and their addresses for the furnishing of notice hereunder. It shall be the responsibility of each lot owner to notify the Secretary of any change in their mailing address. Notice given by the Secretary to the last known address furnished by Clarendon County Tax Assessors Office or any change thereto provided by the owner shall constitute compliance with this section as sufficient notice. A quorum of not less than fifty-one (51%) percent of eligible votes shall be required to conduct business at any meeting of the Homeowners Association. Any Owner of a lot which is leased may assign his voting right to the tenant, provided that a copy of the instrument of assignment is furnished to the Secretary of the Association at least twenty four (24) hours before any regular or special scheduled meeting of said Homeowners Association. Any such proxy filed with the Secretary, shall be open for public inspection and shall be retained in the files of said Homeowners Association and attached to and become a part of the minutes of that meeting.

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6. Compliance With Document - Each Owner shall abide by and benefit from the provisions of the Declarations of Covenants, Conditions and Restrictions of Palmetto Air Plantation, recorded in the Office of the RMC for Clarendon County on 11 July, 2001 in Deed Book A-444 at Page 26 and these By-Laws.

7. Rules and Regulations - The Association from time to time and subject to the provisions of the Declarations of Covenants, Conditions and Restrictions of Palmetto Air Plantation may adopt, amend and repeal rules and regulations, to be known as the "Association Rules", governing among other things and without limitations:

a) The use of roads and easements;

b) The use and maintenance of the landing strip;

c) Collection and disposal of garbage and trash;

d) The burning of open fires;

e) The control of animals;

f) Parking restrictions and limitations;

g) The posting of maximum speeds for vehicular traffic and other traffic rules;

h) Establishment of times or other restrictions when commercial vehicles may be permitted to use any or all of the roads;

i) The types of vehicles (other than conventionally equipped passenger automobiles) and the times when any vehicle or motorized vehicle or device may be permitted to use the roads within Palmetto Air Plantation or any other area of the property;

j) A schedule for fines for infractions of the Association Rules or project documents.

i) A copy of the Association Rules in effect shall be distributed to each Member of the Association, and any changes in the Association Rules shall be distributed to each Member within a reasonable time following the effective date of the change.

8. Assistance to Architectural Control Committee - The Association shall in all respects cooperate with and assist the Architectural Control Committee in the attainment of the Architectural Control Committee functions and in the enforcement of the Architectural Guidelines, rules and regulations as more particularly defined in Article III of the Declaration of Covenants, Conditions and Restrictions.

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9. Books and Records - The Association shall make available for inspection, upon request, during normal business hours or under other reasonable circumstances, to Owners and Mortgagees current copies of the Association Documents and the books, records and financial statements of the Association prepared pursuant to the By-Laws. The Association may charge a reasonable fee for copying such materials.

10. Successors of Declarant/Developer - The Association shall succeed to all the rights, duties and responsibilities of the Declarant/Developer under this Declaration upon the termination of the Class B membership in accordance with the above provisions. The Association may delegate any such rights, duties and responsibilities to the Architectural Control Committee or any other committee or entity which it may choose to form.

11. Annual and Special Meetings of the Membership -

(a) The annual members meeting shall be held at Palmetto Air Plantation or such other place as may be designated by the Board of Directors at 10:00 A.M. on the _____ day of _____ of each year for the purpose of electing Directors and transacting any other business authorized to be transacted by the Members. PROVIDED HOWEVER, that if that date is a legal holiday the meeting shall be held at the same hour on the next succeeding Saturday;

b) Special Meetings - Special Members' Meetings shall be held whenever called by the President or Vice-President or by a majority of the Board of Directors, and must be called by such officers upon receipt of a written request from three (3) Members of the Association owning a majority of the dwellings.

c) Notice of Meetings - Notice of all Members' meetings, regular or special, shall be given by the President, Vice-President, or Secretary of the Association, or other officers of the Association in the absence of said officers to each member, unless waived in writing, such notice to be written and to state the time, place and object for which the meeting is called. Such notice shall be given to each Member not less than ten (10) days nor more than sixty (60) days prior to the date set for such meeting. If any Members meeting cannot be organized because a quorum has not been attended, or the members who are present, either in person or by proxy, may adjourn

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the meeting until the required percentage of attendance constituting a quorum, is present.

d) At meetings of membership, the President shall preside or in the absence of him or her, the membership shall select a chairman;

e) The order of business at the Annual Members' Meetings and as far as practical, at any other members' meeting shall be:

i) Calling of the roll and certifying of proxies;

ii) Proof of notice of meeting or waiver of notice;

iii) Reading of Minutes;

iv) Reports of Officers;

v) Reports of Committees;

vi) Appointment of Chairman of Inspectors of Election;

vii) Election of Directors;

viii) Unfinished business;

ix) New business;

x) Adjournment.

12. Board of Directors:

(A) The Homeowners Association shall be governed by a Board of Directors of five (5) members elected by a majority of the members of the Homeowners Association. The Board of Directors will elect a Secretary from its membership. All Board members shall serve without compensation except the Secretary who shall be compensated as determined by the Board of Directors. A quorum of the Board necessary to conduct business shall consist of at least half of the members present.

(B) The first Board of Directors of the Association and succeeding Boards of Directors, shall consist of five (5) persons. At least a majority of the Board of Directors shall be members of the Association, or shall be authorized representatives, officers, or an employee of a corporate member of the Association.

(C) All members of the Board of Directors entitled to be designated under the terms of this provision of these By-Laws shall be elected by a plurality of the votes cast at the Annual Meeting of the Members of the Association.

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(D) The first Annual Meeting of the Members the term of the Officers of the three (3) Directors receiving the highest plurality of votes shall be established at two (2) years and the term of office of the other two (2) Directors shall be established at one (1) year. Thereafter, as many Directors of the Association shall be elected at the Annual Meeting as there are regular terms of office of the Directors expiring at such time.

(E) Meetings of the Board of Directors shall be held at such time and place as shall be determined from time to time by majority of the Directors.

(F) Special meetings of the Directors may be called by the President and must be called by the Secretary at the written request of one-third of the votes of the Board.

(G) A quorum at the Directors' meeting shall consist of the Directors entitled to cast the majority of the votes of the Board.

(H) The Board of Directors shall manage and direct the affairs of the Association and subject to any restrictions imposed by law, or the Declaration of Covenants, Conditions and Restrictions or these By-Laws and may exercise all of the powers of the Association subject only to approval by the Owners when such is specifically required of these By-Laws. The Board of Directors powers shall include, without limiting the generality of the foregoing, the following:

i) To make, levy and collect assessments against members and to use the proceeds of said assessment and to exercise the use of their powers and duties granted unto the Association;

ii) To maintain, repair, replace and the management of the common areas of the facility wherever the same is required to be done and accomplished by the Association for the benefit of the members;

iii) To comply with directives of the FAA regarding the landing strip;

iv) To contract for the management of the common areas and facilities;

v) To enforce by legal means the provisions of the Articles of Incorporation, the By-Laws of the Association and the Declaration of Covenants, Conditions and Restrictions and the regulations hereinafter promulgated governing the use of common property and the run-way in the subdivision;

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vi) To pay all taxes and assessments which may become liens against any part of the common areas and to assess the same against the Members and their respective lots;

vii) To carry insurance for the protection of the Members and the Association against casualty and liability;

viii) To pay all costs of power, water, sewer or other utility services rendered to the subdivision and not billed to individual residences;

ix) To employ personnel for reasonable compensation to perform the services required for the proper maintenance of the common areas;

x) Directors may be removed from office in the manner provided by law for the removal of Directors of South Carolina corporations for profit.

13. Fiscal Management - The provisions for the fiscal management of the Association set forth in the Declaration of Covenants, Conditions and Restrictions shall be supplemented by the following provisions:

a. The assessments rolls shall be maintained in a set of accounting books in which there shall be an account for each lot owner. Such account shall designate the name and address of the owner, the amount of each assessment against the owner and the amount paid upon the account and the balance due;

b. The Board of Directors shall adopt a budget for each calendar year which shall contain estimates of the cost of performing the functions of the Association, including but not limited to the following items:

(1) Common expense budgets which shall include maintenance and operation of the common elements, landing strip (run-way), landscaping, streets, utility services, casualty insurance, liability insurance and reserves (operating and replacement);

(2) Proposed assessments against each Member;

(3) Copies of the proposed budget and proposed assessments shall be transmitted to each Member on or before 1 January of each year for which the budget is made.

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(4) The Board of Directors shall determine the method of payment of such assessments and the due dates thereof and shall notify the Members thereof.

14. Amendments to By-Laws - Amendments to these By-Laws shall be proposed and adopted in the following manner:

(a) Amendments to these By-Laws may be proposed by the Board of Directors of the Association acting on a vote of the majority of the Directors or by Members of the Association having a majority vote of the number of lots in the subdivision, whether meeting as Members or by instruments in writing signed by them;

(b) Upon any amendment or amendments to these By-Laws being proposed by the Board of Directors or Members, such proposed amendments shall be transmitted to the President of the Association who shall then call a Special Meeting of the Members of the Association for a date not sooner than twenty (20) days or later than sixty (60) days from receipt by such Officer of the proposed amendment or amendments. The Secretary shall give to each Member written or printed notice of such meeting in the same form and in the same manner as notice of the call of a Special Meeting of the Members;

(c) In order for such amendment to become effective, the same must be approved by an affirmative vote of fifty one percent (51%).

15. Conflicts - In the event of any conflict between the provisions of the Declaration of Covenants, Conditions and Restrictions and the provisions of these By-Laws, the provisions of the Declaration of Covenants, Conditions and Restrictions shall control.

The foregoing were adopted as the By-Laws of Palmetto Air Plantation Homeowners Association, Inc., a corporation not for profit under the laws of the State of South Carolina at the first meeting of the Board of Directors on September 4, 2004.

Katherine E. Hodulik (L.S.)
Secretary

WF:FILES/CORPORATE/PALMETTO AIR PLANTATION HOMEOWNERS ASSN-BY-LAWS
FILE #040365BB

(L.S.)
President

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FIRST AMENDMENT
OF
THE BY-LAWS OF PALMETTO AIR PLANTATION HOMEOWNERS ASSOCIATION, INC.

This Amendment to the By-laws of Palmetto Air Plantation Homeowners Association, Inc. made and adopted by the members of the association this 2nd day of September, 2017.

WHEREAS, in accordance with paragraph 14 of the By-laws of Palmetto Air Plantation Homeowners Association, Inc. the Board of Directors of the Association propose an Amendment to paragraph 4b of the By-laws of the association to extend the control of the Class B member (Developer/Declarant) from fifteen years from the date of the Covenants to twenty five years from the date of the Covenants, and;

WHEREAS, after due notice of a special call meeting of the members of the association held in accordance with paragraph 14b of said By-laws, a majority of 51% of the members of the association have adopted said amendment.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENCE, that the By-laws of Palmetto Air Plantation Homeowners Association, Inc. is hereby amended as follows:

4. "Classes of Membership" paragraph b) is hereby amended by deleting the same and inserting in lieu thereof the following: Twenty five years from the date of these Covenants (by-laws) dated September 4, 2004.

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IN WITNESS WHEREOF, Palmetto Air Plantation Homeowners Association, Inc. has caused these to be executed this 2nd day of September, 2017.

PALMETTO AIR PLANTATION HOMEOWNERS ASSOCIATION, INC.

Monica S Bruce
Witness

Pamela Gerfin
Witness

BY: Joseph M. Witt
ITS: President

STATE OF SOUTH CAROLINA)
)
COUNTY OF CLARENDON)

I, Pamela Gerfin, Notary Public in and for the State of South Carolina, do hereby certify that the within named Joseph M. Witt personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal the 2nd day of September, 2017.

Pamela Gerfin
Notary Public Signature
My Commission Expires: 6/26/2027

Notary Public Printed Name or Seal Below:

PAMELA GERFIN NOTARY PUBLIC SOUTH CAROLINA MY COMMISSION EXPIRES 06/26/2027

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218 S.C. 359
Supreme Court of South Carolina.

EPPS
v.
BRYANT et al.

No. 16447.
|
Dec. 27, 1950.

Synopsis
F. Q. Epps sued for a temporary order restraining J. E. Bryant and another from trespassing on plaintiff's land and a permanent injunction against and damages for such trespass. From an order of the Common Pleas Court, Clarendon County, Steve C. Griffith, J., providing that a previous order, restraining and enjoining defendants from entering or trespassing on the land during the pendency of the action, should remain in force if plaintiff filed an undertaking, defendants appealed. The Supreme Court, Taylor, J., held that the first order was a temporary injunction, not a restraining order, so that the judge issuing it erred in failing to require plaintiff to file an undertaking to pay defendant damages sustained if the court finally decided that plaintiff was not entitled to an injunction, but that such failure was not a jurisdictional defect and the later order was proper.

Order appealed from affirmed.

See also 217 S.C. 361, 60 S.E.2d 685.

West Headnotes (4)

[1] **Injunction**
Particular cases
Injunction
Operation and effect

In suit to enjoin trespasses on plaintiff's land, order restraining and enjoining defendants from trespassing thereon during pendency of action and directing service of copies of any moving papers on plaintiff's attorney was a temporary injunction, not restraining order, though judge erred in failing to require plaintiff to file undertaking to pay defendants any damages sustained if court decided that plaintiff was not entitled to injunction. Code 1942, §§ 566(2), 567, 570, 571.

1 Cases that cite this headnote

[2] **Injunction**
Necessity and waiver in general

A court issuing temporary injunction order against defendants in injunction suit has no power to dispense with plaintiff's filing of statutory undertaking, with or without surety, to pay damages sustained by defendant if court decides that plaintiff is not entitled to injunction. Code 1942, § 570.

Cases that cite this headnote

[3] **Injunction**
Extraordinary or unusual nature of remedy
Injunction
Necessity and waiver in general

Temporary injunction being a drastic remedy, due compliance with protective terms of statute requiring plaintiff granted injunction to give written undertaking to pay damages sustained by party enjoined, if court decides that plaintiff was not entitled to injunction, should always be required of one granted temporary injunction, but execution of undertaking by party granted temporary restraining order under rule to show cause is not required. Code 1942, §§ 570, 571.

2 Cases that cite this headnote

[4] **Injunction**
Necessity and waiver in general
Injunction
Hearing and determination

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Failure of judge, issuing temporary injunction order, to require party granted injunction to file undertaking to pay damages sustained by party enjoined, if order were held improper, was erroneous, but not jurisdictional defect, so that another judge's subsequent order that first order remain in force, if such undertaking be filed, was proper. Code 1942, § 570.

2 Cases that cite this headnote

Attorneys and Law Firms

**832 *360 DuRant & DuRant, Manning, for appellants.

James Hugh McFaddin, Manning, for respondent.

Opinion

TAYLOR, Justice.

Upon a summons and verified complaint of the plaintiff, the resident Circuit Judge issued at Chambers on March 4, 1950, an order, which the appellants contend is a temporary injunction, and respondent contends is a temporary restraining order. No bond being required of the plaintiff, defendants, *361 after due notice, moved before the next presiding judge of the circuit to set aside the said order upon several grounds, one of which was that no bond or undertaking was required in violation of Section 570 of the statutes of this state. This resulted in an order dated March 30, 1950, providing that the first order should remain in force provided that the plaintiff file an undertaking. From this last order, appellants now come to this Court, contending that there was error in refusing to set aside the first order upon the ground that no bond or undertaking was required of the plaintiff in accordance with Section 570, Code of Laws of South Carolina 1942.

'Although sometimes used synonymously, the terms 'temporary injunction' and **833 'restraining order' are properly distinguishable'. 28 Am.Jur. 206. The two orders are somewhat different in character, although the words describing them are not so important as the substance thereof. An examination of the Code Sections under which temporary injunctions and restraining orders may be issued, in cases of the kind now before us, will very clearly show the distinction between the two types of orders.

Subdivision (2) of Section 566 is as follows: 'When, during the litigation, it shall appear that the defendant is doing, or threatens, or is about to do, or procuring or suffering some act to be done, in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual, a temporary injunction may be granted to restrain such act.'

Section 567 relates to the granting of a temporary injunction, from which we quote the following: 'The injunction may be granted at the time of commencing the action, or at any time afterwards, before judgment, upon its appearing satisfactorily to the court or judge, by the affidavit of the plaintiff or of any other person that sufficient grounds exist therefor.'

*362 Section 570 provides as follows with reference to security upon an injunction: 'When no provision is made by statute as to security upon an injunction, the court or judge shall require a written undertaking on the part of the plaintiff, with or without sureties, to the effect that the plaintiff will pay to the party enjoin(ed) such damages, not exceeding an amount to be specified, as he may sustain by reason of the injunction, if the court shall finally decide that the plaintiff was not entitled thereto.'

The three sections from which the above excerpts were taken relate to *temporary injunctions*. But Section 571 relates solely to *restraining orders*, and the following is a copy of the entire section: 'If the court or judge deems it proper that the defendant, or any of several defendants, should be heard before granting the injunction, an order may be made, requiring cause to be shown, at a specified time and place, why the injunction should not be granted; and the defendant may, in the meantime, be restrained.'

The complaint herein, dated March 3, 1950, alleges that the plaintiff is the owner in fee and in exclusive possession of a certain tract of land in Clarendon County, and that the defendants, their agents and servants, have entered upon this land and committed wilful and malicious trespasses thereon of a continuous character, interfering with the plaintiff in preparing to cultivate his crops on the premises. The prayer of the complaint is for a temporary order restraining the defendants 'during the pendency of this action' from trespassing on the premises; and for a permanent injunction as well as damages; and there is a general prayer for such other and further relief as may be just and proper.

[1] On March 4, 1950, Hon. J. Frank Eatmon, Judge of the Third Circuit, handed down the order hereinbefore referred to, reciting that the case came before him upon the sworn complaint, and that it appeared to his satisfaction that the

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plaintiff was entitled to the temporary relief asked for in paragraph one of the prayer *363 of the complaint, and hence such relief was granted, and the defendants, their agents, servants, etc., were specifically restrained and enjoined 'during the pendency of this action or until the further order of this court' from entering upon or trespassing upon the premises.

This order also contains the following paragraph: '*Ordered* that copies of any moving papers herein be served upon plaintiff's attorney at least ten (10) days before any date set for hearing.'

It will be noted from the foregoing recital that the order is a straight out order of temporary injunction, and is not in any sense a rule to show cause. The paragraph just quoted, or one similar thereto, is appropriate in an order of temporary injunction, where the burden is cast upon the defendant to move to set aside or modify, while under Section 571, providing for the issuance of a restraining order, a rule to **834 show cause is issued, returnable at a specified time and place, fixed by the Court. We are therefore definitely of opinion, as above indicated, that the order of Judge Eatmon was an order of *temporary injunction*, and not a *restraining order*.

[2] It should further be observed, and this is the essential matter involved in this appeal, that there is no provision in the order of temporary injunction for the giving of an undertaking, as required by Section 570, although the terms of this section are specific and mandatory, for it provides that 'the court or judge shall require a written undertaking on the part of the plaintiff'. Furthermore, the decisions of this Court are clearly to the effect that the Court has no power to dispense with an undertaking, with or without sureties, as required by the section aforesaid. New York Life Ins. Co. v. Mobley, 89 S.C. 189, 71 S.E. 817; Columbia Water Power Co. v. Nunamaker, 73 S.C. 550, 53 S.E. 996; and Smith v. Smith, 51 S.C. 379, 29 S.E. 227.

*364 [3] The issuance of a temporary injunction is a drastic remedy, and the terms of Section 570 are intended to provide for protection, in favor of the parties enjoined, in case the injunction should ultimately be deemed improper, *and due compliance with these protective terms should always be required.* On the other hand, the issuance of a restraining order, under a rule to show cause, as provided in Section 571, is quite temporary in character, and is usually made promptly returnable, so that there is no statutory requirement for the execution of an undertaking.

Shortly after the issuance of the order aforesaid defendants gave notice of a motion to be heard before Judge Eatmon, which was transferred by him on March 20, 1950, to Hon. Steve C. Griffith, Judge of the Eighth Circuit, then presiding in the Third Circuit; and the same was heard by him at Chambers at Sumter on March 30, 1950; and it is upon appeal from this order that the case is now before us. We quote the following excerpt from the same, covering the entire order, except the foregoing recitals:

'At the full hearing in this matter upon affidavits and pleadings and after hearing arguments of DuRant and DuRant in support of the motion and James Hugh McFaddin, contra, I am of the opinion that the temporary restraining order should remain in force until the trial of this case on the merits; provided, however, that the plaintiff file within five (5) days from date an undertaking in the form provided by law in the sum of One Thousand ($1,000.00) Dollars, with sufficient surety to be approved by the Clerk of this Court, conditioned to pay to the defendants such damages as they might sustain if the Court should decide that the plaintiff was not entitled thereto.

'This restraining order protects the lands claimed by plaintiff, as shown on the plat introduced in evidence, made by W. B. Sykes, the plaintiff's lines being shown thereon in red.

*365 '*It Is So Ordered.*'

This order was dated March 30, 1950, and it appears from the brief of appellants that the undertaking required thereby was timely filed.

The defendants make but one exception, wherein they charge Judge Griffith with error in refusing to set aside the temporary injunction issued by Judge Eatmon, upon the ground that no bond or undertaking was required of the plaintiff.

[4] It is indeed quite clear that the order of Judge Eatmon, in so far as it failed to require an undertaking, pursuant to Section 570, was inadvertently erroneous. Nevertheless the failure to require an undertaking is not a *jurisdictional defect.*

The law is so definitely and clearly stated in the case of Ex parte Jones, 160 S.C. 63, 158 S.E. 134, 140, 77 A.L.R. 235, wherein the opinion was delivered by the distinguished Acting Associate Justice Mendel L. Smith, that we quote therefrom at length as follows: 'While the language of section 486 (now 570) of the Code, applicable only to the granting of a temporary injunction, is plain and mandatory, and the court should require a bond (Smith v. Smith, 51 S.C. 379, 29 S.E. 227) upon **835 granting such injunction, yet it has been determined that the failure of the court to require the undertaking is not a jurisdictional defect (Watson v. Citizens' Sav. Bank, 5 S.C. [159] 177;

Smith v. Smith, supra); that the undertaking may be filed after the granting of the injunction (Meinhard v. Strickland, 29 S.C. 491, 7 S.E. 838); that the judge or court may, upon motion, so amend the order of injunction as to require execution of a sufficient undertaking (State ex rel. Bates v. County Com'rs, 96 S.C. 29, 79 S.E. 522), and, even where the undertaking filed affords insufficient protection, the remedy is by timely application for its increase (Pee Dee River Lumber Company v. Fountain, 90 S.C. 122, 72 S.E. 885).'

*366 In the case of Ex parte Zeigler, 83 S.C. 78, 64 S.E. 513, 514, 916, 21 L.R.A.,N.S., 1005, the plaintiffs appealed to the Supreme Court from an order granting a preliminary injunction; and the Court held (opinion by Mr. Justice Woods) that there was no error in granting the injunction, but that there 'was error, however, in not requiring the usual injunction undertaking'; and consequently the judgment of the Circuit Court was modified so as to require the filing of a proper written undertaking.

Reference should also be made to the case of State ex rel. Bates v. County Commissioners, 96 S.C. 29, 79 S.E. 522. This was really not a Supreme Court case, but was an order of Mr. Justice Fraser, amending a previous order of temporary injunction, issued by him, wherein he inadvertently failed to require the usual injunction undertaking. Hence, the reported order provided for the issuance of such an undertaking in a specified sum 'for the payment of such damages as the respondents may sustain, not exceeding said sum, by reason of the temporary injunction heretofore granted in this cause, should the court finally determine that the petitioners are not entitled to injunction.'

No reference is made in Judge Griffith's order to the erroneous omission from the former order of the requirement of an injunction undertaking, and that order is inaccurately described as a 'temporary restraining order'. However, as clearly appears from the two cases last above cited, there was substantial compliance in the order of Judge Griffith with the corrective practice indicated by these two cases.

Accordingly, with this explanation, we are of opinion that the order of Judge Griffith, from which this appeal is taken, should be affirmed, and it is so ordered.

OXNER, J., and L. D. LIDE, A. A. J., concur.

BAKER, C. J., and STUKES, J., not participating.

All Citations

218 S.C. 359, 62 S.E.2d 832

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ELECTRONICALLY FILED - 2019 Oct 29 6:37 PM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

ELECTRONICALLY FILED - 2019 Nov 29 9:42 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

STATE OF SOUTH CAROLINA) COUNTY OF CLARENDON)) Palmetto Air Plantation) Homeowners Association, Inc.,)) Plaintiff,)) vs.) Kim E. Bevier,) Defendant.)	IN THE COURT OF COMMON PLEAS OF THE THIRD JUDICIAL CIRCUIT CIVIL ACTION NO.: 2017-CP-14-00127 DEFENDANT'S MOTION TO RECONSIDER, MODIFY AND AMEND JUDGMENT RULE 59(e)

Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, the Defendant hereby moves the court to reconsider and/or alter or amend its order entered on November 19, 2019, denying the Defendant's Motion to Dissolve/Modify the Temporary Restraining Order (TRO) upon the following grounds which were overlooked or not considered by the court:

1. The "Law of the Case Doctrine" does not preclude the modification of the TRO under Rule 54(b) SCRCP, which provides for the modification of interlocutory orders. Rule 54(b) SCRCP would be rendered meaningless were that doctrine so applied.
2. The filing of a motion under Rule 59(e) SCRCP, is not a prerequisite to relief under Rule 54(b) SCRCP.
3. The after-discovered evidence regarding the title history of the property and restrictive covenants, which were presumed to be valid at the time of issuance of the TRO, warrant consideration the injunction bond issue.
4. The error in failing to include the posting of the injunction bond required by Rule 65(c)SCRCP is not remedied by delay in raising the issue of such failure.

November 29, 2019

s/Thomas E. Player, Jr.
Attorney for the Defendant
S.C. Bar Number 4478
Player & McMillan, L.L.C.
305 North Main Street
Sumter, South Carolina 29150
803-775-2306 *(office)*
803-436-5960 (*fax*)
tommyplayer@playermcmillan.com

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE THIRD JUDICIAL DISTRICT
COUNTY OF CLARENDON	)	CIVIL ACTION NO: 2017-CP-14-00127
	)	
Palmetto Air Plantation	)	
Homeowners Association Inc.	)	
	)	
Plaintiff,	)	DEFENDANT MOTION FOR PRETRIAL HEARING
	)	
vs.	)	
	)	
Kim E. Bevier,	)	
Defendant	)	

In accordance with Rule 16 of the SC Rules of Civil Procedure, Defendant hereby makes motion to the court for a pre-trial hearing.

April 10, 2023

s/Kim Edward Bevier
PRO SE
1144 Mullet Drive
Manning, SC 29102
803 622-5893
Kim.Bevier@GMail.com

2023 APR 10 AM 9:04
Beulah Roberts, Clerk-Clarendon S.C

PROOF OF SERVICE

Party Served

Name:	Steven S. McKenzie, Coffee & McKenzie PA
Address:	2 N. Brooks St
City:	Manning
State:	South Carolina
Zip Code:	29102
Date/Time of service:	10 April 2023
Means of Service:	U.S. Mail
Case Number	2017-CP-14-00127
Title of Document:	DEFFENDENT MOTION FOR PRE-TRIAL HEARING
Number of Pages:	1
Service Method:	U.S. Mail

Service By: Kim Edward Bevier – Pro Se
1144 Mullet Drive
Manning, SC 29102

2023 APR 10 AM9:04
Beulah Roberts, Clerk-Clarendon S.C

COFFEY, CHANDLER & YOUNTS, P.A.
Attorneys At Law
8 South Brooks Street ~ Post Office Box 1292
Manning, South Carolina 29102-1292
(803) 435-8847

WILLIAM C. COFFEY, JR.
RAY E. CHANDLER
LENA T. YOUNTS
JOSEPH K. COFFEY

FACSIMILE
(803) 435-8915
E-MAIL
coffeylaw@ftc-i.net

PLAINTIFF'S EXHIBIT 7
PENGAD 800-631-6989

May 21, 2003

Mr. & Mrs. Kim E. Bevier
706 Greene Street
Camden, SC 29020

RE: Lots 33 & 34 Palmetto Air Plantation

Dear Mr. & Mrs. Bevier:

It was a sincere pleasure for me to meet Kim on Tuesday concerning your purchase of lots at Palmetto Air Plantation. It is obvious that you have considered this carefully and I appreciate your questions regarding the Restrictive Covenants. I feel that you will be a valued addition to our community and look forward to having you move here.

In accordance with our conversation, I have prepared and enclose herein for your consideration and execution a Contract of Sale on the lots. Hopefully, I have incorporated those provisions that you requested and if you have any questions concerning it please do not hesitate to contact me. Otherwise, if you will be so kind as to execute it and return a signed copy to me I will be glad to record it in the Office of the Clerk of Court of Clarendon County for you and return the recorded copy.

With sincere regards,

W. C. Coffey, Jr.

WCCJr/bau

Enclosure: As Stated

Sale contract 5.21.03
closed on sale 9-26-03



STATE OF SOUTH CAROLINA)
)
COUNTY OF CLARENDON)

CONTRACT OF SALE

This Contract made and entered into this 21st day of May, 2003, by and between Palmetto Air Plantation, P. O. Box 777, Manning, SC 29102, hereinafter referred to as the "Seller", and Kim E. Bevier and Susan S. Bevier, 706 Greene Street, Camden, SC 29020, hereinafter referred to as the "Purchasers".

1. Description of Premises - Purchasers agree to buy and Seller agrees to sell Lots 33 and 34, Palmetto Air Plantation, situate in Clarendon County, South Carolina, subject to all of the covenants of record and all governmental statutes, ordinances, rules and regulations applicable to said lots.

2. Purchase Price - The purchase price is Eighty Seven Thousand Dollars ($87,000.00) to be paid as follows:

A. An earnest money deposit of Four Thousand Dollars ($4,000.00) has been paid prior hereto as consideration for this Contract, which sum shall be applied to and deducted from the purchase price at closing and shall be held in the escrow account of Coffey, Chandler & Younts, P.A., closing attorneys;

B. The balance of Eighty Three Thousand Dollars ($83,000.00) shall be payable by the issuance at closing of a Purchase Money Note, secured by a Mortgage of Real Estate on the lots herein referred to, which Note shall bear interest at the rate of six percent (6%) per annum and shall be payable on a ten (10) year amortization schedule with a balloon installment at the 60th month of the outstanding balance thereon. The first payment shall be due and payable one (1) month from the closing date anticipated by this transaction.

3. Closing - The Seller shall notify the Purchasers within one (1) year of the date of this Contract that the Seller is prepared to close this transaction and the Purchasers shall have a period of ninety (90) days from the date of notification to complete the closing. PROVIDED HOWEVER, in any event, the closing of this transaction shall occur on or before the 1st day of June, 2004. PROVIDED FURTHER, that the closing of this transaction on behalf of the Purchasers is contingent upon approval of the appropriate authority of Clarendon County for the issuance of a building permit

CERTIFIED TRUE COPY
Of Orisinal Filed
In This Office
05/30/2003 09:04:35AM
Beulah G. Roberts
Clerk of Court
Clarendon County, SC

to construct a residence and other buildings on the premises as permitted by the Restrictive Covenants and upon its failure to do so, the Purchasers shall have the right to terminate this Contract and the earnest money deposited as herein provided shall be refunded to them.

4. Restrictive Covenants - This conveyance is subject to all visible and recorded easements, right-of-way, and covenants, including those Restrictive Covenants dated 11 July, 2001, recorded in the Office of the RMC for Clarendon County in Deed Book A-444 at Page 26.

5. Deed and Costs - Upon payment by the Purchasers to the Seller of the outstanding balance due under this Contract, the Seller shall furnish to the Purchaser a general warranty deed to Lots 33 and 34, conveying good, marketable, fee simple title, free and clear of all liens and encumbrances. The Buyer agrees to pay for the preparation of the deed, deed stamps, any loan fees, title fees and all other closing costs incurred by them in completing the purchase including the preparation of this Contract.

6. Taxes - Ad valorem taxes shall be prorated between the Seller and Purchaser as of the closing date. The Seller shall pay all roll-back taxes applicable to the property.

7. Possession and Improvements - During the term of this Contract the Purchasers shall have possessory rights of the above described lots which shall include the rights to clear said lot of undergrowth and to conduct tests thereon in accordance with the Restrictive Covenants. PROVIDED HOWEVER, that any well, septic tank, or other permanent improvement erected by the Purchasers during the performance of this Contract shall become a part of the real estate herein described and should default occur on the part of the Purchasers, then and in that event, the said structure and appurtenances shall be retained by the Seller as part of the property without any compensation.

8. Default - In the event of default in the payment of the sums recited herein, the Seller may, by endorsement across the face of the original of this Contract and/or endorsement across any recorded copy of the same, cancel and terminate this Contract and said endorsement shall be sufficient evidence of the cancellation of this Contract. Upon said cancellation this Contract shall be declared null and void and all payments made by the Purchasers to the Seller shall be retained in

the hands of the Seller and considered as liquidated damages. PROVIDED FURTHER, that prior to the cancellation of this Contract due to nonpayment, the Seller shall give to the Purchasers ten (10) days written notice by registered or certified mail of said default. Should the Purchasers fail to correct said delinquency and to complete the purchase and pay the balance of the purchase price within said ten (10) day period, the Seller may terminate this Contract as hereinabove provided.

This Contract shall be binding upon the parties hereto, their heirs, successors and assigns.

IN WITNESS whereof we have hereunto set our hands and seals this day and year first above written.

Witnesses:

Carol P. Borchetta

Mary Ann Morris

Palmetto Air Plantation, Inc.

BY _____

ITS: President, Seller

STATE OF SOUTH CAROLINA)
)
COUNTY OF CLARENDON)

PROBATE

PERSONALLY APPEARED BEFORE ME, the undersigned witness and made oath that s/he saw the within named Joseph M. Witt, sign, seal and as his act and deed, deliver the within written Contract of Sale for the uses and purposes therein mentioned and that s/he with the other witness subscribed above witnessed the execution thereof.

Carol P. Borchetta

1st Witness Sign Again

SWORN to before me this 21st day of May, 2002.

Mary Ann Morris

Notary Public for South Carolina
My Commission Expires: 03/19/06

IN WITNESS whereof we have hereunto set our hands and seals this day and year first above written.

WITNESSES

Kathy B. West
1st Witness

Courtney V. Coop
2nd Witness

Kim E. Bevier, Purchaser

Susan Bevier, Purchaser

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF KERSHAW)

PERSONALLY APPEARED BEFORE ME, the undersigned witness and made oath that s/he saw the within named Kim E. Bevier and Susan Bevier sign, seal and as his act and deed, deliver the within written Contract of Sale for the uses and purposes therein mentioned and that s/he with the other witness subscribed above witnessed the execution thereof.

Kathy B. West
1st Witness Sign Again

SWORN to before me this 23
day of May, 2003.

Courtney V. Coop
Notary Public for South Carolina
My Commission Expires: 10/1/2013
(Notary may be 2nd Witness)

My Commission Expires
October 1, 2012

W:FPFILES/CORPORATE/PALMETTO/BEVIERK-COS
FILE #010473BB

COFFEY, CHANDLER & YOUNTS, P.A.
Attorneys At Law
8 South Brooks Street ~ Post Office Box 1292
Manning, South Carolina 29102-1292
(803) 435-8847

WILLIAM C. COFFEY, JR.
RAY E. CHANDLER
LENA T. YOUNTS
JOSEPH K. COFFEY

FACSIMILE
(803) 435-8915
E-MAIL
coffeylaw@ftc-i.net



June 5, 2003

Mr. & Mrs. Kim E. Bevier
706 Greene Street
Camden,SC 29020

Mr. Joe Witt
Palmetto Air Plantation, LLC
P. O. Box 777
Manning, SC 29102

RE: Contract of Sale - Lots 33 & 34 Palmetto Air Plantation

Dear Mr. & Mrs. Bevier & Joe:

We are pleased to enclosed copies of the executed and recorded Contract of Sale between Mr. & Mrs. Bevier and Palmetto Air Plantation.

It has been our sincere pleasure to assist you with this transaction and if we can be of further assistance please do not hesitate to give us a call.

Sincerely,

Betty A. Usry, Secretary to
W. C. Coffey, Jr.

bau/

Enclosure: As Stated.



STATE OF SOUTH CAROLINA)
)
COUNTY OF CLARENDON)

PRELIMINARY
ATTORNEY'S TITLE CERTIFICATE

TO: Kim E. Bevier and Susan S. Bevier

At your request, we have examined the public records of Clarendon County relative to the title of Palmetto Air Plantation to the property described as follows:

All that piece, parcel or lot of land lying, being and situate in School District No. 2 of Clarendon County, South Carolina, being designated as Lot No. 33 and Lot No. 34, Palmetto Air Plantation, containing 1.60 acres and 1.46 acres on a plat hereinafter referred to, and bounding and measuring as follows: on the Northeast by a pond and measuring thereon 506.93 feet; on the Southeast by Lot 35 on said plat and measuring thereon 261.77 feet; on the Southwest by Mullett Drive and lands of Wilver Blanding and measuring thereon a total of 539.17 feet; and on the Northwest by lands of Ernest L. and Linda C. Rauber and Fellowship Ranchette Subdivision and measuring thereon 244.98 feet.

For a more particular description of said lots, reference may be had to a plat made by DuValle W. Elliott, RPLS, dated April 11, 2002, recorded in the Office of the Clerk of Court for Clarendon County in Plat Cabinet E, Slide 1008 at Plat 6.

Said lots being a portion of the lands conveyed to Palmetto Air Plantation by deed of MidEastern Truckwash Inc. dated October 9, recorded in the Office of the Clerk of Court for Clarendon County in Deed Book A-452 at Page 144.

Said lots being a portion of Clarendon Tax Map No. 140-00-05-063-00.

Based upon our examination, we find and hereby certify that Palmetto Air Plantation is the owner of a marketable fee simple interest in said premises and that it holds the same free and clear of any and all liens and encumbrances, save and except the following:

1. Mortgage from Palmetto Air Plantation, Inc. to Edward G. Gibbons dated February 8, 2002, recorded in the Office of the Clerk of Court for Clarendon County in Mortgage Book 465 at Page 134.

2. Contract of Sale between Palmetto Air Plantation and Kim E. Bevier and Susan S. Bevier dated May 21, 2003, recorded in the Office of the Clerk of Court for Clarendon County in Mortgage Book A-498 at Page 157.

3. Restrictive Covenants recorded in the Office of the Clerk of Court for Clarendon County

in Deed Book A-444 at Page 26 and Deed Book A-435 at Page 223.

4. Right of Way Easements recorded in the Office of the Clerk of Court for Clarendon County in Deed Book A-58 at Page 44, A-61 at Page 674 and A-80 at Page 113.

5. Clarendon County Taxes for the year 2002 and prior years have been paid. Taxes for 2003 and future years constitute a lien, but not yet due and payable.

6. This certificate is based on examination of the public records of Clarendon County and does not cover any matters not appearing of record, such as questions of survey, such state of facts as would be revealed by a visual inspection of the premises, possible encroachments of utility lines or public ways which may cross a portion of these premises.

7. Existence, if any, of environmental hazards, presence of toxic waste, and violations of any past, present, or future environmental regulations, standards, or laws.

8. Any law, ordinance or governmental regulation relating to environmental protection.

9. Any law, ordinance or governmental regulation (including but not limited to building and zoning ordinances) restricting or regulating or prohibiting the occupancy, use or enjoyment of the land, or regulating the character, dimensions or location of any improvement now or hereafter erected on the land, or prohibiting a separation in ownership or a change in the dimension or area of the land or any parcel of which the land is or was a part.

10. Application of Roll-Back Taxes as provided in Section 12-43-220 (d) (4) of the Code of Laws of South Carolina, 1976, as amended.

11. This certificate in limited in the amount of $87,000.00.

Respectfully submitted,

COFFEY, CHANDLER & MEREDITH PA

BY: _____
W.C. Coffey, Jr.

September 25, 2003
Manning, South Carolina



COFFEY, CHANDLER & MEREDITH, P.A.

Attorneys At Law

8 South Brooks Street – Post Office Box 1292
Manning, South Carolina 29102-1292

Telephone (803) 435-8847
Facsimile (803) 435-8915
E-mail coffeylaw@ftc-i.net

William C. Coffey, Jr.
Ray E. Chandler
Lena Younts Meredith
Joseph K. Coffey

October 24, 2003

Reply to:
Manning

Mr. and Mrs. Kim Bevier
706 Greene Street
Camden, SC 29020

RE: Purchase of Property from Palmetto Air Plantation
Our File No. 030390BR

Dear Mr. and Mrs. Bevier:

Enclosed please find the original, recorded deed and Attorney's Title Certificate for the property you recently purchased. You will want to store the enclosed documentation in your property portfolio.

Please do not hesitate to call our office should you have any questions or if we may be of service to you with future legal needs.

Sincerely,

Jaimee L. Garrett
Real Estate Department

Enclosure(s): As stated

STATE OF SOUTH CAROLINA)
) FINAL
COUNTY OF CLARENDON) ATTORNEY'S TITLE CERTIFICATE

TO: Kim E. Bevier and Susan S. Bevier

At your request, we have examined the public records of Clarendon County relative to the title of Kim E. Bevier and Susan S. Bevier to the property described as follows:

All that piece, parcel or lot of land lying, being and situate in School District No. 2 of Clarendon County, South Carolina, being designated as Lot No. 33 and Lot No. 34, Palmetto Air Plantation, containing 1.60 acres and 1.46 acres on a plat hereinafter referred to, and bounding and measuring as follows: on the Northeast by a pond and measuring thereon 506.93 feet; on the Southeast by Lot 35 on said plat and measuring thereon 261.77 feet; on the Southwest by Mullett Drive and lands of Wilver Blanding and measuring thereon a total of 539.17 feet; and on the Northwest by lands of Ernest L. and Linda C. Rauber and Fellowship Ranchette Subdivision and measuring thereon 244.98 feet.

For a more particular description of said lots, reference may be had to a plat made by DuValle W. Elliott, RPLS, dated April 11, 2002, recorded in the Office of the Clerk of Court for Clarendon County in Plat Cabinet E, Slide 1008 at Plat 6.

Said lot being conveyed to Kim E. Bevier and Susan S. Bevier by deed of Palmetto Air Plantation dated September 26, 2003, recorded in the Office of the Clerk of Court for Clarendon County in Deed Book A-509 at Page 265.

Said lots being a portion of Clarendon Tax Map No. 140-00-05-063-00.

Based upon our examination, we find and hereby certify that Palmetto Air Plantation is the owner of a marketable fee simple interest in said premises and that it holds the same free and clear of any and all liens and encumbrances, save and except the following:

1. Mortgage from Kim E. Bevier and Susan S. Bevier to Palmetto Air Plantation, Inc. dated September 28, 2003, recorded in the Office of the Clerk of Court for Clarendon County in Mortgage Book 551 at Page 307.

2. Contract of Sale between Palmetto Air Plantation and Kim E. Bevier and Susan S. Bevier dated May 21, 2003, recorded in the Office of the Clerk of Court for Clarendon County in Mortgage Book A-498 at Page 157.

3. Restrictive Covenants recorded in the Office of the Clerk of Court for Clarendon County in Deed Book A-444 at Page 26 and Deed Book A-435 at Page 223.

4. Right of Way Easements recorded in the Office of the Clerk of Court for Clarendon County in Deed Book A-58 at Page 44, A-61 at Page 674 and A-80 at Page 113.

5. Clarendon County Taxes for the year 2002 and prior years have been paid. Taxes for 2003 and future years constitute a lien, but not yet due and payable.

6. This certificate is based on examination of the public records of Clarendon County and does not cover any matters not appearing of record, such as questions of survey, such state of facts as would be revealed by a visual inspection of the premises, possible encroachments of utility lines or public ways which may cross a portion of these premises.

7. Existence, if any, of environmental hazards, presence of toxic waste, and violations of any past, present, or future environmental regulations, standards, or laws.

8. Any law, ordinance or governmental regulation relating to environmental protection.

9. Any law, ordinance or governmental regulation (including but not limited to building and zoning ordinances) restricting or regulating or prohibiting the occupancy, use or enjoyment of the land, or regulating the character, dimensions or location of any improvement now or hereafter erected on the land, or prohibiting a separation in ownership or a change in the dimension or area of the land or any parcel of which the land is or was a part.

10. Application of Roll-Back Taxes as provided in Section 12-43-220 (d) (4) of the Code of Laws of South Carolina, 1976, as amended.

11. This certificate in limited in the amount of $87,000.00.

Respectfully submitted,

COFFEY, CHANDLER & MEREDITH PA

BY: _____
W.C. Coffey, II

September 26, 2003
Manning, South Carolina

NOTICE OF MOTION SCHEDULING

STATE OF
SOUTH CAROLINA

January 05, 2024

Motion "MOFREE - Motion/for Pretrial Hearing" for Case: 2017CP1400127 - Palmetto Air Plantation Homeowners Associations, Inc VS Kim E Bevier has been added to the following Motions Roster:

62 - Motion's Docket, One Day Term, February 2, 2024 9:30am

This hearing of this motion has been scheduled for 2/2/2024 at 9:30 AM.

This Motion's docket is scheduled for a one-day term beginning Wednesday, February 2, 2024 at 9:30am with the Honorable R. Ferrell Cothran, Jr. presiding. The hearings will be held in person at the Clarendon County Courthouse located at 3 W. Keitt Street in Manning.

All Motions for continuance, must be EFILED with a Proposed Order attached. If any Motion has been resolved, please notify the Clerk's office through the e-filing court system. Please do not email correspondence regarding this roster.

Mail Notice To:	Court Info
Kim E Bevier 1144 Mullett Drive Manning, SC 29102	Common Pleas PO Box 136 3 West Keitt Street Manning, SC 29102-9102

If you have any questions regarding the scheduling of this motion, please contact the courts at:

(803)435-4443

Respectfully,

Beulah B. Roberts

Beulah Roberts
Clerk of Court

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE THIRD JUDICIAL DISTRICT
COUNTY OF CLARENDON	)	CIVIL ACTION NO: 2017-CP-14-00127
	)	
Palmetto Air Plantation	)	
Homeowners Association Inc.	)	
	)	
Plaintiff,	)	DEFENDANT MOTION FOR SUMMARY JUDGEMENT
	)	
vs.	)	
	)	
Kim E. Bevier,	)	
Defendant	)	

Introduction

Any enforcement of claimed restrictive covenants is barred by the "South Carolina Homeowners Association Act", Section 27-30-110 of the South Carolina Code of Laws, and ***any further attempt to enforce them is a blatant violation of SC State Statute.***

There are no material facts in dispute and as a matter of law, this case should be immediately dismissed.

Appendices

Appendix A – Certified copy from Clarendon County Register of Deeds of "Declaration of Covenants, Conditions and Restrictions" (DCCrs) recorded by MidEastern Truck Wash Inc., Deed Book A444 Pp. 26, recorded 11 July, 2001, naming **Palmetto Air Plantation Property Owners Association, Inc.**, a non-profit corporation, as the owner's association created for "... enforcing the covenants and restrictions ...".

Appendix B – Official **Certificate of No Record** from the SC Secretary of State for the entity "Palmetto Air Plantation Property Owners Association, inc., dated 9 January 2024.

Appendix C – Official **Certificate of Existence** from the SC Secretary of State for **Plaintiff entity** "Palmetto Air Plantation Home Owners Association, Inc., organized June 2nd, 2004, ***an entity never mentioned by the DCCRs of Appendix A.***

Discussion

Note: For brevity, all references to "Palmetto Air Plantation" will be abbreviated as "PAP". and all references to Declaration of Conditions, Covenants and Restrictions" will be abbreviated "DCCRs".

No bylaws were ever recorded by the Palmetto Air Plantation Property Owners Association, inc. because entity was never authorized by the SC Secretary of State (Appendix B) to conduct

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business. Nor, were any bylaws for said entity ever recorded by the Clarendon County Clerk of Court, Register of Mesne Conveyances or Register of Deeds.

The SC Homeowners act defines Governing Documents in Section 27-30-120 as meaning "declarations, master deeds, bylaws or any amendments to declarations, master deeds or bylaws."

The SC Homeowners Act further states in Section 27-10-130 (A)(1) that, "in order to be enforceable, a homeowners association's governing documents must be recorded in the Clerk of Court's, Register of Mesne Conveyance (RMC), or register of deeds office in the county where the property is located."

It is illegal under the SC Homeowners Association Act for anyone to attempt enforcement of the DCCRs listed in Appendix A because the named homeowner's association, PAP Property Owners Association, Inc., never recorded bylaws specified by Section 27-10-130 (A1) of the Homeowners Association Act. ***The entity never existed to do so.***

Plaintiff entity was not formed until June 2nd, 2004 (Appendix C), **almost three full years after the DCCRs of Appendix A were recorded on July 11, 2001.** Plaintiff was never named in the DCCRs of Appendix A. Deeds of all owners of land in Palmetto Air Plantation were acquired after recordation of the DCCRs by Declarant, Mid-Eastern Truck wash on 11 July 2001 and hence are all bound by the DCCRs, including all members of Plaintiff organization.

Due to DCCRs provision of Article XI Section 11.2 Amendments, the Declarant, Mid-Eastern Truck Wash, lost the right to amend the covenants when it sold all of Palmetto Air Plantation to Palmetto Air Plantation Subdivision, LLC in October of 2001, barely three months after recording the DCCRs of Appendix A.

The DCCRs have never been amended and can never be amended since the Property Owner's Association was never formed and IAW the DCCRs Article XI, Section 11.2 & 11.3, no Secretary of the Board (of the non existent Owners Association) ever existed to certify such change (as conforming to the non-existent by-laws) and record it in the Register of Deeds of Clarendon county.

