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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM OCONEE COUNTY
In the Court of Common Pleas
Steven C. Kirven, Master-in-Equity

Case No. 2021-CP-37-00093
Appellate Case No. 2023-000918

Mountain View Pointe Owners Association, Inc.; Jane P. Hale; L. Shepard Hamrick, Jr.; Martha Hamrick; Matthew Williams; Sue Williams; Barry Noffze; Ruth Noffze; Michael Dorsey; Monica Dorsey; Jack J. Dorsey; Lucinda Dorsey; Kai Evensen; Lynn Elliot Amos, as Trustee of the Lynn Elliot Amos Qualified Personal Residence Trust; Lynn Keith Amos, as Trustee of the Lynn Keith Amos Qualified Personal Residence Trust; Charlene Finucan; John Prescott, Jr.; Elizabeth Prescott; Steven Trojan; Dottie Trojan; Leonard J. Stoecklein; Patricia Stoecklein; Dale Hill; Rebecca Hill; Larry Kuykendall, as Trustee of the Larry Kuykendall Revocable Trust; Larry Kuykendall as Trustee of the Elle Kuykendall Revocable Trust; Thomas McCaw; Roberta McCaw; Robert Albergotti; Elaine Albergotti; Frank Patterson; Frances Patterson; Brian Fox, and Jennifer Fox, ... Respondents,

v.

Rodney Halsell; Barbara Halsell; Graham R. Piper; Christine A. Piper, Michael Newton; Angela Newton; Gary Hutchinson; Daniel Horner; Lonnie Harper; Elleanor Harper; Christopher Tam; Amie Kerley; Karan Sandhu; and Gloria Sandhu, ... Defendants,

Of Whom Rodney Halsell and Barbara Halsell are the Appellants.

RECORD ON APPEAL
VOLUME II

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1 BY THE COURT:

2 All right. Do you have anything else, Mr. Hood?

3 BY MR. HOOD:

4 No, nothing further.

5 BY THE COURT:

6 All right. Mr. McDuff?

7 BY MR. MCDUFF:

8 I'm going to call Mr. Piper.

9 BY THE COURT:

10 All right. He's already testified; I can't imagine
11 anything else you need to ask Mr. Piper, but go
12 ahead.

13 BY MR. MCDUFF:

14 Well, there may be one or two surprises but.

15 BY COURT REPORTER:

16 Do you solemnly swear or affirm to tell the truth,
17 the whole truth and nothing but the truth so help
18 you God?

19 BY MR. PIPER:

20 I do.

21 TESTIMONY OF GRAHAM PIPER

22 DIRECT EXAMINATION BY MR. MCDUFF:

23 Q. Mr. Piper, would you tell the court your full name
24 and your address, place of residence?

25 A. Sure. Graham Richard Piper and address is

1

2 Q. So you live in the Mountain View Pointe Subdivision?

3 A. Correct.

4 Q. And you also were the owner of the, at one point in

5 time you bought in 2013 what we've heard about,

6 tracts, Parcels A & B?

7 A. Yes.

8 Q. All right. And you sold Parcel A to the Halsells?

9 A. Correct.

10 Q. And that would've been in 2020?

11 A. Yes.

12 Q. And was that property available for purchase for

13 anybody when it sold for sale; it wasn't a private

14 sale just to you by Crescent, was it?

15 A. No, it was posted with a sign along, I believe the

16 sign was on Doug Hollow.

17 Q. So your sin here today is that you had the foresight

18 to make a real estate investment and then sell part

19 of that real estate investment to the Halsells?

20 A. Yes.

21 Q. Now, you heard Mr. Halsell describe in detail and

22 I'm not going to go through all these things about

23 the sum and substance of your meeting with members

24 of the MVPOA board of directors, and did he give a

25 fair and accurate recitation to what transpired

1 during those meetings?

2 A. Yes, sir, I think so.

3 Q. All right. In all those times was he trying to work
4 out and come up with a solution?

5 A. That was the whole point to it.

6 Q. Now, we heard I think some testimony about if these
7 Covenants, the CCRs, weren't enforced that somebody
8 would be sued; do you remember that testimony in
9 this case that the board could be sued or somebody
10 on the board could be sued?

11 A. I heard that, but that was the first I had ever
12 heard of it until today.

13 Q. Now, are you aware of -- you're familiar with the
14 Covenants?

15 A. Yes.

16 Q. And is anything other than residential use allowed
17 in the Mountain View Pointe Subdivision?

18 A. To my knowledge, no, I think it specifically states
19 that and, in fact, I think under the provisions for
20 modification of the CCRs the one term that you
21 cannot modify is a residential restriction.

22 Q. Okay. So commercial enterprise would not be allowed
23 in Mountain View Pointe?

24 A. Correct.

25 Q. Did you ever learn of any of the board members or

1 their spouse operating a commercial enterprise
2 within Mountain View Pointe Subdivision?

3 A. Yes, I mean I would even say we potentially had two.
4 One definitely was licensed and operated at I
5 believe it's 230 Mountain View Pointe Drive. It
6 shows up on Google Maps.

7 Q. And who operated the commercial enterprise at that
8 residence?

9 A. Lori Tanner and Michael Braunschweiger.

10 Q. So really Mr. Braunschweiger, would you say he was
11 the one that kind of initiated this whole issue why
12 we're here today?

13 A. He was certainly the leader or the President of the
14 board at the time so, yes.

15 Q. All right. So what kind of business did they run
16 out of their residence?

17 A. It's a business called Embroider Elegance. It
18 operated I think it was at least three if not four
19 embroidery machines and had visits from customers
20 and vendors, suppliers at their business.

21 Q. And was this generally known within the community?

22 A. I believe so. I know my wife purchased some items
23 from them as well as a number of other people in the
24 neighborhood.

25 Q. And was a lawsuit ever brought by the board or any

1 resident in the community to enforce the Covenants
2 with regard to this commercial enterprise in a
3 residential community?

4 A. No.

5 Q. Now, I'm not going to go through a lot of things but
6 your parcel is depicted on this what's Joint Exhibit
7 2, your remaining parcel about 17 acres, more or
8 less?

9 A. Yes.

10 Q. It's basically I think on the east or the northeast
11 quadrant of this plat map?

12 A. Yes.

13 Q. And what kind of features does it have? It
14 indicates, in there broken lines here indicates Duke
15 Power Company transmission 200 foot right-of-way?

16 A. Correct. There's a I believe a 500 kV high-tension
17 line that runs through the middle of that property.

18 Q. All right. So is your property really divided into
19 kind of two separate distinct portions?

20 A. Yes. There are restrictions associated with the
21 Duke right-of-way in terms of not being able to
22 place a building under that area. So from a
23 building perspective, the only place that could be
24 built would be outside of that which would be the
25 section along Mountain View Pointe Drive and the

1 other section that I would say is the other side of
2 the eastern side of the power line right-of-way.

3 Q. And we've heard a lot of discussion about this
4 being, these properties being unrestricted; are
5 there, in fact, restrictions that would apply to any
6 potential development of your parcel tract of Parcel
7 B?

8 A. Yes, in Oconee County there is zoning, it's referred
9 to I believe as the 750-Foot District, Lake District
10 Overlay, which restricts building type around the
11 lakes in Oconee County.

12 Q. And that prohibits any commercial other than
13 residential, any commercial development?

14 A. Correct.

15 Q. So you couldn't put up a Walmart or a mini store or
16 General, you know, a Dollar General or anything like
17 that on your parcel?

18 A. No.

19 Q. Because all that is within the 750-foot lake
20 overlay?

21 A. Correct.

22 Q. Now, is it your belief that this whole suit is about
23 the owners and the board of Mountain View Pointe
24 trying to prevent or limit your use of Parcel B? In
25 other words do you think motivation is animus?

1 A. At this point the only thing I can see to their
2 pushing this to this point and dragging me into this
3 lawsuit is, yes, to control whatever development
4 goes on on that property.

5 Q. Okay. Now, let's talk about the topography of your
6 lot, of tract, of Parcel B; could you describe the
7 topography? I know, I believe on Doug Hollow Road
8 it's 852 feet above being sea level and there's an
9 increase in elevation as you go into the property?

10 A. It increases slightly up to the first transmission
11 tower. Exactly what that rise is I'm not sure, I'd
12 have to have a topographical map. And then it dips
13 down and there are a couple of significant valleys
14 and then rises up again significantly higher at what
15 I call the second transmission tower closer to the
16 north side of the property and then it drops again
17 down to the end of the property at the lake.

18 Q. So is it -- so I think your testimony was this
19 portion which is on the western side of Parcel B,
20 the only real access point would be off of Mountain
21 View Point Drive?

22 A. Correct.

23 Q. And understanding that there's a nonexclusive
24 easement ---

25 A. Correct.

1 Q. --- potentially?

2 A. And as it goes up and down there are a couple of
3 significant ravines. It's also the drainage off of
4 Mountain View Pointe Drive, those drainage culverts
5 drain onto that property and create additional
6 impediments to coming off of Doug Hollow.

7 Q. All right. As we sit here today, this very day when
8 everybody is in court trying to get a resolution of
9 this thing, between the time you purchased the
10 property in 2013 to today have you applied for any
11 kind of encroachment permit to access your property
12 by way of Mountain View Pointe Drive?

13 A. No, I have not.

14 Q. I think we heard some testimony yesterday that you,
15 I think it was from Ms. Prescott, that you were
16 wanting to put in, wanted to put in four access
17 points along Mountain View Pointe Drive?

18 A. I have no idea where that number came from. There
19 are ---

20 Q. Judge, if we can have the audience keep their,
21 maintain their decorum?

22 BY THE COURT:

23 That's be fine.

24 A. I mean I have not put forth any plans. You know,
25 there are places that I think would make acceptable

1 building sites on that property, but I have not got
2 any permits and, you know, I've said to some people
3 that, you know, and I think others have watched me,
4 you know, places where I walk onto the property or
5 where it's more level and there are other places
6 that it drops off rather precipitously and, you
7 know, would not make for reasonable access.

8 Q. But as we sit here you haven't sought to do anything
9 with your property, have you?

10 A. No.

11 Q. You haven't had plans drawn up?

12 A. No.

13 Q. You haven't had a civil engineer do any site plans
14 for the property?

15 A. No.

16 Q. Haven't done any building designs for the property?

17 A. No.

18 Q. So it's just vacant land?

19 A. Correct.

20 Q. And, in fact, prior to today you've allowed a number
21 of the Plaintiffs in this matter to use your
22 property to store their boat trailers on it, haven't
23 you?

24 A. Yes.

25 Q. And access your property and use it to store their

1 boat trailers?

2 A. Correct. There's provisions in the CCRs, the
3 Covenants, that stipulate that trailers can't be
4 parked in front of people's houses from the
5 roadside. So for people who want to comply with the
6 Covenants I've made provisions for them to park
7 trailers over in the powerline right-of-way as
8 that's acceptable under Duke's terms.

9 Q. All right. In spite of the Restrictions and the
10 Covenants about leaving boat trailers in driveways,
11 is that provision violated and unenforced in your
12 community?

13 A. For the most part of it. We've had a number of
14 trailers parked in driveways or in yards at
15 different times. I believe the Covenant states
16 clearly that there's a 24-hour limit and that's been
17 severely abused I would say by a number of people.

18 Q. Including the Plaintiffs in this case?

19 A. Yes.

20 Q. And so would you agree that there's selective
21 enforcement of the Covenants and Restrictions in
22 this matter?

23 A. Absolutely. I mean there's been no enforcement in
24 the case of the trailer criteria that I'm aware of.

25 Q. And can you name any of the people that have left

1 trailers in there, that are Plaintiffs in this case
2 that have left trailers out?

3 A. Most recently there was a boat trailer in the
4 Dorseys front yard adjacent to Jim and Cindy. I
5 think that was Lot 10 and there's been a container
6 trailer on the Trojan's lot that comes and goes
7 periodically and stays for months on end over the
8 years multiple times. Let's see on the Harpers' lot
9 although they're a defendant they have trailers in
10 the side yard that are visible from Mountain View
11 Pointe Drive and, you know, there's been some
12 construction trailers and other things at the Amoses
13 and at the Hills that have sat there for months on
14 end.

15 Q. Now, switching gears, have you taken measurements to
16 figure out exactly what portion that, let's say
17 hypothetically that there exists an easement, a
18 landscape easement, along, alongside and within the
19 boundaries of Parcel B, how much the POA landscaping
20 is within the right-of-way versus the landscape
21 easement?

22 A. Yes, I think as Rod testified to earlier there is
23 one island that extends six inches to a foot or
24 something. You know, I think I calculated maybe 40
25 square feet; I think he calculated 25 square feet.

1 I was trying to be a bit, maybe a bit more generous.
2 But next to nothing on the Parcel B side extends
3 beyond the road right-of-way.

4 Q. Now, have you measured how many lineal feet you have
5 from the intersection on Parcel B road frontage from
6 the point of Doug Hollow Road up to part of Lot
7 Number 1 in the Mountain View Pointe Subdivision?

8 A. I did not physically measure it; I used the table on
9 the plat and summarized the segments on the survey
10 and I think I came up with 1350 feet, give or take,
11 of road frontage.

12 Q. All right, I have no further questions.

13 BY THE COURT:

14 All right, sir. Mr. Hood, have you got any
15 questions?

16 BY MR. HOOD:

17 I have no questions, Your Honor.

18 BY THE COURT:

19 All right, Mr. Brandt?

20 CROSS EXAMINATION BY MR. BRANDT:

21 Q. Yes, sir. Mr. Piper, this discussion about this
22 property this last time concentrated on the B area
23 down there next to Doug Hollow, all these things
24 that you were allowing to go on, for instance, boat
25 trailer storage?

1 A. I'm sorry?

2 Q. I kind of got confused about whether you were
3 talking about boat trailers over here on your Lot 1
4 or down here on the lot?

5 A. The boat trailer storage is just beyond. There's a
6 high-tension tower probably right in this area and
7 the boat trailer storage is just to the side of it.

8 Q. Okay. And how do you access that?

9 A. Off of Doug Hollow.

10 Q. Off of Doug Hollow. How do you -- but those people
11 that you're accessing boat or storing boat trailers
12 for, are they other members of the subdivision?

13 A. They are only members of the subdivision.

14 Q. Do they have a charge for the boat trailer storage?

15 A. I charge \$50 to put some diesel in my tractor so
16 that I can mow and maintain some of that area.

17 Q. Do you also provide any down there on Lot B overflow
18 parking for the Light House Restaurant?

19 A. Not at this time.

20 Q. Have you?

21 A. When we bought the property from Crescent there was
22 a lease in place with the Light House Restaurant for
23 overflow parking there and so that continued and
24 sort of resorted to us as the new owners.

25 Q. And how much did you charge the Light House for the

1 overflow parking privileges?

2 A. It's been many years ago. We haven't done that. I
3 believe it was \$600 a year.

4 Q. Okay. Well, the fact is though you did get paid for
5 providing that service from Lot B?

6 A. For?

7 Q. Yeah.

8 A. I think for the first -- well, there was the partial
9 payment for when Duke kept -- since we closed in I
10 think July, Duke kept the first half and we got the
11 second half and then they renewed it for one year so
12 we might have.

13 Q. Have you ever made statements to any of the members
14 out there or anyone that you may want to put modular
15 homes on your Lot B?

16 A. I have not, no.

17 Q. Have you ever made statements to anyone that you may
18 want to put additional cuts off of Doug Hollow, I
19 mean off of Mountain View Pointe Drive into Lot B?

20 A. As I said I've not made any plans to do so.

21 Q. No, my question, have you made statements that you
22 may want to?

23 A. I have made statements that I believe I could
24 because at this point the alleged landscape easement
25 due to the question on titling of this thing makes

1 me wonder whether the easement exists at all at this
2 point.

3 Q. Okay. But there is room down here even given rights
4 to the Duke transmission line, over here there is
5 room down here that you could put modular homes in
6 there?

7 A. I don't have a survey estimate, but when you look at
8 Parcel A that the Halsells has versus that I would
9 guesstimate there's at least four acres there so ---

10 Q. You could use it?

11 A. --- something could be built on that property.

12 Q. Okay. And there's no restrictions on that property
13 that affects that four acres you talked about? Four
14 of the 15 acres, there are no restrictions?

15 A. Well, there is the Oconee County 750 Lake District
16 Overlay.

17 Q. It doesn't cover this whole area, does it?

18 A. Yes, it does.

19 Q. And how much, how much would it cover of that lot,
20 what percentage?

21 A. 100%, all of this parcel. Here is the lake line.
22 All of this parcel is within 750 feet of the lake.

23 Q. From there to there. So you're restricted only by
24 the overlay on your lot?

25 A. That is my understanding, yes.

1 Q. And what's allowed in the overlay?

2 A. Residential housing, single -- I believe it's
3 residential housing at a density no greater than one
4 per half acre.

5 Q. Okay. So they could put one per half acre even
6 within the overlay?

7 A. Yes.

8 Q. Okay. So it can be used for something to be built
9 in there?

10 A. Yes. As I said yesterday, I've built a tractor shed
11 approximately there.

12 Q. And you could basically and it's unrestricted except
13 the overlay, once you ran out of the overlay can you
14 put -- what else is it restricted to?

15 A. As I said, 100% of it is within the overlay. If you
16 go to the map ---

17 Q. Well, what does the overlay restrict the use of
18 within that overlay? Can I put a commercial
19 business in there?

20 A. It would have to be a residential building.

21 Q. Okay, that's what I'm trying to get to. You're
22 saying it's restricted if you used it back here to
23 build anything on it, it would have to be
24 residential?

25 A. My understanding of the 750 Overlay is it's

1 residential.

2 Q. You couldn't put a bar in there?

3 A. I don't see that that would -- I think as soon as
4 you applied for a business permit the county would
5 step in and restrict you so, no, I don't see how you
6 could do that.

7 Q. Well, mainly that lake overlay sort of restricts
8 basically the contour of the ground and the growth,
9 plant growth and stuff in there, doesn't it, it
10 speaks to that?

11 A. I don't know enough about it in detail. As I said,
12 I haven't tried to develop it. That's my
13 understanding.

14 Q. I don't have anything further.

15 BY MR. MCDUFF:

16 Nothing on redirect, Judge.

17 BY THE COURT:

18 All right, sir, you can step down. Have you got any
19 more witnesses?

20 BY MR. MCDUFF:

21 No, Your Honor, we rest at this time.

22 BY THE COURT:

23 All right, so that concludes the testimony. Now, I
24 understand, of course, you talked earlier about
25 going out and looking at the site. As soon as soon

1 as somebody gives me some direction I'll try to get
2 there. But can we agree that we don't need the
3 court reporter to be there? She can reflect in the
4 record that it's put into evidence and we're going
5 to go view and the attorneys will be required to be
6 there with me; the others can come or not, but
7 that's all and there will be no real testimony
8 taken; is that agreed?

9 BY MR. MCDUFF:

10 I agree with that.

11 BY MR. HOOD:

12 Agree.

13 BY MR. BRANDT:

14 Agree.

15 BY THE COURT:

16 I mean there would be some just, I mean I would say
17 just discussion among the group about, well, this is
18 this and this is this and that's fine, but it
19 wouldn't be considered testimony, okay? All right,
20 the other thing, let me make sure I understand a
21 couple of things. I think I've got a mental picture
22 of it but on this road it's called Mountain View
23 Pointe Road I think it is, now first of all, it is a
24 public road, correct?

25 BY MR. BRANDT:

1 Correct.

2 BY THE COURT:

3 And it's in the Oconee road system, is that correct?

4 BY MR. MCDUFF:

5 Yes.

6 BY THE COURT:

7 Can we agree on that?

8 BY MR. MCDUFF:

9 There was a deed in the record that reflects the
10 transfer from Crescent to Oconee County.

11 BY THE COURT:

12 So there was actually a deed?

13 BY MR. MCDUFF:

14 There was a deed.

15 BY MR. BRANDT:

16 A deed for a right-of-way.

17 BY THE COURT:

18 Deed for a right-of-way or deed for ownership?

19 BY MR. MCDUFF:

20 It was deed for the right-of-way. They said they
21 accepted right-of-way, maintenance and control.

22 BY THE COURT:

23 Okay. Now, the road width is 50 feet right-of-way?

24 BY MR. MCDUFF:

25 The right-of-way width is 50 feet.

1 BY THE COURT:
2 And the paved portion is?
3 BY MR. MCDUFF:
4 Give or take 25 feet.
5 BY THE COURT:
6 25 feet?
7 BY MR. MCDUFF:
8 Well, I think it's 22 plus you have a foot or so for
9 the curb on each side.
10 BY THE COURT:
11 So 25 in total paved area?
12 BY MR. MCDUFF:
13 I think it's about 22 paved.
14 BY THE COURT:
15 The pictures showed, you know, sort of a curb or
16 gutter type ---
17 BY MR. MCDUFF:
18 Yeah, add another foot on each side for the curbing.
19 BY THE COURT:
20 Well, we can say 25 feet but I mean that's kind of
21 important to know what this is.
22 BY MR. MCDUFF:
23 Yeah, we can -- I think it's, you can say 25 feet
24 from curb and gutter to curb and cutter.
25 BY THE COURT:

1 All right. So the reason I'm asking that question
2 is I'm envisioning you've got Mountain View Pointe
3 Road that runs from Doug Hollow down to the
4 subdivision and it's a 25-foot wide roughly paved
5 area?

6 BY MR. MCDUFF:

7 Correct.

8 BY THE COURT:

9 So then you're going to have probably 12 and a half
10 feet on each side of that, it's still right-of-way.

11 BY MR. MCDUFF:

12 Correct, correct.

13 BY THE COURT:

14 And then you've got another strip that's 25-feet
15 wide that's this easement that it's talking about?

16 BY MR. MCDUFF:

17 Correct.

18 BY THE COURT:

19 Although apparently that easement flares out
20 somewhat down toward the ---

21 BY MR. MCDUFF:

22 To create the monument area.

23 BY THE COURT:

24 Yeah, at Doug Hollow Road. I'm not sure about those
25 dimensions, but I don't think that's an issue.

1 Okay, now, I understand that and that helpful for
2 me. Do any of the attorneys want to have a closing
3 argument or do you want to incorporate that into
4 your memorandum that you're going to submit within
5 20 days and 10 days to reply?

6 BY MR. MCDUFF:

7 Well, I'm going to make a motion on the record for
8 judgment as a matter of law, but I would say we
9 could make our closing arguments in our final
10 documents in our briefing to the court.

11 BY MR. HOOD:

12 I agree, that's fine.

13 BY MR. BRANDT:

14 Agree.

15 BY THE COURT:

16 Well, go ahead and put your motion on the record.

17 BY MR. MCDUFF:

18 All right. Judge, my motion is for judgment as a
19 matter of law on behalf of the Pipers is predicated
20 upon the following: it's that this court, the only
21 cause of action against the Pipers is count number
22 one or cause of action number one, the cause of
23 action for declaratory relief under Title 15 of the
24 South Carolina Code. South Carolina law is clear,
25 and I'll give you a number of cases, I'm citing West

1 versus West, that was South Carolina Supreme Court,
2 263 SC 146, a 1974 case, that even on an action for
3 declaratory judgment there has to be an actual case
4 for controversy. In this case and if there's a case
5 of controversy when you're dealing with an easement
6 I know that Mr. Brandt has cited Ralph versus
7 McLaughlin that says there could be a cause of
8 action for trespass to an easement, but I think if
9 you look at that case that case was one where there
10 a total destruction of the easement by the owner of
11 a servient tenement that gave rise to a trespass
12 cause of action. So the only issue in this case
13 becomes whether or not there was unreasonable
14 interference with an easement where Mountain View
15 Pointe Owners Association is the holder of a
16 dominant tenement and I'm saying just for the sake
17 of argument that an easement exists. I'm not
18 conceding that an exist exists; I'm going to contend
19 that there is no easement because there was a merger
20 at the time the documents were created that didn't
21 result in an easement and that the only party that
22 would have standing based upon the deeds to the
23 Pipers would be the successor in interest to
24 Crescent Communities SC, LLC which is now a Japanese
25 corporation which would be the only -- and they're

1 not a party to this action. But that aside, there
2 is no, the Plaintiff and the Plaintiffs in this case
3 have not established a case or controversy
4 whatsoever. And the law is also clear is they can't
5 hold, they can't ask the court for a declaratory
6 judgment to keep in their back pocket as the courts
7 say in case the Pipers do something in the future to
8 develop their property and say, you can't do that,
9 we've got a declaratory judgment. You have to take
10 a snapshot of today to determine whether or not
11 there's a case of controversy and there's no
12 absolutely no evidence in this case of interference
13 with an easement on Parcel B, that's all they own.
14 The only issue, the only thing at issue with this
15 case is the Pipers right to use and access Parcel B.
16 There is no case of controversy regarding Parcel B.
17 There's been no attempt to breach that easement, to
18 encroach on that easement or an attempt to use that
19 easement to develop their property. The only thing
20 that we have testimony of is this tractor path that
21 they said was a thing that they all used, they've
22 all accessed to Parcel B through this tractor path
23 and they've taken ATV back there. And so there is
24 no evidence that the Pipers have done anything that
25 would've interfered, and they haven't claimed that

1 and they haven't testified to any interference with
2 their right to have access to this easement.
3 Remember, this a nonexclusive easement by the very
4 terms, the express terms of Section 7.9 or Article
5 7.9 of the CCRs if they even apply to this property
6 that it's not within the four corners of the
7 subdivision. But in any event, there's been no
8 evidence of any interference with it, actual,
9 otherwise or constructive interference, let alone
10 unreasonable interference and that's the ultimate
11 test in this case that they don't apply to the
12 claims against the Halsells is whether or not
13 there's been unreasonable interference and I submit
14 there's no evidence of any interference with this
15 easement on the part of the Pipers and for that
16 reason we're asking the court to grant judgment as a
17 matter law in count one, the only count against the
18 Pipers, and let them out of this case.

19 BY THE COURT:

20 All right. Mr. Brandt?

21 BY MR. BRANDT:

22 Your Honor, that's true, they have not breached the
23 easement. But however, they did sell the land to
24 the Halsells, they've supported them in this, they
25 believe, obviously from the evidence they believe

1 they can put driveways across the easement. To me
2 that is a, it's kind of an anticipatory breach and
3 all we're asking is to declare can you do this, and
4 as to them can that easement be shrunk down by any
5 kind of activity, even within that easement can it
6 be reduced in size by the Pipers? Certainly they
7 have not -- they did sell it, they did disclose the
8 easement, but then they supported the right to do
9 that. So to wait for actual breach of the easement,
10 I don't think that that's required. But they have
11 not put anything across the easement on their side
12 of the road that would be a bad for the easement,
13 they've not obstructed the easement. But again, do
14 you have a right to do that? Do you have a right to
15 put a driveway in a property down there outside the
16 subdivision? Do you have a right to put a building
17 or anything? Can you reduce the easement by a foot,
18 by two feet or 25 feet, whatever it is? And that's
19 what the issue is and to guide, give future guidance
20 to this I think that the Order should extend to the
21 Pipers.

22 BY THE COURT:

23 All right, well, ---

24 BY MR. HOOD:

25 Your Honor, can I be heard just briefly?

1 BY MR. MCDUFF:

2 Oh, and let me just add before ---

3 BY THE COURT:

4 What's your thought in this?

5 BY MR. HOOD:

6 I'll tell you.

7 BY THE COURT:

8 Well, make it quick.

9 BY MR. HOOD:

10 Well, I thought he was going to ---

11 BY MR. MCDUFF:

12 Judge, I just want to draw the court's attention to
13 the case of City of Columbia versus Sanders, it's a
14 South Carolina Supreme Court Case, 231 SC 61. This
15 is a quoting from the court, it says, "The Uniform
16 Declaratory Judgment Act does not require the court
17 to give a purely advisory opinion which the parties
18 might so to speak put on ice to be used if and when
19 the occasions might arise" and that's what the
20 Plaintiffs are asking the court to do in this case.
21 And, you know, everything has got to be done on a
22 case by case basis. What encroachment by the
23 Halsells may be different in nature than any alleged
24 encroachment if the Pipers ever developed their
25 property, so they can't say as a matter of law I've

1 got this judgment and you can't ever do anything
2 with your property through a nonexclusive easement.
3 They're asking the court for advisory opinion when
4 there's no actual evidence of any encroachment or
5 interference with that easement on the part of the
6 Pipers so.

7 BY THE COURT:

8 I understand what you're saying.

9 BY MR. MCDUFF:

10 All right, so I'll sit down, I'm done.

11 BY THE COURT:

12 Mr. Hood?

13 BY MR. HOOD:

14 All right. Well, Your Honor, he said exactly what I
15 was going to say as to the advisory opinion that's
16 being sought. But I would say one more thing, I
17 think the importance of making that determination
18 now at least indirectly affects us is as you've
19 heard throughout the testimony. I think it's very
20 apparent that that is what has motivated, in other
21 words what might happen on that side of the road has
22 been a big motivating issue to the parties how the
23 issue with the Halsells has been addressed by the
24 property owners.

25 BY THE COURT:

1 Well, I mean I think there is a lot of testimony in
2 the case that we need to sift through. I mean it's
3 not -- there is a lot of factual information,
4 including that Mr. Piper uses, crosses over this
5 easement with his tractor on occasions on his way to
6 this tractor shed or whatever it is and obviously
7 what if the POA decided they wanted to landscape
8 where he crosses? Well, that's an issue that the
9 evidence in the case brings up. And it's been
10 pointed out that Mr. Piper was eminently involved in
11 creating the situation where Mr. Halsell is in the
12 situation he's in and it's identical, it's an
13 identical easement on both sides. So I think
14 there's enough factual information or a factual
15 matter there to decide that at the end if there was
16 a matter of law and that's what we'll do. I'm going
17 to deny your motion at this point. Of course,
18 that's still an argument you make in the final
19 analysis and you may end up prevailing at that
20 point, but we're going to cross that bridge when we
21 get to it.

22 BY MR. MCDUFF:

23 Understood. I'm doing it for the record, Judge.

24 BY THE COURT:

25 Oh, I understand. All right, while we're chatting

1 we're going to save the closing arguments and you
2 can incorporate that into your brief. But I've got
3 a couple of questions I'd like to, I mean I'm not
4 trying to tie anybody down or put anybody on the
5 spot but it's just things that I've kind of thought
6 about as we've gone through this and I know y'all
7 done a lot of work on it as lawyers and so you might
8 give me some indication of your thinking that would
9 help me in or even in considering the case as we go
10 forward. But first of all, I guess I would address
11 this to, well, I guess I'll address to anybody, but
12 the terminology "nonexclusive easement" has been
13 used quite extensively in this case and I believe,
14 Mr. McDuff, you probably originated that and it's
15 viewed by others. But my question is how do you
16 bind a nonexclusive easement and why is that
17 applicable in this case and what is the effect of
18 the nonexclusive easement in this situation?
19 Because quite frankly, I think I know what a
20 nonexclusive easement is and it seems to be not
21 necessarily, it's not necessarily in accord with
22 some of the other views or what a nonexclusive is,
23 so I'm just wondering about your thinking on that.
24 I mean so what if the easement, the landscaping
25 easement, and I'm jumping over your other argument,

1 but so what if it is nonexclusive, what does that
2 matter?

3 BY MR. MCDUFF:

4 Well, I think it's this, it's that it means, what it
5 matters is that both parties, the owner of the fee
6 which is indisputably on Parcel A would be Halsells
7 and Parcel B would be the Pipers. The nonexclusive
8 means, and I think the only case I can find that
9 really articulates this well, there's not a whole
10 lot in South Carolina that deals with this. There's
11 a Florida Court of Appeals case from 1984 that talks
12 about what a nonexclusive easement is and I think
13 what the purpose of a nonexclusive easement is both
14 the owner of the fee and the holder of the easement,
15 the dominant tenement have equal right to it. You
16 cannot do anything that interferes with, materially
17 interferes with the right of these dominant holder,
18 the dominant tenement and its rights in that
19 easement but that does not prevent the owner, the
20 holder of the servient tenement from using the
21 easement nonexclusive because ---

22 BY THE COURT:

23 Wait a minute, wait a minute, wait a minute. My
24 understanding of nonexclusive easement is a little
25 bit different and my understanding is, and I could

1 be wrong and you can educate me, but nonexclusive
2 means that the grantor of that easement can grant
3 the same easement to other people or other parties.

4 BY MR. MCDUFF:

5 Well, I don't think ---

6 BY THE COURT:

7 So in other words, if I give somebody a right-of-way
8 across my property to ride their car over to the
9 adjoining property and it's nonexclusive, that means
10 I can give somebody else the same right to use the
11 same easement for the same purpose.

12 BY MR. MCDUFF:

13 Well, let me read the definition that was given by
14 the Florida Court of Appeals, the Florida District
15 Court of Appeal in 1984 in the case of Yellowfin
16 versus Mortgage Investors of Washington.

17 BY MR. BRANDT:

18 Give me the cite.

19 BY MR. MCDUFF:

20 It's 453 Southern 2^d 897. And some states use, and
21 I'll tell you this there are some states that use
22 exclusive and nonexclusive easements in terms of the
23 difference been an easement appurtenant and an
24 easement in gross which hasn't been adopted in South
25 Carolina. Some of the western states use that to

1 refer to exclusive/nonexclusive where ---

2 BY THE COURT:

3 Well, I mean there's one factor that would be
4 involving that analysis.

5 BY MR. MCDUFF:

6 Right. And that's generally ---

7 BY THE COURT:

8 That's using an example of appurtenant.

9 BY MR. MCDUFF:

10 And that's generally with, an easement in gross, an
11 easement appurtenant requires that it's generally
12 for right-of-ways, ingress, egress, where land
13 cannot be used and it terminates on the dominant
14 easement holder's property, that's an easement
15 appurtenant in South Carolina.

16 BY THE COURT:

17 An easement appurtenant basically runs with the
18 land.

19 BY MR. MCDUFF:

20 Runs with the land. But it requires, there's some
21 elements in South Carolina that the Supreme Court
22 has provided.

23 BY THE COURT:

24 Well, let's don't get into all that.

25 BY MR. MCDUFF:

1 I don't want to get into that. Well, let me read
2 this definition that the Florida Court of Appeals
3 provided. It says here, "In determining the scope
4 of easements as in construed in deeds generally the
5 court is aided by various rules of construction.
6 One of the rules is that there's a presumption in
7 favor of the nonexclusive easement," so if not
8 otherwise defined, it's presumed to be a
9 nonexclusive easement. "An exclusive easement is
10 one for the sole benefit of the easement holder and
11 excludes use thereof by the grantor servient owner.
12 A nonexclusive easement on the other hand permits
13 use by the servient owner. Hence, if there is any
14 doubt, the court will conclude that the grantor
15 likewise may use the land subject to the easement so
16 long as he does not interfere with the use thereof
17 by his grantee."

18 BY THE COURT:

19 In other words, he can go out and plant some stuff
20 on there just like the POA could, but he can't
21 interfere with what they want to do?

22 BY MR. MCDUFF:

23 Well, I think it's unreasonably interfere, and I
24 think that's the test, does it materially and
25 unreasonably interfere with the owner of the

1 dominant of the tenement?

2 BY THE COURT:

3 Well, that's different than exclusive and
4 nonexclusive.

5 BY MR. MCDUFF:

6 Right, and I think that's where, I think if we look
7 at nonexclusive it grants the grantor the easement
8 and the servient tenement the right to use the same
9 property subject to the easement.

10 BY THE COURT:

11 Is it for what?

12 BY MR. MCDUFF:

13 It doesn't, it's undefined. I think it's ---

14 BY THE COURT:

15 I believe that's where we're missing something.

16 BY MR. MCDUFF:

17 But here's where the problem is we get into and
18 here's what the court said, the difficulty with the
19 Plaintiffs' contention in this case would be that
20 their claim that they only have the right -- they're
21 the gatekeeper for the use of what the court said
22 was a nonexclusive easement and they have the sole
23 right to determine what use and who got to access
24 that easement would be tantamount to a conveyance of
25 the land in fee simple. So that's the problem we

1 have in this case if that the POA says that only us
2 can use this easement; we're the gatekeeper and
3 that's their position and we decide who and what and
4 when and where and how anybody gets the right to
5 access this easement on property on we don't own.

6 BY THE COURT:

7 No, they're not talking about access an easement;
8 they're talking about landscaping the easement.

9 BY MR. MCDUFF:

10 Well, they're talking about anybody using and
11 breaching that easement.

12 BY THE COURT:

13 Has anybody ever got, has anybody ever received a
14 landscaping easement in this area?

15 BY MR. MCDUFF:

16 You mean in talking about Mountain View Pointe
17 Drive?

18 BY THE COURT:

19 I'm talking about within that 25-foot strip.

20 BY MR. MCDUFF:

21 Well, I think the only party that had an easement in
22 this would be Crescent Communities or its successor
23 in interest.

24 BY THE COURT:

25 Well, then you're getting to your next argument when

1 I'm saying this easement, there's some question
2 here, has anybody else other than the POA and
3 property owners in the POA, has anybody else been
4 granted a landscape easement in that area?

5 BY MR. MCDUFF:

6 On property owned by the Defendants in this case?

7 BY THE COURT:

8 I'm talking about any in that area we're talking
9 about?

10 BY MR. MCDUFF:

11 None of which are attainable through records, none
12 that can be discovered.

13 BY THE COURT:

14 All right. So ---

15 BY MR. MCDUFF:

16 So the problem is their position would be tantamount
17 to giving them a fee simple interest in property
18 owned by the Halsells and the Pipers.

19 BY THE COURT:

20 That isn't true.

21 BY MR. MCDUFF:

22 Well, that's what, I'm giving you or telling you
23 what the court says. I know you're the finder of
24 facts and call the balls of strike but I'm telling
25 you what the court said.

1 BY THE COURT:

2 Well, what that -- we'll leave it at that, you know,
3 when I say I disagree, I disagree based on what I
4 know what right now or what, you know, my
5 recollection. But that's an issue that I want you
6 to address and the other attorneys to address in the
7 brief, that's something I think that we need to deal
8 with ultimately in the final Order. So I hear what
9 you're saying but that's an issue that y'all need to
10 take a closer look at and give me some information
11 on it.

12 BY MR. MCDUFF:

13 Yeah, and I want to be careful, Judge, because
14 according to their theory because the Pipers have
15 supported the Halsells in this thing that I
16 supported the Pipers in representing that somehow I
17 could be liable for, you know, again having a
18 declaratory judgment. This is ---

19 BY THE COURT:

20 Well, I think that's an excellent idea.

21 BY MR. MCDUFF:

22 Well, you're going to have get through my wife to
23 make that.

24 BY THE COURT:

25 All right, and that's fine. Like I say I'm not

1 trying to limit the discussion or argument; I'm just
2 trying to get some ideas about what, you know, how
3 you looking at the thing. And the second thing
4 again I guess this will be Mr. McDuff, your theory
5 about the merger of the easement, have you got a
6 dominant or subservient ownership in common; how
7 does that apply or not apply in this case?

8 BY MR. MCDUFF:

9 How does that apply in this case? Well, factually
10 the sequence of the events and the chronology.

11 BY THE COURT:

12 Well, I mean I understand you're going to say, well,
13 Crescent owned all this property and Crescent put an
14 easement over this other piece and then they sold it
15 off to somebody else and sold off the lots in the
16 subdivision, so at the time they did that Crescent
17 owned everything.

18 BY MR. MCDUFF:

19 Correct.

20 BY THE COURT:

21 And wouldn't that be true of every development it
22 has ever done?

23 BY MR. MCDUFF:

24 Well, what they did in this case which was
25 unorthodox to say the least, I think it was just

1 sloppy garbage is what Crescent did was they created
2 a purported easement on properties that were, on
3 their own properties which were not part of the
4 subdivision, that's what they attempted to do and so
5 ---

6 BY THE COURT:

7 That's okay, isn't it?

8 BY MR. MCDUFF:

9 Well, no, because when you have a merger, when you
10 have the holder of the easement, the servient
11 tenement and dominant tenement which it's undisputed
12 in 2002 Crescent Communities SC, LLC owned both what
13 would be the dominant tenement and the servient
14 tenement. The South Carolina Supreme Court in
15 Wyndham versus Riddle said that the easement fails,
16 there is no easement, it does not exist. Even if
17 it's then transferred to another party later down
18 the road, you have to look at the point in time when
19 the easement was created did the holder of the
20 dominant tenement and the holder of the servient
21 tenement, were they one in the same party because
22 there's a merger?

23 BY THE COURT:

24 Well, I mean I want you to cover this your argument

25 ---

1 BY MR. MCDUFF:

2 Yeah.

3 BY THE COURT:

4 --- and apply it to the facts in this case.

5 BY MR. MCDUFF:

6 Yeah, and I'm going to but ---

7 BY THE COURT:

8 I mean let's say, for example, that I own a piece of

9 property and my next door guy, I give him a right-

10 of-way across my property to get to this property --

11 -

12 BY MR. MCDUFF:

13 That would be a valid easement in gross.

14 BY THE COURT:

15 --- but then later on when someone buys his

16 property?

17 BY MR. MCDUFF:

18 If anybody has a merger, then it goes away.

19 BY THE COURT:

20 That's right.

21 BY MR. MCDUFF:

22 Then with a merger it goes away.

23 BY THE COURT:

24 But that's not what happened here.

25 BY MR. MCDUFF:

1 Exactly, and that's what Wyndham versus Riddle
2 addresses, the South Carolina ---

3 BY THE COURT:

4 Well, that's not what happened here I don't think.

5 BY MR. MCDUFF:

6 Well, no, you have the, you have -- Crescent owned
7 everything.

8 BY THE COURT:

9 But it was a development situation and if you read
10 over the CCRs you're going to find language in there
11 that says, it makes it very clear that the benefit
12 of the easement created was for the POA and the lots
13 owners in the subdivision.

14 BY MR. MCDUFF:

15 Well, then you take it -- when looking at the CCRs,
16 Section 1.1.2 defines what the common areas are and
17 it includes the landscape easement and monument
18 easement. But then you have to look at Section 3.1
19 that contemplates the developer is by some
20 instrument that will be recorded is going to
21 transfer title to the easement or the fee to
22 property, that was going to occur and that never
23 occurred. The CCRs made that a condition preceding
24 to the Association holding those things and those
25 interest in the property.

1 BY THE COURT:

2 And so under your theory, Mountain View Pointe Road
3 just doesn't exist because they conveyed a right-of-
4 way across this other land out here to the county
5 when they owned all of it?

6 BY MR. MCDUFF:

7 No, because that's not an easement; that was a
8 transfer of a right-of-way.

9 BY THE COURT:

10 Well, it's a right-of-way, the same thing.

11 BY MR. MCDUFF:

12 It's not, but it's different. They created it to a
13 third party when they transferred it. They ---

14 BY THE COURT:

15 Well, it's like 80 foot for landscaping.

16 BY MR. MCDUFF:

17 But the problem is none of the -- the problem is,
18 Judge, what you're missing on this with all due
19 respect is that Oconee County is a different party
20 than Crescent Communities. It's not like where you
21 have the property, the fee, to encroach ---

22 BY THE COURT:

23 Well, the POA and the people that bought those lots
24 is that different parties, too?

25 BY MR. MCDUFF:

1 I'm sorry, I missed that?

2 BY THE COURT:

3 I said isn't the POA and the parties, the people
4 that bought the lots in the subdivision, those are
5 different parties?

6 BY MR. MCDUFF:

7 But it doesn't matter. See, if that was an event
8 that occurred later past 2002. The court says you
9 look at the point in time when the purported
10 easement was created, not later on when somebody
11 else bought the property. The point in time is when
12 the event occurred did the dominant tenement and the
13 servient tenement owned by the same parties?