Not a scintilla of proof exists that Plaintiff entity was empowered to act in lieu of the Property Owners Association named in the DCCRs. Plaintiff has never recorded ***Declarations*** *that apply to Defendants property, and thus, is also in violation of the SC Homeowners Association Act in failing to record Declarations in Clarendon County.*

All lot owners within PAP acquired property after Mid-Eastern Truck Wash recorded the DCCRs and sold all PAP Property to PAP Subdivision LLC in October of 2001. Consequently, all PAP property was encumbered by the DCCRs recorded on 11 July, 2001, absent a home owners association to enforce said covenants, and absent bylaws with which to do so.

For Plaintiff to claim it is authorized by bylaws not recorded until three years after the DCCRs, by an entity unmentioned in the DCCRs, is a disingenuous partial truth at best, and true only to the extent their bylaws were created and recorded by Plaintiff for land already bound by the original DCCRs of July 11, 2001

Conclusions

1. It is not possible for Plaintiff to be the owner's association cited in the DCCRs because Plaintiff did not exist until almost three years after DCCR recording date, nor is their name recited within.
2. Declarant, Mid-Eastern Truck Wash, never created the Property Owner's Association and never recorded bylaws for the named association.
3. Mid-Eastern Truck Wash sold all land referenced by the recorded DCCRs in October, 2001, to Palmetto Air Plantation Subdivision, LLC.
4. Plaintiff organization is composed of members whose deeds remain encumbered by the DCCRs recorded by Mid-Eastern Truck Wash on July 11, 2001.
5. Palmetto Air Plantation Property Owners Association nominated by the DCCRs as the homeowner's association, has never recorded by-laws in Clarendon County and is **barred by the SC Homeowners Act from enforcing said covenants.**
6. Since the DCCR nominated homeowners association never filed by-laws, **the SC Homeowners Act prohibits enforcement, by anyone, of any recorded DCCRs.**
7. Since Plaintiff members own property subject to the DCCRs of July 11, 2001, and has never recorded additional Declarations applying to Defendant's property, **it is also barred by SC Statute from enforcing Mid-Eastern Truck Wash's DCCRs filed July 11, 2001.**
8. Any claim of privity of contract or standing by Plaintiff is demonstrably and factually false.

Defendant prays for the following relief:

1 – Dismissal of lawsuit with prejudice.
2 - Immediate dissolution of the TRO awarded to Plaintiff and removal of any *lis pendens.*
3 – In accordance with DCCRs "Section 12.4 Recovery of Costs", the following damages.
   a - All expenses incurred by Defendant in defense of this lawsuit, including legal fees paid to Defendant's former attorney.
   b - All lot fees paid by Defendant to Plaintiff between 2003 – 2017, inclusive.

January 17, 2024

s/Kim Edward Bevier
PRO SE
1144 Mullet Drive
Manning, SC 29102
803 622-5893 Kim.Bevier@Gmail.co

Appendix A

Certified Copy of Declarations of Covenants, Conditions and Restrictions

of

PALMETTO AIR PLANTATION

Clarendon County, South Carolina

Recorded 11 July, 2001

By MidEastern Truck Wash

Deed Book A444 Page26

22 Pp.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
PALMETTO AIR PLANTATION
CLARENDON COUNTY, SOUTH CAROLINA

This Declaration of Covenants, Conditions and Restrictions is made this 11th day of July, 2001 by MidEastern Truckwash, Inc., a South Carolina Corporation hereinafter referred to as the "Declarant".

WHEREAS, the Declarant is the owner of a track of land located south of the right of way of U.S. Highway 301 between the City of Manning and Interstate Highway 95. The property contains approximately 45 lots, private access roads, FAA approved run-way measuring approximately *150* feet by 3,720 feet and 45 residential lots being a portion of Clarendon County Tax Map Parcel No. 223-00-02-005, all of which shall be reflected on a plat of the sub-division prepared by Duvalle W. Elliott. The Declarant's purpose is to develop a community for aviation enthusiast that promotes peaceful living, protects investments and provides the use of a private one-way gated entrance and Common Areas for the benefit all Owners.

WHEREAS, the Declarant desires to insure the values and amenities in said development, to prevent future impairment thereof, and to provide for the maintenance of all Common Areas, by subjecting the real property contained in the subdivision together with any additions to said property to the covenants, restrictions, easement, charges, and liens hereinafter set forth each of which is and are for the benefit of the property of each of the Owners,

WHEREAS, the Declarant deems it desirable for the efficient preservation of the values and amenities in said development to create an Owners Association that will be delegated the powers of maintaining and administrating the development properties and facilities and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created by incorporating a non-profit corporation under the laws of the State of South Carolina entitled Palmetto Air Plantation Property Owners Association, Inc.

NOW THEREFORE, the Declarant does hereby declare that all of the property shown as lots 1 through 45, ponds, airstrip, roadways and rights-of-way on a subdivision plat to be prepared by Duvalle W. Elliott and recorded in the Office of the RMC for Clarendon County, including Lot 19 of said sub-division as reflected on a plat made by Duvalle W. Elliott, dated March 30, 2001, recorded in the Office of the Clerk of Court for Clarendon County, in Plat Book S0050 at Page 571 and shall be held, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements and declarations that shall run with real property and be binding on all parties owning any right, title and interests in said real property or part thereof, their heirs, successors and assigns and shall inure to the benefit of each Owner thereof.

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THE
OFFICE OF REGISTER OF DEEDS
DATE 1/16/24
REGISTER OF DEEDS
CLARENDON COUNTY, SC

ARTICLE I
Definitions

Section 1.1 **Adjoining Land** shall mean and refer to land contiguous with the Property, whether or not owned by Declarant, which is or may be made subject to this Declaration.

Section 1.2 **Annexation** shall mean and refer to the process by which any portion of the Expansion Property or Adjoining Land are made subject to this Declaration.

Section 1.3 **Architectural Control Committee (ACC)** shall mean and refer to a committee formed to maintain the quality and architectural harmony of improvements to the Development.

Section 1.4 **Architectural Guidelines** shall mean and refer to the guidelines and rules established and supplemented from time to time by the Architectural Control Committee

Section 1.5 **Articles or Articles of Incorporation** shall mean and refer to the Articles of Incorporation of the Association which will have been filed with the Secretary of State to create the Association.

Section 1.6 **Assessments** shall mean and refer to annual, special and default assessments levied pursuant to this Declaration

Section 1.7 **Association** shall mean the Plantation Air Plantation Property Owners Association, Inc. (PAP) a non-profit South Carolina corporation.

Section 1.8 **Board of Directors** shall mean and refer to the Board of Directors of the Association, which is the governing body of the Association.

Section 1.9 **By-Laws** shall refer to the By-Laws of Palmetto Air Plantation Property Owners Association, Inc. Attached to the Declaration and incorporated herein by this reference.

Section 1.10 **Palmetto Air Plantation** shall mean and refer to the planned community created by this Declaration.

Section 1.11 **Common Areas** shall mean any and all real and personal property including roadways, rights of ways, ponds, wetland preservations, and aircraft runways now and hereinafter owned by the Association for the common use and enjoyment of the owners.

Section 1.12 **Declarant** shall mean and refer to MidEastern Truckwash, Inc., a South Carolina Corporation and its successors-in-title and assigns. It is expressly understood and declared that there shall be only one person or legal entity entitled to exercise the right and power of the "Declarant" and Joe Witt is initially designated to be that person.

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Section 1.13 **Improvements** shall mean and refer to all buildings and structures, parking areas, fences, walls, hedges, plantings, pools, driveways, ponds, lakes, recreational facilities, signs, changes in any exterior color or shape, excavation and all other site work including without limitation grading, road construction, utility improvement, removal of trees or plantings, and any new exterior construction or exterior improvement which may be included in the foregoing. "Improvements" does not include turf, shrub or tree repair or replacement of a magnitude which does not change exterior colors or exterior appearance. "Improvements" does include both original improvements and all later changes and improvements.

Section 1.14 **Licensor** shall mean and refer to MidEastern Truckwash, Inc., a South Carolina Corporation which owns the runway and will issue licenses for the use of the runway. Lot Owners and their invitees shall be permitted to use the runway without the necessity of a license from the Licensor.

Section 1.15 **Lot** shall mean and refer to any plot of land within the Palmetto Air Plantation whether or not improvements are constructed thereon, which shall constitute a single family dwelling. The ownership of each Lot shall include all the rights, title and interest of an Owner in the Common Property, which shall include without limitation, membership in the Association.

Section 1.16 **Maintenance Fund** shall mean and refer to the fund created by assessments and fees levied pursuant to this Declaration.

Section 1.17 **Members** shall mean and refer to any person or entity holding membership in the Association.

Section 1.18 **Mortgage** shall mean and refer to any mortgage, deed to secure debt, deed of trust, and any and all similar instruments used for the purpose of encumbering real property in this Development as security for the payment or satisfaction of an obligation.

Section 1.19 **Owner** shall mean and refer to the record Owner, whether one or more persons, of the fee simple title to a Lot located within the Development, and entitled to one vote per Lot as a member of the Palmetto Air Plantation Property Owners Association, Inc., but excluding those having such interest merely as security for the performance of an obligation.

Section 1.20 **Plat** shall mean and refer to any plat depicting the subdivision or any lot therein, filed in the Office of the RMC for Clarendon County, State of South Carolina, as such plat may be amended from time to time by the Declarant.

Section 1.21 **Property** shall mean and refer to the Property initially subject to this Declaration and any additional Real Property from time to time subject to these Covenants pursuant to the provisions of this Declaration.

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Section 1.22 **Runway** shall mean that property located at the center of the subdivision used for the purpose of aircraft takeoffs and landings.

Section 1.23 **Taxiway** shall mean and refer to those right-of-ways radiating from the runway or otherwise as shown on the plat for the purpose of providing access for aircraft to and from the runway.

ARTICLE II
The Association

Section 2.1 **Dedication of Common Areas.** Declarant may hereafter convey to the Association certain parts of the property as Common Areas intended for common use by the owners in Palmetto Air Plantation Property Owners Association, Inc., Such designated areas shall, upon conveyance, be dedicated to the common use and enjoyment of Owners, and their families, guests, tenants, and invitees.

Section 2.2 **Responsibility for Common Area.** Subject to the rights of the Owners set forth in this Declaration, the Association shall be responsible for the management and control of the Common Area dedicated under Section 2.1 above and all improvements in the Common Area (including equipment related thereto), and shall keep it in good, clean and attractive condition and repair consistent with the requirements of a first class residential and recreational community, pursuant to the terms and conditions of this Declaration.

Section 2.3 **Membership.** Every Owner, by virtue of being an Owner and for as long as he is an Owner, shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot or Lots. No Owner, whether one or more persons, shall have more than one membership regardless of the number of Lots owned, but all of the persons owning each Lot shall be entitled to rights of membership and of use and enjoyment appurtenant to such ownership. The combination of two Lots will be considered a single Lot for membership and assessment purposes. The Articles of Incorporation and Bylaws of the Association may set forth additional classifications of membership, which Members may or may not be Owners.

Section 2.4 **Membership and Voting Rights.** Each Member shall be entitled to one vote per membership. When more than one person holds an interest in any Lot, all such persons shall constitute one Membership. The vote for such Membership shall be exercised as the Owners among themselves determine, and the Secretary of the Association shall be notified of such designation prior to any meeting. Any Owner of a Lot may lease the same and assign his membership right to the tenant, provided that a copy of the Instrument of Assignment is furnished to the Secretary of the Association prior to any meeting at which the tenant exercises the voting right of membership. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, Bylaws, and Architectural Guidelines, and the Restrictions and Covenants of the property. The lease shall obligate the tenant to comply with the foregoing and upon the tenants failure to do so he/she may be evicted by the Declarant or the Owners Association Board of Directors.

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Section 2.5 **Rules and Regulations.** The Association from time to time and subject to the provisions of this Declaration, may adopt, amend and repeal rules and regulations, to be known as "Association Rules," governing, among other things, the following:

a. The Use of Open Space,
b. The Use of Private Roads,
c. Collection and Disposal of Garbage and Trash,
d. The Posting of Maximum Speeds for Vehicular Traffic and Other Traffic Rules,
e. The Types of Vehicles and Times when any Vehicles (including Commercial Vehicles), may be permitted to use the road within Palmetto Air Plantation or any other area of the property.
f. The Schedule of Fines for Infractions of the Association Rules or the Project Documents.

Section 2.6 **Ownership of Personal and Real Property for Common Use.** The Association, through action of its Board may acquire, hold and dispose of tangible and intangible personal property and real property.

Section 2.7 **Implied Rights and Obligations.** The Association may exercise any other rights or privileges given to it expressly by the Declaration, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association under this Declaration or reasonably necessary to effectuate any such right of privilege. The Association shall perform all of the duties and obligations imposed upon it expressly by the Palmetto Air Plantation Documents, together with every other duty or obligation reasonably to be implied from the express provisions of the Palmetto Air Plantation Documents where reasonably necessary to satisfy any such duty of obligation.

ARTICLE III
Architectural Control Committee

Palmetto Air Plantation is designed as a private residential community with architectural controls which allows aircraft owners and pilots convenient access to the runway. To insure that the property will be developed harmoniously and that consistency is maintained, an Architectural Control Committee will formulate, review and control a comprehensive landscape plan, street lighting, signs, fencing, parking and site improvements. The initial Architectural Control Committee shall consist of one member, Joe Witt or his designee. In the event of the failure and ability for any reason of Joe Witt to act, the vacancy created shall be filled temporarily or permanently as necessary by his designee. At such time the development is fifty (50%) per cent completed, the above member may relinquish his powers of the Architectural Control Committee to the Owners Association. At that time Joe Witt, may choose to continue his position on the new Architectural Control Committee and two (2) other members shall be appointed by the Board of Directors of the Association. The new Architectural Control Committee shall consist of three (3) members and shall promulgate such rules and guidelines as may be necessary to carry out the purpose of the Declaration.

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The Architectural Control Committee shall

3.1. regulate the external design, appearance, and location of the Properties and Lots and any improvements thereof

3.2 adopt architectural guidelines and programs consistent with covenants and restrictions.

3.3. inspect for compliance with these guidelines.

3.4 adopt procedures for the exercise of its duties.

3.5. maintain complete and accurate records of all actions taken

Notwithstanding anything to the contrary contained herein, the Architectural Control Committee or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application of enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the community.

ARTICLE IV
Architectural Guidelines and Rules

Section 4.1 Land Use. All Lots shall be used for residential purposes only and common recreational purposes auxiliary thereto and for no other purpose. No Lot shall be used a right-of-way, street or road or access to any property not included within the Properties of this Development without the consent of the Declarant. Only one family may occupy a Lot as a private residence at any one time. No structure except as herein provided shall be erected, altered, placed or permitted to remain on any Lot other than one (1) detached single family dwelling or residence. Such accessory buildings or hangar may not be constructed prior to the completion of the dwelling unless waived by the ACC and then limited to a one year completion deadline. Furthermore the necessary building or hangar shall comply with all other restrictions contained herein for the main dwelling, including but not limited to, exterior requirements, setback lines and permanent foundations. A guest suite or a like facility may be included as part of the main dwelling or accessory building, but such suite may not be rented or leased except as part of the entire premises including the main dwelling. Furthermore no airplane hangar shall be used as a residence without the consent of the Declarant or Board of Directors of the Homeowners Association.

Section 4.2 Partition of Combination of Lots. No Lot shall be subdivided or its boundary lines changed except with prior written approval of the Declarant. Declarant, however, hereby expressly reserves the right to replat any Lot or Lots. Declarant's consent shall be conditioned upon payment by the Owner or Owners concerned of all expenses incident to giving the consent, including legal and accounting fees. Every agreement and recorded instrument for combination of Lots shall make adequate provisions for the adjustment of voting rights and liability for payment of assessments appurtenant to or imposed upon such Lots. Whether combined or unchanged, each Lot shall be

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conveyed, transferred, gifted, devised, bequeathed, encumbered or otherwise disposed of, as the case may be, with all appurtenant rights and interests created by law or this Declaration, including the membership in any association and all the rights thereof.

Section 4.3 **Commercial Businesses Prohibited.** No commercial business of any type shall be permitted; however, nothing herein contained shall be construed as preventing the Declarant from erecting and maintaining facilities of a commercial, recreational or community nature or facilities incident to the use of the runway, taxiway and easements. This should not exclude any home office, but no customer, clients, or patients can be seen on residential premises. Also, this should not exclude work done on non-owned aircraft so long as such work is done inside a hangar and the completed aircraft confirms with all requirements as set forth in these covenants. No one, other than the Declarant, can allow the use of the airport or runway for commercial activity or for self-enterprise.

Section 4.4 **Common Area.** The Common Area shall be owned by the Declarant or the Association and no Owner shall bring any action for partition or division of the Common Area by acceptance of a deed or other instrument of conveyance or assignment, each Owner shall be deemed to have specifically waived such Owner's right to institute or maintain a partition action or any other action designed to cause a division of the Common Area, and this section may be pleaded as a bar to any such action. Any Owner who shall institute or maintain any such action shall be liable to the Declarant or the Association, and hereby agrees to reimburse the Declarant or the Association for its costs, expenses and reasonable attorney's fees in defending any such action.

Section 4.5 **Architectural Control.** No dwelling unit, hangar or other building shall be erected, placed or altered on any Lot until the plans for each showing locations of the units on the Lot and the landscaping plan for the Lot have been submitted to and approved by the Architectural Control Committee. Such plans shall be reviewed as to quality of workmanship and materials, harmony of external design with existing dwelling units and hangars, and as to location with respect to topography and finish grade elevation, and house, hangar and other buildings shall be of similar architectural design, before being approved by Architectural Control Committee or its successor or assigns. No home, garage, hangar or other building may be constructed on any Lot unless such work meets all County Codes then in existence. A copy of the builder or contractor's license must be submitted with construction plans to the ACC.

Section 4.6 **Dwelling Size.** Each single story dwelling on a Lot shall have a heated square foot area of 2000 square feet minimum. No dwelling unit shall be permitted on any Lot that has a ground floor area of the main structure, exclusive of porches, patios, hangars and garages of less than 1,800 square feet on the first floor for a one and one-half story, split-level, or two story dwellings. All multi-level dwellings shall have a minimum of 2,800 square feet. All house/hangar combinations shall include a minimum of 1,800 square feet of heated living area, exluding hangar, shop or storage portion of the structure. All structures must be built with eaves and over-hangs and have a residential characteristic. PROVIDED HOWEVER, single family,one-store residential structures of 1,600 square feet may be permitted on Lots 42, 43 and 44 of the subdivision. All dwellings shall contain a place for parking for at least two vehicles in an enclosed garage.

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Section 4.7 **Location.** In order to assure that all structures will be located with regard to the topography of each individual Lot, taking into consideration the elevation contours of the Lot, the location of adjoining dwellings, and similar considerations, the Declarant or the ACC reserves unto itself, its successors and assigns, the right to control absolutely and solely to decide the precise site and location of any structure, improvements, and utilities upon all Lots and every Lot within the Development; PROVIDED, HOWEVER, that such location shall be determined only after reasonable opportunity is afforded the Owner to recommend a specific site, and in any event all buildings (including eaves, decks, patios and steps) shall be constructed beyond the minimum setback lines. All structures shall be located in compliance with the rules and ordinances of Clarendon County Planning Commission.

Section 4.8 **Structure Material.** Unless specifically otherwise approved in writing by the ACC all structures constructed or placed on any Lot shall be built of substantially new materials and no used structures shall be relocated or placed on any such Lot. No dwelling shall have an exterior surface composed of asbestos siding, exposed concrete block, cinder block, or other similar material. Vinyl siding products will be considered on a case by case basis.

Section 4.9 **Kind of Home.** No mobile or manufactured homes of any kind, or any home having the same general appearance, shall be permitted on any Lot. No building or structure of a temporary nature, trailer, tent, shack, garage or other out-building shall be erected or maintained on any Lot at any time. Furthermore, no building shall be permitted on any Lot unless it is erected on a solid foundation of brick or masonry from the ground level to the first floor level. PROVIDED HOWEVER, that modular construction shall be permitted with approval of the ACC.

Section 4.10 **Driveways.** Vehicular driveways and walkways shall be constructed of concrete, brick, asphalt or reconstituted rubber services. If any driveway is to cross a drainage ditch, the Owner shall be required to install, at his own expense, all necessary culverts and coverings prior to the commencement of any other construction on the Lot.

Section 4.11 **Drainage.** No Owner shall do or permit any work, construct any improvements, place any landscaping or suffer the existence of any condition whatsoever which shall alter or interfere with the drainage pattern of the Property, except to the extent such alteration and drainage pattern is approved in writing by the Declarant, and except for the rights reserved to Declarant to alter or change the drainage patterns.

Section 4.12 **Continuity of Construction.** All structures approved by the ACC must be completed insofar as the exterior finish is concerned within 12 months from the date of issuance of a building permit for said structure. The ACC may waive this requirement if construction delays have been caused by strikes, war, fire, or Acts of God which render the completion of construction within such time impossible. All improvements commenced on the Property shall be prosecuted diligently to completion and shall be completed within 12 months of commencement, unless an exception is granted in writing by the ACC. If an Improvement is commenced and construction is then abandoned for more than ninety (90) days or if construction is not completed within required 12 month period, then after notice and hearing as provided in the By-Laws, the ACC may impose a fine of not less than One Hundred ($100.00) Dollars per day on the Owner of the Lot. Furthermore, prior

to occupancy of the dwelling or within one year after the issuance of a Building Permit, the Lot Owner shall have his property sown in grass and have planted foundation landscaping around the dwelling and other accessory buildings in accordance with the proposed landscaping plans previously submitted and approved.

Section 4.13 **Reconstruction.** Any building on any Lot which is destroyed in whole or in part by fire, windstorm, flood or other Act of God must be rebuilt, or all debris from such building removed and the Lot restored to the condition it was in prior to commencement of construction of such building with reasonable promptness: PROVIDED HOWEVER, that any such reconstruction must be commenced within 3 months from the date of such destruction or if no reconstruction is to occur, then all such debris must be removed and the Lot restored to its prior condition within 2 months of such destruction.

Section 4.14 **Construction Traffic.** Construction traffic is prohibited on the Common Area runway, and tie down areas. The failure of a Lot Owner to prevent construction traffic associated with his Lot from entering upon the Common Area runway, and tie down areas shall make that Lot Owner liable for any necessary repairs caused by construction traffic upon these areas. Lot Owners shall specifically include a clause in their construction contracts prohibiting contractor equipment from entering upon the Common Areas, runway, taxiway, and tie down areas.

Section 4.15 **Hangar Specifications.** Each Lot adjoining the taxiway right-of-way may have a hangar for the storage of private aircraft. Such hangars, if constructed, must be compatible in appearance with the residential unit. The hangar must be a fully enclosed building with approved and operational doors which do not face the street. No T-Hangar shall be constructed and all separate hangars must be rearward of the mean center line of the house and away from the street side of the Lot. Free standing hangar shall not exceed 3,600 square feet of interior space, including workshop, restroom, storage area and any other purpose. The hangar may be built before the dwelling house only when permitted by the ACC, but substantial completion of the dwelling insofar as the exterior finish is concerned must be accomplished within 12 months from the date of the issuance of the Building Permit for hangar structures.

ARTICLE V
Restrictions and Covenants

Section 5.1 **Failing to Comply.** In the event the Owner of any Lot shall fail to comply with any of the below mentioned criteria, or fails to maintain the premises and the exterior of the improvements situated thereon, or permits litter and debris to accumulate on his Lot, or allows hedges or other plantings to obscure the view of the street traffic, or fails to comply with any other reasonable fire preventive requirements, the Declarant, through its agents and employees, shall have the right to enter upon such premises and to repair, maintain, rehabilitate and restore the exterior of any improvements situated thereon and/or clean or clear any Lot of debris, or take any other steps necessary to remove litter and debris, or take any other steps necessary to meet reasonable fire preventive regulations; PROVIDED HOWEVER, that the Declarant, or its agents, shall first give written notice to the Owner of said Lot of its intention to make such repairs or of its intention to

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perform such clearing, maintenance or rehabilitation work, affording the Owner of said Lot 30 days in which to make said necessary repairs, maintenance, or clearing work. If at the end of this period the work to be performed has not been done by the Owner, then the Declarant, or its agents, shall have the right, as set forth herein, to make such repairs, etc. Nothing herein contained shall be construed to grant to the Declarant or its agents, any right to enter into or inside of any building located on any Lot without the consent of the Owner thereof. Any costs incurred by the Declarant, or its agents, in enforcing and carrying out the performance of this paragraph shall be charged against the Owner of said Lot, and a lien may be created on said Lot until the Declarant, or its agents, has been paid in full for all costs incurred.

Section 5.2 **Maintenance.** All Owners shall keep their Lots, whether occupied or unoccupied, free of all tall grass, dead, diseased or decaying trees, weeds, trash, rubbish, and debris and keep all Lots in a neat and attractive condition. All improvements erected on Lots shall be maintained in a clean, neat and orderly condition and in a good state of maintenance and repair.

Section 5.3 **Toxic Disposal Prohibited.** Disposal on the site of any substances which may be considered toxic or environmentally sensitive is expressly prohibited. Disposal of any substances which may contaminate the ground water of this subdivision or the surrounding area is prohibited. These substances include, for example, but are not limited to, paints, solvents, cleaning fluids, paint strippers, fuel and oil.

Section 5.4 **Unsightly Materials Prohibited.** No rubbish, garbage, debris, junk, junk vehicles, or unsightly material shall be deposited on any of the Lots at any time except building material during the course of construction on the site. All rubbish, waste, or garbage shall be kept in sanitary containers, and shall be removed from the premises at least once a week. No dismembered aircraft parts nor nonoperative aircraft are to be left about the premises.

Section 5.5 **Hazardous Activities.** Nothing shall be done or kept on any Lot or in the Common Area which will increase the rate of insurance on the Common Areas or any other Lot without the prior written consent of the Declarant or the Association. No Owner shall permit anything to be done or kept on his Lot or in the Common Areas which would result in the cancellation of insurance on any part of the Common Areas, or which would be in violation of any law.

Section 5.6 **Nuisance.** No noxious or offensive activity shall be conducted upon any Lot or in any dwelling nor shall anything be done thereon or therein which may be or may become an annoyance or nuisance to the neighborhood.

Section 5.7 **Outside Toilets.** Outside toilets or privies are expressly prohibited, except where required for construction purposes.

Section 5.8 **Wall Hangings.** An Owner shall not cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, balconies or windows of his Dwelling or exterior buildings which may adversely affect the appearance of Palmetto Air Plantation without the prior written approval of the Architectural Control Committee.

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Section 5.9 **Children.** Children will be the direct responsibility of their parents or legal guardians, including full supervision of them while within the Development and including full compliance by them with this rule and with all other rules and regulations of the Association. All children under twelve (12) years of age must be accompanied by a responsible adult when entering and/or utilizing any recreational facility. In order to control the overall appearance of the community, no swing sets, play sets, sandboxes, basketball backboards, tree houses, animal houses or animal pens shall be erected so as to be visible from any roadway or adjoining property, unless approved in advance by the ACC.

Section 5.10 **Pets.** Pets and other animals shall neither be kept nor maintained in or about the properties except in accordance with the following. Commercial breeding or feeding of horses, cattle, goats, hogs, sheep or poultry; the operation of a commercial dairy; dog boarding kennel or veterinary hospital; and the operation of a commercial livery or boarding stable for horses; or a riding academy; and the keeping of any hog or milk cow or horse, are strictly prohibited. It is understood, however, that this restriction shall not be construed to prohibit the keeping of a limit of three (3) domestic animals (canine or feline) for family pleasure, provided that domestic animals must be restrained by fence or other appropriate protective restraint. This restraint should be from the farthest possible point from the adjoining property, and all appropriate measures must be taken by the Lot Owner to eliminate and prevent offensive odors and any unsightly accumulations from said animals. Noisy animals, such as incessantly barking dogs, must be controlled by their Owners. No pet shall be permitted outside of its Owners Lot unless attended by an adult or child of more than ten (10) years of age and said pet must be on a leash of reasonable length. At no time are any unattended domestic animals or pets allowed on the runway or taxiway easements.

Section 5.11 **Noise.** No Owner shall make or permit any disturbing noises on their Lot by himself or his family, servants, employees, agents, or visitors, nor permit any conduct by such persons that will interfere with the rights, comforts or convenience of other Owners. There shall be no discharging of firearms or fireworks on the premises.

Section 5.12 **Electronic Equipment.** No electronic equipment may be permitted in or on any Lot which interferes with the television or radio reception of another Lot.

Section 5.13 **Satellite Dish.** No awning, canopy, shutter, enclosure, satellite dish or other projection shall be attached to or placed upon the outside wall or roof of any structure or on the Lot, except by the approval of the Architectural Control Committee. Small, inconspicuous satellite dishes will be most compatible.

Section 5.14 **Vehicles and Parking.** No Owners vehicles shall be parked on any street. No boat, motor home, travel trailer or any other recreational vehicle or commercial truck may be stored outside over night on any Lot for a period of more than seven (7) days. Furthermore, no wrecked or junked motor vehicle or vehicles without current licence plates shall be placed upon the premises and no commercial vehicles shall be parked overnight in the subdivision without the consent of the ACC. No motor vehicle or aircraft of any kind, at any time, shall be parked or tied down on any of the taxiways or runways, roadways or right-of-ways except when permitted by the Architectural Control Committee.

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Section 5.15 **Fuel Storage.** It is acknowledged that the Declarant will establish a fuel area between Lot 18 and Lot 19 at the end of the runway. Except for that designated area, no bulk storage of flammable, combustible or explosive fluids, chemicals or substances shall be allowed in any Dwelling, or on any Lot, or on the Common Areas, except that small quantities of fuels used for common activities such as lawn mowing, BBQ grills and other like activities may be kept when stored in a manner which minimizes the risk of fire or explosion. Lot Owners may not store bulk quantities of fuels used for aviation purposes on Lots or in buildings. Aviation fuels may be available in connection with the facility located adjacent to the runway.

Section 5.16 **Fences and Hedges.** The erection or installation of fences and hedges may be permitted with the consent of the Architectural Control Committee which shall directly control the location and type of said facility. No barbed wire fencing will be permitted at any time.

Section 5.17 **Signs.** No signs of any character shall be erected, pasted, posted, or displayed upon or about any Lot or part of any Lot, or Common Area, without the written permission of the ACC. The ACC shall have the right, in its sole discretion, to prohibit or to restrict and control the size, construction, material, wording, location and height of all signs and may summarily remove and destroy all unauthorized signs. Declarant and Lot Owners, however, may post temporary "For Sale" or "For Rent" signs on the Properties and these signs must be approved before being put on any Lot. No sign shall be attached to any tree or shrubbery. All signs must be professionally lettered, and may not contain the price of the house or Lot. Furthermore, signs used by a builder during construction or informational signs by the Declarant shall be allowed.

Section 5.18 **Clothes Lines.** No clothing, laundry, or wash shall be aired or dried on any portion of the Lots in an area with a substantial exposure to view from any other Lot or street. Drying areas will be permitted only in locations approved by the Architectural Control Committee and only when substantially protected from view of screening or fencing approved by the Architectural Control Committee.

Section 5.19 **Flag Poles.** Flag Poles are permitted, provided the pole is not more than 15 feet in height, unless otherwise approved by the Architectural Control Committee.

Section 5.20 **Antennas.** No radio or television aerial or antenna or any other external electronic equipment or devices may be installed or maintained on any exterior of any structure erected on a Lot unless the location, size, and design has been approved by the ACC. Said antennae or equipment shall be subject to FAA and FCC regulations concerning obstructions placed in the vicinity of airports. Furthermore, all electrical, telephone, and other utility lines shall be run underground.

Section 5.21 **Outdoor Lighting.** One or more hospitality light standards, of a design approved by the ACC, may be located within the front yard of any Owner's property. Any outdoor lighting positioned and installed by a Lot Owner shall be of such a nature and type so as not to present a hazardous or confusing condition to night air operations which may be conducted from said airport and be shaded so as not to create a nuisance to any other Lot Owner.

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Section 5.22 **Mail Boxes.** Each dwelling shall have a standard house number, mail box and paper box with a design and location approved by the ACC.

Section 5.23 **Swimming Pools.** No non-permanent or "above ground" pools may be placed, maintained or kept on any Lot.

Section 5.24 **Wells and Water Removal.** No wells shall be drilled, dug or installed except with the approval of the Architectural Control Committee.

Section 5.25 **Access.** There shall be no overland vehicular access to any Lot except from designated road and taxi-ways lying within the Common Areas. The Declarant, its agents or employees shall have access to each Lot from time to time during reasonable working hours, upon oral or written notice to the Owner, as may be necessary for the maintenance, repair or replacement of any portion of the Common Areas, or facilities situated upon such Lot which serve another Owners Lot. The Declarant or its agent shall also have access to each Lot at all times without notice as may be necessary to make emergency repairs to prevent damage to the Common Areas or another Lot.

Section 5.26 **Amendments to Regulations.** Reasonable regulations governing the use of the Common Areas and external appearance of all structures erected on the Lots may be made and amended from time to time by the Declarant or the Architectural Control Committee; PROVIDED HOWEVER, that all such regulations and amendments thereto shall be approved by a majority vote of the Directors of the Owners Association before the same shall become effective.

Section 5.27 **Ponds and Waterways.** Any Lot not adjoining a pond shall gain access to the pond through Common Areas of the subdivision only. Provided no pond shall be used for swimming or for the operation of motor boats. Boating use shall be limited to canoes, kayaks and small electric driven fishing boats.

ARTICLE VI
Aircraft and Hangar Restrictions, and Parking

Section 6.1 **Type of Aircraft.** Only conventional, general aviation aircraft shall be permitted. No jet, or ultra light aircraft shall be permitted. The Lot Owners, their heirs or assigns hereby relinquish any and all rights to complain, object or take any legal remedies to stop the function of normal aviation use and related activities in the development. The airplane hangar or tie down space on each Lot shall be limited strictly to private use and only by the Owner of the property or tenant on which the hangar or tie down space is located except as permitted herein. No person who is not a member of the Association or a tenant of a member of the Association shall be permitted to store, tie down or hangar any aircraft in the subdivision without the consent of the Board of Directors of the Owners Association. The Board of Directors will have the authority to specify the terms and conditions under which a non-member aircraft may be stored, hangared or tied down.

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Section 6.2 **Airport Hangars.** All hangars are subject to the Architectural Control Committee approval, and must be architecturally compatible with the primary structure on the Lot. All aircraft hangars must be constructed in conjunction with or subsequent to the construction of a residence. Hangars may be detached from or attached to a primary structure in accordance with local building regulations.

Section 6.3 **Two or More Aircraft.** If two or more aircraft are owned by Lot Owner, one aircraft, not stored in the hangar, may be secured with tie downs adequate for the size and weight of the aircraft. Until a dwelling and hangar are under construction or built, no aircraft shall be tied down on the Lot unless approved by the ACC. The one tied-down aircraft must be in airworthy condition as defined by the current Federal Aviation Regulations (FAR's) except as permitted by the Board of Directors in writing. The tied out aircraft must be in a good state of repair and appearance.

Section 6.4 **Unattended Aircraft.** No aircraft shall be parked on any part of the runway, taxiway or easements and all aircraft parked or left for any period of time unattended within Lots shall be securely tied down. If any aircraft is found within any Lot, not tied down and unattended, the Board of Directors or its agents may, but are not obligated to, secure it at the expense of the Owner of said aircraft.

Section 6.5 **Run-ups.** "Run-ups" and testing of engines within residential areas should be limited to the hours of 8:00 am and 6:00 pm. But in any event the "run-up" shall not be done in such a manner as to cause inconvenience or damage to the property of others. This shall not prohibit normal take offs and landings at any time.

Section 6.6 **Stunt Flying.** No low-level flying stunts nor other hazardous activities will be permitted about the subdivision. Each Owner is required to strictly observe all Federal, State and Local Statues, Regulations or Ordinances relative to the operation of civil aircraft

Section 6.7 **Speed Limits.** Aircraft shall taxi at less than 15 miles per hour on all taxiways. Pilots are cautioned to avoid increasing engine RPM to high levels as part of our noise abatement program and to avoid blowing sand and dirt on following aircraft and in residential areas.

Section 6.8 **Taxi-Way Courtesy.** Moving aircraft shall have the right-of-way at all times. Automotive traffic must yield at all taxiway crossings and on dual purpose streets. No taxiways other than those designated by Declarant as combination street/taxiways shall be used by any vehicle other than aircraft or aircraft service vehicles, unless pursuant to a valid access permit granted by the Association. No aircraft shall have a right-of-way on taxiways, and all aircraft on taxiways must anticipate use of passing areas for approaching aircraft

Section 6.9 **Commercial Business.** No commercial aircraft business shall be permitted on a Lot. This should not exclude work done on non-owned aircraft so long as such work is done inside a hangar and the completed aircraft conforms with all requirements as set forth in these covenants.

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Section 6.10 **Storing Parts.** There shall be no storage of dismantled or disabled aircraft on the Lots or the Common Areas. Aircraft being repaired and aircraft parts must be kept within an enclosed hangar building which has been approved by the Architectural Control Committee. Parts of aircraft, including but not limited to, fuselages, wings, engines, horizontal and vertical stabilizers, ailerons, rudders, landing gear and spare parts may not be stored in yards where visible from the street, taxiway, or adjoining Lots, but must be stored inside the hangar or other building approved by the ACC.

ARTICLE VII
Runway Assurances and Operations

Section 7.1 **Operation.** Every Lot Owner or Lessee or Grantee of any property now or hereafter subject to this Declaration by acceptance of a Deed, Lease or other Conveyance thereof hereby agrees the runway and taxiway shall remain and be maintained as such until such time as at least eighty (80%) per cent of the members and Declarant consents to its dissolution or operation is interrupted or terminated by Local, State or Federal authority.

Section 7.2 **Complaints.** As this is an aviation community, Owners understand, and agreed, that Lot Owners, their heirs, or assigns relinquish any right to complain, object, or take any legal remedies to stop aviation related activities in the Development.

Section 7.3 **Control of Runway.** The Licensor, MidEastern Truckwash, Inc., shall have the right to control the use of the runway and taxiway and may prohibit the use of the runway or taxiway by any aircraft deemed unsafe to either the life or health of individuals or the condition and maintenance of the field by virtue of its size, design or state of repair.

Section 7.4 **Withholding of Use.** The Declarant or the Association shall have the right to withhold from, restrict, or charge an individual assessment for the use of the Common Area, including the runway, to any Owner:

a) Who is in default in the payment of any assessment fee; or

b) Who, in the judgment of the Declarant or the Owners Association, uses the Common Areas or his aircraft in a negligent manner or in a manner harmful to the rights of other users; or

c) Who, in general, violates the published rules and regulations of the Association.

ARTICLE VIII
Easements and Setbacks

Section 8.1 **Setback Requirements.** No house or building may be constructed within 75 feet of the centerline of any designated street, or taxiway or runway boundary. A 40 foot clear zone easement shall be established along all Lot lines facing the runway where no aircraft may be parked, no trees or other obstacles allowed in this area. A 5 foot easement along all sides of Lots and along

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sides adjoining any designated streets are reserved for underground utilities and drainage purposes. All setbacks and side Lot lines shall be in compliance with the rules and regulations of Clarendon County Planning Commission and Architectural Control Committee.

Section 8.2 **During Construction.** During the development period, the Declarant or its agent reserves a blanket easement and right on, over and under the ground within the Property to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any grading of the soil, or to take any other similar action reasonably necessary, following which the Declarant or its agent shall restore the affected property to its original condition as near as possible. The Declarant or its agent shall give reasonable notice of intent to take such action to all affected Owners, unless, in the opinion of the Declarant or its agent, any emergency exists which precludes such notice. The Declarant or its agent, however, in the exercise of such easement rights shall not disturb any living dwelling or other substantial improvement upon any property.

Section 8.3 **Maintenance.** In order to implement effective insect and woods fire control, the Declarant reserves for itself and its agents the right to enter upon any Lot on which a residence has not been constructed and upon which no landscaping plan has been implemented (with prior written approval of the ACC for such plan), such entry to be made at the expense of the Owner of the Lot), by personnel with tractors or other suitable devices for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, or other unsightly growth, which in the opinion of the Declarant detracts from the overall beauty, setting and safety of the Property. Such entrance shall not be deemed a trespass. The Declarant and its agents may likewise enter upon such land to remove any trash which has collected on such Lot without such entrance and removal being deemed a trespass. The provisions in this paragraph shall not be construed as an obligation on the part of the Declarant to mow, clear, cut or prune any Lot nor to provide garbage or trash removal services.

ARTICLE IX
Insurance

Section 9.1 **By the Declarant or Association.** The Declarant or Association or its duly authorized agent shall have the right and power to obtain insurance to the extent reasonably available for all improvements on the Common Areas against loss or damage in an amount sufficient to cover 100 percent (100%) of the replacement cost of any repair or reconstruction work in the event of damage or destruction from any reasonable hazard. The Declarant may also obtain a broad form public liability policy covering all Common Areas. In the event of damage or destruction to property insured by the Declarant by fire or other casualty, the Declarant or its agent shall, upon receipt of the insurance proceeds contract to rebuild or repair such damaged or destroyed portions of the property to as good a condition as formerly enjoyed. In the event the insurance proceeds are insufficient to pay all costs of repairing or rebuilding of such destroyed improvement, the Declarant or its agents shall levy a special assessment against all Owners to make up such deficiency. In the event the insurance proceeds exceed the cost of repair, the excess proceeds shall be distributed to the respective Owners and Mortgagees as their interests appear.

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Section 9.2 **Liability Insurance by Declarant or Association.** The Declarant or Association shall have the right and power to obtain a comprehensive policy of public liability insurance insuring the Association and its Members for all liability for property damage, bodily injury or death in connection with the operation, maintenance and use of the Common Area within Palmetto Air Plantation.

Section 9.3 **By the Owner.** It shall be the individual responsibility of each Owner to provide, as he sees fit, insurance on the improvements on his Lot in the event of damage or destruction from all reasonable hazards. Each Owner shall provide as he sees fit homeowners liability insurance, theft and other insurance covering personal property damage or personal liability loss.

Section 9.4 **Aircraft Liability Insurance.** Every Owner or user of an aircraft which is based on the Property shall provide the Licensor or the Association or their agent with a current Certificate of Insurance for aircraft liability before they can use the runway. Failure to provide the Certificate of Insurance and to maintain such insurance shall result in the automatic suspension of the Owner or user's right to use the Common Area including the runway.

ARTICLE X
Maintenance Assessments

Section 10.1 **Creation of the Lien and Personal Obligation for Assessments.** Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed, is deemed to covenant and agree to pay to the Association:

(a) Annual assessments or charges as provided in this Declaration for the purpose of funding the maintenance fund.

(b) Special assessment for capital improvements and other purposes as stated in this Declaration; such annual and special assessments to be fixed, established and collected from time to time as provided below.

(c) Default assessments which may be assessed against an Owner's Lot pursuant to this Declaration or the Palmetto Air Plantation Homeowners Associations Rules or Regulations or because the Association as incurred an expense on behalf of the Owners under the Association Documents. The annual, special and default assessments, together with interest, costs and reasonable attorney's fees, shall be a charge upon the land and shall be a continuing lien upon the Lot against which each such assessment is made until paid. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the Owner of such Lot at the time when the assessment fell due.

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Section 10.2 **Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and occupants of Palmetto Air Plantation and for the improvement and maintenance of the Common Area, including but not limited:

(a) to keep the Common Areas clean and free from debris and to maintain any amenities located thereon in a clean and orderly condition, to maintain the landscaping thereon in accordance with the highest standards for private parks including any necessary removal and replacement of landscaping, and to repair, replace, and provide for additions to the improvements as stated in the Declaration or Association Documents.

(b) to pay all taxes, if any, levied against the Common Areas and any properties owned by the Association.

(c) to install and maintain any light fixtures along roads and streets in the Development to provide street lighting therefore, as may be approved by the Association.

(d) to erect and maintain entrance signs at the entrances to the Development and signs on the Common Areas, said signs to be of standard construction and quality.

(e) to pay the premiums on all hazard insurance carried by the Association on the Common Areas and all public liability insurance carried by the Association pursuant to the By-Laws.

(f) to provide such security services as may be deemed reasonably necessary for the protection of the Common Areas from theft, vandalism, fire and damage from animals.

(g) to provide such garbage removal services as may be approved by the Association for all Lots.

Section 10.3 **Uniform Rate of Assessment.** Both annual and special assessments must be fixed at a uniform rate for all Lots, except the Board may provide for a reduced assessment to be paid by those Lot Owners whose property is undeveloped. PROVIDED HOWEVER, the Owners of undeveloped Lots are assessed on a uniform basis. All payments shall be applied first to cost, then to late charges, then to interest and then to delinquent assessments.

Section 10.4 **Effect of Non-payment of Assessment; Lien; Remedies of Association.** Any Association installment, whether pertaining to an annual, special or default assessment, which is not paid within thirty (30) days of its due date shall be delinquent. In the event that an assessment installment becomes delinquent, the Association, in its sole discretion may take any or all of the following actions:

(a) Assess a late charge of at least fifteen percent (15%) per delinquency.

(b) Suspend the voting rights of the Owner during any period of delinquency.

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(c) Accelerate all remaining assessment installments for the fiscal year in question so that unpaid assessments for the remainder of the year shall be due and paid at once.

(d) Bring legal action against any Owner personally obligated to pay the delinquent installments.

(e) File a statement of lien with respect to the Lot, and foreclose as set forth below:
The Association may file a statement of lien by recording with the Clerk of Court's Office of Clarendon County, South Carolina, a written statement with respect to the Lot, setting forth the name of the Owner, the legal description of the Lot, the name of the Association, and amount of the delinquent assessments then owing, which statement shall be duly signed and acknowledged by the President or Vice-President of the Association or by the Manager, and which shall be served upon the Owner of the Lot by mail to the address of the Lot or at such other address as the Association may have in its records for the Owner. Thirty (30) days following the mailing of such Notice, the Association may proceed to foreclose the statement of lien in the same manner as provided for foreclosure of mortgages under the statutes of the State of South Carolina. Such lien shall be in favor of the Association and shall be for the benefit of all other Owners. In a foreclosure action, the Association shall be entitled to recover as a part of the action the interest, costs and reasonable attorney's fees with respect to the action. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot. The remedies herein provided shall not be exclusive and the Association may enforce any other remedies to collect delinquent assessments as may be provided by law.

Section 10.5 **Subordination of the Lien.** The lien of the assessments provided for in this Declaration shall be subordinate to the lien of any first mortgage. The lien of the assessments shall be superior to and prior to any homestead exemption provided now or in the future by laws of the State of South Carolina. No sale or transfer of any Lot pursuant to a decree of foreclosure or by a Public Trustee's foreclosure or any other proceeding or deed in lieu of foreclosure for the purpose of enforcing a first mortgage shall extinguish the lien of such assessments as to installments which become due prior to such sale or transfer, and the amount of such extinguished lien may be reallocated and assessed to all Lots as a common expense at the direction of the Board of Directors. No sale or transfer shall relieve the purchaser or transferee of a Lot from liability for, nor the Lot from the lien of any assessments made after the sale or transfer.

ARTICLE XI
Duration and Amendments

Section 11.1 **Term.** The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change covenants and restrictions, in whole or in part, or to terminate the same.

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Section 11.2 **Amendments.** So long as the Declarant owns twenty-five (25%) per cent of the original lots in the subdivision it shall have the right and authority to modify and amend these covenants and restrictions without liability or notice or joinder of any other party provided such modifications and amendments do not violate the ordinances of Clarendon County Planning Commission. Subsequently amendments to this Declaration may be adopted by the membership of the Property Owners Association in the same manner and upon the same vote as required for amendments to the By-Laws of the Property Owners Association.

Section 11.3 **Effective on Recording Any Modification or Amendment.** Shall be immediately effective upon recording in the R.M.C. Office for Clarendon County, South Carolina, a copy of such amendment or modification, executed and acknowledged by the necessary number of Owners (and by Declarant, as required), together with a duly authenticated Certificate of the Secretary of the Board stating that the required number of consents of Owners were obtained and are on file in the office of the Association.

ARTICLE XII
Enforcement of Covenants

Section 12.1 **Violations Deemed a Nuisance.** Every violation of this Declaration of Covenant is deemed to be a nuisance is subject to all the remedies provided for the abatement of the violation. In addition, all public and private remedies allowed at law or in equity against anyone in violation of these Covenants shall be available

Section 12.2 **Who May Enforce.** Any action to enforce these restrictions may be brought by Declarant or the Board of the Owners Association or any Property Owner in the subdivision.

Section 12.3 **No Liability.** No member of the Board of Directors, Declarant, the Manager, or the Architectural Control Committee or any Owner shall be liable to any other Owner for the failure to enforce any of the restrictive covenants.

Section 12.4 **Recovery of Costs.** If legal assistance is obtained to enforce any of the provisions of the restrictions, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the restrictions or the restraint of violations of the restrictions, the prevailing party shall be entitled to recover all costs incurred by it in such action, including reasonable attorney's fees as may be incurred, or if suit is brought, as may be determined by the Court.

ARTICLE XIII
Expansion

Section 13.1 **Reservation of Right to Expand.** Declarant shall expand the effect of this Declaration to include all of the Expansion Property which the Declarant may choose to add to the subdivision. The Declarant shall have the unilateral right to transfer to any other person this right

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and to expand by instruments duly recorded. Declarant shall pay all taxes and other governmental assessments relating to the Expansion of property.

IN WITNESS WHEREOF, Mideastern Truckwash, Inc. has hereunto set its hands and seals, the day and year first above written.

WITNESS:

MIDEASTERN TRUCKWASH, INC.

BY: JOE WITT
ITS: PRESIDENT/DECLARANT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CLARENDON)

PROBATE

PERSONALLY APPEARED BEFORE ME, the undersigned witness and made oath that s/he saw the within named Mideastern Truckwash, Inc., sign, seal and its act and deed, deliver the within written Declaration of Covenants, Conditions and Restrictions for the uses and purposes therein mentioned and that s/he with the other witness above witnessed the execution thereof.