14 BY THE COURT:

15 Well, just check that, check it out ---

16 BY MR. MCDUFF:

17 I will, Your Honor.

18 BY THE COURT:

19 --- in a development situation. I can't understand
20 how that would ever work in a development situation.

21 BY MR. MCDUFF:

22 Well, because I'll tell you, every development there
23 exists and what Crescent Communities did, Crescent
24 turned over the fee to the -- like in my community
25 subdivision, there's an entryway like there is in

1 Mountain View Pointe but the developer turned over
2 the fee to that entryway to the Property Owners
3 Association. Here, that neither the road nor the
4 property adjoining it is owned by, was owned by or
5 turned over to the Association, so the fee was still
6 retained by Crescent.

7 BY THE COURT:

8 Well, I mean I think you need to cover whether
9 there's other ways to create easements besides a
10 deed.

11 BY MR. MCDUFF:

12 Well, all we know is there are two ways, there's
13 either express easement by some document that
14 creates a deed or there are implied easements.

15 BY THE COURT:

16 And what kind of documents does that include?

17 BY MR. MCDUFF:

18 It has to be something that sets forth like any
19 other, it has to be a document that sets forth the
20 scope, the dimensions of the easements. To have a
21 valid easement under South Carolina law there has be
22 an instrument that describes the easement, the scope
23 of the easement that readily ascertainable and there
24 has to be an instrument of conveyance, there has to
25 be a transfer.

1 BY THE COURT:

2 Well, I don't know about the instrument of
3 conveyance.

4 BY MR. MCDUFF:

5 Well, there has to be, there has to be some ---

6 BY THE COURT:

7 There's an indication that they have dedicated this
8 property for the benefit of some party. Well, cover
9 it in your brief.

10 BY MR. MCDUFF:

11 Cover it in my brief, all right.

12 BY THE COURT:

13 And, Mr. Brandt, have you got anything you want to
14 add at this time about that why he's wrong?

15 BY MR. BRANDT:

16 Well, I mean your comments are my thinking. You've
17 looked at the Covenants and Restrictions at the time
18 they were created. You've got a subdivision out
19 there and what was the intent of Crescent and the
20 property owners even when it went down and they made
21 subject to any easements of record, you've got to
22 look at all of that. And certainly you get around
23 Wyndham, we've made our arguments on Wyndham, the
24 Wyndham case at summary judgment and you've got
25 briefs on that issue here and that ---

1 BY THE COURT:

2 Well, the other thing I'd think about is that, you
3 know, when Piper sold it to Halsell on Lot A side
4 then, you know, what was the effect of that?

5 BY MR. MCDUFF:

6 Well, I'll tell you this, there's the 2013, I think
7 that you have to look at the 2013 deed from Crescent
8 Communities to the Pipers for tracts, Parcels A and
9 B. I think because that was the only time that
10 there was a bona fide reservation of an easement
11 because their plat at B443 references a landscape
12 easement along there. But the owner of that
13 property at that time would've been Crescent
14 Communities when that property was transferred to
15 the Pipers.

16 BY THE COURT:

17 And I'm saying when the Pipers transferred A to the
18 Halsells there was reference to the ---

19 BY MR. MCDUFF:

20 There was.

21 BY THE COURT:

22 --- easement involved in the document.

23 BY MR. MCDUFF:

24 And I'm saying what that originated from was the
25 2013 deed which is Exhibit 6, Joint Exhibit 6, was

1 transferred from Crescent to the Pipers, that was
2 the only time potentially in 2013 when an easement
3 was created for landscape.

4 BY THE COURT:

5 What about when he deeded it subject to his
6 easement?

7 BY MR. MCDUFF:

8 Well, it would be assuming that -- the question is
9 who has standing then to enforce it?

10 BY THE COURT:

11 Well, that may be a question for ---

12 BY MR. MCDUFF:

13 That's a, that's a material question in this case.

14 BY THE COURT:

15 Hasn't anybody raised that.

16 BY MR. MCDUFF:

17 Well, it's standing can be raised at any time and I
18 want to tell you the issue of standing is very
19 prominent in this case and my position is none of
20 these Plaintiffs, not a single one of them, has
21 standing to challenge this easement in this case.
22 The only party that would have the right to do it
23 would be the successor in interest to Crescent
24 Communities SC, LLC which is a Japanese company, a
25 forestry company.

1 BY THE COURT:

2 Well, it doesn't matter whether they're Japanese or
3 what.

4 BY MR. MCDUFF:

5 But they're not a party to the case. They're not in
6 the courtroom and they haven't submitted to the
7 jurisdiction of the court. They're not here and
8 they haven't been brought into it. There's not a
9 party in here that has standing to challenge this.

10 BY THE COURT:

11 Well, that's going to be tough to sell right here
12 but go ahead and try it. All right, my next
13 question is, we kind of touched on this yesterday,
14 define landscaping and we don't necessarily need to
15 go on and on with that but I mean I asked yesterday
16 of the defense about landscaping and I want to see
17 if you can address that. There was some testimony
18 about putting in a retaining wall that I guess
19 would've been on the landscape easement but, of
20 course, that underlying property is owned by Halsell
21 so is that landscaping that needs to be addressed?
22 And finally, there was some discussion yesterday
23 about an injunction against Piper?

24 BY MR. MCDUFF:

25 Uh-huh, that's what they're seeking in their count

1 one is declaratory relief and an injunction.

2 BY THE COURT:

3 Well, why would an injunction be necessary if we
4 have a declaratory judgment that says this is what
5 the situation is, this is what the rights are?

6 BY MR. MCDUFF:

7 Well, and it ---

8 BY THE COURT:

9 There wouldn't be.

10 BY MR. MCDUFF:

11 Well, and so and here's the ---

12 BY THE COURT:

13 I mean I guess there could be.

14 BY MR. MCDUFF:

15 Well, that's what the Plaintiffs are praying for and
16 they be required to ---

17 BY THE COURT:

18 Well, Mr. Brandt, let me ask you that, why do you
19 need an injunction ---

20 BY MR. BRANDT:

21 I don't.

22 BY THE COURT:

23 --- if a declaratory judgment ---

24 BY MR. BRANDT:

25 I don't. I just need a declaratory judgment of what

1 can these people do out there?

2 BY THE COURT:

3 Well, that's exactly right. The way I view it is
4 the declaratory judgment is designed to declare what
5 the rights are of the parties in relationship to
6 this landscape easement and once you do that, you
7 know, the Pipers would violate that at their peril,
8 but, you know, ---

9 BY MR. BRANDT:

10 I agree with you.

11 BY THE COURT:

12 And, you know, on the other hand if he says, well,
13 they can cross his easement with driveways, then if
14 the POA violates it at their peril if they try to
15 stop it? So you don't need an injunction against
16 anybody I don't think.

17 BY MR. BRANDT:

18 No, once the rights are declared it's going avoid
19 trouble and/or a potential for controversy.

20 BY THE COURT:

21 Now, it may different with the Halsell situation
22 because, you know, if it's determined that he has to
23 go back and remove his concrete and so forth that's
24 on the landscape easement, then that may require an
25 injunction to do that but, you know.

1 BY MR. MCDUFF:

2 Well, it gets us back to the root problem, Judge, it
3 really does and I don't want to beat this horse
4 that's already dead. But it brings us back to the
5 root problem because what the Plaintiffs want is an
6 all or nothing proposition ---

7 BY THE COURT:

8 Wait a minute, wait, wait, wait, I was going to
9 comment on that.

10 BY MR. MCDUFF:

11 Okay.

12 BY THE COURT:

13 And this will be what I will say, but my observation
14 is, you know, anytime you have two parties that
15 disagree and they try to find common ground that's a
16 wonderful thing, but sometimes there is not the
17 ability to find a common ground because you have to
18 some degree mutually exclusive positions. Now, you
19 know, I hear a lot of these politicians that talk
20 about finding a common ground and working together
21 and being united, but normally that means do what we
22 want to do and we'll all be united. So it's
23 unfortunate that we've gotten to this place and I
24 think the ultimate outcome somebody is going to be
25 disappointed. It might be the Defendants, it might

1 be the Plaintiff; but unfortunately somebody is
2 going to be disappointed with the results. Now,
3 obviously both sides have a right to appeal what I
4 come up with and that's their right to and that's
5 fine. But I just wanted everybody to be aware of
6 that going in that, yeah, it's a tough decision and
7 I don't, you know, base this decision with any
8 desire to do anybody harm but I've got to go by what
9 the law is as I see it and then the chips fall where
10 they fall so I'll just that in advance before I
11 render a decision. Okay?

12 BY MR. MCDUFF:

13 All right.

14 BY THE COURT:

15 Anything else?

16 BY MR. BRANDT:

17 No, sir.

18 BY THE COURT:

19 All right. So we're ready to proceed to the scene
20 of the events if somebody can get me directions.

21

22 (END OF TRIAL ON 10/27/22 AT 1:51 P.M.)

23 (VISIT TO PROPERTY SITE OFF RECORD BY JUDGE, ATTORNEYS
24 AND INTERESTED PARTIES)

25

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MJS
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OCONEE COUNTY, N.C.
REGISTER OF DEEDS

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2002 NOV 12 AM 11:00

DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
MOUNTAIN VIEW POINTE

DRAWN BY AND MAIL TO:
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CLT 637923 v10

Court
#1

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THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MOUNTAIN VIEW POINTE ("Declaration") is made as of the 21st day of October, 2002, by CRESCENT COMMUNITIES S.C., LLC, a Delaware limited liability company.

STATEMENT OF PURPOSE

Declarant is the developer and owner of certain real property located in Oconee County, South Carolina, which is hereafter described as the Property. Declarant desires to create on the Property a residential community of single-family homes to be named Mountain View Pointe.

Declarant desires to insure the attractiveness of the Development, to prevent any future impairment thereof, to prevent nuisances and enhance the value of all properties within the Development. Furthermore, Declarant desires to provide for the construction, maintenance and upkeep of any Common Areas and related easements within the Development, all for the common use and benefit of all Owners, (or with respect to Common Areas dedicated to the use and benefit of certain Owners, to the exclusion of other Owners, only those Owners benefiting from such Common Area).

Declarant desires to provide for a system whereby all Owners (or with respect to Common Areas dedicated to the use and benefit of certain Owners, to the exclusion of other Owners, the Owners benefiting from such Common Area) will pay for the maintenance and upkeep of any Common Areas, in accordance with an established budget set by the Board of Directors.

Declarant desires to subject the Property to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of the Property and each Owner.

Declarant further desires to create a South Carolina non-profit corporation to be known as MOUNTAIN VIEW POINTE OWNERS ASSOCIATION, INC. to which will be delegated and assigned the powers of owning, maintaining and administering the Common Areas, administering and enforcing the covenants and restrictions contained herein, and collecting and disbursing the Assessments and charges hereinafter created, in order to efficiently preserve, protect and enhance the value of the Development, to ensure, for the benefit of each Owner, the specific rights, privileges and easements in the Common Areas, and to provide for the maintenance and upkeep of the Common Areas, as provided in the Declaration and the Bylaws.

NOW, THEREFORE, Declarant, by this Declaration, does declare that all of the Property shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, which shall run with the Property and be binding on all parties owning any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

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ARTICLE I

DEFINITIONS

All capitalized terms used herein shall have the meanings set forth in Article I.

Section 1.1. "Additional Property" shall mean and refer to (i) any additional real estate adjacent or contiguous to the Property shown on the Map recorded in Map Book A918 at page(s) 1-2 in the Office of the Register of Deeds for Oconee County, South Carolina, or (ii) any property located within four thousand (4,000) feet of any boundary of the Property shown on the Map, all or a portion of which may be made subject to the terms of this Declaration in accordance with the provisions of Section 2.2 of this Declaration.

Section 1.2. "Annual Assessment" shall mean and refer to the amount to be levied annually by the Association against each Lot, as set forth in Section 5.2.

Section 1.3. "Articles of Incorporation" shall mean and refer to the Articles of Incorporation for the Association attached as Exhibit "A".

Section 1.4. "Assessments" shall mean and refer to the Annual Assessments, Supplemental Annual Assessments, Special Assessments, Special Individual Assessments, Boatlip Assessments, Supplemental Boatlip Assessments, Special Boatlip Assessments, Septic System Assessments and Supplemental Septic System Assessments applicable to a Lot.

Section 1.5. "Association" shall mean and refer to MOUNTAIN VIEW POINTE OWNERS ASSOCIATION, INC., a South Carolina non-profit corporation, its successors and assigns.

Section 1.6. "Board of Directors" or "Board" shall mean and refer to the Board of Directors of the Association, which shall be elected and shall serve pursuant to the Bylaws.

Section 1.7. "Boatlip Assessments" shall mean and refer to the amount to be levied annually by the Association against each Boatlip.

Section 1.8. "Boatlip Lease" shall mean and refer to the boatlip lease form provided by Declarant to the Boatlip Lot Owners as more particularly set forth in Section 3.6.

Section 1.9. "Boatlip Lots" shall mean and refer to Lots 20-22 and 26-29 in the Development that have, as an appurtenance to the Lot, the right to use one of the assigned Community Boatlips in accordance with and as more particularly set forth in Article VI-A of this Declaration.

Section 1.10. "Boatlip Lot Owner" shall mean and refer to the Owner of any Boatlip Lot, as more particularly set forth in Article VI-A of this Declaration.

Section 1.11. "Bylaws" shall mean and refer to the Bylaws for the Association, substantially in the form attached as Exhibit "B", as amended, from time to time.

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Section 1.12. "Common Area" or "Common Areas" shall mean and refer collectively to the Entrance Monument, Street Lights, Landscape Easement Area, Public Roads (prior to their acceptance for maintenance by the Oconee County Public Works Department or other governmental entity), and any other property designated on the Map as "Common Area," "Common Open Area," "Common Open Space," "COS," or other similar designation. The Association shall own Common Areas (or be granted an easement) for the common use and benefit of all Owners. The listing and description of the components of the Common Area is illustrative of Declarant's present plans only and is not a guaranty by Declarant or the Association that all or any part of such components will be constructed or installed by Declarant or the Association at any future time. Declarant reserves the right, but not the obligation, to provide additional Common Areas within the Subdivision, and shall have the right to designate which Owners shall be permitted to use any Common Areas or future Common Areas as set forth in Section 2.2 of this Declaration.

Section 1.13. "Community Boatslips" shall mean and refer to the seven (7) Boatslips, pier, access area, and all associated Improvements, which Declarant shall construct for lease to the Boatslip Lot Owners, each of whom is required to lease one of the Community Boatslips, as more particularly shown and described on Exhibit "C".

Section 1.14. "CPI" shall mean and refer to the Consumer Price Index, All Urban Consumers, United States, All Items (1982-84 = 100) issued by the U.S. Bureau of Labor Statistics for the most recent 12-month period for which the CPI is available.

Section 1.15. "Declarant" shall mean and refer to Crescent Communities S.C., LLC, and such of its successors and assigns to whom the rights of Declarant are transferred by written instrument recorded in the Office of the Register of Deeds for Oconee County, South Carolina.

Section 1.16. "Development" shall mean and refer to Mountain View Pointe, a single-family residential development proposed to be developed on the Property by Declarant.

Section 1.17. "Duke Lease" shall mean and refer the lease agreement between Duke Energy Corporation and Declarant pertaining to the lease of the area of the lake bed of Lake Keowee underlying the Community Boatslips.

Section 1.18. "Entrance Monument" shall mean and refer to the easement areas reserved and granted by Declarant in Section 7.9 of this Declaration, over a portion of the Common Area, as shown on the Map, and any monuments and entrance signs located on such easement areas together with lighting, an irrigation system, landscaping and other Improvements which may be constructed on such easement areas, to be used as an entryway for the Subdivision.

Section 1.19. "ECC" shall mean and refer to the Environmental Control Committee that oversees the development and enforcement of the Guidelines and performs certain other functions described in Article IX of this Declaration.

Section 1.20. "Guidelines" shall mean and refer to the Environmental and Lake Buffer Guidelines published by the ECC as set forth in Section 9.3.

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Section 1.21. "Improvement" or "Improvements" shall mean and refer to any and all man-made changes or additions to any portion of the Property.

Section 1.22. "Lake Buffer Area" shall mean and refer to the area that is fifty (50) feet from the 800' MSL contour or five (5) feet from the 804' MSL contour, whichever is greater.

Section 1.23. "Landscape Easement Area" shall mean and refer to the twenty-five (25) foot easement granted by Declarant along both sides of the main entrance road into the Subdivision, all of which shall be maintained by the Association as more particularly set forth in Section 7.9.

Section 1.24. "Lot" or "Lots" shall mean and refer to the separately numbered parcels depicted on the Map.

Section 1.25. "Map" shall mean and refer to (i) the map of Mountain View Pointe Subdivision recorded in Map Book 8910, Page(s) 1 & 2, in the Office of the Register of Deeds for Oconee County, South Carolina, (ii) any maps of any portions of the Additional Property which are subjected to this Declaration, and (iii) any revisions of such map or maps recorded in the Office of the Register of Deeds for Oconee County, South Carolina.

Section 1.26. "Maximum Annual Assessment" shall mean and refer to the maximum Annual Assessment that may be charged in a calendar year, as set forth in Section 5.4.1.

Section 1.27. "Maximum Boatslip Assessment" shall mean and refer to the maximum Boatslip Assessment that may be charged in a calendar year, as set forth in Section 6A.4.1.

Section 1.28. "Maximum Septic System Assessment" shall mean and refer to the maximum Septic System Assessment that may be charged in a calendar year, as set forth in Section 6B.4.1.

Section 1.29. "Member" shall mean and refer to every person or entity that holds a membership in the Association.

Section 1.30. "Mortgage" shall mean and refer to any mortgage constituting a first lien on a Lot.

Section 1.31. "Mortgagee" shall mean and refer to the owner and holder of a Mortgage on a Lot.

Section 1.32. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot within the Development, including the Declarant if it owns any Lot, but excluding any Mortgagee.

Section 1.33. "Private Roads" shall mean and refer to those certain roads constructed within the Private Road Easements which will provide access, ingress, egress and regress to each of the Private Road Lots upon completion, and will be dedicated to the Private Road Lots Owners, all to be maintained by the Private Road Lot Owners as addressed in Section 7.26.

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Section 1.34. "Private Road Easements" shall mean and refer to the non-exclusive, perpetual easements twenty (20) feet in width and identified on the Map as "Private Road R/W & Easement," which have been established over portions of the Property, for the benefit of the Private Road Lot Owners, their heirs, successors and assigns for access, ingress, egress and regress to and from the Private Road Lots. The Private Road Easements are also reserved unto the Declarant and the Association, their successors and assigns for access, ingress, egress and regress to the Private Road Lots, for the installation and maintenance of the Private Roads and for the installation and maintenance of any utilities and drainage facilities.

Section 1.35. "Private Road Lots" shall collectively mean and refer to Lots 23-25.

Section 1.36. "Property" shall mean and refer to the property shown on the Map, including the Lots, Roadways and Common Areas, together with any leasehold interest or easement which the Association has or may hereafter acquire in any property adjacent to the Development (including, but not limited to, any leases of any submerged land lying within the bed of Lake Kcovee).

Section 1.37. "Public Roads" shall mean and refer to all roads and cul-de-sacs in the Subdivision and shown on the Map as "Public R/W," all to be maintained by the Association as more particularly set forth in Section 4.6 of this Declaration until dedicated and accepted by the Oconee County Public Works Department or other governmental entity.

Section 1.38. "Reserve Fund" shall mean and refer the portion of the Annual Assessment to be used for the purposes set forth in Section 4.7.

Section 1.39. "Roadways" shall mean and refer to the Public Roads and the Private Roads.

Section 1.40. "Septic System Assessments" shall mean and refer to the amount to be levied annually by the Association against each Lot for the purposes set forth in Section 6B.2.

Section 1.41. "Special Individual Assessment" shall mean and refer to the amount levied by the Association for the purposes set forth in Section 5.6.

Section 1.42. "Special Assessment" shall mean and refer to the amount levied by the Association for the purposes set forth in Section 5.5.

Section 1.43. "Special Boatslip Assessment" shall mean and refer to the amount levied by the Association for the purposes set forth in Section 6A.5.

Section 1.44. "Street Lights" shall mean and refer to those certain street lights that may be constructed upon, within and over the rights-of-way of the Roadways.

Section 1.45. "Supplemental Annual Assessment" shall mean and refer to an amount levied by the Board of Directors in addition to the Annual Assessment, as set forth in Section 5.4.3.

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Section 1.46. "Supplemental Boatlip Assessment" shall mean and refer to an amount levied by the Board of Directors in addition to the Boatlip Assessment, as set forth in Section 6A.4.3.

Section 1.47. "Supplemental Septic System Assessment" shall mean and refer to an amount levied by the Board of Directors in addition to the Septic System Assessment, as set forth in Section 6B.4.3.

Section 1.48. "Subdivision" shall mean and refer to Mountain View Pointe Subdivision, as shown on the Map.

Section 1.49. "Waterfront Lots" shall mean and refer to Lots 1-19 and 23-25 as shown on the Map. Although Lots 20 and 21 are Boatlip Lots, each shall also be considered a Waterfront Lot for all purposes set forth in the Declaration, with the exception of Section 7.21 and Section 7.22.

Section 1.50. "Water System" shall mean and refer to the central water system constructed by Declarant in order to provide water necessary to serve the Subdivision.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION AND
WITHIN THE JURISDICTION OF THE ASSOCIATION

Section 2.1. Property. The real property, which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration, is located in Oconee County, South Carolina, as more particularly described and shown on the Map.

Section 2.2. Additions to the Property.

- 2.2.1 Declarant may cause any portion of the Additional Property to be made subject to the terms and scheme of this Declaration by filing one or more Supplemental Declarations in the Office of the Register of Deeds for Oconee County, South Carolina, containing a description of the Additional Property and a statement by the Declarant of its intent to extend the operation and effect of this Declaration to the Additional Property.
- 2.2.2 Any Supplemental Declaration may contain complementary additions to the covenants and restrictions contained herein as may be necessary in the judgment of the Declarant to reflect the different character of the Additional Property. No Supplemental Declaration shall revoke or modify the covenants and restrictions contained herein with respect to the Property, nor revoke or modify the covenants and restrictions established by previously filed Supplemental Declarations, without meeting the requirements for amendment set forth in Section 12.3 of this Declaration. Notwithstanding the foregoing, Declarant or the Association shall have the right, without meeting the requirements for

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amendment set forth in Section 12.3 of this Declaration, to amend this Declaration to reconfigure the Community Boatslips or Common Areas to reflect the actual final configuration of such areas and the "as-built" construction of such amenities.

ARTICLE III

PROPERTY RIGHTS

Section 3.1. Ownership of Common Areas. On or before ten (10) years from the date this Declaration is recorded, Declarant shall convey fee simple title by limited warranty deed (or grant an easement) to the Common Areas to the Association, to be owned and maintained by the Association. Declarant reserves the right to construct (i) the Entrance Monument(s) to be located at the entrance to the Development; (ii) appropriate landscaping in the Landscape Easement Area; and (iii) the Public Roads, as reflected on the Map, for the use and benefit of the Owners who are entitled to use such Common Areas as provided in this Declaration. Notwithstanding the recordation of any Map or any other action by Declarant or the Association, all Common Areas shall remain private property and shall not be considered as dedicated to the use and benefit of the public (with the exception of the Public Roads, which will eventually be dedicated and accepted for public maintenance by the Oconee County Public Works Department or other governmental entity).

Section 3.2. Owners' Rights to Use and Enjoy Common Areas. Each Owner shall have the non-exclusive easement and right to use and enjoy the Common Areas, and such right shall be appurtenant to and conveyed with title to such Owner's Lot, subject to the following:

- 3.2.1 the right of the Association to promulgate and enforce reasonable rules and regulations governing the use of the Common Areas;
- 3.2.2 the right of the Association to suspend the voting rights of an Owner in the Association and the right of the Association to suspend the right to use certain or all of the Common Areas by an Owner for any period during which any Assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days for any violation or infraction of its published rules and regulations;
- 3.2.3 the right of the Declarant or the Association to grant utility, drainage and other easements across the Common Areas;
- 3.2.4 the right of the Declarant or the Association to restrict the use of certain Common Areas to certain designated Owners as shall be described in this Declaration; and
- 3.2.5 the provisions of Article VII of this Declaration.

Section 3.3. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, the Owner's right of enjoyment to the Common Areas and facilities located thereon to the members of the Owner's family and his guests, tenants, or invitees.

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Section 3.4. Rights in the Roadways. Each Private Road Lot Owner, Declarant and the Association, their successors and assigns, shall have and are hereby granted the perpetual, non-exclusive right to use the Private Roads within the Private Road Easements, for the purpose of pedestrian and vehicular access, ingress, egress and regress to and from each Private Road Lot, for installation and maintenance of the Private Roads, drainage facilities and other utilities to serve the Private Road Lots. Notwithstanding the foregoing, the rights granted in this Section 3.4.1 to the Private Road Lot Owners shall only extend and apply to the Private Road(s) fronting the respective Private Road Lots. Declarant shall have the exclusive right to construct the Private Roads within the Private Road Easements, in the approximate location shown on the Map, as well as any additional Private Roads which may be added to the Development in the future pursuant to the provisions of Section 2.2 of this Declaration. The Private Roads and the Private Road Easements shall be maintained and repaired by the Private Road Lot Owners as more particularly set forth in Section 7.26. No structures, plantings or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of the Private Roads, or the utilities or drainage facilities located therein.

Section 3.5. Community Boatslips. Subject to and contingent upon receipt of the approval of Duke Energy Corporation and any other regulatory body having jurisdiction, Declarant shall have the exclusive right to construct all of the Community Boatslips, in the approximate locations shown on the Map or as otherwise shown in any Supplemental Declaration or other document which may be recorded pursuant to the provisions of this Declaration. Declarant shall not construct more Community Boatslips than are approved by Duke Energy Corporation pursuant to Declarant's Boatslip permit request for the Subdivision. The Community Boatslips, to the extent available, will be offered to Owners of Boatslip Lots on a first come, first served basis and thereafter, on such basis as Declarant shall determine in Declarant's sole discretion.

Section 3.6. Lease of Community Boatslips. Following the construction of the Community Boatslips, each of the Community Boatslips may be leased by Declarant to the Owners of the Boatslip Lots and transferred among Owners as follows:

- 3.6.1 Pursuant to the Boatslip Lease, Declarant shall require each purchaser of a Boatslip Lot to lease one of the Boatslips. Each Boatslip Lease shall be appurtenant to the ownership of the applicable Boatslip Lot and shall only be assigned as provided below. The Boatslip Lease shall include the right to use the assigned Community Boatslip and the pier and access area in common with the other Boatslip Lot Owners.
- 3.6.2 The Lot to which a Boatslip Lease is appurtenant shall thereafter be a Boatslip Lot. Once entered into between Declarant and the Boatslip Lot Owner, the relevant Boatslip Lease shall not be separated from the ownership of the Boatslip Lot to which it is appurtenant and shall run with the title to such Boatslip Lot unless and until such Boatslip Lease is assigned by the Boatslip Lot Owner to another Boatslip Lot Owner in accordance with Section 3.6.3. In this regard, any conveyance by a Boatslip Lot Owner of its ownership interest in a Boatslip Lot shall automatically assign all rights and duties of said Boatslip Lot Owner

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under the Boatslip Lease, and they shall immediately execute and record an instrument in the Office of the Register of Deeds of Oconee County, South Carolina, sufficient to provide record notice of such assignment and assumption (a recorded copy of which instrument shall be provided to Declarant, as lessor, and the Association). Any Mortgage or other encumbrance of a Boatslip Lot shall also encumber the Boatslip Lease appurtenant thereto, even if not expressly included therein. Provided, however, no Mortgagee or other person claiming by, through or under any Mortgage shall by virtue thereof acquire any greater rights in the relevant Community Boatslip than the Boatslip Lot Owner may have under the Boatslip Lease at the time of such encumbrance; and provided further, such Mortgage or other instrument of encumbrance, and the indebtedness secured thereby, shall at all times be and remain subordinate and subject to all of the terms and conditions of the Boatslip Lease and to all of the rights of Declarant (as lessor) thereunder. Any successor to a Boatslip Lot Owner's interest in a Boatslip Lease, whether such interest is acquired by sale, assignment, foreclosure, deed in lieu of foreclosure, execution or otherwise, shall take such interest subject to all of the terms, covenants, conditions, duties, and obligations of such Boatslip Lot Owner under the Boatslip Lease, shall be deemed to have assumed to Declarant (as lessor) and shall execute an attornment agreement upon the request of Declarant.

- 3.6.3 The relevant Boatslip Lot Owner may assign any Boatslip Lease only to another Boatslip Lot Owner. Upon such assignment, the Boatslip Lot Owner and the assignee of such Boatslip Lot Owner's interest in the Boatslip Lease shall immediately execute and record an instrument in the Office of the Register of Deeds of Oconee County, South Carolina (a recorded copy of which shall be provided to Declarant, as lessor, and the Association), sufficient to provide record evidence of such assignment. Following such assignment, the assignor's Lot shall automatically cease to be a Boatslip Lot and the assignee's Lot shall thereafter be a Boatslip Lot (until further assignment of said assignee's lease rights), in which case the relevant Boatslip Lease shall then run with the title to such Boatslip Lot as set forth herein. No Boatslip Lease shall be separated from the ownership of any Boatslip Lot and assigned to anyone or any entity other than another Owner in accordance with this Section 3.6.3 and other related provisions in this Declaration.

Section 3.7. Use of Community Boatslips. Declarant (or the Association) shall have the right to use any of the Community Boatslips not leased to another Owner and shall have the obligation to pay Boatslip Assessments, Supplemental Boatslip Assessments and Special Boatslip Assessments on any Community Boatslips actually used by Declarant (or the Association) and not leased to another Owner. Declarant (or the Association) shall not be required to pay Boatslip Assessments, Supplemental Boatslip Assessments and Special Boatslip

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Assessments for any Community Boatslips not actually used by Declarant (or the Association). At Declarant's option, Declarant shall be entitled to assign all rights and duties of Declarant under any Boatslip Lease and/or the Duke Lease to any person or entity, including, without limitation, the Association, whereupon Declarant shall have no further rights, duties, obligations or liabilities thereunder.

- 3.7.1 In the event that any of the Community Boatslips is not leased as an appurtenance to a Boatslip Lot, the unleased Boatslip(s) may be retained by Declarant and the Association for the common use and enjoyment of only the Owners of Boatslip Lots, their families, guests and invitees, for the purpose of temporarily docking boats, and may not be leased or otherwise transferred by Declarant to, or used by, any other party or the public.
- 3.7.2 The use of the Community Boatslips is and shall be subject to each of the following:
 - 3.7.2.1 rules and regulations for use promulgated by Declarant, Association and/or the ECC;
 - 3.7.2.2 all laws, statutes, ordinances and regulations of all federal, state and local governmental bodies having jurisdiction thereon;
 - 3.7.2.3 rules and regulations for use established by Duke Energy Corporation, its successors and assigns; and
 - 3.7.2.4 the terms and provisions of the Duke Lease.
- 3.7.3 The Board of Directors shall adopt rules and regulations governing the use of the Community Boatslips and the personal conduct thereon of the Boatslip Lot Owners and their families, tenants, guests and invitees. If the Boatslip Lot Owners desire to amend such rules and regulations, then a meeting of the Members owning Boatslip Lots may be called and held, in accordance with the terms and provisions of the Bylaws, for the purpose of voting to amend such rules and regulations. If such a meeting is duly called and held, the Boatslip Lot Owners may direct the Board of Directors to amend the rules and regulations governing the use of the Community Boatslips, including additions to and deletions of portions of such rules and regulations, as are (a) approved by a vote of the Members owning Boatslip Lots in accordance with the terms and provisions of the Bylaws, (b) permitted under the Duke Lease, and (c) consented to by Declarant, so long as Declarant is the Owner of any Lot.
- 3.7.4 Only the Boatslip Lot Owners, their families, guests and invitees may use the pier and access area that are part of the Community Boatslips. Only the Owner of the Boatslip Lot to which such Community

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Boat slip is appurtenant, their families, tenants, guests and invitees may use the assigned Community Boat slip.

ARTICLE IV

THE ASSOCIATION

Section 4.1. Membership. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot, and shall be governed by the Bylaws.

Section 4.2. Classes of Lots and Voting Rights. The voting rights of the Members shall be appurtenant to the ownership of Lots. There shall be two (2) classes of Lots with respect to voting rights:

- 4.2.1 Class A Lots. All Lots shall be Class A Lots, except Class B Lots as defined below. Each Class A Lot shall entitle the Owner(s) of the Lot to one (1) vote for each Class A Lot owned. When more than one person owns an interest (other than a leasehold, security interest or mortgage) in any Lot, all such persons shall be Members and their appurtenant voting rights shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Class A Lot.
- 4.2.2 Class B Lots. Class B Lots shall be all Lots owned by Declarant that have not been conveyed to purchasers who are not affiliated with Declarant. Declarant shall be entitled to four (4) votes for each Class B Lot owned by it.

Section 4.3. Relinquishment of Control. The Class B Membership shall cease and be converted to Class A Membership on the first to occur of the following events:

- 4.3.1 when the number of votes in the Class A Membership exceeds the total number of votes outstanding in the Class B Membership; or
- 4.3.2 upon the expiration of ten (10) years after the recordation of this Declaration; or
- 4.3.3 upon the election of Declarant, in its sole discretion, to terminate its Class B Membership and to convert the Class B Lots to Class A Lots. Any such election, to be effective, must be in writing and recorded in the Office of the Register of Deeds for Oconee County, South Carolina.

Section 4.4. Availability of Documents. The Association shall maintain current copies of the Declaration, the Bylaws and other rules concerning the Development as well as its own books, records, and financial statements which will be available for inspection by all Owners,

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Mortgagees and insurers and guarantors of Mortgages that are secured by Lots. All such documents shall be available upon reasonable notice and during normal business hours.

Section 4.5. Management Contracts. The Association is authorized to engage the services of any person, firm or corporation to act as managing agent of the Association at a compensation level to be established by the Board of Directors and to perform any or all of the powers and duties of the Association. Provided, however, that the term of any such agreement with a managing agent shall not exceed one (1) year and shall only be renewed by agreement of the parties for successive one (1) year terms. Any such contract shall be terminable by the Association, with or without cause, upon ninety (90) days prior written notice to the manager, without payment of a termination fee.

Section 4.6. Maintenance. Prior to their acceptance for public maintenance, the Association shall maintain the Public Roads, provided that Declarant, in its sole discretion, has the right to reimburse the Association for maintenance costs until the Oconee County Public Works Department or other governmental entity accepts the Public Roads for maintenance. Such maintenance shall include repair and reconstruction, when necessary. Maintenance of the Public Roads shall conform to the standard of maintenance (if one is ascertainable) that would be required by the Oconee County Public Works Department or other governmental entity before it would accept such Public Roads for maintenance.

Declarant shall construct the Private Roads, and once fully constructed, maintenance and repair of the Private Roads shall be the sole responsibility of the Private Road Lot Owners (enforceable by any Private Road Lot Owner). Provided, however, Declarant hereby reserves for the benefit of itself, the Association and/or the FCC, the right and easement, but not the obligation, to go upon any portion of the Private Roads at any time in order to repair and maintain such Private Roads where needed, in Declarant's sole discretion, to bring such Private Roads within the standards required by Section 4.6.4. If Declarant goes upon the Private Roads to perform maintenance and repairs for such purpose, each Private Road Lot Owner shall be obligated to the Declarant for his or her share of all related costs of such maintenance and repairs incurred by Declarant on the Private Road that was maintained or repaired.

The Common Areas shall be maintained as more particularly described below:

- 4.6.1 Maintenance of the Entrance Monument(s) shall include maintenance, repair and reconstruction, when necessary, of the monuments, signage, irrigation, planters and lighting located within the Easement Areas, and providing and paying for landscaping and utility charges for irrigation and lighting of the monuments and signage located thereon (if any).
- 4.6.2 All Common Areas (and all Improvements located thereon) shall be kept clean and free from debris and maintained in an orderly condition, together with the landscaping thereon (if any) in accordance with the highest standards for private parks, including any repair and replacement of any landscaping, utilities, or Improvements located thereon.

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- 4.6.3 The Association shall not be responsible for the maintenance of any Lot or any portion of any Lot or the Improvements within the boundaries thereof, with the exception of the Entrance Monument(s) if located on any Lot.
- 4.6.4 The Association shall not be responsible for the maintenance of any Private Road. The Private Road Lot Owners shall maintain the Private Roads and the Private Road Easements. Such maintenance shall include cleaning, maintaining, repairing, reconstruction and replacing (if destroyed), when necessary, the Private Roads, and such maintenance practices shall conform to the same standards of maintenance which would be required by the Oconee County Public Works Department or other governmental entity for public roads, as more particularly set forth in Section 7.26 of the Declaration. Provided, however, the Association reserves the right, but not the obligation, to go upon any portion of the Private Roads at any time in order to repair and maintain the Private Roads, as more particularly set forth in Section 7.26.

Section 4.7. Reserve Fund. The Association shall establish and maintain an adequate reserve fund for the following purposes:

- 4.7.1 the periodic maintenance, repair, reconstruction and replacement of the Common Areas and any Improvements located on such Common Areas (including, but not limited to the Public Roads prior to acceptance for public maintenance) which the Association is obligated to maintain;
- 4.7.2 to fund unanticipated expenses of the Association; and/or
- 4.7.3 to acquire equipment or services deemed necessary or desirable by the Board of Directors, from time to time, in its discretion.

The Reserve Fund shall be collected and maintained out of the Annual Assessment as set forth in Section 5.2. The amount of the Reserve Fund shall be determined, from time to time, by the Board.

ARTICLE V

COVENANT FOR ANNUAL AND SPECIAL ASSESSMENTS

Section 5.1. 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 therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay Assessments to the Association, as hereinafter provided. Any such Assessment, together with interest, costs, and reasonable attorneys' fees, shall be a charge and a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with interest, costs and reasonable attorneys' fees, shall also be the

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personal obligation of the Owner of such Lot at the time when the Assessment is due or levied. The personal obligation for delinquent Assessments shall not pass to an Owner's successors in title unless expressly assumed.

Section 5.2. Purpose of Annual Assessment. The Annual Assessment shall be used as follows:

- 5.2.1 to repair, maintain, reconstruct (when necessary), keep clean and free from debris, the Common Areas, as more particularly set forth in Section 4.6 of this Declaration;
- 5.2.2 to maintain and repair the Public Roads, as more particularly set forth in Section 4.6 of this Declaration;
- 5.2.3 to pay all costs associated with the lease of the Street Lights, including but not limited to, monthly lease payments and utility costs;
- 5.2.4 to pay the premiums on all insurance carried by the Association pursuant hereto or pursuant to the Bylaws;
- 5.2.5 to pay all legal, accounting and other professional fees incurred by the Association in carrying out its duties as set forth herein or in the Bylaws; and
- 5.2.6 to maintain the Reserve Fund, as set forth in Section 4.7.

Section 5.3. Payment of Annual Assessment; Due Dates. The Annual Assessment shall commence as to each Lot on January 1, 2003. The initial Annual Assessment for the calendar year beginning January 1, 2003 shall be Four Hundred Seventy-Five Dollars (\$475.00) per Lot, which amount shall be due and payable in full no later than January 31, 2003, and prorated on a calendar year basis. The Annual Assessment for each and every year beginning January 1, 2004 shall be in an amount as set by the Board of Directors, in accordance with Section 5.4, and shall be due and payable in one (1) annual installment, due and payable no later than January 31st of each such year. The Board of Directors shall set the amount of the Annual Assessment as to each Lot for any calendar year at least thirty (30) days prior to January 1st of such calendar year, and the Association shall send written notice of the amount of the Annual Assessment, as well as the amount of the installment due, to each Owner on or before January 1st of such calendar year. The failure of the Association to send, or of an Owner to receive, such notice shall not relieve any Owner of its obligation to pay the Annual Assessment. Notwithstanding the foregoing, the Board of Directors may alter the dates of the fiscal year for setting the Annual Assessment and may increase or decrease the frequency of collection of Annual Assessment installments in any reasonable manner.

Section 5.4. Maximum Annual Assessment; Supplemental Annual Assessment.

- 5.4.1 For each year following the initial Annual Assessment, the Board of Directors has the authority to increase the Annual Assessment each year by a maximum amount equal to the previous year's Annual

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Assessment times the greater of (i) ten percent (10%) or (ii) the annual percentage increase in the CPI. If the CPI is discontinued, the Board shall use the index most similar to the CPI that is published by the United States Government indicating changes in the cost of living. If the Annual Assessment is not increased by the maximum amount permitted under the terms of this provision, the difference between any actual increase which is made and the maximum increase permitted for that year shall be computed and the Annual Assessment may be increased by that amount in a future year, in addition to the maximum increase permitted under the terms of the preceding sentence for such future year, by a vote of the Board of Directors, and without a vote of the Members.

- 5.4.2 After the initial Annual Assessment, the Maximum Annual Assessment may be increased above the maximum amount set forth in Section 5.4.1 by a vote of no less than two-thirds (2/3) of the eligible Members who are voting in person or by proxy at the annual meeting or at a special meeting duly called for this purpose, in accordance with the Bylaws.
- 5.4.3 The Board of Directors may set the Annual Assessment at an amount not in excess of the Maximum Annual Assessment. If the Board of Directors sets less than the Maximum Annual Assessment for any calendar year and thereafter, during such calendar year, determines that such lesser Annual Assessment cannot fund important and essential functions of the Association, the Board of Directors may, without a vote of the Members, levy a Supplemental Annual Assessment in accordance with the Bylaws. In no event shall the sum of the Annual Assessment and Supplemental Annual Assessment for any year exceed the applicable Maximum Annual Assessment for such year other than as set forth in Section 5.4.2.

Section 5.5. Special Assessment. In addition to the Annual Assessment authorized above, the Association may levy, in any calendar year, a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of (i) the construction of any Common Area Improvements which are not originally constructed by Declarant; (ii) the reconstruction, repair or replacement of the Common Areas, including all Improvements located thereon, and including fixtures and personal property related thereto; or (iii) any other extraordinary, unanticipated cost which cannot otherwise be funded through the established Assessments for that current year.

Section 5.6. Special Individual Assessment. In addition to the Annual Assessments, Supplemental Annual Assessments, and Special Assessments authorized above, the Board of Directors shall have the power to levy a Special Individual Assessment applicable to any particular Lot Owner (i) for the purpose of paying for the cost of any construction, reconstruction, repair or replacement of any damaged component of the Common Areas and/or any Improvements located thereon, caused by any act or omission of such Owner(s), members of

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such Owner's family, or such Owner's agents, guests, tenants, employees, or invitees and not the result of ordinary wear and tear; or (ii) for payment of liquidated damages, reimbursement amounts, fines, penalties or other charges imposed against any particular Owner relative to such Owner's failure to comply with the terms and provisions of this Declaration, the Bylaws, the Guidelines or any rules or regulations promulgated by the Association or the Declarant pursuant to this Declaration or the Bylaws. Provided, however, that Declarant shall not be obligated to pay any Special Individual Assessment, except with Declarant's prior written approval. The due date of any Special Individual Assessment levied pursuant to this Section 5.6 shall be fixed in the Board of Directors' resolution authorizing such Special Individual Assessment. Upon the establishment of a Special Individual Assessment, the Board shall send written notice of the amount and due date of such Special Individual Assessment to the affected Owner(s) at least thirty (30) days prior to the date such Special Individual Assessment is due.