Witness

SWORN to before me this 11th day of July, 2001

Notary Public for South Carolina
My Commission Expires: 4/4/11

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07/11/2001 03:40:50PM
Bk:A0444 Pg:00026
RecFee:27.00 St Fee:0.00
Co Conv Fee:0.00 Pages:21
R M C DEPARTMENT CLARENDON CO
Beulah B. Roberts, Clerk of Court

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Appendix B

Certificate of No Record
Of Palmetto Air Plantation Property Owners Association Inc.
(DCCR named homeowner organization)
Date of Incorporation: Never Incorporated
1 Pp.

The State of South Carolina

Office of Secretary of State Mark Hammond

Certificate of No Record

I, Mark Hammond, Secretary of State of South Carolina Hereby Certify that:

At this time, this office can find no record of an entity using the name: palmetto air plantation property owners association, inc

Given under my Hand and the Great Seal of the State of South Carolina this 9th day of January, 2024.

Mark Hammond

Mark Hammond, Secretary of State

Appendix C

Certified Copy of Certificate of Existence
Of Palmetto Air Plantation Homeowners Association Inc.
(Plaintiff Entity)
Date of Incorporation: June 2, 2004
1 Pp.

The State of South Carolina

Office of Secretary of State Mark Hammond

Certificate of Existence

I, Mark Hammond, Secretary of State of South Carolina Hereby Certify that:

PALMETTO AIR PLANTATION HOMEOWNERS ASSOCIATION, INC., a nonprofit corporation duly organized under the laws of the State of South Carolina on June 2nd, 2004, has as of the date hereof filed as a nonprofit corporation for religious, educational, social, fraternal, charitable, or other eleemosynary purpose, and has paid all fees, taxes and penalties owed to the State, that the Secretary of State has not mailed notice to the company that it is subject to being dissolved by administrative action pursuant to S.C. Code Ann. §33-31-1421, and that the nonprofit corporation has not filed articles of dissolution as of the date hereof.

Given under my Hand and the Great Seal of the State of South Carolina this 15th day of February, 2023.

Mark Hammond

Mark Hammond, Secretary of State

PROOF OF SERVICE

Party Served

Name:	Steven S. McKenzie, Coffee & McKenzie PA
Address:	2 N. Brooks St
City:	Manning
State:	South Carolina
Zip Code:	29102
Date/Time of service:	18 January 2024
Means of Service:	U.S. Mail
Case Number	2017-CP-14-00127
Title of Document:	DEFFENDENT RESPONSE TO PLAINTIFF'S REPLY TO DEFENDANT'S MOTION TO SUPPLEMENT PLEADINGS
Number of Pages:	29
Service Method:	U.S. Mail

Service By: Kim Edward Bevier – Pro Se
1144 Mullet Drive
Manning, SC 29102

2024 JAN 18 PM4:21
Beulah Roberts, Clerk-Clarendon S.C

ELECTRONICALLY FILED - 2024 Jul 23 12:59 PM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON	)	
	)	Civil Action No. 2017-CP-14-00127
PALMETTO AIR PLANTATION HOMEOWNERS ASSOCIATION, INC.,	)	
Plaintiff,	)	**MOTION TO RECONSIDER**
vs.	)	
KIM E. BEVIER,	)	
Defendant.	)	

Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, Defendant hereby moves the Court to reconsider and or alter/amend its order granting judgment to the plaintiff, upon the following grounds which were overlooked, misapprehended or not considered by the court.

This case was heard April 1, 2024 upon Plaintiff's request for a final hearing. At the time of the hearing, Defendant had a pending summary judgment motion filed January 18, 2024. This motion was not heard nor ruled on prior to the trial and Defendant seeks a ruling on this motion and for a new trial if this motion is denied.

This motion and one of Defendant's defenses were based on the fact that the named Plaintiff has no legal basis to enforce claimed restrictive covenants against Defendant since the only proper party to enforce such restrictive covenants is the entity named in the Palmetto Air Plantation Declaration of Covenants, Conditions and Restrictions, Palmetto Air Plantation Property Owners Association, Inc., a name very similar to Plaintiff, but a distinctly different legal entity. The only way Plaintiff could have created a homeowner's association under S.C. Code §27-30-110 *et. seq.* would have been to have the homeowners vote on it. No vote was taken to establish Plaintiff as the homeowner's association as required. Very notably, the creator and president of Plaintiff and

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the individual responsible for prosecuting this case's, Joeseph Witt, home is excluded from Plaintiff's HOA. He uses all of the amenities of the HOA, but pays no dues or HOA fees.

There has been no attempt by Plaintiff to explain how Plaintiff became the legal HOA when the Declarant, Mid-Eastern Truck Wash, ("Declarant") failed to file anything with the Secretary of State for Palmetto Air Plantation Property Owners Association, Inc. and they sold the property giving up their rights to establish a HOA. A HOA that is not properly formed has no legal right to enforce restrictive covenants even if the homeowners are aware of the improperly formed HOA.

The following three sections of the covenants presented at trial are especially relevant to this argument:

> **Section 1.5** Articles or Articles of Incorporation Shall Mean and refer to the Articles of Incorporation of the Association which *will have been filed* with the Secretary of State to create the Association. (emphasis added).
>
> **Section 1.7** Association shall mean the Palmetto Air Plantation Property Owners Association, Inc. (PAP) a non-profit South Carolina Corporation.
>
> **Section 1.9** By-Laws shall refer hereafter to the By-Laws of Palmetto Air Plantation Property Owners Association, Inc. Attached to the Declaration and incorporated herein by this reference.

No Association was ever incorporated, no Articles of incorporation filed and no By-Laws attached to the recorded Covenants. No HOA, by any name, has ever been created by the Declarant, Mid-Eastern Truck Wash.

The DCCRs Section 11.2 – Amendments as presented at trial states,

> As long as the Declarant owns 25% of the unsold lots in the subdivision, it shall have the right and authority to modify and amend these covenants and

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restrictions, without liability or notice or joinder of any other party provided such modification and amendments do not violate the ordinances of the Clarendon County Planning Commission.

Subsequently, amendments to this declaration may be adopted by the membership of the Property Owners Association in the same manner and upon the same vote as required for amendments to By-Laws of the Property Owners Association.

On October 9, 2001, Declarant Sold 100% of Palmetto Air Plantation to Palmetto Air Plantation, LLC (AKA Palmetto Air Plantation Subdivision, LLC), thus forfeiting forever, the above described right and authority to modify and amend the covenants and restrictions. To this day, the Covenants have never been altered and re-recorded and are offered in their original form on the Palmetto Air Plantation website as the applicable covenants of Palmetto Air Plantation.

The Declarant Representative was, and is, Plaintiff's President who is also President of MidEastern Truck Wash, a/k/a MidEastern Inc., and Managing Partner of Palmetto Air Plantation, LLC (AKA Palmetto Air Plantation Subdivision, LLC). However, Neither Declarant Representative Joseph Witt nor Palmetto Air Plantation Subdivision LLC or any entity has legal authority to modify the Covenants recorded July 11, 2001.

Almost three years after the Covenants were recorded, on June 14, 2004, Declarant Representative Joseph Witt, incorporated Plaintiff as a non-profit corporation. On September 4, 2004, with no legal authority, he held an organizational meeting of Plaintiff, and adopted association By-Laws differing substantially from the rules as recorded in the Covenants. These claimed the lots purchased in October of 2004 from Declarant by his other company Palmetto Air

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Plantation Subdivision LLC, would not pay lot fees as other lot owners and granted himself four times the voting power per lot as any other previous or subsequent lot owner.

Joseph Witt, in his role as Declarant Representative was attempting to change covenants which he had no right or authority to amend or modify in any way per Section 11.2 of the Covenants. He had no authority to change any part of the DCCRs because three years earlier he sold 100% of the subdivision to Palmetto Air Plantation LLC. (Clarendon Deed Book 452, Pp. 144 Bargain & Sale Deed for assumption of two mortgages, etc.)

The burden of proof weighs upon Plaintiff to prove it is the legal descendent of the never formed Palmetto Air Plantation Property Owners Association nominated by the Covenants. Plaintiff has not submitted any proof this.

Defendant has shown that the Covenants stated claims of creation of the nominated homeowner organization, filing of Articles of incorporation and attachment of bylaws never occurred. Plaintiff is not named by Covenants as the homeowners' association. Any contemplation of a contractual method for deferral of creation of the Property Owners Association until some future time after recording of the Covenants is not supported by any evidence within the contract of the Covenants.

Plaintiff did not exist until three years after DCCRs were filed, and 18 months after Defendant purchased property subject to the Covenants. Declarant lost any right to modify the covenants three months after recording the DCCRs on July 11, 2001, upon sale of 100% of Palmetto Air Plantation. (Covenants Section 11.2). Plaintiff has no privity of contract with Defendant and is not one of the three entities named in Section 12.2 of the Covenants allowed to bring suit for enforcement: the Property Owners Association, the Declarant or a lot owner.

The South Carolina Homeowners Association Act of 2018 required all HOAs, if they had

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not already done so, to record all governing documents of the HOAs, to include Declarations, Master Deeds or Bylaws, in the RMC office where the land described by the Declarations exists. Governing documents mean the Covenants (Declarations) recorded by Mid-Eastern Truck Wash on 11 July 2001, as well as the By-Laws of the non-existent Palmetto Air Plantation Property Owners Association. By-Laws have never been recorded because no Property Owners Association was ever created to do so. Pursuant to the SC Homeowners Association Act, the Covenants are unenforceable.

Plaintiff attempted to pass itself off as the legal HOA of the Covenants by giving itself a similar name, has recorded By-Laws, but no Declaration exists giving them the right to do so, and no Declarant representative existed with the authority to change the name three years after Covenants were recorded as described above.

Plaintiff has only recorded By-Laws. There are no Declarations giving them the authority to enforce the Covenants recorded by Mid- Eastern Truck Wash on July 11, 2001. Plaintiff has offered no proof it is the Covenant nominated Property Owners Association or legal successor by contractual means and fails to prove it has privily of contract with Defendant and the right to bring legal action as stated in Section 12.2 of the Covenants. For these reasons, Plaintiff has no authority to enforce any restrictive covenants and the court should modify its ruling to reflect such.

The Court of Appeals ruling is limited and only applies to Defendant if Plaintiff has the proper authority under S.C. Code §27-30-110 *et. seq.* to enforce the claimed restrictive covenants against Defendant. The question as to whether Plaintiff is the proper legal entity and had proper authority to enforce restrictive covenants has never been ruled on by this court, was not considered by the Court of Appeals and Defendant is asking this court to rule on this issue.

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ATTORNEY FOR DEFENDANT

July 23, 2024
Columbia, South Carolina

ELECTRONICALLY FILED - 2024 Sep 02 11:59 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF CLARENDON	)	DOCKET NO.: 17-CP-14-00127
	)	
PALMETTO AIR PLANTATION HOMEOWNERS ASSOCIATION INC.,	)	
	)	
Plaintiff,	)	
	)	**REPLY TO DEFENDANTS MOTION TO RECONSIDER**
	)	
vs	)	
	)	
KIM E. BEVIER,	)	
	)	
Defendant.	)	
	)	

The Plaintiff replying to the Defendant's Motion to Reconsider the Final Order of the Court. The Plaintiff would show upon this Honorable Court as follows:

The Defendant alleges in his Motion to Reconsider that the Plaintiff has no legal basis to enforce the Covenants against the Defendant because the Plaintiff has a different name than Plaintiff. Also, the original owner of the property, "Mid-Eastern Truck Wash, ("Declarant" or "Mid-Eastern") failed to file 'anything' with the Secretary of State for Palmetto Plantation Property Owners Association, Inc. and they (Declarant) sold the property giving up their 'legal' right to enforce restrictive covenants even if the homeowners are aware of the improperly formed HOA." The Defendant goes on to state that the Court of Appeals ruling is limited and only applies to Defendant if Plaintiff has the proper authority under S.C. Code Ann. § 27-30-110 et seq.

1. **THE SOUTH CAROLINA COURT OF APPEALS HAS RULED THAT THE COVENANTS ARE BINDING ON THE DEFENDANT.**

The Honorable R. Ferrell Cothran, Jr. granted a Partial Summary Judgment to

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the Plaintiff on the issue of the enforceability of the Declaration of Covenants against Defendant. The Defendant then appealed that Order to the South Carolina Court of Appeals. The South Carolina Court of Appeals heard the matter in Appellate Case No. 2019-000516. The Court Appeals stated as follows when it Affirmed the Partial Summary Judgment Order of Judge Cothran:

> The circuit court granted partial summary judgment in favor of Palmetto Air, finding the Declaration of Covenants was enforceable against Bevier. Specifically, the circuit court determined that the restrictive covenants were created when Mid-Eastern executed and recorded the Declaration of Covenants. It further determined Bevier had actual and constructive knowledge of the Declaration of Covenants. Bevier filed Rule 59(e), SCRCP motion to reconsider, which the circuit court denied.
>
> Moreover, Bevier had constructive notice of the restrictive covenants because the Declaration of Covenants was properly recorded within his chain of title when Mid-Eastern filed and recorded it with the Clarendon County Register of Deeds office before it conveyed the land to Palmetto Air. *See Harbison Cmty. Ass'n*, 319 S.C. at 103, 459 S.E.2d at 863 ("A homeowner is charged with constructive notice of any restriction properly recorded within the chain of title."); *Howorka v. Harbor Island Owners' Ass'n*, 292 S.C. 381, 386, 356 S.E.2d 433, 436 (Ct. App. 1987) (finding homeowner had constructive notice of a declaration of covenants by virtue of its recordation against the burdened property).

See Palmetto Air v. Bevier, Unpublished Opinion No. 2022-UP-361.

The Court of Appeals was aware that Mid-Easten was the original owner of the property in question, so all of the facts that Defendant relies upon regarding the transfer of the property from Mid-Eastern to Palmetto Air Plantation were known to the Court of Appeals. If the Court of Appeals believed that there was a problem created regarding the applicability of the Covenants to the Defendant's property or with the enforceability of the Covenants by the Plaintiff, the Court of Appeals could have addressed the issue when it ruled, and it did not. The validity of the Covenants and their applicability to the Defendant

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has been resolved and is now moot and *res judicata* by Order of The South Carolina Court of Appeals. The Court of Appeals ruling was not appealed by the Defendant and it is now the law of this case. Defendant is estopped from continuing to argue that the Covenants do not apply to him and for him to continue to argue . The Plaintiff would ask that the Defendant's Motion be dismissed.

2. **S.C. CODE ANN. § 27-30-110 ET SEQ. IS NOT APPLICABLE TO THIS MATTER.**

The Plaintiff would show that this case was filed in 2017 and the Defendant has previously been allowed to amend his answer twice. The case has been to the South Carolina Court of Appeals wherein that Court ruled that the Covenants do apply to the Defendant. Defendant now argues that S.C. Code Ann. § 27-30-110 et seq. is the only way the Plaintiff could have created a homeowner's association. The South Carolina Homeowner's Act (S.C. Code § 27-30-110 et seq.) became effective May 17, 2018. This case began in 2017 and Mid-Eastern transferred the property in 2001 to Palmetto Air Plantation. The Plaintiff was created in 2004. S.C. Code § 27-30-110 et seq. is not applicable in this matter. Furthermore, Plaintiff has prosecuted this case for seven (7) plus years in the name of the Plaintiff without objection by the Defendant and any allegation of the fact that the Plaintiff is not the proper party has been waived been waived by the Defendant.

3. **THE PLAINTIFF SEEKS ATTORNEY'S FEES PURSUANT TO SCRCP RULE 11 BECAUSE THE DEFENDANT HAS FILED A FRIVOLOUS MOTION.**

Plaintiff would show that the Motion of the Defendant was filed with no legal basis. The issues raised by the Defendant in his Motion have been ruled on by the Court at trial

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and by the South Carolina Court of Appeals. The Plaintiff has incurred attorney's fees in defense of this frivolous Motion.

For the above-mentioned reasons as well as the equitable doctrines of waiver, moot, estoppel, and *res judicata,* Plaintiff would ask the Court to deny the Motion of the Defendant. The Plaintiff would also seek attorney's fees and costs for having to defend this Motion before the Court.

Respectfully Submitted,

COFFEY & MCKENZIE, PA

September 2, 2024

BY: /Steven S. McKenzie

Steven S. McKenzie
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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CLARENDON COUNTY
CIRCUIT COURT

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SC Court of Appeals

Kristi F. Curtis, Circuit Court Judge

Case No. 2017-CP-14-00127
Appellate Case No. Pending

Kim E. Bevier.....Appellant,

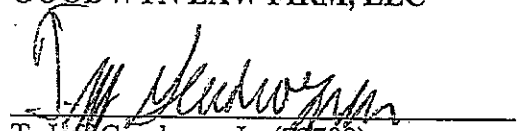
v.

Palmetto Air Plantation Homeowners Association, Inc., ...Respondent.

NOTICE OF APPEAL

Kim E. Bevier, appeals the Final Order of the Honorable Kristi F. Curtis, Circuit Court Judge, dated July 17, 2024 and the Order denying Defendant's Motion for Reconsideration dated October 29, 2024, attached hereto.

GOODWYN LAW FIRM, LLC



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Attorney for Appellant

Columbia, South Carolina
November 1, 2024

ELECTRONICALLY FILED - 2024 Nov 07 4:33 PM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

ELECTRONICALLY FILED - 2024 Nov 07 4:33 PM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127
ELECTRONICALLY FILED - 2024 Oct 29 10:37 AM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

STATE OF SOUTH CAROLINA COUNTY OF CLARENDON	IN THE COURT OF COMMON PLEAS
PALMETTO AIR PLANTATION HOMEOWNERS ASSOCIATION, INC., Plaintiff, v. KIM E. BEVIER, Defendant.	CASE NO.: 2017-CP-14-00127 **ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION**

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SC Court of Appeals

A bench trial in this matter was heard on April 1, 2024. Defendant seeks reconsideration of the court's final order in this matter, filed July 17, 2024. After considering Defendant's Motion and Plaintiff's Reply, the motion is denied.

LEGAL STANDARD

The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to "reconsider matters properly encompassed in a decision on the merits." *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). Consequently, a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 22, 602 S.E.2d 772, 779 (2004). A party may wish to file such a motion when he believes the court misunderstood, failed to fully consider, or failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. *Elam,* 361 S.C. at 24, 602 S.E.2d at 779.

Defendant argues that Plaintiff is not a valid entity to enforce the covenants against Defendant, and that the Covenants themselves are invalid. The court finds Defendant's argument is barred by the doctrine of *res judicata*, as the S.C. Court of Appeals has already ruled that

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Defendant's property is subject to these Covenants. In its opinion upholding the Circuit Court's order granting partial summary judgment in favor of Plaintiff, the Court of Appeals stated:

> The circuit court granted partial summary judgment in favor of Palmetto Air, finding the Declaration of Covenants was enforceable against Bevier. Specifically, the circuit court determined that the restrictive covenants were created when Mid-Eastern executed and recorded the Declaration of Covenants. It further determined Bevier had actual and constructive knowledge of the Declaration of Covenants. . . . Moreover, Bevier had constructive notice of the restrictive covenants because the Declaration of Covenants was property recorded within his chain of title when Mid-Eastern filed and recorded it with the Clarendon County Register of Deeds office before it conveyed the land to Palmetto Air.

The doctrine of *res judicata* operates to bar a litigant "from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." *Hilton Head Center v. S.C. Pub. Serv. Comm'n*, 294 S.C. 9, 362 S.E.2d 176 (1987). Both the Circuit Court and the Court of Appeals addressed Plaintiff's Motion for Summary Judgment on the issue of whether Defendant's property is subject to the Covenants at issue in this suit, and both found that the Covenants at issue here were enforceable against Defendant. Defendant could have raised this issue before Judge Cothran or the Court of Appeals. Defendant was represented by very able counsel both at the Summary Judgment stage and at the Court of Appeals. Defendant cannot keep silent before the circuit court on the very issue before it, wait until the issue has gone all the way up to the Court of Appeals, only to advance a different argument on the exact same issue after the Court of Appeals has made its ruling.

Defendant has not shown that the court misunderstood, failed to fully consider, or failed to rule on an argument or issue before the court. As such, the motion is DENIED.

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Clarendon Common Pleas

Case Caption: Palmetto Air Plantation Homeowners Associations, Inc VS Kim E Bevier

Case Number: 2017CP1400127

Type: Order/Other

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CLARENDON COUNTY
CIRCUIT COURT

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SC Court of Appeals

Kristi F. Curtis, Circuit Court Judge

Case No. 2017-CP-14-00127
Appellate Case No. Pending

Kim E. Bevier.....Appellant,

v.

Palmetto Air Plantation Homeowners Association, Inc., ...Respondent.

PROOF OF SERVICE

I certify that I have served a copy of **Appellant's Notice of Appeal** on the following at the address below by depositing a copy of same in the United States Mail, postage prepaid, on November 1, 2024.

Steven S. McKenzie
Coffey & McKenzie, P.A.
P.O. Box 1292
2 North Brooks Street
Manning, South Carolina 29102

SIGNATURE TO FOLLOW ON NEXT PAGE

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Attorney for Appellant

Columbia, South Carolina
November 1, 2024

ELECTRONICALLY FILED - 2024 Nov 07 4:33 PM - CLARENDON - COMMON PLEAS - CASE#2017CP1400127

STATE OF SOUTH CAROLINA COUNTY OF CLARENDON	)	IN THE COURT OF COMMON PLEAS
PALMETTO AIR PLANTATION HOMEOWNERS ASSOCIATION, INC., Plaintiff, vs. KIM E. BEVIER, Defendant.	)	Civil Action No. 2017-CP-14-00127 **NOTICE OF FILING** **NOTICE OF APPEAL**

PLEASE TAKE NOTICE that Defendant, by and through his undersigned counsel, has on November 1, 2024 filed with the Clerk of the South Carolina Court of Appeals, a Notice of Appeal of the above-captioned matter. A copy of the filed Notice of Appeal is attached hereto.

Respectfully submitted,

/s/ T. JEFF GOODWYN, JR.
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jgoodwyn@goodwynlaw.com
Attorney for Defendant

November 7, 2024
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF CLARENDON)

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, That, MidEastern Truckwash, Inc. the "Grantor" in the State aforesaid, for and in consideration of the sum of Five ($5.00) Dollars, and the Assumption of a Mortgage to Edward G. Gibbons, dated 18 November 1996, recorded in Mortgage Book 287 at Page 208, having a balance of Ninety One Thousand Two Hundred Eighty One and 00/100ths ($91,281.00) Dollars and the Assumption of a Mortgage, dated 9 May 1997, to Joe P. Moore, et al, recorded in Mortgage Book 301 at Page 234, assigned to John C. Land, III in Mortgage Book 301 at Page 297, having a balance of Thirty Seven Thousand One Hundred Eighty Six and 00/100th ($37,186.00) Dollars, consideration paid to the Grantor by **Palmetto Air Plantation, L.L.C. , P. O. Box 777, Manning, South Carolina 29102** 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:

All that piece, parcel or tract of land, lying, being and situate in School District Number 20 of the County of Clarendon, State of South Carolina, containing 82.91 acres, according to the plat hereinafter referred to and bounding and measuring as follows: On the Northeast by lands of New Covenant Holiness Church and by lands of Joseph Palmer Moore; on the Southeast by lands of Lettie D. Johnson and by lands of Janie and Clyde Wilkes, Jr., the run of Fellowship Branch being the line; on the Southwest by lands of Joe P. Moore, et al. And by lands of Fellowship Ranchette Subdivision; on the North by lands of Cecil D. Sheets and by lands of Hugh T. Martin; on the Southwest by lands of Hugh T. Martin; on the Northwest by the right of way of U.S. Highway 301.

For a more particular description of said lot, reference may be had to a plat made by DuValle W. Elliott, RLS, dated 14 March 1996, recorded in the Office of the Clerk of Court for Clarendon County in Plat Book A-17 at Page 6.

Said premises having been conveyed to MidEastern Truckwash, Inc. by Deed of Edward G. Gibbons, dated 18 November 1996, recorded in the Office of the RMC for Clarendon County in Deed Book A-305 at Page 28. For Tax Map Parcel Number, see below.

ALSO, all that piece, parcel or tract of land, lying, being and situate in School District No. 2 of Clarendon County, South Carolina, containing 22.22 acres and bounding now or formerly as follows: On the Northeast by the tract above described; on the Southeast by lands of Lettie Johnson; on the Southwest by

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lands of Alfred Blanding Estate; on the Northwest by lands of Ernest L. Rauber, and lands of Ray and Rita Lamothe.

Said tract having been conveyed to MidEastern Truckwash, Inc. by Deed of Marion Moore, et al, dated 9 Mary 1997, recorded in the Office of the Clerk of Court for Clarendon County in Deed Book A-319 at Page 82.

The above tracts being designated as Clarendon County Tax Map Parcel No. 140-00-05-063.

Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise appertaining.

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the said Grantee, Palmetto Air Plantation, L.L.C., its Heirs and Assigns forever.

And the Grantor does hereby bind itself and its Heirs, Personal Representatives and Assigns, 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 9th day of October, 2001.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Carol P. Bochette
1st Witness

Mary Ann Moore
2nd Witness

MIDEASTERN TRUCKWASH, INC.

BY: Joseph M Witt
Joseph M. Witt, President

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STATE OF SOUTH CAROLINA)
)
COUNTY OF CLARENDON)

PROBATE

PERSONALLY APPEARED BEFORE ME the undersigned witness and made oath that s/he saw the within named Grantor's 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
9th day of October, 2001.

Betty A Usry (L.S.)
Notary Public for South Carolina

Carol P. Bachelor
1st Witness Sign Again

My Commission Expires: 4/24/11

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Beulah G. Roberts, Clerk of Court

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STATE OF SOUTH CAROLINA)
)
COUNTY OF CLARENDON)

AFFIDAVIT

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 being transferred is, a portion of Clarendon County Tax Map Number 140-00-05-063, was transferred by By MidEastern Truckwash, Inc. to Palmetto Air Plantation, L.L.C. on 9 October 2001.

3. Check one of the following. The deed is:

   a. $128,467.00 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 a distribution to a trust beneficiary.

   c. _____ exempt from the deed recording fee because (See Information section of affidavit): _____

(If exempt, please skip items 4-7, and go to item 8 of this affidavit.)

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):

   a. X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $128,467.00.

   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 X 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.	Place the amount listed in item 4 above here:	$128,467.00
b.	Place the amount listed in item 5 above here: (If no amount is listed, place zero here.)	
c.	Subtract Line 6(b) from Line 6(a) and place result here:	$128,467.00

7. The deed recording fee is based on the amount listed on Line 6(c) above and the deed recording fee due is: $475.45.

8. As required by Code § 12-24-70, I state that I am a responsible person who was connected with the transaction as: _____

I further 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.

SWORN to before me this 9th day of October, 2001.

Notary Public for S.C.
My Commission Expires: 4/4/06

Responsible Person Connected with the Transaction

Joseph M. Wirt
Print or Type Name Here

W:FPFILES\CORPORATE\01047BB\PALMETTO\DEED.AFF

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
PALMETTO AIR PLANTATION
CLARENDON COUNTY, SOUTH CAROLINA

This Declaration of Covenants, Conditions and Restrictions is made this 11th day of July, 2001 by MidEastern Truckwash, Inc., a South Carolina Corporation hereinafter referred to as the "Declarant".

WHEREAS, the Declarant is the owner of a track of land located south of the right of way of U.S. Highway 301 between the City of Manning and Interstate Highway 95. The property contains approximately 45 lots, private access roads, FAA approved run-way measuring approximately *150* feet by 3,720 feet and 45 residential lots being a portion of Clarendon County Tax Map Parcel No. 223-00-02-005, all of which shall be reflected on a plat of the sub-division prepared by Duvalle W. Elliott. The Declarant's purpose is to develop a community for aviation enthusiast that promotes peaceful living, protects investments and provides the use of a private one-way gated entrance and Common Areas for the benefit all Owners.

WHEREAS, the Declarant desires to insure the values and amenities in said development, to prevent future impairment thereof, and to provide for the maintenance of all Common Areas, by subjecting the real property contained in the subdivision together with any additions to said property to the covenants, restrictions, easement, charges, and liens hereinafter set forth each of which is and are for the benefit of the property of each of the Owners.

WHEREAS, the Declarant deems it desirable for the efficient preservation of the values and amenities in said development to create an Owners Association that will be delegated the powers of maintaining and administrating the development properties and facilities and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created by incorporating a non-profit corporation under the laws of the State of South Carolina entitled Palmetto Air Plantation Property Owners Association, Inc.

NOW THEREFORE, the Declarant does hereby declare that all of the property shown as lots 1 through 45, ponds, airstrip, roadways and rights-of-way on a subdivision plat to be prepared by Duvalle W. Elliott and recorded in the Office of the RMC for Clarendon County, including Lot 19 of said sub-division as reflected on a plat made by Duvalle W. Elliott, dated March 30, 2001, recorded in the Office of the Clerk of Court for Clarendon County, in Plat Book S0050 at Page 571 and shall be held, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements and declarations that shall run with real property and be binding on all parties owning any right, title and interests in said real property or part thereof, their heirs, successors and assigns and shall inure to the benefit of each Owner thereof.

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ARTICLE I
Definitions

Section 1.1 **Adjoining Land** shall mean and refer to land contiguous with the Property, whether or not owned by Declarant, which is or may be made subject to this Declaration.

Section 1.2 **Annexation** shall mean and refer to the process by which any portion of the Expansion Property or Adjoining Land are made subject to this Declaration.

Section 1.3 **Architectural Control Committee (ACC)** shall mean and refer to a committee formed to maintain the quality and architectural harmony of improvements to the Development.

Section 1.4 **Architectural Guidelines** shall mean and refer to the guidelines and rules established and supplemented from time to time by the Architectural Control Committee.

Section 1.5 **Articles or Articles of Incorporation** shall mean and refer to the Articles of Incorporation of the Association which will have been filed with the Secretary of State to create the Association.

Section 1.6 **Assessments** shall mean and refer to annual, special and default assessments levied pursuant to this Declaration.

Section 1.7 **Association** shall mean the Plantation Air Plantation Property Owners Association, Inc. (PAP) a non-profit South Carolina corporation.

Section 1.8 **Board of Directors** shall mean and refer to the Board of Directors of the Association, which is the governing body of the Association.

Section 1.9 **By-Laws** shall refer to the By-Laws of Palmetto Air Plantation Property Owners Association, Inc. Attached to the Declaration and incorporated herein by this reference.

Section 1.10 **Palmetto Air Plantation** shall mean and refer to the planned community created by this Declaration.

Section 1.11 **Common Areas** shall mean any and all real and personal property including roadways, rights of ways, ponds, wetland preservations, and aircraft runways now and hereinafter owned by the Association for the common use and enjoyment of the owners.

Section 1.12 **Declarant** shall mean and refer to MidEastern Truckwash, Inc., a South Carolina Corporation and its successors-in-title and assigns. It is expressly understood and declared that there shall be only one person or legal entity entitled to exercise the right and power of the "Declarant" and Joe Witt is initially designated to be that person.

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Section 1.13 **Improvements** shall mean and refer to all buildings and structures, parking areas, fences, walls, hedges, plantings, pools, driveways, ponds, lakes, recreational facilities, signs, changes in any exterior color or shape, excavation and all other site work including without limitation grading, road construction, utility improvement, removal of trees or plantings, and any new exterior construction or exterior improvement which may be included in the foregoing. "Improvements" does not include turf, shrub or tree repair or replacement of a magnitude which does not change exterior colors or exterior appearance. "Improvements" does include both original improvements and all later changes and improvements.

Section 1.14 **Licensor** shall mean and refer to MidEastern Truckwash, Inc., a South Carolina Corporation which owns the runway and will issue licenses for the use of the runway. Lot Owners and their invitees shall be permitted to use the runway without the necessity of a license from the Licensor.

Section 1.15 **Lot** shall mean and refer to any plot of land within the Palmetto Air Plantation whether or not improvements are constructed thereon, which shall constitute a single family dwelling. The ownership of each Lot shall include all the rights, title and interest of an Owner in the Common Property, which shall include without limitation, membership in the Association.

Section 1.16 **Maintenance Fund** shall mean and refer to the fund created by assessments and fees levied pursuant to this Declaration.

Section 1.17 **Members** shall mean and refer to any person or entity holding membership in the Association.

Section 1.18 **Mortgage** shall mean and refer to any mortgage, deed to secure debt, deed of trust, and any and all similar instruments used for the purpose of encumbering real property in this Development as security for the payment or satisfaction of an obligation.

Section 1.19 **Owner** shall mean and refer to the record Owner, whether one or more persons, of the fee simple title to a Lot located within the Development, and entitled to one vote per Lot as a member of the Palmetto Air Plantation Property Owners Association, Inc., but excluding those having such interest merely as security for the performance of an obligation.

Section 1.20 **Plat** shall mean and refer to any plat depicting the subdivision or any lot therein, filed in the Office of the RMC for Clarendon County, State of South Carolina, as such plat may be amended from time to time by the Declarant.

Section 1.21 **Property** shall mean and refer to the Property initially subject to this Declaration and any additional Real Property from time to time subject to these Covenants pursuant to the provisions of this Declaration.

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Section 1.22 **Runway** shall mean that property located at the center of the subdivision used for the purpose of aircraft takeoffs and landings.

Section 1.23 **Taxiway** shall mean and refer to those right-of-ways radiating from the runway or otherwise as shown on the plat for the purpose of providing access for aircraft to and from the runway.

ARTICLE II
The Association

Section 2.1 **Dedication of Common Areas.** Declarant may hereafter convey to the Association certain parts of the property as Common Areas intended for common use by the owners in Palmetto Air Plantation Property Owners Association, Inc.. Such designated areas shall, upon conveyance, be dedicated to the common use and enjoyment of Owners, and their families, guests, tenants, and invitees.

Section 2.2 **Responsibility for Common Area.** Subject to the rights of the Owners set forth in this Declaration, the Association shall be responsible for the management and control of the Common Area dedicated under Section 2.1 above and all improvements in the Common Area (including equipment related thereto), and shall keep it in good, clean and attractive condition and repair consistent with the requirements of a first class residential and recreational community, pursuant to the terms and conditions of this Declaration.

Section 2.3 **Membership.** Every Owner, by virtue of being an Owner and for as long as he is an Owner, shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot or Lots. No Owner, whether one or more persons, shall have more than one membership regardless of the number of Lots owned, but all of the persons owning each Lot shall be entitled to rights of membership and of use and enjoyment appurtenant to such ownership. The combination of two Lots will be considered a single Lot for membership and assessment purposes. The Articles of Incorporation and Bylaws of the Association may set forth additional classifications of membership, which Members may or may not be Owners.

Section 2.4 **Membership and Voting Rights.** Each Member shall be entitled to one vote per membership. When more than one person holds an interest in any Lot, all such persons shall constitute one Membership. The vote for such Membership shall be exercised as the Owners among themselves determine, and the Secretary of the Association shall be notified of such designation prior to any meeting. Any Owner of a Lot may lease the same and assign his membership right to the tenant, provided that a copy of the Instrument of Assignment is furnished to the Secretary of the Association prior to any meeting at which the tenant exercises the voting right of membership. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, Bylaws, and Architectural Guidelines, and the Restrictions and Covenants of the property. The lease shall obligate the tenant to comply with the foregoing and upon the tenants failure to do so he/she may be evicted by the Declarant or the Owners Association Board of Directors.

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Section 2.5 **Rules and Regulations.** The Association from time to time and subject to the provisions of this Declaration, may adopt, amend and repeal rules and regulations, to be known as "Association Rules," governing, among other things, the following:

a. The Use of Open Space,
b. The Use of Private Roads,
c. Collection and Disposal of Garbage and Trash,
d. The Posting of Maximum Speeds for Vehicular Traffic and Other Traffic Rules,
e. The Types of Vehicles and Times when any Vehicles (including Commercial Vehicles), may be permitted to use the road within Palmetto Air Plantation or any other area of the property.
f. The Schedule of Fines for Infractions of the Association Rules or the Project Documents.

Section 2.6 **Ownership of Personal and Real Property for Common Use.** The Association, through action of its Board may acquire, hold and dispose of tangible and intangible personal property and real property.

Section 2.7 **Implied Rights and Obligations.** The Association may exercise any other rights or privileges given to it expressly by the Declaration, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association under this Declaration or reasonably necessary to effectuate any such right of privilege. The Association shall perform all of the duties and obligations imposed upon it expressly by the Palmetto Air Plantation Documents, together with every other duty or obligation reasonably to be implied from the express provisions of the Palmetto Air Plantation Documents where reasonably necessary to satisfy any such duty of obligation.

ARTICLE III
Architectural Control Committee

Palmetto Air Plantation is designed as a private residential community with architectural controls which allows aircraft owners and pilots convenient access to the runway. To insure that the property will be developed harmoniously and that consistency is maintained, an Architectural Control Committee will formulate, review and control a comprehensive landscape plan, street lighting, signs, fencing, parking and site improvements. The initial Architectural Control Committee shall consist of one member, Joe Witt or his designee. In the event of the failure and ability for any reason of Joe Witt to act, the vacancy created shall be filled temporarily or permanently as necessary by his designee. At such time the development is fifty (50%) per cent completed, the above member may relinquish his powers of the Architectural Control Committee to the Owners Association. At that time Joe Witt, may choose to continue his position on the new Architectural Control Committee and two (2) other members shall be appointed by the Board of Directors of the Association. The new Architectural Control Committee shall consist of three (3) members and shall promulgate such rules and guidelines as may be necessary to carry out the purpose of the Declaration.

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The Architectural Control Committee shall:

3.1. regulate the external design, appearance, and location of the Properties and Lots and any improvements thereof

3.2. adopt architectural guidelines and programs consistent with covenants and restrictions.

3.3. inspect for compliance with these guidelines.

3.4 adopt procedures for the exercise of its duties.

3.5. maintain complete and accurate records of all actions taken

Notwithstanding anything to the contrary contained herein, the Architectural Control Committee or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application of enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the community.

ARTICLE IV
Architectural Guidelines and Rules

Section 4.1 Land Use. All Lots shall be used for residential purposes only and common recreational purposes auxiliary thereto and for no other purpose. No Lot shall be used a right-of-way, street or road, or access to any property not included within the Properties of this Development without the consent of the Declarant. Only one family may occupy a Lot as a principal residence at any one time. No structure, except as herein provided shall be erected, altered, placed or permitted to remain on any Lot other than one (1) detached single family dwelling or residence. Such accessory buildings or hangar may not be constructed prior to the completion of the dwelling unless waived by the ACC and then limited to a one year completion deadline. Furthermore the accessory building or hangar shall comply with all other restrictions contained herein for the main dwelling, including, but not limited to, exterior requirements, setback lines and permanent foundations. A guest suite or a like facility may be included as part of the main dwelling or accessory building, but such suite may not be rented or leased except as part of the entire premises including the main dwelling. Furthermore, no airplane hangar shall be used as a residence without the consent of the Declarant or Board of Directors of the Homeowners Association.

Section 4.2 Partition of Combination of Lots. No Lot shall be subdivided or its boundary lines changed except with prior written approval of the Declarant. Declarant, however, hereby expressly reserves the right to replat any Lot or Lots. Declarant's consent shall be conditioned upon payment by the Owner or Owners concerned of all expenses incident to giving the consent, including legal and accounting fees. Every agreement and recorded instrument for combination of Lots shall make adequate provisions for the adjustment of voting rights and liability for payment of assessments appurtenant to or imposed upon such Lots. Whether combined or unchanged, each Lot shall be

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conveyed, transferred, gifted, devised, bequeathed, encumbered or otherwise disposed of, as the case may be, with all appurtenant rights and interests created by law or this Declaration, including the membership in any association and all the rights thereof.

Section 4.3 **Commercial Businesses Prohibited.** No commercial business of any type shall be permitted; however, nothing herein contained shall be construed as preventing the Declarant from erecting and maintaining facilities of a commercial, recreational or community nature or facilities incident to the use of the runway, taxiway and easements. This should not exclude any home office, but no customer, clients, or patients can be seen on residential premises. Also, this should not exclude work done on non-owned aircraft so long as such work is done inside a hangar and the completed aircraft confirms with all requirements as set forth in these covenants. No one, other than the Declarant, can allow the use of the airport or runway for commercial activity or for self-enterprise.

Section 4.4 **Common Area.** The Common Area shall be owned by the Declarant or the Association and no Owner shall bring any action for partition or division of the Common Area by acceptance of a deed or other instrument of conveyance or assignment, each Owner shall be deemed to have specifically waived such Owner's right to institute or maintain a partition action or any other action designed to cause a division of the Common Area, and this section may be pleaded as a bar to any such action. Any Owner who shall institute or maintain any such action shall be liable to the Declarant or the Association, and hereby agrees to reimburse the Declarant or the Association for its costs, expenses and reasonable attorney's fees in defending any such action.

Section 4.5 **Architectural Control.** No dwelling unit, hangar or other building shall be erected, placed or altered on any Lot until the plans for each showing locations of the units on the Lot and the landscaping plan for the Lot have been submitted to and approved by the Architectural Control Committee. Such plans shall be reviewed as to quality of workmanship and materials, harmony of external design with existing dwelling units and hangars, and as to location with respect to topography and finish grade elevation, and house, hangar and other buildings shall be of similar architectural design, before being approved by Architectural Control Committee or its successor or assigns. No home, garage, hangar or other building may be constructed on any Lot unless such work meets all County Codes then in existence. A copy of the builder or contractor's license must be submitted with construction plans to the ACC.

Section 4.6 **Dwelling Size.** Each single story dwelling on a Lot shall have a heated square foot area of 2000 square feet minimum. No dwelling unit shall be permitted on any Lot that has a ground floor area of the main structure, exclusive of porches, patios, hangars and garages of less than 1,800 square feet on the first floor for a one and one-half story, split-level, or two story dwellings. All multi-level dwellings shall have a minimum of 2,800 square feet. All house/hangar combinations shall include a minimum of 1,800 square feet of heated living area, exluding hangar, shop or storage portion of the structure. All structures must be built with eaves and over-hangs and have a residential characteristic. PROVIDED HOWEVER, single family,one-store residential structures of 1,600 square feet may be permitted on Lots 42, 43 and 44 of the subdivision. All dwellings shall contain a place for parking for at least two vehicles in an enclosed garage.

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Section 4.7 **Location.** In order to assure that all structures will be located with regard to the topography of each individual Lot, taking into consideration the elevation contours of the Lot, the location of adjoining dwellings, and similar considerations, the Declarant or the ACC reserves unto itself, its successors and assigns, the right to control absolutely and solely to decide the precise site and location of any structure, improvements, and utilities upon all Lots and every Lot within the Development; PROVIDED, HOWEVER, that such location shall be determined only after reasonable opportunity is afforded the Owner to recommend a specific site, and in any event all buildings (including eaves, decks, patios and steps) shall be constructed beyond the minimum setback lines. All structures shall be located in compliance with the rules and ordinances of Clarendon County Planning Commission.

Section 4.8 **Structure Material.** Unless specifically otherwise approved in writing by the ACC, all structures constructed or placed on any Lot shall be built of substantially new materials and no used structures shall be relocated or placed on any such Lot. No dwelling shall have an exterior surface composed of asbestos siding, exposed concrete block, cinder block, or other similar material. Vinyl siding products will be considered on a case by case basis.

Section 4.9 **Kind of Home.** No mobile or manufactured homes of any kind, or any home having the same general appearance, shall be permitted on any Lot. No building or structure of a temporary nature, trailer, tent, shack, garage or other out-building shall be erected or maintained on any Lot at any time. Furthermore, no building shall be permitted on any Lot unless it is erected on a solid foundation of brick or masonry from the ground level to the first floor level. PROVIDED HOWEVER, that modular construction shall be permitted with approval of the ACC.

Section 4.10 **Driveways.** Vehicular driveways and walkways shall be constructed of concrete, brick, asphalt or reconstituted rubber services. If any driveway is to cross a drainage ditch, the Owner shall be required to install, at his own expense, all necessary culverts and coverings prior to the commencement of any other construction on the Lot.

Section 4.11 **Drainage.** No Owner shall do or permit any work, construct any improvements, place any landscaping or suffer the existence of any condition whatsoever which shall alter or interfere with the drainage pattern of the Property, except to the extent such alteration and drainage pattern is approved in writing by the Declarant, and except for the rights reserved to Declarant to alter or change the drainage patterns.

Section 4.12 **Continuity of Construction.** All structures approved by the ACC must be completed insofar as the exterior finish is concerned within 12 months from the date of issuance of a building permit for said structure. The ACC may waive this requirement if construction delays have been caused by strikes, war, fire, or Acts of God which render the completion of construction within such time impossible. All improvements commenced on the Property shall be prosecuted diligently to completion and shall be completed within 12 months of commencement, unless an exception is granted in writing by the ACC. If an Improvement is commenced and construction is then abandoned for more than ninety (90) days or if construction is not completed within required 12 month period, then after notice and hearing as provided in the By-Laws, the ACC may impose a fine of not less than One Hundred ($100.00) Dollars per day on the Owner of the Lot. Furthermore, prior

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to occupancy of the dwelling or within one year after the issuance of a Building Permit, the Lot Owner shall have his property sown in grass and have planted foundation landscaping around the dwelling and other accessory buildings in accordance with the proposed landscaping plans previously submitted and approved.

Section 4.13 **Reconstruction.** Any building on any Lot which is destroyed in whole or in part by fire, windstorm, flood or other Act of God must be rebuilt, or all debris from such building removed and the Lot restored to the condition it was in prior to commencement of construction of such building with reasonable promptness; PROVIDED HOWEVER, that any such reconstruction must be commenced within 3 months from the date of such destruction or if no reconstruction is to occur, then all such debris must be removed and the Lot restored to its prior condition within 2 months of such destruction.

Section 4.14 **Construction Traffic.** Construction traffic is prohibited on the Common Area runway, and tie down areas. The failure of a Lot Owner to prevent construction traffic associated with his Lot from entering upon the Common Area runway, and tie down areas shall make that Lot Owner liable for any necessary repairs caused by construction traffic upon these areas. Lot Owners shall specifically include a clause in their construction contracts prohibiting contractor equipment from entering upon the Common Areas, runway, taxiway, and tie down areas.

Section 4.15 **Hangar Specifications.** Each Lot adjoining the taxiway right-of-way may have a hangar for the storage of private aircraft. Such hangars, if constructed, must be compatible in appearance with the residential unit. The hangar must be a fully enclosed building with approved and operational doors which do not face the street. No T-Hangar shall be constructed and all separate hangars must be rearward of the mean center line of the house and away from the street side of the Lot. Free standing hangar shall not exceed 3,600 square feet of interior space, including workshop, restroom, storage area and any other purpose. The hangar may be built before the dwelling house only when permitted by the ACC, but substantial completion of the dwelling insofar as the exterior finish is concerned must be accomplished within 12 months from the date of the issuance of the Building Permit for hangar structures.

ARTICLE V
Restrictions and Covenants

Section 5.1 **Failing to Comply.** In the event the Owner of any Lot shall fail to comply with any of the below mentioned criteria, or fails to maintain the premises and the exterior of the improvements situated thereon, or permits litter and debris to accumulate on his Lot, or allows hedges or other plantings to obscure the view of the street traffic, or fails to comply with any other reasonable fire preventive requirements, the Declarant, through its agents and employees, shall have the right to enter upon such premises and to repair, maintain, rehabilitate and restore the exterior of any improvements situated thereon and/or clean or clear any Lot of debris, or take any other steps necessary to remove litter and debris, or take any other steps necessary to meet reasonable fire preventive regulations; PROVIDED HOWEVER, that the Declarant, or its agents, shall first give written notice to the Owner of said Lot of its intention to make such repairs or of its intention to

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perform such clearing, maintenance or rehabilitation work, affording the Owner of said Lot 30 days in which to make said necessary repairs, maintenance, or clearing work. If at the end of this period the work to be performed has not been done by the Owner, then the Declarant, or its agents, shall have the right, as set forth herein, to make such repairs, etc. Nothing herein contained shall be construed to grant to the Declarant or its agents, any right to enter into or inside of any building located on any Lot without the consent of the Owner thereof. Any costs incurred by the Declarant, or its agents, in enforcing and carrying out the performance of this paragraph shall be charged against the Owner of said Lot, and a lien may be created on said Lot until the Declarant, or its agents, has been paid in full for all costs incurred.

Section 5.2 **Maintenance.** All Owners shall keep their Lots, whether occupied or unoccupied, free of all tall grass, dead, diseased or decaying trees, weeds, trash, rubbish, and debris and keep all Lots in a neat and attractive condition. All improvements erected on Lots shall be maintained in a clean, neat and orderly condition and in a good state of maintenance and repair.

Section 5.3 **Toxic Disposal Prohibited.** Disposal on the site of any substances which may be considered toxic or environmentally sensitive is expressly prohibited. Disposal of any substances which may contaminate the ground water of this subdivision or the surrounding area is prohibited. These substances include, for example, but are not limited to, paints, solvents, cleaning fluids, paint strippers, fuel and oil.

Section 5.4 **Unsightly Materials Prohibited.** No rubbish, garbage, debris, junk, junk vehicles, or unsightly material shall be deposited on any of the Lots at any time except building material during the course of construction on the site. All rubbish, waste, or garbage shall be kept in sanitary containers, and shall be removed from the premises at least once a week. No dismembered aircraft parts nor nonoperative aircraft are to be left about the premises.

Section 5.5 **Hazardous Activities.** Nothing shall be done or kept on any Lot or in the Common Area which will increase the rate of insurance on the Common Areas or any other Lot without the prior written consent of the Declarant or the Association. No Owner shall permit anything to be done or kept on his Lot or in the Common Areas which would result in the cancellation of insurance on any part of the Common Areas, or which would be in violation of any law.

Section 5.6 **Nuisance.** No noxious or offensive activity shall be conducted upon any Lot or in any dwelling nor shall anything be done thereon or therein which may be or may become an annoyance or nuisance to the neighborhood.

Section 5.7 **Outside Toilets.** Outside toilets or privies are expressly prohibited, except where required for construction purposes.