Section 5.7. Assessment Rate.

- 5.7.1 Subject to the exception set forth in Section 5.7.2, the Annual Assessments must be fixed at a uniform rate for all Lots; and
- 5.7.2 Annual Assessments, Supplemental Annual Assessments and Special Assessments for each Lot owned by Declarant and unoccupied as a residence shall be one-third (1/3) of the Annual Assessments, Supplemental Annual Assessments and Special Assessments for each other Lot in the Subdivision not owned by Declarant.

ARTICLE VI

GENERAL ASSESSMENT PROVISIONS

Section 6.1. Certificate Regarding Assessments. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. A properly executed certificate as to the status of Assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 6.2. Effect of Nonpayment of Assessments; Remedies of the Association. Any Assessment (or installment thereof) not paid by its due date, shall bear interest from such due date at the rate of eighteen percent (18%) per annum or the highest rate then permitted by law, whichever is less. In addition to such interest charge, the delinquent Owner shall also pay such late charge as may have been established by the Board of Directors to defray the costs arising because of late payment. The Association may bring an action at law against the delinquent Owner or foreclose the lien against the Lot and the right to use the Common Areas, and interest, late payment charges, costs and reasonable attorneys' fees related to such action or foreclosure shall be added to the amount of such Assessment. No Owner may waive or otherwise escape liability for the Assessments by not using the Common Areas, or by abandoning his Lot.

Section 6.3. Subordination of the Lien to Mortgages. The lien of the Assessments provided for in Articles V, VI, VI-A and VI-B of this Declaration shall be subordinate to the lien

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of any first Mortgage on a Lot or any Mortgage to CLT Development Corp. Sale or transfer of any Lot shall not affect the Assessment lien. The sale or transfer of any Lot pursuant to Mortgage foreclosure, or any proceeding in lieu thereof, however, shall extinguish the lien of such Assessments as to payments that became due prior to such sale or transfer. Provided, however, that the Board of Directors may, in its sole discretion, determine that such unpaid Assessments should be collectable pro rata from all Owners, including the foreclosure sale purchaser. Such pro rata portions are payable by all Owners, notwithstanding the fact that such pro rata portions may cause the applicable Assessment (as applicable), to be in excess of the applicable Maximum Assessment amount permitted hereunder. No sale or transfer shall relieve the purchaser of such Lot from liability for any Assessments thereafter becoming due or from the lien thereof, but the lien provided for herein shall continue to be subordinate to the lien of any Mortgage as above provided.

ARTICLE VI-A

COVENANT FOR BOATSLIP, SUPPLEMENTAL
BOATSLIP AND SPECIAL BOATSLIP ASSESSMENTS

Section 6A.1. Creation of the Lien and Personal Obligation for Boatslip, Supplemental Boatslip and Special Boatslip Assessments. Declarant, for each Boatslip Lot owned within the Property, hereby covenants, and each Owner of any Boatslip Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, or by entering into a Boatslip Lease (or an assignment thereof) for a Boatslip as an appurtenance to such Owner's Lot as more particularly set forth in Section 3.6 of this Declaration is deemed to covenant and agree to pay to the Association, Boatslip Assessments, Supplemental Boatslip Assessments and Special Boatslip Assessments, for maintenance and repair costs of the Community Boatslips. Any Assessment, together with interest, costs, and reasonable attorneys' fees, shall be a charge and a continuing lien upon the Boatslip Lot against which each such Assessment is made and upon the right to use the Boatslip appurtenant to such Boatslip Lot, along with the non-exclusive right to use the pier and access area which comprise the Community Boatslips. Each such Assessment or charge, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Boatslip Lot effective at the time when the Assessment falls due. The personal obligation for delinquent Assessments or charges shall not pass to an Owner's successors in title unless expressly assumed, provided such Assessments, together with interest, costs, and reasonable attorneys' fees, shall constitute a continuing lien upon the Boatslip Lot against which such Assessments are made.

Section 6A.2. Purpose of Boatslip Assessments. The Boatslip Assessments shall be used as follows:

- 6A.2.1 to clean, maintain, repair and reconstruct when necessary, the Community Boatslips, including all lighting and other fixtures, wires, railings and other facilities located thereon (if any), all as more particularly set forth in this Declaration;
- 6A.2.2 to provide and pay for electricity and water service to the Community Boatslips (if any);

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- 6A.2.3 to pay all ad valorem taxes levied against the Community Boatslips and any other property owned by the Association in connection therewith;
- 6A.2.4 to pay all lease payments, if applicable, to Duke Energy Corporation under the Duke Lease;
- 6A.2.5 to pay insurance premium on all coverage carried by the Association in connection with the Community Boatslips;
- 6A.2.6 to pay all legal, accounting and other professional fees incurred by the Association in carrying out its duties as set forth herein or in the Bylaws in connection with the Community Boatslips; and
- 6A.2.7 to maintain appropriate reserves in connection with the Community Boatslips.

Section 6A.3. Payment of Boatslip Assessments; Due Dates. No Boatslip Assessments shall be due prior to the Community Boatslips being completed. The initial Boatslip Assessments applicable to all Boatslip Lots (for the calendar year in which the first lease of a completed Boatslip is executed) shall be Four Hundred Dollars (\$400.00) per Boatslip Lot. Boatslip Assessments for each and every year thereafter shall be payable no later than January 31st of such year. The Boatslip Assessments for each and every year thereafter shall be set by the Board of Directors, in accordance with Section 6A.4, and shall be due and payable no later than January 31st of each such year. The Board of Directors shall set the amount of the Boatslip Assessment as to each Boatslip Lot for any year at least thirty (30) days prior to January 1st of such year, and the Association shall send written notice of the amount of the Boatslip Assessment to each Boatslip Lot Owner on or before January 1st of such year. Failure of the Association to send the notice described in this Section 6A.3 shall not relieve the Boatslip Lot Owners of their liability for Boatslip Assessments. Notwithstanding the foregoing, the Board of Directors may alter the dates of the fiscal year for setting the Boatslip Assessments, and may increase or decrease the frequency of the collection of the Boatslip Assessments (or installments thereof) in any reasonable manner.

Section 6A.4. Maximum Boatslip Assessment.

- 6A.4.1 For years after the initial Boatslip Assessments, the Board of Directors has the authority to increase the Boatslip Assessment each year by a maximum amount equal to the previous year's Boatslip Assessment times the greater of (i) ten percent (10%); or (ii) the annual percentage increase in the CPI. If the CPI is discontinued, then the Board shall use the index most similar to the CPI that is published by the United States Government indicating changes in the cost of living. If the Boatslip Assessments are not increased by the maximum amount permitted under the terms of this provision, the difference between any actual increase which is made and the maximum increase permitted for that year shall be computed, and the Boatslip Assessment may be

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increased by that amount in a future year, in addition to the maximum increase permitted under the terms of the preceding sentence for such future year, by a vote of the Board of Directors, without a vote of the Members who are Owners of Boatlip Lots.

- 6A.4.2 After the initial Boatlip Assessment, the Boatlip Assessments may be increased by any amount in excess of the Maximum Boatlip Assessment if such increase is approved by Declarant (so long as Declarant owns any part of the Property) and by a vote of a majority of the Boatlip Lot Owners.
- 6A.4.3 The Board of Directors may set the Boatlip Assessments in an amount not in excess of the Maximum Boatlip Assessment. If the Board of Directors sets less than the Maximum Boatlip Assessment for any calendar year and thereafter, during such year, determines that important and essential functions of the Association as to the Community Boatlips cannot be funded by such lesser Boatlip Assessment, the Board may levy a Supplemental Boatlip Assessment without a vote of the Boatlip Lot Owners. In no event shall the sum of the Boatlip Assessment and Supplemental Boatlip Assessment for any year exceed the applicable Maximum Boatlip Assessment for such year, other than as set forth in Section 6A.4.2.

Section 6A.5. Special Assessments for Boatlip Improvements. In addition to the Boatlip Assessments authorized above, the Association may levy, in any calendar year, a Special Boatlip Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any reconstruction, repair or replacement of the Community Boatlips, and any capital improvements located thereon, including lighting, water lines and other fixtures, poles, wires, railings and other facilities located thereon and personal property related thereto. Provided, however, (i) any such Special Boatlip Assessment must be approved by Declarant (so long as Declarant owns any part of the Property) and by a vote of a majority of the votes appurtenant to the Boatlip Lots, and (ii) any such Special Boatlip Assessment may be levied only against the Boatlip Lot Owners.

Section 6A.6. Assessment Rate.

- 6A.6.1 Except as set forth in Section 6A.6.2, Boatlip Assessments, Supplemental Boatlip Assessments and Special Boatlip Assessments must be fixed at a uniform rate for all Boatlip Lots.
- 6A.6.2 Boatlip Assessments, Supplemental Boatlip Assessments and Special Boatlip Assessments for each Boatlip Lot owned by Declarant shall be one-third (1/3) of the Boatlip Assessments, Supplemental Boatlip Assessments and Special Boatlip Assessments for each other Boatlip Lot in the Subdivision not owned by Declarant.

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ARTICLE VI-B

COVENANT FOR SEPTIC SYSTEM ASSESSMENTS

Section 6B.1. Creation of the Lien and Personal Obligation for Septic System Assessments. Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association, Septic System Assessments for the inspection of each Lot Owner's Septic System. Any such Septic System Assessment, together with interest, costs, and reasonable attorneys' fees, shall be a charge and a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner effective at the time when the Assessment falls due. The personal obligation for delinquent Assessments shall not pass to an Owner's successors in title unless expressly assumed by them, provided such Assessments, together with interest, costs, and reasonable attorneys' fees, shall be a continuing lien upon the Lot against which such Assessments are made.

Section 6B.2. Purpose of Septic System Assessments. The Septic System Assessments shall be used to inspect each Lot's Septic System to ensure that the Septic System is in compliance with any requirements imposed by the Association, the ECC or any governmental authority.

Section 6B.3. Payment of Septic System Assessments; Due Date. The Septic System Assessments shall be payable, annually, in advance, and shall commence as to each Lot, and shall be due and payable when Site Improvement Plans and Specifications (as defined in the Guidelines) are submitted to the ECC as set forth in the Guidelines. The initial Septic System Assessments applicable to all Lots shall be Two Hundred Seventy-Five Dollars (\$275.00) per Lot for the first year. Thereafter, the Septic System Assessments shall be One Hundred Seventy-Five Dollars (\$175.00) per year. Septic System Assessments for each and every year thereafter shall be payable no later than January 31st of such year. The Septic System Assessments for each and every year thereafter shall be in an amount as set by the Board of Directors, in accordance with Section 6B.4 and shall be due and payable no later than January 31st of each such year. The Board of Directors shall set the amount of the Septic System Assessment as to each Lot for any year at least thirty (30) days prior to January 1st of such year, and the Association shall send written notice of the amount of the Septic System Assessment to each Lot Owner on or before January 1st of such year. Failure of the Association to send the notice described in this Section 6B.3 shall not relieve the Owners of their liability for Septic System Assessments. Notwithstanding the forgoing, the Board of Directors may alter the dates of the fiscal year for setting the Septic System Assessments, and may increase or decrease the frequency of the collection of the Septic System Assessments (or installments thereof) in any reasonable manner.

Section 6B.4. Maximum Septic System Assessment.

6B.4.1 For years following the first year of Septic System Assessments and thereafter, the Board of Directors, by a vote in accordance with the

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Bylaws, without a vote of the Members, may increase the Septic System Assessment each year by a maximum amount equal to the previous year's Septic System Assessment times the greater of (i) ten percent (10%) or (ii) the annual percentage increase in the CPI. If the CPI is discontinued, then the Board shall use the index most similar to the CPI that is published by the United States Government indicating changes in the cost of living. If the Septic System Assessments are not increased by the maximum amount permitted under the terms of this provision, the difference between any actual increase which is made and the maximum increase permitted for that year shall be computed and the Septic System Assessments may be increased by that amount in a future year, in addition to the maximum increase permitted under the terms of the preceding sentence for such future year, by a vote of the Board of Directors, without a vote of the Members.

- 6B.4.2 From and after the initial Septic System Assessments, the Maximum Septic System Assessment may be increased above the maximum amount set forth in Section 6B.4.1 by a vote of a majority of the votes appurtenant to the Lots which are then subject to this Declaration, plus the written consent of Declarant (so long as Declarant owns any part of the Property).
- 6B.4.3 The Board of Directors may set the Septic System Assessment at an amount not in excess of the Maximum Septic System Assessment. If the Board of Directors levies less than the Maximum Septic System Assessment for any calendar year and thereafter, during such calendar year, determine that the important and essential functions of the Association cannot be funded by such lesser amount, the Board may, by vote in accordance with the Bylaws, levy a Supplemental Septic System Assessment. In no event shall the sum of the Septic System Assessment and Supplemental Septic System Assessment for any year exceed the applicable Maximum Septic System Assessment for such year other than as set forth herein.

Section 6B.5. Assessment Rate.

- 6B.5.1 Subject to the exception set forth in Section 6B.5.2, Septic System Assessments and Supplemental Septic System Assessments must be fixed at a uniform rate for all Lots.
- 6B.5.2 Septic System Assessments for each Lot owned by Declarant shall be one-third (1/3) of the Septic System Assessments and Supplemental Septic System Assessments for each other Lot in the Subdivision not owned by Declarant.

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ARTICLE VII

RESTRICTIONS

Section 7.1. Land Use, Building Type and Residential Restriction. All Lots in the Subdivision shall be used only for private residential and recreational purposes. No structure shall be erected, altered, placed or permitted to remain on any Lot other than for use as a single family residential dwelling, unless otherwise provided herein, and only one single-family residential dwelling not exceeding 2½ stories in height above ground shall be erected or permitted to remain upon any Lot. No log cabin (or structure resembling a log cabin, or having the architectural characteristics of a log cabin), mobile home, modular home or shell home may be erected or permitted to remain on any Lot. A private garage (not exceeding three (3) car capacity), outbuildings, fixed piers and floating boat dock facilities incidental to the residential use of the Lot are permitted, if approved by the ECC, upon the condition that they are not rented, leased nor otherwise used for remuneration, subject to the other covenants and restrictions contained herein. No detached garage or outbuildings shall at any time be used as a residence. Any ownership or leasing arrangement for a Lot having the characteristics of a vacation time-sharing ownership plan, a vacation time-sharing lease plan or any other form of interval, sequential or shared ownership is expressly prohibited. Furthermore, no boat (including a houseboat), whether existing on a Lot or docked at a fixed pier or floating boat dock that is appurtenant to any Property in the Subdivision, may at any time be used as a residence.

Section 7.2. Dwelling Size. Any one (1) story dwelling erected upon any Lot shall contain not less than one thousand six hundred (1,600) square feet. Any multi-story dwelling shall contain not less than one thousand eight hundred (1,800) square feet and the first floor shall contain not less than one thousand (1,000) square feet. The square footage requirements refer to enclosed heated floor area and are exclusive of the area in unfinished basements, unheated porches of any type, attached or detached garages, carports, any type of porte cochere, and unheated storage areas, decks or patios.

Section 7.3. Building Construction and Quality. All buildings and outbuildings erected upon any Lot shall be constructed of new material of good grade, quality and appearance and shall be constructed in a proper, workmanlike manner. No single-family residential dwelling with a sales price of less than One Hundred Fifty Thousand Dollars (\$150,000.00) (in terms of 2002 dollar value), exclusive of the cost of the Lot, shall be permitted on any Lot, unless approved in advance in writing by Declarant or the ECC. No building shall be erected unless it is completely underpinned with a solid brick, brick or stone-covered block or stucco foundation. No exterior surface of any building shall be asbestos shingle siding, imitation brick or stoneroll siding, or exposed concrete or cement blocks. The exterior surface of any garage, outbuilding or appurtenant structure or building erected on or located on any Lot shall be architecturally compatible with, and of material and construction comparable in cost and design to, the exterior surface of the dwelling located on the Lot. All buildings shall have roofs (except for dormers, porches and bay windows) of not less than six (6) vertical by twelve (12) horizontal pitch, and not less than twelve (12) inch overhang, covered with slate, cedar shakes, tile, composition (fiberglass), or architectural (sculpted) shingles. Tin or rolled roofing material is not permitted.

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Section 7.4. Temporary Structures; Structure Materials. No residence or building of a temporary nature shall be erected or allowed to remain on any Lot, and no metal, fiberglass, plastic, vinyl or canvas tent, barn, carport, garage, utility building, storage building or other metal, fiberglass, plastic, vinyl or canvas structure shall be placed on any Lot or attached to any residence. Provided, however, that Declarant reserves the right to erect or move temporary buildings or trailers onto the Lots owned by Declarant, to be used for storage or for construction or sales offices.

Section 7.5. Building Setback Lines. No building on any Lot (including any stoops, porches, or decks) shall be erected or permitted to remain within the front (street right-of-way), side (abutting right-of-way for a corner Lot) or rear building setback lines as noted on the Map or within the Lake Buffer Area. Boathouses, piers and dock facilities are exempt from the rear setback restrictions provided they comply with the provisions set forth in Section 7.22. The foregoing notwithstanding, gazebos or similar minor aesthetic Improvements may encroach within the rear setback, including the Lake Buffer Area, provided that they: (i) are single story; (ii) contain less than one hundred fifty (150) square feet; and (iii) are not enclosed by walls or other surfaces unless such surfaces meet the openness test established for perimeter fencing in Section 7.11. Similarly, front, side or rear entryways which are connected to the residence and are not covered or enclosed in any manner, may encroach within the front, side or rear setback or the Lake Buffer Area.

If any zoning or subdivision ordinance, floodway regulations or other ordinance, law or regulation applicable to a Lot prescribes greater setbacks, then all buildings erected during the pendency of that zoning or subdivision ordinance, floodway regulations or other ordinance, law or regulation shall be governed by the greater setbacks. No masonry mailboxes or other structures or Improvements may be constructed or placed within the right-of-way of any of the Public Roads (so as to prevent such Public Roads from being accepted for maintenance by the Oconee County Public Works Department or other applicable governmental entity). Declarant hereby reserves the right and easement, benefiting Declarant, the Association and the ECC and burdening the Property, to go upon any Lot or other portion of the Property in order to remove any mailboxes or other structures or Improvements constructed within the right-of-way of any Public Road which will prevent such Public Road from being accepted for maintenance by the Oconee County Public Works Department or other applicable governmental entity. If Declarant, the Association or the ECC exercises its easement rights pursuant to the terms of this Section 7.5, the Owner of the nonconforming Lot shall reimburse Declarant, the Association or the ECC (as applicable) within five (5) business days following the submission of an invoice for any costs or expenses incurred by Declarant, the Association or the ECC. The Association shall have the authority but not the obligation, in its sole discretion, to levy a Special Individual Assessment against an Owner who fails to abide by the terms of this Section 7.5, as well as the expenses to be reimbursed Declarant in the event that Declarant seeks to cure any such violation, and shall be subject to the Association's Assessment collection remedies as specified in Article VI of the Declaration. The exercise or nonexercise of the easement rights contained in this Section 7.5 shall be subject to the discretion of the Declarant, the Association or the ECC; provided, however, Declarant, the Association or the ECC shall not have the obligation to exercise such rights.

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Section 7.6. Minor Setback Violations. In the event of the unintentional violation of any of the building setback restrictions, in the amount of ten percent (10%) or less of the applicable setback restriction, Declarant reserves the right, but is not obligated, to waive in writing such violation of the setback restrictions upon agreement of the Owner of the Lot upon which the violation occurs and the Owner of any Lot adjoining the violated setback, provided that such change is not in violation of any zoning or subdivision ordinance or other applicable law or regulation or, if in violation, only if a variance or other similar approval has been received from the appropriate governmental authority.

Section 7.7. Combination or Subdivision of Lots. Except as otherwise set forth herein, no Lot shall be subdivided by sale or otherwise so as to reduce the Lot area shown on the Map. However, a Lot Owner may combine one Lot with contiguous Lot(s) so long as the parcel or parcels which result from such combination do not violate any applicable zoning ordinance, subdivision ordinance or other applicable law or regulation. In the event that two or more Lots are completely combined so as to create one parcel, the resulting parcel shall be considered as one Lot for the purposes of this Article VII, but shall continue to be considered as two or more Lots for all other purposes (including voting and Assessments). Furthermore, the Owner of any Lot which combines with all or a portion of a contiguous Lot shall be solely responsible for any costs which may result from such combination, including the costs of relocating any existing easements. Notwithstanding the foregoing, Declarant reserves the right to change the boundaries or dimensions of any Lots still owned by Declarant as may be needed to meet septic system requirements or for any other reason and any Lot or Lots which result from such change by Declarant shall not be subject to any additional Assessment.

Section 7.8. Utility Easements. Declarant reserves easements for the installation and maintenance of utilities (electricity, septic system, water, gas, telephone, cable television, etc.) and drainage facilities over the front and rear ten (10) feet of each Lot (with the exception of the Waterfront Lots, which will not have a ten [10] foot easement over the rear of each such Waterfront Lot [i.e., waterside]) and seven and one-half (7.5) feet in width along each side lot line of each Lot. Additional drainage easements and utility easements are reserved as more particularly shown and delineated on the Map and in other recorded easement documents. Within such easements, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may interfere with drainage and the flow of water within the easement areas. The Owner of each Lot shall maintain that portion of the Lot lying within the easement areas as defined herein and shall maintain any Improvements located thereon, except those Improvements installed and maintained by a public authority or utility company. All transformers and meters must be located at the rear of the dwellings. Declarant reserves the right to create and impose additional easements over any unsold Lot or Lots for road drainage, utility and entry signage installation purposes by the recording of appropriate instruments, and such easements shall not be construed to invalidate any of these covenants.

Section 7.9. Entrance Monument. Declarant hereby grants, establishes, creates and reserves for the benefit of Declarant and the Association, and their successors and assigns, non-exclusive perpetual easements for the purpose of landscaping and maintaining the entryway and erecting and maintaining the Entrance Monument for the Subdivision as "Entrance Monument Easement" on the Map. Declarant or the Association shall have the right to enter, landscape and

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maintain the Entrance Monument as an entryway to the Subdivision. Further, Declarant or the Association may erect and maintain one or more stone monuments, with an entrance sign bearing the name of the Subdivision and Declarant and may erect and maintain lighting for the Entrance Monument, planters and other Improvements typically used for an entryway. Declarant further hereby grants, establishes, creates and reserves for the benefit of Declarant and the Association, and their successors and assigns, non-exclusive perpetual easements for the purpose of landscaping and maintaining the property adjacent to the main entry road for the Subdivision as "Landscaping Easement" on the Map.

Section 7.10. Stormwater Drainage Easement. Declarant reserves over the Common Areas an easement for drainage of stormwater runoff from the Lots and Roadways within the Subdivision.

Section 7.11. Fences and Walls. No wooden fence or brick or stone wall may be erected nearer the front lot line of a Lot than the front face of the dwelling located on such Lot. In the case of a corner Lot, no sideyard fence shall be located nearer than the side of the house facing the side street line. No wooden fences or brick or stone walls greater than six (6) feet in height are permitted. Chain link or other metal fencing is not permitted, except that 2" x 4" metal mesh may be used with split rail fencing to contain animals or children within rear or side yards. Perimeter fencing shall not have more than fifty percent (50%) of any of its surface closed as viewed from a point on a line of sight perpendicular to the line of the fence. A wall constructed of brick or stone and used in lieu of a fence is exempt from the openness test. Provided, however, that the restrictions described in this Section 7.11 shall not apply to any Improvements originally installed by Declarant on any Common Area.

Section 7.12. Signs. No signs of any kind may shall be displayed to the public view on any Common Area, other than the Entrance Monuments as set forth in Section 7.9. No signs of any kind may be displayed to the public view on any Lot, with the following exceptions which may not exceed five (5) square feet in size: (a) one sign (on the Lot only) advertising the Property for sale or rent; (b) one sign on the Lot only used by a builder to advertise the Lot during the construction and sales period; and (c) temporary political signs. These restrictions shall never apply to permanent Entrance Monuments or to temporary entry signs or advertising by Declarant, or for sale signs installed by Declarant or its agents prior to the sellout of the Subdivision.

Section 7.13. Antennas; Satellite Dishes or Discs. No radio or television transmission or reception towers, antenna, satellite dishes or discs shall be erected or maintained on any Lot, except that one (1) dish or disc not exceeding one (1) meter in diameter or diagonal measurement for receiving direct broadcast satellite service ("DBS") or multi-point distribution services ("MDS") may be erected and maintained on each Lot. No roof-mounted antenna, dishes or discs shall be permitted on any Lot if adequate broadcast reception can be obtained without mounting such equipment on the roof of the house; provided, however, that if such roof-mounted equipment is required, no antenna or related structures may be mounted on masts exceeding twelve (12) feet in height above the highest roof line ridge of the house. Any dish, disc, or antenna (with associated mast) shall be reasonably camouflaged and screened from view from Lake Keowee and the Roadways, and shall not be located in the area between the street right-of-way line and the minimum building setback lines applicable to the Lot. In cases where an

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antenna wire does not require the use of a mast, landscaping or some other means to reduce its visual impact must camouflage such wire.

Section 7.14. Lot Maintenance; Trash Disposal. Each Owner shall keep his Lot in a clean and orderly condition and shall keep the Improvements thereon in a suitable state of painting and repair, promptly repairing any damage caused by fire or other casualty. No clothes line may be erected or maintained on any Lot. No Lot shall be used in whole or in part for storage of trash of any character whatsoever and no trash, rubbish, stored materials or similar unsightly items shall be allowed to remain on any Lot outside of an enclosed structure, except when temporarily placed in closed, sanitary containers pending removal by trash collection authorities or companies.

Section 7.15. Off-Road Parking; Off-Water Boat Storage. Each Lot Owner shall provide a concrete or asphalt driveway prior to the occupancy of any dwelling constructed on the Lot that provides space for parking two (2) automobiles off the Roadways. No truck or commercial vehicle in excess of one-ton load capacity, or any vehicle under repair, wrecked or junked motor vehicle shall be parked upon or permitted to remain on any Lot, Common Area, or other portion of the Property. No trailer, mobile home, recreational vehicle, camper or boat shall be used as a residence, either temporarily or permanently. No trailer, mobile home, recreational vehicle, camper or boat shall be parked upon or be permitted to remain on any Lot for a period exceeding twenty-four (24) hours, unless it is parked off the Roadways and not within the front or side yard of the Lot. All automobiles, trucks, trailers, campers, motor homes and recreational vehicles must have a current license plate affixed and all such vehicles must be parked in a carport, enclosed garage, or on a concrete or asphalt driveway.

Section 7.16. Sewage Disposal. Every dwelling erected on any Lot shall be served by an approved septic system for the disposal of sewage, or connected to a private or public sewage disposal system. All septic systems or other private sewage disposal systems shall be approved by, and constructed and maintained in accordance with, all the regulations and requirements of all governmental authorities and regulatory agencies having jurisdiction. Declarant does not make any representations regarding the future availability of municipal sewer service.

Section 7.17. Public Water System; No Wells. Declarant shall construct the Water System. All water mains, pipes and other equipment necessary for the operation and maintenance of the Water System shall be located within the utility easements described in Section 7.8, or within Public Road rights-of-way or the Private Road Easements. Upon its completion, the Water System and all mains, pipes, equipment and other personal property which is part thereof, shall become the property of Seneca Light and Water Plant, a public utility company duly licensed and operating under the authority granted by the South Carolina Public Service Commission. The Water System shall be the sole source of potable water for the Subdivision, and no well may be dug or constructed on any Lot for the purpose of providing a domestic water supply.

Section 7.18. Nuisances. No noxious or offensive trade or activity shall be carried on or upon any Lot or Common Area, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No substance, thing or material shall be kept upon any Lot or Common Area that will emit foul or obnoxious odors, or that will cause any noise that

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will or might disturb the peace and quiet of the occupants of surrounding property. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot or Common Area with the exception of dogs, cats, or other household pets, which may be kept or maintained provided they are not kept, bred, or maintained for commercial purposes. No more than three (3) household pets shall be kept or maintained per Lot, except for newborn offspring of such household pets that are under nine (9) months in age.

Section 7.19. Diligent Construction. All construction, landscaping or other work which has been commenced on any Lot must be continued with reasonable diligence to completion and no partially completed houses or other Improvements shall be permitted to exist on any Lot or Common Area, except during such reasonable time period as is necessary for completion. The exterior of all houses and other structures must be completed within one (1) year from the date of commencement of construction, except where such completion is impossible due to strikes, fires, national emergency or natural calamities. No construction materials of any kind may be stored on any Lot within forty-five (45) feet of any Roadways curbs. The responsible Owner or builder shall repair any damage to any Roadways, curb or sidewalk or any part of any Common Area or any utility system caused by their negligence. If such responsible party fails to repair such damage, Declarant or the Association may make or provide for such repairs, and the responsible Owner shall immediately reimburse the repairing party for its reasonable out-of-pocket expenses in making such repairs. The Owner of each Lot and any builders shall at all times keep contiguous public and private areas free from any dirt, mud, garbage, trash or other debris which is occasioned by construction of Improvements on the Lots, Roadways, and any Common Areas. Declarant or the Association may provide for the cleaning of public and private areas due to the activities of the responsible party and may assess the responsible party a reasonable charge not to exceed the actual cost for such cleaning. Declarant and each Owner or builder shall, consistent with standard construction practices, keep all portions of the Lots, Roadways, and Common Areas free of unsightly construction debris and shall at all times during construction either provide dumpsites for the containment of garbage, trash or other debris which is caused by construction of Improvements on a Lot or Common Areas, or take other measures consistent with standard construction practices necessary to keep the Lot, Roadways, and all Common Areas free of such garbage, trash, or other debris. Each Owner and its Owner's builder shall be responsible for erosion control protection during any grading, site preparation or earth-disturbing operation, as described and defined in the Guidelines.

Section 7.20. Removal of Trees and Other Vegetation. All trees, shrubs and ground cover within the Lake Buffer Area are considered to be "protected" vegetation in that cutting and clearing generally is not permitted therein without the prior written consent of Declarant or the ECC. The practical exceptions to this rule are that dead or diseased trees and poisonous plants may be removed, underbrush may be selectively cleared, understory may be thinned to provide better views, individual trees may be limbed up, and ground covers may be planted. "Mature trees" inside the Lake Buffer Area may not be cut down or otherwise removed without the specific written approval of the Declarant or the ECC. For purposes of this Declaration, "Mature trees" shall mean all evergreen or deciduous trees with a caliper of four (4) inches or greater.

Furthermore, in the event that trees, shrubs or ground cover are completely removed (as opposed to thinned) in connection with the improvement of any Lot, such cleared portions of the Lot shall be covered with grass or shall be landscaped with plants, shrubs, trees, mulch, wood

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chips, pine needles and/or similar landscaping improvements. However, grass cannot be planted inside the Lake Buffer Area.

Declarant hereby reserves the right and easement benefiting Declarant, the Association, and/or the ECC to go upon any Lot or other portion of the property to replant or order the replanting of any trees, shrubs or other vegetation removed within the Subdivision in violation of the terms of this Section 7.20. If Declarant, the Association, and/or the ECC exercises its easement rights pursuant to the terms of this Section 7.20, the Owner of the nonconforming Lot shall reimburse Declarant, the Association, and/or the ECC (as applicable) within five (5) business days following the submission of an invoice for any costs or expenses incurred. The exercise or nonexercise of the easement rights contained in this Section 7.20 shall be subject to the discretion of the Declarant, the Association, and/or the ECC, provided that Declarant, the Association, and/or the ECC shall not have the obligation to exercise such rights.

Declarant, the Association and/or the ECC shall have the authority, in their sole discretion, to levy a Special Individual Assessment against an Owner who cuts, damages, or removes any trees, shrubs or other vegetation on any part of the Common Areas, their Lot or any other Lot in violation of the above provisions or the Guidelines. The Tree Valuation Schedule relating to damaged or destroyed trees set forth in the Guidelines, as well as all related expenses to be reimbursed, shall be considered a Special Individual Assessment against the respective Owner's Lot, entitling Declarant, the Association and/or the ECC to the Assessment collection remedies specified in Article VI of this Declaration.

Section 7.21. Marine Toilets. No water craft equipped with a marine toilet having a fixed or portable holding tank, or a through hull or overboard discharge toilet, shall be permitted at any Waterfront Lot Owner's dock or pier or at the Community Boatslips.

Section 7.22. Docks, Piers and Boat Houses. Duke Energy Corporation controls access to, use of, and water levels in Lake Keowee. Any Owner, Declarant and the Association must receive permission from Duke Energy Corporation (or a successor manager of Lake Keowee under authority from the Federal Energy Regulatory Commission ["FERC"]) prior to placing or constructing any pier, structure or other improvement within or upon, or conducting any activity altering the topography of, the hydroelectric project surrounding and encompassing the waters of Lake Keowee. Declarant makes no oral, express or implied representation or commitment as to the likelihood of any Owner obtaining such permission, nor as to the continued existence, purity, depth or levels of water in Lake Keowee, and Declarant shall have no liability with respect to these matters. Construction of any such improvements is also subject to the recorded restrictions and easements affecting the Lot.

Subject to the foregoing and to the other provisions of this Declaration and the Guidelines, any Waterfront Lot Owner may construct one (1) pier, provided that such Lot is not located in an area where the narrowness of a cove precludes construction of a dock or pier as determined by Duke Energy Corporation and/or any governmental entity having jurisdiction at the time such improvements are to be constructed. Any waterfront improvement shall have a low profile and open design to minimize obstruction of neighbors' views. Enclosed docks or boathouses will not be allowed either on the water or within the Lake Buffer Area. Roof-covered docks are allowed provided that such docks are one level, do not exceed more than

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twenty-five (25) feet in height and are not enclosed. Two-level or multi-level docks are generally not permitted; provided, however, the ECC will review requests to install two-level docks on a case-by-case basis, based on the slope, grade or topography of certain Lots.

The placement, construction, or use of the piers, boatslips, and of any other pier, dock, boatslip structures or other improvements within or upon, or the conducting of any activity altering the topography of, the hydroelectric project surrounding and encompassing the waters of Lake Keowee, is and shall be subject to each of the following:

- 7.22.1 easements, restrictions, rules, regulations and guidelines for construction and use promulgated by the Association and/or the ECC;
- 7.22.2 all laws, statutes, ordinances and regulations of all Federal, State and local governmental bodies having jurisdiction thereof, including without limitation, FERC; and
- 7.22.3 rules and regulations, privileges and easements affecting the Property and the waters and submerged land of Lake Keowee established by Duke Energy Corporation, its successors and assigns. Duke Energy Corporation is the manager of Lake Keowee under authority granted by FERC, and its current management plan runs through August 31, 2016. As manager of Lake Keowee, Duke Energy Corporation controls access to, the use of, and the water level in Lake Keowee. All Owners, the Association, the Declarant and any builders must receive permission from Duke Energy Corporation [or a successor manager of Lake Keowee, under authority from FERC] prior to any alterations therein, including the construction and continued use and maintenance of any dock, pier, or boatslip.

No Waterfront Lot Owner shall construct a pier of any kind, boat mooring or any other structure outside the pier zone designated on the Map applicable to such Lot.

Section 7.23. Boat Ramps. No boat ramps of any kind shall be permitted on any Lot, and no boat shall be placed in (or removed from) the waters of Lake Keowee from any Lot, provided however, small watercraft such as canoes, dinghies, and jet skis may be launched from any Lot if launched without a ramp. All other watercraft shall be launched from a public boat ramp outside the Subdivision.

Section 7.24. Rights of Duke Energy Corporation. Duke Energy Corporation has certain privileges and easements affecting the Development which include the right, privilege and easement of backing, ponding, raising, flooding or diverting the waters of Lake Keowee and its tributaries upon and over the Development, as more specifically described in the deed from Duke Energy Corporation to Declarant.

Section 7.25. Non-waiver. No delay or failure on the part of an aggrieved party to invoke an available remedy in respect to a violation of any provision contained herein or referred to herein shall be held to be a waiver by that party of any right available to the party upon the recurrence or continuance of said violation or the occurrence of a different violation.

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Section 7.26. Maintenance of the Private Roads. The Private Roads shall be maintained and periodically repaired, as needed, by the Private Road Lot Owners. The Private Road Lot Owners shall meet, from time to time, to agree upon service work to be performed on the Private Roads. Any Private Road Lot Owner may call a meeting by mailing written notice to each other Private Road Lot Owner's residence at least thirty (30) days prior to the meeting at which the notice indicates that a vote will be taken regarding maintenance and repair of the Private Roads. Failure to notify every Private Road Lot Owner of the meeting in the manner prescribed above shall invalidate any vote taken at such meeting unless all Private Road Lot Owners attended the meeting in person or by proxy. A validly called meeting may be conducted by telephone or other convenient method. There shall be one (1) vote appurtenant to each Private Road Lot owned and any repair or maintenance of the Private Roads which is approved by a majority of the votes cast, in person or by proxy, at a validly called meeting of the Private Road Lot Owners shall be considered "Approved Maintenance." The cost of all Approved Maintenance shall be divided equally among the Private Road Lot Owners. Each Private Road Lot Owner shall be obligated for its respective share of the cost of all Approved Maintenance, the payment of which is enforceable by any other Private Road Lot Owner. A lien is hereby established on the Private Road Lots for the purpose of enforcing the obligations of any Private Road Lot Owner who fails to pay his or her share of the cost of the Approved Maintenance of the Private Roads. If a Private Road Lot Owner fails to pay his or her share of the costs of the Approved Maintenance, the defaulting Private Road Lot Owner shall pay interest accruing thereon at the lower of: (i) eighteen percent (18%) per annum or; (ii) the maximum rate allowed by law. In addition, if any Private Road Lot Owner employs an attorney to collect the obligation to pay for Approved Maintenance from a defaulting Private Road Lot Owner or enforce the lien hereunder against a defaulting Private Road Lot Owner, such Private Road Lot Owner shall be reimbursed by the defaulting Private Road Lot Owner for all reasonable attorneys' fees and court costs incurred with respect thereto. The Association hereby reserves the right and easement, but not the obligation, to go upon any portion of the Private Roads at any time in order to repair and maintain the Private Roads where needed, in the Association's sole discretion, to bring such Private Roads within the standards set forth in Section 7.26. If the Association goes upon the Private Roads to perform maintenance and repairs for such purpose, each Private Road Lot Owner shall be subject to a Special Individual Assessment as set forth in Section 5.6 for all related costs of such maintenance and repairs incurred by the Association. Except as otherwise expressly set forth herein, only the Private Road Lots Owners, their families, tenants, guests or invitees may use the Private Roads for access, ingress, egress and regress to and from the Private Road Lots.

ARTICLE VIII

INSURANCE

Section 8.1. Board of Directors. The Board of Directors shall obtain and maintain at all times the following types of insurance:

- 8.1.1 Fire and Casualty. All Improvements and all fixtures included in any Common Areas and all personal property and supplies belonging to the Association, shall be insured in an amount equal to 100% of the current replacement cost up to the amount specified in the insurance

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policy (exclusive of land, foundation, excavation and other normally excluded items) as determined annually by the Board of Directors with the assistance of the insurance company providing coverage. The Board of Directors shall, at least annually, review the insurance coverage required herein and determine 100% of the current replacement cost of such Improvements and fixtures and personal property and supplies. Such coverage shall provide protection against loss or damage by fire, windstorm, vandalism and malicious damage and all perils covered by a standard "all risk" insurance policy. All such policies shall provide that the Board of Directors and the insurance company shall approve adjustment of loss. In addition to the provisions and endorsements set forth in Section 8.4, the fire and casualty insurance described herein shall contain the following provisions:

- 8.1.1.1 a waiver of subrogation by the insurer as to any claims against the Association, any officer, Director, agent or employee of the Association, the Owners and their employees, agents, tenants and invitees; and
- 8.1.1.2 a provision that the coverage will not be prejudiced by act or neglect of one or more Owners when said act or neglect is not within the control of the Association or by any failure of the Association to comply with any warranty or condition regarding any portion of the Property over which the Association has no control.

- 8.1.2 Public Liability. The Board of Directors shall also be required to obtain and maintain to the extent obtainable, public liability insurance in such limits as the Board of Directors may, from time to time, determine to be customary for projects similar in construction, location and use to any Common Areas, and customary for the activities and obligations of property owners' associations for projects similar to the Development, covering each member of the Board of Directors, the managing agent, if any, and each Owner with respect to his liability arising out of the ownership, maintenance, or repair of the Common Areas and out of the activities of the Association; provided, however, that in no event shall the amounts of such public liability insurance ever be less than \$1,000,000 per occurrence against liability for bodily injury, including death resulting therefrom, and damage to property, including loss of use thereof, occurring upon, in or about, or arising from or relating to, the Property or any portion thereof. Such insurance shall include endorsements covering cross-liability claims of one insured against another, including the liability of the Association and/or the Owners as a group to a single Owner. The Board of Directors shall review such limits annually. Until the first meeting of the Board of Directors following the initial meeting of the Owners,

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such public liability insurance shall be in amounts of not less than \$1,000,000 per occurrence for claims for bodily injury and property damage.

- 8.1.3 Fidelity Coverage. The Board of Directors shall also be required to obtain fidelity coverage against dishonest acts on the part of all persons, whether officers, Directors, trustees, employees, agents or independent contractors, responsible for handling funds belonging to or administered by the Association, in an amount determined by the Board of Directors in its discretion. An appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers.
- 8.1.4 Such other insurance coverages, including flood insurance and worker's compensation, as the Board of Directors shall determine, from time to time, to be necessary or desirable.

Section 8.2. Premium Expense. Premiums upon insurance policies purchased by the Board of Directors shall be paid by the Board of Directors and charged as a common expense to be collected from the Owners pursuant to Article V.

Section 8.3. Special Endorsements. The Board of Directors shall make diligent effort to secure insurance policies that will provide for the following:

- 8.3.1 recognition of any insurance trust agreement entered into by the Association;
- 8.3.2 coverage that may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least forty-five (45) days prior written notice to the named insured, any insurance trustee and all Mortgagees; and
- 8.3.3 coverage that cannot be canceled, invalidated or suspended on account of the conduct of any officer or employee of the Board of Directors without prior demand in writing that the Board of Directors cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, any Owner or any Mortgagee.

Section 8.4. General Guidelines. All insurance policies purchased by the Board of Directors shall be with a company or companies licensed to do business in the State of South Carolina and holding a rating of "A-VII" or better by the current issue of A.M. Best's Insurance Reports. All insurance policies shall be written for the benefit of the Association and shall be issued in the name of, and provide that all proceeds thereof shall be payable to, the Association. Notwithstanding any of the foregoing provisions and requirements relating to insurance, there may be named as an insured, on behalf of the Association, the Association's authorized representative, who shall have exclusive authority to negotiate losses under any policy providing such insurance. The property and public liability insurance policies shall not contain (and the

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insurance shall not be placed with companies whose charters or bylaws contain) provisions whereby: (1) contributions or assessments may be made against the Association, the Owners or the Mortgagees; (2) loss payments are contingent upon action by the carriers, Directors, policy holders or Members; or (3) there are limiting clauses (other than insurance conditions) which could prevent Owners or Mortgagees from collecting the proceeds.

Section 8.5. Owner's Personal Property. The Association or Declarant shall not be liable in any manner for the safekeeping or conditions of any boat or other personal property belonging to or used by any Owner or his family, tenants, guests or invitees, located on or used at the Common Areas or the Community Boatlips. Further, the Association or Declarant shall not be responsible or liable for any damage or loss to or of any boat, its tackle, gear, equipment or other property located thereon, or any other personal property of any Owner, his family, tenants, guests or invitees located on or used at the Common Areas or the Community Boatlips. Each Owner shall be solely responsible for all such boats and other personal property and for any damage thereto or loss thereof, and shall be responsible for the purchase, at such Owner's sole cost and expense, of any liability insurance or other insurance for damage to or loss of such property.

ARTICLE IX

ENVIRONMENTAL AND LAKE BUFFER GUIDELINES

Section 9.1. General. Notwithstanding anything contained in this Declaration to the contrary, no construction activity of any type, including, without limitation, grading or site preparation on any Lot, erection of Improvements or exterior additions or alterations to any Improvement situated upon the Property, or any landscaping or cutting of trees on any Lot, shall be commenced, erected or maintained, until all the following conditions have been satisfied: (a) an application for approval has been submitted to the ECC, (b) the ECC has given written approval for the plans and specifications for the Improvements, the location of such Improvements, and the commencement of construction, all in accordance with the terms and requirements in the Guidelines; and (c) the fees set forth in or contemplated by this Article IX have been paid in full by the Owner. The provisions of this Article IX shall not apply to the construction of any Improvements commenced, erected or maintained by Declarant on any Lot or upon any of the Common Areas. Declarant and/or the Association may delegate to the ECC any powers or authority reserved or granted to it under this Article IX.

Section 9.2. Composition of ECC. So long as Declarant owns any Lot or other portion of the Property, Declarant shall appoint the members of the ECC. When Declarant no longer owns any Lot or other portion of the Property or at such earlier date as Declarant releases its right to appoint the members of the ECC, the Board shall thereafter appoint the members of the ECC. The three (3) members of the ECC shall be appointed annually. The members of the ECC need not be Owners of property in the Development. In the event of the death or resignation of any member of the ECC, the party or body then having the authority to appoint members to the ECC shall have full authority to designate and appoint a successor. Members of the ECC may be removed and replaced at any time, with or without cause, and without prior notice, by the party or body then having the authority to appoint such members. The ECC shall have the right, power and authority to employ and/or use the services of any architects, engineers or other

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professionals as it deems necessary or advisable, in its sole discretion, to carry out its duties and obligations as described in this Article IX.

Section 9.3. Environmental and Lake Buffer Guidelines.

- 9.3.1 The ECC shall, from time to time, publish, promulgate and amend the Guidelines. The Guidelines shall be explanatory and illustrative of the general intent of the development of the Property and are intended as a guide to assist the ECC in reviewing plans and specifications for Improvements. The Guidelines shall also set out, among other things, the procedures for submission, review and approval of plans and specifications (for the construction of Improvements) to the ECC and the fees to be imposed by the ECC, as more specifically described in Section 9.6. In any event, the Guidelines shall not be binding upon the ECC, may be revised and amended at any time by the ECC, in its sole discretion, and shall not constitute, in every event, the basis for approval or disapproval of plans, specifications and other materials (for the construction of Improvements) submitted to the ECC for approval.
- 9.3.2 The ECC is also hereby authorized to publish and promulgate, from time to time, and revise and amend at any time in its sole discretion, construction rules, as part of the Guidelines, to be followed by all Owners and builders performing work or constructing or installing Improvements on the Property.
- 9.3.3 The ECC may issue and amend the Guidelines, from time to time, and may publish and promulgate different Guidelines for different Phases, sections or portions of the Property.

Section 9.4. Enforcement.

- 9.4.1 It is Declarant's intent that the environmental control provisions of this Declaration and any Supplemental Declarations are intended to minimize the adverse impact on the environment of Lake Keowee. All Owners, by purchasing property subject to this Declaration, acknowledge that a violation of any such provisions could result in irreparable harm and damage to other Lot Owners in the Development and to Declarant, and to the values of their respective properties in the Development, a monetary measure of which harm and damage would be difficult to establish. Accordingly, the Association shall have the specific right (but not the obligation) to enforce and/or to prevent any violation of the provisions contained in this Article IX by a proceeding at law or in equity against the person or persons violating or attempting to violate any such provisions. Declarant hereby specifically reserves and grants to the ECC, the Board and any agent or member thereof, the right of entry and inspection upon any portion

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of the Property for the purpose of determining whether any construction of any Improvement violates any approval by the ECC, the Guidelines, this Declaration or any Supplemental Declaration, as amended.

- 9.4.2 As to nonconforming or unapproved Improvements, the Association may require any Owner to restore such Owner's Improvements to the condition existing prior to the construction thereof (including, without limitation, the demolition and removal of any nonconforming unapproved Improvements) if such Improvements were commenced or constructed in violation of this Article IX. In addition, the Association may, but has no obligation to, cause such restoration, demolition and removal to be performed and to levy the cost as a Special Individual Assessment against the Lot or portion of the Property upon which such Improvements were commenced or constructed. In the event that it becomes necessary to resort to litigation to determine the propriety of any constructed Improvement to remove any unapproved Improvement or otherwise to remedy a violation of the Guidelines, the Association shall be entitled to recover court costs, reasonable attorneys' fees and expenses incurred by the Association and/or the ECC in connection therewith, which costs, fees and expenses may be levied as a Special Individual Assessment against the Lot upon which such Improvement was commenced or constructed.

Section 9.5. Failure of the ECC to Act. If the ECC fails to approve or disapprove any plans and specifications and other submittals which conform (and which relate to Improvements which will conform) with the requirements of the Guidelines and this Declaration or to reject them as being inadequate or unacceptable within thirty (30) business days after receipt thereof, and provided such submittal was a full and complete submittal, in accordance with the Guidelines, of all items that were to have been submitted to the ECC, the Lot Owner shall give written notice to the ECC asking it to act on the submittal. If the ECC shall again fail to approve or disapprove of such plans, specifications and other submittals within ten (10) days after receipt of the Lot Owner's written request the ECC shall be deemed to have approved such conforming plans and specifications and other submittals; provided that the ECC has no right or power, either by action or failure to act, to waive or grant any variances relating to any mandatory requirements specified in this Declaration or any Supplemental Declaration. If plans and specifications or other submittals are not sufficiently complete or are otherwise inadequate, the ECC may reject them as being inadequate or may approve or disapprove part, conditionally or unconditionally, and reject or approve the balance.

Section 9.6. Fees and Construction Escrow Deposit Required by the ECC. The ECC, in its sole discretion, may require that each Person submitting plans and specifications for Improvements to the ECC pay one or more fees to the ECC or to Declarant as a condition to commencement of construction of such Improvements. Such fee(s), including the amount(s), payee and purpose(s) thereof shall be established by, and may be increased, from time to time, by the ECC and shall be set forth in the Guidelines. The ECC, in its sole discretion, may require

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that each Lot Owner submitting plans and specifications for construction to pay a construction escrow deposit to the Association to be held for the purposes set forth in the Guidelines.

Section 9.7. No Construction Without Payment of Fees. Plans and specifications for Improvements to be constructed on a Lot or other portion of the Property shall not be deemed to have been properly submitted unless and until any and all fees required by the ECC to be paid in connection with such Improvements, as provided in Section 9.6, shall have been paid to the ECC or Declarant, as required by the Guidelines.

Section 9.8. Notices and Submittals. Notices and submittals to the ECC shall be in accordance with the notice provisions set forth, from time to time, in the Guidelines.

Section 9.9. Limitation of Liability. No member of the ECC shall be liable for claims, causes of action or damages (except where occasioned by willful misconduct of such member) arising out of services performed pursuant to this Article IX. Neither the ECC, the members thereof, the Association, Declarant, nor any officers, directors, members, employees, agents or affiliates of any of them, shall be liable for damages or otherwise to anyone submitting plans and specifications and other submittals for approval or to any Owner by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval of, or the failure to approve or disapprove of, any plans and specifications. The approval of plans and specifications by the ECC shall not be deemed or construed as a representation or warranty of the ECC, Declarant, or any officer, director, member, employee, agent or affiliate of any of them, (i) that Improvements constructed in accordance with such plans and specifications will comply with applicable zoning ordinances, building codes, or other governmental or quasi-governmental laws, ordinances, rules and regulations; (ii) as to the structural soundness, quality, durability, suitability, fitness or proper functioning of Improvements constructed in accordance with such plans and specifications; and/or (iii) any responsibility or liability therefor is expressly hereby disclaimed. Every person who submits plans and specifications, and every Owner, agrees that such Owner will not bring any action or suit against Declarant, the Association, the ECC, the Board, or the officers, directors, members, employees, agents or affiliates of any of them, to recover any such damages and hereby releases, demises, and quits all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given. Declarant shall be the sole party responsible for the performance of Declarant's obligations under this Declaration, and no other person, firm or entity, including, without limitation, any entity affiliated with Declarant, shall have any obligation or liability for Declarant's obligations under this Declaration.

Section 9.10. Miscellaneous. Members of the ECC, in the sole discretion of the party or body appointing such members (i.e., either Declarant or the Board, as the case may be) may be compensated for their services. The Association shall reimburse members of the ECC for reasonable out-of-pocket expenses associated with their activities hereunder. All costs, expenses and attorneys' fees of the ECC, including those incurred in connection with the exercise of their enforcement or other powers as provided herein, shall be borne by the Association; provided, however, nothing herein shall be deemed to negate the Association's right to an award of court costs, attorneys' fees and expenses in accordance with Section 9.4.

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ARTICLE X

RIGHTS OF MORTGAGEES

Section 10.1. Approval of Mortgagees. Unless at least seventy-five percent (75%) of the Mortgagees holding Mortgages on Lots located within the Development then subject to the full application of this Declaration have given their prior written approval, the Association shall not:

- 10.1.1 except as otherwise specifically provided herein, by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer any real estate or Improvements thereon which are owned, directly or indirectly, by the Association; provided, however, the granting of easements for utilities or other purposes and the transfer of Boatslips pursuant to the terms of the Declaration shall not be deemed a transfer within the meaning of this provision;
- 10.1.2 except as otherwise specifically provided herein, change the method of determining the obligations, Assessments, dues or other charges which may be levied against an Owner;
- 10.1.3 fail to maintain fire and extended coverage insurance on insurable Improvements in any Common Areas in the Subdivision (with the exception of Public Roads) on a current replacement cost basis in an amount not less than 100% of the insurable value as set forth in Article VII; or
- 10.1.4 use the proceeds of any hazard insurance policy covering losses to any part of any Common Area for a purpose other than the repair, replacement or reconstruction of the damaged Common Areas.

Section 10.2. Additional Rights. Provided that a Mortgagee has given written notice to the Association as hereafter provided, a Mortgagee shall have the following rights:

- 10.2.1 to be furnished at least one copy of the annual financial statement and report of the Association within ninety (90) days following the end of each fiscal year;
- 10.2.2 to be given notice by the Association of any meeting of the Association's membership, and to designate a representative to attend all such meetings;
- 10.2.3 to be given prompt written notice of default under the Declaration, the Bylaws or any rules and regulations promulgated by the Association by any Owner owning a Lot encumbered by a Mortgage held by the Mortgagee, such notice to be sent to the principal office of such Mortgagee or the place which it designates in writing;

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- 10.2.4 to be given prompt written notice of any casualty loss to the Common Areas, or loss by eminent domain, condemnation or other taking of (i) the Common Areas or (ii) any Lot encumbered by a Mortgage held by the Mortgagee;
- 10.2.5 to be given prompt written notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
- 10.2.6 to be given prompt written notice of any action which requires the consent of any or all of the Mortgagees as specified herein.

Whenever any Mortgagee desires the provisions of this Section 10.2 to be applicable to it, it shall serve or cause to be served written notice of such fact upon the Association by certified mail, return receipt requested, addressed to the Association and sent to its address stated herein, identifying the Lot or Lots upon which any such Mortgagee holds any Mortgage or identifying any Lot owned by it, together with sufficient pertinent facts to identify any Mortgage which may be held by it and which notice shall designate the place to which notices are to be given by the Association to such Mortgagee. In the event a Mortgagee fails to give written notice as provided in the immediately preceding sentence, the Mortgage shall not be entitled to the benefits of this Section 10.2.

Section 10.3. Books and Records. Any Mortgagee will have the right to examine the books and records of the Association during any reasonable business hours.

Section 10.4. Payment of Taxes and Insurance Premiums. The Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge or lien against the Common Areas and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy for property owned by the Association and the persons, firms or corporations making such payments shall be owed prompt reimbursement from the Association.

ARTICLE XI

CONDEMNATION

Section 11.1. Partial Taking: Without Direct Effect on Lots. If part of the Property shall be taken or condemned by any authority having the power of eminent domain, such that no Lot is taken, all compensation and damages for and on account of the taking of the Common Areas, exclusive of compensation for consequential damages to certain affected Lots, shall be paid to the Board of Directors in trust for all Owners and their Mortgagees according to the loss or damages to their respective interests in such Common Areas. The Association, acting through the Board of Directors, shall have the right to act on behalf of the Owners with respect to the negotiation and litigation of the issues with respect to the taking and compensation affecting the Common Areas, without limitation on the right of the Owners to represent their own interests. Each Owner, by his acceptance of a deed to a Lot, hereby appoints the Association as his attorney-in-fact to negotiate, litigate or settle on his behalf all claims arising from the

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condemnation of the Common Areas. Such proceeds shall be used to restore the Common Areas with the excess, if any, to be retained by the Association and applied to future operating expenses by the Board of Directors, in its sole discretion. Nothing herein shall prevent Owners whose Lots are specifically affected by the taking or condemnation from joining in the condemnation proceedings and petitioning on their own behalf for consequential damage relating to loss of value of the affected Lots or Improvements, fixtures or personal property thereon, exclusive of damages relating to the Common Areas. In the event that the condemnation award does not allocate consequential damages to specific Owners, but by its terms includes an award for reduction in value of Lots without such allocation, the award shall be divided between affected Owners and the Association, as their interests may appear, by the Board of Directors, in its sole discretion.

Section 11.2. Partial or Total Taking: Directly Affecting Lots. If part or all of the Property shall be taken or condemned by any authority having the power of eminent domain, such that any Lot or a part thereof (including specific easements assigned to any Lot) is taken, the Association shall have the right to act on behalf of the Owners with respect to Common Area as provided in Section 11.1 and the proceeds shall be payable as outlined therein. The Owners directly affected by such taking shall represent and negotiate for themselves with respect to the damages affecting their respective Lots. All compensation and damages for and on account of the taking of anyone or more of the Lots or Improvements, fixtures or personal property thereon, shall be paid to the Owners of the affected Lots and their Mortgagees, as their interests may appear. If all of the Property shall be taken such that the Association no longer has reason to exist and shall thereafter be dissolved and/or liquidated, all compensation and damages for and on account of the taking of the Common Areas shall be distributed with the other assets of the Association in accordance with the Articles of Incorporation.

Section 11.3. Notice to Mortgagees. A notice of any eminent domain or condemnation proceeding shall be sent to all Mortgagees who have served written notice upon the Association in accordance with Section 10.2.

ARTICLE XII

GENERAL PROVISIONS

Section 12.1. Enforcement. Declarant, being the developer of other subdivisions in the area of the Subdivision, wishes to maintain a high standard in the appearance and quality of the Subdivision. Though damages would be difficult to measure, the failure of the Owners or the Association to abide by the terms, covenants and restrictions contained in this Declaration would result in irreparable damage to Declarant and its reputation. Accordingly, Declarant, during the term of this Declaration as set forth in Section 12.4, as well as the Association or any Owner or Owners, shall have the right, but not the obligation, to enforce all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration by proceeding at law or in equity against any person or persons violating or attempting to violate any such restriction, condition, covenant, reservation, lien or charge, either to restrain violation thereof or to recover damages therefor. Declarant, the Association and each Owner shall have all appropriate remedies at law or in equity to enforce the provisions of this

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Declaration and the Bylaws and any duly authorized rules and regulations governing the Development against the Association.

In addition, the Association and the Owners hereby covenant and agree that they shall exercise their power of enforcement hereunder in order to maintain a first class subdivision in appearance and quality, and that they shall, upon the request of Declarant, enforce any restriction, condition, covenant or reservation contained in this Declaration deemed by Declarant, in its sole discretion, to have been violated, using all remedies available to them at law or in equity. Failure by Declarant, the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. Declarant hereby reserves the right and easement, but not the obligation, to go upon any portion of the Common Areas and Private Roads at any time in order to repair and maintain such Common Areas and Private Roads where needed, in Declarant's sole discretion, to bring such Common Areas and Private Roads within the standards required by Declarant. If Declarant goes upon the Common Areas and Private Roads to perform maintenance and/or repairs for such purpose, the Association hereby agrees to reimburse Declarant in full for the cost of such maintenance and/or repairs, upon receipt of a statement for such costs from Declarant, for maintenance and/or repair of the Common Areas, and the Private Road Lot Owners agrees to reimburse Declarant in full for such maintenance and/or repairs of the Private Roads, upon receipt of a statement of such costs from Declarant.

Section 12.2. Severability. Invalidity of any of these covenants or restrictions by judgment or court order shall not affect any other provisions of this Declaration, which shall remain in full force and effect.

Section 12.3. Amendment.

12.3.1 Amendment by Owners. The covenants, conditions, and restrictions of this Declaration may be amended at any time and from time to time by an instrument signed by Owners holding two-thirds of votes appurtenant to the Lots which are then subject to this Declaration; provided, however, that such amendment must be consented to by Declarant so long as Declarant is the Owner of any Lot in the Development or of any Additional Property. Any such amendment shall not become effective until the instrument evidencing such change has been filed of record. Notwithstanding the foregoing, the consent of a majority of the Owners of Lots, plus the written consent of Declarant, shall be required to reduce the land in the Development, to withdraw any portion of the Property from the requirements of this Declaration, or to restrict or revoke Declarant's right of enforcement as provided for in Section 12.1 of the Declaration.

12.3.2 Amendment by Declarant. Declarant may, at Declarant's option, amend this Declaration without obtaining the consent or approval of any other person or entity if such amendment is necessary to cause this Declaration to comply with the requirements of FIMA, VA, the Federal National Mortgage Association or other similar agency. Declarant,

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without obtaining the approval of any other person or entity, may also make (a) amendments or modifications hereto which are correctional in nature only and do not involve a change which materially adversely affects the rights, duties or obligations specified herein; and/or (b) any addition or amendment that Declarant is authorized to make under other Sections of this Declaration, including without limitation Section 2.2 and Section 3.2.4.

Section 12.4. Term. The covenants and restrictions of this Declaration are to run with the land and shall be binding upon all parties and all persons claiming under them for a period of twenty (20) years from the date this Declaration is recorded; after which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then Owners of the Lots, plus Declarant, has been recorded, agreeing to terminate said covenants and restrictions in whole or in part. Provided, however, that the residential use restrictions set forth in Section 7.1 of this Declaration shall run with the land and shall be binding upon all parties and all persons claiming under them in perpetuity.

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IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed by its duly authorized officer as of the day and year first above written.

CRESCENT COMMUNITIES S.C., LLC,
a Delaware limited liability company

WITNESSES:

Debbie J. Bauer
First Witness

Kay H. Arnette
Second Witness

By: [Signature]
President

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

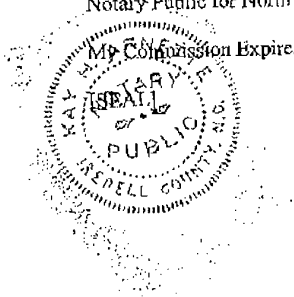
Personally appeared before me, Debbie J. Bauer (First Witness) and made oath that he/she saw the within named Crescent Communities S.C., LLC by Stephen M. Schreiner its Vice President sign, seal, and deliver the within written instrument; and that he/she with Kay H. Arnette (Second Witness) witnessed the execution thereof.

Sworn to before me this 21st
day of October, 2002

Debbie J. Bauer
(Signature of First Witness)

Kay H. Arnette
Notary Public for North Carolina

My Commission Expires 06-28-04



FILED FOR RECORD
MECKLENBURG COUNTY, N.C.
REGISTER OF DEEDS
2002 NOV 12 A 11:09

EXHIBIT "A"
TO
DECLARATION
FOR
MOUNTAIN VIEW POINTE

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Articles of Incorporation of Mountain View Pointe Owners Association, Inc.

CLT 637923v10

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ARTICLES OF INCORPORATION
OF
MOUNTAIN VIEW POINTE OWNERS ASSOCIATION, INC.
A NONPROFIT CORPORATION

STATE OF SOUTH CAROLINA
SECRETARY OF STATE
NONPROFIT CORPORATION
ARTICLES OF INCORPORATION

TYPE OR PRINT CLEARLY IN BLACK INK

Pursuant to Section 33-31-202 of the South Carolina Code of Laws, as amended, the undersigned corporation submits the following information:

1. The name of the nonprofit corporation is Mountain View Pointe Owners Association, Inc.
2. The initial registered office of the nonprofit corporation is 1201 Main Street, Suite 1450
Street Address

Columbia Richland SC 29202
City County State Zip Code

The name of the registered agent of the nonprofit corporation at that office is

David B. Summer, Jr.
Print Name

I hereby consent to the appointment as registered agent of the corporation.

Agent's Signature

3. Check "a", "b", or "c" whichever is applicable. Check only one box:

- a. ☐ The nonprofit corporation is a public benefit corporation.
- b. ☐ The nonprofit corporation is a religious corporation.
- c. ☒ The nonprofit corporation is a mutual benefit corporation.

4. Check "a" or "b", whichever is applicable:

- a. ☒ This corporation will have members.
- b. ☐ This corporation will not have members.

5. The address of the principal office of the nonprofit corporation is

400 South Tryon Street, Suite 1300, Charlotte, Mecklenburg, North Carolina 28202
Street Address City County State Zip Code

6. If this nonprofit corporation is either a public benefit or religious corporation (when box "a" or "b" of paragraph 3 is checked), complete either "a" or "b", whichever is applicable, to describe how the remaining assets of the corporation will be distributed upon dissolution of the corporation.

- a. ☐ Upon dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501 (c)(3) of the Internal Revenue Code, or the corresponding section of any future Federal tax code, or shall be distributed to the Federal government, or to a state or local government, for a public purpose. Any such asset not so disposed of shall be disposed of by the Court of Common Pleas of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated exclusively for such purposes.

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Mountain View Pointe Owners Association, Inc.

Name of Corporation

- b. ☐ Upon dissolution of the corporation, consistent with the law, the remaining assets of the corporation shall be distributed to _____
7. If the corporation is a mutual benefit corporation (when box "c" of paragraph 3 is checked), complete either "a" or "b", whichever is applicable, to describe how the (remaining) assets of the corporation will be distributed upon dissolution of the corporation.
- a. ☒ Upon dissolution of the mutual benefit corporation, the (remaining) assets shall be distributed to its members, or if it has no members, to those persons to whom the corporation holds itself out as benefiting or serving.
- b. ☐ Upon dissolution of the mutual benefit corporation, the (remaining) assets, consistent with the law, shall be distributed to _____
8. The optional provisions which the nonprofit corporation elects to include in the articles of incorporation are as follows (See 33-31-202(c) of the 1976 South Carolina Code of Laws, as amended, the applicable comments thereto, and the instructions to this form)
9. The name and address of each incorporator is as follows (only one is required)
- | Name | Address | Zip Code |
|------------------------|---------|----------|
| Municy L. O'Leh, Esq., | | |
| Name | Address | Zip Code |
| Name | Address | Zip Code |
| Name | Address | Zip Code |
10. Each original Director of the nonprofit corporation must sign the articles but only if the Directors are named in these articles:
- | Name (Only if named in articles) | Signature of Director |
|----------------------------------|-----------------------|
| Name (Only if named in articles) | Signature of Director |
| Name (Only if named in articles) | Signature of Director |
11. Each incorporator must sign the articles.
- | |
|---------------------------|
| Signature of incorporator |
| Signature of incorporator |
| Signature of incorporator |

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EXHIBIT "B"
TO
DECLARATION
FOR
MOUNTAIN VIEW POINTE

Bylaws of Mountain View Pointe Owners Association, Inc.

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BYLAWS OF
MOUNTAIN VIEW POINTE OWNERS ASSOCIATION, INC.
ARTICLE 1

Section 1.1. Name. The name of the non-profit corporation is MOUNTAIN VIEW POINTE OWNERS ASSOCIATION, INC. (the "Association").

Section 1.2. Location. The principal office of the Association shall initially be located in Mecklenburg County, North Carolina at 400 South Tryon Street, Suite 1300, Charlotte, North Carolina 28201-1003. The registered office of the Association may be, but need not be, identical with the principal office.

Section 1.3. Purpose. The purpose for which the Association is organized is to further social activities of Owners of Lots in Mountain View Pointe Subdivision located in Oconee County, South Carolina, to provide services to the Owners, manage and maintain the Common Areas and administer and enforce all covenants and restrictions dealing with the Property located in Mountain View Pointe, and any other purposes allowed by law.

ARTICLE 2

DEFINITIONS

All capitalized terms when used in these Bylaws, or any amendment hereto (unless the context shall otherwise require or unless otherwise specified herein or therein) shall have the meanings set forth in that certain Declaration of Covenants, Conditions and Restrictions for Mountain View Pointe executed by Crescent Communities S.C., LLC, and duly recorded in the Office of the Register of Deeds of Oconee County, South Carolina (as supplemented and amended, from time to time, the "Declaration").

ARTICLE 3

MEETINGS OF MEMBERS

Section 3.1. Annual Meetings. The first annual meeting of the Members shall be held some time during the months of March, April or May, 2003 as determined by a vote of the Board of Directors, and each subsequent regular annual meeting of the Members shall be held on or about the anniversary date of the first annual meeting thereafter, at a reasonable time to be determined by the Board. If the day for the annual meeting of the Members is a legal holiday, the meeting will be held on the first day following which is not a legal holiday.

Section 3.2. Special Meeting. Special meetings of the Members may be called at any time by the President of the Association, by the Board of Directors, or upon the written request of the Members who are entitled to vote at least ten percent (10%) of all of the votes appurtenant to the Lots.

Section 3.3. Meetings of Groups of Certain Lot Owners. From time to time, meetings (a) the Members owning Boatlift Lots and (b) the Members who are Private Road Lot Owners (each, a "Member Group") may be called at any time by the President of the Association, by the

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Board of Directors, or upon the written request of the Members who are entitled to vote at least ten percent (10%) of all of the votes appurtenant to the relevant Member Group, for the purpose of discussing and voting on matters affecting the Member Group. Such meetings may be held at the annual meeting of the Members or at a special meeting of the Member Group.

Section 3.4. Place of Meetings. All meetings of the Members and all meetings of any of the Member Groups shall be held at such place within Mecklenburg County, North Carolina or Oconee County, South Carolina, as shall be determined by the Board of Directors, from time to time.

Section 3.5. Notice of Meeting. Written notice of each meeting of the Members and each meeting of any of the Member Groups shall be given by, or at the direction of, the Secretary of the Association or other person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, not less than ten (10) days nor more than sixty (60) days before the date of such meeting to each Member entitled to vote there at, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. The notice shall specify the place, day and hour of the meeting, and in the case of a special meeting, the purpose of the meeting.

Section 3.6. Classes of Lots and Voting Rights. The voting rights of the Members shall be appurtenant to the ownership of Lots. There shall be two (2) classes of Lots with respect to voting rights:

(a) Class A Lots. All Lots shall be Class A Lots, except Class B Lots as defined below. Each Class A Lot shall entitle the Owner(s) of said Lot to one (1) vote. When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to said Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Class A Lot.

(b) Class B Lots. Class B Lots shall be all Lots owned by Declarant that have not been conveyed to purchasers who are not affiliated with the Declarant. Each Class B Lot shall entitle the Owner of said Lot to four (4) votes for each Class B Lot owned by it.

Section 3.7. Relinquishment of Control. The Class B Membership shall cease and be converted to Class A Membership on the first to occur of the following events:

(a) when the total number of votes in the Class A Membership exceeds the total number of votes in the Class B Membership;

(b) upon the expiration of ten (1) years after the recordation of the Declaration; or

(c) upon the election of Declarant, in its sole discretion, to terminate its Class B Membership and to convert the Class B Lots to Class A Lots. Any such election, to be effective, must be in writing and recorded in the Office of the Register of Deeds for Oconee County, South Carolina.

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The earliest to occur of (a), (b) or (c) above shall be referred to as the "Turnover Date." After the Turnover Date and for so long as Declarant owns any part of the Property, Declarant shall be a Class A member.

Section 3.8. Quorum. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, twenty percent (20%) of the votes appurtenant to the Lots (or to the Lots of any Member Group) shall constitute a quorum for any action, except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, subsequent meetings may be called, subject to the same notice requirement, until the required quorum is present. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 3.9. Proxies. At all meetings of Members or any Member Group, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary of the Association. Every proxy shall be revocable and shall automatically cease upon conveyance of the applicable Member's Lot.

Section 3.10. Action by Members. Except as provided otherwise in the Articles of Incorporation, the Declaration or these Bylaws, any act or decision approved by a majority vote of all votes entitled to be cast by all classes of Members, present or represented by legitimate proxy at a legally constituted meeting at which a quorum is present, shall be regarded as the act of the Members. Notwithstanding any term or provision herein, the affirmative vote of no less than two-thirds (2/3) of all votes entitled to be cast by all classes of Members shall be required in order for the Association to (a) file a complaint, on account of an act or omission of Declarant, with any governmental agency which has regulatory or judicial authority over the Development or any part thereof, or (b) assert a claim against or sue Declarant.

Section 3.11. Action by Members of a Member Group. Except as otherwise provided in the Articles of Incorporation, the Declaration or these Bylaws, any act or decision approved by a majority vote of all votes entitled to be cast by the Members of any of the Member Groups, present or represented by legitimate proxy at a legally constituted meeting at which a quorum of the Members of the Member Group is present, shall be regarded as the act of such Member Group.

Section 3.12. Waiver of Notice. Any Member may, at any time, waive notice of any meeting of the Members, (or any meeting of any of the Member Groups) in writing and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Member at any such meeting shall constitute a waiver of notice by such Member of the time and place thereof, except where such Member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called. If all of the Members are present at any meeting of the Members (or a Member Group), are present at a meeting of such Members, no notice shall be required and any business may be transacted at such meeting.

Section 3.13. Informal Action by Members. Any action which may be taken at a meeting of the Members (or a Member Group), may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the persons who would be

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entitled to vote upon such action at a meeting and filed with the Secretary of the Association to be kept in the Association's minute book.

Section 3.14. Class Voting Prohibited. Class voting is expressly prohibited under these Bylaws.

ARTICLE 4

BOARD OF DIRECTORS

Section 4.1. Number. Prior to the Turnover Date, a Board of three (3) Directors, who shall be appointed by Declarant and who need not be Members of the Association, shall manage the business and affairs of the Association. At the first annual meeting of the Members following the Turnover Date, a Board of three (3) Directors shall be elected in accordance with Section 4.5 and Section 4.6.

Section 4.2. Initial Directors. The initial Board of Directors shall be appointed by Declarant. The initial Board of Directors shall serve at the election of the Declarant from the date upon which the Declaration is recorded in the Office of the Register of Deeds of Oconee County, South Carolina, until such time as their successors are duly appointed in accordance with Section 4.1, or duly elected and qualified, as described in Section 4.5 and Section 4.6.

Section 4.3. The names of the persons who shall serve on the initial Board of Directors are as follows:

<u>Name</u>	<u>Address</u>
Stephen M. Schreiner	
Steve W. Coleman	
Leslie A. Lancaster	

Section 4.4. Nomination. Subject to Section 4.1, nominations for the first election of the Board of Directors after the Turnover Date shall be made from the floor at a meeting of the Members. After such first election of Directors, a Nominating Committee shall make nominations for election to the Board of Directors, but nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two (2) or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to the annual meeting following the first election of Directors and each annual meeting of the Members thereafter, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each such annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.

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Section 4.5. Election. After the Turnover Date, the Board of Directors shall be elected at the annual meeting of the Members by written ballot. At such election, the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Articles of Incorporation, these Bylaws and the Declaration. Subject to the terms of this Article 4, the persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

Section 4.6. Term of Office. Each Director shall hold office for the term for which such Director was elected, or until his death, resignation, retirement, removal disqualification or until his successor is elected and qualified. Subject to Section 4.1, at the first election of Directors following the Turnover Date, the Members shall elect three (3) Directors. The Member who receives the most votes shall serve for a three (3) year term. The Member who gets the next highest number of votes shall serve for a two (2) year term. The Member receiving the next highest number of votes shall serve for a one (1) year term. Votes shall be tallied at the meeting at which they are cast and, in the event of a tie vote, a run-off election shall be conducted at the same meeting. After the initial election of Directors, each Director shall thereafter serve for a three (3) year term. Nothing herein contained shall be construed to prevent the election of a Director to succeed himself.

Section 4.7. Removal. Subject to Section 4.1, any Director may be removed from the Board, with or without cause, by a majority vote of the Members of the Association. In the event of death, resignation or removal of a Director, such Director's successor shall be selected by the remaining members of the Board and shall save for the unexpired term of his predecessor. The Members may elect a Director at any time to fill any vacancy not filled by the remaining members of the Board.

Section 4.8. Compensation. No Director shall receive compensation for any service he may render to the Association. However, any Director may be reimbursed for his actual expenses incurred in the performance of his duties.

ARTICLE 5

MEETINGS OF DIRECTORS

Section 5.1. Regular Meetings. Meetings of the Board of Directors shall be held on a regular basis as often as the Board sees fit, but no less often than annually, on such days and at such place and hour as may be fixed from time to time by resolution of the Board. If the meeting falls upon a legal holiday, then that meeting shall be held at the same time on the next day that is not a legal holiday.

Section 5.2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two (2) Directors, after not less than three (3) days notice to each Director.

Section 5.3. Quorum. A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors

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present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

Section 5.4. Informal Action by Directors. Action taken by a majority of the Directors without a meeting is nevertheless Board action if written consent to the action in question is signed by all of the Directors and filed with the minutes of the proceedings of the Board, whether done before or after the action so taken.

Section 5.5. Chairman. A Chairman of the Board of Directors shall be elected by the Directors and shall preside over all Board meetings until the President of the Association is elected. Thereafter, the President shall serve as Chairman. In the event there is a vacancy in the office of the Presidency, a Chairman shall be elected by the Board of Directors and serve until a new President is elected.

Section 5.6. Liability of the Board. The members of the Board of Directors shall not be liable to the Members for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The Members shall indemnify, defend and hold harmless each of the Directors against all contractual liability to others arising out of contracts made by the Board on behalf of the Association, unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or these Bylaws. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Association, except to the extent that they are also Members.

ARTICLE 6

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 6.1. Powers. The Board of Directors, for the benefit of the Members, shall have the following specific powers and rights (without limitation, however, with respect to any other powers and rights which the Board may possess under South Carolina law or under the Declaration):

- (a) To adopt and publish rules and regulations governing the use of the Common Areas and facilities and the personal conduct of the Members and their families, guests and invitees thereon, and to establish penalties for the infraction or violation thereof;
- (b) To suspend any Member's voting rights and right to use the Common Areas during any period in which such Member shall be in default in the payment of any Assessment levied by the Association. Such rights may also be suspended (after notice and hearing) for a period not to exceed sixty (60) days for infraction or violation of published rules and regulations;
- (c) To exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the Members by other provisions of these Bylaws, the Articles of Incorporation, or the Declaration;
- (d) To declare the office of a Director to be vacant in the event such Director is absent from three (3) consecutive regular meetings of the Board of Directors;

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(e) To employ a manager, an independent contractor, or such other employee(s) as the Board deems necessary, and prescribe their duties;

(f) To grant all necessary easements and rights-of-way upon, over, under and across the Common Areas when it deems such action to be necessary and appropriate, including, but not limited to, easements for the installation and maintenance of electrical, telephone, cablevision, water, sanitary sewer and other utilities or drainage facilities, provided, however, until such time as Declarant no longer owns any portion of the Property, the Board may not grant such an easement or right-of-way without the prior written approval of Declarant;

(g) To appoint and remove all officers, agents and employees of the Association, prescribe their duties, set their compensation and require of them such security or fidelity bonds as it may deem expedient;

(h) To enter into agreements or contracts with utility companies with respect to utility installation, consumption and service matters relating to the Common Areas and/or the Association;

(i) To enter into agreements or contracts with builders regarding the construction of Improvements on Lots located in the Development;

(j) To retain the services of legal, accounting and other professional firms;

(k) To employ or retain the services of architects or other qualified persons to serve on or advise the ECC;

(l) To maintain contingency reserves for the purposes set forth in the Declaration;

(m) To enforce the provisions of the Declaration and any Additional or Supplemental Declaration and any rules or regulations made hereunder or thereunder;

(n) To levy Assessments as more particularly set forth in the Declaration; and

(o) To take any and all other actions, and to enter into any and all other agreements, as may be necessary for the fulfillment of its obligations under the Declaration or these Bylaws.

Section 6.2. Duties. The Board, for the benefit of the Members, shall have the following specific duties (without limitation of other duties the Board may have):

(a) To maintain current copies of the Declaration, these Bylaws and other rules concerning the Development, as well as Association books, records and financial statements, available for inspection upon reasonable notice and during normal business hours by all Owners, Mortgagees and insurers and guarantors of Mortgages that are secured by Lots;

(b) To supervise all officers, agents and employees of the Association to ensure that their duties are properly performed;

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- (c) As more fully provided in the Declaration:
 - (i) To set the amount of the Assessments;
 - (ii) To send written notice of each Assessment to every Owner subject thereto before its due date; and
 - (iii) To foreclose the lien against any Lot for which Assessments are not paid or to bring an action at law against the Owner personally obligated to pay the same;
- (d) To issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any Assessment has been paid, which certificate shall be conclusive evidence of such payment;
- (e) To procure and maintain adequate liability insurance covering the Association and the Directors and officers thereof and adequate hazard insurance on the property owned by the Association, all in accordance with the Declaration;
- (f) To cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate, in accordance with the Declaration;
- (g) To maintain or cause to be maintained the Common Areas (including the upkeep and maintenance of associated improvements) in accordance with the Declaration;
- (h) Until accepted for maintenance by the Oconee County Public Works Department or other governmental authority, to own and maintain or cause to be maintained the Public Roads (including any swales and medians) to the standard of maintenance (if one is ascertainable) which would be required by the Oconee County Public Works Department or other governmental authority, as the case may be, before it would accept the Public Roads for maintenance;
- (i) To maintain or cause to be maintained any sidewalks in the Development to the extent not maintained by a governmental authority; and
- (j) Once Declarant's right to appoint the ECC has terminated, to appoint the ECC, all as more particularly provided in the Declaration.

ARTICLE 7

OFFICERS AND THEIR DUTIES

Section 7.1. Officers. The officers of the Association shall be a President, a Vice President, a Secretary, a Treasurer, and such other officers as the Board may, from time to time, by resolution create.

Section 7.2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

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Section 7.3. Term. The Board shall elect each officer of the Association and each shall hold office for one (1) year or until his death, resignation, retirement, removal, disqualification, or his successor is elected and qualifies.

Section 7.4. Special Appointment. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority and perform such duties as the Board may, from time to time, determine.

Section 7.5. Resignation and Removal. The Board may remove any officer from office with or without cause. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 7.6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7.7. Multiple Offices. The same person may hold the offices of Secretary and Treasurer. No person shall simultaneously hold more than one of any of the other offices, except in the case of special offices created pursuant to Section 7.4.

Section 7.8. Compensation. No officer shall receive any compensation from the Association for acting as such.

Section 7.9. Duties. The duties of the officers are as follows:

(a) President - The President shall be the principal executive officer of the Association, and subject to the control of the Board, shall supervise and control the management of the Association. The President shall preside at all meetings of the Board of Directors, shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments; and shall co-sign all checks and promissory notes.

(b) Vice President - The Vice President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

(c) Secretary - The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members, shall keep the corporate seal of the Association and affix it on all papers requiring the corporate seal; shall serve notice of meetings of the Board and of the Members; shall keep appropriate current records showing the Members of the Association, together with their addresses; and shall perform such other duties as required by the Board.

(d) Treasurer - The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; shall keep

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proper books of account; and shall prepare an annual budget and a statement of income and expenditures to be presented to the Members at their regular annual meeting.

ARTICLE 8

COMMITTEES

Subject to Section 4.4, the Board shall appoint a Nominating Committee. In addition, the Board shall appoint other committees as it deems appropriate, from time to time, in carrying out its purposes.

ARTICLE 9

BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, upon reasonable notice and during reasonable business hours, be subject to inspection by any Member. The Declaration, the Articles of Incorporation and these Bylaws shall be available for inspection by any Member at the principal office of the Association.

ARTICLE 10

ASSESSMENTS

As more particularly described in the Declaration, each Member is obligated to pay Assessments to the Association. Any Assessments, which are not paid when due, shall be delinquent. If an Assessment is not paid by its due date, as set forth in the Declaration, the Assessment shall bear interest as provided therein. Any late charges, costs of collection and reasonable attorneys' fees related to any such delinquent Assessment may be added to the amount of such Assessment. No Member may waive or otherwise escape liability for the Assessments provided for herein by non-use or abandonment of its Lot.

ARTICLE 11

CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words MOUNTAIN VIEW POINTE OWNERS ASSOCIATION, INC. - 2002 - S.C.

ARTICLE 12

AMENDMENTS

Section 12.1. Procedure for Amendment. Subject to the limitations hereinafter contained, the Articles of Incorporation and these Bylaws may be amended or modified at any time by a vote of no less than a majority of all votes entitled to be cast by the Members, which vote is taken at a duly held meeting of the Members at which a quorum is present, all in accordance with these Bylaws. Provided, however, if a majority of all votes entitled to be cast by

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the Members cannot be obtained at such a meeting, then the Articles of Incorporation and these Bylaws may be amended by obtaining the vote of a majority of all votes present at a duly held meeting of the Members at which a quorum is present and by, within ninety (90) days of such vote, obtaining written consent to such amendment by Members holding a sufficient number of votes to comprise, along with such voting Members, a majority of all votes entitled to be cast by the Members. Further provided, that any amendment or modification to the Articles of Incorporation and these Bylaws must be consented to by Declarant so long as Declarant is the Owner of any Lot or other portion of the Property, which consent Declarant may grant or withhold in its sole discretion. In addition, Declarant, without obtaining the approval of any other Member or any other Owner or Owners, may make amendments or modifications to the Articles of Incorporation and these Bylaws which either: (a) are correctional in nature only and do not involve a change which materially adversely affects the rights, duties or obligations specified herein or therein; or (b) apply only to the portions of the Property then owned by Declarant. Any amendment or modification effected pursuant to this Section 12.1 shall become effective with respect to these Bylaws when an instrument is filed of record in the Office of the Register of Deeds for Oconee County, South Carolina, provided, however, such an amendment or modification in lieu of being executed by the Members voting for such amendment or modification, may contain a certification of the Secretary of the Association stating that the amendment or modification has been voted on and approved by the requisite number of votes of the Members, as provided in this Section 12.1, and when with respect to the Articles of Incorporation any amendment or modification is filed of record in the Office of the South Carolina Secretary of State.

Notwithstanding anything in this Section 12.1 to the contrary, The Class B Member may at its option amend the Articles of Incorporation and these Bylaws without obtaining the consent or approval of any other person or entity if such amendment is necessary to cause these Bylaws or the Articles of Incorporation to comply with the requirements of the FIAA, VA, Federal National Mortgage Association or any other governmental agency. The Class B Member, without obtaining the approval of any other person or entity, may also make amendments or modifications hereto which are correctional in nature only and do not involve a change which materially adversely affects the rights, duties or obligations specified herein.