Section 5.8 **Wall Hangings.** An Owner shall not cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, balconies or windows of his Dwelling or exterior buildings which may adversely affect the appearance of Palmetto Air Plantation without the prior written approval of the Architectural Control Committee.

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Section 5.9 **Children.** Children will be the direct responsibility of their parents or legal guardians, including full supervision of them while within the Development and including full compliance by them with this rule and with all other rules and regulations of the Association. All children under twelve (12) years of age must be accompanied by a responsible adult when entering and/or utilizing any recreational facility. In order to control the overall appearance of the community, no swing sets, play sets, sandboxes, basketball backboards, tree houses, animal houses or animal pens shall be erected so as to be visible from any roadway or adjoining property, unless approved in advance by the ACC.

Section 5.10 **Pets.** Pets and other animals shall neither be kept nor maintained in or about the properties except in accordance with the following. Commercial breeding or feeding of horses, cattle, goats, hogs, sheep or poultry; the operation of a commercial dairy; dog boarding kennel or veterinary hospital; and the operation of a commercial livery or boarding stable for horses; or a riding academy; and the keeping of any hog or milk cow or horse, are strictly prohibited. It is understood, however, that this restriction shall not be construed to prohibit the keeping of a limit of three (3) domestic animals (canine or feline) for family pleasure, provided that domestic animals must be restrained by fence or other appropriate protective restraint. This restraint should be from the farthest possible point from the adjoining property, and all appropriate measures must be taken by the Lot Owner to eliminate and prevent offensive odors and any unsightly accumulations from said animals. Noisy animals, such as incessantly barking dogs, must be controlled by their Owners. No pet shall be permitted outside of its Owners Lot unless attended by an adult or child of more than ten (10) years of age and said pet must be on a leash of reasonable length. At no time are any unattended domestic animals or pets allowed on the runway or taxiway easements.

Section 5.11 **Noise.** No Owner shall make or permit any disturbing noises on their Lot by himself or his family, servants, employees, agents, or visitors, nor permit any conduct by such persons that will interfere with the rights, comforts or convenience of other Owners. There shall be no discharging of firearms or fireworks on the premises.

Section 5.12 **Electronic Equipment.** No electronic equipment may be permitted in or on any Lot which interferes with the television or radio reception of another Lot.

Section 5.13 **Satellite Dish.** No awning, canopy, shutter, enclosure, satellite dish or other projection shall be attached to or placed upon the outside wall or roof of any structure or on the Lot, except by the approval of the Architectural Control Committee. Small, inconspicuous satellite dishes will be most compatible.

Section 5.14 **Vehicles and Parking.** No Owners vehicles shall be parked on any street. No boat, motor home, travel trailer or any other recreational vehicle or commercial truck may be stored outside over night on any Lot for a period of more than seven (7) days. Furthermore, no wrecked or junked motor vehicle or vehicles without current licence plates shall be placed upon the premises and no commercial vehicles shall be parked overnight in the subdivision without the consent of the ACC. No motor vehicle or aircraft of any kind, at any time, shall be parked or tied down on any of the taxiways or runways, roadways or right-of-ways except when permitted by the Architectural Control Committee.

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Section 5.15 **Fuel Storage.** It is acknowledged that the Declarant will establish a fuel area between Lot 18 and Lot 19 at the end of the runway. Except for that designated area, no bulk storage of flammable, combustible or explosive fluids, chemicals or substances shall be allowed in any Dwelling, or on any Lot, or on the Common Areas, except that small quantities of fuels used for common activities such as lawn mowing, BBQ grills and other like activities may be kept when stored in a manner which minimizes the risk of fire or explosion. Lot Owners may not store bulk quantities of fuels used for aviation purposes on Lots or in buildings. Aviation fuels may be available in connection with the facility located adjacent to the runway.

Section 5.16 **Fences and Hedges.** The erection or installation of fences and hedges may be permitted with the consent of the Architectural Control Committee which shall directly control the location and type of said facility. No barbed wire fencing will be permitted at any time.

Section 5.17 **Signs.** No signs of any character shall be erected, pasted, posted, or displayed upon or about any Lot or part of any Lot, or Common Area, without the written permission of the ACC. The ACC shall have the right, in its sole discretion, to prohibit or to restrict and control the size, construction, material, wording, location and height of all signs and may summarily remove and destroy all unauthorized signs. Declarant and Lot Owners, however, may post temporary "For Sale" or "For Rent" signs on the Properties and these signs must be approved before being put on any Lot. No sign shall be attached to any tree or shrubbery. All signs must be professionally lettered, and may not contain the price of the house or Lot. Furthermore, signs used by a builder during construction or informational signs by the Declarant shall be allowed.

Section 5.18 **Clothes Lines.** No clothing, laundry, or wash shall be aired or dried on any portion of the Lots in an area with a substantial exposure to view from any other Lot or street. Drying areas will be permitted only in locations approved by the Architectural Control Committee and only when substantially protected from view of screening or fencing approved by the Architectural Control Committee.

Section 5.19 **Flag Poles.** Flag Poles are permitted, provided the pole is not more than 15 feet in height, unless otherwise approved by the Architectural Control Committee.

Section 5.20 **Antennas.** No radio or television aerial or antenna or any other external electronic equipment or devices may be installed or maintained on any exterior of any structure erected on a Lot unless the location, size, and design has been approved by the ACC. Said antennae or equipment shall be subject to FAA and FCC regulations concerning obstructions placed in the vicinity of airports. Furthermore, all electrical, telephone, and other utility lines shall be run underground.

Section 5.21 **Outdoor Lighting.** One or more hospitality light standards, of a design approved by the ACC, may be located within the front yard of any Owner's property. Any outdoor lighting positioned and installed by a Lot Owner shall be of such a nature and type so as not to present a hazardous or confusing condition to night air operations which may be conducted from said airport and be shaded so as not to create a nuisance to any other Lot Owner.

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Section 5.22 **Mail Boxes.** Each dwelling shall have a standard house number, mail box and paper box with a design and location approved by the ACC.

Section 5.23 **Swimming Pools.** No non-permanent or "above ground" pools may be placed, maintained or kept on any Lot.

Section 5.24 **Wells and Water Removal.** No wells shall be drilled, dug or installed except with the approval of the Architectural Control Committee.

Section 5.25 **Access.** There shall be no overland vehicular access to any Lot except from designated road and taxi-ways lying within the Common Areas. The Declarant, its agents or employees shall have access to each Lot from time to time during reasonable working hours, upon oral or written notice to the Owner, as may be necessary for the maintenance, repair or replacement of any portion of the Common Areas, or facilities situated upon such Lot which serve another Owners Lot. The Declarant or its agent shall also have access to each Lot at all times without notice as may be necessary to make emergency repairs to prevent damage to the Common Areas or another Lot.

Section 5.26 **Amendments to Regulations.** Reasonable regulations governing the use of the Common Areas and external appearance of all structures erected on the Lots may be made and amended from time to time by the Declarant or the Architectural Control Committee; PROVIDED HOWEVER, that all such regulations and amendments thereto shall be approved by a majority vote of the Directors of the Owners Association before the same shall become effective.

Section 5.27 **Ponds and Waterways.** Any Lot not adjoining a pond shall gain access to the pond through Common Areas of the subdivision only. Provided no pond shall be used for swimming or for the operation of motor boats. Boating use shall be limited to canoes, kayaks and small electric driven fishing boats.

ARTICLE VI
Aircraft and Hangar Restrictions, and Parking

Section 6.1 **Type of Aircraft.** Only conventional, general aviation aircraft shall be permitted. No jet, or ultra light aircraft shall be permitted. The Lot Owners, their heirs or assigns hereby relinquish any and all rights to complain, object or take any legal remedies to stop the function of normal aviation use and related activities in the development. The airplane hangar or tie down space on each Lot shall be limited strictly to private use and only by the Owner of the property or tenant on which the hangar or tie down space is located except as permitted herein. No person who is not a member of the Association or a tenant of a member of the Association shall be permitted to store, tie down or hangar any aircraft in the subdivision without the consent of the Board of Directors of the Owners Association. The Board of Directors will have the authority to specify the terms and conditions under which a non-member aircraft may be stored, hangared or tied down.

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Section 6.2 **Airport Hangars.** All hangars are subject to the Architectural Control Committee approval, and must be architecturally compatible with the primary structure on the Lot. All aircraft hangars must be constructed in conjunction with or subsequent to the construction of a residence. Hangars may be detached from or attached to a primary structure in accordance with local building regulations.

Section 6.3 **Two or More Aircraft.** If two or more aircraft are owned by Lot Owner, one aircraft, not stored in the hangar, may be secured with tie downs adequate for the size and weight of the aircraft. Until a dwelling and hangar are under construction or built, no aircraft shall be tied down on the Lot unless approved by the ACC. The one tied-down aircraft must be in airworthy condition as defined by the current Federal Aviation Regulations (FAR's) except as permitted by the Board of Directors in writing. The tied out aircraft must be in a good state of repair and appearance.

Section 6.4 **Unattended Aircraft.** No aircraft shall be parked on any part of the runway, taxiway or easements and all aircraft parked or left for any period of time unattended within Lots shall be securely tied down. If any aircraft is found within any Lot, not tied down and unattended, the Board of Directors or its agents may, but are not obligated to, secure it at the expense of the Owner of said aircraft.

Section 6.5 **Run-ups.** "Run-ups" and testing of engines within residential areas should be limited to the hours of 8:00 am and 6:00 pm. But in any event the "run-up" shall not be done in such a manner as to cause inconvenience or damage to the property of others. This shall not prohibit normal take offs and landings at any time.

Section 6.6 **Stunt Flying.** No low-level flying stunts nor other hazardous acuvities will be permitted about the subdivision. Each Owner is required to strictly observe all Federal, State and Local Statues, Regulations or Ordinances relative to the operation of civil aircraft.

Section 6.7 **Speed Limits.** Aircraft shall taxi at less than 15 miles per hour on all taxiways. Pilots are cautioned to avoid increasing engine RPM to high levels as part of our noise abatement program and to avoid blowing sand and dirt on following aircraft and in residential areas.

Section 6.8 **Taxi-Way Courtesy.** Moving aircraft shall have the right-of-way at all times. Automotive traffic must yield at all taxiway crossings and on dual purpose streets. No taxiways other than those designated by Declarant as combination street/taxiways shall be used by any vehicle other than aircraft or aircraft service vehicles, unless pursuant to a valid access permit granted by the Association. No aircraft shall have a right-of-way on taxiways, and all aircraft on taxiways must anticipate use of passing areas for approaching aircraft.

Section 6.9 **Commercial Business.** No commercial aircraft business shall be permitted on a Lot. This should not exclude work done on non-owned aircraft so long as such work is done inside a hangar and the completed aircraft conforms with all requirements as set forth in these covenants.

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Section 6.10 **Storing Parts.** There shall be no storage of dismantled or disabled aircraft on the Lots or the Common Areas. Aircraft being repaired and aircraft parts must be kept within an enclosed hangar building which has been approved by the Architectural Control Committee. Parts of aircraft, including but not limited to, fuselages, wings, engines, horizontal and vertical stabilizers, ailerons, rudders, landing gear and spare parts may not be stored in yards where visible from the street, taxiway, or adjoining Lots, but must be stored inside the hangar or other building approved by the ACC.

ARTICLE VII
Runway Assurances and Operations

Section 7.1 **Operation.** Every Lot Owner or Lessee or Grantee of any property now or hereafter subject to this Declaration by acceptance of a Deed, Lease or other Conveyance thereof hereby agrees the runway and taxiway shall remain and be maintained as such until such time as at least eighty (80%) per cent of the members and Declarant consents to its dissolution or operation is interrupted or terminated by Local, State or Federal authority.

Section 7.2 **Complaints.** As this is an aviation community, Owners understand, and agreed, that Lot Owners, their heirs, or assigns relinquish any right to complain, object, or take any legal remedies to stop aviation related activities in the Development.

Section 7.3 **Control of Runway.** The Licensor, MidEastern Truckwash, Inc., shall have the right to control the use of the runway and taxiway and may prohibit the use of the runway or taxiway by any aircraft deemed unsafe to either the life or health of individuals or the condition and maintenance of the field by virtue of its size, design or state of repair.

Section 7.4 **Withholding of Use.** The Declarant or the Association shall have the right to withhold from, restrict, or charge an individual assessment for the use of the Common Area, including the runway, to any Owner:

a) Who is in default in the payment of any assessment fee; or

b) Who, in the judgment of the Declarant or the Owners Association, uses the Common Areas or his aircraft in a negligent manner or in a manner harmful to the rights of other users; or

c) Who, in general, violates the published rules and regulations of the Association.

ARTICLE VIII
Easements and Setbacks

Section 8.1 **Setback Requirements.** No house or building may be constructed within 75 feet of the centerline of any designated street, or taxiway or runway boundary. A 40 foot clear zone easement shall be established along all Lot lines facing the runway where no aircraft may be parked, no trees or other obstacles allowed in this area. A 5 foot easement along all sides of Lots and along

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sides adjoining any designated streets are reserved for underground utilities and drainage purposes. All setbacks and side Lot lines shall be in compliance with the rules and regulations of Clarendon County Planning Commission and Architectural Control Committee.

Section 8.2 **During Construction.** During the development period, the Declarant or its agent reserves a blanket easement and right on, over and under the ground within the Property to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any grading of the soil, or to take any other similar action reasonably necessary, following which the Declarant or its agent shall restore the affected property to its original condition as near as possible. The Declarant or its agent shall give reasonable notice of intent to take such action to all affected Owners, unless, in the opinion of the Declarant or its agent, any emergency exists which precludes such notice. The Declarant or its agent, however, in the exercise of such easement rights shall not disturb any living dwelling or other substantial improvement upon any property.

Section 8.3 **Maintenance.** In order to implement effective insect and woods fire control, the Declarant reserves for itself and its agents the right to enter upon any Lot on which a residence has not been constructed and upon which no landscaping plan has been implemented (with prior written approval of the ACC for such plan), such entry to be made (at the expense of the Owner of the Lot), by personnel with tractors or other suitable devices for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, or other unsightly growth, which in the opinion of the Declarant detracts from the overall beauty, setting and safety of the Property. Such entrance shall not be deemed a trespass. The Declarant and its agents may likewise enter upon such land to remove any trash which has collected on such Lot without such entrance and removal being deemed a trespass. The provisions in this paragraph shall not be construed as an obligation on the part of the Declarant to mow, clear, cut or prune any Lot nor to provide garbage or trash removal services.

ARTICLE IX
Insurance

Section 9.1 **By the Declarant or Association.** The Declarant or Association or its duly authorized agent shall have the right and power to obtain insurance to the extent reasonably available for all improvements on the Common Areas against loss or damage in an amount sufficient to cover 100 percent (100%) of the replacement cost of any repair or reconstruction work in the event of damage or destruction from any reasonable hazard. The Declarant may also obtain a broad form public liability policy covering all Common Areas. In the event of damage or destruction to property insured by the Declarant by fire or other casualty, the Declarant or its agent shall, upon receipt of the insurance proceeds contract to rebuild or repair such damaged or destroyed portions of the property to as good a condition as formerly enjoyed. In the event the insurance proceeds are insufficient to pay all costs of repairing or rebuilding of such destroyed improvement, the Declarant or its agents shall levy a special assessment against all Owners to make up such deficiency. In the event the insurance proceeds exceed the cost of repair, the excess proceeds shall be distributed to the respective Owners and Mortgagees as their interests appear.

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Section 9.2 **Liability Insurance by Declarant or Association.** The Declarant or Association shall have the right and power to obtain a comprehensive policy of public liability insurance insuring the Association and its Members for all liability for property damage, bodily injury or death in connection with the operation, maintenance and use of the Common Area within Palmetto Air Plantation.

Section 9.3 **By the Owner.** It shall be the individual responsibility of each Owner to provide, as he sees fit, insurance on the improvements on his Lot in the event of damage or destruction from all reasonable hazards. Each Owner shall provide as he sees fit homeowners liability insurance, theft and other insurance covering personal property damage or personal liability loss.

Section 9.4 **Aircraft Liability Insurance.** Every Owner or user of an aircraft which is based on the Property shall provide the Licensor or the Association or their agent with a current Certificate of Insurance for aircraft liability before they can use the runway. Failure to provide the Certificate of Insurance and to maintain such insurance shall result tin the automatic suspension of the Owner or user's right to use the Common Area including the runway.

ARTICLE X
Maintenance Assessments

Section 10.1 **Creation of the Lien and Personal Obligation for Assessments.** Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed, is deemed to covenant and agree to pay to the Association:

(a) Annual assessments or charges as provided in this Declaration for the purpose of funding the maintenance fund.

(b) Special assessment for capital improvements and other purposes as stated in this Declaration; such annual and special assessments to be fixed, established and collected from time to time as provided below.

(c) Default assessments which may be assessed against an Owner's Lot pursuant to this Declaration or the Palmetto Air Plantation Homeowners Associations Rules or Regulations or because the Association as incurred an expense on behalf of the Owners under the Association Documents. The annual, special and default assessments, together with interest, costs and reasonable attorney's fees, shall be a charge upon the land and shall be a continuing lien upon the Lot against which each such assessment is made until paid. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the Owner of such Lot at the time when the assessment fell due.

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Section 10.2 **Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and occupants of Palmetto Air Plantation and for the improvement and maintenance of the Common Area, including but not limited:

(a) to keep the Common Areas clean and free from debris and to maintain any amenities located thereon in a clean and orderly condition, to maintain the landscaping thereon in accordance with the highest standards for private parks including any necessary removal and replacement of landscaping, and to repair, replace, and provide for additions to the improvements as stated in the Declaration or Association Documents.

(b) to pay all taxes, if any, levied against the Common Areas and any properties owned by the Association.

(c) to install and maintain any light fixtures along roads and streets in the Development to provide street lighting therefore, as may be approved by the Association.

(d) to erect and maintain entrance signs at the entrances to the Development and signs on the Common Areas, said signs to be of standard construction and quality.

(e) to pay the premiums on all hazard insurance carried by the Association on the Common Areas and all public liability insurance carried by the Association pursuant to the By-Laws.

(f) to provide such security services as may be deemed reasonably necessary for the protection of the Common Areas from theft, vandalism, fire and damage from animals.

(g) to provide such garbage removal services as may be approved by the Association for all Lots.

Section 10.3 **Uniform Rate of Assessment.** Both annual and special assessments must be fixed at a uniform rate for all Lots, except the Board may provide for a reduced assessment to be paid by those Lot Owners whose property is undeveloped. PROVIDED HOWEVER, the Owners of undeveloped Lots are assessed on a uniform basis. All payments shall be applied first to cost, then to late charges, then to interest and then to delinquent assessments.

Section 10.4 **Effect of Non-payment of Assessment; Lien; Remedies of Association.** Any Association installment, whether pertaining to an annual, special or default assessment, which is not paid within thirty (30) days of its due date shall be delinquent. In the event that an assessment installment becomes delinquent, the Association, in its sole discretion may take any or all of the following actions:

(a) Assess a late charge of at least fifteen percent (15%) per delinquency.

(b) Suspend the voting rights of the Owner during any period of delinquency.

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(c) Accelerate all remaining assessment installments for the fiscal year in question so that unpaid assessments for the remainder of the year shall be due and paid at once.

(d) Bring legal action against any Owner personally obligated to pay the delinquent installments.

(e) File a statement of lien with respect to the Lot, and foreclose as set forth below:
The Association may file a statement of lien by recording with the Clerk of Court's Office of Clarendon County, South Carolina, a written statement with respect to the Lot, setting forth the name of the Owner, the legal description of the Lot, the name of the Association, and amount of the delinquent assessments then owing, which statement shall be duly signed and acknowledged by the President or Vice-President of the Association or by the Manager, and which shall be served upon the Owner of the Lot by mail to the address of the Lot or at such other address as the Association may have in its records for the Owner. Thirty (30) days following the mailing of such Notice, the Association may proceed to foreclose the statement of lien in the same manner as provided for foreclosure of mortgages under the statutes of the State of South Carolina. Such lien shall be in favor of the Association and shall be for the benefit of all other Owners. In a foreclosure action, the Association shall be entitled to recover as a part of the action the interest, costs and reasonable attorney's fees with respect to the action. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot. The remedies herein provided shall not be exclusive and the Association may enforce any other remedies to collect delinquent assessments as may be provided by law.

Section 10.5 **Subordination of the Lien.** The lien of the assessments provided for in this Declaration shall be subordinate to the lien of any first mortgage. The lien of the assessments shall be superior to and prior to any homestead exemption provided now or in the future by laws of the State of South Carolina. No sale or transfer of any Lot pursuant to a decree of foreclosure or by a Public Trustee's foreclosure or any other proceeding or deed in lieu of foreclosure for the purpose of enforcing a first mortgage shall extinguish the lien of such assessments as to installments which become due prior to such sale or transfer, and the amount of such extinguished lien may be reallocated and assessed to all Lots as a common expense at the direction of the Board of Directors. No sale or transfer shall relieve the purchaser or transferee of a Lot from liability for, nor the Lot from the lien of any assessments made after the sale or transfer.

ARTICLE XI
Duration and Amendments

Section 11.1 **Term.** The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change covenants and restrictions, in whole or in part, or to terminate the same.

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Section 11.2 **Amendments.** So long as the Declarant owns twenty-five (25%) per cent of the unsold Lots in the subdivision it shall have the right and authority to modify and amend these covenants and restrictions without liability or notice or joinder of any other party provided such modifications and amendments do not violate the ordinances of Clarendon County Planning Commission. Subsequently amendments to this Declaration may be adopted by the membership of the Property Owners Association in the same manner and upon the same vote as required for amendments to the By-Laws of the Property Owners Association.

Section 11.3 **Effective on Recording Any Modification or Amendment.** Shall be immediately effective upon recording in the R.M.C. Office for Clarendon County, South Carolina, a copy of such amendment or modification, executed and acknowledged by the necessary number of Owners (and by Declarant, as required), together with a duly authenticated Certificate of the Secretary of the Board stating that the required number of consents of Owners were obtained and are on file in the office of the Association.

ARTICLE XII
Enforcement of Covenants

Section 12.1 **Violations Deemed a Nuisance.** Every violation of this Declaration of Covenant is deemed to be a nuisance is subject to all the remedies provided for the abatement of the violation. In addition, all public and private remedies allowed at law or in equity against anyone in violation of these Covenants shall be available

Section 12.2 **Who May Enforce.** Any action to enforce these restrictions may be brought by Declarant or the Board of the Owners Association or any Property Owner in the subdivision.

Section 12.3 **No Liability.** No member of the Board of Directors, Declarant, the Manager, or the Architectural Control Committee or any Owner shall be liable to any other Owner for the failure to enforce any of the restrictive covenants.

Section 12.4 **Recovery of Costs.** If legal assistance is obtained to enforce any of the provisions of the restrictions, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the restrictions or the restraint of violations of the restrictions, the prevailing party shall be entitled to recover all costs incurred by it in such action, including reasonable attorney's fees as may be incurred, or if suit is brought, as may be determined by the Court.

ARTICLE XIII
Expansion

Section 13.1 **Reservation of Right to Expand.** Declarant shall expand the effect of this Declaration to include all of the Expansion Property which the Declarant may choose to add to the subdivision. The Declarant shall have the unilateral right to transfer to any other person this right

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and to expand by instruments duly recorded. Declarant shall pay all taxes and other governmental assessments relating to the Expansion of property.

IN WITNESS WHEREOF, Mideastern Truckwash, Inc. has hereunto set its hands and seals, the day and year first above written.

WITNESS:

MIDEASTERN TRUCKWASH, INC.

BY: JOE WITT
ITS: PRESIDENT/DECLARANT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CLARENDON)

PROBATE

PERSONALLY APPEARED BEFORE ME, the undersigned witness and made oath that s/he saw the within named Mideastern Truckwash, Inc., sign, seal and its act and deed, deliver the within written Declaration of Covenants, Conditions and Restrictions for the uses and purposes therein mentioned and that s/he with the other witness above witnessed the execution thereof.

Witness

SWORN to before me this 11th day of July, 2001

Notary Public for South Carolina
My Commission Expires: 4/4/11

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Beulah G. Roberts, Clerk of Court

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
PALMETTO AIR PLANTATION
CLARENDON COUNTY, SOUTH CAROLINA

This Declaration of Covenants, Conditions and Restrictions is made this ____day of _____, 2001 by MidEastern Truckwash, Inc., a South Carolina Corporation hereinafter referred to as the "Declarant".

WHEREAS, the Declarant is the owner of a track of land located south of the right of way of U.S. Highway 301 between the City of Manning and Interstate Highway 95. The property contains approximately 45 lots, private access roads, FAA approved run-way measuring approximately *150* feet by 3,720 feet and 45 residential lots being a portion of Clarendon County Tax Map Parcel No. 223-00-02-005, all of which shall be reflected on a plat of the sub-division prepared by DuValle W. Elliott. The Declarant's purpose is to develop a community for aviation enthusiast that promotes peaceful living, protects investments and provides the use of a private one-way gated entrance and Common Areas for the benefit all Owners.

WHEREAS, the Declarant desires to insure the values and amenities in said development, to prevent future impairment thereof, and to provide for the maintenance of all Common Areas, by subjecting the real property contained in the subdivision together with any additions to said property to the covenants, restrictions, easement, charges, and liens hereinafter set forth each of which is and are for the benefit of the property of each of the Owners.

WHEREAS, the Declarant deems it desirable for the efficient preservation of the values and amenities in said development to create an Owners Association that will be delegated the powers of maintaining and administrating the development properties and facilities and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created by incorporating a non-profit corporation under the laws of the State of South Carolina entitled Palmetto Air Plantation Property Owners Association, Inc.

NOW THEREFORE, the Declarant does hereby declare that all of the property shown as lots 1 through 45, ponds, airstrip, roadways and rights-of-way on a subdivision plat to be prepared by DuValle W. Elliott and recorded in the Office of the RMC for Clarendon County, including Lot 19 of said sub-division as reflected on a plat made by DuValle W. Elliott, dated March 30, 2001, recorded in the Office of the Clerk of Court for Clarendon County, in Plat Book S0050 at Page 571 and shall be held, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements and declarations that shall run with real property and be binding on all parties owning any right, title and interests in said real property or part thereof, their heirs, successors and assigns and shall inure to the benefit of each Owner thereof.

ARTICLE I
Definitions

Section 1.1 **Adjoining Land** shall mean and refer to land contiguous with the Property, whether or not owned by Declarant, which is or may be made subject to this Declaration.
Section 1.2 **Annexation** shall mean and refer to the process by which any portion of the Expansion Property or Adjoining Land are made subject to this Declaration.

Section 1.3 **Architectural Control Committee (ACC)** shall mean and refer to a committee formed to maintain the quality and architectural harmony of improvements to the Development.

Section 1.4 **Architectural Guidelines** shall mean and refer to the guidelines and rules established and supplemented from time to time by the Architectural Control Committee.

Section 1.5 **Articles or Articles of Incorporation** shall mean and refer to the Articles of Incorporation of the Association which will have been filed with the Secretary of State to create the Association.

Section 1.6 **Assessments** shall mean and refer to annual, special and default assessments levied pursuant to this Declaration.

Section 1.7 **Association** shall mean the Plantation Air Plantation Property Owners Association, Inc. (PAP) a non-profit South Carolina corporation.

Section 1.8 **Board of Directors** shall mean and refer to the Board of Directors of the Association, which is the governing body of the Association.

Section 1.9 **By-Laws** shall refer to the By-Laws of Palmetto Air Plantation Property Owners Association, Inc. Attached to the Declaration and incorporated herein by this reference.

Section 1.10 **Palmetto Air Plantation** shall mean and refer to the planned community created by this Declaration.

Section 1.11 **Common Areas** shall mean any and all real and personal property including roadways, rights of ways, ponds, wetland preservations, and aircraft runways now and hereinafter owned by the Association for the common use and enjoyment of the owners.

Section 1.12 **Declarant** shall mean and refer to MidEastern Truckwash, Inc., a South Carolina Corporation and its successors-in-title and assigns. It is expressly understood and declared that there shall be only one person or legal entity entitled to exercise the right and power of the "Declarant" and Joe Witt is initially designated to be that person.

Section 1.13 **Improvements** shall mean and refer to all buildings and structures, parking areas,

fences, walls, hedges, plantings, pools, driveways, ponds, lakes, recreational facilities, signs, changes in any exterior color or shape, excavation and all other site work including without limitation grading, road construction, utility improvement, removal of trees or plantings, and any new exterior construction or exterior improvement which may be included in the foregoing. "Improvements" does not include turf, shrub or tree repair or replacement of a magnitude which does not change exterior colors or exterior appearance. "Improvements" does include both original improvements and all later changes and improvements.

Section 1.14 **Licensor** shall mean and refer to MidEastern Truckwash, Inc., a South Carolina Corporation which owns the runway and will issue licenses for the use of the runway. Lot Owners and their invitees shall be permitted to use the runway without the necessity of a license from the Licensor.

Section 1.15 **Lot** shall mean and refer to any plot of land within the Palmetto Air Plantation whether or not improvements are constructed thereon, which shall constitute a single family dwelling. The ownership of each Lot shall include all the rights, title and interest of an Owner in the Common Property, which shall include without limitation, membership in the Association.

Section 1.16 **Maintenance Fund** shall mean and refer to the fund created by assessments and fees levied pursuant to this Declaration.

Section 1.17 **Members** shall mean and refer to any person or entity holding membership in the Association.

Section 1.18 **Mortgage** shall mean and refer to any mortgage, deed to secure debt, deed of trust, and any and all similar instruments used for the purpose of encumbering real property in this Development as security for the payment or satisfaction of an obligation.

Section 1.19 **Owner** shall mean and refer to the record Owner, whether one or more persons, of the fee simple title to a Lot located within the Development, and entitled to one vote per Lot as a member of the Palmetto Air Plantation Property Owners Association, Inc., but excluding those having such interest merely as security for the performance of an obligation.

Section 1.20 **Plat** shall mean and refer to any plat depicting the subdivision or any lot therein, filed in the Office of the RMC for Clarendon County, State of South Carolina, as such plat may be amended from time to time by the Declarant.

Section 1.21 **Property** shall mean and refer to the Property initially subject to this Declaration and any additional Real Property from time to time subject to these Covenants pursuant to the provisions of this Declaration.

Section 1.22 **Runway** shall mean that property located at the center of the subdivision used for the purpose of aircraft takeoffs and landings.

Section 1.23 **Taxiway** shall mean and refer to those right-of-ways radiating from the runway or otherwise as shown on the plat for the purpose of providing access for aircraft to and from the runway.

ARTICLE II
The Association

Section 2.1 **Dedication of Common Areas.** Declarant may hereafter convey to the Association certain parts of the property as Common Areas intended for common use by the owners in Palmetto Air Plantation Property Owners Association, Inc.. Such designated areas shall, upon conveyance, be dedicated to the common use and enjoyment of Owners, and their families, guests, tenants, and invitees.

Section 2.2 **Responsibility for Common Area.** Subject to the rights of the Owners set forth in this Declaration, the Association shall be responsible for the management and control of the Common Area dedicated under Section 2.1 above and all improvements in the Common Area (including equipment related thereto), and shall keep it in good, clean and attractive condition and repair consistent with the requirements of a first class residential and recreational community, pursuant to the terms and conditions of this Declaration.

Section 2.3 **Membership.** Every Owner, by virtue of being an Owner and for as long as he is an Owner, shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot or Lots. No Owner, whether one or more persons, shall have more than one membership regardless of the number of Lots owned, but all of the persons owning each Lot shall be entitled to rights of membership and of use and enjoyment appurtenant to such ownership. The combination of two Lots will be considered a single Lot for membership and assessment purposes. The Articles of Incorporation and Bylaws of the Association may set forth additional classifications of membership, which Members may or may not be Owners.

Section 2.4 **Membership and Voting Rights.** Each Member shall be entitled to one vote per membership. When more than one person holds an interest in any Lot, all such persons shall constitute one Membership. The vote for such Membership shall be exercised as the Owners among themselves determine, and the Secretary of the Association shall be notified of such designation prior to any meeting. Any Owner of a Lot may lease the same and assign his membership right to the tenant, provided that a copy of the Instrument of Assignment is furnished to the Secretary of the Association prior to any meeting at which the tenant exercises the voting right of membership. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, Bylaws, and Architectural Guidelines, and the Restrictions and Covenants of the property. The lease shall obligate the tenant to comply with the foregoing and upon the tenants failure to do so he/she may be evicted by the Declarant or the

Owners Association Board of Directors.

Section 2.5 **Rules and Regulations**. The Association from time to time and subject to the provisions of this Declaration, may adopt, amend and repeal rules and regulations, to be known as "Association Rules," governing, among other things, the following:

a. The Use of Open Space,
b. The Use of Private Roads,
c. Collection and Disposal of Garbage and Trash,
d. The Posting of Maximum Speeds for Vehicular Traffic and Other Traffic Rules,
e. The Types of Vehicles and Times when any Vehicles (including Commercial Vehicles), may be permitted to use the road within Palmetto Air Plantation or any other area of the property.
f. The Schedule of Fines for Infractions of the Association Rules or the Project Documents.

Section 2.6 **Ownership of Personal and Real Property for Common Use.** The Association, through action of its Board may acquire, hold and dispose of tangible and intangible personal property and real property.

Section 2.7 **Implied Rights and Obligations**. The Association may exercise any other rights or privileges given to it expressly by the Declaration, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association under this Declaration or reasonably necessary to effectuate any such right of privilege. The Association shall perform all of the duties and obligations imposed upon it expressly by the Palmetto Air Plantation Documents, together with every other duty or obligation reasonably to be implied from the express provisions of the Palmetto Air Plantation Documents where reasonably necessary to satisfy any such duty of obligation.

ARTICLE III
Architectural Control Committee

Palmetto Air Plantation is designed as a private residential community with architectural controls which allows aircraft owners and pilots convenient access to the runway. To insure that the property will be developed harmoniously and that consistency is maintained, an Architectural Control Committee will formulate, review and control a comprehensive landscape plan, street lighting, signs, fencing, parking and site improvements. The initial Architectural Control Committee shall consist of one member, Joe Witt or his designee. In the event of the failure and ability for any reason of Joe Witt to act, the vacancy created shall be filled temporarily or permanently as necessary by his designee. At such time the development is fifty (50%) per cent completed, the above member may relinquish his powers of the Architectural Control Committee to the Owners Association. At that time Joe Witt, may choose to continue his position on the new Architectural Control Committee and two (2) other members shall be appointed by the Board of Directors of the Association. The new Architectural Control Committee shall consist of three (3) members and shall promulgate such rules and guidelines as may be necessary to carry out the purpose of the Declaration.

The Architectural Control Committee shall:

3.1. regulate the external design, appearance, and location of the Properties and Lots and any improvements thereof.

3.2. adopt architectural guidelines and programs consistent with covenants and restrictions.

3.3. inspect for compliance with these guidelines.

3.4 adopt procedures for the exercise of its duties.

3.5. maintain complete and accurate records of all actions taken.

Notwithstanding anything to the contrary contained herein, the Architectural Control Committee or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application of enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the community.

ARTICLE IV
Architectural Guidelines and Rules

Section 4.1 **Land Use.** All Lots shall be used for residential purposes only and common recreational purposes auxiliary thereto and for no other purpose. No Lot shall be used a right-of-way, street or road, or access to any property not included within the Properties of this Development without the consent of the Declarant. Only one family may occupy a Lot as a principal residence at any one time. No structure, except as herein provided shall be erected, alerted, placed or permitted to remain on any Lot other than one (1) detached single family dwelling or residence. Such accessory buildings or hangar may not be constructed prior to the completion of the dwelling unless waived by the ACC and then limited to a one year completion deadline. Furthermore the accessory building or hangar shall comply with all other restrictions contained herein for the main dwelling, including, but not limited to, exterior requirements, setback lines and permanent foundations. A guest suite or a like facility may be included as part of the main dwelling or accessory building, but such suite may not be rented or leased except as part of the entire premises including the main dwelling. Furthermore, no airplane hangar shall be used as a residence without the consent of the Declarant or Board of Directors of the Homeowners Association.

Section 4.2 **Partition of Combination of Lots.** No Lot shall be subdivided or its boundary lines changed except with prior written approval of the Declarant. Declarant, however, hereby expressly reserves the right to replat any Lot or Lots. Declarant's consent shall be conditioned upon payment by the Owner or Owners concerned of all expenses incident to giving the consent, including legal and accounting fees. Every agreement and recorded instrument for combination of Lots shall make

adequate provisions for the adjustment of voting rights and liability for payment of assessments appurtenant to or imposed upon such Lots. Whether combined or unchanged, each Lot shall be conveyed, transferred, gifted, devised, bequeathed, encumbered or otherwise disposed of, as the case may be, with all appurtenant rights and interests created by law or this Declaration, including the membership in any association and all the rights thereof.

Section 4.3 **Commercial Businesses Prohibited.** No commercial business of any type shall be permitted; however, nothing herein contained shall be construed as preventing the Declarant from erecting and maintaining facilities of a commercial, recreational or community nature or facilities incident to the use of the runway, taxiway and easements. This should not exclude any home office, but no customer, clients, or patients can be seen on residential premises. Also, this should not exclude work done on non-owned aircraft so long as such work is done inside a hangar and the completed aircraft confirms with all requirements as set forth in these covenants. No one, other than the Declarant, can allow the use of the airport or runway for commercial activity or for self-enterprise.

Section 4.4 **Common Area.** The Common Area shall be owned by the Declarant or the Association and no Owner shall bring any action for partition or division of the Common Area by acceptance of a deed or other instrument of conveyance or assignment, each Owner shall be deemed to have specifically waived such Owner's right to institute or maintain a partition action or any other action designed to cause a division of the Common Area, and this section may be pleaded as a bar to any such action. Any Owner who shall Institute or maintain any such action shall be liable to the Declarant or the Association, and hereby agrees to reimburse the Declarant or the Association for its costs, expenses and reasonable attorney's fees in defending any such action.

Section 4.5 **Architectural Control.** No dwelling unit, hangar or other building shall be erected, placed or altered on any Lot until the plans for each showing locations of the units on the Lot and the landscaping plan for the Lot have been submitted to and approved by the Architectural Control Committee. Such plans shall be reviewed as to quality of workmanship and materials, harmony of external design with existing dwelling units and hangars, and as to location with respect to topography and finish grade elevation, and house, hangar and other buildings shall be of similar architectural design, before being approved by Architectural Control Committee or its successor or assigns. No home, garage, hangar or other building may be constructed on any Lot unless such work meets all County Codes then in existence. A copy of the builder or contractor's license must be submitted with construction plans to the ACC.

Section 4.6 **Dwelling Size.** Each single story dwelling on a Lot shall have a heated square foot area of 2000 square feet minimum. No dwelling unit shall be permitted on any Lot that has a ground floor area of the main structure, exclusive of porches, patios, hangars and garages of less than 1,800 square feet on the first floor for a one and one-half story, split-level, or two story dwellings. All multi-level dwellings shall have a minimum of 2,800 square feet. All house/hangar combinations shall include a minimum of 1,800 square feet of heated living area,

excluding hangar, shop or storage portion of the structure. All structures must be built with eaves and over-hangs and have a residential characteristic. PROVIDED HOWEVER, single family, one-store residential structures of 1,600 square feet may be permitted on Lots 42, 43 and 44 of the subdivision. All dwellings shall contain a place for parking for at least two vehicles in an enclosed garage.

Section 4.7 **Location.** In order to assure that all structures will be located with regard to the topography of each individual Lot, taking into consideration the elevation contours of the Lot, the location of adjoining dwellings, and similar considerations, the Declarant or the ACC reserves unto itself, its successors and assigns, the right to control absolutely and solely to decide the precise site and location of any structure, improvements, and utilities upon all Lots and every Lot within the Development; PROVIDED, HOWEVER, that such location shall be determined only after reasonable opportunity is afforded the Owner to recommend a specific site, and in any event all buildings (including eaves, decks, patios and steps) shall be constructed beyond the minimum setback lines. All structures shall be located in compliance with the rules and ordinances of Clarendon County Planning Commission.

Section 4.8 **Structure Material.** Unless specifically otherwise approved in writing by the ACC, all structures constructed or placed on any Lot shall be built of substantially new materials and no used structures shall be relocated or placed on any such Lot. No dwelling shall have an exterior surface composed of asbestos siding, exposed concrete block, cinder block, or other similar material. Vinyl siding products will be considered on a case by case basis.

Section 4.9 **Kind of Home.** No mobile or manufactured homes of any kind, or any home having the same general appearance, shall be permitted on any Lot. No building or structure of a temporary nature: trailer, tent, shack, garage or other out-building shall be erected or maintained on any Lot at any time. Furthermore, no building shall be permitted on any Lot unless it is erected on a solid foundation of brick or masonry from the ground level to the first floor level. PROVIDED HOWEVER, that modular construction shall be permitted with approval of the ACC.

Section 4.10 **Driveways.** Vehicular driveways and walkways shall be constructed of concrete, brick, asphalt or reconstituted rubber services. If any driveway is to cross a drainage ditch, the Owner shall be required to install, at his own expense, all necessary culverts and coverings prior to the commencement of any other construction on the Lot.

Section 4.11 **Drainage.** No Owner shall do or permit any work, construct any improvements, place any landscaping or suffer the existence of any condition whatsoever which shall alter or interfere with the drainage pattern of the Property, except to the extent such alteration and drainage pattern is approved in writing by the Declarant, and except for the rights reserved to Declarant to alter or change the drainage patterns.

Section 4.12 **Continuity of Construction.** All structures approved by the ACC must be completed insofar as the exterior finish is concerned within 12 months from the date of issuance

of a building permit for said structure. The ACC may waive this requirement if construction delays have been caused by strikes, war, fire, or Acts of God which render the completion of construction within such time impossible. All improvements commenced on the Property shall be prosecuted diligently to completion and shall be completed within 12 months of commencement, unless an exception is granted in writing by the ACC. If an Improvement is commenced and construction is then abandoned for more than ninety (90) days or if construction is not completed within required 12 month period, then after notice and hearing as provided in the By-Laws, the ACC may impose a fine of not less than One Hundred ($100.00) Dollars per day on the Owner of the Lot. Furthermore, prior to occupancy of the dwelling or within one year after the issuance of a Building Permit, the Lot Owner shall have his property sown in grass and have planted foundation landscaping around the dwelling and other accessory buildings in accordance with the proposed landscaping plans previously submitted and approved.

Section 4.13 **Reconstruction.** Any building on any Lot which is destroyed in whole or in part by fire, windstorm, flood or other Act of God must be rebuilt, or all debris from such building removed and the Lot restored to the condition it was in prior to commencement of construction of such building with reasonable promptness; PROVIDED HOWEVER, that any such reconstruction must
be commenced within 3 months from the date of such destruction or if no reconstruction is to occur, then all such debris must be removed and the Lot restored to its prior condition within 2 months of such destruction.

Section 4.14 **Construction Traffic.** Construction traffic is prohibited on the Common Area runway, and tie down areas. The failure of a Lot Owner to prevent construction traffic associated with his Lot from entering upon the Common Area runway, and tie down areas shall make that Lot Owner liable for any necessary repairs caused by construction traffic upon these areas. Lot Owners shall specifically include a clause in their construction contracts prohibiting contractor equipment from entering upon the Common Areas, runway, taxiway, and tie down areas.

Section 4.15 **Hangar Specifications.** Each Lot adjoining the taxiway right-of-way may have a hangar for the storage of private aircraft. Such hangars, if constructed, must be compatible in appearance with the residential unit. The hangar must be a fully enclosed building with approved and operational doors which do not face the street. No T-Hangar shall be constructed and all separate hangars must be rearward of the mean center line of the house and away from the street side of the Lot. Free standing hangar shall not exceed 3,600 square feet of interior space, including workshop, restroom, storage area and any other purpose. The hangar may be built before the dwelling house only when permitted by the ACC, but substantial completion of the dwelling insofar as the exterior finish is concerned must be accomplished within 12 months from the date of the issuance of the Building Permit for hangar structures.

ARTICLE V
Restrictions and Covenants

Section 5.1 **Failing to Comply.** In the event the Owner of any Lot shall fail to comply with any of the below mentioned criteria, or fails to maintain the premises and the exterior of the improvements situated thereon, or permits litter and debris to accumulate on his Lot, or allows hedges or other plantings to obscure the view of the street traffic, or fails to comply with any other reasonable fire preventive requirements, the Declarant, through its agents and employees, shall have the right to enter upon such premises and to repair, maintain, rehabilitate and restore the exterior of any improvements situated thereon and/or clean or clear any Lot of debris, or take any other steps necessary to remove litter and debris, or take any other steps necessary to meet reasonable fire preventive regulations; PROVIDED HOWEVER, that the Declarant, or its agents, shall first give written notice to the Owner of said Lot of its intention to make such repairs or of its intention to perform such clearing, maintenance or rehabilitation work, affording the Owner of said Lot 30 days in which to make said necessary repairs, maintenance, or clearing work. If at the end of this period the work to be performed has not been done by the Owner, then the Declarant, or its agents, shall have the right, as set forth herein, to make such repairs, etc. Nothing herein contained shall be construed to grant to the Declarant or its agents, any right to enter into or inside of any building located on any Lot without the consent of the Owner thereof. Any costs incurred by the Declarant, or its agents, in enforcing and carrying out the performance of this paragraph shall be charged against the Owner of said Lot, and a lien may be created on said Lot until the Declarant, or its agents, has been paid in full for all costs incurred.

Section 5.2 **Maintenance.** All Owners shall keep their Lots, whether occupied or unoccupied, free of all tall grass, dead, diseased or decaying trees, weeds, trash, rubbish, and debris and keep all Lots in a neat and attractive condition. All improvements erected on Lots shall be maintained in a clean, neat and orderly condition and in a good state of maintenance and repair.

Section 5.3 **Toxic Disposal Prohibited.** Disposal on the site of any substances which may be considered toxic or environmentally sensitive is expressly prohibited. Disposal of any substances which may contaminate the ground water of this subdivision or the surrounding area is prohibited. These substances include, for example, but are not limited to, paints, solvents, cleaning fluids, paint strippers, fuel and oil.

Section 5.4 **Unsightly Materials Prohibited.** No rubbish, garbage, debris, junk, junk vehicles, or unsightly material shall be deposited on any of the Lots at any time except building material during the course of construction on the site. All rubbish, waste, or garbage shall be kept in sanitary containers, and shall be removed from the premises at least once a week. No dismembered aircraft parts nor nonoperative aircraft are to be left about the premises.

Section 5.5 **Hazardous Activities.** Nothing shall be done or kept on any Lot or in the Common Area which will increase the rate of insurance on the Common Areas or any other Lot without the prior written consent of the Declarant or the Association. No Owner shall permit anything to be done or kept on his Lot or in the Common Areas which would result in the

cancellation of insurance on any part of the Common Areas, or which would be in violation of any law.

Section 5.6 **Nuisance.** No noxious or offensive activity shall be conducted upon any Lot or in any dwelling nor shall anything be done thereon or therein which may be or may become an annoyance or nuisance to the neighborhood.

Section 5.7 **Outside Toilets.** Outside toilets or privies are expressly prohibited, except where required for construction purposes.

Section 5.8 **Wall Hangings.** An Owner shall not cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, balconies or windows of his Dwelling or exterior buildings which may adversely affect the appearance of Palmetto Air Plantation without the prior written approval of the Architectural Control Committee.

Section 5.9 **Children.** Children will be the direct responsibility of their parents or legal guardians, including full supervision of them while within the Development and including full compliance by them with this rule and with all other rules and regulations of the Association. All children under twelve (12) years of age must be accompanied by a responsible adult when entering and/or utilizing any recreational facility. In order to control the overall appearance of the community, no swing sets, play sets, sandboxes, basketball backboards, tree houses, animal houses or animal pens shall be erected so as to be visible from any roadway or adjoining property, unless approved in advance by the ACC.

Section 5.10 **Pets.** Pets and other animals shall neither be kept nor maintained in or about the properties except in accordance with the following. Commercial breeding or feeding of horses, cattle, goats, hogs, sheep or poultry; the operation of a commercial dairy; dog boarding kennel or veterinary hospital; and the operation of a commercial livery or boarding stable for horses; or a riding academy; and the keeping of any hog or milk cow or horse, are strictly prohibited. It is understood, however, that this restriction shall not be construed to prohibit the keeping of a limit of three (3) domestic animals (canine or feline) for family pleasure, provided that domestic animals must be restrained by fence or other appropriate protective restraint. This restraint should be from the farthest possible point from the adjoining property, and all appropriate measures must be taken by the Lot Owner to eliminate and prevent offensive odors and any unsightly accumulations from said animals. Noisy animals, such as incessantly barking dogs, must be controlled by their Owners. No pet shall be permitted outside of its Owners Lot unless attended by an adult or child of more than ten (10) years of age and said pet must be on a leash of reasonable length. At no time are any unattended domestic animals or pets allowed on the runway or taxiway easements.

Section 5.11 **Noise.** No Owner shall make or permit any disturbing noises on their Lot by himself or his family, servants, employees, agents, or visitors, nor permit any conduct by such persons that will interfere with the rights, comforts or convenience of other Owners. There shall

be no discharging of firearms or fireworks on the premises.

Section 5.12 **Electronic Equipment.** No electronic equipment may be permitted in or on any Lot which interferes with the television or radio reception of another Lot.

Section 5.13 **Satellite Dish.** No awning, canopy, shutter, enclosure, satellite dish or other projection shall be attached to or placed upon the outside wall or roof of any structure or on the Lot, except by the approval of the Architectural Control Committee. Small, inconspicuous satellite dishes will be most compatible.

Section 5.14 **Vehicles and Parking.** No Owners vehicles shall be parked on any street. No boat, motor home, travel trailer or any other recreational vehicle or commercial truck may be stored outside over night on any Lot for a period of more than seven (7) days. Furthermore, no wrecked or junked motor vehicle or vehicles without current licence plates shall be placed upon the premises and no commercial vehicles shall be parked overnight in the subdivision without the consent of the ACC. No motor vehicle or aircraft of any kind, at any time, shall be parked or tied down on any of the taxiways or runways, roadways or right-of-ways except when permitted by the Architectural Control Committee.