Section 12.2. Resolution of Conflict. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control. In the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

ARTICLE 13

MISCELLANEOUS

The fiscal year of the Association shall be the calendar year and shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

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ARTICLE 14

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INDEMNIFICATION OF DIRECTORS AND OFFICERS

Neither Declarant, nor any Member, nor the Board, nor the Association, nor any officers, Directors, agents or employees of any of them shall be personally liable for debts contracted for or otherwise incurred by the Association or for a tort of another Member, whether or not such other Member was acting on behalf of the Association or otherwise. Neither Declarant, nor the Association, nor their Directors, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portions thereof or for failure to repair or maintain the same. Declarant, the Association or any other person, firm or entity making such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portions thereof.

The Association shall, to the extent permitted by applicable law, indemnify and defend all members of the Board from and against any and all loss, cost, expense, damage, liability, claim, action or cause of action arising from or relating to the performance by the Board of its duties and obligations, except for any such loss, cost, expense, damage, liability, claim, action or cause of action resulting from the gross negligence or willful misconduct of the person(s) to be indemnified.

The Association shall indemnify any Director or officer or former Director or officer of the Association or any person who may have served at the request of the Association as a director or officer of another corporation, whether for profit or not for profit, against expenses (including reasonable attorneys' fees) or liabilities actually and reasonably incurred by him in connection with the defense of or as a consequence of any threatened pending or completed action, suit or proceeding (whether civil or criminal) in which he is made a party or was (or is threatened to be made) a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for gross negligence or willful misconduct in the performance of a duty.

The indemnifications provided herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any statute, bylaw, agreement, vote of Members or any disinterested Directors or otherwise and shall continue as to any person who has ceased to be a Director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such person.

The Association may purchase and maintain insurance on behalf of any person who is or was a Director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability.

The Association's indemnity of any person who is or was a Director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director,

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officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall be reduced by any amounts such person may collect as indemnification (i) under any policy of insurance purchased and maintained on his behalf by the Association, or (ii) from such other corporation, partnership, joint venture, trust or other enterprise.

Nothing contained in this Article 14, or elsewhere in these Bylaws, shall operate to indemnify any Director or officer if such indemnification is for any reason contrary to any applicable state or federal law.

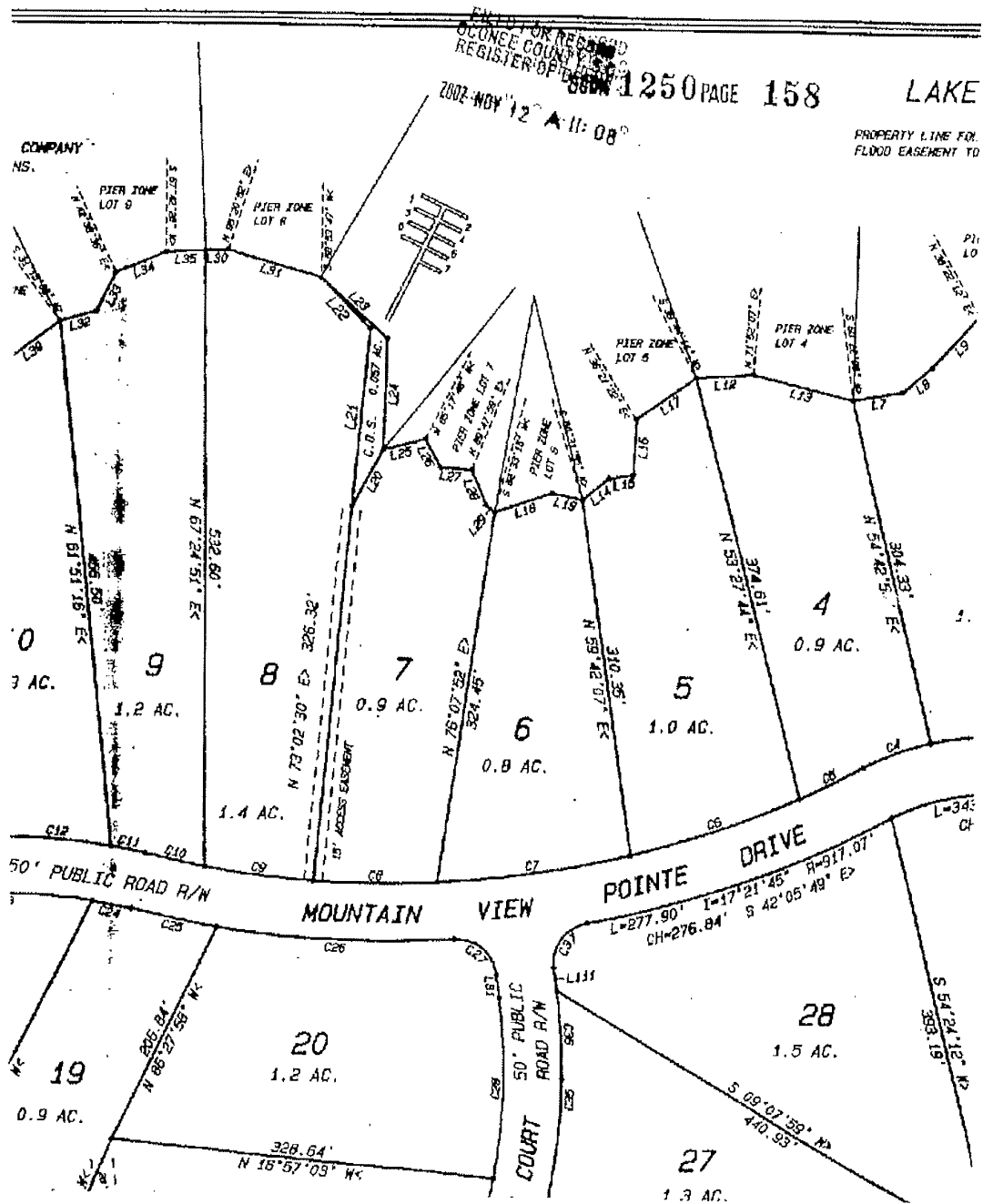
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EXHIBIT "C"
TO
DECLARATION
FOR
MOUNTAIN VIEW POINTE

BOOK 1250 PAGE 157

Boatslips

EXHIBIT "C"



FILED FOR RECORD
OCONEE COUNTY, S.C.
REGISTER OF DEEDS

Doc ID: 003675730013 Type: DEED
BK 1742 Pg 188-200

BYLAWS OF
MOUNTAIN VIEW POINTE OWNERS' ASSOCIATION, INC.

(As Amended Effective March 7, 2009)

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ARTICLE 1

Section 1.1. Name. The name of the non-profit corporation is MOUNTAIN VIEW POINTE OWNERS ASSOCIATION, INC. (the "Association").

Section 1.2. Location. The principal office of the Association shall be the residence address of the President of the Association, provided it is located in the Mountain View Pointe Subdivision. If the President's residence is not so located, the principal office shall be as agreed upon by the Board of Directors. The registered office of the Association may be, but need not be, identical with the principal office.

Section 1.3. Purpose. The purpose for which the Association is organized is to further social activities of Owners of Lots in Mountain View Pointe Subdivision located in Oconee County, South Carolina, to provide services to the Owners, manage and maintain the Common Areas and administer and enforce all covenants and restrictions dealing with the Property located in Mountain View Pointe, and any other purposes allowed by law.

ARTICLE 2

DEFINITIONS

All capitalized terms when used in these Bylaws, or any amendment hereto (unless the context shall otherwise require or unless otherwise specified herein or therein) shall have the meanings set forth in that certain Declaration of Covenants, Conditions and Restrictions for Mountain View Pointe executed by Crescent Communities S.C., LLC, and duly recorded in the Office of the Register of Deeds of Oconee County, South Carolina (as supplemented and amended, from time to time, the "Declaration").

ARTICLE 3

MEETINGS OF MEMBERS

Section 3.1. Annual Meetings. Annual meetings of the Members shall be held during the month of March or April at a reasonable time to be determined by the Board.

Section 3.2. Special Meeting. Special meetings of the Members may be called at any time by the President of the Association, by the Board of Directors, or upon the written request of the Members who are entitled to vote at least ten percent (10%) of all of the votes appurtenant to the Lots.

Section 3.3. Meetings of Groups of Certain Lot Owners. From time to time, meetings (a) the Members owning Boatship Lots and (b) the Members who are Private Road Lot Owners (each, a "Member Group") may be called at any time by the President of the Association, by the Board of Directors, or upon the written request of the Members who are entitled to vote at least

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1 (b)

ten percent (10%) of all of the votes appurtenant to the relevant Member Group, for the purpose of discussing and voting on matters affecting the Member Group. Such meetings may be held at the annual meeting of the Members or at a special meeting of the Member Group.

Section 3.4. Place of Meetings. All meetings of the Members and all meetings of any of the Member Groups shall be held at such place within Oconee County, South Carolina, as shall be determined by the Board of Directors, from time to time.

Section 3.5. Notice of Meeting. Written notice of each meeting of the Members and each meeting of any of the Member Groups shall be given by, or at the direction of, the Secretary of the Association or other person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, not less than ten (10) days nor more than sixty (60) days before the date of such meeting to each Member entitled to vote there at, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. The notice shall specify the place, day and hour of the meeting, and in the case of a special meeting, the purpose of the meeting. Notice may be hand delivered to the Member or the Member's residence in lieu of mailing, and with the consent of a Member, notice of meetings may be given via e-mail or fax.

Section 3.6. Classes of Lots and Voting Rights. The voting rights of the Members shall be appurtenant to the ownership of Lots. There shall be two (2) classes of Lots with respect to voting rights:

(a) Class A Lots. All Lots shall be Class A Lots, except Class B Lots as defined below. Each Class A Lot shall entitle the Owner(s) of said Lot to one (1) vote. When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to said Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Class A Lot. No Member who is delinquent in the payment of any fee or assessment shall be entitled to vote.

(b) Class B Lots. Class B Lots shall be all Lots owned by Declarant that have not been conveyed to purchasers who are not affiliated with the Declarant. Each Class B Lot shall entitle the Owner of said Lot to four (4) votes for each Class B Lot owned by it.

Section 3.7. Relinquishment of Control. The Class B Membership shall cease and be converted to Class A Membership on the first to occur of the following events:

- (a) when the total number of votes in the Class A Membership exceeds the total number of votes in the Class B Membership;
- (b) upon the expiration of ten (1) years after the recordation of the Declaration; or
- (c) upon the election of Declarant, in its sole discretion, to terminate its Class B Membership and to convert the Class B Lots to Class A Lots. Any such election, to be effective, must be in writing and recorded in the Office of the Register of Deeds for Oconee County, South Carolina.

The earliest to occur of (a), (b) or (c) above shall be referred to as the "Turnover Date." After the Turnover Date and for so long as Declarant owns any part of the Property, Declarant shall be a Class A member.

Section 3.8. Quorum. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, twenty percent (20%) of the votes appurtenant to the Lots (or to the Lots of any Member Group) shall constitute a quorum for any action, except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, subsequent meetings may be called, subject to the same notice requirement, until the required quorum is present. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 3.9. Proxies. At all meetings of Members or any Member Group, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary of the Association. Every proxy shall be revocable and shall automatically cease upon conveyance of the applicable Member's Lot.

Section 3.10. Action by Members. Except as provided otherwise in the Articles of Incorporation, the Declaration or these Bylaws, any act or decision approved by a majority vote of all votes entitled to be cast by all classes of Members, present or represented by legitimate proxy at a legally constituted meeting at which a quorum is present, shall be regarded as the act of the Members. Notwithstanding any term or provision herein, the affirmative vote of no less than two-thirds (2/3) of all votes entitled to be cast by all classes of Members shall be required in order for the Association to (a) file a complaint, on account of an act or omission of Declarant, with any governmental agency which has regulatory or judicial authority over the Development or any part thereof, or (b) assert a claim against or sue Declarant.

Section 3.11. Action by Members of a Member Group. Except as otherwise provided in the Articles of Incorporation, the Declaration or these Bylaws, any act or decision approved by a majority vote of all votes entitled to be cast by the Members of any of the Member Groups, present or represented by legitimate proxy at a legally constituted meeting at which a quorum of the Members of the Member Group is present, shall be regarded as the act of such Member Group.

Section 3.12. Waiver of Notice. Any Member may, at any time, waive notice of any meeting of the Members, (or any meeting of any of the Member Groups) in writing and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Member at any such meeting shall constitute a waiver of notice by such Member of the time and place thereof, except where such Member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called. If all of the Members are present at any meeting of the Members (or a Member Group), no notice shall be required and any business may be transacted at such meeting.

Section 3.13. Informal Action by Members. Any action which may be taken at a meeting of the Members (or a Member Group), may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the persons who would be

entitled to vote upon such action at a meeting and filed with the Secretary of the Association to be kept in the Association's minute book.

Section 3.14. Class Voting Prohibited. Class voting is expressly prohibited under these Bylaws.

ARTICLE 4

BOARD OF DIRECTORS

Section 4.1. Number. A Board of three (3) Directors shall manage the business and affairs of the Association. The Directors shall be elected in accordance with Section 4.3 and Section 4.4.

Section 4.2. Nomination. A Nominating Committee shall make nominations for election to the Board of Directors, but nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two (2) or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors sufficiently prior to an annual meeting to enable the Nominating Committee to make all necessary nominations to be acted upon by the Members at the annual meeting, and shall serve until the close of that annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.

Section 4.3. Election. The Board of Directors shall be elected at the annual meeting of the Members by written ballot. At such election, the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Articles of Incorporation, these Bylaws and the Declaration. Subject to the terms of this Article 4, the persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

Section 4.4. Term of Office. Each Director shall hold office for the term for which such Director was elected, or until his death, resignation, retirement, removal disqualification or until his successor is elected and qualified. Each Director shall be elected to serve a three (3) year term unless elected to complete the unexpired term of a predecessor Director. Directors shall be elected so that one Director's three year term expires each year. If at any meeting more than one Director is to be elected, the nomination of the Member shall specify the duration of the term the Director is to serve; i.e., whether the Director's term is to be a full three (3) year term, or for the period of a predecessor's unexpired term. If more than one Member is nominated to serve any particular term for which a Director must be elected, the Member who receives the most votes shall serve that term. Nothing herein contained shall be construed to prevent the election of a Director to succeed himself.

Section 4.5. Removal. Any Director may be removed from the Board, with or without cause, by a majority vote of the Members of the Association. In the event of death, resignation or removal of a Director, such Director's successor may be selected by the remaining members of

the Board and shall serve for the unexpired term of his predecessor. The Members may elect a Director at any time to fill any vacancy not filled by the remaining members of the Board.

Section 4.6. Compensation. No Director shall receive compensation for any service rendered to the Association. However, any Director may be reimbursed for actual expenses incurred in the performance of the Director's duties.

ARTICLE 5

MEETINGS OF DIRECTORS

Section 5.1. Regular Meetings. Meetings of the Board of Directors shall be held as often as the Board sees fit, but no less often than annually, on such days and at such place and hour as may be fixed from time to time by resolution or other agreement of the Board. If a meeting called other than by agreement of all Directors falls upon a legal holiday, then that meeting shall be held at the same time on the next day that is not a legal holiday.

Section 5.2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two (2) Directors, after not less than three (3) days notice to each Director.

Section 5.3. Quorum. A majority of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

Section 5.4. Informal Action by Directors. Action taken by a majority of the Directors without a meeting is nevertheless Board action if written consent to the action in question is signed by all of the Directors and filed with the minutes of the proceedings of the Board, whether done before or after the action so taken.

Section 5.5. Chairman. The President of the Association shall serve as Chairman of the Board. In the event there is a vacancy in the office of the Presidency, a Chairman shall be elected by the Board of Directors and serve until a new President is elected.

Section 5.6. Liability of the Board. The members of the Board of Directors shall not be liable to the Members for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The Members shall indemnify, defend and hold harmless each of the Directors against all contractual liability to others arising out of contracts made by the Board on behalf of the Association, unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or these Bylaws. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Association, except to the extent that they are also Members.

ARTICLE 6

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 6.1. Powers. The Board of Directors, for the benefit of the Members, shall have the following specific powers and rights (without limitation, however, with respect to any other powers and rights which the Board may possess under South Carolina law or under the Declaration):

- (a) To adopt and publish rules and regulations governing the use of the Common Areas and facilities and the personal conduct of the Members and their families, guests and invitees thereon, and to establish penalties for the infraction or violation thereof;
- (b) To suspend any Member's voting rights and right to use the Common Areas during any period in which such Member shall be in default in the payment of any Assessment levied by the Association. Such rights may also be suspended (after notice and hearing) for a period not to exceed sixty (60) days for infraction or violation of published rules and regulations;
- (c) To exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the Members by other provisions of these Bylaws, the Articles of Incorporation, or the Declaration;
- (d) To declare the office of a Director to be vacant in the event such Director is absent from three (3) consecutive regular meetings of the Board of Directors;
- (e) To employ a manager, an independent contractor, or such other employee(s) as the Board deems necessary, and prescribe their duties;
- (f) To grant all necessary easements and rights-of-way upon, over, under and across the Common Areas when it deems such action to be necessary and appropriate, including, but not limited to, easements for the installation and maintenance of electrical, telephone, cablevision, water, sanitary sewer and other utilities or drainage facilities, provided, however, until such time as Declarant no longer owns any portion of the Property, the Board may not grant such an easement or right-of-way without the prior written approval of Declarant;
- (g) To appoint and remove all officers, agents and employees of the Association, prescribe their duties, set their compensation and require of them such security or fidelity bonds as it may deem expedient;
- (h) To enter into agreements or contracts with utility companies with respect to utility installation, consumption and service matters relating to the Common Areas and/or the Association;
- (i) To enter into agreements or contracts with builders regarding the construction of Improvements on Lots located in the Development;

- (j) To retain the services of legal, accounting and other professional firms;
- (k) To employ or retain the services of architects or other qualified persons to serve on or advise the ECC;
- (l) To maintain contingency reserves for the purposes set forth in the Declaration;
- (m) To enforce the provisions of the Declaration and any Additional or Supplemental Declaration and any rules or regulations made hereunder or thereunder;
- (n) To levy Assessments as more particularly set forth in the Declaration; and
- (o) To take any and all other actions, and to enter into any and all other agreements, as may be necessary for the fulfillment of its obligations under the Declaration or these Bylaws.

Section 6.2. Duties. The Board, for the benefit of the Members, shall have the following specific duties (without limitation of other duties the Board may have):

- (a) To maintain current copies of the Declaration, these Bylaws and other rules concerning the Development, as well as Association books, records and financial statements, available for inspection upon reasonable notice and during normal business hours by all Owners, Mortgagees and insurers and guarantors of Mortgages that are secured by Lots;
- (b) To supervise all officers, agents and employees of the Association to ensure that their duties are properly performed;
- (c) As more fully provided in the Declaration:
 - (i) To set the amount of the Assessments;
 - (ii) To send written notice of each Assessment to every Owner subject thereto before its due date; and
 - (iii) To foreclose the lien against any Lot for which Assessments are not paid or to bring an action at law against the Owner personally obligated to pay the same;
- (d) To issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any Assessment has been paid, which certificate shall be conclusive evidence of such payment;

(e) To procure and maintain adequate liability insurance covering the Association and the Directors and officers thereof and adequate hazard insurance on the property owned by the Association, all in accordance with the Declaration;

(f) To cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate, in accordance with the Declaration;

(g) To maintain or cause to be maintained the Common Areas (including the upkeep and maintenance of associated improvements) in accordance with the Declaration;

(h) Until accepted for maintenance by the Oconee County Public Works Department or other governmental authority, to own and maintain or cause to be maintained the Public Roads (including any swales and medians) to the standard of maintenance (if one is ascertainable) which would be required by the Oconee County Public Works Department or other governmental authority, as the case may be, before it would accept the Public Roads for maintenance;

(i) To maintain or cause to be maintained any sidewalks in the Development to the extent not maintained by a governmental authority; and

(j) An ECC may be created and members appointed or removed from time to time as the Board may deem necessary within its sole discretion, all as more particularly provided in the Declaration.

ARTICLE 7

OFFICERS AND THEIR DUTIES

Section 7.1. Officers. The officers of the Association shall be a President, a Secretary, a Treasurer, and such other officers as the Board may, from time to time, by resolution create. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

Section 7.2. Term. The Board shall elect each officer of the Association and each shall hold office for one (1) year or until his death, resignation, retirement, removal, disqualification, or his successor is elected and qualifies.

Section 7.3. Special Appointment. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority and perform such duties as the Board may, from time to time, determine.

Section 7.4. Resignation and Removal. The Board may remove any officer from office with or without cause. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 7.5. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7.6. Multiple Offices. The same person may hold the offices of Secretary and Treasurer. No person shall simultaneously hold more than one of any of the other offices, except in the case of special offices created pursuant to Section 7.4.

Section 7.7. Compensation. No officer shall receive any compensation from the Association for acting as such.

Section 7.8. Duties. The duties of the officers are as follows:

(a) President - The President shall be the principal executive officer of the Association, and subject to the control of the Board, shall supervise and control the management of the Association. The President shall preside at all meetings of the Board of Directors, shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments; and shall co-sign all checks and promissory notes.

(b) Vice President - Should the Board appoint a Vice President, then subject to any other duties or limitations imposed by Board resolution, the Vice President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

(c) Secretary - The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members, shall keep the corporate seal of the Association and affix it on all papers requiring the corporate seal; shall serve notice of meetings of the Board and of the Members; shall keep appropriate current records showing the Members of the Association, together with their addresses; and shall perform such other duties as required by the Board.

(d) Treasurer - The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; shall keep proper books of account; and shall prepare an annual budget and a statement of income and expenditures to be presented to the Members at their regular annual meeting.

ARTICLE 8

COMMITTEES

Subject to Section 4.2, the Board shall appoint a Nominating Committee. In addition, the Board shall appoint other committees as it deems appropriate, from time to time, in carrying out its purposes.

ARTICLE 9

BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, upon reasonable notice and during reasonable business hours, be subject to inspection by any Member. The Declaration, the Articles of Incorporation and these Bylaws shall be available for inspection by any Member at the principal office of the Association.

ARTICLE 10

ASSESSMENTS

As more particularly described in the Declaration, each Member is obligated to pay Assessments to the Association. Any Assessments, which are not paid when due, shall be delinquent. If an Assessment is not paid by its due date, as set forth in the Declaration, the Assessment shall bear interest as provided therein. Any late charges, costs of collection and reasonable attorneys' fees related to any such delinquent Assessment may be added to the amount of such Assessment. No Member may waive or otherwise escape liability for the Assessments provided for herein by non-use or abandonment of his Lot.

ARTICLE 11

CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words MOUNTAIN VIEW POINTE OWNERS ASSOCIATION, INC.- 2002 - S.C.

ARTICLE 12

AMENDMENTS

Section 12.1. Procedure for Amendment. Subject to the limitations hereinafter contained, the Articles of Incorporation and these Bylaws may be amended or modified at any time by a vote of no less than a majority of all votes entitled to be cast by the Members, which vote is taken at a duly held meeting of the Members at which a quorum is present, all in accordance with these Bylaws. Provided, however, if a majority of all votes entitled to be cast by the Members cannot be obtained at such a meeting, then the Articles of Incorporation and these Bylaws may be amended by obtaining the vote of a majority of all votes present at a duly held meeting of the Members at which a quorum is present and by, within ninety (90) days of such vote, obtaining written consent to such amendment by Members holding a sufficient number of votes to comprise, along with such voting Members, a majority of all votes entitled to be cast by the Members. Further provided, that any amendment or modification to the Articles of Incorporation and these Bylaws must be consented to by Declarant so long as Declarant is the Owner of any Lot or other portion of the Property, which consent Declarant may grant or withhold in its sole discretion. In addition, Declarant, without obtaining the approval of any other Member or any other Owner or Owners, may make amendments or modifications to the Articles

of Incorporation and these Bylaws which either: (a) are correctional in nature only and do not involve a change which materially adversely affects the rights, duties or obligations specified herein or therein; or (b) apply only to the portions of the Property then owned by Declarant. Any amendment or modification effected pursuant to this Section 12.1 shall become effective with respect to these Bylaws when an instrument is filed of record in the Office of the Register of Deeds for Oconee County, South Carolina, provided, however, such an amendment or modification in lieu of being executed by the Members voting for such amendment or modification, may contain a certification of the Secretary of the Association stating that the amendment or modification has been voted on and approved by the requisite number of votes of the Members, as provided in this Section 12.1, and when with respect to the Articles of Incorporation any amendment or modification is filed of record in the Office of the South Carolina Secretary of State.

Notwithstanding anything in this Section 12.1 to the contrary, The Class B Member may at its option amend the Articles of Incorporation and these Bylaws without obtaining the consent or approval of any other person or entity if such amendment is necessary to cause these Bylaws or the Articles of Incorporation to comply with the requirements of the FHA, VA, Federal National Mortgage Association or any other governmental agency. The Class B Member, without obtaining the approval of any other person or entity, may also make amendments or modifications hereto which are correctional in nature only and do not involve a change which materially adversely affects the rights, duties or obligations specified herein.

Section 12.2. Resolution of Conflict. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control. In the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

ARTICLE 13

MISCELLANEOUS

The fiscal year of the Association shall be the calendar year and shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

ARTICLE 14

INDEMNIFICATION OF DIRECTORS AND OFFICERS

Neither Declarant, nor any Member, nor the Board, nor the Association, nor any officers, Directors, agents or employees of any of them shall be personally liable for debts contracted for or otherwise incurred by the Association or for a tort of another Member, whether or not such other Member was acting on behalf of the Association or otherwise. Neither Declarant, nor the Association, nor their Directors, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portions thereof or for failure to repair or maintain the same. Declarant, the Association and their Officers, Directors and/or any Member making such repairs or maintenance on behalf of the Association shall not be liable for any personal injury or other incidental or consequential damages

occasioned by any act or omission in the repair or maintenance of any premises, improvements or portions thereof.

The Association shall, to the extent permitted by applicable law, indemnify and defend all members of the Board from and against any and all loss, cost, expense, damage, liability, claim, action or cause of action arising from or relating to the performance by the Board of its duties and obligations, except for any such loss, cost, expense, damage, liability, claim, action or cause of action resulting from the gross negligence or willful misconduct of the person(s) to be indemnified.

The Association shall indemnify any Director or Officer or former Director or Officer of the Association or any person who may have served at the request of the Association as a director or officer of another corporation, whether for profit or not for profit, against expenses (including reasonable attorneys' fees) or liabilities actually and reasonably incurred by him in connection with the defense of or as a consequence of any threatened pending or completed action, suit or proceeding (whether civil or criminal) in which he is made a party or was (or is threatened to be made) a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for gross negligence or willful misconduct in the performance of a duty.

The indemnifications provided herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any statute, bylaw, agreement, vote of Members or any disinterested Directors or otherwise and shall continue as to any person who has ceased to be a Director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such person.

The Association may purchase and maintain insurance on behalf of any person who is or was a Director, Officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability.

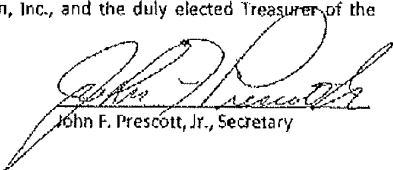
The Association's indemnity of any person who is or was a Director, Officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall be reduced by any amounts such person may collect as indemnification (i) under any policy of insurance purchased and maintained on his behalf by the Association, or (ii) from such other corporation, partnership, joint venture, trust or other enterprise.

Nothing contained in this Article 14, or elsewhere in these Bylaws, shall operate to indemnify any Director or officer if such indemnification is for any reason contrary to any applicable state or federal law.

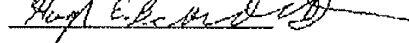
SECRETARY'S CERTIFICATE

I, John F. Prescott, Jr. hereby certify that I am a duly elected member of the Board of Directors of Mountain View Pointe Owners' Association, Inc., and the duly elected Secretary of Mountain View Pointe Owners' Association, Inc. I further certify that the foregoing Bylaws of Mountain View Pointe Owners' Association, Inc. were adopted by the unanimous vote of the members of the Association present at the annual meeting of the Association held on March 7, 2009, (members present in person or by proxy representing 25 of the 29 Lots in the Addition and therefore constituting a quorum for these purposes), and that said Bylaws have therefore been duly and validly adopted by the Association and amend and supersede the former Bylaws of the Association attached as Exhibit B to the Declaration of Covenants, Conditions and Restrictions for Mountain View Pointe, which Declarations were recorded with the Register of Deeds of Oconee County on November 12, 2002 at Deed Book 1250, Page 093.

I further certify that Hugh E. ("Ed") Bearden III, witness hereto, is a duly elected member of the Board of Directors of Mountain View Pointe Owners' Association, Inc., and the duly elected President of the Association, and that Albert D. ("Al") Owens, witness hereto, is a duly elected member of the Board of Directors of Mountain View Pointe Owners' Association, Inc., and the duly elected Treasurer of the Association.


 John F. Prescott, Jr., Secretary

WITNESSES:

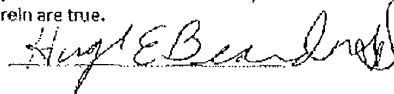



STATE OF SOUTH CAROLINA)

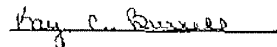
COUNTY OF OCONEE)

PROBATE

PERSONALLY appeared before me, Kay Burrell, John F. Prescott, Jr. and the witnesses Hugh E. Bearden III and Albert D. Owens. Mr. Prescott, having made oath, swore to the truth of the matters stated in the above Secretary's Certificate and executed the same before me in the presence of the two witnesses. The witnesses, Hugh E. Bearden III and Albert D. Owens, having made oath, affirmed that they saw Mr. Prescott execute the Certificate and that the matters stated therein are true.



SWORN TO BEFORE ME THIS

7 DAY OF October, 2009


Notary Public for South Carolina.

My Commission Expires: 5/24/10
 FILED FOR RECORD
 OCONEE COUNTY, S.C.
 REGISTER OF DEEDS
 2009 OCT 20 P 4 29



PLAY PREPARED FOR

2) MOUNTAIN VIEW
POINTE

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01775

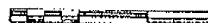
DATE: OCTOBER 22, 2002

STATE OF SOUTH CAROLINA

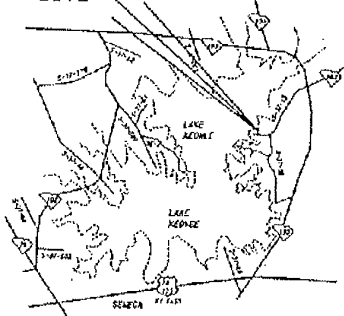
COUNTY OF OCONEE

TOWNSHIP OF SENECA

SCALE: 1" = 100'



SITE



I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREIN WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS B SURVEY AS SPECIFIED THEREIN.

THERE ARE NO VISIBLE ENCRONCHMENTS OR PROJECTIONS
OTHER THAN SIGN.

777-88-2-112-01
DEWAVE COUNTY PLANNING COMMISSION
416 N. Pine Street
Wabash, IN 46781

Record Mts 12 day of
Vol 153 2003
2010 PM 12 and Certified
Register of Deeds, Georgia County



Gregory Wayne Eastore
GREGORY WAYNE EASTORE
P.O. BOX 205 SENECA, SD 57082
TELEPHONE (605) 202-0024

PALESTINE-UNIVERSITY OF JERUSALEM

OCONEE COUNTY

STATE TAX _____

COUNTY TAX _____

EXEMPT ☒

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

BOOK 1411 PAGE 237

FILED FOR RECORD
OCONEE COUNTY, S.C.
REGISTER OF DEEDS

2005 APR 13 P 3 46

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that CRESCENT COMMUNITIES S.C., LLC, a Delaware limited liability company, ("Grantor") for and in consideration of the sum of: [See attached Affidavit of Value] and other good and valuable consideration to Grantor in hand paid at or before the sealing of these presents by MOUNTAIN VIEW POINTE OWNERS ASSOCIATION, INC., a South Carolina non-profit corporation ("Grantee") whose address is c/o Association Management Group, Attn: Starr Greenleaf, 3104 Grandview Drive, Suite B, Simpsonville, SC, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released and by these presents does grant, bargain, sell and release unto Grantee, Grantee's successors and assigns forever, all of that certain real property situated in Oconee County, South Carolina (collectively, the "Property"), as more particularly described as follows:

All that certain property labeled as "COS," "Common Open Space," "Access Area," and the seven (7) Community Boatslips, all as more particularly shown on plat of survey entitled "Mountain View Pointe," dated October 22, 2002, prepared by Gregory Blake Sosebee, P.L.S. 14818, and recorded on in Volume A910, Pages 1 and 2 in the Office of the Register of Deeds, Oconee County, South Carolina.

DERIVATION: Being also a portion of that property conveyed to Grantor by deed from Crescent Resources, LLC, recorded on September 9, 2002 in Deed Book 1239, Page 155 in the Office of the Register of Deeds for Oconee County and a portion of that property shown, now or formerly, on Tax Map No. 151-00-01-005 (portion) for Oconee County.

TOGETHER WITH, all and singular, the rights, members, hereditaments and appurtenances to the Property belonging or in any way incident or appertaining, including but not limited to, all improvements of any nature located on the Property and all easements and rights-of-way appurtenant thereto, and SUBJECT TO the following:

1. All covenants, conditions, easements and restrictions of record, including but not limited to those restrictions and covenants contained in that document entitled, "Declaration of Covenants, Conditions and Restrictions for Mountain View Pointe" recorded in the Office of the Register of Deeds for Oconee County, as may be supplemented, amended and/or re-recorded, from time to time;
2. The lien for ad valorem taxes for the year 2005 and subsequent years, not yet due and payable.
3. By accepting and recording this deed, Grantee signifies Grantee's understanding that Duke Power Company has certain privileges and easements affecting the Property which include the right, privilege and easement of backing, ponding, raising, flooding or diverting the waters of Lake Keowee and its tributaries upon and over the Property, as more specifically described in instruments recorded in the Office of the Register of Deeds for Oconee County, including, without limitation, the 810 foot flood easement to Duke Power Company (presently known as Duke Energy Corporation) recorded in Deed Book 633, Page 154, and Deed Book 652, Page 269, Office of the Register of Deeds for Oconee County.
4. By accepting and recording of this deed, Grantee acknowledges for itself and its successors and assigns as follows: Duke Power Company controls access to, use of and water levels in Lake Keowee. Grantee must receive a permit from Duke (or a successor manager of Lake Keowee under authority from the Federal Energy Regulatory Commission) prior to placing or constructing any pier, structure or other improvement within or upon, or conducting any activity altering the topography of, the hydroelectric project surrounding and encompassing the

NAME AND ADDRESS OF GRANTEE:

Mountain View Pointe Owners Association, Inc.
c/o Association Management Group
Attn Starr Greenleaf
3104 Grandview Drive, Ste B
Simpsonville, SC 29680

CLT 841746v1

Recorded this 14th day of April
Book 0005 Page 50821
Fee _____

Andrea R. Tipton
Auditor Oconee County, S.C.

Court
#3

BOOK 1411 PAGE 238

waters of Lake Keowee. Grantor makes no oral, express or implied representation or commitment as to the likelihood of Grantee obtaining such a permit, nor as to the continued existence, purity, depth or levels of water in Lake Keowee, and Grantor shall have no liability with respect to these matters. Construction of any such improvements is also subject to the recorded restrictions and easements affecting the Property.

5. All matters which may be shown by a current survey of the Premises or apparent upon reasonable inspection of the Property.

6. Nothing shall be held to impose any restriction on any land of Grantor not hereby conveyed.

TO HAVE AND TO HOLD, all and singular, the Premises unto Grantee, Grantee's successors and assigns forever.

And Grantor does hereby bind Grantor, Grantor's successors and assigns to warrant and forever defend, all and singular, the Property unto Grantee, Grantee's successors and assigns, against Grantor and Grantor's successors lawfully claiming, or to claim, the same or any part thereof.

IN WITNESS WHEREOF, CRESCENT COMMUNITIES S.C., LLC has caused this instrument to be executed by its duly authorized officer this 8th day of April, 2005.

WITNESSES:

CRESCENT COMMUNITIES S.C., LLC
a Delaware limited liability company

[Signature]
First Witness

By: [Signature]
Its: Vice President

Kay H. Arnette
Second Witness

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

Personally appeared before me, Amy Yu (First Witness) and made oath that he/she saw the within named Crescent Communities S.C., LLC, a Delaware limited liability company, by J. Scott Munday, its Vice President, execute and deliver the within written Deed, as the act and deed of the limited liability company, and that he/she with Kay H. Arnette (Second Witness) witnessed the execution thereof.

Sworn to before me this 8th
day of April, 2005.

[Signature]
First Witness

Kay H. Arnette (I.S.)
Notary Public for North Carolina
My Commission Expires 6-28-09

[NOTARY SEAL]



CLF 841746v1

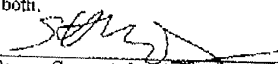
BOOK 1411 PAGE 239

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

AFFIDAVIT OF VALUE

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 all of the Common Area, Common Open Space, COS, Access Area and seven (7) Community Boatslips in Mountain View Pointe Subdivision, bearing Oconee County Tax Map Number 151-00-01-005 (portion), was transferred by Crescent Communities S.C., LLC to Mountain View Pointe Owners Association, Inc. on _____, 2005.
3. Check one of the following :
 - (a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) X _____ exempt from the deed recording fee because Exemption #1: Property is being conveyed to a non-profit corporation and no consideration is paid or received for the transfer. (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) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of _____.
 - (b) _____ The fee is computed on the fair market value of the realty which is _____.
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.
5. Check Yes _____ or No _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____.
6. The deed recording fee is computed as follows:
 - (a) _____ Place the amount listed in item 4 above here: _____
 - (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: _____
7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: none.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Seller.
9. I 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 dollars or imprisoned not more than one year, or both.


Responsible Person Connected with the Transaction

SWORN to before me this 24
day of April, 2005.
Notary Public for South Carolina, NC.
My Commission Expires: 6-20-08

BOOK 1411 PAGE 240

INFORMATION

Except as provided in this paragraph, the term "value" means the consideration paid or to be paid in money or money's worth for the realty including other realty, personal property, stocks, bonds, partnership interests, and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of a right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration under the provisions of this section. However, in the case of realty transferred between a corporation, a partnership, or other entity and its stockholder, partner, or owner, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value as determined for property tax purposes in determining fair market value under the provisions of this section.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty, as long as no consideration is paid for the transfer other than the interests in the realty that are exchanged in order to effect the partition;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust as a stockholder, partner, or trust beneficiary of the entity or so as to become a stockholder, partner, or trust beneficiary of the entity as long as no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in the stock or interest held by the grantor. However, except for transfers from one family trust to another family trust without consideration, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee, even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, as long as no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust in which the beneficiaries are all members of the same family. "Family" means the grantor, the grantor's spouse, parents, grandparents, aunts, uncles, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendant of any of them, and the grantor's and grantor's spouse's heirs under a statute of descent and distribution. A "family partnership" or "family trust" also includes charitable entities, other family partnerships and family trusts of the grantor, and charitable remainder and charitable lead trusts, if all the beneficiaries are charitable entities or members of the grantor's family. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership;
- (12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, as long as no consideration is paid or is to be paid under the corrective or quitclaim deed;
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed executed pursuant to foreclosure proceedings;
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty; and
- (15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

FILED FOR RECORD
OCONEE COUNTY, S.C.
REGISTER OF DEEDS

BOOK 1426 PAGE 274

MJS
10.00

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE 2005 JUN 20 P 4

CORRECTIVE TITLE TO REAL ESTATE
(Correcting Deed Recorded in Book 1411,
Page 237)

THE PURPOSE OF THIS CORRECTIVE DEED IS TO CORRECT THE PUBLIC
RECORD.

031962

WHEREAS, CRESCENT COMMUNITIES S.C., LLC, a Delaware limited liability company, ("Crescent") intended to convey certain real property designated as "COS," "Common Open Space," and "Access Area," by deed and the seven (7) Community Boatslips by bill of sale, to MOUNTAIN VIEW POINTE OWNERS ASSOCIATION, INC., a South Carolina non-profit corporation, ("Association") following (a) Crescent's entering into the Boatslip Leases with the Boatslip Lot Owners (as defined in the Declaration of Covenants, Conditions and Restrictions for Mountain View Pointe) and (b) the turnover of control of the Association to the Owners at the Annual Meeting to be held on June 25, 2005 (the "Turnover Date"); and

WHEREAS, the deed prepared by Crescent, due to a scrivener's error, inadvertently included the seven (7) Community Boatslips, along with the real property designated as "COS," "Common Open Space," and "Access Area," and was mistakenly recorded on April 13, 2005 and in Deed Book 1411, Page 237, Oconee County Public Registry ("Common Area Deed"), which date was prior to (a) Crescent's entering into the Boatslip Leases with the Boatslip Lot Owners and (b) the Turnover Date, as defined in the Association's Bylaws; and

WHEREAS, the Association desires to correct the public record by re-conveying to Crescent the property conveyed by the Common Area Deed, subject to Crescent's obligation to convey the "COS," "Common Open Space," and "Access Area" by deed and the seven (7) Community Boatslips by bill of sale, following Crescent's entering into the Boatslip Leases and as of the Turnover Date.

KNOW ALL MEN BY THESE PRESENTS, that, MOUNTAIN VIEW POINTE OWNERS ASSOCIATION, INC., a South Carolina non-profit corporation ("Grantor") for and in consideration of the sum of [See attached Affidavit of Value] and other good and valuable consideration to Grantor in hand paid at or before the sealing of these presents by CRESCENT COMMUNITIES S.C., LLC, a Delaware limited liability company ("Grantee") whose address is 400 South Tryon St., Suite 1300, Charlotte, North Carolina 28201, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released and by these presents does grant, bargain, sell and release unto Grantee, Grantee's successors and assigns forever, all of that certain real property situated in Oconee County, South Carolina (collectively, the "Property"), as more particularly described as follows:

All that certain property labeled as "COS," "Common Open Space," "Access Area," and the seven (7) Community Boatslips, all as more particularly shown on plat of survey entitled "Mountain View Pointe," dated October 22, 2002, prepared by Gregory Blake Sosebee, P.L.S. 14818, and recorded on in Volume A910, Pages 1 and 2 in the Office of the Register of Deeds, Oconee County, South Carolina.

DERIVATION: Being all of that property conveyed to Grantor by deed from Crescent Resources, LLC, recorded on April 13, 2005 in Deed Book 1411, Page 237 in the Office of the Register of Deeds for Oconee County and a portion of that property shown, now or formerly, on Tax Map No. 151-00-01-005 (portion) for Oconee County.

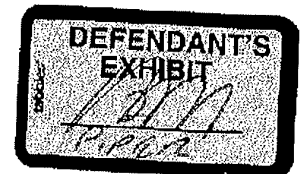
TOGETHER WITH, all and singular, the rights, members, hereditaments and appurtenances to the Property belonging or in any way incident or appertaining, including but not limited to, all improvements of any nature located on the Property and all easements and rights-of-way appurtenant thereto, and SUBJECT TO the following:

NAME AND ADDRESS OF
GRANTEE:

Crescent Communities S.C., LLC
400 South Tryon Street, Suite 1300
Charlotte, NC 28201
CLT 841746v2

OCONEE COUNTY
STATE TAX
COUNTY TAX
EXEMPT

Recorded this 21st day of June
Book 2005 Page 50377
Auditors Oconee County, S.C.