Section 5.15 **Fuel Storage.** It is acknowledged that the Declarant will establish a fuel area between Lot 18 and Lot 19 at the end of the runway. Except for that designated area, no bulk storage of flammable, combustible or explosive fluids, chemicals or substances shall be allowed in any Dwelling, or on any Lot, or on the Common Areas, except that small quantities of fuels used for common activities such as lawn mowing, BBQ grills and other like activities may be kept when stored in a manner which minimizes the risk of fire or explosion. Lot Owners may not store bulk quantities of fuels used for aviation purposes on Lots or in buildings. Aviation fuels may be available in connection with the facility located adjacent to the runway.

Section 5.16 **Fences and Hedges.** The erection or installation of fences and hedges may be permitted with the consent of the Architectural Control Committee which shall directly control the location and type of said facility. No barbed wire fencing will be permitted at any time.

Section 5.17 **Signs.** No signs of any character shall be erected, pasted, posted, or displayed upon or about any Lot or part of any Lot, or Common Area, without the written permission of the ACC. The ACC shall have the right, in its sole discretion, to prohibit or to restrict and control the size, construction, material, wording, location and height of all signs and may summarily remove and destroy all unauthorized signs. Declarant and Lot Owners, however, may post temporary "For Sale" or "For Rent" signs on the Properties and these signs must be approved before being put on any Lot. No sign shall be attached to any tree or shrubbery. All signs must be professionally lettered, and may not contain the price of the house or Lot. Furthermore, signs used by a builder during construction or informational signs by the Declarant shall be allowed.

Section 5.18 **Clothes Lines.** No clothing, laundry, or wash shall be aired or dried on any portion of the Lots in an area with a substantial exposure to view from any other Lot or street. Drying areas will be permitted only in locations approved by the Architectural Control Committee and only when substantially protected from view of screening or fencing approved by the Architectural Control Committee.

Section 5.19 **Flag Poles.** Flag Poles are permitted, provided the pole is not more than 15 feet in height, unless otherwise approved by the Architectural Control Committee.

Section 5.20 **Antennas.** No radio or television aerial or antenna or any other external electronic equipment or devices may be installed or maintained on any exterior of any structure erected on a Lot unless the location, size, and design has been approved by the ACC. Said antennae or equipment shall be subject to FAA and FCC regulations concerning obstructions placed in the vicinity of airports. Furthermore, all electrical, telephone, and other utility lines shall be run underground.

Section 5.21 **Outdoor Lighting.** One or more hospitality light standards, of a design approved by the ACC, may be located within the front yard of any Owner's property. Any outdoor lighting positioned and installed by a Lot Owner shall be of such a nature and type so as not to present a hazardous or confusing condition to night air operations which may be conducted from said airport and be shaded so as not to create a nuisance to any other Lot Owner.

Section 5.22 **Mail Boxes.** Each dwelling shall have a standard house number, mail box and paper box with a design and location approved by the ACC.

Section 5.23 **Swimming Pools.** No non-permanent or "above ground" pools may be placed, maintained or kept on any Lot.

Section 5.24 **Wells and Water Removal.** No wells shall be drilled, dug or installed except with the approval of the Architectural Control Committee.

Section 5.25 **Access.** There shall be no overland vehicular access to any Lot except from designated road and taxi-ways lying within the Common Areas. The Declarant, its agents or employees shall have access to each Lot from time to time during reasonable working hours, upon oral or written notice to the Owner, as may be necessary for the maintenance, repair or replacement of any portion of the Common Areas, or facilities situated upon such Lot which serve another Owners Lot. The Declarant or its agent shall also have access to each Lot at all times without notice as may be necessary to make emergency repairs to prevent damage to the Common Areas or another Lot.

Section 5.26 **Amendments to Regulations.** Reasonable regulations governing the use of the Common Areas and external appearance of all structures erected on the Lots may be made and amended from time to time by the Declarant or the Architectural Control Committee;

PROVIDED HOWEVER, that all such regulations and amendments thereto shall be approved by a majority vote of the Directors of the Owners Association before the same shall become effective.

Section 5.27 **Ponds and Waterways.** Any Lot not adjoining a pond shall gain access to the pond through Common Areas of the subdivision only. Provided no pond shall be used for swimming or for the operation of motor boats. Boating use shall be limited to canoes, kayaks and small electric driven fishing boats.

ARTICLE VI
Aircraft and Hangar Restrictions, and Parking

Section 6.1 **Type of Aircraft.** Only conventional, general aviation aircraft shall be permitted. No jet, or ultra light aircraft shall be permitted. The Lot Owners, their heirs or assigns hereby relinquish any and all rights to complain, object or take any legal remedies to stop the function of normal aviation use and related activities in the development. The airplane hangar or tie down space on each Lot shall be limited strictly to private use and only by the Owner of the property or tenant on which
the hangar or tie down space is located except as permitted herein. No person who is not a member of the Association or a tenant of a member of the Association shall be permitted to store, tie down or hangar any aircraft in the subdivision without the consent of the Board of Directors of the Owners Association. The Board of Directors will have the authority to specify the terms and conditions under which a non-member aircraft may be stored, hangared or tied down.

Section 6.2 **Airport Hangars.** All hangars are subject to the Architectural Control Committee approval, and must be architecturally compatible with the primary structure on the Lot. All aircraft hangars must be constructed in conjunction with or subsequent to the construction of a residence. Hangars may be detached from or attached to a primary structure in accordance with local building regulations.

Section 6.3 **Two or More Aircraft.** If two or more aircraft are owned by Lot Owner, one aircraft, not stored in the hangar, may be secured with tie downs adequate for the size and weight of the aircraft. Until a dwelling and hangar are under construction or built, no aircraft shall be tied down on the Lot unless approved by the ACC. The one tied-down aircraft must be in airworthy condition as defined by the current Federal Aviation Regulations (FAR's) except as permitted by the Board of Directors in writing. The tied out aircraft must be in a good state of repair and appearance.

Section 6.4 **Unattended Aircraft.** No aircraft shall be parked on any part of the runway, taxiway or easements and all aircraft parked or left for any period of time unattended within Lots shall be securely tied down. If any aircraft is found within any Lot, not tied down and

unattended, the Board of Directors or its agents may, but are not obligated to, secure it at the expense of the Owner of said aircraft.

Section 6.5 **Run-ups.** "Run-ups" and testing of engines within residential areas should be limited to the hours of 8:00 am and 6:00 pm. But in any event the "run-up" shall not be done in such a manner as to cause inconvenience or damage to the property of others. This shall not prohibit normal take offs and landings at any time.

Section 6.6 **Stunt Flying.** No low-level flying stunts nor other hazardous activities will be permitted about the subdivision. Each Owner is required to strictly observe all Federal, State and Local Statues, Regulations or Ordinances relative to the operation of civil aircraft.

Section 6.7 **Speed Limits.** Aircraft shall taxi at less than 15 miles per hour on all taxiways. Pilots are cautioned to avoid increasing engine RPM to high levels as part of our noise abatement program and to avoid blowing sand and dirt on following aircraft and in residential areas.
Section 6.8 **Taxi-Way Courtesy.** Moving aircraft shall have the right-of-way at all times. Automotive traffic must yield at all taxiway crossings and on dual purpose streets. No taxiways other than those designated by Declarant as combination street/taxiways shall be used by any vehicle other than aircraft or aircraft service vehicles, unless pursuant to a valid access permit granted by the Association. No aircraft shall have a right-of-way on taxiways, and all aircraft on taxiways must anticipate use of passing areas for approaching aircraft.

Section 6.9 **Commercial Business.** No commercial aircraft business shall be permitted on a Lot. This should not exclude work done on non-owned aircraft so long as such work is done inside a hangar and the completed aircraft conforms with all requirements as set forth in these covenants.

Section 6.10 **Storing Parts.** There shall be no storage of dismantled or disabled aircraft on the Lots or the Common Areas. Aircraft being repaired and aircraft parts must be kept within an enclosed hangar building which has been approved by the Architectural Control Committee. Parts of aircraft, including but not limited to, fuselages, wings, engines, horizontal and vertical stabilizers, ailerons,
rudders, landing gear and spare parts may not be stored in yards where visible from the street, taxiway, or adjoining Lots, but must be stored inside the hangar or other building approved by the ACC.

ARTICLE VII
Runway Assurances and Operations

Section 7.1 **Operation.** Every Lot Owner or Lessee or Grantee of any property now or hereafter subject to this Declaration by acceptance of a Deed, Lease or other Conveyance thereof hereby agrees the runway and taxiway shall remain and be maintained as such until such time as at least eighty (80%) per cent of the members and Declarant consents to its dissolution or

operation is interrupted or terminated by Local, State or Federal authority.

Section 7.2 **Complaints.** As this is an aviation community, Owners understand, and agreed, that Lot Owners, their heirs, or assigns relinquish any right to complain, object, or take any legal remedies to stop aviation related activities in the Development.

Section 7.3 **Control of Runway.** The Licensor, MidEastern Truckwash, Inc., shall have the right to control the use of the runway and taxiway and may prohibit the use of the runway or taxiway by any aircraft deemed unsafe to either the life or health of individuals or the condition and maintenance of the field by virtue of its size, design or state of repair.

Section 7.4 **Withholding of Use.** The Declarant or the Association shall have the right to withhold from, restrict, or charge an individual assessment for the use of the Common Area, including the runway, to any Owner:

a) Who is in default in the payment of any assessment fee; or

b) Who, in the judgment of the Declarant or the Owners Association, uses the Common Areas or his aircraft in a negligent manner or in a manner harmful to the rights of other users; or

c) Who, in general, violates the published rules and regulations of the Association.

ARTICLE VIII
Easements and Setbacks

Section 8.1 **Setback Requirements.** No house or building may be constructed within 75 feet of the centerline of any designated street, or taxiway or runway boundary. A 40 foot clear zone easement shall be established along all Lot lines facing the runway where no aircraft may be parked, no trees or other obstacles allowed in this area. A 5 foot easement along all sides of Lots and along sides adjoining any designated streets are reserved for underground utilities and drainage purposes. All setbacks and side Lot lines shall be in compliance with the rules and regulations of Clarendon County Planning Commission and Architectural Control Committee.

Section 8.2 **During Construction.** During the development period, the Declarant or its agent reserves a blanket easement and right on, over and under the ground within the Property to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any grading of the soil, or to take any other similar action reasonably necessary, following which the Declarant or its agent shall restore the affected property to its original condition as near as possible. The Declarant or its agent shall give reasonable notice of intent to take such action to all affected Owners, unless, in the opinion of the Declarant or its agent, any emergency exists which precludes such notice. The Declarant or its agent, however, in the exercise of such easement rights shall not disturb any living dwelling or other substantial

improvement upon any property.

Section 8.3 **Maintenance.** In order to implement effective insect and woods fire control, the Declarant reserves for itself and its agents the right to enter upon any Lot on which a residence has not been constructed and upon which no landscaping plan has been implemented (with prior written approval of the ACC for such plan), such entry to be made (at the expense of the Owner of the Lot), by personnel with tractors or other suitable devices for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, or other unsightly growth, which in the opinion of the Declarant detracts from the overall beauty, setting and safety of the Property. Such entrance shall not be deemed a trespass. The Declarant and its agents may likewise enter upon such land to remove any trash which has collected on such Lot without such entrance and removal being deemed a trespass. The provisions in this paragraph shall not be construed as an obligation on the part of the Declarant to mow, clear, cut or prune any Lot nor to provide garbage or trash removal services.

ARTICLE IX
Insurance

Section 9.1 **By the Declarant or Association.** The Declarant or Association or its duly authorized agent shall have the right and power to obtain insurance to the extent reasonably available for all improvements on the Common Areas against loss or damage in an amount sufficient to cover 100 percent (100%) of the replacement cost of any repair or reconstruction work in the event of damage or destruction from any reasonable hazard. The Declarant may also obtain a broad form public liability policy covering all Common Areas. In the event of damage or destruction to property insured by the Declarant by fire or other casualty, the Declarant or its agent shall, upon receipt of the insurance proceeds contract to rebuild or repair such damaged or destroyed portions of the property to as good a condition as formerly enjoyed. In the event the insurance proceeds are insufficient to pay all costs of repairing or rebuilding of such destroyed improvement, the Declarant or its agents shall levy a special assessment against all Owners to make up such deficiency. In the event the insurance proceeds exceed the cost of repair, the excess proceeds shall be distributed to the respective Owners and Mortgagees as their interests appear.

Section 9.2 **Liability Insurance by Declarant or Association.** The Declarant or Association shall have the right and power to obtain a comprehensive policy of public liability insurance insuring the
Association and its Members for all liability for property damage, bodily injury or death in connection with the operation, maintenance and use of the Common Area within Palmetto Air Plantation.

Section 9.3 **By the Owner.** It shall be the individual responsibility of each Owner to provide, as he sees fit, insurance on the improvements on his Lot in the event of damage or destruction

from all reasonable hazards. Each Owner shall provide as he sees fit homeowners liability insurance, theft and other insurance covering personal property damage or personal liability loss.

Section 9.4 **Aircraft Liability Insurance.** Every Owner or user of an aircraft which is based on the Property shall provide the Licensor or the Association or their agent with a current Certificate of Insurance for aircraft liability before they can use the runway. Failure to provide the Certificate of Insurance and to maintain such insurance shall result tin the automatic suspension of the Owner or user's right to use the Common Area including the runway.

ARTICLE X
Maintenance Assessments

Section 10.1 **Creation of the Lien and Personal Obligation for Assessments.** Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed, is deemed to covenant and agree to pay to the Association:

(a) Annual assessments or charges as provided in this Declaration for the purpose of funding the maintenance fund.

(b) Special assessment for capital improvements and other purposes as stated in this Declaration; such annual and special assessments to be fixed, established and collected from time to time as provided below.

(c) Default assessments which may be assessed against an Owner's Lot pursuant to this Declaration or the Palmetto Air Plantation Homeowners Associations Rules or Regulations or because the Association as incurred an expense on behalf of the Owners under the Association Documents. The annual, special and default assessments, together with interest, costs and reasonable attorney's fees, shall be a charge upon the land and shall be a continuing lien upon the Lot against which each such assessment is made until paid. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the Owner of such Lot at the time when the assessment fell due.

Section 10.2 **Purpose of Assessments.** The assessments levied by the Association shall be used
exclusively to promote the recreation, health, safety and welfare of the Owners and occupants of Palmetto Air Plantation and for the improvement and maintenance of the Common Area, including but not limited:
(a) to keep the Common Areas clean and free from debris and to maintain any amenities located thereon in a clean and orderly condition, to maintain the landscaping thereon in accordance with the highest standards for private parks including any necessary removal and replacement of landscaping, and to repair, replace, and provide for additions to the improvements as stated in the

Declaration or Association Documents.

(b) to pay all taxes, if any, levied against the Common Areas and any properties owned by the Association.

(c) to install and maintain any light fixtures along roads and streets in the Development to provide street lighting therefore, as may be approved by the Association.

(d) to erect and maintain entrance signs at the entrances to the Development and signs on the Common Areas, said signs to be of standard construction and quality.

(e) to pay the premiums on all hazard insurance carried by the Association on the Common Areas and all public liability insurance carried by the Association pursuant to the By-Laws.

(f) to provide such security services as may be deemed reasonably necessary for the protection of the Common Areas from theft, vandalism, fire and damage from animals.

(g) to provide such garbage removal services as may be approved by the Association for all Lots.

Section 10.3 **Uniform Rate of Assessment.** Both annual and special assessments must be fixed at a uniform rate for all Lots, except the Board may provide for a reduced assessment to be paid by those Lot Owners whose property is undeveloped. PROVIDED HOWEVER, the Owners of undeveloped Lots are assessed on a uniform basis. All payments shall be applied first to cost, then to late charges, then to interest and then to delinquent assessments.

Section 10.4 **Effect of Non-payment of Assessment; Lien; Remedies of Association.** Any Association installment, whether pertaining to an annual, special or default assessment, which is not paid within thirty (30) days of its due date shall be delinquent. In the event that an assessment installment becomes delinquent, the Association, in its sole discretion may take any or all of the following actions:

(a) Assess a late charge of at least fifteen percent (15%) per delinquency.

(b) Suspend the voting rights of the Owner during any period of delinquency.

(c) Accelerate all remaining assessment installments for the fiscal year in question so that unpaid assessments for the remainder of the year shall be due and paid at once.

(d) Bring legal action against any Owner personally obligated to pay the delinquent installments.

(e) File a statement of lien with respect to the Lot, and foreclose as set forth below:
The Association may file a statement of lien by recording with the Clerk of Court's Office of Clarendon County, South Carolina, a written statement with respect to the Lot, setting forth the

name of the Owner, the legal description of the Lot, the name of the Association, and amount of the delinquent assessments then owing, which statement shall be duly signed and acknowledged by the President or Vice-President of the Association or by the Manager, and which shall be served upon the Owner of the Lot by mail to the address of the Lot or at such other address as the Association may have in its records for the Owner. Thirty (30) days following the mailing of such Notice, the Association may proceed to foreclose the statement of lien in the same manner as provided for foreclosure of mortgages under the statutes of the State of South Carolina. Such lien shall be in favor of the Association and shall be for the benefit of all other Owners. In a foreclosure action, the Association shall be entitled to recover as a part of the action the interest, costs and reasonable attorney's fees with respect to the action. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot. The remedies herein provided shall not be exclusive and the Association may enforce any other remedies to collect delinquent assessments as may be provided by law.

Section 10.5 **Subordination of the Lien.** The lien of the assessments provided for in this Declaration shall be subordinate to the lien of any first mortgage. The lien of the assessments shall be superior to and prior to any homestead exemption provided now or in the future by laws of the State of South Carolina. No sale or transfer of any Lot pursuant to a decree of foreclosure or by a Public Trustee's foreclosure or any other proceeding or deed in lieu of foreclosure for the purpose of enforcing a first mortgage shall extinguish the lien of such assessments as to installments which become due prior to such sale or transfer, and the amount of such extinguished lien may be reallocated and assessed to all Lots as a common expense at the direction of the Board of Directors. No sale or transfer shall relieve the purchaser or transferee of a Lot from liability for, nor the Lot from the lien of any assessments made after the sale or transfer.

ARTICLE XI
Duration and Amendments

Section 11.1 **Term.** The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change covenants and restrictions, in whole or in part, or to terminate the same.

Section 11.2 **Amendments.** So long as the Declarant owns twenty-five (25%) per cent of the unsold Lots in the subdivision it shall have the right and authority to modify and amend these covenants and restrictions without liability or notice or joinder of any other party provided such modifications and amendments do not violate the ordinances of Clarendon County Planning

Commission. Subsequently amendments to this Declaration may be adopted by the membership of the Property Owners Association in the same manner and upon the same vote as required for amendments to the By-Laws of the Property Owners Association.

Section 11.3 **Effective on Recording Any Modification or Amendment.** Shall be immediately effective upon recording in the R.M.C. Office for Clarendon County, South Carolina, a copy of such amendment or modification, executed and acknowledged by the necessary number of Owners (and by Declarant, as required), together with a duly authenticated Certificate of the Secretary of the Board stating that the required number of consents of Owners were obtained and are on file in the office of the Association.

ARTICLE XII
Enforcement of Covenants

Section 12.1 **Violations Deemed a Nuisance.** Every violation of this Declaration of Covenant is deemed to be a nuisance is subject to all the remedies provided for the abatement of the violation. In addition, all public and private remedies allowed at law or in equity against anyone in violation of these Covenants shall be available.

Section 12.2 **Who May Enforce.** Any action to enforce these restrictions may be brought by Declarant or the Board of the Owners Association or any Property Owner in the subdivision.

Section 12.3 **No Liability.** No member of the Board of Directors, Declarant, the Manager, or the Architectural Control Committee or any Owner shall be liable to any other Owner for the failure to enforce any of the restrictive covenants.

Section 12.4 **Recovery of Costs.** If legal assistance is obtained to enforce any of the provisions of the restrictions, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the restrictions or the restraint of violations of the restrictions, the prevailing party shall be entitled to recover all costs incurred by it in such action, including reasonable attorney's fees as may be incurred, or if suit is brought, as may be determined by the Court.

ARTICLE XIII
Expansion

Section 13.1 **Reservation of Right to Expand.** Declarant shall expand the effect of this Declaration to include all of the Expansion Property which the Declarant may choose to add to the
subdivision. The Declarant shall have the unilateral right to transfer to any other person this right
and to expand by instruments duly recorded. Declarant shall pay all taxes and other

governmental assessments relating to the Expansion of property.

IN WITNESS WHEREOF, Mideastern Truckwash, Inc. has hereunto set its hands and seals, the day and year first above written.

WITNESS:

_____ MIDEASTERN TRUCKWASH, INC.

_____ _____

BY: JOE WITT
ITS: PRESIDENT/DECLARANT

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF CLARENDON)

PERSONALLY APPEARED BEFORE ME, the undersigned witness and made oath that s/he saw the within named Mideastern Truckwash, Inc., sign, seal and its act and deed, deliver the within written Declaration of Covenants, Conditions and Restrictions for the uses and purposes therein mentioned and that s/he with the other witness above witnessed the execution thereof.

_____
Witness

SWORN to before me this _____
day of _____, 2001

Notary Public for South Carolina
My Commission Expires:_____

W:FPFILES/CORPORATE/PALMETTO AIR PLANTATION
FILE #010473BB - RESTRICTIONS - COVENANTS

Lot #25

FOR PARTIAL RELEASE OF MORTGAGE, RECORDED 5-7-06 SEE MTGE BOOK 675, PAGE 38

FOR PARTIAL RELEASE OF MORTGAGE, RECORDED 3-15-2004 SEE MTGE BOOK 572, PAGE 132

Lot #40

FOR PARTIAL RELEASE OF MORTGAGE, RECORDED 11-6-2003 SEE MTGE BOOK 558, PAGE 83

Lot #29

FOR PARTIAL RELEASE OF MORTGAGE, RECORDED 9-26-2003 SEE MTGE BOOK 552, PAGE 42

Lot 33+34

FOR PARTIAL RELEASE OF MORTGAGE, RECORDED 6-15-2004 SEE MTGE BOOK 586, PAGE 225

Lot #42

FOR PARTIAL RELEASE OF MORTGAGE, RECORDED 7-22-04 SEE MTGE BOOK 591, PAGE 23

Lot #39

FOR PARTIAL RELEASE OF MORTGAGE, RECORDED 2-28-2005 SEE MTGE BOOK 615, PAGE 95

Lot 36

FOR PARTIAL RELEASE OF MORTGAGE, RECORDED 5-16-2005 SEE MTGE BOOK 628, PAGE 41

Lot #24

FOR PARTIAL RELEASE OF MORTGAGE, RECORDED 7-1-05 SEE MTGE BOOK 636, PAGE 19

Lot #31 (1.76 Acres)

FOR PARTIAL RELEASE OF MORTGAGE, RECORDED 12-20-05 SEE MTGE BOOK 664, PAGE 112

Lot #37 & 38

FOR PARTIAL RELEASE OF MORTGAGE, RECORDED 11-10-05 SEE MTGE BOOK 658, PAGE 184

Lot #32

FOR PARTIAL RELEASE OF MORTGAGE, RECORDED 4-25-06 SEE MTGE BOOK 683, PAGE 79

Lot #1

FOR PARTIAL RELEASE OF MORTGAGE, RECORDED 4-3-06 SEE MTGE BOOK 679, PAGE 119

Lot 43

FOR PARTIAL RELEASE OF MORTGAGE, RECORDED 8-4-06 SEE MTGE BOOK 696, PAGE 9

FILED AND RECORDED
2006 JUL 14 PM 12:22
CLARENDON COUNTY
REGISTER OF DEEDS

MORTGAGE OF REAL ESTATE

STATE OF SOUTH CAROLINA,
County of CLARENDON

TO ALL WHOM THESE PRESENTS MAY CONCERN: PALMETTO AIR PLANTATION, LLC

Address: P.O. BOX 777, MANNING, SC 29102

(hereinafter referred to as Mortgagor) SEND(S) GREETING:

WHEREAS, the Mortgagor is well and truly indebted unto EDWARD G. GIBBONS, 511 S. MILLS STREET, MANNING, SC 29102 (hereinafter referred to as Mortgagee), as evidenced by the Mortgagor's promissory note dated FEBRUARY 8, 2007 20

in the sum of ONE HUNDRED TWENTY-FIVE THOUSAND FOUR HUNDRED TWELVE AND NO/100 DOLLARS ($125,412.00) with interest from date of said note payable as and at the rate(s) provided in said note, and upon the terms and conditions therein stated as will more fully appear by reference thereto, except that unless sooner paid, the final payment of principal and interest shall be due on FEBRUARY 8, 2017.

This mortgage also secures all existing indebtedness of mortgagor (or of any one or more of the parties designated herein as mortgagor) to mortgagee (including but not limited to the above described note) evidenced by promissory notes or any other instruments and all renewals, reamortizations, extensions, deferments or other rearrangements thereof, together with interest thereon as provided therein, (2) all future advances that subsequently may be made to mortgagor (or to any one or more of the parties designated herein as mortgagor with the written consent of the remainder of said parties) to be evidenced by promissory notes or any other instrument, and all renewals, reamortizations, extensions, deferments or other rearrangements thereof, together with interest thereon as provided therein, said future advances, if any, to be made solely at the option of mortgagee, and (3) all other indebtedness of mortgagor (or of any one or more of the parties designated herein as mortgagor) to mortgagee now due or to become due or hereafter contracted, and all renewals, reamortizations, extensions, deferments or other rearrangements thereof, together with interest thereon as provided for THE MAXIMUM PRINCIPAL AMOUNT OF ALL EXISTING INDEBTEDNESS, FUTURE ADVANCES AND ALL OTHER INDEBTEDNESS OUTSTANDING AT ANY ONE TIME NOT TO EXCEED ONE HUNDRED TWENTY-FIVE THOUSAND FOUR HUNDRED TWELVE AND NO/100 DOLLARS, plus interest thereon, attorney's fees, court costs, and any advances necessary for the protection of the security of title thereto, such as, but not limited to, advances for taxes and insurance premiums, all of which are secured by this mortgage. It is understood and agreed by all parties hereto that the execution by mortgagor and the acceptance by mortgagee of any notes, renewal notes or other instruments or the agreement by mortgagee to any reamortizations, extensions, deferments or other rearrangements as contemplated in this paragraph or elsewhere herein shall not be construed as payment of any indebtedness hereby secured (whether or not, among other changes in terms, the interest rate or rates remain the same and/or time for payment is thereby extended or lessened), and shall not discharge the lien of this mortgage which is to remain in full force and effect until the total indebtedness secured hereby has been paid in full. All notes or other instruments contemplated in this paragraph or elsewhere herein shall remain uncancelled and in possession of mortgagee, its successors and assigns, until the total indebtedness hereby secured is paid in full.

NOW KNOW ALL MEN, that mortgagor, in consideration of the debt as evidenced by the above described note and for better securing the payment thereof to mortgagee, according to the terms of said note, and the performance of the conditions and covenants herein contained, and to secure any other indebtedness contemplated in the paragraph next above or elsewhere herein and also in consideration of the sum of One Dollar to mortgagor in hand paid by mortgagee, receipt whereof is hereby acknowledged, has granted, bargained, sold and released in fee simple, and by these presents does grant, bargain, sell and release in fee simple unto mortgagee, its successors and assigns, the following described lands, including but not limited to all trees, timber, shrubbery, fixtures and improvements now and hereafter thereon, TO-WIT:

SEE EXHIBIT 'A' - LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF.

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EXHIBIT 'A' - LEGAL DESCRIPTION

All that piece, parcel or tract of land, lying, being and situate in School District Number 20 of the County of Clarendon, State of South Carolina, containing 82.91 acres, according to the plat hereinafter referred to and bounding and measuring as follows: On the Northeast by lands of New Covenant Holiness Church and by lands of Joseph Palmer Moore; on the Southeast by lands of Lettie D. Johnson and by lands of Janie and Clyde Wilkes, Jr., the run of Fellowship Branch being the line; on the Southwest by lands of Joe P. Moore, et al. And by lands of Fellowship Ranchette Subdivision; on the North by lands of Cecil D. Sheets and by lands of Hugh T. Martin; on the Southwest by lands of Hugh T. Martin; on the Northwest by the right of way of U.S. Highway 301.

For a more particular description of said lot, reference may be had to a plat made by DuValle W. Elliott, RLS, dated 14 March 1996, recorded in the Office of the Clerk of Court for Clarendon County in Plat Book A-17 at Page 6.
For Tax Map Parcel Number and Derivation, see below.

ALSO, all that piece, parcel or tract of land, lying, being and situate in School District No. 2 of Clarendon County, South Carolina, containing 22.22 acres and bounding now or formerly as follows: On the Northeast by the tract above described; on the Southeast by lands of Lettie Johnson; on the Southwest by lands of Alfred Blanding Estate; on the Northwest by lands of Ernest L. Rauber, and lands of Ray and Rita Lamothe.

Said tracts having been conveyed to PALMETTO AIR PLANTATION, INC., by deed of MidEastern Truckwash, Inc., October 9, 2001, recorded in the Office of the Clerk of Court for Clarendon County in Deed Book A-452 at Page 144.

The above tracts being designated as Clarendon County Tax Map Parcel No. 140-00-05-063.

LESS, AND EXCEPTING, HOWEVER, Lot 19, as shown on a plat prepared by DuValle W Elliott, RPLS, drawn July 30, 2001, as recorded in the Office of said Clerk in Plat Book S-50 at page 599. Said lot 19 having previously been conveyed to Michael K. Huizenga and Juvy Y. Huizenga by deed from MidEastern Truck Wash, Inc., and Joseph M. Witt, dated August 1, 2001, as recorded in the Office of said Clerk in Deed Book A-446 at Page 008.

lot #45 Palmetto Air Plantation
FOR PARTIAL RELEASE OF MORTGAGE, RECORDED
12/12/16 SEE MTGE BOOK 465, PAGE 134

lot #18 Palmetto air plantation
FOR PARTIAL RELEASE OF MORTGAGE, RECORDED
7/6/07 SEE MTGE BOOK 754, PAGE 224

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lot #17 Palmetto air plantation
FOR PARTIAL RELEASE OF MORTGAGE, RECORDED
7/6/07 SEE MTGE BOOK 754, PAGE 223

lot 16 Palmetto Air Plantation
FOR PARTIAL RELEASE OF MORTGAGE, RECORDED
11/14/17 SEE MTGE BOOK 465, PAGE 123

lot #19 (1.52 acres)
FOR PARTIAL RELEASE OF MORTGAGE, RECORDED
5/4/07 SEE MTGE BOOK 746, PAGE 80

TOGETHER with all and singular the rights, members, hereditaments, and appurtenances to the said premises belonging or in any wise incident or appertaining.

TO HAVE AND TO HOLD all and singular the said premises unto mortgagee, its successors and assigns in fee simple forever. Mortgagor hereby binds himself, his heirs, executors, administrators, successors and assigns, to warrant and forever defend all and singular the said premises unto the mortgagee, its successors and assigns, from and against mortgagor, his heirs, executors, administrators, successors and assigns, and all other persons whomsoever lawfully claiming or to claim the same or any part thereof.

PROVIDED ALWAYS, NEVERTHELESS, and it is the true intent and meaning of the parties to these presents, that if mortgagor shall well and truly pay, or cause to be paid unto mortgagee, its successors or assigns, the total indebtedness secured hereby, with interest thereon as aforesaid, and shall perform all terms, conditions and covenants according to the true intent of said note, any other instrument above referred to and this mortgage and any other instrument securing said note or other instrument above referred to, all of which are hereby made a part hereof, then this mortgage shall cease, determine, and be utterly null and void; otherwise it shall remain in full force and effect.

For the consideration aforesaid, mortgagor covenants as follows:

1. Mortgagor is lawfully seized of said property in fee simple and has a perfect right to convey same; there are no encumbrances or liens whatsoever on said property except this mortgage unless otherwise stated on the face hereof.

2. Mortgagor will insure, and keep insured as required by mortgagee from time to time, all buildings now and hereafter on said land against such risks, in such forms, in at least such amounts, and in such company or companies as shall be satisfactory to mortgagee, the loss, if any, to be payable to mortgagee as its interest may appear and will deliver to mortgagee a policy or policies of insurance with mortgage clause satisfactory to mortgagee attached thereto, and will promptly pay when due all premiums for such insurance. At the option of mortgagor, insurance funds may be used for reconstruction or repair of the destroyed or damaged insured buildings and insurance funds not so used shall be applied on such part of the indebtedness secured hereby as mortgagee in its sole discretion may determine.

3. Mortgagor will pay, when due and payable, all taxes, assessments and other charges that may be levied or assessed against said property, and all judgments and all other amounts that may be or become a lien thereon.

4. Mortgagor will keep in good order and condition, preserve, and repair, rebuild and restore all terraces, buildings, groves, orchards, fences, fixtures, shrubbery and other improvements, of every kind and nature, now on said land and hereafter erected or placed thereon that may be destroyed or damaged by fire, windstorm or otherwise, and will not permit the change, injury or removal thereof, will not commit or permit waste on said land, and will not, except with the written consent of mortgagee cut, use or remove, or permit the cutting, use or removal of, any timber or trees on said land for sawmill, turpentine or other uses or purposes, except for firewood and other ordinary farm purposes. Mortgagor will also preserve and keep in good order and condition all trees and timber now and hereafter growing upon the said property and will at all times properly protect the trees and timber against loss or damage by fire, all to the satisfaction of the mortgagee.

5. Mortgagor covenants that he will not perform any act which might impair or tend to impair the continuation on the property herein described of all crop allotments and acreage allotments now established or hereafter established on any of the property herein described.

6. Time is of the essence of the above recited note, of this instrument and of any other instrument secured hereby. If mortgagor fails to comply with any covenant, condition or agreement in this instrument or in the said note or in any reamortization, renewal, deferment or extension agreement or in any other instrument secured hereby, mortgagee may, at its option, exercise any one or more of the following rights, powers, privileges and remedies:

(a) Perform any one or more of the covenants of mortgagor in this instrument, in the said note, and in any other instrument secured hereby, and all amounts advanced by mortgagee in doing so shall be due and payable by mortgagor to mortgagee immediately without notice, and shall be secured by this instrument, and shall bear interest from the date of advance by mortgagee at the highest rate provided in any note or other instrument secured hereby.

(b) Declare all amounts secured by this instrument immediately due and payable without notice.

(c) Proceed immediately to foreclose this mortgage, and pursue such other remedies as may be authorized by law.

7. Mortgagor represents and declares as a condition hereof and as a part of the consideration for the indebtedness secured hereby that he does hereby waive and renounce for himself, his heirs, administrators, executors, successors and assigns, all rights that now exist or that may hereafter exist under the laws of the State of South Carolina to require an appraisal of the property herein described before or after the foreclosure sale thereof, and agrees to pay the full amount of the indebtedness secured hereby, and the full amount of the deficiency in the payment thereof that may be established by the foreclosure sale of the property herein described, without requiring an appraisal of the property herein described, either before or after the foreclosure sale thereof, and without any defense or set-off because of the alleged true value of said land, or for any other reason.

8. As further security for the payment of the note herein described, all other indebtedness secured hereby, and for the performance of all the terms, conditions and covenants of said note, of any other instrument secured hereby and of this mortgage, mortgagor hereby transfers, assigns, and sets over to mortgagee all of the crops sown or growing upon the said mortgaged premises at the time of filing suit for foreclosure hereof and thereafter and all of the rents, issues and profits of the said mortgaged premises unpaid and uncollected at the time of filing suit for foreclosure hereof, and thereafter, and upon filing suit for foreclosure, or at any time thereafter, mortgagee shall be entitled to have a receiver appointed to take charge of the said mortgaged premises and the crops sown or growing thereon, together with the said rents, issues and profits arising therefrom and hereby assigned, and hold the same subject to the order and direction of the court.

9. In the event the undebtedness secured hereby, or any part thereof, is established by or in any action for foreclosure of this mortgage, mortgagee may also recover of mortgagor, in addition to the said debt or so much thereof as shall be unpaid, a reasonable sum for the attorney of mortgagee for professional services rendered in such action, not less than ten percentum of the amount of principal, interest and all advances made or liens paid by mortgagee under the terms hereof then unpaid, such fee to be incorporated in the judgment of foreclosure in such action.

10. Mortgagor shall hold and enjoy the said premises until default in payment of any of the installments as provided in the above recited note or other instrument secured hereby, or a breach of any of the covenants or conditions of the above recited note or other instrument secured hereby, or this mortgage shall be made; however, any agent or employee of mortgagee or any person designated by mortgagee may enter upon said premises at any time for the purpose of inspecting same or for any other purpose desired by mortgagee.

11. All amounts that may hereafter be awarded for condemnation of and waste and tortious injury to any of the property hereby encumbered are hereby assigned and shall be payable unto mortgagee for application, after payment therefrom of attorney's fees and expenses incurred by mortgagor and by mortgagee in connection therewith, on such part of the indebtedness secured hereby as mortgagee may determine, with no duty on mortgagee to collect same.

12. In the event mortgagee becomes a party to any legal proceeding (excluding an action to foreclose this mortgage or to collect the debt hereby secured), involving this mortgage or the premises described herein (including but not limited to the title to the lands described above), mortgagee may also recover of mortgagor all costs and expenses reasonably incurred by the mortgagee, including a reasonable attorney's fee, which costs, expenses and attorneys' fee when paid by mortgagee shall become a part of the debt secured hereby and shall be immediately payable upon demand, and shall draw interest from the date of advance by mortgagee until paid at the highest rate provided in any note or other instrument secured hereby.

13. Mortgagor agrees as a condition hereof that all obligations, assignments, releases of real property and/or personal liability, reamortizations, renewals, deferments, extensions or any other agreement, in writing, made by any one or more of the parties herein designated as mortgagor with mortgagee are hereby authorized and consented to by all parties herein designated as mortgagor and shall extend to and be binding upon the heirs, executors, administrators, successors and assigns of all the parties herein designated as mortgagor.

14. Mortgagor agrees as a condition hereof that if a conveyance, lease or other disposition should be made voluntarily by mortgagor (or by any one or more of the parties designated herein as mortgagor) of any title or interest in and to the real property described above, or any part thereof, without the written consent of the lawful holder of this mortgage, or if such title or interest of mortgagor (or of any one or more of the parties designated herein as mortgagor) is involuntarily conveyed or transferred as the result of foreclosure of a junior lien or is required under court order or decree as the result of litigation (conveyance or transfer of title or interest resulting from death of mortgagor, or any of the mortgagors, if more than one, excepted) without the written consent of the lawful holder of this mortgage, then and in either of said events, and at the option of said holder, and without notice to the mortgagor, all sums of money secured hereby shall become due and payable and in default immediately and concurrently with such conveyance, transfer, lease or other disposition, whether the same are so due and payable and in default by the specific terms hereof or not.

15. Mortgagee shall have the right, exercisable at its discretion so long as this mortgage is in force and effect, to demand in writing the assignment of and transfer to mortgagee, its successors and assigns, and mortgagor hereby agrees to so assign and transfer any and all rents, profits, royalties, income or other consideration to be paid or accruing to mortgagor from any oil, natural gas, mineral, timber, leasehold or other interest of any kind and nature whatsoever, derived from, connected with or affecting the within described real property but not otherwise subject to, conveyed and/or secured by this mortgage, with the right of, but no duty upon, mortgagee, its successors or assigns, to collect same.

16. Mortgagor will comply with all the terms and conditions of any instrument heretofore or hereafter executed by mortgagor in connection with the loan(s) secured by this mortgage.

17. If mortgagor (or either of them, if more than one), his heirs, successors or assigns, or any assumer of the indebtedness hereby secured, files a petition in voluntary bankruptcy, for receivership, for corporate reorganization or for other debtor relief of any character or kind, or is adjudged a bankrupt, then and in the event, and at the option of the mortgagee, its successors and assigns, the mortgagee, without notice to the mortgagor, shall have the right to declare all sums of money secured hereby immediately due and payable and in default whether the same are so due and payable and in default by the specific terms hereof or not.

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18. A default under this instrument or under any other instrument heretofore or hereafter executed by mortgagor to mortgagee shall at the option of mortgagee constitute a default under any one or more or all instruments executed by mortgagor to mortgagee.

IN WITNESS WHEREOF, mortgagor has hereunto set his Hand and Seal (and if mortgagor is or includes a corporation, it has caused this instrument to be executed, sealed by its corporate seal and delivered by its duly authorized officers.)

this 8TH day of FEBRUARY, 2002, 20

Signed, Sealed and Delivered
In the Presence of:

PALMETTO AIR PLANTATION, LLC

BY: _____ (Seal)
JOSEPH M. WITT, MANAGING MEMBER

_____ (Seal)

_____ (Seal)

STATE OF SOUTH CAROLINA,
County of }

Personally appeared before me and made oath that he saw the within-named sign, seal and as act and deed deliver the within mortgage; and that he, with witnessed the execution thereof.

SWORN to and subscribed before me this day of , 20

_____ (L. S.)
Notary Public for South Carolina.
My Commission Expires _____

STATE OF SOUTH CAROLINA,
County of CLARENDON }

Personally appeared before me THE UNDERSIGNED , and made oath that S/he saw the with-named PALMETTO AIR PLANTATION, LLC., A LIMITED LIABILITY COMPANY ~~Corporation~~, by JOSEPH M. WITT , as its MANAGING ~~MEMBER~~ and MEMBER ~~for~~ for and as the act and deed of the said LIMITED LIABILITY COMPANY ~~Corporation~~, sign, seal and deliver the within mortgage, and that S/HE with THE SECOND WITNESS SUBSCRIBED TO ABOVE , witnessed the execution thereof.

SWORN to and subscribed before me this 8TH day of FEBRUARY , 2002

_____ (L. S.)
Notary Public for South Carolina
My Commission Expires: 2/24/07

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The State of South Carolina

Office of Secretary of State Mark Hammond

Certificate of Existence

I, Mark Hammond, Secretary of State of South Carolina Hereby Certify that:

PALMETTO AIR PLANTATION HOMEOWNERS ASSOCIATION, INC., a nonprofit corporation duly organized under the laws of the State of South Carolina on June 2nd, 2004, has as of the date hereof filed as a nonprofit corporation for religious, educational, social, fraternal, charitable, or other eleemosynary purpose, and has paid all fees, taxes and penalties owed to the State, that the Secretary of State has not mailed notice to the company that it is subject to being dissolved by administrative action pursuant to S.C. Code Ann. §33-31-1421, and that the nonprofit corporation has not filed articles of dissolution as of the date hereof.

Given under my Hand and the Great Seal of the State of South Carolina this 15th day of February, 2023.

Mark Hammond

Mark Hammond, Secretary of State

Palmetto air Plantation

Used to Deceive Formation

August 18, 2004

Dear Neighbors,

On September 4th at 10:00 a.m., we will hold the organizational meeting of the Palmetto Air Plantation Homeowner's Association LLC at my hanger, where we will be electing the initial officers.

I've enclosed a copy of the Bylaws for the Association for your review. Please take time to carefully read this document and give me a call if you have any questions/concerns as soon as possible, so that I might have time to discuss with our attorney any proposed revisions.

I'm looking forward to seeing all of you again, and hope you'll be able to be there on the 4th.

Sincerely,

Joe

JMW/ket

Palmetto Air Plantation LLC
Post Office Box 777
Manning, South Carolina 29102
(803) 473-2199
Fax: (803) 473-4407

www.palmettoairplantation.com
E-mail: joewitt@palmettoairplantation.com

BY-LAWS
OF
PALMETTO AIR PLANTATION HOMEOWNERS ASSOCIATION, INC.
(A corporation not for profit under the laws of the State of South Carolina)

1. Identity:

These are the By-Laws of Palmetto Air Plantation Homeowners Association, Inc., a non-profit corporation existing under the laws of the State of South Carolina, which has been organized for the purpose of maintaining **Palmetto Air Plantation Subdivision** which is reflected on a plat of the subdivision made by DuValle W. Elliott, RLS, dated 11 April, 2002, designated as Clarendon Tax Map Parcel No. 140-00-05-065-00, which common areas may be conveyed by the developer, Mid-Eastern Truckwash, Inc. to the Homeowners Association and dedicated to the common use and enjoyment of the owners, their families, guests, tenants, employees and invitees.

2. Association Responsibility for Common Areas - Subject to the rights of the Owners set forth in the Declaration of Covenants, Conditions and Restrictions of the Subdivision, the Association shall be responsible for the management and control of the common areas (including equipment related thereto) and shall keep them in good, clean and attractive condition and repair consistent with the requirements of the FAA regarding the landing strip and a first class residential area pursuant to the terms and conditions of the Declarations.

3. Membership - Every Lot Owner, by virtue of being an Owner and for as long as he or she is an Owner, shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. No Owners, whether one or more persons, shall have more than one membership per Lot owned, but all of the persons owning each Lot shall be entitled to rights of membership and of use and enjoyment appurtenant to such ownership.

4. Classes of Membership - The Association shall have two (2) classes of voting members as follows:

Class A. Class A members shall be all Owners of Lots as shown on the plat previously referenced with the exception of the Developer/Declarant and shall be entitled to one vote for each lot owned. When more than one person holds an interest in any lot, all such persons shall be members. The vote for such lot shall be exercised as the Owners among themselves

determine, and the Secretary of the Association shall be notified of such designation prior to any meeting. In the absence of such notification, the vote allocated to the lot shall be suspended in the event more than one person or entity seeks to exercise the right to vote. Furthermore, in no event shall more than one vote be cast with respect to any lot and the vote may not be split into fractions or percentages but shall be cast as one whole vote.

Class B. The Class B members shall be the Developer/Declarant and shall be entitled to four (4) votes for each lot owned by it. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

a) When the total votes outstanding in Class A membership equal the total votes outstanding in Class B membership; or

b) Fifteen years from the date of these Covenants.

Any agent with written authorization from the Declarant shall be permitted to attend and cast all votes in behalf of the Declarant at any regular or special meeting of Palmetto Air Plantation Homeowners Association.

5. Meetings - Notice must be given to all lot owners in writing at least seven (7) days prior to any regular or special meeting of the Homeowners Association. The Secretary shall maintain a roster of all lot owners and their addresses for the furnishing of notice hereunder. It shall be the responsibility of each lot owner to notify the Secretary of any change in their mailing address. Notice given by the Secretary to the last known address furnished by Clarendon County Tax Assessors Office or any change thereto provided by the owner shall constitute compliance with this section as sufficient notice. A quorum of not less than fifty-one (51%) percent of eligible votes shall be required to conduct business at any meeting of the Homeowners Association. Any Owner of a lot which is leased may assign his voting right to the tenant, provided that a copy of the instrument of assignment is furnished to the Secretary of the Association at least twenty four (24) hours before any regular or special scheduled meeting of said Homeowners Association. Any such proxy filed with the Secretary, shall be open for public inspection and shall be retained in the files of said Homeowners Association and attached to and become a part of the minutes of that meeting.

6. Compliance With Document - Each Owner shall abide by and benefit from the provisions of the Declarations of Covenants, Conditions and Restrictions of Palmetto Air Plantation, recorded in the Office of the RMC for Clarendon County on 11 July, 2001 in Deed Book A-444 at Page 26 and these By-Laws.

7. Rules and Regulations - The Association from time to time and subject to the provisions of the Declarations of Covenants, Conditions and Restrictions of Palmetto Air Plantation may adopt, amend and repeal rules and regulations, to be known as the "Association Rules", governing among other things and without limitations:

a) The use of roads and easements;

b) The use and maintenance of the landing strip;

c) Collection and disposal of garbage and trash;

d) The burning of open fires;

e) The control of animals;

f) Parking restrictions and limitations;

g) The posting of maximum speeds for vehicular traffic and other traffic rules;

h) Establishment of times or other restrictions when commercial vehicles may be permitted to use any or all of the roads;

i) The types of vehicles (other than conventionally equipped passenger automobiles) and the times when any vehicle or motorized vehicle or device may be permitted to use the roads within Palmetto Air Plantation or any other area of the property;

j) A schedule for fines for infractions of the Association Rules or project documents.

j) A copy of the Association Rules in effect shall be distributed to each Member of the Association, and any changes in the Association Rules shall be distributed to each Member within a reasonable time following the effective date of the change.

8. Assistance to Architectural Control Committee - The Association shall in all respects cooperate with and assist the Architectural Control Committee in the attainment of the Architectural Control Committee functions and in the enforcement of the Architectural Guidelines, rules and regulations as more particularly defined in Article III of the Declaration of Covenants, Conditions and Restrictions.

9. Books and Records - The Association shall make available for inspection, upon request, during normal business hours or under other reasonable circumstances, to Owners and Mortgagees current copies of the Association Documents and the books, records and financial statements of the Association prepared pursuant to the By-Laws. The Association may charge a reasonable fee for copying such materials.

10. Successors of Declarant/Developer - The Association shall succeed to all the rights, duties and responsibilities of the Declarant/Developer under this Declaration upon the termination of the Class B membership in accordance with the above provisions. The Association may delegate any such rights, duties and responsibilities to the Architectural Control Committee or any other committee or entity which it may choose to form.