Court #4

BOOK 1426 PAGE 275

1. All covenants, conditions, easements and restrictions of record, including but not limited to those restrictions and covenants contained in that document entitled, "Declaration of Covenants, Conditions and Restrictions for Mountain View Pointe" recorded in the Office of the Register of Deeds for Oconee County, as may be supplemented, amended and/or re-recorded, from time to time;

2. The lien for ad valorem taxes for the year 2005 and subsequent years, not yet due and payable.

TO HAVE AND TO HOLD, all and singular, the Premises unto Grantee, Grantee's successors and assigns forever.

And Grantor does hereby bind Grantor, Grantor's successors and assigns to warrant and forever defend, all and singular, the Property unto Grantee, Grantee's successors and assigns, against Grantor and Grantor's successors lawfully claiming, or to claim, the same or any part thereof.

IN WITNESS WHEREOF, MOUNTAIN VIEW POINTE OWNERS ASSOCIATION, INC. has caused this instrument to be executed by its duly authorized officer this 16th day of June, 2005.

WITNESSES:

MOUNTAIN VIEW POINTE OWNERS ASSOCIATION, INC.
a South Carolina non-profit corporation

Amy C. Yu
First Witness

By: [Signature]
Its: President

Kay H. Arnette
Second Witness

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

Personally appeared before me, Amy C. Yu (First Witness) and made oath that he/she saw the within named Mountain View Pointe Owners Association, Inc., a South Carolina corporation, by J. Scott Munday, its President, execute and deliver the within written Deed, as the act and deed of the limited liability company, and that he/she with Kay H. Arnette (Second Witness) witnessed the execution thereof.

Sworn to before me this 16th
day of June, 2005.

Amy C. Yu
First Witness

Kay H. Arnette (L.S.)
Notary Public for North Carolina
My Commission Expires 02/28/09

[NOTARY SEAL]

BOOK 1426 PAGE 276

FILED FOR RECORD
OCONEE COUNTY, S.C.
REGISTER OF DEEDS

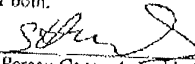
STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

2005 JUN 20 P 4:01

AFFIDAVIT OF VALUE

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 all of the Common Area, Common Open Space, COS, Access Area and seven (7) Community Boatslips in Mountain View Pointe Subdivision, bearing Oconee County Tax Map Number 151-00-01-005 (portion), was transferred to Crescent Communities S.C., LLC by Mountain View Pointe Owners Association, Inc. on _____, 2005.
3. Check one of the following :
 - (a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) X _____ exempt from the deed recording fee because Exemption #12: This deed is a corrective deed and no consideration is paid or received for the transfer. (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) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of _____.
 - (b) _____ The fee is computed on the fair market value of the realty which is _____.
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.
5. Check Yes _____ or No _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____.
6. The deed recording fee is computed as follows:
 - (a) _____ Place the amount listed in item 4 above here: _____
 - (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: _____
7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: none.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Seller.
9. I 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 dollars or imprisoned not more than one year, or both.


Responsible Person Connected with the Transaction

SWORN to before me this 16th
day of June, 2005.
Notary Public for Mecklenburg Co., NC
My Commission Expires: 06-28-09

BOOK 1426 PAGE 277

INFORMATION

Except as provided in this paragraph, the term "value" means the consideration paid or to be paid in money or money's worth for the realty including other realty, personal property, stocks, bonds, partnership interests, and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of a right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration under the provisions of this section. However, in the case of realty transferred between a corporation, a partnership, or other entity and its stockholder, partner, or owner, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value as determined for property tax purposes in determining fair market value under the provisions of this section.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty, as long as no consideration is paid for the transfer other than the interests in the realty that are exchanged in order to effect the partition;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust as a stockholder, partner, or trust beneficiary of the entity or so as to become a stockholder, partner, or trust beneficiary of the entity as long as no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in the stock or interest held by the grantor. However, except for transfers from one family trust to another family trust without consideration, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee, even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, as long as no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust in which the beneficiaries are all members of the same family. "Family" means the grantor, the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendant of any of them, and the grantor's and grantor's spouse's heirs under a statute of descent and distribution. A "family partnership" or "family trust" also includes charitable entities, other family partnerships and family trusts of the grantor, and charitable remainder and charitable lead trusts, if all the beneficiaries are charitable entities or members of the grantor's family. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership;
- (12) that constitute a corrective deed or a quietclaim deed used to confirm title already vested in the grantee, as long as no consideration is paid or is to be paid under the corrective or quietclaim deed;
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed executed pursuant to foreclosure proceedings;
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty; and
- (15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

OCONEE COUNTY
 STATE TAX 348.40
 COUNTY TAX 147.40
 EXEMPT
 STATE OF SOUTH CAROLINA
 COUNTY OF OCONEE

BOOK 1367 PAGE 226

FILED FOR RECORD
 OCONEE COUNTY, S.C.
 REGISTER OF DEEDS TITLE TO REAL ESTATE

2009 AUG 30 P 4: 51

KNOW ALL MEN BY THESE PRESENTS, that CRESCENT COMMUNITIES S.C., LLC, a Delaware limited liability company, ("Grantor") for and in consideration of the sum of [See attached Affidavit of Value] and other good and valuable consideration to Grantor in hand paid at or before the sealing of these presents by Graham R. Piper and Christine A. Piper (hereinafter called "Grantee" whether one or more persons or entities) whose address is _____, 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 said Grantee, Grantee's heirs, successors and assigns forever, all of that certain real property situated in Oconee County, South Carolina, more particularly described as follows:

BEING Lot 7 of MOUNTAIN VIEW POINTE as shown on a plat thereof recorded in Plat Book A910, Page(s) 1 and 2 in the Office of the Register of Deeds for Oconee County, South Carolina (the "Premises").
 Tax Parcel # 151-02-01-007

DERIVATION: Being a portion of that property conveyed to Grantor by deed from Crescent Resources, LLC, recorded September 9, 2002, in Deed Book 1239, Page 155 in the Office of the Register of Deeds for Oconee County and a portion of that property shown, now or formerly, on Tax Map No. 151-00-01-005 for Oconee County.

TOGETHER WITH, all and singular, the rights, members, hereditaments and appurtenances to the Premises belonging or in any way incident or appertaining, including but not limited to, all improvements of any nature located on the Premises and all easements and rights-of-way appurtenant thereto, and SUBJECT TO the following covenants, easements, reservations, conditions and restrictions which shall run with the land and be binding upon Grantee, Grantee's heirs, successors and assigns:

1. All covenants, conditions, easements and restrictions of record, including but not limited to those restrictions and covenants contained in that document entitled, "Declaration of Covenants, Conditions and Restrictions - Mountain View Pointe" recorded in the Office of the Register of Deeds for Oconee County, as supplemented, amended and/or re-recorded, from time to time.
2. The lien of ad valorem taxes for the year 2004, and subsequent years not yet due and payable.
3. By accepting and recording this deed, Grantee signifies Grantee's understanding that Duke Energy Corporation has certain privileges and easements affecting the Premises which include the right, privilege and easement of backing, ponding, raising, flooding or diverting the waters of Lake Keowee and its tributaries upon and over the Premises, as more specifically described in instruments recorded in

Name and Address of Grantee: Graham R. Piper and Christine A. Piper

CLT 638682v2

Recorded this 31 day of AUG. THIS PROPERTY DESIGNATED AS
 Book 2004 Page 403, 852 MAP 151 SUB 02 BLK 01 PARC 007
 Fee _____ ON OCONEE COUNTY TAX MAPS
Andrea R. Mc Roy A. Williams
 Auditors Oconee County, S.C. OCONEE COUNTY ASSESSOR

Court
 # 5

BOOK 1367 PAGE 226A

1367 226 226A

Recorded this 30 day of
August 20 1944
Vol 1367 Pg 226 and Certified
Register of Deeds, Osceola County

226

BOOK 1367 PAGE 226 B

the Office of the Register of Deeds for Oconee County, including, without limitation, the 810 foot flood easement to Duke Power Company (presently known as Duke Energy Corporation) recorded in Book 635, Page 298, Office of the Register of Deeds for Oconee County.

4. By accepting and recording this deed, Grantee acknowledges for itself and its successors and assigns as follows: Duke Energy Corporation controls access to, use of and water levels in Lake Keowee. Grantee must receive a permit from Duke (or a successor manager of Lake Keowee under authority from the Federal Energy Regulatory Commission) prior to placing or constructing any pier, structure or other improvement within or upon, or conducting any activity altering the topography of the hydroelectric project surrounding and encompassing the waters of Lake Keowee. Grantor makes no oral, express or implied representation or commitment as to the likelihood of Grantee obtaining such a permit, nor as to the continued existence, purity, depth or levels of water in Lake Keowee, and Grantor shall have no liability with respect to these matters. Construction of any such improvements is also subject to the recorded restrictions and easements affecting the Premises hereby conveyed.
5. All matters which may be shown by a current survey of the Premises or apparent upon reasonable inspection of the Premises.
6. Nothing herein shall be held to impose any restriction on any land of Grantor not hereby conveyed.

TO HAVE AND TO HOLD, all and singular, the Premises unto Grantee, Grantee's heirs, successors and assigns forever.

And Grantor does hereby bind Grantor, Grantor's successors and assigns to warrant and forever defend, all and singular, the Premises unto Grantee, Grantee's heirs, successors and assigns, against Grantor and Grantor's successors lawfully claiming, or to claim, the same or any part thereof.

IN WITNESS WHEREOF, CRESCENT COMMUNITIES S.C., LLC has caused this instrument to be executed by its duly authorized officer this 23rd day of August, 2004.

CLT 638682v2

BOOK 1367 PAGE 227

WITNESSES

Debbie J. Bauer
First Witness

Kay H. Arnette
Second Witness

CRESCENT COMMUNITIES S.C., LLC
a Delaware limited liability company

By: J. Scott Munday
Its: J. Scott Munday, Vice President

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

Personally appeared before me, Debbie J. Bauer (First Witness) and made oath that he/she saw the within named Crescent Communities S.C., LLC, by J. Scott Munday, its Vice President sign and as the limited liability company's act and deed, deliver the within written Deed; and that he/she with Kay H. Arnette, (Second Witness) witnessed the execution thereof.

Sworn to before me this 23rd
day of August, 2004.

Kay H. Arnette
Notary Public for North Carolina
My Commission Expires 06-28-09

Debbie J. Bauer
(Signature of First Witness)

[SEAL]

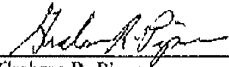
CLT 638682v2

BOOK 1367 PAGE 228

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

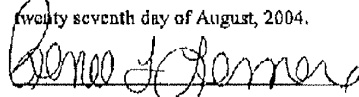
AFFIDAVIT

PERSONALLY APPEARED BEFORE ME, the Undersigned, who being duly sworn says that he/she is the Grantee in that certain transaction whereby certain real property was conveyed this date from CRESCENT COMMUNITIES, S.C., LLC, a Delaware limited liability company, to Graham R. Piper and Christine A. Piper, and that the actual consideration for this transfer was the sum of ONE HUNDRED THIRTY FOUR THOUSAND AND NO/100 (\$134,000.00).


Graham R. Piper


Christine A. Piper

Sworn to before me this
twenty seventh day of August, 2004.



Notary Public of South Carolina

My Commission Expires:

11-03-05

FILED FOR RECORD
OCONEE COUNTY, S.C.
REGISTER OF DEEDS
2004 AUG 30 P 4: 51

BeB
12.00

NEWTON LAW FIRM
OF CLEMSON, LLC
P.O. Box 1539
CLEMSON, SC 29633-1539

FILED FOR RECORD
OCONEE COUNTY, S.C.
REGISTER OF DEEDS

2013 AUG 26 P 12:17

Doc ID: 004287420008 Type: DEE
BK 1982 PG 91-96

002379

Prepared by: Parker Poe Adams & Bernstein LLP
Three Wells Fargo Center
401 South Tryon Street
Suite 3000
Charlotte, NC 28202

Tract Nos. S-7149.01 and 7149.02

Return to: Grantee
240 Mountain View Pointe Dr.
Seneca, SC 29672

EXCISE TAX - \$740.00

STATE OF SOUTH CAROLINA)
:)
COUNTY OF OCONEE)

SPECIAL WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS that

CRESCENT COMMUNITIES S.C., LLC, a Delaware limited liability company ("Grantor"), whose address is 227 West Trade Street, Suite 1000, Charlotte, NC 28202, in consideration of the sum of Two Hundred Thousand and No/100 Dollars (\$200,000.00), to it in hand paid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release, subject to the easements, restrictions, reservations, covenants, conditions and other exceptions set forth below, unto GRAHAM R. PIPER and wife, CHRISTINE A. PIPER, as joint tenants with rights of survivorship, and not as tenants in common, their heirs and assigns forever ("Grantee"), whose address is all that certain tract of land described in Exhibit A attached hereto ("Property").

The Property is conveyed subject to the following easements, restrictions, reservations, covenants, conditions and other exceptions (collectively, "Exceptions"):

- (1) flood easements in favor of Duke Energy Carolinas, LLC (formerly known as Duke Power Company) and riparian rights of others, if any;
- (2) transmission line and retail electric line rights-of-way, if any, reserved by or granted to Duke Energy Carolinas, LLC (formerly known as Duke Power Company);
- (3) ad valorem taxes for the year 2013 and subsequent years;

OCONEE COUNTY
STATE TAX 520.00
COUNTY TAX 220.00
EXEMPT _____

FOR OFFICE USE ONLY
THIS PROPERTY DESIGNATED AS
MAP 67 SUB 62 BLK 61 PARC. 030
ON OCONEE COUNTY TAX MAPS
[Signature]
OCONEE COUNTY ASSESSOR

Recorded this 27 day of August
Book 2013 Page 237
Fee
[Signature]
Register of Deeds, Oconee County, S.C.

PPAR 2126577v1

Count #
6

- (4) "rollback" or other deferred ad valorem property taxes;
- (5) matters affecting title to the Property as shown on the Plat or which would be shown on a current and accurate survey of the Property (including any encroachments);
- (6) easements, covenants, restrictions and conditions of record, and rights-of-way of public and private streets and roads;
- (7) easements, restrictions and rights-of-way as may be apparent from an inspection of the Property; and
- (8) zoning, subdivision, land use and other laws, regulations or ordinances applicable to the Property.

TOGETHER WITH, subject to the Exceptions, all and singular the rights, members, hereditaments and appurtenances to the Property belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, subject to the Exceptions, all and singular the Property, unto the said Grantee and Grantee's heirs, successors and assigns forever.

Subject to the Exceptions, Grantor covenants to warrant specially the title to the Property against the lawful claims of any person claiming from, through or under it.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed this 16th day of July, 2013.

Signed, Sealed and Delivered in the Presence of: CRESCENT COMMUNITIES S.C., LLC,
a Delaware limited liability company

By: Crescent Communities, LLC,
a Georgia limited liability company,
its Manager
Melanie Childers Conrade
Print Name: Melanie Childers Conrade
Witness #1

Susan Higginson
Print Name: Susan Higginson
Witness #2

By: James M. Short, Jr.
James M. Short, Jr.
President, Land Management
Division

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

Personally appeared before me the undersigned witness who being duly sworn deposes and says that he/she saw the within named James M. Short, Jr., President, Land Management Division of Crescent Communities, LLC, a Georgia limited liability company, Manager of CRESCENT COMMUNITIES S.C., LLC, a Delaware limited liability company, sign, and as its act and deed deliver the foregoing instrument, for the uses and purposes therein mentioned, and that he/she, together with Susan Higginson (witness #2), the other witness subscribed above, witnessed the execution thereof.

Melanie Childers Conrade
(Witness #1 sign here)

Sworn to and subscribed before
me this the 16th day of
July, 2013.

Susan Higginson
Notary Public

Notary Public for Madison County, North Carolina

My Commission Expires: March 27, 2016

[NOTARIAL STAMP-SEAL]

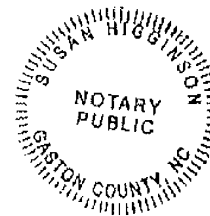


EXHIBIT A

All references to recording information shall refer to documents that were recorded in the Office of the Clerk of Court for the county in which the Property is located.

A total of 21.745 acres of land located in Seneca Township, Oconee County, South Carolina, consisting of two tracts as follows: (i) that tract designated as "PARCEL B, S-Tract 7149.01, 17,030 AC." on plat recorded in Plat Book B-443, Page 2 ("Plat"); and (ii) that tract designated as "PARCEL A, S-Tract 7149.02, 4,715 AC." on the Plat; **AND BEING** all or a portion of the land conveyed to South Carolina Land & Timber Corp. (presently known as Crescent Communities, LLC) by deed from W. L. Norton recorded in Deed Book 9-N, Page 217; by deed to South Carolina Land & Timber Corp. from Virginia Isbell Norton, Trustee for Joseph J. Norton, IV recorded in Deed Book 9-N, Page 249; by deed to South Carolina & Timber Corp. from J. J. Norton, Jr. and wife, Virginia I. Norton, Paul C. Franklin and Joseph J. Norton, Trustees, recorded in Deed Book 9-N, Page 250; by deed to South Carolina Land & Timber Corp. from J. J. Norton, Jr. recorded in Deed Book 9-N, Page 251; by deed to South Carolina Land & Timber Corp. from Martha Norton Kimbraugh recorded in Deed Book 9-N, Page 252; by deed to South Carolina Land & Timber Corp. from Sarah Norton Wooten recorded in Deed Book 9-N, Page 271; and by deed to Crescent Communities S.C., LLC from Crescent Resources, LLC (presently known as Crescent Communities, LLC) recorded September 9, 2002, in Deed Book 1239, Page 155.

PPAB 2112143v1

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says;

- If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes ☐ or No ☐

- (a) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ 200,000.00
- (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 _____.

6. The deed recording fee is computed as follows:

- (a) Place the amount listed in item 4 above here: \$ 200,000.00
- (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 \$ 200,000.00
here;

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$ 740.00.

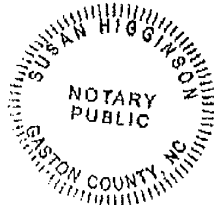
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Authorized Agent for Crescent Communities S.C., LLC.

9. I 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 dollars or imprisoned not more than one year, or both.

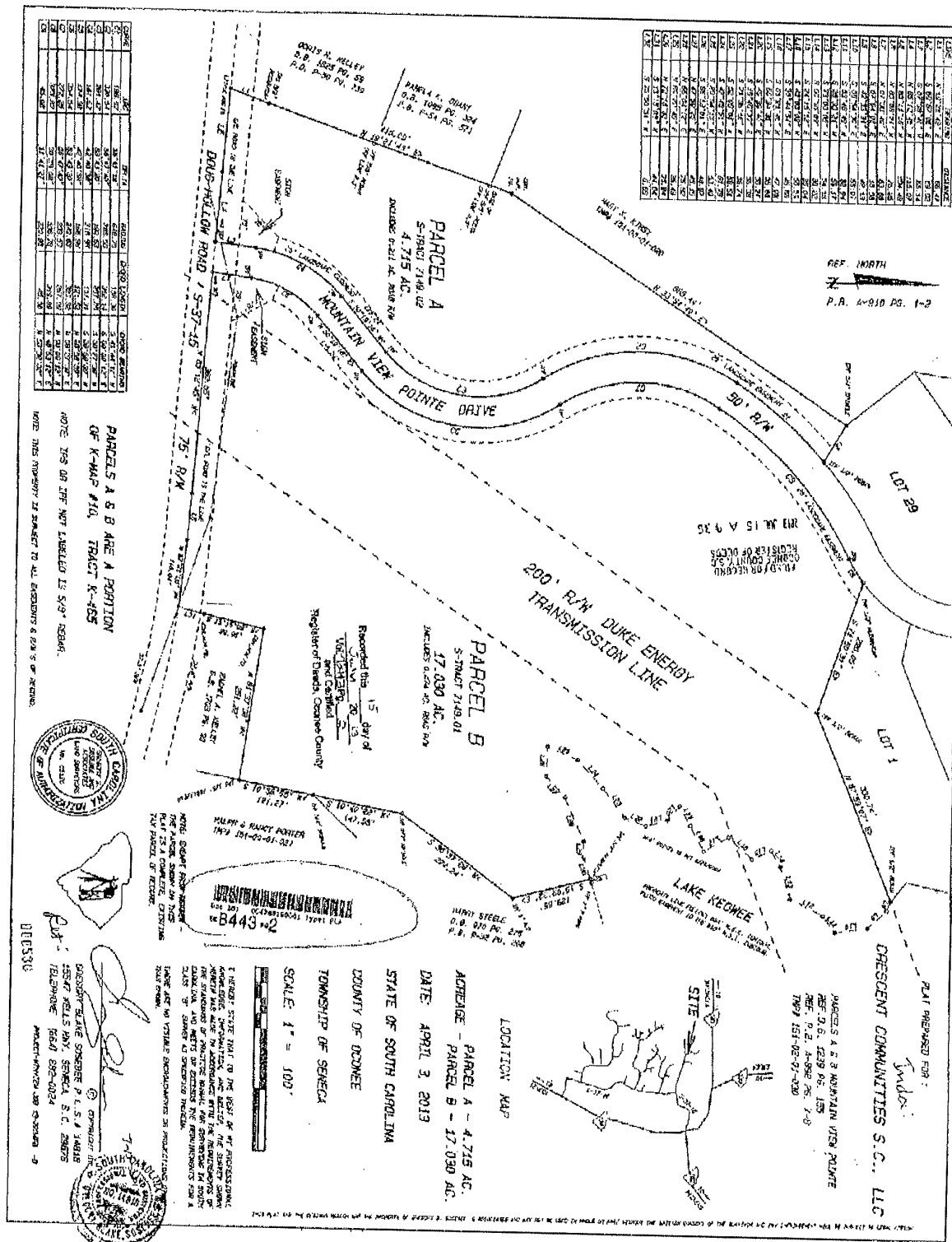
[Signature]
Responsible Person Connected with the Transaction
James M. Sheer, Jr.
President, Land Management Division of
Crescent Communities, LLC, member and manager
of Crescent Communities S.C., LLC

SWORN to before me this 16th day of
July, 2013.

[Signature]
Notary Public for [Signature]
My Commission Expires: March 27, 2016



2



Court #7

Ret: Road Dept 010358
N/CACCEPTED FOR OCONEE COUNTY BY: Don F. EdAUTHORITY: Performance DATE: 12/5/05Standards, ch. 6THE STATE OF SOUTH CAROLINA
COUNTY OF OCONEEDirt _____ (FT) Paved 5 (FT)

DEED TO RIGHT-OF-WAY

ROAD NO. SE-519 Mountain View Pointe Drive

Doc ID: 00083820001 Type: DEE

Mountain View PointeSUBDIVISION WHEN APPLICABLE: BK 1465 Pg 285KNOW ALL MEN BY THESE PRESENT, That I, (or we) Crescent Communities S.C., LLC

By: _____ in consideration of the sum of one dollar, to me (or us) in hand paid and the acceptance and maintenance of the same as part of the Oconee County Road System, by Oconee County, receipt of which is hereby acknowledged, have granted, bargained, sold and released and by these presents do grant, bargain, sell release unto Oconee County, its successors and assigns, a right-of-way for the construction or maintenance of the road/highway from

Doug Hollow Road (S-37-15) to Cul de Sac
Name of Place _____ Name of Place _____On Road No. SE-519 State and County aforesaid, see Plat Book A910 at Page 182 recorded with the Clerk of Court, Oconee County, on and over all lands which I (or we) may own whole or in part; for the purpose of locating, constructing, improving and maintaining the above described highway with the bridges and causeways thereon, and the installation of public utilities. Said tract being shown on Tax Map 151-00-01-005 and being over the lands purchased from Crescent Resources, Inc.Deed Book 1239, Page 155. Said right-of-way to have a width of 50 feet, thatis 25 feet on each side of the center*line of the Highway except where a greater width is necessary for short distances on account of large cuts or fills and being approximately 2715* feet in length.

"Special Provisions": The undersigned waives any claim for damages, if any, and accepts the surface water from roadway and culverts and assumes the responsibility for drainage ditches, culverts, and etc., beyond the right-of-way.

*As staked and/or constructed by Oconee

*This Right of Way Deed will include a Cul de Sac with a fifty (50) feet radius.

Together with all singular, the rights, members, hereditaments and appurtenances therunto belonging, or in any wise incident or appertaining. It is agreed that buildings, fences, signs or other obstructions will not be erected by me (or us), my heirs, assigns, or administrators within the limits of the right-of-way herein conveyed.

TO HAVE AND TO HOLD, all singular, the said right-of-way and the rights hereinbefore granted unto the said Oconee County, its successors and assigns forever.

IN WITNESS WHEREOF, I (or we) have hereunto set my (or our) hand... seal... this 17th day of November in the year of our Lord, Two Thousand, and Three.

SIGNED, SEALED & DELIVERED IN THE PRESENCE OF:

Debbie Bauer
Kay H. Arnette

Crescent Communities S.C., LLC

By: Scott Munday, Vice President

Signature

OCONEE COUNTY

STATE TAX

COUNTY TAX

EXEMPT ☒

THE STATE OF SOUTH CAROLINA, COUNTY OF OCONEE:

Personally appeared Debbie J. Bauer and made oathThat he/she saw the within named Crescent Communities S.C., LLC By: Scott Munday, Vice President

Print or type name

Sign, seal and as his/her act and deed, deliver the within written Deed: and that with

Kay H. Arnette witnessed the execution thereof.Sworn to before me this 17th day of November, A.D. 20 03Kay H. Arnette (L.S.)
Notary Public for South Carolina
My Commission Expires 06-28-04

Witness sign here

FILED FOR RECORD
OCONEE COUNTY, S.C.
REGISTER OF DEEDS
DEC 16 11 03

Court #8



Barcode ID: 2048730 Type: DEE
 Recorded: 12/04/2020 at 09:05:07 AM
 Fee Amt: \$570.00 Tax: \$555.00
 Oconee, South Carolina, Register Of Deeds Off
 Anna Davison - Register Of Deeds
 Page 1 of 2

BK **2632** PG **210-211**

Prepared by: McLaurin Law, LLC
 10 Commons Blvd.
 Seneca, SC 29678

009010 1500

Tax Map #: 151-02-01-033

STATE OF SOUTH CAROLINA)
)
 COUNTY OF OCONEE)

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS that **GRAHAM R. PIPER AND CHRISTINE A. PIPER**, in the state aforesaid, for and in consideration of the sum of **One Hundred Fifty Thousand and No/100 (\$150,000.00)** Dollars, to us in hand paid by **RODNEY HALSELL AND BARBARA HALSELL**, receipt of which is hereby acknowledged, have granted, bargained, sold and released and by these presents do grant, bargain, sell and release unto the said **RODNEY HALSELL AND BARBARA HALSELL**, subject to the below stated Exceptions, as joint tenants with right of survivorship, and not as tenants in common, their heirs and assigns forever:

All that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Oconee, Seneca Township, being known and designated as PARCEL A, containing 4.715 acres, more or less, as shown and more fully described on a plat thereof prepared by Gregory Blake Sosebee, PLS #14818, dated November 16, 2020 and recorded in Plat Book 6704, at Page 6, records of Oconee County, South Carolina.

It is mutually understood and agreed that this conveyance is made subject to those easements and/or rights-of-way as may appear on the premises and/or of record and all zoning and setback requirements.

This being a portion of the property conveyed unto Graham R. Piper and Christine A. Piper by deed of Crescent Communities S.C., LLC dated July 16, 2013 and recorded August 26, 2013 in Deed Book 1982, at page 91, records of Oconee County, South Carolina.

Count #9

Grantee's Address:

DEC 07 2020

Auditor, Oconee County S.C.

OCONEE COUNTY
 STATE TAX 390.00
 COUNTY TAX 165.00
 EXEMPT _____

(Page #1 of 2 Pages)

FOR OFFICE USE ONLY
 THIS PROPERTY DESIGNATED AS
 MAP 61 SUB 002 BLK 01 PARC 033 MR
 ON OCONEE COUNTY TAX MAPS
 13. 22
 OCONEE COUNTY ASSESSOR

TOGETHER with, subject to the above stated Exceptions, all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

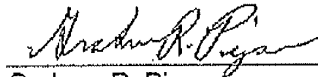
TO HAVE AND TO HOLD, subject to the above stated Exceptions, all and singular, the premises before mentioned unto the said **RODNEY HALSELL AND BARBARA HALSELL**, as joint tenants with right of survivorship, and not as tenants in common, their heirs and assigns forever.

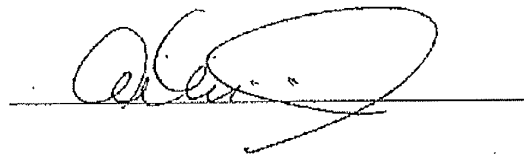
AND, we do hereby bind ourselves and our heirs, executors, and administrators, to warrant and forever defend all and singular the premises before mentioned, subject to the above stated Exceptions, unto the said **RODNEY HALSELL AND BARBARA HALSELL**, as joint tenants with right of survivorship, and not as tenants in common, their heirs and assigns, from and against us and our heirs, successors and assigns, and against every person whosoever lawfully claiming or to claim the same or any part thereof.

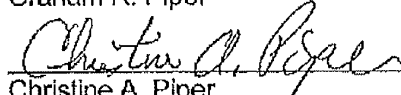
WITNESS our hands and seals this 2nd day of December, 2020.

Signed, Sealed and Delivered
in the Presence of:



 (SEAL)
Graham R. Piper



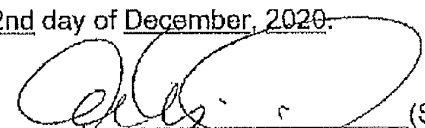
 (SEAL)
Christine A. Piper

STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)

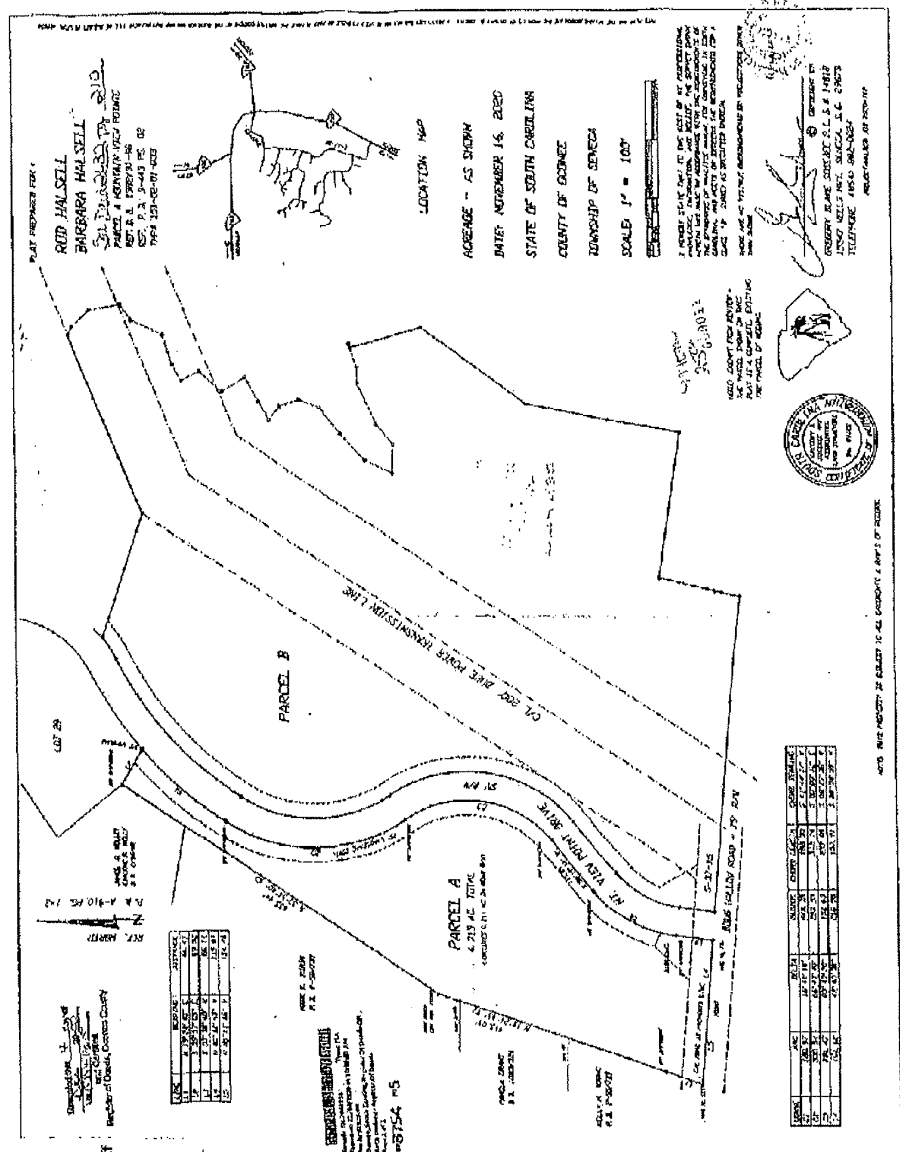
ACKNOWLEDGEMENT

I, Ann Marie Sullivan, Notary Public for South Carolina, do hereby certify that **GRAHAM R. PIPER AND CHRISTINE A. PIPER**, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 2nd day of December, 2020.

 (SEAL)
Notary Public for South Carolina

My Commission Expires: 10/11/25



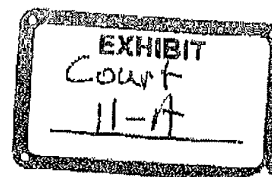
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Fee Amt: \$25.00
Oceana, South Carolina, Register of Deeds Office
Anna Davidson - Register of Deeds
Page 1 of 1
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LARRY C. BRANDT, P.A.
ATTORNEY AT LAW

Larry C. Brandt
lch.brandt@lawfirm@att.net

P.O. Box 738
3691 Blue Ridge Boulevard
Walhalla, South Carolina 29691
Phone: (864) 638-5406
Facsimile: (864) 638-7873



October 26, 2020

Mr. and Mrs. Rodney C. Halsell

Re: Mountain View Pointe

Dear Mr. and Mrs. Halsell:

On behalf of my Client, Mountain View Pointe Owner's Association, I am writing this letter to clarify the Association's position in regards to its landscape easement granted in Section 7.9 of the Covenants and Restrictions recorded in Deed Book 1250, Pages 093-158, records of Oconee County, South Carolina. In that regard, I have advised the Association that it is my legal opinion that the Association cannot grant permission for anyone to put a driveway into other property on, over, and through its landscape easement as that requires unanimous voter consent of all lot owners within the Mountain View Pointe Development. This is based upon the following provisions of the Covenants and Restrictions, to wit:

- a. Section 1.12 clearly declares the landscape easement to be a common area;
- b. The statement of purpose subjects the easement area to be for the benefit of the subdivision as well as each owner;
- c. Section 1.23 defines landscape easement area as 25 foot along both sides of the main entrance road into the subdivision;
- d. Section 12.1 bestows upon each owner or owners the right to enforce all restrictions, covenants, conditions, reservations, liens, and charges imposed by the provisions of the Covenants and Restrictions Declaration by a proceeding at law and/or equity against any person or persons and/or the association;
- e. Since each lot owner has a vested interest in the easement, that interest may not be impaired without every owner's consent, notwithstanding that the Covenants and Restrictions may be amended by two-thirds vote of the property owners -- i.e., it is not

Mr. and Mrs. Rodney C. Halsell
October 26, 2020
Page 2

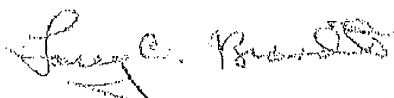
an issue concerning amending the Covenants and Restrictions or an imposition of a rule for the management of the common area, but one of impairment of the property rights of all property owners within the community.

In reaching this opinion, I have also considered Section 6.1(f) of the Covenants and Restrictions which provides that the Board has the power "to grant all necessary and appropriate easements and rights-of-way upon, over, under, and across common areas when it deems such action to be necessary and appropriate;" however, the list of examples of easements intended to be authorized by this provision are of the kind or class which would benefit all property owners within the community, not one to the exclusion of all others or one whose property is totally outside the community.

I trust that this sufficiently explains the Association Board's position in regards to your request, but if you have any questions you may direct them to me, and I shall be happy to respond. You may also have your attorney contact me to discuss my opinion and reasoning for same.

Sincerely,

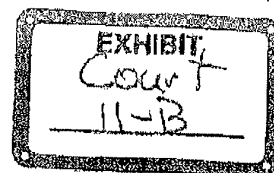
LARRY C. BRANDT, P.A.


Larry C. Brandt
Attorney at Law

LCB/jpw

cc: Mr. Mike Braunschweiger (via e-mail)

William C. Hood
Attorney at Law
505 North McDuffie Street
Anderson, South Carolina 29621
Telephone 864-375-0530 • Fax 864-375-0640



January 12, 2021

Mr. Larry C. Brandt
Attorney at Law
P. O. Box 738
Walhalla, SC 29691

Re: Mountain View Pointe Owners' Association

Dear Larry:

I am representing Mr. and Mrs. Rodney Halsell and am writing in response to your letter to them dated October 26, 2020, on behalf of the Association. First, let me assure you the Halsells have recognized the landscape easement from the beginning and approached the Association about their plans in an effort to accommodate its interests under the easement. Your letter, however, indicates there is an issue over the scope of the easement.

While the easement is classified as "common property" under the definitions in the CCR's, it nevertheless remains an easement, and the Halsells remain the fee simple owners of the property. As such, they retain all rights and uses of the property incident to their ownership which do not unreasonably interfere with the intended purpose of the easement. In Hill v. Carolina Power & Light Co., 204 S.C. 83 (1943), the Court described the relationship between the easement owner and landowner as follows:

"The unrestricted grant of an easement conveys all such rights as are incident or necessary to its reasonable and proper enjoyment. The right to use such land and the space overhead remains in the owner of the fee so far as such right is consistent with the purpose and character of the easement. The right of the easement owner and the right of the landowner are not absolute, irrelative and uncontrolled, but are so limited, each by the other, that there may be a due and reasonable enjoyment of both. In other words, a grant or reservation of an easement in general terms is limited to a use which is reasonably necessary and convenient and as little burdensome to the servient estate as possible for the use contemplated." (citing Am. Jur., Sec. 96, Page 993)

When the language of an easement is capable of more than one construction, the construction which least restricts the property will be adopted. Tupper v. Darlington County, 326 S.C. 318 (1997). Unquestionably, an owner's right to access his property from an adjoining public road is a substantial incident of his ownership. On the other hand, a landscaping and maintenance easement does not reasonably or necessarily preclude a driveway over the

easement. (see Ballington v. Paxton, 327 S.C. 372 (1997)). If such were intended, it could have been easily so provided.

The Halsells presented a written proposal dated September 7, 2020 (copy enclosed), and met with members of the Board. The purpose of the meeting was not to seek approval for a driveway, but to determine any concerns of the association relative to the easement and thereby attempt to avoid any conflicts before beginning the project. The board members offered no reasons as to why the driveway would interfere with their easement, but were instead concerned about setting a precedent for construction of other driveways. The Halsells remain willing to work with the Association to protect its legitimate interests concerning landscaping and maintenance. However, they believe they have every right to place a driveway on their property to provide access to the adjoining public street and intend to do so. The Halsells have acquired a permit and expect to begin work soon. I suggest it would be mutually beneficial for us to try to work out the issues, if any, before the project begins. Please let us know how your client wishes to proceed.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Bill Hood', written over a horizontal line.

William C. Hood

WCH/

Encl.

cc Mr. and Mrs. Halsell

Rustic Style Bldg. — Bldg. purpose
i.e. noise, traffic smell

LANDSCAPE EASEMENT EXISTS

HOBBY/GARAGE

WHAT'S HIS OFFER?

~~OFFER~~

\$200K ✓

1130

Mr. & Mrs. Piper,

My name is Rod Hulsell and I live nearby in Waterford. I am very interested in speaking with you about buying the 4.7 acre lot you own on the left side Mtn View Pt. Dr. if you would be open to selling this land. As I expect you want to preserve the view along this street. I am very open to you having a say in a Rustic style buildings I would place on the property. The buildings would be in the \$500-650k range so not an eyesore. Regards,
901-240-0446 Rod

Please let me know, either way, at your earliest convenience.

PLAINTIFF'S
EXHIBIT

MVP Homeowners,

Please allow me to introduce my wife and I as your new neighbors for the 4.7 acre property to the left as you drive up county road Mtn View Pt Dr while entering your neighborhood. We are closing on the property next week. By now you are familiar with the land being developed after we met with your Board on September 7th. Our goal is to "absolutely minimize the amount of change that takes place with the trees on this property". We are placing our residential garage as far as possible away from Mtn View Pt Dr as we don't want it visible anymore than you would desire it to be. Per code we can place the structure 10' from the west side property line, farthest away from Mtn View Pt Dr. You can see that in the attached image.

After being declined a release by MVP HOA Board to construct a paved 25' wide driveway across a grassy section of our land on the MVP POA 25' landscape easement we took measures to investigate bringing our residential private driveway off Doug Hollow. We have cleared this with SCDOT. A longer driveway is why we are reaching out to you today. Our original driveway design coming off MVP Dr was going to be just over 200 feet in length, removing mostly all young pines as you can see if you take a closer look at the area for this driveway the next time you drive pass it. (Yellow line in the attached image for your visualization)

Without consent from MVP Board, based on the topography of this 4.7 acre tract we will be forced to construct our driveway parallel to Mtn View Pt Dr (outside of the MVP easement on our private land). It was the best way for Crescent to create Mtn View Pt Dr years ago and will be the same for us. This driveway will be 802 feet in length and require us to cut down a ridiculous amount of mature trees. Coming off Doug Hollow will actually remove THREE times the number of trees that will be removed for our building. The driveway would be right behind the nice neighborhood MVP monument sign and run up well beyond the first two curves of MVP Dr past the street light before going up to our building. (Red line in the attached image for your visualization)

We are making a substantial investment on this residential project and have positioned the building so the front porches, columns, stonework, decorative windows, etc. would all be on the north end of the building. This is the end that will be closest to MVP Dr as you can see in the image. Should we be forced by MVP POA to come off Doug Hollow we will flip the building and MVP residents will not have any benefit of that in the winter, when leaves are absent as you'll be looking at the rear of the building.

As I shared with Mike Braunschweiger in my last call with him, I believe "a driveway off Doug Hollow is absolutely the wrong thing to do". It doesn't make any sense for us to remove over 30,000 sq ft of trees that could remain to preserve the aesthetically pleasing view along the county road coming into your neighborhood. My wife and I intend to be good long-term neighbors and want the MVP Homeowners to have total transparency of the situation before we begin the work. If we were to proceed with building our driveway off Doug Hollow without reaching out to you it would be too late for MVP POA to change position once the trees are removed for the longer driveway.

I recently spoke with the President of Oconee AQD (Advocates for Quality Development) about this driveway scenario. He stated that AQD would be in strong favor of the shorter driveway and also stated that FOLKS would be in favor of us not having to unnecessarily cut down over 30K sq ft of trees so close to the lake because the adjacent neighborhood would not issue a release of 25' of a landscape easement.



By working together we should be able to resolve this so we do not unnecessarily remove so many mature trees and change your view as you enter your development for many many years because we are not provided a release agreement of a 25' X 25' grassy area on land that we own. Your POA has a "non-exclusive" landscape easement, which allows you to beautifully maintain it. It does not exclude us from putting in a driveway. In speaking with our attorney the landscape easement was never intended to block any landowner from accessing his/her own property.

We would like to make one last effort with MVP POA. We will be willing to purchase a consent agreement from MVP POA for only a 25' x 25' section of grass for our paved driveway & utilities for \$10,000. This is astronomically more than it is worth as you realize. This would preserve over 602' of trees being removed so the MVP residents have the least impact from our land development as well as keep our building better shielded from MVP traffic. This also leaves the MVP monument sign backdrop unchanged as the nice mature trees behind the sign will not be cut down for a driveway coming off Doug Hollow. Would be a win-win scenario for all of us! Not to mention that MVP POA could use the \$10,000 to make additional improvements along both sides of MVP Dr or anywhere else in your development. And it keeps both parties from paying legal fees over time.

We are sharing this with you as our new neighbors as "we want the land to look as aesthetically pleasing as possible", just as I stressed with Mike B, we want the residents & Board of MVP to be able to make an educated decision before we proceed. Although MVP POA has zero authority over this private land being developed we are extending this level of transparency as we believe it's the right thing to do.

For clarification on a rumored concern we've heard, we will not have 18 wheelers in and out of our residential property. This is a private residence, just like your home.

In closing, there are two simple choices for MVP Board & Homeowners:

OPTION 1 – YELLOW driveway location

OR

OPTION 2 – RED driveway location

We believe Option 1 to be the best for both of us. (Significantly fewer trees removed and you retain over 600' of the entrance view unchanged & limited view of our building)

Please advise the MVP Board of your decision of Option 1 or Option 2 by close of business on Dec 3, 2020 as we will contact them for the final time. This issue has been ongoing since August. It's now time to proceed with construction. This letter serves as our last effort to work with MVP POA for a paved driveway off Mountain View Pt Dr. If MVP POA chooses Option 2 we will proceed off Doug Hollow.

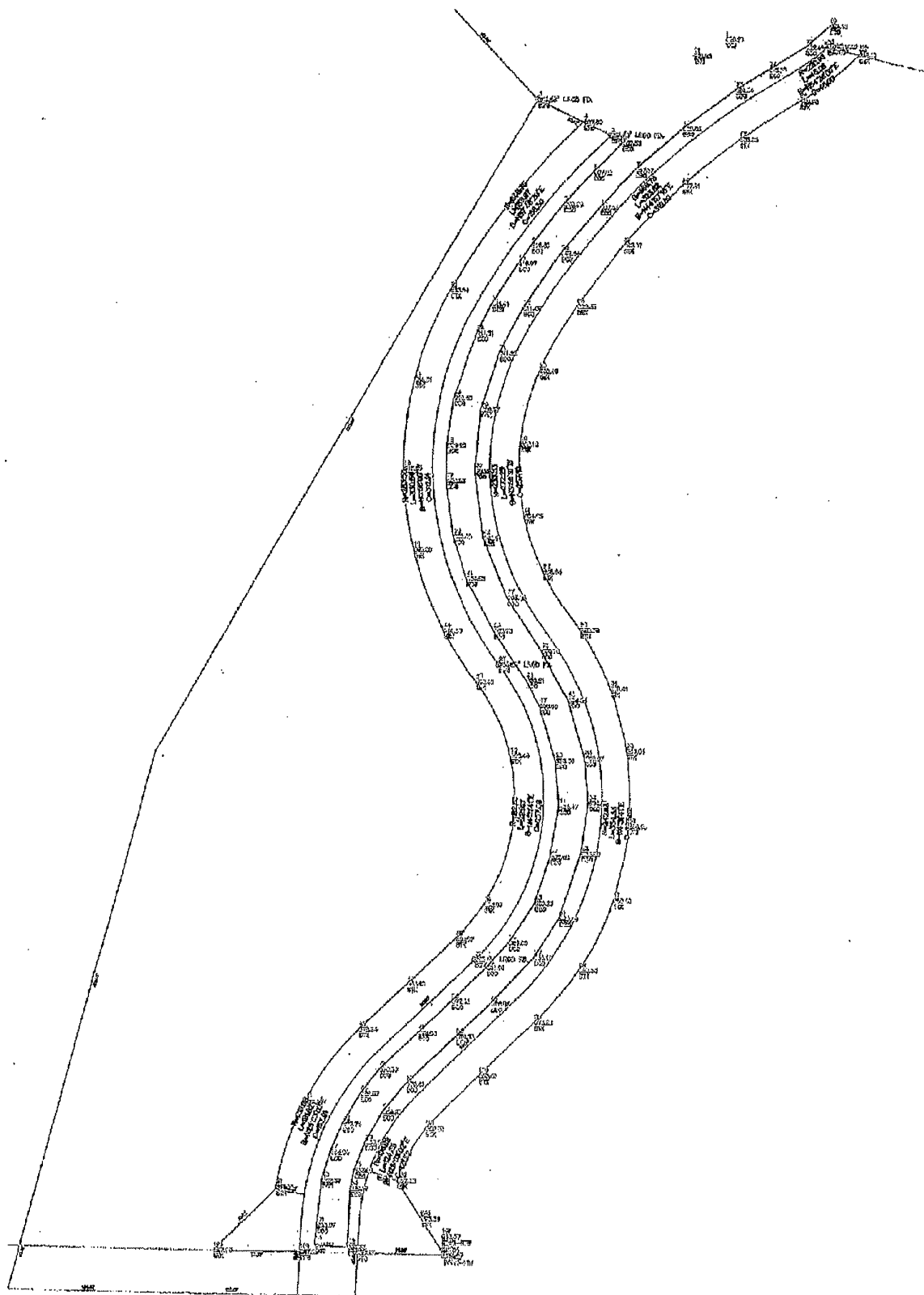
In the spirit of being good neighbors I'll make myself available this Saturday AM 11/28 from 8-10 AM if you would like to meet me along MVP Dr to discuss the driveway construction and answer any questions.

Looking forward to being a neighbor next to the MVP Development and meeting you at some point.

Regards,

Rod & Barbara Halsell





PLANNED TO BE A HIGHWAY INTERCHANGE WITH A RAMP TO THE ASSOCIATED ROAD, QUANDO BEING FOR
 THE 1st FLOOR, 1st FLOOR

September 7, 2020

Halsell Proposal

Proposed Scope: Construct a residential garage in close proximity to the rear setback lines on parcel #151-02-01-033 in the flattest area of the lot. The building objective is to be as out of sight from Mountain View Pointe Drive and from Doug Hollow Road as possible. Anticipated construction investment \$500k to \$600K in addition to land purchase. The Halsell's have committed that this will not be used for commercial purposes. This will be a site built building (*ROD MAY PROVIDE MORE INFO*).

Zoning Considerations: Current property status is unrestricted by county designation. There is a special Lake District defined by the distance of 750 ft from the 800 ft elevation (full pond) that gives the County Director of Planning say in allowable use of the property. The Lake District overlay covers only a portion of this parcel. **Part of this parcel is not in the Lake District and is thus not restricted allowing for any potential use in that area.** This project has been reviewed with Alan Chapman, Director of Planning and approved to move forward and will become designated as Residential. This would be a benefit to Mountain View Pointe in that it would classify currently unrestricted property adjacent to the community as Residential.

Alan Chapman, Planning Director,

cell

office

MVP Landscape Easement Considerations: A landscape easement 25ft wide from Mountain View Pointe Drive along with a monument easement grants the MVP POA the right to landscape and maintain the landscaping and monument in this area of the lot. There are Definitions (Section 1), Ownership & Use (Section 3), Powers and Duties of the BOD (section 6) and Restriction (Section 7) in the MVP CCRs. Section 3.1 states:

"Declarant shall convey fee simple title by limited warranty deed (or grant an easement) to the Common Areas to the Association, to be owned and maintained by the Association."

The Monument and Entrance Landscape areas are granted by way of an easement. Section 7, referenced in Section 1.23, clearly states in Section 7.9 of the MVP CCRs, the Entrance Monument and Landscape easements are "non-exclusive" (Book 1250 pp 121-122, pages 24-25).

Real Estate attorney Ann Sullivan with Keowee Lawyers was consulted for interpretation of the easement impact on the property owner's property rights. The assessment was that the property owner retains the right to access the property including the easement area, and the MVP POA has the right to plant and maintain the easement area. The example given was that the property owner could install a driveway crossing the easement and the MVP POA could come in and dig a hole in the middle of the driveway and plant a tree.

This sets up the potential for tit-for-tat between the MVP POA and the Property Owner, where the property owner accesses the property and the MVP POA installs some landscaping to discourage the owner's access and use of property. The recommended solution was for both parties to reach an agreement. As noted in the MVP CCRs Section 6.1 (f), one of the POWERS AND DUTIES OF THE BOARD OF DIRECTORS is



"To grant all necessary easements and rights-of-way upon, over, under and across the Common Areas when it deems such action to be necessary and appropriate, including, but not limited to, easements for the installation and maintenance of electrical, telephone, cablevision, water, sanitary sewer and other utilities or drainage facilities."

Benefits to MVP POA and MVP residents on reaching an agreement:

1. No tit-for-tat conflict with the property owner
2. Residential designation for currently unrestricted adjacent parcel of land
3. Increased property values (project estimated investment is greater than average value of MVP interior properties)
4. Potential to negotiate characteristics of a driveway across the landscape easement.
5. No litigation costs

Benefits to Property Owner on reaching an agreement:

1. No tit-for-tat conflict with the MVP POA
2. Defined access to the property
3. Ability to proceed with planned use
4. No litigation costs

Objective: Determine a mutually agreeable arrangement to secure a driveway off Mountain View Pointe Drive across the landscape easement.

Current Land Value: Oconee County Tax Assessor values the property at \$32,750 for 4.715 acre; this equates to \$6946 per ac. or \$0.1594 per sq. ft. A 15 ft wide by 25 ft area would be 375 sq. ft. with a value of \$59.78.

LARRY C. BRANDT, P.A.

ATTORNEY AT LAW

P.O. Box 738

3691 Blue Ridge Boulevard

Walhalla, South Carolina 29691

Phone: (864) 638-5406

Facsimile: (864) 638-7873

Larry C. Brandt

lcb.brandtlawfirm@att.net

October 26, 2020

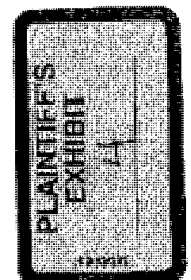
Mr. and Mrs. Graham R. Piper

Re: Mountain View Pointe

Dear Mr. and Mrs. Piper:

On behalf of my Client, Mountain View Pointe Owner's Association, I am writing this letter to clarify the Association's position in regards to its landscape easement granted in Section 7.9 of the Covenants and Restrictions recorded in Deed Book 1250, Pages 093-158, records of Oconee County, South Carolina. In that regard, I have advised the Association that it is my legal opinion that the Association cannot grant permission for anyone to put a driveway into other property on, over, and through its landscape easement as that requires unanimous voter consent of all lot owners within the Mountain View Pointe Development. This is based upon the following provisions of the Covenants and Restrictions, to wit:

- a. Section 1.12 clearly declares the landscape easement to be a common area;
- b. The statement of purpose subjects the easement area to be for the benefit of the subdivision as well as each owner;
- c. Section 1.23 defines landscape easement area as 25 foot along both sides of the main entrance road into the subdivision;
- d. Section 12.1 bestows upon each owner or owners the right to enforce all restrictions, covenants, conditions, reservations, liens, and charges imposed by the provisions of the Covenants and Restrictions Declaration by a proceeding at law and/or equity against any person or persons and/or the association;
- e. Since each lot owner has a vested interest in the easement, that interest may not be impaired without every owner's consent, notwithstanding that the Covenants and Restrictions may be amended by two-thirds vote of the property owners - i.e., it is not



Mr. and Mrs. Graham R. Piper
October 26, 2020
Page 2

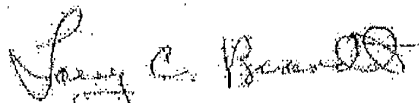
an issue concerning amending the Covenants and Restrictions or an imposition of a rule for the management of the common area, but one of impairment of the property rights of all property owners within the community.

In reaching this opinion, I have also considered Section 6.1(f) of the Covenants and Restrictions which provides that the Board has the power "to grant all necessary and appropriate easements and rights-of-way upon, over, under, and across common areas when it deems such action to be necessary and appropriate," however, the list of examples of easements intended to be authorized by this provision are of the kind or class which would benefit all property owners within the community, not one to the exclusion of all others or one whose property is totally outside the community.

I trust that this sufficiently explains the Association Board's position in regards to your request; but if you have any questions you may direct them to me, and I shall be happy to respond. You may also have your attorney contact me to discuss my opinion and reasoning for same.

Sincerely,

LARRY C. BRANDT, P.A.



Larry C. Brandt
Attorney at Law

LCB/jpw

cc: Mr. Mike Braunschweiler (via e-mail)



**AGREEMENT/CONTRACT: TO BUY AND SELL REAL ESTATE
(GENERAL USE AND LOTS/ACREAGE)**

1. **PARTIES:** This legally binding Agreement ("Contract") To Buy and Sell Real Estate is entered into by:

Buyer(s), Rodney Halsell

Seller(s), Graham R Piper and Christine A Piper ("Buyer"), and

____ ("Seller").

- (A) "Party" - defined as either Buyer or Seller, "Parties" defined as both Buyer and Seller.
 (B) "Brokers" are licensed South Carolina brokers-in-charge, their associated real estate licensees, and their subagents.
 (C) "Closing Attorney" - is the licensed South Carolina attorney selected by Buyer to coordinate the transaction and Closing, McLaurin Law Firm LLC
 (D) "Effective Date" - the final date upon which a Party to the negotiation places the final and required signatures and/or initials and date on this Contract and Delivers Notice to Initially cause this primary Contract to be binding on all Parties.
 (E) "Business Day" - a 24 hour period (Monday/Tuesday/Wednesday/Thursday/Friday) beginning at 10 AM and counted from 10 AM of the first Business Day following the appropriate date (Effective Date, Closing Date, stated date, Notice Delivery date). Business Days shall not begin, end, or include any Saturday, Sunday, or Federal legal holiday.
 (F) "Good Funds" - is the transfer of the required amount of United States Dollars (USD) within any required timeframe.
 (G) "Time" - all time stated shall be South Carolina local time. Time is of the essence with respect to all provisions of this Contract stipulating time, deadline, or performance periods.

☐ BUYER ☐ SELLER IS A SOUTH CAROLINA REAL ESTATE LICENSEE

2. **PURCHASE PRICE:** \$ 200,000.00 150,000 one ~~Two~~ Hundred Thousand

Payable by transfer of Good Funds via ☐ Finance or ☐ a combination of Finance and Cash USD or ☒ Cash USD.

Verification of Cash available for Closing is ☐ attached ☒ not attached ☒ to be Delivered before _____. This Contract ☐ is ☒ is not contingent upon the sale and closing of Buyer's real property and SCR504 ☐ is ☒ is not attached.

3. **PROPERTY:** Hereby acknowledging sufficient good Contract consideration (e.g. mutual promises herein), Seller will sell and convey and Buyer will buy for the Purchase Price any and all lot or parcel of land, appurtenant interests, improvements, landscape, systems, and fixtures if any thereon and further described below ("Property"). Seller agrees to maintain in operable condition the Property and any personal property conveying, including any landscaping, grounds and any agreed upon repairs or replacements, from the Effective Date through Closing subject to normal operable wear and tear. Buyer acknowledges opportunity to inquire about owners association issues, common area issues, condominium master deed issues, assigned parking/storage areas, memberships, lease issues and financed equipment prior to signing Contract. Leasing issues and items and financed equipment see Adjustments (e.g. tenants, leases, future vacation renters, SC vacation rental act reservations, rents, deposits, documents, solar panels, fuel tanks with fuel, alarm systems, satellite equipment, roll carts).

Address Parcel A, S-Tract 7149.02, designated as 4.715 Acre

Unit # _____

City Seneca

State of South Carolina

Zip 29672

County of Oconee

Lot _____ Block _____ Section/Phase _____ Subdivision _____

Other _____

Tax Map 151-02-01-033

Parties agree that no personal property will transfer as part of this sale, except described below and/or ☐ in attachment(s):

4. **CONVEYANCE/CLOSING/POSSESSION:** "Closing" occurs when Seller conveys Property to Buyer and occurs no later than 5 PM on or before October 18, 2020 ("Closing Date") with an automatic extension of 5 business days for an unsatisfied contingency through no fault of either party. Conveyance shall be fee simple made subject to all easements, reservations, rights of way, restrictive covenants of record (provided they do not make the title unmarketable or adversely affect the use/value of the Property in a material way) and to all government statutes, ordinances, rules, permits, and regulations. Seller agrees to convey marketable title with a properly recorded general warranty deed free of encumbrances and liens except as herein stated; and in name(s): To be determined

[PH] BUYER [_____] BUYER [_____] SELLER [_____] SELLER HAVE READ THIS PAGE



and ownership type determined by Buyer. The deed shall be delivered to the Closing Attorney's designated place on or before the Closing Date no later than 10 AM. Seller agrees to pay all statutory deed recording fees. Parties agree the Brokers shall have access to the closing and relevant documents; and the Brokers shall be given copies of the settlement statement prior to Closing for review. Parties agree to hire/use licensed Attorney(s). Seller shall convey possession of a vacant and reasonably clean Property, free of debris, along with all keys, codes, any remote controls, available documents (e.g. manuals, equipment warranties, service information), and similar ownership items to Buyer at Closing. N/A

5. **EARNEST MONEY:** Total \$ 5,000.00 (USD) Earnest Money is paid as follows: \$ n/a accompanies this offer and \$ 5,000.00 will be paid within 3 Business Days after Effective Date and Earnest Money is in the form of ☒ check ☐ cash ☐ other (e.g. wire) to be a Credit to Buyer at Closing or disbursed only as Parties agree in writing or by court order or by Contract or as required for Closing by Closing Attorney. Buyer and seller authorize McLaurin Law Firm LLC as Escrow Agent to deposit and hold and disburse earnest money according to the terms of any separate escrow agreement, the law, and any regulations. Broker does not guarantee payment of a check or checks accepted as earnest money. Parties direct escrow agent to communicate reasonable information confirming receipt and status of earnest money upon a Broker request. N/A

THE PARTIES UNDERSTAND AND AGREE THAT UNDER ALL CIRCUMSTANCES INCLUDING DEFAULT, ESCROW AGENT WILL NOT DISBURSE EARNEST MONEY DEPOSIT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT (e.g. SCR518, SCR517, mediation agreement) OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT. EARNEST MONEY WILL NOT BE DISBURSED UNTIL DETERMINED TO BE GOOD FUNDS. IF LEGAL ACTIONS OCCUR RELATED TO EARNEST MONEY, PARTY RECEIVING THE LEAST AMOUNT OF EARNEST MONEY IN THE COURT'S DISBURSEMENT ORDER AGREES TO INDEMNIFY ESCROW AGENT'S FEES, COURT COSTS AND ATTORNEY FEES. IF INTERPLEADER IS TO BE UTILIZED, PARTIES AGREE THAT \$ 150.00 SHALL BE PAID TO THE ESCROW AGENT BY THE PARTIES AS COMPENSATION BEFORE ESCROW AGENT INITIATES COURT OF COMPETENT JURISDICTION PROCEEDINGS ON EARNEST MONEY. ??

6. **TRANSACTION COSTS:** Buyer's transaction costs include all costs and closing costs resulting from selected financing, pre-paid recurring items, insurance (mortgage insurance, title insurance lender/owner, hazard) discount points, all costs to obtain information from or pertaining to any owners association (aka certificate of assessment), interest, non-recurring closing costs, title exam, FHA/VA allowable costs, fees and expenses of Buyer's attorney, contractually required real estate broker compensation, and the cost of any inspector, appraiser, or surveyor. Seller's transaction costs include deed preparation, deed recording costs, deed stamps/tax/recording costs calculated based on the value of the Property, all costs necessary to deliver marketable title and payoffs, satisfactions of mortgages/liens and recording, property taxes pro-rated at Closing, contractually required real estate broker compensation, and fees and expenses of Seller's attorney.

At Closing, Seller will pay Buyer's transaction costs not to exceed \$ n/a OR % of purchase price, whichever is higher, which includes non-allowable costs first and then allowable costs (FHA/VA). Buyer is responsible for any Buyer's transaction costs exceeding this amount. If the amount exceeds the actual amount of those costs or amount allowed by Lender, then any excess funds will revert to Seller. Seller will also provide or pay for all of Seller's transaction costs. If no Closing, Buyer is responsible for Buyer's transaction costs and Seller responsible for Seller's transaction costs.

Private/public transfer fees and any costs similar to transfer fees (ex. capital contributions, conservancy fees, estoppel fees, or otherwise named but similar fees paid to the owners association) are the ☒ Seller's or ☐ Buyer's transaction costs. How Back TAXES?

Unless otherwise agreed upon in writing, Buyer will pay Buyer's transaction costs and Seller pay Seller's transaction costs

7. **FINANCE:** Buyer's obligation under this Contract ☐ is ☒ is not contingent upon obtaining financing of a ☐ 30 year or ☐ 15 year or ☐ other purchase money loan at reasonable prevailing market terms with loan(s) equal in amounts of minimum n/a % and maximum n/a % of the Purchase Price or Appraised Value whichever is lower. ("Financing Contingency"). Financing Contingency expires at Closing ("Financing Period"). Buyer must make timely good faith efforts to apply for and obtain financing while refraining from contrary actions ("Financing Effort"). In a timely manner, Buyer shall inform Seller and Brokers of pertinent financing issues and authorize Buyer's Lender to disclose pertinent loan information to Seller and Brokers ("Financing Disclosure"). Buyer shall apply for financing within Business Days from the Effective Date and shall Deliver Notice to Seller of reasonable pre-final loan approval (e.g. pre-approval letter, initial approval letter) that contains no unreasonable credit, income, or asset conditions within Business Days from the Effective Date (no repairs required prior to this Notice). Final loan approval occurs when Lender

[RA] BUYER [] BUYER [] SELLER [] SELLER HAVE READ THIS PAGE

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funds loan(s). If a Lender subsequently declines or fails to approve financing, the Buyer shall notify the Seller and Brokers as soon as possible. If the Seller and Brokers are notified of inability to obtain financing during the Financing Period, either Party may terminate this Contract by Notice.

Lender (may change): n/a ☐ FHA ☐ VA ☐ Conventional ☐ Seller
☐ Other _____

An FHA VA Financing Addendum ☐ is ☐ is not attached. Additional financing terms ☐ are ☐ are not attached.

8. INSPECTION/REINSPECTION RIGHTS: Buyer and SC licensed and insured inspectors ("inspectors") reasonably perform any reasonable ultimately non-destructive examination and make reasonable record of the Property with reasonable Notice to Seller through Closing including investigations of off-site conditions and any issues related to the Property at Buyer Expense ("inspections"). Buyer and persons they choose may make reasonable visual observations of Property.

Sellers will make the Property accessible for inspection and not unreasonably withhold access, unless otherwise agreed in writing by the Parties. Seller will keep all utilities operational through Closing unless otherwise agreed: *N/A*

☐ Seller grants Buyer permission to connect utilities, pay for utilities, and hire professionals (e.g. electricians, plumbers) to safely connect and operate the utilities during the inspections _____

Other _____ ☐ see attached.

Buyer will hold harmless, indemnify, pay damages and attorneys fees to Seller and Brokers for all claims, injuries, and damages arising out of the exercise of these rights. Seller will hold harmless, indemnify, pay damages and attorneys fees to Brokers for all claims, injuries, and damages arising out of the exercise of these rights. Brokers recommend that Parties obtain all inspections as soon as possible. Brokers recommend that Parties and Inspectors use insurance to manage risk.

9. APPRAISED VALUE:

☐ This Contract is contingent upon the Property being valued according to the Lender's appraisal or other appraisal as agreed upon by the Parties ("Appraised Value") for the Purchase Price or higher. If the Parties are made aware that the Appraised Value is less than the Purchase Price and the Seller Delivers Notice to the Buyer within 5 Business Days or Closing (whichever earliest) of an amendment to reduce the Purchase Price to the Appraised Value, the Parties agree to proceed to Closing under terms of this Contract with the Purchase Price amended to be the Appraised Value. If Seller is aware and refuses to reduce as stated above, Buyer may proceed to Closing or terminate this Contract by Delivering Notice of Termination to the Seller.

☒ This Contract is not contingent upon the Property being valued at an Appraised Value according to the Lender's appraisal or other appraisal as agreed upon by the Parties for the Purchase Price or more.

10. SURVEY, TITLE EXAMINATION, ELEVATION, INSURANCE: Brokers recommend Buyer have Property surveyed, title examined, elevation/wetlands/beachfront determined, and appropriate insurance (e.g. flood, flood contents, hazard, liability, owner's title) effective at Closing. Unless otherwise agreed upon in writing by Parties, Buyer to obtain new insurance policies by Closing and Seller may cancel existing insurance after Closing. Flood Insurance, if required by Lender or at Buyer's option, shall be assigned to Buyer with permission of carrier and premium prorated to Closing. Buyers are solely responsible to investigate pricing, availability, coverage, and requirements of insurance (e.g. flood, flood contents, hazard, liability) for the property prior to signing Contract.

11. SURVIVAL: If any provision herein contained which by its nature or effect is required to be observed, kept, or performed after Closing, it will survive the Closing and remain binding upon for the parties hereto until fully observed, kept or performed.

12. DUE DILIGENCE:

The DUE DILIGENCE PERIOD ends no later than 25 Business Days after Contract's original Primary Effective Date unless the Parties agree in writing to extend the Due Diligence Period.

During the Due Diligence Period, Buyer may take timely/prudent steps to help Buyer/inspectors, Seller/Estimators, and REALTORS® all have adequate time for: Buyer to coordinate inspections and Contract Renegotiations, Seller to obtain estimates, Buyer and Seller to negotiate Contract terms, and Buyer to potentially timely/proper Due Diligence terminate or buy.

[*PA*] BUYER [_____] BUYER [_____] SELLER [_____] SELLER HAVE READ THIS PAGE

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During the Due Diligence Period, Seller agrees Buyer may rely on the following list of five items in accordance with Contract and laws. Buyer is solely responsible for inspections. Buyer is not required to inspect. Until Buyer timely/properly terminates the Contract or the Parties agree on an amended Contract, the Buyer can rely on #1, #2, #3, #4, and #5. TIME IS OF THE ESSENCE. Delivering a Repair Request does not extend the Due Diligence Period.

- (1) Conduct/obtain inspections [e.g. on site conditions, off site conditions]
- (2) Deliver Repairs Requests Notice to Seller [e.g. SCR525 with all repair requests, all/portions of reports]
- (3) Proceed under amended Contract [e.g. SCR330 and SCR525, SCR390, SCR391]
- (4) Proceed under As Is Contract [e.g. Buyer desires to buy anyway, Buyer wants Property without Repair]
- (5) Terminate Contract by timely/properly Delivering "Notice of Termination" and "Termination Fee" to Seller within the Due Diligence Period, any remaining Earnest Money shall be returned to the Buyer.

TERMINATION: During the Due Diligence Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller both Notice of Termination and a Termination Fee of \$ N/A USD Good Funds. **DURING THE DUE DILIGENCE PERIOD, SHOULD BUYER FAIL TO OBTAIN A NEW/AMENDED CONTRACT WITH THE SELLER OR BUYER FAIL TO TIMELY/PROPERLY DUE DILIGENCE TERMINATE THE CONTRACT DURING THE DUE DILIGENCE PERIOD:** The Buyer agrees to buy and Seller agrees to sell the Property **AS IS**. Parties agree "As Is" means Buyer buys the Property for the Purchase Price while Seller maintains the Property from the Effective Date through Closing subject to normal wear otherwise without repair or replacement and sells the Property for the Purchase price unless otherwise agreed upon in writing by the Parties in this Contract.

13. FIRE OR CASUALTY OR INJURY: In case the Property is damaged wholly or partially by fire or other casualty prior to Closing, Parties will have the right for 5 Business Days after Notice of damage to Deliver Notice of Termination to other Party. If Party does not Deliver Notice of Termination, the Parties proceed according to the Contract and Seller is to be responsible to (1) repair all damage, (2) remit to Buyer an amount for repairs, or (3) assign to Buyer the right to all proceeds of insurance and remit any deductible amount applicable to such casualty. If Buyer or Inspections caused the damage, Buyer is responsible for indemnifying Seller for damages. Brokers and Parties should ensure that they are protected by appropriate risk management strategies such as insurance.

14. BUILDING PERMIT: This Contract ☒ is ☐ is not contingent upon Buyer's ability to acquire all required licenses and permits from the appropriate authorities to build on the Property. No later than 25 Business Days after the original Effective Date unless the Parties agree in writing to extend this Building Permit Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination due to inability to acquire all required licenses and permits from the appropriate authorities to build on the Property. If Seller receives the Delivered Notice of Termination during the Building Permit Period, any remaining Earnest Money shall be returned to the Buyer. Should Buyer not Deliver Notice of Termination due to inability to acquire all required licenses and permits from the appropriate authorities to build on the Property to Seller during the Building Permit Period, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract.

15. REZONING: This Contract ☐ is ☒ is not contingent upon the Property being rezoned to RESIDENTIAL by full approval (without any appeal during the appeal period) by the appropriate authorities. No later than 25 Business Days after the original Effective Date unless the Parties agree in writing to extend this Rezoning Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination due to inability to acquire rezoning from the appropriate authorities to build on the Property. If Seller receives the Delivered Notice of Termination during the Rezoning Period, any remaining Earnest Money shall be returned to the Buyer. Should Buyer not Deliver Notice of Termination due to inability to acquire rezoning from the appropriate authorities during the Rezoning Period, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract. The ☒ Buyer or ☐ Seller shall be responsible for pursuing rezoning and paying all associated costs. All rezoning applications shall be submitted to the Seller for Seller's approval prior to filing. Seller shall not unreasonably or untimely withhold approval. All Parties agree to cooperate, sign the necessary documentation, and make efforts to support the rezoning application.

16. WELL, SEPTIC, WATER LINE, SEWER AVAILABILITY: This Contract ☒ is ☐ is not contingent upon Buyer's ability to obtain from the South Carolina Department of Health and Environmental Control or other appropriate authorities all required permits for a well and septic system suitable for the Buyer's intended structure in the event a well or septic system is needed on the Property. No later than 25 Business Days after the original Effective Date unless the Parties agree in writing to extend this Well and Septic Permit Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination due to inability to acquire all required permits from the appropriate authorities to install a conventional well and conventional septic system on the Property. If Seller receives the Delivered Notice of Termination

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during the Well and Septic Period, any remaining Earnest Money shall be returned to the Buyer. Should Buyer not Deliver Notice of Termination due to inability to acquire all required permits from the appropriate authorities to install a well and septic system on the Property to Seller during the Well and Septic Period, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract. If the Property is connected or capable of being connected to a water and or sewer line maintained by a private or public utility for a customary tap fee not to exceed \$_____, the Buyer agrees to waive any applicable portion of the Well and Septic Contingency. Seller represents the Property is connected to water system: ☒ county ☐ city ☐ private ☐ corporate ☒ community ☐ well ☐ other _____. Seller represents the Property is connected to water disposal system: ☐ septic ☐ sewer ☐ private ☐ corporate ☐ government ☒ other City Wtr/Septic Avail.

17. CONDITION OF PROPERTY: Seller shall not remove any timber, vegetation, dirt, minerals, or otherwise affect the condition of the property from the Effective Date through Closing. All timber, vegetation, dirt, minerals, or similar shall remain as part of the Property and be conveyed to the Buyer at Closing. The Seller shall not bring any trash, refuse, debris, dirt, fill, medical wastes, hazardous wastes, or other materials onto the Property. Seller shall Deliver Notice of any legal action or condemnation action to the Buyer as soon as possible. If Seller Delivers such Notice, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination. If Seller receives this Delivered Notice of Termination at any time, remaining Earnest Money shall be returned to the Buyer. Should Buyer not Deliver this Notice of Termination, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract.

18. SC RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT ("CDS") [check one]:

☐ Buyer and Seller agree that Seller has Delivered prior to this Contract, a CDS to Buyer, as required by SC Code of Laws Section 27-50-10 et seq. If after delivery, Seller discovers a CDS material inaccuracy or the CDS becomes materially inaccurate due to an occurrence or circumstance; the Seller shall promptly correct this inaccuracy (e.g. delivering a corrected CDS to the Buyer or making reasonable repairs prior to Closing). Buyer understands the CDS does not replace inspections. Buyer understands and agrees the CDS contains only statements made by the Seller. Parties agree the Brokers are not responsible nor liable for any information in the CDS and the Brokers have met requirements of SC Code 27-50-70. CDS is not a substitute for the Buyers and Inspectors inspecting the Property, Property issues, and off site conditions for all needs.

☒ Buyer and Seller agree that Seller will **NOT** complete nor provide a CDS to Buyer in accordance with SC Code of Law, as amended, Section 27-50-30, Paragraph (13). Buyers have sole responsibility to inspect Property issues for all their needs.

19. LEAD BASED PAINT/LEAD HAZARDS: If Property was built or contains items created prior to 1978, it may contain lead based hazards and Parties agree to sign "Disclosure of Information of Lead Based Paint and/or Lead Hazards" forms (e.g. SCR316) and give copies to Brokers. Parties acknowledge receiving and understanding the EPA pamphlet "Protect your Family From Lead In Your Home." For their protection, Buyers should conduct/obtain inspections of all Property issues per their needs. N/A

20. SEX OFFENDER/CRIMINAL INFORMATION: Parties agree that Brokers are not responsible for obtaining or disclosing information in the SC Sex Offender Registry and no course of action may be brought against any Brokers for failure to obtain or disclose sex offender or criminal information. Buyer and Seller agree that they have sole responsibility to obtain their own sex offender, death, psychological stigma, clandestine laboratory, and crime information from sources (e.g. law enforcement, P.I., web). The Buyer may obtain information about the Sex Offender Registry and persons registered with the Registry by contacting the local county Sheriff or other appropriate law enforcement officials. N/A

21. TRUST ACCOUNT INTEREST/CHARITABLE CONTRIBUTION: According to the South Carolina Real Estate Commission regulations and South Carolina laws, any interest earned from deposit to Closing on Buyer's earnest money deposit belongs to Buyer. It is understood that Broker ☐ may ☒ may not place deposited earnest monies into an interest bearing trust account. If Buyer's earnest money deposit is deposited into an interest bearing trust account, Parties agree that Broker will retain all interest earned in said account and may contribute some or all to a charitable enterprise.

22. SC INCOME TAX ON NON-RESIDENT GAIN AND COMPLIANCE AND USA FEDERAL INCOME TAX: Seller and Buyer will comply with the provisions of the South Carolina laws [e.g. 12-8-580 (as amended)] regarding state income tax withholding requirements if the Seller is not a resident or has not filed South Carolina state income tax returns. Seller and Buyer will comply with United States of America federal income tax laws. Seller and Buyer should discuss tax laws and minimization actions with their qualified tax advisor. Parties will comply with all local, state, federal laws, and any rules. N/A

23. ROLLBACK TAXES (IF ANY): The Parties agree that the ☐ Seller or ☒ Buyer shall pay any rollback taxes when rollback taxes are determined and billed.

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24. SPECIAL STUDIES AREA, WETLANDS, AND ENVIRONMENTAL MATTERS: All reports and certifications required by the Lender, Buyer, or any government concerning any special study area, wetlands, or environmental issues shall be ordered by n/a and paid for by n/a.

All of these reports or certifications shall be completed no later than n/a Business Days after the original Effective Date, unless the Parties agree in writing or extend this period ("Environmental Period"). In the event repairs are necessary to address environmental concerns (Repair Requests), the Seller shall be Delivered Notice in writing of the specific defects or deficiencies no later than 2 Business Days after the Environmental Period. If the Buyer fails to notify the Seller within this timeframe, Buyer shall have waived any and all rights under terms of this section. If Lender's commitment requires any additional inspections or certifications, these are to be provided by the Buyer.

Upon Delivered Notice of the Repair Requests, Seller has five Business Days to address the Buyer's Repair Requests. The costs of all repairs to address environmental concerns to be paid by Seller. If the Seller fails to agree to make these repairs within this timeframe, the Buyer shall have 2 Business Days to choose any of the following options (1) accept the Property in its present condition, (2) negotiate with the Seller for the payment of these repairs or (3) terminate this Contract and receive their Earnest Money. The repairs to any other items are the sole responsibility of the Buyer. The obligations of the Seller for repairs terminate upon Closing. If the Seller agrees to make the repairs, the Parties agree to proceed under Contract. N/A

25. ENTIRE AND BINDING AGREEMENT (MERGER CLAUSE): Parties agree that this Contract expresses the entire agreement between the parties, that there is no other agreement, oral/otherwise, modifying the terms and this Contract is binding on Parties and principals, heirs, personal representatives, successors, and assigns. Illegal provisions are severable.

26. ADJUSTMENTS: Buyer and Seller agree to settle or prorate, annually or as appropriate; as of Closing Date: (A) utilities and waste fees issued after Closing which include service for time Property was owned/occupied by Seller (B) real estate taxes and owner association fees/assessments for the calendar year of Closing (C) any rents, deposits, fees associated with leasing (D) insurance, EMS service, fuel/consumables, and assessments. Closing Attorney shall make tax proration based on the available tax information deemed reliable by the Closing Attorney. Should the tax or tax estimate or proration later become inaccurate or change, Buyer and Seller shall make any financial adjustments between themselves once accurate tax information is available and Buyer takes timely reasonable steps to minimize taxes. This section survives Closing. Buyer is solely responsible for timely and reasonably minimizing the Buyer's taxes and obtaining tax minimization procedural information including related legal counsel and financial counsel. Special assessments approved prior to Closing shall be the responsibility of the Seller. Special Assessments approved after Closing shall be the responsibility of the Buyer. ??

27. DEFAULT/BREACH OF CONTRACT:

- (A) If Seller defaults in the performance of any of the Seller's obligations under this Contract ("Default"), Buyer may:
- (i) Deliver Notice of Default to Seller and terminate Contract and
 - (ii) Pursue any remedies available to Buyer at law or equity and
 - (iii) Recover attorneys' fees and all other direct costs of litigation if Seller found in default/breach of Contract.
- (B) If Buyer defaults in the performance of any of the Buyer's obligations under this Contract ("Default"), Seller may:
- (i) Deliver Notice of Default to Buyer and terminate Contract and
 - (ii) Pursue any remedies available to Seller at law or equity and
 - (iii) Recover attorneys' fees and all other direct costs of litigation if Buyer found in default/breach of Contract.
- (C) If either/both Parties default, Parties agree to sign an escrow deposit disbursement agreement or release agreement.
- (D) Parties may agree in writing to allow a Cure Period for a default. If within the Cure Period, either Party cures the Default and Delivers Notice, Parties shall proceed under the Contract.

28. MEDIATION: To potentially avoid expensive/lengthy/uncertain litigation, Parties may voluntarily/cooperatively decide which mediator to hire, how to pay the mediator, where to meet for mediation talks, and their own settlement agreement. Mediators do not decide settlement outcomes (Parties decide). Mediators merely facilitate the Parties reaching their own settlement and documenting settlement. Parties agree to attempt mediation for any dispute, claim, breach, representations made by any Party/Broker/other (e.g. concealment, misrepresentation, negligence, fraud) or service issues related to this Contract by using the National Association of REALTORS® Mediation Dispute Resolution System (803-772-5206 or www.NAR.REALTOR/policy/mediation or www.screaltors.org/mediation). Parties agree that the duty to attempt mediation survives closing and any signed mediation settlement agreement is binding. Parties agree some matters may proceed without mediation (e.g. foreclosure, action to enforce a mortgage or deed of trust or "rent to own" agreement, unlawful detainer action, file/enforce mechanic's lien, probate issues, interpleader action on earnest money). Parties agree some matters are not a waiver of mediation nor a breach of duty to attempt mediation (e.g. filing judicial action enabling recording notice of pending action, order for attachment/receivership/injunction or other provisional remedies). N/A
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DEADLINE
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29. NON-RELIANCE CLAUSE (NOT A MERGER CLAUSE NOR EXTENSION OF A MERGER CLAUSE): Parties execute this Contract freely and voluntarily without reliance upon any statements, representations, inducements, promises, or agreements by Brokers or Parties except as expressly stipulated or set forth in this Contract. If not contained herein, such statements, representations, inducements, promises, or agreements shall be of no force or effect. Parties acknowledge that Brokers are being retained solely as licensed real estate agents and not as any attorney, tax/financial advisor, appraiser, surveyor, engineer, mold or air quality expert, home inspector, or other professional service provider. N/A

30. BROKER DISCLAIMER: Parties acknowledge that Brokers give no warranties or representations of any kind, expressed or implied as to: (1) condition of the Property, including but not limited to termites, radon, mold, asbestos, moisture, environmental issues, water, waste, air quality, HVAC, utilities, plumbing, electrical or structure, etc. (2) condition of the Property, survey or legal matters, square footage (3) off site conditions (4) schools (5) title including but not limited to easements, encroachments, projections, encumbrances, restrictions, covenants, setbacks, and the like (6) fitness for a particular purpose of the Property or the improvements (7) zoning ordinances and restrictions (7) projected income, value, marketability, taxes, insurance, or other possible benefits to Buyer. Parties consent that their Brokers may communicate with them via any means; and use or disclose information not made confidential by written instruction of Parties. N/A

31. BROKERS COMPENSATION: Parties direct Closing Attorney to use settlement funds to collect and disburse Brokers Compensation to Brokers in accordance with agreements and document compensation on the settlement statement. If a Party disputes Brokers Compensation, that Party agrees to retain a South Carolina law firm to escrow only the disputed amount of Brokerage Compensation until the dispute is resolved by a written agreement signed by that Party and the Affected Broker, arbitration award, or court order. Party requesting the escrow shall pay all costs for escrow. If the dispute is not resolved within 180 days of Closing, the escrow shall be disbursed to the Broker. Parties agree that Brokers are third party beneficiaries to this Contract and have standing to seek remedies at law and equity. Parties represent that their only enforceable agency agreements are with the Brokers disclosed in this Contract. Parties consent to Brokers possibly receiving compensation from the HWC and/or others if compensation is paid by in accordance with laws and REALTOR® ethics. **NOTICE: THIS IS TO GIVE YOU NOTICE THAT BROKERS HAVE/WILL/MAY RECEIVE COMPENSATION FROM HWC/OTHERS FOR REFERRAL/PROCESSING. YOU ARE NOT REQUIRED TO PURCHASE A HWC OR SIMILAR RESIDENTIAL SERVICE CONTRACT AND IF YOU CHOOSE TO PURCHASE SUCH COVERAGE YOU ARE FREE TO PURCHASE IT FROM ANOTHER PROVIDER.** N/A

32. BROKER LIABILITY LIMITATION: Parties agree Brokers provided Parties with benefits, services, assistance, and value in bringing about this Contract. In consideration and recognition of the risks, rewards, compensation and benefits arising from this transaction to Brokers, Parties each agree that they shall pay Brokers' attorneys fees and that Brokers, shall not be liable to either Party or both, either jointly, severally or individually, in an amount exceeding that Broker's Compensation by reason of any act or omission, including negligence, misrepresentation, errors and omissions, or breach of undertaking, except for intentional or willful acts. This limitation shall apply regardless of the cause of action or legal theory asserted against either Broker, unless the claim is for an intentional or willful act. This limitation of liability shall apply to all claims, losses, costs, damages or claimed expenses of any nature from any cause(s), except intentional or willful acts, so that the total liability of either Broker shall not exceed the amount set forth herein. Parties will indemnify and hold harmless and pay attorneys fees for Brokers from breach of contract, any negligent or intentional acts or omissions by any Parties, Inspectors, Professionals, Service Providers, Contractors, etc. including any introduced or recommended by Brokers. Parties each agree that there is valid and sufficient consideration for this limitation of liability and that Brokers are the intended third-party beneficiaries of this provision. N/A

33. ATTACHMENTS, OTHER CONTINGENCIES, TERMS, AND/OR STIPULATIONS: There may be attachments to this Contract. The most recent changes, amendments, attachments, contingencies, stipulations, addendum, additions, exhibits, or writings, agreed to by the Parties; is evidence of the Parties' intent and agreement and shall control any Contract language conflicts. Parties shall initial and date Contract changes. If any documents are attached as addenda, amendments, attachments, or exhibits considered part of this Agreement, they are further identified or described here (e.g. SCR 390, 391, 311, 503, 504, 315, 320, 393, 370, 375, 513, 610): Contingent upon title search revealing no restrictions.