11. Annual and Special Meetings of the Membership -

(a) The annual members meeting shall be held at Palmetto Air Plantation or such other place as may be designated by the Board of Directors at 10:00 A.M. on the ___ day of _____ of each year for the purpose of electing Directors and transacting any other business authorized to be transacted by the Members. PROVIDED HOWEVER, that if that date is a legal holiday the meeting shall be held at the same hour on the next succeeding Saturday;

b) Special Meetings - Special Members' Meetings shall be held whenever called by the President or Vice-President or by a majority of the Board of Directors, and must be called by such officers upon receipt of a written request from three (3) Members of the Association owning a majority of the dwellings.

c) Notice of Meetings - Notice of all Members' meetings, regular or special, shall be given by the President, Vice-President, or Secretary of the Association, or other officers of the Association in the absence of said officers to each member, unless waived in writing, such notice to be written and to state the time, place and object for which the meeting is called. Such notice shall be given to each Member not less than ten (10) days nor more than sixty (60) days prior to the date set for such meeting. If any Members meeting cannot be organized because a quorum has not been attended, or the members who are present, either in person or by proxy, may adjourn

the meeting until the required percentage of attendance constituting a quorum, is present.

d) At meetings of membership, the President shall preside or in the absence of him or her, the membership shall select a chairman.

e) The order of business at the Annual Members' Meetings and as far as practical, at any other members' meeting shall be:

i) Calling of the roll and certifying of proxies;

ii) Proof of notice of meeting or waiver of notice;

iii) Reading of Minutes;

iv) Reports of Officers;

v) Reports of Committees;

vi) Appointment of Chairman of Inspectors of Election;

vii) Election of Directors;

viii) Unfinished business;

ix) New business;

x) Adjournment.

12. Board of Directors:

(A) The Homeowners Association shall be governed by a Board of Directors of five (5) members elected by a majority of the members of the Homeowners Association. The Board of Directors will elect a Secretary from its membership. All Board members shall serve without compensation except the Secretary who shall be compensated as determined by the Board of Directors. A quorum of the Board necessary to conduct business shall consist of at least half of the members present.

(B) The first Board of Directors of the Association and succeeding Boards of Directors, shall consist of five (5) persons. At least a majority of the Board of Directors shall be members of the Association, or shall be authorized representatives, officers, or an employee of a corporate member of the Association.

(C) All members of the Board of Directors entitled to be designated under the terms of this provision of these By-Laws shall be elected by a plurality of the votes cast at the Annual Meeting of the Members of the Association.

(D) The first Annual Meeting of the Members the term of the Officers of the three (3) Directors receiving the highest plurality of votes shall be established at two (2) years and the term of office of the other two (2) Directors shall be established at one (1) year. Thereafter, as many Directors of the Association shall be elected at the Annual Meeting as there are regular terms of office of the Directors expiring at such time.

(E) Meetings of the Board of Directors shall be held at such time and place as shall be determined from time to time by majority of the Directors.

(F) Special meetings of the Directors may be called by the President and must be called by the Secretary at the written request of one-third of the votes of the Board.

(G) A quorum at the Directors' meeting shall consist of the Directors entitled to cast the majority of the votes of the Board.

(H) The Board of Directors shall manage and direct the affairs of the Association and subject to any restrictions imposed by law, or the Declaration of Covenants, Conditions and Restrictions or these By-Laws and may exercise all of the powers of the Association subject only to approval by the Owners when such is specifically required of these By-Laws. The Board of Directors powers shall include, without limiting the generality of the foregoing, the following:

i) To make, levy and collect assessments against members and to use the proceeds of said assessment and to exercise the use of their powers and duties granted unto the Association;

ii) To maintain, repair, replace and the management of the common areas of the facility wherever the same is required to be done and accomplished by the Association for the benefit of the members;

iii) To comply with directives of the FAA regarding the landing strip;

iv) To contract for the management of the common areas and facilities;

v) To enforce by legal means the provisions of the Articles of Incorporation, the By-Laws of the Association and the Declaration of Covenants, Conditions and Restrictions and the regulations hereinafter promulgated governing the use of common property and the run-way in the subdivision;

not legally formed

vi) To pay all taxes and assessments which may become liens against any part of the common areas and to assess the same against the Members and their respective lots;

vii) To carry insurance for the protection of the Members and the Association against casualty and liability;

viii) To pay all costs of power, water, sewer or other utility services rendered to the subdivision and not billed to individual residences;

ix) To employ personnel for reasonable compensation to perform the services required for the proper maintenance of the common areas;

x) Directors may be removed from office in the manner provided by law for the removal of Directors of South Carolina corporations for profit.

13. Fiscal Management - The provisions for the fiscal management of the Association set forth in the Declaration of Covenants, Conditions and Restrictions shall be supplemented by the following provisions:

a. The assessments rolls shall be maintained in a set of accounting books in which there shall be an account for each lot owner. Such account shall designate the name and address of the owner, the amount of each assessment against the owner and the amount paid upon the account and the balance due;

b. The Board of Directors shall adopt a budget for each calendar year which shall contain estimates of the cost of performing the functions of the Association, including but not limited to the following items:

(1) Common expense budgets which shall include maintenance and operation of the common elements, landing strip (run-way), landscaping, streets, utility services, casualty insurance, liability insurance and reserves (operating and replacement);

(2) Proposed assessments against each Member;

(3) Copies of the proposed budget and proposed assessments shall be transmitted to each Member on or before 1 January of each year for which the budget is made.

(4) The Board of Directors shall determine the method of payment of such assessments and the due dates thereof and shall notify the Members thereof.

14. Amendments to By-Laws - Amendments to these By-Laws shall be proposed and adopted in the following manner:

(a) Amendments to these By-Laws may be proposed by the Board of Directors of the Association acting on a vote of the majority of the Directors or by Members of the Association having a majority vote of the number of lots in the subdivision, whether meeting as Members or by instruments in writing signed by them;

(b) Upon any amendment or amendments to these By-Laws being proposed by the Board of Directors or Members, such proposed amendments shall be transmitted to the President of the Association who shall then call a Special Meeting of the Members of the Association for a date not sooner than twenty (20) days or later than sixty (60) days from receipt by such Officer of the proposed amendment or amendments. The Secretary shall give to each Member written or printed notice of such meeting in the same form and in the same manner as notice of the call of a Special Meeting of the Members;

(c) In order for such amendment to become effective, the same must be approved by an affirmative vote of fifty one percent (51%).

15. Conflicts - In the event of any conflict between the provisions of the Declaration of Covenants, Conditions and Restrictions and the provisions of these By-Laws, the provisions of the Declaration of Covenants, Conditions and Restrictions shall control.

The foregoing were adopted as the By-Laws of Palmetto Air Plantation Homeowners Association, Inc., a corporation not for profit under the laws of the State of South Carolina at the first meeting of the Board of Directors on _____ _____, 2004.

_____ (L.S.)
Secretary

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) THIRD JUDICIAL CIRCUIT
COUNTY OF CLARENDON) CIVIL ACTION NO.: 2017-CP-14-00127

Palmetto Air Plantation Homeowners Association, Inc.,	
Plaintiff,	DEPOSITION OF KIM E. BEVIER
vs.	April 4, 2018
Kim E. Bevier,	
Defendant.	

Deposition of KIM E. BEVIER, taken by Doris Tompkins Brown, Certified Verbatim Reporter and Notary Public in and for the State of South Carolina, commencing at 10:17 A.M. on April 4, 2018, at the offices of Coffey, and McKenzie, 2 North Brooks Street, Manning, South Carolina.

APPEARANCES

FOR THE PLAINTIFF: Steven S. McKenzie
Coffey and McKenzie
Post Office Box 1292
Manning, South Carolina

FOR THE DEFENDANT: Thomas E. Player, Jr.
Player and McMillan
Post Office Drawer 3690
Sumter, South Carolina

Doris Tompkins Brown

COPY

Certified Verbatim Reporter
Post Office Box 653
Sumter, South Carolina 29151
(803) 499-2434

COPY

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* * * * *

(COURT REPORTER'S NOTE: --- INDICATES INTERRUPTION, INCOMPLETE PHRASE, TRAILING OFF, INCOMPLETE SENTENCE)

The deposition of Kim E. Bevier is being taken pursuant to agreement and in accordance with the South Carolina Rules of Civil Procedure and Amendments as adopted by the Supreme Court which shall control the taking of said deposition and its use thereof.

Counsel, with the specific consent of the witness, waives the reading and signing of the deposition prior to the time it is filed with the Court.

(Kim E. Bevier, having been duly sworn, testifies as follows:)

EXAMINATION BY MR. McKENZIE:

Q. Mr. Bevier, again, I hope I don't butcher your name a whole lot during this thing, but as you know, I'm Steve McKenzie. I represent Palmetto Air Plantation in a lawsuit that has been brought against you in the Clarendon County Court of Common Pleas. Have you ever had your deposition taken before?

A. I have.

Q. Okay. So, you understand that this lady, Ms. Brown, beside me is taking down everything that we say verbatim?

A. Yes.

Q. And she needs to get a clean record; so, it's -- if you could give us a affirmative response as opposed to a some type of gesture of the body, a headshake or a

wave or whatever, we need some type of affirmative response. Sometimes yeses or nos are a good answer. Okay. But she needs to be able to take down -- it's very difficult for her take down responses that are not verbal. Do you understand that?

A. Sure.

Q. Okay. All right. You are Mr. Bevier. Am I pronouncing that ---

A. I'm one of them, yes.

Q. Okay. Okay. And you are the Defendant in this action?

A. Yes.

Q. Okay. And what is your current residence?

A. 1144 Mullett Drive, Manning.

Q. Okay. How long have you lived there?

A. It's about two and a half years now I moved down.

Q. Okay. Who do you live there with?

A. My wife.

Q. What is her name?

A. Ann Teresa Gaynor Bevier.

Q. Bevier?

A. That's how she pronounces it.

Q. Okay. All right. And that's how I pronounced it before this, too, but -- all right. So, is she a titled owner on the property?

A. No.
Q. **Okay. You are the only titled owner?**
A. That's correct.
Q. **And I think that you had a late wife who passed ---**
A. She did. She died in 2013.
Q. **2013. Okay. And she was currently on the Deed also; is that correct?**
A. Yes. Uh-huh (affirmative response).
Q. **Okay. And I think you guys were joint tenants with right of survivorship?**
A. Uh-huh (affirmative response).
Q. **Is that a yes?**
A. I filed her Death Certificate at the courthouse. I gave them notice and all of that.
Q. **Okay.**

MR. PLAYER: Kim, if you would say yes or no rather than uh-huh. It's hard for her to distinguish ---

MR. McKENZIE: Yeah.

MR. BEVIER: I'm sorry.

MR. PLAYER: -- between the two. Okay?

MR. BEVIER: Okay.

Q. **Yeah.**

MR. BEVIER: Just stop and hit me or something.

Q. And we will -- and if I do that during the course of this, if you say uh-huh, I'll -- I may ask you for a response. I'm not being rude.

A. I understand.

Q. I'm just trying ---

A. Not a problem.

Q. -- to get the record clear. Okay?

A. Not a problem.

Q. So, you and -- and she were -- bought the property -- when did you buy the property?

A. 2003, as I recall.

Q. Okay. And who did you buy the property from?

A. Palmetto Air Plantation, LLC.

Q. And do you know who handled the closing for you and Palmetto Air Plantation?

A. I think it was your former partner.

Q. Okay.

A. Coffey.

Q. I hand you a letter dated May 21st, 2003. Do you recognize that letter?

A. Yeah. I mean, I don't -- I think it's a valid letter if that's what you're asking me.

Q. Do you recall receiving that letter?

A. No, not especially.

Q. Okay.

A. I mean, it's been, what, fifteen (15) years now.

Q. Okay. Do you have any reason to doubt that you did not receive that letter?

A. No, I do not.

MR. PLAYER: We'll stipulate it.

MR. McKENZIE: Okay. We'll move this in as Plaintiff's Defendant -- Plaintiff's Exhibit Number One.

COPY OF LETTER DATED 5/21/03 MARKED PLAINTIFF'S EXHIBIT NUMBER ONE.

Q. Can you -- have you read the letter?

A. Yes.

Q. Okay. Paragraph One of the letter talks about Restrictive Covenants?

A. Uh-huh (affirmative response).

Q. Do you see that?

A. Yes, I do.

Q. And it says apparently you -- you and your wife, Kim, ---

A. No.

Q. I'm sorry.

A. Here's where you need to do your homework a little bit. My wife's name was Sue. My name is Kim.

Q. Okay. Sorry. All right. So, "To meet Kim on Tuesday." Okay. Apparently, Mr. Coffey may have had

that wrong. He meant -- meet you and Kim or you -- Kim and you, I guess?

A. I don't know.

Q. You don't know. Okay. It's -- the letter speaks for itself. Mr. Coffey talks about the fact that he met you on Tuesday ---

A. Uh-huh (affirmative response).

Q. -- concerning your purchase of lots at Palmetto Air Plantation?

A. Uh-huh (affirmative response).

Q. Is that yes?

A. Yes, it is. I'm sorry.

Q. Okay. Apparently, you and your wife had questions about the Restrictive Covenants?

A. I don't really remember if Susan did or not, and I -- I don't remember if I did what they were.

Q. Okay.

A. It's just too long ago.

Q. Okay. But were you aware of Restrictive Covenants when you bought the lot?

A. I was aware. I was advised that there were Restrictive Covenants, yes.

Q. Were you provided Restrictive Covenants or a copy of the Restrictive Covenants?

A. I think I was told I could get them On-line.

Q. Okay. Did you go On-line and look for them?
A. Yes.
Q. Okay. And did you print those off or did you have them in your possession?
A. I don't think I had ever printed them off until just this past year.
Q. Okay. All right. I hand you a copy of the Restrictive Covenants.

COPY OF RESTRICTIVE COVENANTS
MARKED PLAINTIFF'S EXHIBIT NUMBER TWO.

Q. And I've handed you a copy of the Restrictive Covenants and I've marked them Plaintiff's Exhibit Number Two for identification purposes right now, but is this a copy of the Restrictive Covenants that you would have printed off-line?
A. No.
Q. It's not?
A. It is not.
Q. Okay. I'll refer you down to the bottom of the page.
A. Yeah.
Q. It is the book and page where they are recorded in the Clarendon County RMC Office. Do you see that at the bottom of the page?
A. Do you have a memo on the front of this or something?
Q. It's like ---

A. Let me get past that and past your plat which didn't exist at the time the Covenants were filed.

MR. PLAYER: Steve, I think you have attached to this just for the record the 2009 Amendments ---

MR. McKENZIE: Yeah, there's a -- there's a First Amendment, too. You all can go through that, too, but it's -- they're all encompassing. They amended -- they amended these Covenants.

MR. PLAYER: Right.

MR. McKENZIE: And I will ask him about that, too.

MR. PLAYER: Okay.

A. Okay. After that, beginning on about the one, two, three, four, fifth page of what you handed me, I recognize what was On-line.

Q. The fifth page?

A. Yeah, I think it's the fifth page out of what you handed me.

Q. Okay. And the fifth page, it starts -- the first page is the Declaration and the -- and the fifth page actually starts the Covenants and the -- and the Restrictions. Do you see that? And that is probably what you're talking about.

A. Well, ---
Q. **And it's in -- it's in D Book ---**
A. I'm talking about this page right here is what I recognize ---
Q. **Okay.**
A. -- as the first page of the Covenants that I saw On-line.
Q. **Okay.**
A. And it says that MidEastern Truck Wash is the Declarant.
Q. **Well, let's do this so you'll be more familiar with it. I will take this off and we'll re-mark this and we'll just take the -- anything off that you don't recognize. I'll also take the -- the Amendment to it back. I don't think that really is any pertinent part of this anyway.**

MR. PLAYER: Steve, we can stipulate that that's what's recorded as ---

MR. McKENZIE: Okay.

MR. PLAYER: -- as indicated on this ---

MR. McKENZIE: Okay.

MR. PLAYER: -- and the notation of where it's recorded in Clarendon County.

MR. McKENZIE: I'm going to mark -- I'm just going to mark the part of that's the Declaration

of Covenants, Conditions and the Restrictions that -- it's at D Book 444, Page 26 at the RMC Office marked at the bottom. You'll see about the fifth page in, Tommy. I can correct that for you.

MR. PLAYER: 226?

MR. McKENZIE: Yeah. You'll see ---

MR. PLAYER: 226 is ---

MR. McKENZIE: Let me correct yours. I'll pull out -- that's the part that Mr. ---

MR. PLAYER: I'm fine with that, Steve.

MR. McKENZIE: Okay.

MR. PLAYER: I'm not going to ---

MR. McKENZIE: The part that he had heartburn with ---

MR. PLAYER: No ---

MR. McKENZIE: -- I'll take that out.

There you go.

Q. All right. We -- what we have done, Mr. Bevier, is, we have marked on the Restrictive Covenants or we've taken out the first three pages which started -- which was the Declaration of Restrictive Covenants which started at -- at or is filed at D Book 435, starting at Page 223 and then the Declarations themselves and Covenants are in D Book 444, Page 26, which is where

you -- what you are familiar with and what you recognize; is that correct?

A. This is what I -- what I have here in my hand marked Exhibit Two is what I have seen On-line. That's my only -- I think I pulled up a copy of these with the County's On-line system, but I've never seen this other -- other pages that you had at the beginning of it.

Q. Okay. And I want you to be -- what you're familiar with, and so, ---

A. Uh-huh (affirmative response).

Q. -- and you will see that on the first page; it actually is dated the 11th of July 2001?

A. Yes, I see that.

Q. And I think you purchased this property on May 21st, 2003 or around the time frame?

A. Pretty close.

Q. Okay. Why did you purchase this property?

A. Because I wanted to live on an airport.

Q. Okay. And did you -- you wanted to live on an airport; you wanted to live in a restricted community?

A. No, that was not my objective to live in a restricted community. It was my objective to live on a -- in a nice place on an airport and build a retirement home ---

Q. Okay.
A. -- for my wife and I at the time.
Q. All right. So, you -- when you -- as we've discussed in Exhibit One, you had apparently met with Mr. Coffey, and -- and the letter speaks for itself and you discussed Restrictive Covenants with him?
A. I don't remember what was discussed ---
Q. Okay.
A. -- or if it was discussed.
Q. Okay.
A. To be honest.
Q. Okay.
A. I may have said something to him about the Covenants; I don't know. And unless -- unless he's got some notes somewhere he left for you after he retired, I don't know what was discussed.
Q. Okay. Can you read the second paragraph into the record for me of the Restrictive Covenants? Starting with "Whereas".
A. "Whereas the Declarant is the owner of a tract of land located south of the right of way of US Highway 301 between the city of Manning and Interstate Highway 95. The property contains approximately forty-five (45) lots, private access roads. FFA approve runway measuring approximately a hundred and fifty (150) feet

by Thirty-seven twenty (3,720) feet and forty-five (45) residential lots being a portion of Clarendon County Tax Map Parcel Number 223-00-02-005, all of which shall be reflected on a plat of the subdivision prepared by DuValle W. Elliott, which shall be reflected on a plat of the subdivision prepared by DuValle W. Elliott. The Declarant's purpose is to develop a community for aviation enthusiasts that promotes peaceful living, protects investments and provides the use of a private one-way gated entrance and common areas for the benefit -- for the benefit all owners." There's some ---

Q. It should have been "Of all owners".

A. There's some misspellings and some incorrect syntax in there.

Q. Right. But so, your understanding of that paragraph is that this is a gated -- it's a gated community for aircraft enthusiasts?

A. Yes.

Q. Okay. And that is what you were looking for?

A. Yes.

Q. Okay. Now, at some point in time I think you built a hangar for an airplane; is that correct?

A. Well, I built a hangar and a workshop, but that was after I built the house.

Q. Right. But did you -- did you have to get that hangar approved by the Clarendon County Planning Commission?
A. My understanding -- no. My understanding at the time was that all I needed approval on was Joe signing off as Architectural Control Committee.
Q. Right.
A. Okay?
Q. And did he do that?
A. Sure.
Q. Okay. And were you aware of the Agricultural Control or Architectural Control Committee ---
A. I had read that in the Covenants.
Q. Okay. So, that is established pursuant to the Covenants?
A. It's in the Covenants.
Q. Okay.
A. Uh-huh (affirmative response).
Q. Is it any -- is it anywhere else?
A. About the Architectural Control Committee?
Q. Right. Right.
A. As far as I know, no; I haven't read anything else about that.
Q. Okay. I mean, is it a requirement from the County that you had to get a ---
A. I have no idea.

Q. Okay. But you did get a Building Permit for the hangar?

A. Of course. Uh-huh (affirmative response).

Q. Okay. And I think you got an original Building Permit for your lot; is that correct?

A. For the house, yeah.

Q. Yeah. And a Certificate of Occupancy for the house?

A. Yes, I did.

Q. Okay. When we went to our first Hearing, you filed an Affidavit with the Court; do you remember that? The first Hearing in this case.

A. What did I say in the Affidavit?

Q. I'm going to hand it to you.

A. Okay.

Q. Okay. Just look at that Affidavit and see if that is what you recall.

A. Yeah.

Q. Okay. Is that your Affidavit?

A. Absolutely it is.

Q. Okay. In the first paragraph, ---

A. Yes.

Q. -- you state your name?

A. Yes.

Q. And you say where you live, 1144 Mullett Drive?

A. Yes.

Q. And in Palmetto Air Plantation subdivision?
A. That's correct.
Q. Okay. It says also that you purchased Lots 33 and 34?
A. Yes.
Q. Okay. In September -- on September 26, 2003. And if the date is wrong, I'm not holding you to the date, I'm simply -- somewhere around that time frame?
A. Yes.
Q. Okay.
A. Of course.
Q. Some time in -- some time in 2003?
A. Whatever it was.
Q. Okay. Says you are a commercial aircraft pilot?
A. I am.
Q. And then it goes on to say why you were attracted to this subdivision?
A. Yes.
Q. Okay. And what were the reasons for being attracted to it?
A. The land. The land and the pond. And the private access.
Q. Okay.
A. Uh-huh (affirmative response).
Q. You actually stated why you were -- can you read that into the record? "I was attracted to the subdivision"

-- do you see that?

A. "I was attracted to this subdivision because it includes as one of its amenities an airstrip and accommodates the construction of hangars on individual lots for the housing of aircraft".

Q. Okay. All right. So, and then it goes on to say you built you home in 2010?

A. Yes.

Q. Okay. Where do you find the authority for the building of the airstrip on the ---

A. Building of the airstrip?

Q. Yeah, I mean, where -- where -- why did you -- why could Joe do or Palmetto Air Plantation do an airstrip?

A. He's entitled to peaceful use and enjoyment of his land that he owns and he built the airstrip and sold it as one of the amenities when I bought my lots. Otherwise, I sure would not guarantee you I would have paid Ninety Thousand Dollars ($90,000.00) or Eighty Thousand Dollars ($80,000.00) for three acres of land down here.

Q. Right. And part of the reason you paid Eighty Thousand Dollars ($80,000.00) for the three acres of land was because it had Restrictive Covenants?

A. No. It was because of the airstrip, the pond, and I

could get three acres of land on the side of the pond and it was a gated community. That's why I bought the land down there.

Q. Okay. Well, the authority for building the airstrip and the amenities that you talked about, the gated community and all of that come from the Restrictive Covenants?

A. No, the authority to do what you want with your land comes from common law in the state of South Carolina; it's property law.

Q. Okay.

MR. McKENZIE: We'll mark this as Number Three. This is two pages.

COPY OF AFFIDAVIT MARKED PLAINTIFF'S EXHIBIT NUMBER THREE.

Q. You can keep those in front of you. All right. So, Mr. Bevier, your understanding is, is that it's -- you can build an airstrip, put up a gated community and ---

A. If I own a piece of -- if I own a piece of land ---

Q. Uh-huh (affirmative response).

A. -- and I'm otherwise not prohibited by Federal or State law, I can build whatever I want to on my property.

Q. You understand South -- that Clarendon County has

Building Codes?

A. Sure.

Q. Okay. It also has -- you have to get approval for -- to develop subdivisions, County approval?

A. I wasn't aware of that, but I assume so, yes.

Q. Okay. And a plan has to be submitted before you can develop a subdivision?

A. I don't know that for a fact. I'll take your word for it.

Q. Okay. All right. So, you are saying that common law is modified by State or Federal law?

A. Sure.

Q. Okay. Well, ---

A. In Federal, State, local order, ---

Q. Okay.

A. -- I would assume.

Q. Okay.

A. Yeah.

Q. And so, you don't -- you're not aware of a local Ordinance or you haven't looked that up and researched it, but ---

A. About subdivisions?

Q. Sure.

A. No, I have not.

Q. Okay. So, if you wanted to develop your own lot, your

own division, what would you have to do; have you researched that issue?

A. My own subdivision?

Q. Yeah, if you wanted to go ---

A. I have not researched that issue.

Q. All right. Do you recall entering into a Contract of Sale with Palmetto Air Plantation?

A. Yes.

Q. Okay. I hand you a copy of it. Is that your -- can you turn to the last page? Sorry. Yes, it's the last -- well, it would be the fourth page.

MR. BEVIER: (To Mr. Player)

Have you got a copy of this, Tommy?

Q. I'll give him a copy of it.

A. Yeah, it's me. Okay.

MR. PLAYER: We'll stipulate to that.

MR. McKENZIE: Okay. All right.

A. What was your question again?

Q. All right. This -- do you -- do you recall entering into a Contract of Sale?

A. Sure.

Q. And that is your signature on Page Four?

A. Yes, it is.

Q. And you understand what a Contract is, I'm assuming?

A. I do.

Q. Okay. Paragraph One, can you read that into the record?
A. "Purchasers agree to buy and Seller agrees to sell Lots 33 and 34, Palmetto Air Plantation, situate in Clarendon County, South Carolina, subject to all the Covenants of record and all Governmental Statutes, Ordinances, Rules and Regulations applicable to said lots".
Q. Okay. So, you understand that, when you purchased this property, it was subject to Restrictions and Covenants?
A. At the time, it looked to me like it was subject to those Covenants, yes.
Q. Okay. And I'll turn you to -- if you'll turn to Page Two.
A. Uh-huh (affirmative response).
Q. At the top of that, ---
A. Where it says Restrictive Covenants?
Q. Yes.
A. Okay.
Q. All right. You agree it says, "Other buildings on the premises as permitted by the Restrictive Covenants;" is that correct?
A. That's what it says, yes.
Q. And one of the things that's permitted on the -- on

the premises is hangars; is that correct?
A. I would assume so.
Q. Well, I mean, we don't -- I don't have a hangar in my subdivision.
A. What it says here is to construct a residence and other buildings.
Q. Right. But part of -- where you get permission to build a hangar in the subdivision is from the Restrictive Covenants?
A. I -- I don't know. I'm not a lawyer.
Q. Okay. Well, ---
A. I mean, is it a matter of law?
Q. No, what I'm -- the question I'm asking you is, you understand that -- that this is an air plantation subdivision for ---
A. Okay.
Q. -- aircraft enthusiasts?
A. Let ---
Q. And you and I talked about that?
A. Let me tell you this.
Q. Okay.
A. And -- and it may help resolve some of the questions you want to ask me here in the future. At the time, I believe those Covenants were enforced. It's after further investigation that my contention is they are

not.

Q. Okay. But we're going to go through them.

A. Okay.

Q. Okay?

A. All right.

Q. Because in 2000 -- 2001, -- I'm sorry -- 2003 when you signed this Agreement, ---

A. Uh-huh (affirmative response).

Q. -- you -- you agreed to be held bound by the Restrictive Covenants?

A. If there were any in existence, and it's my contention there weren't.

MR. PLAYER: Let me put an objection to the form of the question.

MR. McKENZIE: Okay.

MR. PLAYER: But you have to answer it notwithstanding my objection.

Q. Okay. Paragraph Four ---

A. Yeah.

Q. -- on Page Two.

A. All right.

Q. Restrictive Covenants. The conveyance is subject to all visible and recorded easements, right of ways, and Covenants including those Restrictive Covenants dated 11 July, which are in front of you ---

A. Yes.
Q. -- 2001, recorded in the Office of RMC Clarendon County Deed Book A-444, Page 26. Right there.
A. Yeah. Uh-huh (affirmative response).
Q. That's Exhibit Number Two.
A. Okay.
Q. So, is your contention now that you are in violation of your Contract?

MR. PLAYER: Object to the form.

Q. Is that your contention?
A. That is not my contention.
Q. Okay. So, ---
A. My contention is that there were never any Covenants bound to my property.
Q. Okay. But you agree ---
A. That's what I'm trying to tell you.
Q. But my under -- but I want you to follow my question here. Do you agree that you agreed to be bound by them in a Contract of Sale?
A. At the them when I signed this, I believed the Covenants were enforced and at that time that would have been my belief, yes.
Q. All right.
A. Does that answer your question?
Q. Well, what has changed your belief?

A. Research.
Q. Okay.
A. And the law.
Q. Okay.
A. My reading of the law; okay?
Q. So, are you in violation of your Contract of Sale now?
A. No.

MR. PLAYER: Object to the form.

MR. BEVIER: (To Mr. Player) What do I do here?

MR. PLAYER: You have to answer.

MR. BEVIER: Oh, okay.

A. What's the question again?
Q. Are you in violation of this Contract?
A. I don't think the Contract is valid.
Q. Okay.
A. Because there were no Covenants enforced at the time I signed this even though it's stated that there were.
Q. Why were there not Covenants enforced?
A. They weren't bound to the land when it was transferred from the Declarant to the Developer.
Q. I'm not asking about the Deed. I'm asking about this Contract. You signed a Contract, ---
A. Uh-huh (affirmative response).
Q. -- and in that Contract, you agreed that the -- you

agreed that the -- the Covenants went with this piece of land that you agreed to buy?

A. At -- at the time, that was my understanding.

MR. PLAYER: Object to the form. The Contract speaks for itself.

Q. The Contract does speak for itself, Mr. Bevier, but you -- it's your contention now that this Contract was not valid?

A. My contention now is that this Contract is suffering from a misstatement of fact if not an outright lie that the Covenants were bound to my property. That's my position at this point.

Q. All right. Let's go on further down. Paragraph Seven: "Possession and Improvements;" do you see that?

A. I do.

Q. Provided, however, -- do you see that paragraph, that part of the paragraph? Now, go about halfway where it starts with ""Performance of this Contract shall become part" -- do you see that?

A. Yeah, it's saying that if something's built, should default occur on the part of the Purchasers which this is a Sales Contract, right, which means that if you don't get paid, that it's in default. Anything that I built already gets to be taken by the seller.

Q. Okay.

A. I understand that.
Q. I know, but -- but my question -- my question to you is this is an Agreement that you entered into with Palmetto Air Plantation?
A. It's a Sales Agreement, yeah.
Q. Okay. So, if you're -- and your contention now is Restrictive Covenants don't apply; is that correct?
A. Yes.
Q. Paragraph Four says that the conveyance is subject to the Restrictive Covenants?
A. Well, the Restrictive Covenants were not bound to the land at that time. When MidEastern Truck Wash sold all the land ---
Q. Uh-huh (affirmative response).
A. -- to Palmetto Air Plantation, the Covenants were not bound to all those lots.
Q. Were they -- were they -- were they filed in the courthouse and the RMC Office?
A. A year and a half before that or two years before that, yes, they were filed.
Q. Okay. So, when -- but your contention is and tell me -- tell me about that contention. How do you get to that?
A. The Covenants need to be bound to the property with Deed of Conveyance.

Q. Okay.
A. They are not.
Q. Okay. So, that's -- that is your contention?
A. Yes, it is my contention.
Q. Okay. That the ---
A. And it never bound all of the lots; okay?
Q. Well, ---
A. Your -- your contention would be that it bound all of the lots. But when Joe formed this Homeowners Association, he made sure that Palmetto Air Plantation in the forty-four (44) lots they owned at the time would never be forced to pay lot fees by anybody else because there were no Covenants bound to any of the lots when MidEastern transferred the Deed of all those lots to Palmetto Air Plantation. They didn't want anybody to come back on them, any of the people that had already bought lots, anything else. He didn't want to pay for the common area. He wanted to be able to get us to pay for the common area. That's my answer to your question.
Q. Okay. So, your contention throughout this entire lawsuit has been -- or now is that the Restrictive Covenants don't apply to you?
A. That's correct.
Q. Okay.

A. And we said so in the -- you know, that was one of our defenses that we went to the Hearing for just recently.

Q. Oh, I understand that.

A. Covenants don't apply.

Q. And -- and that is your third Answer to this Complaint?

A. Excuse me?

Q. Your third answer to this Complaint.

A. I don't know. Is it?

Q. Yes.

MR. PLAYER: You have to answer that. I just ---

Q. Okay.

MR. PLAYER: Let me -- Steve, if I could interrupt just a minute.

MR. McKENZIE: Sure.

MR. PLAYER: We -- we should have told you, Kim, to start with that you and I can't communicate during the course of this deposition.

MR. BEVIER: No problem.

MR. PLAYER: You and I can't communicate.

MR. BEVIER: Okay.

MR. PLAYER: You just have to answer the questions.

MR. BEVIER: All right. Good enough.

MR. McKENZIE: Let's mark the Contract of Sale as Number Four.

MR. PLAYER: No objection.

COPY OF CONTRACT OF SALE MARKED PLAINTIFF'S EXHIBIT NUMBER FOUR.

Q. All right. Mr. Bevier, so, it is your contention that the -- even though you signed the Contract of Sale that said you would -- your lot would be subject to the Restrictive Covenants, you're not bound by that Contract?

A. That is my contention, yes.

MR. PLAYER: Again, let me -- let me object to the form.

Q. That's your contention?

A. Listen, ---

Q. All right.

A. -- we entered into a Contract of Sale and there was -- in my opinion now after I've done the research, there was a misstatement on the Contract of Sale.

Q. Okay. What was the misstatement?

A. That the Covenants were appropriately -- that the Covenants had been filed on my property.

Q. All right. Then did you file any action to not ---

A. No, because ---

Q. -- to invalidate the Contract?
A. No, because I believed the whole story that Joe had created at that point in time that the Covenants were applicable.
Q. Okay.
A. Okay. It was only after he filed this lawsuit against me that I did -- went into the courthouse, had the availability to do On-line research of Deeds and everything that I came to this conclusion, that I realized what was going on here. Joe got in trouble with that original development, needed money; the only way he could bring in his partners was to give them all the land and make sure they wouldn't have to put up any more money. That's why he did all of this.
Q. Okay. Do you recall receiving a letter from I think it's Billy Coffey's secretary, Betty Usry, at the time, with the ---
A. What time would that have been?
Q. This would be -- I'll show you the letter. June 5th, ---
A. Okay.
Q. -- 2003. And that letter states that you had actually have a copy of the recorded Contract of Sale?
A. I -- I don't recall the letter to answer your question.

Q. **Okay.**

MR. PLAYER: We're stipulating he received the letter.

MR. McKENZIE: Okay. We'll mark this as Number Five.

COPY OF LETTER DATED 6/5/03 MARKED PLAINTIFF'S EXHIBIT NUMBER FIVE.

Q. **Do you remember receiving at closing a Preliminary Attorney's Title Certificate?**

A. I didn't remember that until I read -- I finally found a cache of documents my late wife had filed which included a copy of the Homeowner's Association By-Laws.

Q. **Okay. I hand you a copy of the Restrictive Covenants -- I'm sorry, Preliminary Attorney's Title Certificate.**

MR. McKENZIE: Tommy, do you have one?

A. Am I not answering a question that you made right now or you haven't made one yet?

Q. **No, I haven't asked you one. I'm just handing ---**

MR. PLAYER: We -- we're stipulating he received this.

MR. McKENZIE: All right. Number Five or Number Six.

COPY OF PRELIMINARY ATTORNEY'S TITLE

CERTIFICATE MARKED PLAINTIFF'S EXHIBIT NUMBER SIX.

Q. Paragraph Three at the bottom of that page.

A. Uh-huh (affirmative response).

Q. It references the Restrictive Covenants recorded in the Clarendon County Clerk of Court, and if you turn to the second page, it gives you the Deed Book, ---

A. Yeah.

Q. -- page and all that.

A. Yeah. I -- I probably didn't even see this at the time it came though. My wife put it in the folder. But I see that -- that sentence if that's your question.

Q. Okay. All right. At some point in time, you received a letter on October 24th; do you recall receiving that letter?

A. No, I don't recall receiving it.

Q. Okay.

A. I think I have a copy of this, the letter I found in the file.

Q. Okay. And then that letter purports to send you a copy of the Final -- the Recorded Deed and Attorney's Title Certificate for the property you recently purchased; do you see that?

A. Uh-huh (affirmative response).

Q. That is the Attorney's Title Certificate. Can you read into the record Paragraph Three?
A. Can I do what now?
Q. Read into the record Paragraph Three at the bottom of the page.
A. It says "Restrictive Covenants recorded in the Office of the Clerk of Court for Clarendon County, Deed Book A-444 at Page 26 and Deed Book A-435 at Page 223."

MR. McKENZIE: We'll mark this as Number Seven. This is the October 24th letter along with the Final Attorney -- Attorney's Title of Certificate.

COPY OF LETTER DATED 10/24/03 AND THE FINAL ATTORNEY'S TITLE CERTIFICATE MARKED PLAINTIFF'S EXHIBIT NUMBER SEVEN.

A. Do you need this back?
Q. Thank you. I'm going to ask you if you can identify this document.
A. Yes.
Q. Tell me what that is.
A. It's a Plat of the subdivision.
Q. Okay.
A. It was done when -- 16 September of '03. When it was approved by the Clarendon County Planning Commission.
Q. Okay.

A. What -- I'm just curious. What date was it that I bought land down here?

Q. September of 2003.

A. Okay. So, it was just after this was ---

Q. Right.

A. Okay.

Q. I'll hand you another one.

A. Yeah, this is the one I saw On-line.

Q. That's the one you saw?

A. Right.

MR. McKENZIE: We'll mark that as Number Eight.

COPY OF PLAT OF PALMETTO AIR PLANTATION MARKED PLAINTIFF'S EXHIBIT NUMBER EIGHT.

A. Yeah, the one that -- this shows that Joe's land's not part of the subdivision.

Q. Okay.

A. Okay.

Q. I hand you a copy of this document. Do you recognize that?

A. Yeah, I think this is what's outlined on my property again.

Q. Okay.

MR. McKENZIE: And we'll mark that as Number Nine.

COPY OF CLARENDON COUNTY ASSESSOR'S OFFICE SUMMARY OF MR. BEVIER'S PROPERTY MARKED PLAINTIFF'S EXHIBIT NUMBER NINE.

Q. And that would be a -- the Clarendon County Assessor's Office showing Mr. Bevier's property along with the improvements and a -- I guess a scale drawing showing the square footage of the house and the hangar; is that correct? On the second page, showing the square footage?

MR. PLAYER: Do you have an extra copy of that?

MR. McKENZIE: Yeah.

MR. PLAYER: Thanks.

A. I don't -- I don't believe it does show the square footage of the house and the hangar.

Q. Okay.

A. There is no notation there for PEM or PBM, whatever it is, which is the square footage -- would be the square footage in the hangar and the workshop attached. It does show it looks like for the house.

Q. Okay.

A. But it doesn't show the square footage for the house -- for the hangar and workshop.

Q. Okay. It has the dimensions, it looks like 60 by ---

A. Yeah. The hangar is 60 by 60. And the workshop I

think is 30 by 42.

Q. Okay. 30 by 42?

A. Yeah.

Q. It shows those dimensions?

A. Right.

Q. It's just a -- it's just a copy that the Assessor's Office does I guess for the purposes of taxation?

A. Uh-huh (affirmative response).

Q. Is that correct?

A. It appears to be so, yes.

Q. I hand you a copy of -- I believe this is the Building Permit for the hangar. Do you see that?

A. Yes.

Q. Okay.

MR. McKENZIE: We can mark that Number Ten, I believe.

COPY OF THE BUILDING PERMIT FOR THE HANGAR AND WORKSHOP MARKED PLAINTIFF'S EXHIBIT NUMBER TEN.

Q. That is the Building Permit for the hangar and workshop; would that be correct?

A. Yes.

Q. And I believe that that is dated sometime in 2010?

A. No, 9/8/14.

Q. Oh, I'm sorry. April of 2013. Is that correct?

A. No. This is for the hangar and workshop which was -- wasn't built until a year after Susan died. This was built in -- this was issued in September 8th, 2014.

Q. Okay. The front of this says, "Clarendon County Building Permit. Date, April 5, 2013." And this was received -- I don't know why the difference in the dates, but ---

MR. PLAYER: Have you got an extra copy?

MR. McKENZIE: Yeah.

A. Well, I don't know why they put that up there. Probably because the Tax Map Reference Number, but it was not built until that latter date there.

Q. In 2014?

A. In 2014. The original Building Permit was done in 2010 when the home was built.

Q. Why did you have to go back and get a subsequent Building Permit?

A. Because of the difference of four years between building the home and building the hangar.

Q. Okay. Well, I note on here that -- that -- the -- maybe the application was submitted on that date; it wasn't approved until it looks like on 9/8/14, which is the second page?

A. The hangar was not built until 2014.

Q. All right. Again, the documents I guess speak for

themselves?
A. Well, it says -- it's got date issued 9/8/14 right down at the bottom of the second page.
Q. That's the question I just asked you.
A. I'm sorry.
Q. I said, the application must have been submitted in April of 2013?
A. It was not. It was not. I hadn't -- I had no idea of building the hangar at that point in time. It was four years later after my wife had died that I decided to build that hangar and workshop. And the Building Permit Morton went and got, I believe, and I don't know why it's dated -- it says -- I don't know why it's dated -- well, it's dated 5 April '13 up top, not '10.
Q. That's what I stated on the record a second ago. It's dated in April -- April 5th, 2013?
A. Uh-huh (affirmative response).
Q. And whatever reason, it was issued on 9/8/14, which is the second page?
A. I have no idea.
Q. Okay.
A. I have -- I have no clue to that.
Q. And actually, the last page, Certificate of Occupancy, I guess this was for your home?

A. That was for the house, the building inspection. Bart Taylor did that on October 21st, '10.

Q. Okay.

A. Do you want this back?

Q. No, I made a copy. You can have that. Put it your records right there is fine.

A. Do you want to put a sticker on this one?

Q. I put it right here on this one that we have. This stack is going into evidence. Let me just get that Number Nine out of there.

A. Here's another one with a yellow tag on it.

Q. Okay. You need to keep those. We might have to talk about those later on.

A. All right.

Q. Okay Okay. Do you recall receiving a letter from myself on March 21st, 2017? I'll hand you a copy of it.

A. I don't recall the date, no. Yes, I recall this.

Q. Okay.

MR. McKENZIE: We'll mark that Number ELEVEN.

COPY OF LETTER DATED 3/21/17 MARKED PLAINTIFF'S EXHIBIT NUMBER 11.

Q. It's a letter dated March 21st, 2017.

A. May I comment on this letter?

Q. We'll -- we'll talk about it in just a second. Let me mark it first, and then you can tell me all you want to.
A. All right.
Q. Here you go.
A. All right.
Q. Do you recall the letter, though?
A. Sure.
Q. Okay. Tell me what you want to comment about it.
A. Well, there's a couple of factual issues in here. First of all, the dog is an English Mastiff and not a Bull Mastiff.
Q. Okay.
A. Secondly, I responded to you. I sent you a couple e-mails and I wanted a copy of the Homeowner's Association By-Laws which you never responded to me. As a matter of fact, you've never responded to any of my e-mails to you. There was no due process at all involved in this. I get this letter, and the next thing I know I get sued. You know, I sent -- I think I sent you back a letter saying I disagree with your process on all of these. And it appears that somebody decided that I was guilty of violating these Restrictions and you were going to sue me about it. There was no process involved at all, no conversation,

no nothing.

Q. Did you ever have any conversations with Joe Witt about you not being in compliance with the Restrictive Covenants?

A. Joe harangued me about the dog.

Q. Uh-huh (affirmative response).

A. Okay. And that was it. Everything was about the dog.

Q. Uh-huh (affirmative response). All right. Nothing about Airbnb?

A. That was not a meeting with the Board of Directors to discuss the issues they supposedly had problems with per your letter on March 21st.

Q. Okay. You don't recall having any meetings with Joe about anything other than the dog?

A. After this letter?

Q. No, before that letter.

A. There were no meetings.

Q. Before the letter?

A. Joe complained about the dog, and that was it. And then at this letter brings up a couple other issues, something about landscaping, and I think even you amended that later on to include something about a -- a swimming pool I had inside my hangar out of sight.

Q. And we'll talk about that.

A. All right. Good.

Q. Okay. First -- the first paragraph of the letter dated March 21st, 2017 talks about Airbnb. When did you start Airbnb ---

A. I didn't start Airbnb.

Q. When did you start utilizing the Airbnb service?

A. I never have. But in order to avoid being deceptive here, my wife enrolled that apartment in Airbnb so she could earn a little extra money to help pay her daughter's college costs.

Q. Okay. And -- but your wife passed in what year?

A. That's not my wife that ---

Q. That is your current wife?

A. -- started the Airbnb. My wife died -- Susan died in 2013.

Q. Okay.

A. March 3rd of 2013. I married Annie in May of 2015.

Q. Okay.

A. All right.

Q. All right. So, when did Annie start Airbnb?

A. I'm not sure of the exact date.

Q. Okay. How long -- how many guests did you have in Airbnb?

A. Probably a dozen.

Q. Okay. And what was the -- how did you get paid by Airbnb for allowing guests to stay there?

A. I don't know for sure. I think the guests put credit card information to Airbnb, and Airbnb takes that and disburses it to the owners of the property.

Q. Okay. If you will turn -- have you got the Restrictive Covenants still in front of you?

A. Yeah, go ahead.

Q. What do -- what does Article Four, Sections 4.1 and 4.3 say about commercial ---

A. What page?

Q. I'm sorry?

A. What page, please?

Q. Let's go to -- I'll tell you -- it's Page Seven.

A. Page Seven.

Q. Page Six and Seven.

A. Six and Seven. Now, where should I start reading? This ---

Q. Well, don't start reading, but, you know, it -- it tells you on Page Seven, Paragraph 4.3, how about read that one.

A. Four Point Three.

Q. Can you read that into the record for us?

A. Section 4.3. "Commercial Businesses Prohibited."

Q. Okay.

A. "No commercial business of any type shall be permitted."

Q. And ---
A. "However, nothing herein contained shall be construed as preventing the Declarant from erecting and maintaining facilities of a commercial recreational community nature or facilities incident to the use of the runway, taxi way and elements. This should not exclude any home office -- should not exclude any home office, but no customers, clients or patients can be seen on residential premises. Although this should not exclude work done on non-owned aircraft as long as such work is done inside a hangar and the completed aircraft confirms with all -- conforms it should be -- with all requirements as set forth in these Covenants. No one other than the Declarant can allow the use of the airport or runway for commercial activity or for self-enterprise.
Q. Now, if these Declarations and Covenants apply to your property, are you in violation of it pursuant ---
A. I disagree that doing Airbnb in an empty apartment is a commercial enterprise. I'm not Hotel 6 set up along the road with advertising and everything else.
Q. Okay.
A. That's my answer.
Q. So, let me ask you this question about Airbnb. You are renting a room for profit?

A. More -- way more than one room, yes. Sure.
Q. But I mean, you were renting a room for profit?
A. That's what we were doing.
Q. Okay. All right. So, you disagree that that's a commercial activity?
A. I do.
Q. Okay. All right. Now, let's go to the second paragraph in the letter that I wrote to you on March 21st, 2017.
A. Okay.
Q. You own a large breed dog and you said it's an English Mastiff?
A. It is an English Mastiff.
Q. Okay.
A. May I comment on that paragraph?
Q. Sure.
A. All right. I asked you I think in an e-mail that I sent you who has complained about my dog, and you never responded. You -- you state here that it has received complaints that the dog has been seen off your property unrestrained, and my contention is that is an outright lie.
Q. Uh-huh (affirmative response).
A. Because I have not let my dog off my property off a leash since February or March of Twenty Thousand or

2016.

Q. Well, let me ask you this. You say you -- you restrain the dog with an underground fence?

A. On my property, he is restrained to a small area with an underground electric fence, yes.

Q. And ---

A. But that's -- you're not answering -- you're not responding to my point that -- who had complained because it is a lie. It is a false statement.

Q. Did you go to the Architectural Control Committee to ask about the fencing?

A. I didn't need to.

Q. Why?

A. There is no visible manifestation of that fence.

Q. But you understand that the -- the Covenants at require any fence ---

A. I understand that the Cov -- any fence?

Q. Right.

A. That's not -- that doesn't even meet the definition of a fence. It's an underground control system or something. It's not a fence. You ask somebody what a fence is, and they're going to tell you it has a physical manifestation above ground that restricts passage.

Q. Okay. So, on Page 12 -- Page 12 ---

A. And you still haven't answered my question about who complained that the dog was seen off my property.
Q. Mr. Bevier, I am asking the questions. This is a deposition. You're not asking questions. Okay. If you want to ask those questions, you're going to ask through your lawyer and we'll respond to that.
A. Okay.
Q. But ---
A. All right.
Q. -- this is your deposition; I'm taking your deposition. I ask the questions.
A. Okay.
Q. Okay?
A. Cool.
Q. Page Twelve in regards to fence.
A. Of the Covenants?
Q. Of the Covenants. Paragraph 5.16.
A. "The erection or installation of fences and hedges may be permitted with the consent of the Architectural Control Committee which shall directly control the location and type of said facility. No barbed wire fencing will be permitted at any time."
Q. Okay. So, was the electric fence installed?
A. It was put in the ground, yes.
Q. Okay. All right. So, it is your contention that the

electric fence is not a fence?
A. It is not a fence in common usage, no.
Q. All right. Let's go on to the next paragraph which would be Number Three.
A. Of ---
Q. Of the 2017, March 21st, 2017 letter.
A. Okay. Paragraph Three. Paragraph Three is about the dog.
Q. I'm sorry. No, it's -- it's my third point I guess.
A. Third. Okay.
Q. Second page, third.
A. Okay. I got you. I got you.
Q. Starts of with -- with third. Article IV, Section 4.1 states in the pertinent part ---
A. Uh-huh (affirmative response).
Q. Do you see that?
A. Uh-huh (affirmative response).
Q. "Within one year after the issuance of the Building Permit," ---
A. I see what you're saying, yeah.
Q. Okay.
A. Uh-huh (affirmative response).
Q. And you submitted -- do you recall submitting a Paula Bishop plan to the Architectural or I guess the Architectural Control Committee?

A. Yeah, but that -- that was well more than one year after the issuance of the Building Permit. I asked Joe about this, and he told me at the time, "Don't worry about it."

Q. All right. I'm going to refer you back to Plaintiff's Number Ten, the issuance of the Building Permit was dated October 3rd -- on the last page -- I'm reading upside down. October 21st, 2010, that's the Certificate of Occupancy?

A. Uh-huh (affirmative response).

Q. Okay. So, within one year of you building your home, you were required by the By-Laws ---

A. Joe told me not to worry about it. He wanted me to build the house.

Q. Okay. Well, the house would have been built?

A. When I asked him about that in the Covenants, he said, "Don't worry about it; go ahead and build your house."

Q. Okay.

A. Because he wanted another house put up out there to help him sell his lots.

Q. Okay. All right. So, it is your contention that you -- you were exempted from the -- having to put -- implement the Paula Bishop plan?

A. When was the Paula Bishop plan even undertaken? I think I paid her to do that in 2014, which was already

four years after the house was constructed.

Q. So, my question to you is, have you implemented the Paula Bishop plan that was submitted to you ---

A. I have not.

Q. Okay. All right. So, let's go back to your contention that the Covenants -- I want to get a clear understanding from you why the Covenants don't -- aren't applicable to you.

A. Because they've never been bound to the property that I purchased.

Q. All right. Explain that to me because I'm having a hard time with your understanding of the law.

A. Okay. My lay understanding of this is that any Restrictive Covenants needs to be either stipulated in a conveyance or referenced in a conveyance if recorded elsewhere. None of those things happened when Joe sold all the land as MidEastern Truck Wash sold all the land to Palmetto Air Plantation, LLC. Okay?

Q. Okay.

A. All right. Joe, at that point in time, lost his rights as Declarant because more than twenty-five (25) -- he retained zero percent of the lots at that time. He can't act as Declarant after he's sold all of the property.

Q. And where is that located in the law?

A. I'd have to look. I've read it somewhere. I can't cite that. I'm not -- I'm not a lawyer and this is not my court presentation. You asked me why I believe what I believe and I'm trying to explain that to you. Okay? He didn't record the Covenants when he deeded all of that land, all forty-four (44) or forty-five (45) lots to Palmetto Air Plantation, LLC. Okay. Palmetto Air Plantation, LLC has not recorded those Covenants by reference in any of the lots, any of the Deeds for the twenty (20) some lots that has sold since that date including mine. And as a matter of fact, the -- as I recall, if my memory is right, the only lot that Joe sold from MidEastern Truck Wash to a guy down in Summerton I think it was did not contain that verbiage either. So, you ask -- why I don't believe the Covenants apply to my land -- that's the first reason is that he lost all right to be Declarant and God on that property after he sold it to Palmetto Air Plantation, LLC. Palmetto Air Plantation, LLC gave me a general Warranty Deed; okay? Not subject -- I guess it's subject to restrictions, zoning, easements and all that jazz that apply, but it did -- again, it did not bind the Covenants to my property and, indeed, I don't think they could unless they re-filed themselves. That's my answer.

Q. **Okay. And again, it is your contention that the Contract of Sale is what, null and void?**

A. The Covenant -- I don't know. A Judge would have to say that, I guess, but my contention is that there is an error in there that those Covenants were applicable to my property at the time I entered into that Contract for Sale. Although, at the point in time if you want -- this is probably what you want to hear -- I believed that the Covenants did apply.

Q. **Okay. So, regardless of whether they do or not, you agreed to be bound by them?**

A. At that point in time, I thought everything was on the up and up. It was only after I got to digging into all of this stuff that I realized what a huge morass Joe had created here.

Q. **Okay. But -- but I guess -- I guess my question is, is that you entered into a Contract and whether there was a mistake made at some point in the way these lots were deeded, you -- you agreed to be bound by these Covenants whenever you entered into the Contract?**

MR. PLAYER: Object to the form.

A. My belief at the time is that all of that was legal and on the up and up. I no longer believe that. That answers your question. At the time, I believed that it was in force and that it was valid. It was only

later I discovered it was a bunch of horse hockey.

Q. Okay. All right. So, let me ask a good question. So, you -- my -- my question to you is, is that it says that there are Restrictive Covenants on Paragraph Four, and if you want to pull this back in front of you, that will be fine; I'll get it for you.

A. This is the Contract of Sale?

Q. Contract of Sale.

A. Okay. I don't have that, but yeah, I know it's in the Contract of Sale.

Q. Okay.

A. Yeah, I know it's in there.

Q. Paragraph Four.

A. Yeah.

Q. I mean, do you disagree or agree that the -- that at the time of your purchase, that these Restrictive Covenants were on file at the RMC Office in Clarendon County?

A. I don't disagree with that. I disagree that they were effective.

Q. Okay. But you -- I mean, do you agree or not agree that you have signed this Contract?

A. Yes, of course, I signed the Contract, Steve, I mean, come on.

Q. Okay. And so, the question -- my question to you is

then you signed a Contract agreeing to be bound by them?

A. At the time, I believed it was legal and truthful and it -- it's turned out that it's not. Okay? All right? If you're getting me to say -- if you want me to say that I agreed to that and I agreed to continue to be bound by that, I don't because it wasn't right at the time that Contract for Sale was signed. That was an untrue statement that the property was bound by those Covenants. I don't know how else to answer this question.

Q. Well, Mr. Bevier, I -- my -- I guess my response to that would be that you entered into a Contract and the Contract asked if you wanted -- you didn't have to be bound by these, you could have gone anywhere else and built anywhere else you wanted to build; right? You could have built anywhere you wanted to build in the world?

A. What has that got to do with your question?

Q. Because you entered into a Contract.

A. Yes, I did, and some of the information that was presented to me as being factual turns out not to be so.

Q. Okay. So, what is the remedy, Mr. Bevier?

A. Well, if Joe wants to buy all of my property back from

me, that would be a good remedy.

Q. Okay.

MR. PLAYER: Object to form.

Q. So, the -- the remedy would be he buys your property?

A. He buys everything ---

MR. PLAYER: Object to the question.

A. Uh-huh (affirmative response).

MR. PLAYER: As to form. You can answer. Object to the question.

Q. You may answer. He can buy your property?

A. If he wants me out of there, let him buy me out at some sum that I agree is appropriate. All right? If he doesn't want me in there, he can -- he can claim he's Genghis Khan, he can claim he's emperor of the world. I don't care as long as -- if he buys me out and I move out of there, I don't give a damn what he does to that land. Okay. But as long as I own it and I'm trying to sell it. I'm trying to get out of there now. I care a lot. Steve, would you mind if I took another bathroom break?

Q. Yeah.

A. Would that be all right?

Q. I'm looking over my notes anyway.

(OFF THE RECORD).

MR. McKENZIE: I don't have any other

questions. I think I know your position now and I just had to get my head around it, and I -- I appreciate you answering my questions.

MR. BEVIER: Surely.

MR. McKENZIE: Mr. Player may have some questions for you.

MR. PLAYER: No, I don't -- I don't have any questions.

(THERE BEING NO FURTHER QUESTIONS, THE DEPOSITION WAS CONCLUDED AT 11:20 A.M.).

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF SUMTER)

I, Doris Tompkins Brown, Certified Verbatim Reporter and Notary Public in and for the State of South Carolina, certify that I did have Kim E. Bevier appear before me commencing at 10:17 A.M. on April 4, 2018, at the offices of the Coffey and McKenzie, 2 North Brooks Street, Manning, South Carolina; that the witness was duly sworn and cautioned to tell the truth; that the foregoing pages constitute a true and accurate transcript of the testimony given at that time and place.

I hereby certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this the 21st day of May, 2018.

Doris Tompkins Brown, CVR
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission expires: 4-02-2025

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PLAINTIFF'S EXHIBIT 1
PENGAD 800-631-6989

May 21, 2003

Mr. & Mrs. Kim E. Bevier
706 Greene Street
Camden, SC 29020

RE: Lots 33 & 34 Palmetto Air Plantation

Dear Mr. & Mrs. Bevier:

It was a sincere pleasure for me to meet Kim on Tuesday concerning your purchase of lots at Palmetto Air Plantation. It is obvious that you have considered this carefully and I appreciate your questions regarding the Restrictive Covenants. I feel that you will be a valued addition to our community and look forward to having you move here.

In accordance with our conversation, I have prepared and enclose herein for your consideration and execution a Contract of Sale on the lots. Hopefully, I have incorporated those provisions that you requested and if you have any questions concerning it please do not hesitate to contact me. Otherwise, if you will be so kind as to execute it and return a signed copy to me I will be glad to record it in the Office of the Clerk of Court of Clarendon County for you and return the recorded copy.

With sincere regards,

W. C. Coffey, Jr.

WCCJr/bau

Enclosure: As Stated

Sale contract 5.21.03
closed on sale 9-26-03



DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
PALMETTO AIR PLANTATION
CLARENDON COUNTY, SOUTH CAROLINA

This Declaration of Covenants, Conditions and Restrictions is made this 11th day of July, 2001 by MidEastern Truckwash, Inc., a South Carolina Corporation hereinafter referred to as the "Declarant"

WHEREAS, the Declarant is the owner of a track of land located south of the right of way of U.S. Highway 301 between the City of Manning and Interstate Highway 95. The property contains approximately 45 lots, private access roads, FAA approved run-way measuring approximately *150* feet by 3,720 feet and 45 residential lots being a portion of Clarendon County Tax Map Parcel No. 223-00-02-005, all of which shall be reflected on a plat of the sub-division prepared by Duvalle W. Elliott. The Declarant's purpose is to develop a community for aviation enthusiast that promotes peaceful living, protects investments and provides the use of a private one-way gated entrance and Common Areas for the benefit all Owners.

WHEREAS, the Declarant desires to insure the values and amenities in said development, to prevent future impairment thereof, and to provide for the maintenance of all Common Areas, by subjecting the real property contained in the subdivision together with any additions to said property to the covenants, restrictions, easement, charges, and liens hereinafter set forth each of which is and are for the benefit of the property of each of the Owners.

WHEREAS, the Declarant deems it desirable for the efficient preservation of the values and amenities in said development to create an Owners Association that will be delegated the powers of maintaining and administrating the development properties and facilities and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created by incorporating a non-profit corporation under the laws of the State of South Carolina entitled Palmetto Air Plantation Property Owners Association, Inc.

NOW THEREFORE, the Declarant does hereby declare that all of the property shown as lots 1 through 45, ponds, airstrip, roadways and rights-of-way on a subdivision plat to be prepared by Duvalle W. Elliott and recorded in the Office of the RMC for Clarendon County, including Lot 19 of said sub-division as reflected on a plat made by Duvalle W. Elliott, dated March 30, 2001, recorded in the Office of the Clerk of Court for Clarendon County, in Plat Book S0050 at Page 571 and shall be held, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements and declarations that shall run with real property and be binding on all parties owning any right, title and interests in said real property or part thereof, their heirs, successors and assigns and shall inure to the benefit of each Owner thereof.

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ARTICLE I
Definitions

Section 1.1 **Adjoining Land** shall mean and refer to land contiguous with the Property, whether or not owned by Declarant, which is or may be made subject to this Declaration.

Section 1.2 **Annexation** shall mean and refer to the process by which any portion of the Expansion Property or Adjoining Land are made subject to this Declaration.

Section 1.3 **Architectural Control Committee (ACC)** shall mean and refer to a committee formed to maintain the quality and architectural harmony of improvements to the Development.

Section 1.4 **Architectural Guidelines** shall mean and refer to the guidelines and rules established and supplemented from time to time by the Architectural Control Committee.

Section 1.5 **Articles or Articles of Incorporation** shall mean and refer to the Articles of Incorporation of the Association which will have been filed with the Secretary of State to create the Association.

Section 1.6 **Assessments** shall mean and refer to annual, special and default assessments levied pursuant to this Declaration.

Section 1.7 **Association** shall mean the Plantation Air Plantation Property Owners Association, Inc. (PAP) a non-profit South Carolina corporation.

Section 1.8 **Board of Directors** shall mean and refer to the Board of Directors of the Association, which is the governing body of the Association.

Section 1.9 **By-Laws** shall refer to the By-Laws of Palmetto Air Plantation Property Owners Association, Inc. Attached to the Declaration and incorporated herein by this reference.

Section 1.10 **Palmetto Air Plantation** shall mean and refer to the planned community created by this Declaration.

Section 1.11 **Common Areas** shall mean any and all real and personal property including roadways, rights of ways, ponds, wetland preservations, and aircraft runways now and hereinafter owned by the Association for the common use and enjoyment of the owners.

Section 1.12 **Declarant** shall mean and refer to MidEastern Truckwash, Inc., a South Carolina Corporation and its successors-in-title and assigns. It is expressly understood and declared that there shall be only one person or legal entity entitled to exercise the right and power of the "Declarant" and Joe Witt is initially designated to be that person.

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Section 1.13 **Improvements** shall mean and refer to all buildings and structures, parking areas, fences, walls, hedges, plantings, pools, driveways, ponds, lakes, recreational facilities, signs, changes in any exterior color or shape, excavation and all other site work including without limitation grading, road construction, utility improvement, removal of trees or plantings, and any new exterior construction or exterior improvement which may be included in the foregoing. "Improvements" does not include turf, shrub or tree repair or replacement of a magnitude which does not change exterior colors or exterior appearance. "Improvements" does include both original improvements and all later changes and improvements.

Section 1.14 **Licensor** shall mean and refer to MidEastern Truckwash, Inc., a South Carolina Corporation which owns the runway and will issue licenses for the use of the runway. Lot Owners and their invitees shall be permitted to use the runway without the necessity of a license from the Licensor.

Section 1.15 **Lot** shall mean and refer to any plot of land within the Palmetto Air Plantation whether or not improvements are constructed thereon, which shall constitute a single family dwelling. The ownership of each Lot shall include all the rights, title and interest of an Owner in the Common Property, which shall include without limitation, membership in the Association.

Section 1.16 **Maintenance Fund** shall mean and refer to the fund created by assessments and fees levied pursuant to this Declaration.

Section 1.17 **Members** shall mean and refer to any person or entity holding membership in the Association.

Section 1.18 **Mortgage** shall mean and refer to any mortgage, deed to secure debt, deed of trust, and any and all similar instruments used for the purpose of encumbering real property in this Development as security for the payment or satisfaction of an obligation.

Section 1.19 **Owner** shall mean and refer to the record Owner, whether one or more persons, of the fee simple title to a Lot located within the Development, and entitled to one vote per Lot as a member of the Palmetto Air Plantation Property Owners Association, Inc., but excluding those having such interest merely as security for the performance of an obligation.

Section 1.20 **Plat** shall mean and refer to any plat depicting the subdivision or any lot therein, filed in the Office of the RMC for Clarendon County, State of South Carolina, as such plat may be amended from time to time by the Declarant.

Section 1.21 **Property** shall mean and refer to the Property initially subject to this Declaration and any additional Real Property from time to time subject to these Covenants pursuant to the provisions of this Declaration.

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Section 1.22 Runway shall mean that property located at the center of the subdivision used for the purpose of aircraft takeoffs and landings.

Section 1.23 Taxiway shall mean and refer to those right-of-ways radiating from the runway or otherwise as shown on the plat for the purpose of providing access for aircraft to and from the runway.

ARTICLE II
The Association

Section 2.1 **Dedication of Common Areas.** Declarant may hereafter convey to the Association certain parts of the property as Common Areas intended for common use by the owners in Palmetto Air Plantation Property Owners Association, Inc.. Such designated areas shall, upon conveyance, be dedicated to the common use and enjoyment of Owners, and their families, guests, tenants, and invitees.

Section 2.2 **Responsibility for Common Area.** Subject to the rights of the Owners set forth in this Declaration, the Association shall be responsible for the management and control of the Common Area dedicated under Section 2.1 above and all improvements in the Common Area (including equipment related thereto), and shall keep it in good, clean and attractive condition and repair consistent with the requirements of a first class residential and recreational community, pursuant to the terms and conditions of this Declaration.

Section 2.3 **Membership.** Every Owner, by virtue of being an Owner and for as long as he is an Owner, shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot or Lots. No Owner, whether one or more persons, shall have more than one membership regardless of the number of Lots owned, but all of the persons owning each Lot shall be entitled to rights of membership and of use and enjoyment appurtenant to such ownership. The combination of two Lots will be considered a single Lot for membership and assessment purposes. The Articles of Incorporation and Bylaws of the Association may set forth additional classifications of membership, which Members may or may not be Owners.

Section 2.4 **Membership and Voting Rights.** Each Member shall be entitled to one vote per membership. When more than one person holds an interest in any Lot, all such persons shall constitute one Membership. The vote for such Membership shall be exercised as the Owners among themselves determine, and the Secretary of the Association shall be notified of such designation prior to any meeting. Any Owner of a Lot may lease the same and assign his membership right to the tenant, provided that a copy of the Instrument of Assignment is furnished to the Secretary of the Association prior to any meeting at which the tenant exercises the voting right of membership. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, Bylaws, and Architectural Guidelines, and the Restrictions and Covenants of the property. The lease shall obligate the tenant to comply with the foregoing and upon the tenants failure to do so he/she may be evicted by the Declarant or the Owners Association Board of Directors.

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Section 2.5 **Rules and Regulations.** The Association from time to time and subject to the provisions of this Declaration, may adopt, amend and repeal rules and regulations, to be known as "Association Rules," governing, among other things, the following:

a. The Use of Open Space,
b. The Use of Private Roads,
c. Collection and Disposal of Garbage and Trash,
d. The Posting of Maximum Speeds for Vehicular Traffic and Other Traffic Rules,
e. The Types of Vehicles and Times when any Vehicles (including Commercial Vehicles), may be permitted to use the road within Palmetto Air Plantation or any other area of the property.
f. The Schedule of Fines for Infractions of the Association Rules or the Project Documents.

Section 2.6 **Ownership of Personal and Real Property for Common Use.** The Association, through action of its Board may acquire, hold and dispose of tangible and intangible personal property and real property.

Section 2.7 **Implied Rights and Obligations.** The Association may exercise any other rights or privileges given to it expressly by the Declaration, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association under this Declaration or reasonably necessary to effectuate any such right of privilege. The Association shall perform all of the duties and obligations imposed upon it expressly by the Palmetto Air Plantation Documents, together with every other duty or obligation reasonably to be implied from the express provisions of the Palmetto Air Plantation Documents where reasonably necessary to satisfy any such duty of obligation.

ARTICLE III
Architectural Control Committee

Palmetto Air Plantation is designed as a private residential community with architectural controls which allows aircraft owners and pilots convenient access to the runway. To insure that the property will be developed harmoniously and that consistency is maintained, an Architectural Control Committee will formulate, review and control a comprehensive landscape plan, street lighting, signs, fencing, parking and site improvements. The initial Architectural Control Committee shall consist of one member, Joe Witt or his designee. In the event of the failure and ability for any reason of Joe Witt to act, the vacancy created shall be filled temporarily or permanently as necessary by his designee. At such time the development is fifty (50%) per cent completed, the above member may relinquish his powers of the Architectural Control Committee to the Owners Association. At that time Joe Witt, may choose to continue his position on the new Architectural Control Committee and two (2) other members shall be appointed by the Board of Directors of the Association. The new Architectural Control Committee shall consist of three (3) members and shall promulgate such rules and guidelines as may be necessary to carry out the purpose of the Declaration.

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The Architectural Control Committee shall:

3.1. regulate the external design, appearance, and location of the Properties and Lots and any improvements thereof

3.2. adopt architectural guidelines and programs consistent with covenants and restrictions,

3.3 inspect for compliance with these guidelines,

3.4 adopt procedures for the exercise of its duties,

3.5. maintain complete and accurate records of all actions taken

Notwithstanding anything to the contrary contained herein, the Architectural Control Committee or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application of enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the community.

ARTICLE IV
Architectural Guidelines and Rules

Section 4.1 Land Use. All Lots shall be used for residential purposes only and common recreational purposes auxiliary thereto and for no other purpose. No Lot shall be used a right-of-way, street or road, or access to any property not included within the Properties of this Development without the consent of the Declarant. Only one family may occupy a Lot as a principal residence at any one time. No structure except as hereafter provided shall be erected, altered, placed or permitted to remain on any Lot other than one (1) detached single family dwelling or residence. Such accessory buildings or hangar may not be constructed prior to the completion of the dwelling unless waived by the ACC and then limited to a one year completion deadline. Furthermore the accessory building or hangar shall comply with all other restrictions contained herein for the main dwelling, including, but not limited to, exterior requirements, setback lines and permanent foundations. A guest suite or a like facility may be included as part of the main dwelling or accessory building, but such suite may not be rented or leased except as part of the entire premises including the main dwelling. Furthermore no airplane hangar shall be used as a residence without the consent of the Declarant or Board of Directors of the Homeowners Association

Section 4.2 Partition of Combination of Lots. No Lot shall be subdivided or its boundary lines changed except with prior written approval of the Declarant. Declarant, however, hereby expressly reserves the right to replat any Lot or Lots. Declarant's consent shall be conditioned upon payment by the Owner or Owners concerned of all expenses incident to giving the consent, including legal and accounting fees. Every agreement and recorded instrument for combination of Lots shall make adequate provisions for the adjustment of voting rights and liability for payment of assessments appurtenant to or imposed upon such Lots. Whether combined or unchanged, each Lot shall be

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conveyed, transferred, gifted, devised, bequeathed, encumbered or otherwise disposed of, as the case may be, with all appurtenant rights and interests created by law or this Declaration, including the membership in any association and all the rights thereof.

Section 4.3 **Commercial Businesses Prohibited.** No commercial business of any type shall be permitted; however, nothing herein contained shall be construed as preventing the Declarant from erecting and maintaining facilities of a commercial, recreational or community nature or facilities incident to the use of the runway, taxiway and easements. This should not exclude any home office, but no customer, clients, or patients can be seen on residential premises. Also, this should not exclude work done on non-owned aircraft so long as such work is done inside a hangar and the completed aircraft confirms with all requirements as set forth in these covenants. No one, other than the Declarant, can allow the use of the airport or runway for commercial activity or for self-enterprise.

Section 4.4 **Common Area.** The Common Area shall be owned by the Declarant or the Association and no Owner shall bring any action for partition or division of the Common Area by acceptance of a deed or other instrument of conveyance or assignment, each Owner shall be deemed to have specifically waived such Owner's right to institute or maintain a partition action or any other action designed to cause a division of the Common Area, and this section may be pleaded as a bar to any such action. Any Owner who shall institute or maintain any such action shall be liable to the Declarant or the Association, and hereby agrees to reimburse the Declarant or the Association for its costs, expenses and reasonable attorney's fees in defending any such action.

Section 4.5 **Architectural Control.** No dwelling unit, hangar or other building shall be erected, placed or altered on any Lot until the plans for each showing locations of the units on the Lot and the landscaping plan for the Lot have been submitted to and approved by the Architectural Control Committee. Such plans shall be reviewed as to quality of workmanship and materials, harmony of external design with existing dwelling units and hangars, and as to location with respect to topography and finish grade elevation, and house, hangar and other buildings shall be of similar architectural design, before being approved by Architectural Control Committee or its successor or assigns. No home, garage, hangar or other building may be constructed on any Lot unless such work meets all County Codes then in existence. A copy of the builder or contractor's license must be submitted with construction plans to the ACC.

Section 4.6 **Dwelling Size.** Each single story dwelling on a Lot shall have a heated square foot area of 2000 square feet minimum. No dwelling unit shall be permitted on any Lot that has a ground floor area of the main structure, exclusive of porches, patios, hangars and garages of less than 1,800 square feet on the first floor for a one and one-half story, split-level, or two story dwellings. All multi-level dwellings shall have a minimum of 2,800 square feet. All house/hangar combinations shall include a minimum of 1,800 square feet of heated living area, exluding hangar, shop or storage portion of the structure. All structures must be built with eaves and over-hangs and have a residential characteristic. PROVIDED HOWEVER, single family,one-store residential structures of 1,600 square feet may be permitted on Lots 42, 43 and 44 of the subdivision. All dwellings shall contain a place for parking for at least two vehicles in an enclosed garage.

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Section 4.7 **Location.** In order to assure that all structures will be located with regard to the topography of each individual lot, taking into consideration the elevation contours of the Lot, the location of adjoining dwellings, and similar considerations, the Declarant or the ACC reserves unto itself, its successors and assigns, the right to control absolutely and solely to decide the precise site and location of any structure, improvements, and utilities upon all Lots and every Lot within the Development. PROVIDED, HOWEVER, that such location shall be determined only after reasonable opportunity is afforded the Owner to recommend a specific site, and in any event all buildings (including eaves, decks, patios and steps) shall be constructed beyond the minimum setback lines. All structures shall be located in compliance with the rules and ordinances of Clarendon County Planning Commission.

Section 4.8 **Structure Material.** Unless specifically otherwise approved in writing by the ACC all structures constructed or placed on any Lot shall be built of substantially new materials and no used structures shall be relocated or placed on any such Lot. No dwelling shall have an exterior surface composed of asbestos siding, exposed concrete block, cinder block, or other similar material. Vinyl siding products will be considered on a case by case basis.

Section 4.9 **Kind of Home.** No mobile or manufactured homes of any kind, or any home having the same general appearance, shall be permitted on any Lot. No building or structure of a temporary nature, trailer, tent, shack, garage or other out-building shall be erected or maintained on any Lot at any time. Furthermore, no building shall be permitted on any Lot unless it is erected on a solid foundation of brick or masonry from the ground level to the first floor level. PROVIDED HOWEVER, that modular construction shall be permitted with approval of the ACC.

Section 4.10 **Driveways.** Vehicular driveways and walkways shall be constructed of concrete, brick, asphalt or reconstituted rubber services. If any driveway is to cross a drainage ditch, the Owner shall be required to install, at his own expense, all necessary culverts and coverings prior to the commencement of any other construction on the Lot.

Section 4.11 **Drainage.** No Owner shall do or permit any work, construct any improvements, place any landscaping or suffer the existence of any condition whatsoever which shall alter or interfere with the drainage pattern of the Property, except to the extent such alteration and drainage pattern is approved in writing by the Declarant, and except for the rights reserved to Declarant to alter or change the drainage patterns.

Section 4.12 **Continuity of Construction.** All structures approved by the ACC must be completed insofar as the exterior finish is concerned within 12 months from the date of issuance of a building permit for said structure. The ACC may waive this requirement if construction delays have been caused by strikes, war, fire, or Acts of God which render the completion of construction within such time impossible. All improvements commenced on the Property shall be prosecuted diligently to completion and shall be completed within 12 months of commencement, unless an exception is granted in writing by the ACC. If an Improvement is commenced and construction is then abandoned for more than ninety (90) days or if construction is not completed within required 12 month period, then after notice and hearing as provided in the By-Laws, the ACC may impose a fine of not less than One Hundred ($100.00) Dollars per day on the Owner of the Lot. Furthermore, prior

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to occupancy of the dwelling or within one year after the issuance of a Building Permit, the Lot Owner shall have his property sown in grass and have planted foundation landscaping around the dwelling and other accessory buildings in accordance with the proposed landscaping plans previously submitted and approved.

Section 4.13 **Reconstruction.** Any building on any Lot which is destroyed in whole or in part by fire, windstorm, flood or other Act of God must be rebuilt, or all debris from such building removed and the Lot restored to the condition it was in prior to commencement of construction of such building with reasonable promptness; PROVIDED HOWEVER, that any such reconstruction must be commenced within 3 months from the date of such destruction or if no reconstruction is to occur, then all such debris must be removed and the Lot restored to its prior condition within 2 months of such destruction.

Section 4.14 **Construction Traffic.** Construction traffic is prohibited on the Common Area runway, and tie down areas. The failure of a Lot Owner to prevent construction traffic associated with his Lot from entering upon the Common Area runway, and tie down areas shall make that Lot Owner liable for any necessary repairs caused by construction traffic upon these areas. Lot Owners shall specifically include a clause in their construction contracts prohibiting contractor equipment from entering upon the Common Areas, runway, taxiway, and tie down areas.

Section 4.15 **Hangar Specifications.** Each Lot adjoining the taxiway right-of-way may have a hangar for the storage of private aircraft. Such hangars, if constructed, must be compatible in appearance with the residential unit. The hangar must be a fully enclosed building with approved and operational doors which do not face the street. No T-Hangar shall be constructed and all separate hangars must be rearward of the mean center line of the house and away from the street side of the Lot. Free standing hangar shall not exceed 3,600 square feet of interior space, including workshop, restroom, storage area and any other purpose. The hangar may be built before the dwelling house only when permitted by the ACC, but substantial completion of the dwelling insofar as the exterior finish is concerned must be accomplished within 12 months from the date of the issuance of the Building Permit for hangar structures.

ARTICLE V
Restrictions and Covenants

Section 5.1 **Failing to Comply.** In the event the Owner of any Lot shall fail to comply with any of the below mentioned criteria, or fails to maintain the premises and the exterior of the improvements situated thereon, or permits litter and debris to accumulate on his Lot, or allows hedges or other plantings to obscure the view of the street traffic, or fails to comply with any other reasonable fire preventive requirements, the Declarant, through its agents and employees, shall have the right to enter upon such premises and to repair, maintain, rehabilitate and restore the exterior of any improvements situated thereon and/or clean or clear any Lot of debris, or take any other steps necessary to remove litter and debris, or take any other steps necessary to meet reasonable fire preventive regulations; PROVIDED HOWEVER, that the Declarant, or its agents, shall first give written notice to the Owner of said Lot of its intention to make such repairs or of its intention to

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perform such clearing, maintenance or rehabilitation work, affording the Owner of said Lot 30 days in which to make said necessary repairs, maintenance, or clearing work. If at the end of this period the work to be performed has not been done by the Owner, then the Declarant, or its agents, shall have the right, as set forth herein, to make such repairs, etc. Nothing herein contained shall be construed to grant to the Declarant or its agents, any right to enter into or inside of any building located on any Lot without the consent of the Owner thereof. Any costs incurred by the Declarant, or its agents, in enforcing and carrying out the performance of this paragraph shall be charged against the Owner of said Lot, and a lien may be created on said Lot until the Declarant, or its agents, has been paid in full for all costs incurred.

Section 5.2 **Maintenance.** All Owners shall keep their Lots, whether occupied or unoccupied, free of all tall grass, dead, diseased or decaying trees, weeds, trash, rubbish, and debris and keep all Lots in a neat and attractive condition. All improvements erected on Lots shall be maintained in a clean, neat and orderly condition and in a good state of maintenance and repair.

Section 5.3 **Toxic Disposal Prohibited.** Disposal on the site of any substances which may be considered toxic or environmentally sensitive is expressly prohibited. Disposal of any substances which may contaminate the ground water of this subdivision or the surrounding area is prohibited. These substances include, for example, but are not limited to, paints, solvents, cleaning fluids, paint strippers, fuel and oil.

Section 5.4 **Unsightly Materials Prohibited.** No rubbish, garbage, debris, junk, junk vehicles, or unsightly material shall be deposited on any of the Lots at any time except building material during the course of construction on the site. All rubbish, waste, or garbage shall be kept in sanitary containers, and shall be removed from the premises at least once a week. No dismembered aircraft parts nor nonoperative aircraft are to be left about the premises.

Section 5.5 **Hazardous Activities.** Nothing shall be done or kept on any Lot or in the Common Area which will increase the rate of insurance on the Common Areas or any other Lot without the prior written consent of the Declarant or the Association. No Owner shall permit anything to be done or kept on his Lot or in the Common Areas which would result in the cancellation of insurance on any part of the Common Areas, or which would be in violation of any law.

Section 5.6 **Nuisance.** No noxious or offensive activity shall be conducted upon any Lot or in any dwelling nor shall anything be done thereon or therein which may be or may become an annoyance or nuisance to the neighborhood.

Section 5.7 **Outside Toilets.** Outside toilets or privies are expressly prohibited, except where required for construction purposes.

Section 5.8 **Wall Hangings.** An Owner shall not cause anything to be affixed or attached to, hung, displayed or placed on the exterior walls, doors, balconies or windows of his Dwelling or exterior buildings which may adversely affect the appearance of Palmetto Air Plantation without the prior written approval of the Architectural Control Committee.

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Section 5.9 **Children.** Children will be the direct responsibility of their parents or legal guardians, including full supervision of them while within the Development and including full compliance by them with this rule and with all other rules and regulations of the Association. All children under twelve (12) years of age must be accompanied by a responsible adult when entering and/or utilizing any recreational facility. In order to control the overall appearance of the community, no swing sets, play sets, sandboxes, basketball backboards, tree houses, animal houses or animal pens shall be erected so as to be visible from any roadway or adjoining property, unless approved in advance by the ACC.

Section 5.10 **Pets.** Pets and other animals shall neither be kept nor maintained in or about the properties except in accordance with the following. Commercial breeding or feeding of horses, cattle, goats, hogs, sheep or poultry; the operation of a commercial dairy; dog boarding kennel or veterinary hospital; and the operation of a commercial livery or boarding stable for horses; or a riding academy; and the keeping of any hog or milk cow or horse, are strictly prohibited. It is understood, however, that this restriction shall not be construed to prohibit the keeping of a limit of three (3) domestic animals (canine or feline) for family pleasure, provided that domestic animals must be restrained by fence or other appropriate protective restraint. This restraint should be from the farthest possible point from the adjoining property, and all appropriate measures must be taken by the Lot Owner to eliminate and prevent offensive odors and any unsightly accumulations from said animals. Noisy animals, such as incessantly barking dogs, must be controlled by their Owners. No pet shall be permitted outside of its Owners Lot unless attended by an adult or child of more than ten (10) years of age and said pet must be on a leash of reasonable length. At no time are any unattended domestic animals or pets allowed on the runway or taxiway easements.

Section 5.11 **Noise.** No Owner shall make or permit any disturbing noises on their Lot by himself or his family, servants, employees, agents, or visitors, nor permit any conduct by such persons that will interfere with the rights, comforts or convenience of other Owners. There shall be no discharging of firearms or fireworks on the premises.

Section 5.12 **Electronic Equipment.** No electronic equipment may be permitted in or on any Lot which interferes with the television or radio reception of another Lot.

Section 5.13 **Satellite Dish.** No awning, canopy, shutter, enclosure, satellite dish or other projection shall be attached to or placed upon the outside wall or roof of any structure or on the Lot, except by the approval of the Architectural Control Committee. Small, inconspicuous satellite dishes will be most compatible.

Section 5.14 **Vehicles and Parking.** No Owners vehicles shall be parked on any street. No boat, motor home, travel trailer or any other recreational vehicle or commercial truck may be stored outside over night on any Lot for a period of more than seven (7) days. Furthermore, no wrecked or junked motor vehicle or vehicles without current licence plates shall be placed upon the premises and no commercial vehicles shall be parked overnight in the subdivision without the consent of the ACC. No motor vehicle or aircraft of any kind, at any time, shall be parked or tied down on any of the taxiways or runways, roadways or right-of-ways except when permitted by the Architectural Control Committee.

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Section 5.15 **Fuel Storage.** It is acknowledged that the Declarant will establish a fuel area between Lot 18 and Lot 19 at the end of the runway. Except for that designated area, no bulk storage of flammable, combustible or explosive fluids, chemicals or substances shall be allowed in any Dwelling, or on any Lot, or on the Common Areas, except that small quantities of fuels used for common activities such as lawn mowing, BBQ grills and other like activities may be kept when stored in a manner which minimizes the risk of fire or explosion. Lot Owners may not store bulk quantities of fuels used for aviation purposes on Lots or in buildings. Aviation fuels may be available in connection with the facility located adjacent to the runway.

Section 5.16 **Fences and Hedges.** The erection or installation of fences and hedges may be permitted with the consent of the Architectural Control Committee which shall directly control the location and type of said facility. No barbed wire fencing will be permitted at any time.

Section 5.17 **Signs.** No signs of any character shall be erected, pasted, posted, or displayed upon or about any Lot or part of any Lot, or Common Area, without the written permission of the ACC. The ACC shall have the right, in its sole discretion, to prohibit or to restrict and control the size, construction, material, wording, location and height of all signs and may summarily remove and destroy all unauthorized signs. Declarant and Lot Owners, however, may post temporary "For Sale" or "For Rent" signs on the Properties and these signs must be approved before being put on any Lot. No sign shall be attached to any tree or shrubbery. All signs must be professionally lettered, and may not contain the price of the house or Lot. Furthermore, signs used by a builder during construction or informational signs by the Declarant shall be allowed.

Section 5.18 **Clothes Lines.** No clothing, laundry, or wash shall be aired or dried on any portion of the Lots in an area with a substantial exposure to view from any other Lot or street. Drying areas will be permitted only in locations approved by the Architectural Control Committee and only when substantially protected from view of screening or fencing approved by the Architectural Control Committee.

Section 5.19 **Flag Poles.** Flag Poles are permitted, provided the pole is not more than 15 feet in height, unless otherwise approved by the Architectural Control Committee.

Section 5.20 **Antennas.** No radio or television aerial or antenna or any other external electronic equipment or devices may be installed or maintained on any exterior of any structure erected on a Lot unless the location, size, and design has been approved by the ACC. Said antennae or equipment shall be subject to FAA and FCC regulations concerning obstructions placed in the vicinity of airports. Furthermore, all electrical, telephone, and other utility lines shall be run underground.

Section 5.21 **Outdoor Lighting.** One or more hospitality light standards, of a design approved by the ACC, may be located within the front yard of any Owner's property. Any outdoor lighting positioned and installed by a Lot Owner shall be of such a nature and type so as not to present a hazardous or confusing condition to night air operations which may be conducted from said airport and be shaded so as not to create a nuisance to any other Lot Owner.

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Section 5.22 **Mail Boxes.** Each dwelling shall have a standard house number, mail box and paper box with a design and location approved by the ACC.

Section 5.23 **Swimming Pools.** No non-permanent or "above ground" pools may be placed, maintained or kept on any Lot.

Section 5.24 **Wells and Water Removal.** No wells shall be drilled, dug or installed except with the approval of the Architectural Control Committee.

Section 5.25 **Access.** There shall be no overland vehicular access to any Lot except from designated road and taxi-ways lying within the Common Areas. The Declarant, its agents or employees shall have access to each Lot from time to time during reasonable working hours, upon oral or written notice to the Owner, as may be necessary for the maintenance, repair or replacement of any portion of the Common Areas, or facilities situated upon such Lot which serve another Owners Lot. The Declarant or its agent shall also have access to each Lot at all times without notice as may be necessary to make emergency repairs to prevent damage to the Common Areas or another Lot.

Section 5.26 **Amendments to Regulations.** Reasonable regulations governing the use of the Common Areas and external appearance of all structures erected on the Lots may be made and amended from time to time by the Declarant or the Architectural Control Committee; PROVIDED HOWEVER, that all such regulations and amendments thereto shall be approved by a majority vote of the Directors of the Owners Association before the same shall become effective.

Section 5.27 **Ponds and Waterways.** Any Lot not adjoining a pond shall gain access to the pond through Common Areas of the subdivision only. Provided no pond shall be used for swimming or for the operation of motor boats. Boating use shall be limited to canoes, kayaks and small electric driven fishing boats.

ARTICLE VI
Aircraft and Hangar Restrictions, and Parking

Section 6.1 **Type of Aircraft.** Only conventional, general aviation aircraft shall be permitted. No jet, or ultra light aircraft shall be permitted. The Lot Owners, their heirs or assigns hereby relinquish any and all rights to complain, object or take any legal remedies to stop the function of normal aviation use and related activities in the development. The airplane hangar or tie down space on each Lot shall be limited strictly to private use and only by the Owner of the property or tenant on which the hangar or tie down space is located except as permitted herein. No person who is not a member of the Association or a tenant of a member of the Association shall be permitted to store, tie down or hangar any aircraft in the subdivision without the consent of the Board of Directors of the Owners Association. The Board of Directors will have the authority to specify the terms and conditions under which a non-member aircraft may be stored, hangared or tied down.

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Section 6.2 **Airport Hangars.** All hangars are subject to the Architectural Control Committee approval, and must be architecturally compatible with the primary structure on the Lot. All aircraft hangars must be constructed in conjunction with or subsequent to the construction of a residence. Hangars may be detached from or attached to a primary structure in accordance with local building regulations.

Section 6.3 **Two or More Aircraft.** If two or more aircraft are owned by Lot Owner, one aircraft, not stored in the hangar, may be secured with tie downs adequate for the size and weight of the aircraft. Until a dwelling and hangar are under construction or built, no aircraft shall be tied down on the Lot unless approved by the ACC. The one tied-down aircraft must be in airworthy condition as defined by the current Federal Aviation Regulations (FAR's) except as permitted by the Board of Directors in writing. The tied out aircraft must be in a good state of repair and appearance.

Section 6.4 **Unattended Aircraft.** No aircraft shall be parked on any part of the runway, taxiway or easements and all aircraft parked or left for any period of time unattended within Lots shall be securely tied down. If any aircraft is found within any Lot, not tied down and unattended, the Board of Directors or its agents may, but are not obligated to, secure it at the expense of the Owner of said aircraft.

Section 6.5 **Run-ups.** "Run-ups" and testing of engines within residential areas should be limited to the hours of 8:00 am and 6:00 pm. But in any event the "run-up" shall not be done in such a manner as to cause inconvenience or damage to the property of others. This shall not prohibit normal take offs and landings at any time.

Section 6.6 **Stunt Flying.** No low-level flying stunts nor other hazardous activities will be permitted about the subdivision. Each Owner is required to strictly observe all Federal, State and Local Statues, Regulations or Ordinances relative to the operation of civil aircraft.

Section 6.7 **Speed Limits.** Aircraft shall taxi at less than 15 miles per hour on all taxiways. Pilots are cautioned to avoid increasing engine RPM to high levels as part of our noise abatement program and to avoid blowing sand and dirt on following aircraft and in residential areas.

Section 6.8 **Taxi-Way Courtesy.** Moving aircraft shall have the right-of-way at all times. Automotive traffic must yield at all taxiway crossings and on dual purpose streets. No taxiways other than those designated by Declarant as combination street/taxiways shall be used by any vehicle other than aircraft or aircraft service vehicles, unless pursuant to a valid access permit granted by the Association. No aircraft shall have a right-of-way on taxiways, and all aircraft on taxiways must anticipate use of passing areas for approaching aircraft.

Section 6.9 **Commercial Business.** No commercial aircraft business shall be permitted on a Lot. This should not exclude work done on non-owned aircraft so long as such work is done inside a hangar and the completed aircraft conforms with all requirements as set forth in these covenants.

Section 6.10 **Storing Parts.** There shall be no storage of dismantled or disabled aircraft on the Lots or the Common Areas. Aircraft being repaired and aircraft parts must be kept within an enclosed hangar building which has been approved by the Architectural Control Committee. Parts of aircraft, including but not limited to, fuselages, wings, engines, horizontal and vertical stabilizers, ailerons, rudders, landing gear and spare parts may not be stored in yards where visible from the street, taxiway, or adjoining Lots, but must be stored inside the hangar or other building approved by the ACC.

ARTICLE VII
Runway Assurances and Operations

Section 7.1 **Operation.** Every Lot Owner or Lessee or Grantee of any property now or hereafter subject to this Declaration by acceptance of a Deed, Lease or other Conveyance thereof hereby agrees the runway and taxiway shall remain and be maintained as such until such time as at least eighty (80%) per cent of the members and Declarant consents to its dissolution or operation is interrupted or terminated by Local, State or Federal authority.

Section 7.2 **Complaints.** As this is an aviation community, Owners understand, and agreed, that Lot Owners, their heirs, or assigns relinquish any right to complain, object, or take any legal remedies to stop aviation related activities in the Development.

Section 7.3 **Control of Runway.** The Licensor, MidEastern Truckwash, Inc., shall have the right to control the use of the runway and taxiway and may prohibit the use of the runway or taxiway by any aircraft deemed unsafe to either the life or health of individuals or the condition and maintenance of the field by virtue of its size, design or state of repair.

Section 7.4 **Withholding of Use.** The Declarant or the Association shall have the right to withhold from, restrict, or charge an individual assessment for the use of the Common Area, including the runway, to any Owner:

a) Who is in default in the payment of any assessment fee; or

b) Who, in the judgment of the Declarant or the Owners Association, uses the Common Areas or his aircraft in a negligent manner or in a manner harmful to the rights of other users; or

c) Who, in general, violates the published rules and regulations of the Association.

ARTICLE VIII
Easements and Setbacks

Section 8.1 **Setback Requirements.** No house or building may be constructed within 75 feet of the centerline of any designated street, or taxiway or runway boundary. A 40 foot clear zone easement shall be established along all Lot lines facing the runway where no aircraft may be parked, no trees or other obstacles allowed in this area. A 5 foot easement along all sides of Lots and along

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sides adjoining any designated streets are reserved for underground utilities and drainage purposes. All setbacks and side Lot lines shall be in compliance with the rules and regulations of Clarendon County Planning Commission and Architectural Control Committee.

Section 8.2 **During Construction.** During the development period, the Declarant or its agent reserves a blanket easement and right on, over and under the ground within the Property to maintain and to correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any grading of the soil, or to take any other similar action reasonably necessary, following which the Declarant or its agent shall restore the affected property to its original condition as near as possible. The Declarant or its agent shall give reasonable notice of intent to take such action to all affected Owners, unless, in the opinion of the Declarant or its agent, any emergency exists which precludes such notice. The Declarant or its agent, however, in the exercise of such easement rights shall not disturb any living dwelling or other substantial improvement upon any property.

Section 8.3 **Maintenance.** In order to implement effective insect and woods fire control, the Declarant reserves for itself and its agents the right to enter upon any Lot on which a residence has not been constructed and upon which no landscaping plan has been implemented (with prior written approval of the ACC for such plan), such entry to be made (at the expense of the Owner of the Lot), by personnel with tractors or other suitable devices for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, or other unsightly growth, which in the opinion of the Declarant detracts from the overall beauty, setting and safety of the Property. Such entrance shall not be deemed a trespass. The Declarant and its agents may likewise enter upon such land to remove any trash which has collected on such Lot without such entrance and removal being deemed a trespass. The provisions in this paragraph shall not be construed as an obligation on the part of the Declarant to mow, clear, cut or prune any Lot nor to provide garbage or trash removal services.

ARTICLE IX
Insurance

Section 9.1 **By the Declarant or Association.** The Declarant or Association or its duly authorized agent shall have the right and power to obtain insurance to the extent reasonably available for all improvements on the Common Areas against loss or damage in an amount sufficient to cover 100 percent (100%) of the replacement cost of any repair or reconstruction work in the event of damage or destruction from any reasonable hazard. The Declarant may also obtain a broad form public liability policy covering all Common Areas. In the event of damage or destruction to property insured by the Declarant by fire or other casualty, the Declarant or its agent shall, upon receipt of the insurance proceeds contract to rebuild or repair such damaged or destroyed portions of the property to as good a condition as formerly enjoyed. In the event the insurance proceeds are insufficient to pay all costs of repairing or rebuilding of such destroyed improvement, the Declarant or its agents shall levy a special assessment against all Owners to make up such deficiency. In the event the insurance proceeds exceed the cost of repair, the excess proceeds shall be distributed to the respective Owners and Mortgagees as their interests appear.

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Section 9.2 **Liability Insurance by Declarant or Association.** The Declarant or Association shall have the right and power to obtain a comprehensive policy of public liability insurance insuring the Association and its Members for all liability for property damage, bodily injury or death in connection with the operation, maintenance and use of the Common Area within Palmetto Air Plantation.

Section 9.3 **By the Owner.** It shall be the individual responsibility of each Owner to provide, as he sees fit, insurance on the improvements on his Lot in the event of damage or destruction from all reasonable hazards. Each Owner shall provide as he sees fit homeowners liability insurance, theft and other insurance covering personal property damage or personal liability loss.

Section 9.4 **Aircraft Liability Insurance.** Every Owner or user of an aircraft which is based on the Property shall provide the Licensor or the Association or their agent with a current Certificate of Insurance for aircraft liability before they can use the runway. Failure to provide the Certificate of Insurance and to maintain such insurance shall result tin the automatic suspension of the Owner or user's right to use the Common Area including the runway.

ARTICLE X
Maintenance Assessments

Section 10.1 **Creation of the Lien and Personal Obligation for Assessments.** Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed, is deemed to covenant and agree to pay to the Association:

(a) Annual assessments or charges as provided in this Declaration for the purpose of funding the maintenance fund.

(b) Special assessment for capital improvements and other purposes as stated in this Declaration; such annual and special assessments to be fixed, established and collected from time to time as provided below.

(c) Default assessments which may be assessed against an Owner's Lot pursuant to this Declaration or the Palmetto Air Plantation Homeowners Associations Rules or Regulations or because the Association as incurred an expense on behalf of the Owners under the Association Documents. The annual, special and default assessments, together with interest, costs and reasonable attorney's fees, shall be a charge upon the land and shall be a continuing lien upon the Lot against which each such assessment is made until paid. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the Owner of such Lot at the time when the assessment fell due.

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Section 10.2 **Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and occupants of Palmetto Air Plantation and for the improvement and maintenance of the Common Area, including but not limited:

(a) to keep the Common Areas clean and free from debris and to maintain any amenities located thereon in a clean and orderly condition, to maintain the landscaping thereon in accordance with the highest standards for private parks including any necessary removal and replacement of landscaping, and to repair, replace, and provide for additions to the improvements as stated in the Declaration or Association Documents.

(b) to pay all taxes, if any, levied against the Common Areas and any properties owned by the Association.

(c) to install and maintain any light fixtures along roads and streets in the Development to provide street lighting therefore, as may be approved by the Association.

(d) to erect and maintain entrance signs at the entrances to the Development and signs on the Common Areas, said signs to be of standard construction and quality.

(e) to pay the premiums on all hazard insurance carried by the Association on the Common Areas and all public liability insurance carried by the Association pursuant to the By-Laws.

(f) to provide such security services as may be deemed reasonably necessary for the protection of the Common Areas from theft, vandalism, fire and damage from animals.

(g) to provide such garbage removal services as may be approved by the Association for all Lots.

Section 10.3 **Uniform Rate of Assessment.** Both annual and special assessments must be fixed at a uniform rate for all Lots, except the Board may provide for a reduced assessment to be paid by those Lot Owners whose property is undeveloped. PROVIDED HOWEVER, the Owners of undeveloped Lots are assessed on a uniform basis. All payments shall be applied first to cost, then to late charges, then to interest and then to delinquent assessments.

Section 10.4 **Effect of Non-payment of Assessment; Lien; Remedies of Association.** Any Association installment, whether pertaining to an annual, special or default assessment, which is not paid within thirty (30) days of its due date shall be delinquent. In the event that an assessment installment becomes delinquent, the Association, in its sole discretion may take any or all of the following actions:

(a) Assess a late charge of at least fifteen percent (15%) per delinquency.

(b) Suspend the voting rights of the Owner during any period of delinquency.

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(c) Accelerate all remaining assessment installments for the fiscal year in question so that unpaid assessments for the remainder of the year shall be due and paid at once.

(d) Bring legal action against any Owner personally obligated to pay the delinquent installments.

(e) File a statement of lien with respect to the Lot, and foreclose as set forth below:
The Association may file a statement of lien by recording with the Clerk of Court's Office of Clarendon County, South Carolina, a written statement with respect to the Lot, setting forth the name of the Owner, the legal description of the Lot, the name of the Association, and amount of the delinquent assessments then owing, which statement shall be duly signed and acknowledged by the President or Vice-President of the Association or by the Manager, and which shall be served upon the Owner of the Lot by mail to the address of the Lot or at such other address as the Association may have in its records for the Owner. Thirty (30) days following the mailing of such Notice, the Association may proceed to foreclose the statement of lien in the same manner as provided for foreclosure of mortgages under the statutes of the State of South Carolina. Such lien shall be in favor of the Association and shall be for the benefit of all other Owners. In a foreclosure action, the Association shall be entitled to recover as a part of the action the interest, costs and reasonable attorney's fees with respect to the action. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot. The remedies herein provided shall not be exclusive and the Association may enforce any other remedies to collect delinquent assessments as may be provided by law.

Section 10.5 **Subordination of the Lien.** The lien of the assessments provided for in this Declaration shall be subordinate to the lien of any first mortgage. The lien of the assessments shall be superior to and prior to any homestead exemption provided now or in the future by laws of the State of South Carolina. No sale or transfer of any Lot pursuant to a decree of foreclosure or by a Public Trustee's foreclosure or any other proceeding or deed in lieu of foreclosure for the purpose of enforcing a first mortgage shall extinguish the lien of such assessments as to installments which become due prior to such sale or transfer, and the amount of such extinguished lien may be reallocated and assessed to all Lots as a common expense at the direction of the Board of Directors. No sale or transfer shall relieve the purchaser or transferee of a Lot from liability for, nor the Lot from the lien of any assessments made after the sale or transfer.

ARTICLE XI
Duration and Amendments

Section 11.1 **Term.** The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any property subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change covenants and restrictions, in whole or in part, or to terminate the same.

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Section 11.2 **Amendments.** So long as the Declarant owns twenty-five (25%) per cent of the unsold Lots in the subdivision it shall have the right and authority to modify and amend these covenants and restrictions without liability or notice or joinder of any other party provided such modifications and amendments do not violate the ordinances of Clarendon County Planning Commission. Subsequently amendments to this Declaration may be adopted by the membership of the Property Owners Association in the same manner and upon the same vote as required for amendments to the By-Laws of the Property Owners Association.

Section 11.3 **Effective on Recording Any Modification or Amendment.** Shall be immediately effective upon recording in the R.M.C. Office for Clarendon County, South Carolina, a copy of such amendment or modification, executed and acknowledged by the necessary number of Owners (and by Declarant, as required), together with a duly authenticated Certificate of the Secretary of the Board stating that the required number of consents of Owners were obtained and are on file in the office of the Association.

ARTICLE XII
Enforcement of Covenants

Section 12.1 **Violations Deemed a Nuisance.** Every violation of this Declaration of Covenant is deemed to be a nuisance is subject to all the remedies provided for the abatement of the violation. In addition, all public and private remedies allowed at law or in equity against anyone in violation of these Covenants shall be available

Section 12.2 **Who May Enforce.** Any action to enforce these restrictions may be brought by Declarant or the Board of the Owners Association or any Property Owner in the subdivision.

Section 12.3 **No Liability.** No member of the Board of Directors, Declarant, the Manager, or the Architectural Control Committee or any Owner shall be liable to any other Owner for the failure to enforce any of the restrictive covenants.

Section 12.4 **Recovery of Costs.** If legal assistance is obtained to enforce any of the provisions of the restrictions, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the restrictions or the restraint of violations of the restrictions, the prevailing party shall be entitled to recover all costs incurred by it in such action, including reasonable attorney's fees as may be incurred, or if suit is brought, as may be determined by the Court.

ARTICLE XIII
Expansion

Section 13.1 **Reservation of Right to Expand.** Declarant shall expand the effect of this Declaration to include all of the Expansion Property which the Declarant may choose to add to the subdivision. The Declarant shall have the unilateral right to transfer to any other person this right

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and to expand by instruments duly recorded. Declarant shall pay all taxes and other governmental assessments relating to the Expansion of property.

IN WITNESS WHEREOF, Mideastern Truckwash, Inc. has hereunto set its hands and seals, the day and year first above written.

WITNESS:

MIDEASTERN TRUCKWASH, INC.

BY: JOE WITT
ITS: PRESIDENT/DECLARANT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CLARENDON)

PROBATE

PERSONALLY APPEARED BEFORE ME, the undersigned witness and made oath that s/he saw the within named Mideastern Truckwash, Inc., sign, seal and its act and deed, deliver the within written Declaration of Covenants, Conditions and Restrictions for the uses and purposes therein mentioned and that s/he with the other witness above witnessed the execution thereof.

Witness

SWORN to before me this 11th day of July, 2001

Notary Public for South Carolina
My Commission Expires: 4/4/11

000083834
FILED, RECORDED, INDEXED
07/11/2001 03:40:50PM
Bk:A0444 Pg:00026
RecFee:27.00 St Fee:0.00
Co Conv Fee:0.00 Pages:21
R M C DEPARTMENT CLARENDON CO
Beulah G. Roberts, Clerk of Court



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CLARENDON	)	C/A NO.: 2017-CP-14-00127
	)	
Palmetto Air Plantation Homeowners Association, Inc.,	)	
Plaintiff(s)	)	AFFIDAVIT OF KIM E. BEVIER
	)	
vs.	)	
	)	
Kim E. Bevier,	)	
Defendant(s).	)	

My name is Kim E. Bevier. My present wife and I live at 1144 Mullett Dr. Manning, SC 29102, in Palmetto Air Plantation Subdivision. My wife Susan (now deceased) and I purchased the lots, 33 and 34 on September 26, 2003. I am a Commercial aircraft pilot and an FAA certified flight instructor. I was attracted to this subdivision because it includes as one of its amenities an air strip and accommodates the construction of hangars on individual lots for the housing of aircraft. We built our home in 2010. Because my in-laws were living with us, it was constructed with a "mother-in-law" wing with a fully equipped kitchen, bath and separate entrance.

Susan passed away on February 3, 2013, and my in-laws have also passed away. I married my present wife, Ann, in May, 2015.

Since the mother-in- law wing was unoccupied, Ann thought a little extra income to assist her children with their education expenses could be earned by renting it. We listed it for rent with Airbnb, an international company which assists with reservations, vetting of potential occupants etc. It is listed as a self-contained unit and is rented as such. We always rent the unit as a whole. In other words, we do not rent one room to one party and another to another party as is sometimes done in a bed and breakfast. We do not furnish meals though we sometimes provide snacks and the ingredients for the occupant to brew coffee. The website for Airbnb is airbnb.com. Photographs of the unit are shown along with comments from guests who have stayed there. All comments are positive and noticeably, there are no negative comments about barking dogs.

I purchased our English Mastiff, Blue, from a breeder in Florida in March 2015, at a cost of $1500. He was a wedding gift for my wife, Ann. Blue was originally flown to Chicago to live with my fiancée and her two daughters. After my marriage in late May of 2015, Blue accompanied us on a drive from Chicago to South Carolina.

Blue joined the other two dogs that lived with me, and in the ensuing two years, has grown from puppy to adolescent while becoming a much loved and integral part of our family.

Blue is an affectionate, loyal and gentle giant of a dog. A photograph is attached as Exh B. He does not bark excessively, though, as most dogs do, he barks at the approach of delivery trucks, children on golf carts, bicycle riders and pedestrians if they come too close to our home. Since our home is on a cul-de-sac traffic is minimal.

Blue chases ducks and geese when they attempt an invasion from the pond which borders our property, but does not bother them if they remain offshore. 99.9% of the time he is either sleeping in the shade, chewing on sticks, stealing my golf balls, or trying to play tag with his two other pack mates, Maggie-Sue and Bonnie. He is controlled by an underground fence which is located approximately as shown on Exhibit A. He has not been off of my property without a leash since May, 2016.

Attached to this affidavit is a copy of the Clarendon County tax map with an aerial photograph overlay with my home and those of Joseph Witt, Robert Zambelli and Jeffrey Winemiller identified and located thereon (Exh. A). No one has made any complaint about Blue other than Mr. Witt. He does ride his bike near my home from time to time and Blue barks when he approaches, but the barking is short lived and ceases as the bike leaves the area.

Both Ann and I feel that Airbnb activity is no different than overnight visits by family or friends. In fact, prior to the first use of the apartment via Airbnb, Ann told Mr. Witt's wife, Jean, of her plans. Jean told Ann not to worry about it and that Mr. Witt did not care.

I am aware that the former owners of the property where the Winemillers now reside, Ed and Barbara Amato, were allowed to conduct a commercial flight training operation from their home, using the Palmetto Air Plantation taxiways and runway access, until Ed's untimely death a few years ago.

Respectfully submitted,

Kim Bevier

SWORN to and Subscribed before me
This 11th day of January, 2017.

Notary Public for South Carolina

My Commission Expires: Jan 15, 2023



STATE OF SOUTH CAROLINA)
)
COUNTY OF CLARENDON)

CONTRACT OF SALE

This Contract made and entered into this 21st day of May, 2003, by and between Palmetto Air Plantation, P. O. Box 777, Manning, SC 29102, hereinafter referred to as the "Seller", and Kim E. Bevier and Susan S. Bevier, 706 Greene Street, Camden, SC 29020, hereinafter referred to as the "Purchasers".

1. Description of Premises - Purchasers agree to buy and Seller agrees to sell Lots 33 and 34, Palmetto Air Plantation, situate in Clarendon County, South Carolina, subject to all of the covenants of record and all governmental statutes, ordinances, rules and regulations applicable to said lots.

2. Purchase Price - The purchase price is Eighty Seven Thousand Dollars ($87,000.00) to be paid as follows:

A. An earnest money deposit of Four Thousand Dollars ($4,000.00) has been paid prior hereto as consideration for this Contract, which sum shall be applied to and deducted from the purchase price at closing and shall be held in the escrow account of Coffey, Chandler & Younts, P.A., closing attorneys;

B. The balance of Eighty Three Thousand Dollars ($83,000.00) shall be payable by the issuance at closing of a Purchase Money Note, secured by a Mortgage of Real Estate on the lots herein referred to, which Note shall bear interest at the rate of six percent (6%) per annum and shall be payable on a ten (10) year amortization schedule with a balloon installment at the 60th month of the outstanding balance thereon. The first payment shall be due and payable one (1) month from the closing date anticipated by this transaction.

3. Closing - The Seller shall notify the Purchasers within one (1) year of the date of this Contract that the Seller is prepared to close this transaction and the Purchasers shall have a period of ninety (90) days from the date of notification to complete the closing. PROVIDED HOWEVER, in any event, the closing of this transaction shall occur on or before the 1st day of June, 2004. PROVIDED FURTHER, that the closing of this transaction on behalf of the Purchasers is contingent upon approval of the appropriate authority of Clarendon County for the issuance of a building permit

CERTIFIED TRUE COPY
Of Original Filed
In This Office
05/30/2003 09:04:35AM
Beulah G. Roberts
Clerk of Court
Clarendon County SC

to construct a residence and other buildings on the premises as permitted by the Restrictive Covenants and upon its failure to do so, the Purchasers shall have the right to terminate this Contract and the earnest money deposited as herein provided shall be refunded to them.

4. Restrictive Covenants - This conveyance is subject to all visible and recorded easements, right-of-way, and covenants, including those Restrictive Covenants dated 11 July, 2001, recorded in the Office of the RMC for Clarendon County in Deed Book A-444 at Page 26.

5. Deed and Costs - Upon payment by the Purchasers to the Seller of the outstanding balance due under this Contract, the Seller shall furnish to the Purchaser a general warranty deed to Lots 33 and 34, conveying good, marketable, fee simple title, free and clear of all liens and encumbrances. The Buyer agrees to pay for the preparation of the deed, deed stamps, any loan fees, title fees and all other closing costs incurred by them in completing the purchase including the preparation of this Contract.

6. Taxes - Ad valorem taxes shall be prorated between the Seller and Purchaser as of the closing date. The Seller shall pay all roll-back taxes applicable to the property.

7. Possession and Improvements - During the term of this Contract the Purchasers shall have possessory rights of the above described lots which shall include the rights to clear said lot of undergrowth and to conduct tests thereon in accordance with the Restrictive Covenants. PROVIDED HOWEVER, that any well, septic tank, or other permanent improvement erected by the Purchasers during the performance of this Contract shall become a part of the real estate herein described and should default occur on the part of the Purchasers, then and in that event, the said structure and appurtenances shall be retained by the Seller as part of the property without any compensation.

8. Default - In the event of default in the payment of the sums recited herein, the Seller may, by endorsement across the face of the original of this Contract and/or endorsement across any recorded copy of the same, cancel and terminate this Contract and said endorsement shall be sufficient evidence of the cancellation of this Contract. Upon said cancellation this Contract shall be declared null and void and all payments made by the Purchasers to the Seller shall be retained in

the hands of the Seller and considered as liquidated damages. PROVIDED FURTHER, that prior to the cancellation of this Contract due to nonpayment, the Seller shall give to the Purchasers ten (10) days written notice by registered or certified mail of said default. Should the Purchasers fail to correct said delinquency and to complete the purchase and pay the balance of the purchase price within said ten (10) day period, the Seller may terminate this Contract as hereinabove provided.

This Contract shall be binding upon the parties hereto, their heirs, successors and assigns.

IN WITNESS whereof we have hereunto set our hands and seals this day and year first above written.

Witnesses:

Carol P. Barkette

Mary Ann Mann

Palmetto Air Plantation, Inc.

BY _____

ITS: President, Seller

STATE OF SOUTH CAROLINA)
)
COUNTY OF CLARENDON)

PROBATE

PERSONALLY APPEARED BEFORE ME, the undersigned witness and made oath that s/he saw the within named Joseph M. Witt, sign, seal and as his act and deed, deliver the within written Contract of Sale for the uses and purposes therein mentioned and that s/he with the other witness subscribed above witnessed the execution thereof.

Carol P. Barkette

1st Witness Sign Again

SWORN to before me this 21st day of May, 2002.

Mary Ann Mann

Notary Public for South Carolina
My Commission Expires: 03/19/06

IN WITNESS whereof we have hereunto set our hands and seals this day and year first above written.

WITNESSES

Kathy B. West
1st Witness

2nd Witness

Kim E. Bevier, Purchaser

Susan Bevier, Purchaser

STATE OF SOUTH CAROLINA)
)
COUNTY OF KERSHAW)

PROBATE

PERSONALLY APPEARED BEFORE ME, the undersigned witness and made oath that s/he saw the within named Kim E. Bevier and Susan Bevier sign, seal and as his act and deed, deliver the within written Contract of Sale for the uses and purposes therein mentioned and that s/he with the other witness subscribed above witnessed the execution thereof.

Kathy B. West
1st Witness Sign Again

SWORN to before me this 23
day of May, 2003.

Notary Public for South Carolina
My Commission Expires: 10/1/2013
(Notary may be 2nd Witness)

My Commission Expires
October 1, 2012

W:FPFILES/CORPORATE/PALMETTO/BEVIERK-COS
FILE #010473BB

DESCRIPTION OF LOTS

All those pieces, parcels or lots of land lying, being and situate in School District No. 2 of Clarendon County, South Carolina, being designated as Lot No. 33, containing 1.6 acres and Lot No. 34 containing 1.46 acres and bounding now or formerly as follows: On the Northwest by lands of Ernest and Linda C. Rauber; on the Northeast by a pond; on the Southeast by Lot No. 35; on the Southwest by Mullet Drive and lands of Wilver Blanding.

For a more particular description of said Lots reference may be had to a plat of Palmetto Air Plantation Subdivision, dated 11 April, 2002, made by DuValle W. Elliott, RLS.

Said lots being a portion of the lands conveyed to Palmetto Air Plantation, LLC by Deed of Mideastern Truckwash, Inc., dated 9 October, 2001, recorded October 22, 2001 in Deed Book A-452 at Page 144.

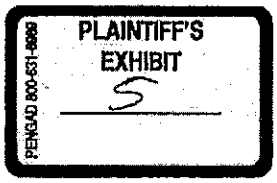
Said lots being a portion of Clarendon Tax Map Parcel No. 140-00-05-063.

COFFEY, CHANDLER & YOUNTS, P.A.

Attorneys At Law
8 South Brooks Street ~ Post Office Box 1292
Manning, South Carolina 29102-1292
(803) 435-8847

WILLIAM C. COFFEY, JR.
RAY E. CHANDLER
LENA T. YOUNTS
JOSEPH K. COFFEY

FACSIMILE
(803) 435-8915
E-MAIL
coffeylaw@ftc-i.net



June 5, 2003

Mr. & Mrs. Kim E. Bevier
706 Greene Street
Camden,SC 29020

Mr. Joe Witt
Palmetto Air Plantation, LLC
P. O. Box 777
Manning, SC 29102

RE: Contract of Sale - Lots 33 & 34 Palmetto Air Plantation

Dear Mr. & Mrs. Bevier & Joe:

We are pleased to enclosed copies of the executed and recorded Contract of Sale between Mr. & Mrs. Bevier and Palmetto Air Plantation.

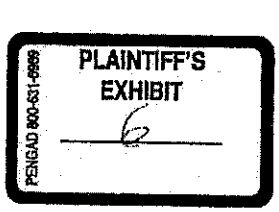
It has been our sincere pleasure to assist you with this transaction and if we can be of further assistance please do not hesitate to give us a call.

Sincerely,

Betty A. Usry, Secretary to
W. C. Coffey, Jr.

bau/

Enclosure: As Stated.



STATE OF SOUTH CAROLINA)
) PRELIMINARY
) ATTORNEY'S TITLE CERTIFICATE
COUNTY OF CLARENDON)

TO: Kim E. Bevier and Susan S. Bevier

At your request, we have examined the public records of Clarendon County relative to the title of Palmetto Air Plantation to the property described as follows:

All that piece, parcel or lot of land lying, being and situate in School District No. 2 of Clarendon County, South Carolina, being designated as Lot No. 33 and Lot No. 34, Palmetto Air Plantation, containing 1.60 acres and 1.46 acres on a plat hereinafter referred to, and bounding and measuring as follows: on the Northeast by a pond and measuring thereon 506.93 feet; on the Southeast by Lot 35 on said plat and measuring thereon 261.77 feet; on the Southwest by Mullett Drive and lands of Wilver Blanding and measuring thereon a total of 539.17 feet; and on the Northwest by lands of Ernest L. and Linda C. Rauber and Fellowship Ranchette Subdivision and measuring thereon 244.98 feet.

For a more particular description of said lots, reference may be had to a plat made by DuValle W. Elliott, RPLS, dated April 11, 2002, recorded in the Office of the Clerk of Court for Clarendon County in Plat Cabinet E, Slide 1008 at Plat 6.

Said lots being a portion of the lands conveyed to Palmetto Air Plantation by deed of MidEastern Truckwash Inc. dated October 9, recorded in the Office of the Clerk of Court for Clarendon County in Deed Book A-452 at Page 144.

Said lots being a portion of Clarendon Tax Map No. 140-00-05-063-00.

Based upon our examination, we find and hereby certify that Palmetto Air Plantation is the owner of a marketable fee simple interest in said premises and that it holds the same free and clear of any and all liens and encumbrances, save and except the following:

1. Mortgage from Palmetto Air Plantation, Inc. to Edward G. Gibbons dated February 8, 2002, recorded in the Office of the Clerk of Court for Clarendon County in Mortgage Book 465 at Page 134.

2. Contract of Sale between Palmetto Air Plantation and Kim E. Bevier and Susan S. Bevier dated May 21, 2003, recorded in the Office of the Clerk of Court for Clarendon County in Mortgage Book A-498 at Page 157.

3. Restrictive Covenants recorded in the Office of the Clerk of Court for Clarendon County

in Deed Book A-444 at Page 26 and Deed Book A-435 at Page 223.

4. Right of Way Easements recorded in the Office of the Clerk of Court for Clarendon County in Deed Book A-58 at Page 44, A-61 at Page 674 and A-80 at Page 113.

5. Clarendon County Taxes for the year 2002 and prior years have been paid. Taxes for 2003 and future years constitute a lien, but not yet due and payable.

6. This certificate is based on examination of the public records of Clarendon County and does not cover any matters not appearing of record, such as questions of survey, such state of facts as would be revealed by a visual inspection of the premises, possible encroachments of utility lines or public ways which may cross a portion of these premises.

7. Existence, if any, of environmental hazards, presence of toxic waste, and violations of any past, present, or future environmental regulations, standards, or laws.

8. Any law, ordinance or governmental regulation relating to environmental protection.

9. Any law, ordinance or governmental regulation (including but not limited to building and zoning ordinances) restricting or regulating or prohibiting the occupancy, use or enjoyment of the land, or regulating the character, dimensions or location of any improvement now or hereafter erected on the land, or prohibiting a separation in ownership or a change in the dimension or area of the land or any parcel of which the land is or was a part.

10. Application of Roll-Back Taxes as provided in Section 12-43-220 (d) (4) of the Code of Laws of South Carolina, 1976, as amended.

11. This certificate in limited in the amount of $87,000.00.

Respectfully submitted,

COFFEY, CHANDLER & MEREDITH PA

BY: _____
W.C. Coffey, Jr.

September 25, 2003
Manning, South Carolina

PLAINTIFF'S EXHIBIT 7
PENGAD 800-631-6989

COFFEY, CHANDLER & MEREDITH, P.A.
Attorneys At Law

8 South Brooks Street ~ Post Office Box 1292
Manning, South Carolina 29102-1292

Telephone (803) 435-8847
Facsimile (803) 435-8915
E-mail coffeylaw@ftc-i.net

William C. Coffey, Jr.
Ray E. Chandler
Lena Younts Meredith
Joseph K. Coffey

October 24, 2003

Reply to:
Manning

Mr. and Mrs. Kim Bevier
706 Greene Street
Camden, SC 29020

RE: Purchase of Property from Palmetto Air Plantation
Our File No. 030390BR

Dear Mr. and Mrs. Bevier:

Enclosed please find the original, recorded deed and Attorney's Title Certificate for the property you recently purchased. You will want to store the enclosed documentation in your property portfolio.

Please do not hesitate to call our office should you have any questions or if we may be of service to you with future legal needs.

Sincerely,

Jaimee L. Garrett
Real Estate Department

Enclosure(s): As stated

Greenwood Office: 214 Waller Street, Greenwood, South Carolina 29646
Telephone (864) 943-1002 • Facsimile (864) 943-1004 • E-mail lenameredith@earthlink.net

STATE OF SOUTH CAROLINA)
) FINAL
COUNTY OF CLARENDON) ATTORNEY'S TITLE CERTIFICATE
)

TO: Kim E. Bevier and Susan S. Bevier

At your request, we have examined the public records of Clarendon County relative to the title of Kim E. Bevier and Susan S. Bevier to the property described as follows:

All that piece, parcel or lot of land lying, being and situate in School District No. 2 of Clarendon County, South Carolina, being designated as Lot No. 33 and Lot No. 34, Palmetto Air Plantation, containing 1.60 acres and 1.46 acres on a plat hereinafter referred to, and bounding and measuring as follows: on the Northeast by a pond and measuring thereon 506.93 feet; on the Southeast by Lot 35 on said plat and measuring thereon 261.77 feet; on the Southwest by Mullett Drive and lands of Wilver Blanding and measuring thereon a total of 539.17 feet; and on the Northwest by lands of Ernest L. and Linda C. Rauber and Fellowship Ranchette Subdivision and measuring thereon 244.98 feet.

For a more particular description of said lots, reference may be had to a plat made by DuValle W. Elliott, RPLS, dated April 11, 2002, recorded in the Office of the Clerk of Court for Clarendon County in Plat Cabinet E, Slide 1008 at Plat 6.

Said lot being conveyed to Kim E. Bevier and Susan S. Bevier by deed of Palmetto Air Plantation dated September 26, 2003, recorded in the Office of the Clerk of Court for Clarendon County in Deed Book A-509 at Page 265.

Said lots being a portion of Clarendon Tax Map No. 140-00-05-063-00.

Based upon our examination, we find and hereby certify that Palmetto Air Plantation is the owner of a marketable fee simple interest in said premises and that it holds the same free and clear of any and all liens and encumbrances, save and except the following:

1. Mortgage from Kim E. Bevier and Susan S. Bevier to Palmetto Air Plantation, Inc. dated September 28, 2003, recorded in the Office of the Clerk of Court for Clarendon County in Mortgage Book 551 at Page 307.

2. Contract of Sale between Palmetto Air Plantation and Kim E. Bevier and Susan S. Bevier dated May 21, 2003, recorded in the Office of the Clerk of Court for Clarendon County in Mortgage Book A-498 at Page 157.

3. Restrictive Covenants recorded in the Office of the Clerk of Court for Clarendon County in Deed Book A-444 at Page 26 and Deed Book A-435 at Page 223.

4. Right of Way Easements recorded in the Office of the Clerk of Court for Clarendon County in Deed Book A-58 at Page 44, A-61 at Page 674 and A-80 at Page 113.

5. Clarendon County Taxes for the year 2002 and prior years have been paid. Taxes for 2003 and future years constitute a lien, but not yet due and payable.

6. This certificate is based on examination of the public records of Clarendon County and does not cover any matters not appearing of record, such as questions of survey, such state of facts as would be revealed by a visual inspection of the premises, possible encroachments of utility lines or public ways which may cross a portion of these premises.

7. Existence, if any, of environmental hazards, presence of toxic waste, and violations of any past, present, or future environmental regulations, standards, or laws.

8. Any law, ordinance or governmental regulation relating to environmental protection.

9. Any law, ordinance or governmental regulation (including but not limited to building and zoning ordinances) restricting or regulating or prohibiting the occupancy, use or enjoyment of the land, or regulating the character, dimensions or location of any improvement now or hereafter erected on the land, or prohibiting a separation in ownership or a change in the dimension or area of the land or any parcel of which the land is or was a part.

10. Application of Roll-Back Taxes as provided in Section 12-43-220 (d) (4) of the Code of Laws of South Carolina, 1976, as amended.

11. This certificate in limited in the amount of $87,000.00.

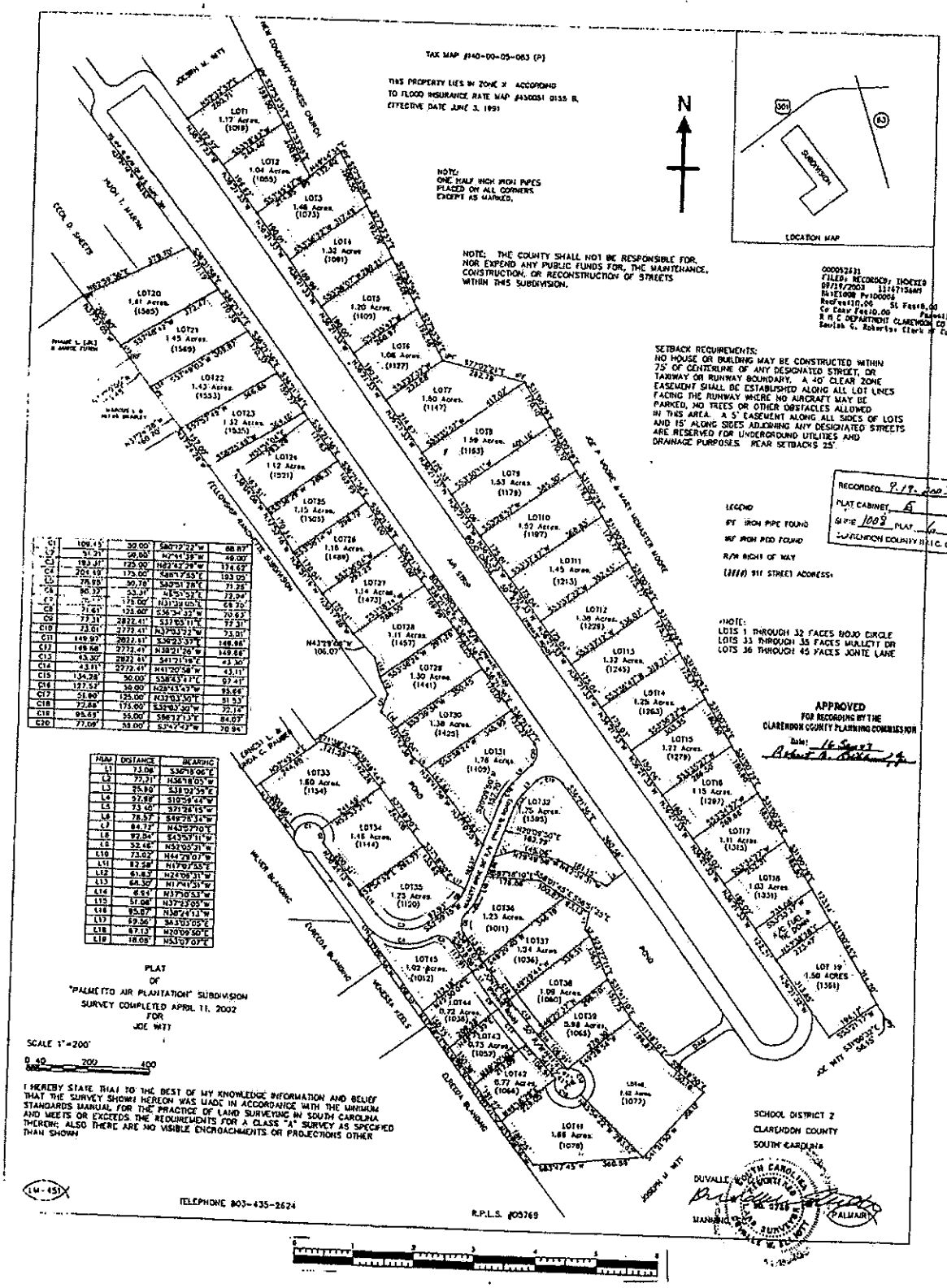
Respectfully submitted,

COFFEY, CHANDLER & MEREDITH P.A.

BY: _____
W.C. Coffey, Jr.

September 26, 2003
Manning, South Carolina

PLAINTIFF'S EXHIBIT
PENGAD 800-631-6989



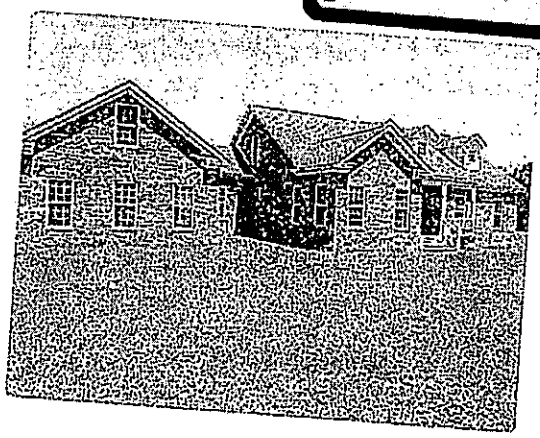
C1	109.45'	30.00'	S80°12'22"W	88.83'
C2	51.31'	50.00'	N24°41'39"W	49.00'
C3	183.31'	125.00'	N82°42'29"W	114.62'
C4	201.10'	175.00'	S88°17'55"E	193.05'
C5	78.90'	50.70'	S40°51'28"E	71.26'
C6	90.32'	53.39'	N15°53'57"E	79.94'
C7	71.61'	175.00'	N31°39'10"E	69.70'
C8	71.61'	125.00'	S56°34'32"W	70.63'
C9	77.31'	2822.41'	S37°05'11"E	77.31'
C10	73.01'	2772.41'	N37°03'22"W	73.01'
C11	149.97'	2822.41'	S36°23'37"E	149.95'
C12	149.66'	2772.41'	N38°21'26"W	149.66'
C13	43.30'	2822.41'	S41°21'19"E	43.30'
C14	43.11'	2772.41'	N41°20'58"W	43.11'
C15	134.28'	50.00'	S58°43'31"E	97.41'
C16	127.57'	50.00'	N28°43'49"W	95.86'
C17	51.90'	125.00'	N33°03'30"E	51.53'
C18	77.68'	175.00'	S33°03'30"W	77.07'
C19	95.63'	55.00'	S86°12'13"E	84.03'
C20	77.09'	55.00'	S34°47'47"W	70.94'

L1	73.08'	S36°18'06"E
L2	77.71'	N36°18'05"W
L3	25.80'	S38°02'59"E
L4	97.48'	S10°54'48"W
L5	73.10'	S71°28'15"W
L6	78.57'	S49°28'34"W
L7	84.72'	N43°57'10"E
L8	92.04'	S43°57'11"W
L9	32.48'	N52°05'31"W
L10	73.02'	N44°28'07"W
L11	82.58'	N17°01'53"E
L12	61.82'	N24°08'31"W
L13	64.30'	N1°41'51"W
L14	6.91'	N37°06'53"W
L15	57.08'	N37°33'05"W
L16	95.07'	N38°41'12"W
L17	59.56'	S43°33'05"E
L18	67.13'	N20°09'50"E
L19	18.05'	N51°07'07"E

PLAINTIFF'S EXHIBIT 7

Summary

Parcel ID	140-00-05-132-00
Account Number	19113
Property Address	20 District
Sec/Twp/Rng	N/A
Legal Description	LOT 33 & 34 PALMETTO AIR PLANTATION (Note: Not to be used on legal documents)
Acres/Lots	3.060
Land Use	QUALIFIED LEGAL RESIDENCE
Millage Group	20 - DIST 2 OUTSIDE MANNING
Neighborhood Code	PALMETTO AIR (190)
Improvements	1 Main Buildings and 0 Misc Improvement(s) on Account



Owners

Owner
Bevier Kim E
1144 Mullet Drive
Manning, SC 29102

Valuation

	2016	2015	2014	2013
+ Building Value	$263,100	$265,200	$259,600	$279,800
+ Land Value	$91,800	$91,800	$91,800	$91,800
+ Misc Value	$116,600	$121,500	$121,500	$0
= Total Market Value	$471,500	$478,500	$472,900	$371,600
+ Ag Credit	$0	$0	$0	$0
= Total Taxable Value	$471,500	$478,500	$472,900	$371,600
Capped Taxble Value	N/A	N/A	N/A	N/A
Total Assessment	$18,860	$19,140	$28,374	$22,296

*This parcel is subject to the value cap

Land

Land Use	Land Code	Number of Units	Unit Type	Land Type	Frontage	Depth
QUALIFIED LEGAL RESIDENCE (QLR4)	101	3.06	ACRES	P	0	0

Buildings

Card	1
Building Type	RESIDENTIAL
Num of Units	2
Year Built	2010
Effective Year Built	2010
Story Height	2
Grade	3+
Condition	Average
Finished Area	4651
Total Area	6748

Foundation	CRAWL SP
Frame	WOOD
Roof Structure	GABLE
Roof Material	COMPOSITION AVERAGE QUALITY
Primary Exterior Wall	BRICK VENEER (Frame)
Heat Type	HEAT PUMP
Heat Fuel	ELECTRIC
Fireplaces	0

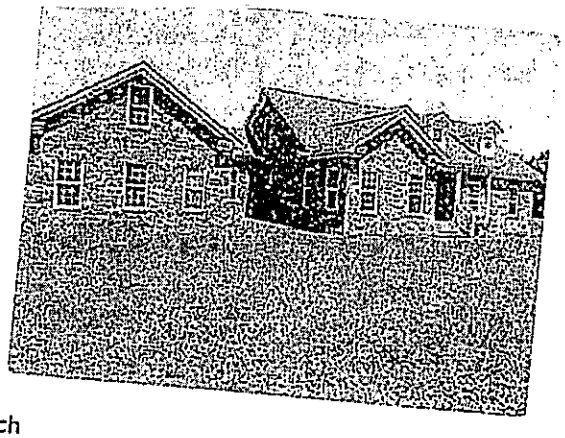
Miscellaneous Information

Card	Type	Quantity	Units	Quality	Condition	Year Built
1	Pre engineered Metal Bldg (PEM)	1	60X60	A	AV	2013
1	Pre engineered Metal Bldg (PEM)	1	30X42	A	AV	2013

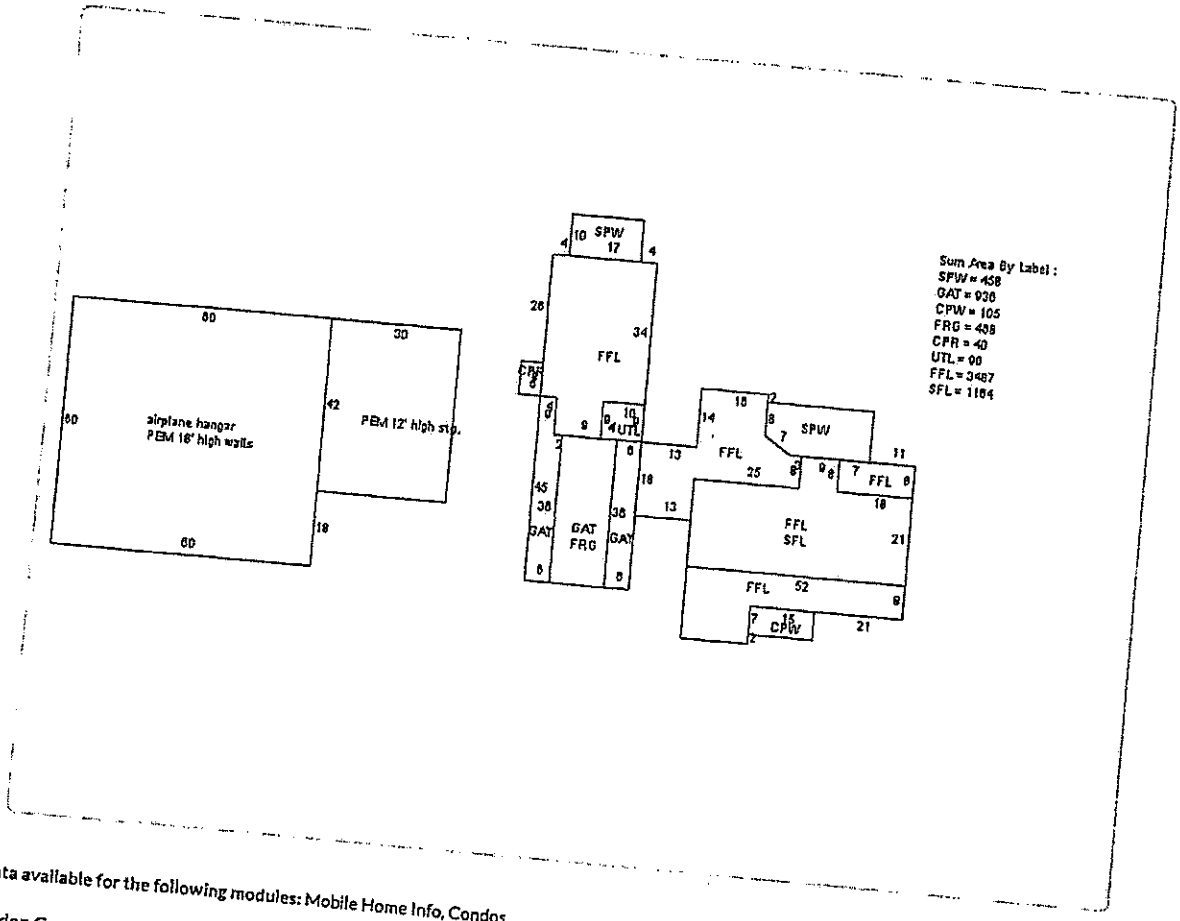
Sales

Sale Date	Sale Price	Legal Reference	Grantor	Grantee	Deed Type
2/3/2013	$0.00	906-65	BEVIER SUSAN SILVA	BEVIER KIM E	DEATH CERT (DTC)
9/26/2003	$87,000.00	A509 264	PALMETTO AIR PLANTATION LLC	BEVIER KIM E & SUSAN S	

Photos



Sketch



No data available for the following modules: Mobile Home Info, Condos.

Clarendon County makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data herein, its use or interpretation. The assessment information is from the last certified taxroll. All data is subject to change before the next certified taxroll.

Last Data Upload: 5/31/2017 9:34:56 PM

Schneider

Developed by
The Schneider
Corporation

PLAINTIFF'S EXHIBIT 10

PENGAD 800-631-6989

Clarendon County

Building Permit Application

144 Mullett Drive
Lot # 33 + 34 Palmetto Air Plantation
Manning S.C. 29102

Date: 5 April 13
Tax Map: 140-00-05-132
Fire Dist: _____
100 Year Flood Plain
Yes ☐ No ☐
Zoning: RC
School Dist: _____
Town _____

Property Owner: Kim E. + Susan S. Bevier
Telephone #: _____

APPLICATION PURPOSE:

New Bldg. ☐ Addition ☑ Renovation ☐ Demolition ☐ Sub. ☐
Electrical ☐ Plumbing ☐ HVAC ☐ Mechanical ☐ Gas ☐
Description: Detached Storage + Airplane Hanger

Minimum Set Back Requirement From Property Lines

No variations from distances indicated are permitted without approval of the Planning & Public Service Department. Violation will result in correction at the expense of the applicant. The road is considered the front property line.

Structure must be 30' feet from the front, 5' feet from the rear, 5' feet from the left, 5' feet from the right property lines

USE:

Single Family ☑ Multi-Family ☐ Commercial ☐ Agriculture ☐
Other _____
Bldg. Size 60 X 60 42 X 30 Square Feet 3600 1260
Sewage: Public ☐ Private ☐ Permit #: N/A
Water: Public ☐ Private ☐ Permit #: _____
Type of Construction: _____
Fireplace _____ Bedroom _____ Baths _____

* * * Sub Contractors must apply for separate permits on Commercial projects. * * *

Valuation $ 121,500
Inspections Required Yes ☑ No ☐
Plans/Sketch Required Yes ☐ No ☑

Contruction Permit Fee: $ 425.00
Plan Review Fee: $ _____
Penalty Fee: $ _____
Total Fee: $ 425.00

Permit # 20251
Receipt # 536630

NOTICE

This permit becomes null and void if work or construction authorized is not commenced within 6 months or if construction work is suspended or abandoned for a period of 6 months at any time after work has started.

I hereby certify that I have read and examined this document and know the same to be true and correct. All provisions of the laws and ordinances governing this type of work will be complied with whether specified herein or not. Granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or the performance of construction.

SUB CONTRACTOR INFORMATION

Morton Building

SIGNATURE - BUILDER/CONTRACTOR ☐ OWNER ☐ AGENT ☐ _____ LICENSE # 612584

ADDRESS 410 Wallace Circle CITY/STATE Fletcher, NC 28732 TELEPHONE # 412-6610-5800

CERTIFICATE OF COMPLETION

Office Hours: Monday through Friday 7:30 – 5:00 pm
411 SUNSET DRIVE
MANNING, SOUTH CAROLINA 29102
TELEPHONE (803) 435-8672 FAX (803) 435-2208
CLARENDON COUNTY BUILDING DEPARTMENT

This certificate issued pursuant to the requirements as set forth in the

X Clarendon County Unified & Development Code
X Applicable International Codes
X National Electrical Codes
_____ NO Electrical Service

And certifies that at the time of issuance the requested use was in Compliance with the above marked codes and ordinances of Clarendon County.
Permission is hereby granted for the connection of power and for the use specified herein.

Description: DETACHED STORAGE & AIRPLANE HANGER

Site Address: 1144 MULLETT DRIVE MANNING

Owner: KIM E. & SUSAN S. BEVIER

Power Company: _____

Certificate No: 20251

Date Issued: 9-8-14

_____ NO FINAL INSPECTION
Owner Building Official R Walton



Certificate of Occupancy

CLARENDON COUNTY BUILDING DEPARTMENT

Department of Building Inspection

This Certificate issued pursuant to the requirements of the Standard Building Code certifying that at the time of issuance this structure was in compliance with the various ordinances of the Jurisdiction regulating building construction or use. For the following:

Use Classification RESIDENTIAL Bldg. Permit No. 18127

Group R-3 Type Construction V Fire District 1

Owner of Building KIM BEVIER

Building Address 1144 MULLETT DRIVE Locality MANNING, SC

Building Official

By:

Date: 10-21-05

POST IN A CONSPICUOUS PLACE



COFFEY & MCKENZIE, PA
ATTORNEYS AT LAW

WILLIAM C. COFFEY, JR.
STEVEN S. MCKENZIE
JOSEPH K. COFFEY

EST. 1970

2 NORTH BROOKS STREET
POST OFFICE 1292
MANNING, SOUTH CAROLINA
TELEPHONE (803)435-8847
FACSIMILE (803) 435-8915
EMAIL:LAWFIRM@CCMLAWSC.COM

March 21, 2017

Mr. Kim E. Bevier

Re: Palmetto Air Plantation lot No. 33 and lot No. 34

Dear Mr. Bevier:

As you are aware from the annual homeowners association meeting held on March 18, 2017 in which you attended, I have been appointed by the Homeowner's Board as the attorney for the Homeowners Association for Palmetto Air Plantation. I am writing this letter to address concerns that the Board has with certain deficiencies that are ongoing concerns to the Board regarding lot numbers 33 and 34 in which you own. I will address the concerns separately in this letter.

First, it has come to the attention of the board that a business owned by you, Air B&B, has in the past and continues to rent out rooms and/or your home to overnight or weekly guest. This commercial activity is strictly prohibited by the Restrictive Covenants of Palmetto Air Plantation. I would refer you to Article IV sections 4.1 and 4.3 of the Restrictive Covenants. Pursuant to those paragraphs, your home is **NOT TO BE USED** for any commercial endeavor. If you desire to lease your home to a long term lessor, you must submit all pertinent information regarding said lease agreement along with the lessor's information to the Board for prior approval. Otherwise, all commercial activity on lots 33 and 34 will cease immediately. Failure to do so by you will result in the Board seeking a court injunction prohibiting further violations of the Restrictive Covenants. Should the Board have to seek enforcement of these provisions of the Restrictive Covenants against you in the courts, the Board will also seek its costs and attorney's fees to be paid by you for the necessity to bring said action.

Second, you own a large breed dog (bullmastiff). The Board has received complaints that the dog has been seen off of your property and unrestrained. State and County laws prohibit the running at large of dogs. Also, Article V section 5.10 of the Restrictive Covenants prohibits dogs from being unattended and the animal must be on a leash. Section 5.10 also requires that the animal should be restrained by "fence or other appropriate restraint". It is the understanding of the Board that you have installed an

underground electric fence to restrain the animal on your property. The Board does not believe that the measure you have taken to secure the animal is appropriate. I would remind you that South Carolina law places strict liability on owners of dogs for damages/injuries the animal causes individuals or property. Also the Board has received complaints regarding excessive barking from the dog. Sections 5.10 and 5.11 of the Restrictive Covenants addresses the issue of noise and barking animals. You will take steps to immediately remedy these problems with the dog. The Board believes the easiest way to address these concerns is to remove the dog immediately from Palmetto Air Plantation. Should you decide not to remove the animal, then the Board would expect that the excessive barking by the dog would immediately cease. The Board would expect that the dog would be enclosed in a physical fence of no less than five (5) feet in height or a pen that would ensure that the dog would not be roaming free and endanger other residents. I would remind you that all fences must be prior approved by the Board before being built per the Restrictive Covenants. Failure to do any of the aforementioned regarding the dog by you will result in the Board seeking a court injunction prohibiting further violations of the Restrictive Covenants. Should the Board have to seek enforcement of these provisions of the Restrictive Covenants against you in the courts, the Board will also seek its costs and attorney's fees to be paid by you for the necessity to bring said action.

Third, Article IV section 4.12 states in pertinent part: "...within one year after the issuance of a Building Permit, the Lot Owner shall have his property sown in grass and have planted foundation landscaping around the dwelling and other accessory buildings in accordance with the proposed landscaping plan previously submitted and approved." You have previously submitted a landscaping plan that was approved by the Board. Although the plan was submitted and approved, the plan was never implemented by you. Although you have failed to implement the landscaping plan within one year of the issuance of the building permit, the Board in its discretion will forego the $100.00 per day fine **PER LOT** against you provided the previous landscaping plan submitted by you and approved by the Board is immediately initiated. The landscaping according to the "Paula Bishop" plan submitted by you would be **COMPLETED AND IN PLACE** on lots 33 and 34 by 5:00 p.m. April 21, 2017 (within thirty days). Should you fail to have the landscaping plan in place and in accordance with the plan you submitted within thirty (30) days, the Board will impose a $200.00 per day ($100.00 per each lot you own) fine retroactive to one year from the issuance of the building permit for each lot. This penalty is in accordance with Article IV section 4.12 of the Restrictive Covenants.

Finally, the Board and its members have instructed me to inform you that any and all communication regarding the contents of this letter will be with the attorney for the Board only. The Board and its members will not discuss this matter with you and all communication will be through myself. If you have any questions are concerns, you may call me at 803-435-8847. I will be more than happy to discuss these issues with

you either by telephone or in person at my office at No. 2 North Brooks Street, Manning South Carolina.

Sincerely,

Steven S. McKenzie

Swing pool