Section 4: Commission/Closing/Assession is hereby modified for Buyer agrees to pay all statutory and recording fees
Section 5: Earnest Money Buyer is hereby modified to Buyer agrees to pay all escrow agent fees.
Section 6: Transaction Costs is hereby modified for Buyer will assume and pay all transaction costs listed in this section.
Section 22: Rollback Taxes Buyer shall pay any rollback taxes prorated
Section 26: Adjustments Seller's tax proration will be limited to taxation based on current "agricultural tax" status.

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Sections 30, 31, 32 Broker no broker is part of this transaction and seller is not obligated for any broker fees or compensation.

34. NOTICE AND DELIVERY: Notice is any unilateral communication (offers, counteroffers, acceptance, termination, unilateral requests for better terms, and associated addenda/amendments) from one Party to the other. Notice to/from a Broker representing a Party is deemed Notice to/from the Party. All Notice, consents, approvals, counterparts, and similar actions required under Contract must be in paper or electronic writing and will be effective as of delivery to the Notice address/email/fax written below and awareness of receipt by Broker ("Delivered") unless Parties agree otherwise in writing.

35. PARTIES ARE SOLELY RESPONSIBLE FOR OBTAINING LEGAL ADVICE PRIOR TO SIGNING THIS CONTRACT AND DURING THE TRANSACTION. REAL ESTATE LICENSEES RECOMMEND OBTAINING LEGAL COUNSEL. Due to potential criminal activity, parties are solely responsible to verify all wiring instructions with law firm/bank and understand that audio/visual surveillance may occur. Parties acknowledge receiving, reading, reviewing, and understanding: this Contract, the SC Disclosure of Real Estate Brokerage Relationships form, any agency agreements, and copies of these documents. Parties acknowledge having time and opportunity to review all documents and receive legal counsel from their attorneys prior to signing Contract. H/A

36. EXPIRATION OF OFFER: When signed by a Party and intended as an offer or counter offer, this document represents an offer to the other Party that may be rescinded any time prior to or expires at 5 ☐ AM ☒ PM on August 31, 2020 unless accepted or counter-offered by the other Party in written form Delivered prior to such deadline: _____

IN WITNESS WHEREOF, this Contract has been duly executed by the Parties as true to the best of their knowledge/belief. If signee is not a Party, appropriate legal documents (e.g. Power of Attorney, Corporate Authorization) are ☐ attached or ☐ to be Delivered within _____ Business Days. Parties shall initial and date all page and changes in this Contract.

BUYER: *Anthony Hollett* Date: 8/29/20 Time: 10:45 AM
BUYER: _____ Date: _____ Time: _____

NOTICE ADDRESS/EMAIL/FAX: _____

SELLER: _____ Date: _____ Time: _____
SELLER: _____ Date: _____ Time: _____

NOTICE ADDRESS/EMAIL/FAX: _____

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**AGREEMENT/CONTRACT: TO BUY AND SELL REAL ESTATE
(GENERAL USE AND LOTS/ACREAGE)**

1. PARTIES: This legally binding Agreement ("Contract") To Buy and Sell Real Estate is entered into by:

Buyer(s), Rodney Halsell ("Buyer"), and
Seller(s), Graham R Piper and Christine A Piper ("Seller").

- (A) "Party" - defined as either Buyer or Seller, "Parties" defined as both Buyer and Seller.
(B) "Brokers" are licensed South Carolina brokers-in-charge, their associated real estate licensees, and their subagents.
(C) "Closing Attorney" - is the licensed South Carolina attorney selected by Buyer to coordinate the transaction and Closing.
McLaurin Law Firm LLC
(D) "Effective Date" - the final date upon which a Party to the negotiation places the final and required signatures and/or initials and date on this Contract and Delivers Notice to initially cause this primary Contract to be binding on all Parties.
(E) "Business Day" - a 24 hour period (Monday/Tuesday/Wednesday/Thursday/Friday) beginning at 10 AM and counted from 10 AM of the first Business Day following the appropriate date (Effective Date, Closing Date, stated date, Notice Delivery date). Business Days shall not begin, end, or include any Saturday, Sunday, or Federal legal holiday.
(F) "Good Funds" - is the transfer of the required amount of United States Dollars (USD) within any required timeframe.
(G) "Time" - all time stated shall be South Carolina local time. Time is of the essence with respect to all provisions of this Contract stipulating time, deadline, or performance periods.

☐ BUYER ☐ SELLER IS A SOUTH CAROLINA REAL ESTATE LICENSEE

2. PURCHASE PRICE: \$ 150,000.00 One Hundred Fifty Thousand

Payable by transfer of Good Funds via ☐ Finance or ☐ a combination of Finance and Cash USD or ☒ Cash USD.
Verification of Cash available for Closing is ☐ attached ☒ not attached ☒ to be Delivered before _____. This Contract ☐ is ☒ is not contingent upon the sale and closing of Buyer's real property and SCR504 ☐ is ☒ is not attached.

3. PROPERTY: Hereby acknowledging sufficient good Contract consideration (e.g. mutual promises herein), Seller will sell and convey and Buyer will buy for the Purchase Price any and all lot or parcel of land, appurtenant interests, improvements, landscape, systems, and fixtures if any thereon and further described below ("Property"). Seller agrees to maintain in operable condition the Property and any personal property conveying, including any landscaping, grounds and any agreed upon repairs or replacements, from the Effective Date through Closing subject to normal operable wear and tear. Buyer acknowledges opportunity to inquire about owners association issues, common area issues, condominium master deed issues, assigned parking/storage areas, memberships, lease issues and financed equipment prior to signing Contract. Leasing issues and items and financed equipment see Adjustments (e.g. tenants, leases, future vacation renters, SC vacation rental act reservations, rents, deposits, documents, solar panels, fuel tanks with fuel, alarm systems, satellite equipment, roll carts).

Address Parcel A, S-Tract 7149.02, designated as 4.715 Acre Unit # _____
City Seneca State of South Carolina
Zip 29672 County of Oconee
Lot _____ Block _____ Section/Phase _____ Subdivision _____
Other _____ Tax Map 151-02-01-033

Parties agree that no personal property will transfer as part of this sale, except described below and/or { } In attachment(s):

4. CONVEYANCE/CLOSING/POSSESSION: "Closing" occurs when Seller conveys Property to Buyer and occurs no later than 5 PM on or before November 30, 2020 ("Closing Date") with an automatic extension of 5 business days for an unsatisfied contingency through no fault of either party. Conveyance shall be fee simple made subject to all easements, reservations, rights of way, restrictive covenants of record (provided they do not make the title unmarketable or adversely affect the use/value of the Property in a material way) and to all government statutes, ordinances, rules, permits, and regulations. Seller agrees to convey marketable title with a properly recorded general warranty deed free of encumbrances and liens except as herein stated; and In name(s): To be determined

[PH] BUYER [_____] BUYER [GP] SELLER [CP] SELLER HAVE READ THIS PAGE

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and ownership type determined by Buyer. The deed shall be delivered to the Closing Attorney's designated place on or before the Closing Date no later than 10 AM. Seller agrees to pay all statutory deed recording fees. Parties agree the Brokers shall have access to the closing and relevant documents; and the Brokers shall be given copies of the settlement statement prior to Closing for review. Parties agree to hire/use licensed Attorney(s). Seller shall convey possession of a vacant and reasonably clean Property, free of debris, along with all keys, codes, any remote controls, available documents (e.g. manuals, equipment warranties, service information) and similar ownership items to Buyer at Closing.

5. **EARNEST MONEY:** Total \$ 5,000.00 NONE (USD) Earnest Money is paid as follows 10/13/20
\$ n/a accompanies this offer and \$ 5,000.00 will be paid within 3 Business Days after 10/13/20
Effective Date and Earnest Money is in the form of ☒ check ☐ cash ☐ other (e.g. wire)
to be a Credit to Buyer at Closing or disbursed only as Parties agree in writing or by court order or by Contract or as required for Closing by Closing Attorney. Buyer and seller authorize McLaurin Law Firm LLC
as Escrow Agent to deposit and hold and disburse earnest money according to the terms of any separate escrow agreement, the law, and any regulations. Broker does not guarantee payment of a check or checks accepted as earnest money. Parties direct escrow agent to communicate reasonable information confirming receipt and status of earnest money upon a Broker request. 10/13/20

THE PARTIES UNDERSTAND AND AGREE THAT UNDER ALL CIRCUMSTANCES INCLUDING DEFAULT, ESCROW AGENT WILL NOT DISBURSE EARNEST MONEY DEPOSIT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT (e.g. SCR518, SCR517, mediation agreement) OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT. EARNEST MONEY WILL NOT BE DISBURSED UNTIL DETERMINED TO BE GOOD FUNDS. IF LEGAL ACTIONS OCCUR RELATED TO EARNEST MONEY, PARTY RECEIVING THE LEAST AMOUNT OF EARNEST MONEY IN THE COURT'S DISBURSEMENT ORDER AGREES TO INDEMNIFY ESCROW AGENT'S FEES, COURT COSTS AND ATTORNEY FEES. IF INTERPLEADER IS TO BE UTILIZED, PARTIES AGREE THAT \$ 150.00 SHALL BE PAID TO THE ESCROW AGENT BY THE PARTIES AS COMPENSATION BEFORE ESCROW AGENT INITIATES COURT OF COMPETENT JURISDICTION PROCEEDINGS ON EARNEST MONEY.

6. **TRANSACTION COSTS:** Buyer's transaction costs include all costs and closing costs resulting from selected financing, pre-paid recurring items, Insurance (mortgage insurance, title insurance lender/owner, hazard) discount points, all costs to obtain information from or pertaining to any owners association (aka certificate of assessment), interest, non-recurring closing costs, title exam, FHAVA allowable costs, fees and expenses of Buyer's attorney, contractually required real estate broker compensation, and the cost of any inspector, appraiser or surveyor. Seller's transaction costs include deed preparation, deed recording costs, deed stamps/tax/recording costs calculated based on the value of the Property, all costs necessary to deliver marketable title and payoffs, satisfactions of mortgages/lens and recording, property taxes pro-rated at Closing, contractually required real estate broker compensation, and fees and expenses of Seller's attorney.

At Closing, Seller will pay Buyer's transaction costs not to exceed \$ n/a OR % of purchase price, whichever is higher, which includes non-allowable costs first and then allowable costs (FHAVA). Buyer is responsible for any Buyer's transaction costs exceeding this amount. If the amount exceeds the actual amount of those costs or amount allowed by Lender, then any excess funds will revert to Seller. Seller will also provide or pay for all of Seller's transaction costs. If no Closing, Buyer is responsible for Buyer's transaction costs and Seller responsible for Seller's transaction costs.

Private/public transfer fees and any costs similar to transfer fees (ex. capital contributions, conservancy fees, estoppel fees, or otherwise named but similar fees paid to the owners association) are the ☒ Seller's or ☐ Buyer's transaction costs.

Unless otherwise agreed upon in writing, Buyer will pay Buyer's transaction costs and Seller pay Seller's transaction costs

7. **FINANCE:** Buyer's obligation under this Contract ☐ is ☒ is not contingent upon obtaining financing of a ☐ 30 year or ☐ 15 year or ☐ other purchase money loan at reasonable prevailing market terms with loan(s) equal in amounts of minimum n/a % and maximum n/a % of the Purchase Price or Appraised Value whichever is lower. ("Financing Contingency"). Financing Contingency expires at Closing ("Financing Period"). Buyer must make timely good faith efforts to apply for and obtain financing while refraining from contrary actions ("Financing Effort"). In a timely manner, Buyer shall inform Seller and Brokers of pertinent financing issues and authorize Buyer's Lender to disclose pertinent loan information to Seller and Brokers ("Financing Disclosure"). Buyer shall apply for financing within Business Days from the Effective Date and shall Deliver Notice to Seller of reasonable pre-final loan approval (e.g. pre-approval letter, initial approval letter) that contains no unreasonable credit, income, or asset conditions within Business Days from the Effective Date (no repairs required prior to this Notice). Final loan approval occurs when Lender

[PM] BUYER [] BUYER [APR] SELLER [CP] SELLER HAVE READ THIS PAGE

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funds loan(s). If a Lender subsequently declines or fails to approve financing, the Buyer shall notify the Seller and Brokers as soon as possible. If the Seller and Brokers are notified of inability to obtain financing during the Financing Period, either Party may terminate this Contract by Notice.

Lender (may change): n/a ☐ FHA ☐ VA ☐ Conventional ☐ Seller

☐ Other

An FHA VA Financing Addendum ☐ Is ☐ Is not attached. Additional financing terms ☐ are ☐ are not attached.

8. INSPECTION/REINSPECTION RIGHTS: Buyer and SC licensed and insured Inspectors ("Inspectors") reasonably perform any reasonable ultimately non-destructive examination and make reasonable record of the Property with reasonable Notice to Seller through Closing including investigations of off-site conditions and any issues related to the Property at Buyer Expense ("Inspections"). Buyer and persons they choose may make reasonable visual observations of Property.

Sellers will make the Property accessible for inspection and not unreasonably withhold access, unless otherwise agreed in writing by the Parties. Seller will keep all utilities operational through Closing unless otherwise agreed:

☐ Seller grants Buyer permission to connect utilities, pay for utilities, and hire professionals (e.g. electricians, plumbers) to safely connect and operate the utilities during the inspections

Other

☐ see attached.

Buyer will hold harmless, indemnify, pay damages and attorneys fees to Seller and Brokers for all claims, injuries, and damages arising out of the exercise of these rights. Seller will hold harmless, indemnify, pay damages and attorneys fees to Brokers for all claims, injuries, and damages arising out of the exercise of these rights. Brokers recommend that Parties obtain all inspections as soon as possible. Brokers recommend that Parties and Inspectors use insurance to manage risk.

9. APPRAISED VALUE:

☐ This Contract is contingent upon the Property being valued according to the Lender's appraisal or other appraisal as agreed upon by the Parties ("Appraised Value") for the Purchase Price or higher. If the Parties are made aware that the Appraised Value is less than the Purchase Price and the Seller Delivers Notice to the Buyer within 5 Business Days or Closing (whichever earliest) of an amendment to reduce the Purchase Price to the Appraised Value, the Parties agree to proceed to Closing under terms of this Contract with the Purchase Price amended to be the Appraised Value. If Seller is aware and refuses to reduce as stated above, Buyer may proceed to Closing or terminate this Contract by Delivering Notice of Termination to the Seller.

☒ This Contract is not contingent upon the Property being valued at an Appraised Value according to the Lender's appraisal or other appraisal as agreed upon by the Parties for the Purchase Price or more.

10. SURVEY, TITLE EXAMINATION, ELEVATION, INSURANCE: Brokers recommend Buyer have Property surveyed, title examined, elevation/wetlands/beachfront determined, and appropriate insurance (e.g. flood, flood contents, hazard, liability, owner's title) effective at Closing. Unless otherwise agreed upon in writing by Parties, Buyer to obtain new insurance policies by Closing and Seller may cancel existing insurance after Closing. Flood Insurance, if required by Lender or at Buyer's option, shall be assigned to Buyer with permission of carrier and premium prorated to Closing. Buyers are solely responsible to investigate pricing, availability, coverage, and requirements of insurance (e.g. flood, flood contents, hazard, liability) for the property prior to signing Contract.

11. SURVIVAL: If any provision herein contained which by its nature or effect is required to be observed, kept, or performed after Closing, it will survive the Closing and remain binding upon for the parties hereto until fully observed, kept or performed.

12. DUE DILIGENCE:

The DUE DILIGENCE PERIOD ends no later than 30 Business Days after Contract's original Primary Effective Date unless the Parties agree in writing to extend the Due Diligence Period.

During the Due Diligence Period, Buyer may take timely/prudent steps to help Buyer/Inspectors, Seller/Estimators, and REALTORS® all have adequate time for: Buyer to coordinate Inspections and Contract Renegotiations, Seller to obtain estimates, Buyer and Seller to negotiate Contract terms, and Buyer to potentially timely/proper Due Diligence terminate or buy.

[RM] BUYER [] BUYER [KAP] SELLER [CP] SELLER HAVE READ THIS PAGE

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During the Due Diligence Period, Seller agrees Buyer may rely on the following list of five items in accordance with Contract and laws. Buyer is solely responsible for inspections. Buyer is not required to inspect. Until Buyer timely/properly terminates the Contract or the Parties agree on an amended Contract, the Buyer can rely on #1, #2, #3, #4, and #5. **TIME IS OF THE ESSENCE. Delivering a Repair Request does not extend the Due Diligence Period.**

- (1) Conduct/obtain Inspections [e.g. on site conditions, off site conditions]
- (2) Deliver Repairs Requests Notice to Seller [e.g. SCR525 with all repair requests, all/portions of reports]
- (3) Proceed under amended Contract [e.g. SCR330 and SCR525, SCR390, SCR391]
- (4) Proceed under As Is Contract [e.g. Buyer desires to buy anyway, Buyer wants Property without Repair]
- (5) Terminate Contract by timely/properly Delivering "Notice of Termination" and "Termination Fee" to Seller within the Due Diligence Period, any remaining Earnest Money shall be returned to the Buyer.

TERMINATION: During the Due Diligence Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller both Notice of Termination and a Termination Fee of \$ N/A USD Good Funds, **DURING THE DUE DILIGENCE PERIOD, SHOULD BUYER FAIL TO OBTAIN A NEW/AMENDED CONTRACT WITH THE SELLER OR BUYER FAIL TO TIMELY/PROPERLY DUE DILIGENCE TERMINATE THE CONTRACT DURING THE DUE DILIGENCE PERIOD:** The Buyer agrees to buy and Seller agrees to sell the Property **AS IS**. Parties agree "As Is" means Buyer buys the Property for the Purchase Price while Seller maintains the Property from the Effective Date through Closing subject to normal wear otherwise without repair or replacement and sells the Property for the Purchase price unless otherwise agreed upon in writing by the Parties in this Contract.

13. FIRE OR CASUALTY OR INJURY: In case the Property is damaged wholly or partially by fire or other casualty prior to Closing, Parties will have the right for 5 Business Days after Notice of damage to Deliver Notice of Termination to other Party. If Party does not Deliver Notice of Termination, the Parties proceed according to the Contract and Seller is to be responsible to (1) repair all damage, (2) remit to Buyer an amount for repairs, or (3) assign to Buyer the right to all proceeds of insurance and remit any deductible amount applicable to such casualty. If Buyer or Inspections caused the damage, Buyer is responsible for indemnifying Seller for damages. Brokers and Parties should ensure that they are protected by appropriate risk management strategies such as insurance.

14. BUILDING PERMIT: This Contract ☒ is ☐ is not contingent upon Buyer's ability to acquire all required licenses and permits from the appropriate authorities to build on the Property. No later than 25 Business Days after the original Effective Date unless the Parties agree in writing to extend this Building Permit Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination due to inability to acquire all required licenses and permits from the appropriate authorities to build on the Property. If Seller receives the Delivered Notice of Termination during the Building Permit Period, any remaining Earnest Money shall be returned to the Buyer. Should Buyer not Deliver Notice of Termination due to inability to acquire all required licenses and permits from the appropriate authorities to build on the Property to Seller during the Building Permit Period, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract.

15. REZONING: This Contract ☐ is ☒ is not contingent upon the Property being rezoned to _____ by full approval (without any appeal during the appeal period) by the appropriate authorities. No later than _____ Business Days after the original Effective Date unless the Parties agree in writing to extend this Rezoning Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination due to inability to acquire rezoning from the appropriate authorities to build on the Property. If Seller receives the Delivered Notice of Termination during the Rezoning Period, any remaining Earnest Money shall be returned to the Buyer. Should Buyer not Deliver Notice of Termination due to inability to acquire rezoning from the appropriate authorities during the Rezoning Period, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract. The ☐ Buyer or ☐ Seller shall be responsible for pursuing rezoning and paying all associated costs. All rezoning applications shall be submitted to the Seller for Seller's approval prior to filing. Seller shall not unreasonably or untimely withhold approval. All Parties agree to cooperate, sign the necessary documentation, and make efforts to support the rezoning application.

16. WELL, SEPTIC, WATER LINE, SEWER AVAILABILITY: This Contract ☒ is ☐ is not contingent upon Buyer's ability to obtain from the South Carolina Department of Health and Environmental Control or other appropriate authorities all required permits for a well and septic system suitable for the Buyer's intended structure in the event a well or septic system is needed on the Property. No later than 25 Business Days after the original Effective Date unless the Parties agree in writing to extend this Well and Septic Permit Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination due to inability to acquire all required permits from the appropriate authorities to install a conventional well and conventional septic system on the Property. If Seller receives the Delivered Notice of Termination

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Initials

Addendum

during the Well and Septic Period, any remaining Earnest Money shall be returned to the Buyer. Should Buyer not Deliver Notice of Termination due to inability to acquire all required permits from the appropriate authorities to install a well and septic system on the Property to Seller during the Well and Septic Period, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract. If the Property is connected or capable of being connected to a water and or sewer line maintained by a private or public utility for a customary tap fee not to exceed \$ _____, the Buyer agrees to waive any applicable portion of the Well and Septic Contingency. Seller represents the Property is connected to water system: ☐ county ☐ city ☐ private ☐ corporate ☐ community ☐ well ☐ other _____ Seller represents the Property is connected to water disposal system: ☐ septic ☐ sewer ☐ private ☐ corporate ☐ government ☒ other City Wtr/Septic Avail

17. CONDITION OF PROPERTY: Seller shall not remove any timber, vegetation, dirt, minerals, or otherwise affect the condition of the property from the Effective Date through Closing. All timber, vegetation, dirt, minerals, or similar shall remain as part of the Property and be conveyed to the Buyer at Closing. The Seller shall not bring any trash, refuse, debris, dirt, fill, medical wastes, hazardous wastes, or other materials onto the Property. Seller shall Deliver Notice of any legal action or condemnation action to the Buyer as soon as possible. If Seller Delivers such Notice, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination. If Seller receives this Delivered Notice of Termination at any time, remaining Earnest Money shall be returned to the Buyer. Should Buyer not Deliver this Notice of Termination, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract.

18. SC RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT ("CDS") [check one]:

☐ Buyer and Seller agree that Seller has Delivered prior to this Contract, a CDS to Buyer, as required by SC Code of Laws Section 27-50-10 et seq. If after delivery, Seller discovers a CDS material inaccuracy or the CDS becomes materially inaccurate due to an occurrence or circumstance, the Seller shall promptly correct this inaccuracy (e.g. delivering a corrected CDS to the Buyer or making reasonable repairs prior to Closing). Buyer understands the CDS does not replace inspections. Buyer understands and agrees the CDS contains only statements made by the Seller. Parties agree the Brokers are not responsible nor liable for any information in the CDS and the Brokers have met requirements of SC Code 27-50-70. CDS is not a substitute for the Buyers and Inspectors inspecting the Property, Property issues, and off site conditions for all needs.

☒ Buyer and Seller agree that Seller will **NOT** complete nor provide a CDS to Buyer in accordance with SC Code of Law, as amended, Section 27-50-30, Paragraph (13). Buyers have sole responsibility to inspect Property issues for all their needs.

19. LEAD BASED PAINT/LEAD HAZARDS: If Property was built or contains items created prior to 1978, it may contain lead based hazards and Parties agree to sign "Disclosure of Information of Lead Based Paint and/or Lead Hazards" forms (e.g. SCR315) and give copies to Brokers. Parties acknowledge receiving and understanding the EPA pamphlet "Protect your Family From Lead in Your Home." For their protection, Buyers should conduct/obtain inspections of all Property issues per their needs.

20. SEX OFFENDER/CRIMINAL INFORMATION: Parties agree that Brokers are not responsible for obtaining or disclosing information in the SC Sex Offender Registry and no course of action may be brought against any Brokers for failure to obtain or disclose sex offender or criminal information. Buyer and Seller agree that they have sole responsibility to obtain their own sex offender, death, psychological stigma, clandestine laboratory, and crime information from sources (e.g. law enforcement, P.I., web). The Buyer may obtain information about the Sex Offender Registry and persons registered with the Registry by contacting the local county Sheriff or other appropriate law enforcement officials.

21. TRUST ACCOUNT INTEREST/CHARITABLE CONTRIBUTION: According to the South Carolina Real Estate Commission regulations and South Carolina laws, any interest earned from deposit to Closing on Buyer's earnest money deposit belongs to Buyer. It is understood that Broker ☐ may ☒ may not place deposited earnest monies into an interest bearing trust account. If Buyer's earnest money deposit is deposited into an interest bearing trust account, Parties agree that Broker will retain all interest earned in said account and may contribute some or all to a charitable enterprise.

22. SC INCOME TAX ON NON-RESIDENT GAIN AND COMPLIANCE AND USA FEDERAL INCOME TAX: Seller and Buyer will comply with the provisions of the South Carolina laws [e.g. 12-8-580 (as amended)] regarding state income tax withholding requirements if the Seller is not a resident or has not filed South Carolina state income tax returns. Seller and Buyer will comply with United States of America federal income tax laws. Seller and Buyer should discuss tax laws and minimization actions with their qualified tax advisor. Parties will comply with all local, state, federal laws, and any rules.

23. ROLLBACK TAXES (IF ANY): The Parties agree that the ☐ Seller or ☒ Buyer shall pay any rollback taxes when rollback taxes are determined and billed.

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24. SPECIAL STUDIES AREA, WETLANDS, AND ENVIRONMENTAL MATTERS: All reports and certifications required by the Lender, Buyer, or any government concerning any special study area, wetlands, or environmental issues shall be ordered by n/a and paid for by n/a.

All of these reports or certifications shall be completed no later than n/a Business Days after the original Effective Date, unless the Parties agree in writing or extend this period ("Environmental Period"). In the event repairs are necessary to address environmental concerns (Repair Requests), the Seller shall be Delivered Notice in writing of the specific defects or deficiencies no later than 2 Business Days after the Environmental Period. If the Buyer fails to notify the Seller within this timeframe, Buyer shall have waived any and all rights under terms of this section. If Lender's commitment requires any additional inspections or certifications, these are to be provided by the Buyer.

Upon Delivered Notice of the Repair Requests, Seller has five Business Days to address the Buyer's Repair Requests. The costs of all repairs to address environmental concerns to be paid by Seller. If the Seller fails to agree to make these repairs within this timeframe, the Buyer shall have 2 Business Days to choose any of the following options (1) accept the Property in its present condition, (2) negotiate with the Seller for the payment of these repairs or (3) terminate this Contract and receive their Earnest Money. The repairs to any other items are the sole responsibility of the Buyer. The obligations of the Seller for repairs terminate upon Closing. If the Seller agrees to make the repairs, the Parties agree to proceed under Contract.

25. ENTIRE AND BINDING AGREEMENT (MERGER CLAUSE): Parties agree that this Contract expresses the entire agreement between the parties, that there is no other agreement, oral/otherwise, modifying the terms and this Contract is binding on Parties and principals, heirs, personal representatives, successors, and assigns. Illegal provisions are severable.

26. ADJUSTMENTS: Buyer and Seller agree to settle or prorate, annually or as appropriate, as of Closing Date: (A) utilities and waste fees issued after Closing which include service for time Property was owned/occupied by Seller (B) real estate taxes and owner association fees/assessments for the calendar year of Closing (C) any rents, deposits, fees associated with leasing (D) insurance, EMS service, fuel/consumables, and assessments. Closing Attorney shall make tax proration based on the available tax information deemed reliable by the Closing Attorney. Should the tax or tax estimate or proration later become inaccurate or change, Buyer and Seller shall make any financial adjustments between themselves once accurate tax information is available and Buyer takes timely reasonable steps to minimize taxes. This section survives Closing. Buyer is solely responsible for timely and reasonably minimizing the Buyer's taxes and obtaining tax minimization procedural information including related legal counsel and financial counsel. Special assessments approved prior to Closing shall be the responsibility of the Seller. Special Assessments approved after Closing shall be the responsibility of the Buyer.

27. DEFAULT/BREACH OF CONTRACT:

- (A) If Seller defaults in the performance of any of the Seller's obligations under this Contract ("Default"), Buyer may:
- (i) Deliver Notice of Default to Seller and terminate Contract and
 - (ii) Pursue any remedies available to Buyer at law or equity and
 - (iii) Recover attorneys' fees and all other direct costs of litigation if Seller found in default/breach of Contract.
- (B) If Buyer defaults in the performance of any of the Buyer's obligations under this Contract ("Default"), Seller may:
- (i) Deliver Notice of Default to Buyer and terminate Contract and
 - (ii) Pursue any remedies available to Seller at law or equity and
 - (iii) Recover attorneys' fees and all other direct costs of litigation if Buyer found in default/breach of Contract.
- (C) If either/both Parties default, Parties agree to sign an escrow deposit disbursement agreement or release agreement.
- (D) Parties may agree in writing to allow a Cure Period for a default. If within the Cure Period, either Party cures the Default and Delivers Notice, Parties shall proceed under the Contract.

28. MEDIATION: To potentially avoid expensive/lengthy/uncertain litigation, Parties may voluntarily/cooperatively decide which mediator to hire, how to pay the mediator, where to meet for mediation talks, and their own settlement agreement. Mediators do not decide settlement outcomes (Parties decide). Mediators merely facilitate the Parties reaching their own settlement and documenting settlement. Parties agree to attempt mediation for any dispute, claim, breach, representations made by any Party/Broker/other (e.g. concealment, misrepresentation, negligence, fraud) or service issues related to this Contract by using the National Association of REALTORS® Mediation Dispute Resolution System (803-772-5206 or www.NAR.REALTOR/policy/mediation or www.screaltors.org/mediation). Parties agree that the duty to attempt mediation survives closing and any signed mediation settlement agreement is binding. Parties agree some matters may proceed without mediation (e.g. foreclosure, action to enforce a mortgage or deed of trust or "rent to own" agreement, unlawful detainer action, file/enforce mechanic's lien, probate issues, interpleader action on earnest money). Parties agree some matters are not a waiver of mediation nor a breach of duty to attempt mediation (e.g. filing judicial action enabling recording notice of pending action, order for attachment/receivership/injunction or other provisional remedies).

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29. NON-RELIANCE CLAUSE (NOT A MERGER CLAUSE NOR EXTENSION OF A MERGER CLAUSE): Parties execute this Contract freely and voluntarily without reliance upon any statements, representations, inducements, promises, or agreements by Brokers or Parties except as expressly stipulated or set forth in this Contract. If not contained herein, such statements, representations, inducements, promises, or agreements shall be of no force or effect. Parties acknowledge that Brokers are being retained solely as licensed real estate agents and not as any attorney, tax/financial advisor, appraiser, surveyor, engineer, mold or air quality expert, home inspector, or other professional service provider.

30. BROKER DISCLAIMER: Parties acknowledge that Brokers give no warranties or representations of any kind, expressed or implied as to: (1) condition of the Property, including but not limited to lemmies, radon, mold, asbestos, moisture, environmental issues, water, waste, air quality, HVAC, utilities, plumbing, electrical or structure, etc. (2) condition of the Property, survey or legal matters, square footage (3) off site conditions (4) schools (5) title including but not limited to easements, encroachments, projections, encumbrances, restrictions, covenants, setbacks, and the like (6) fitness for a particular purpose of the Property or the improvements (7) zoning ordinances and restrictions (7) projected income, value, marketability, taxes, insurance, or other possible benefits to Buyer. Parties consent that their Brokers may communicate with them via any means; and use or disclose information not made confidential by written instruction of Parties.

31. BROKERS COMPENSATION: Parties direct Closing Attorney to use settlement funds to collect and disburse Brokers Compensation to Brokers in accordance with agreements and document compensation on the settlement statement. If a Party disputes Brokers Compensation, that Party agrees to retain a South Carolina law firm to escrow only the disputed amount of Brokerage Compensation until the dispute is resolved by a written agreement signed by that Party and the Affected Broker, arbitration award, or court order. Party requesting the escrow shall pay all costs for escrow. If the dispute is not resolved within 180 days of Closing, the escrow shall be disbursed to the Broker. Parties agree that Brokers are third party beneficiaries to this Contract and have standing to seek remedies at law and equity. Parties represent that their only enforceable agency agreements are with the Brokers disclosed in this Contract. Parties consent to Brokers possibly receiving compensation from the HWC and/or others if compensation is paid by in accordance with laws and REALTOR® ethics; **NOTICE: THIS IS TO GIVE YOU NOTICE THAT BROKERS HAVE/WILL/MAY RECEIVE COMPENSATION FROM HWC/OTHERS FOR REFERRAL/PROCESSING. YOU ARE NOT REQUIRED TO PURCHASE A HWC OR SIMILAR RESIDENTIAL SERVICE CONTRACT AND IF YOU CHOOSE TO PURCHASE SUCH COVERAGE YOU ARE FREE TO PURCHASE IT FROM ANOTHER PROVIDER.**

32. BROKER LIABILITY LIMITATION: Parties agree Brokers provided Parties with benefits, services, assistance, and value in bringing about this Contract. In consideration and recognition of the risks, rewards, compensation and benefits arising from this transaction to Brokers, Parties each agree that they shall pay Brokers' attorneys fees and that Brokers, shall not be liable to either Party or both, either jointly, severally or individually, in an amount exceeding that Broker's Compensation by reason of any act or omission, including negligence, misrepresentation, errors and omissions, or breach of undertaking, except for intentional or willful acts. This limitation shall apply regardless of the cause of action or legal theory asserted against either Broker, unless the claim is for an intentional or willful act. This limitation of liability shall apply to all claims, losses, costs, damages or claimed expenses of any nature from any cause(s), except intentional or willful acts, so that the total liability of either Broker shall not exceed the amount set forth herein. Parties will indemnify and hold harmless and pay attorneys fees for Brokers from breach of contract, any negligent or intentional acts or omissions by any Parties, Inspectors, Professionals, Service Providers, Contractors, etc. including any introduced or recommended by Brokers. Parties each agree that there is valid and sufficient consideration for this limitation of liability and that Brokers are the intended third-party beneficiaries of this provision.

33. ATTACHMENTS, OTHER CONTINGENCIES, TERMS, AND/OR STIPULATIONS: There may be attachments to this Contract. The most recent changes, amendments, attachments, contingencies, stipulations, addendum, additions, exhibits, or writings, agreed to by the Parties; is evidence of the Parties' intent and agreement and shall control any Contract language conflicts. Parties shall initial and date Contract changes. If any documents are attached as addenda, amendments, attachments, or exhibits considered part of this Agreement, they are further identified or described here (e.g. SCR 390, 391, 311, 503, 504, 315, 320, 393, 370, 375, 513, 510): Contingent upon title search revealing no restrictions.

See ADDENDUM to this contract (Hulsell AGREEMENT/CONTRACT).
The provisions of the Addendum take precedence over the sections
referenced in this contract.

[RM] BUYER [] BUYER [BAR] SELLER [OR] SELLER HAVE READ THIS PAGE

Plus
Addendum

34. NOTICE AND DELIVERY: Notice is any unilateral communication (offers, counteroffers, acceptance, termination, unilateral requests for better terms, and associated addenda/amendments) from one Party to the other. Notice to/from a Broker representing a Party is deemed Notice to/from the Party. All Notice, consents, approvals, counterparts, and similar actions required under Contract must be in paper or electronic writing and will be effective as of delivery to the Notice address/email/fax written below and awareness of receipt by Broker ("Delivered") unless Parties agree otherwise in writing.

35. PARTIES ARE SOLELY RESPONSIBLE FOR OBTAINING LEGAL ADVICE PRIOR TO SIGNING THIS CONTRACT AND DURING THE TRANSACTION. REAL ESTATE LICENSEES RECOMMEND OBTAINING LEGAL COUNSEL. Due to potential criminal activity, parties are solely responsible to verify all wiring instructions with law firm/bank and understand that audio/visual surveillance may occur. Parties acknowledge receiving, reading, reviewing, and understanding this Contract, the SC Disclosure of Real Estate Brokerage Relationships form, any agency agreements, and copies of these documents. Parties acknowledge having time and opportunity to review all documents and receive legal counsel from their attorneys prior to signing Contract.

36. EXPIRATION OF OFFER: When signed by a Party and intended as an offer or counter offer, this document represents an offer to the other Party that may be rescinded any time prior to or expires at 5 ☐ AM ☒ PM on October 16, 2020 unless accepted or counter-offered by the other Party in written form Delivered prior to such deadline.

IN WITNESS WHEREOF, this Contract has been duly executed by the Parties as true to the best of their knowledge/belief. If signee is not a Party, appropriate legal documents (e.g. Power of Attorney, Corporate Authorization) are ☐ attached or ☐ to be Delivered within _____ Business Days. Parties shall initial and date all page and changes in this Contract.

BUYER: *Adrian Hill* Date: 10/10/20 Time: 11:00 AM
BUYER: _____ Date: _____ Time: _____

NOTICE ADDRESS/EMAIL/FAX: _____

SELLER: *Marlene R. Pajon* Date: 10/13/20 Time: 3:28
SELLER: *Christine A. Pajon* Date: 10/13/20 Time: 3:28

NOTICE ADDRESS/EMAIL/FAX: _____

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**Addendum to Halsell AGREEMENT/CONTRACT: TO BUY AND SELL REAL ESTATE
(GENERAL USE AND LOTS/ACREAGE) between Rodney Halsell (Buyer) and
Graham and Christine Piper (Sellers).**

The following terms and/or stipulations will take precedence over the terms in the SCR Form 830 in the AGREEMENT/CONTRACT referenced.

Section 4. CONVEYANCE/CLOSING/POSSESSION is hereby modified to BUYER agrees to pay all statutory deed recording fees replacing Seller obligation near top of page 2 of 9.

Section 5. EARNEST MONEY is hereby modified to BUYER agrees to pay all ESCROW fees and costs, Page 2 of 9.

Section 6. TRANSACTION COSTS is hereby modified to BUYER will assume and pay all transaction costs listed in this section. In addition, this addendum modifies the checked box from Seller to Buyer. Page 2 of 9.

Section 23. ROLLBACK TAXES (IF ANY) is hereby set that the BUYER shall pay any rollback taxes when rollback taxes are determined and billed. Page 5 of 9.

Section 26. ADJUSTMENTS is hereby modified to state that SELLERS tax proration will be limited to the prorated taxes based on the current "Agricultural" tax status. Page 6 of 9.

Sections 30, 31, 32 BROKER and any other references to BROKER in this contract are null and void as no BROKER has been engaged in this transaction. Further, the SELLER is not obligated for any broker fees or compensation. Page 7 of 9 along with any other references to BROKER throughout the contract.

{ RA } BUYER { } BUYER { GP } SELLER { CP } SELLER HAVE READ THIS PAGE AND
AGREED TO ADD THIS ADDENDUM AS PART OF THE REFERENCED CONTRACT.

Addendum

September 28, 2020

Adam C. Chapman
Planning Director
Oconee County, South Carolina

RE: 4.7 acre parcel- 151-02-01-033

Dear Adam,

The Pipers, current owners, and the Halsells, prospective buyers, approached the Mountain View Pointe Property Owners Association seeking an agreement to put a driveway accessing the proposed residential garage building the Halsells would like to build on the property. There is a landscape easement on the property allowing the MVP POA the right to landscape this area, however, this is noted as being a "non-exclusive easement" in the MVP CCRs (Section 7.9 of the MVP CCRs, the Entrance Monument and Landscape easements are "non-exclusive" (Book 1250 pp 121-122, pages 24-25 as printed).

Despite offering the following benefits to the MVP POA and MVP residents and requesting that they provide any additional requests, the MVP POA Board responded that they did not want any driveway across the landscape easement and did not offer any terms under which they would approve of a driveway across the easement.

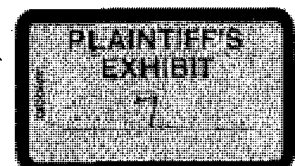
Benefits to MVP POA and MVP residents on reaching an agreement:

1. No conflict with the property owner
2. Residential designation for currently unrestricted adjacent parcel of land
3. Increased property values (project estimated investment is greater than average value of MVP interior properties)
4. Potential to negotiate characteristics of a driveway across the landscape easement.

Benefits to Property Owner on reaching an agreement:

1. No conflict with the MVP POA
2. Defined access to the property
3. Ability to proceed with planned use

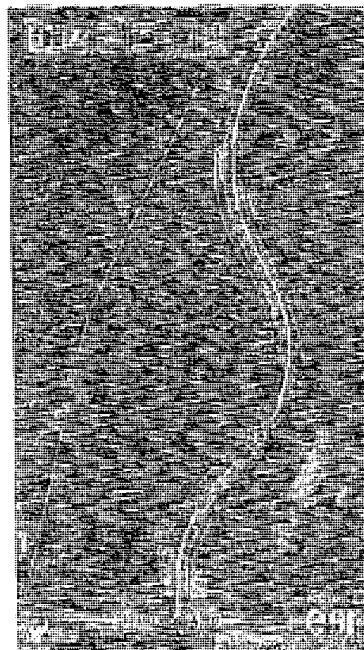
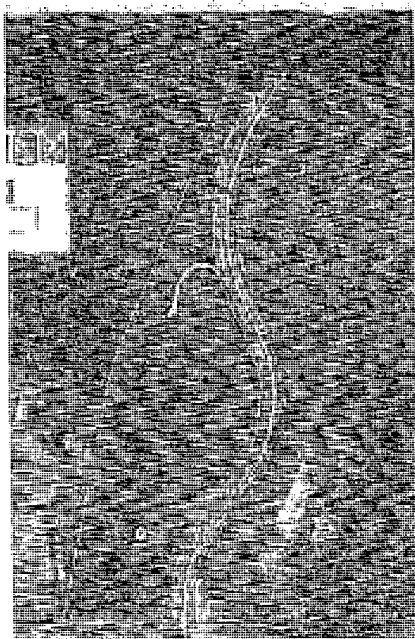
While a driveway from Doug Hollow Road to the proposed building is possible, such a driveway will require: significantly more removal of trees, more earthwork, and result in more hardscape. We believe all of these will increase the negative impact to the area both in the short term during construction and in the long term. The Pipers and Halsells believe that a driveway from Doug Hollow Rd. detracts from the wooded nature of the property today. Since part of this property is in the Lake District overlay, we would like to request your support in securing a driveway permit to come off of Mountain View Pointe Drive. Below are overhead views of the property showing proposed driveway locations on Mountain View Pointe Drive (that would be approx.. 25 ft wide X 200 ft long) versus coming off Doug Hollow Rd. (that would be approx.. 25 ft wide X 800 ft long).



The Halsells as buyers, are looking for some assurance that a driveway on Mountain View Pointe Drive will be allowed by Oconee County or knowing that they have to enter the property from Doug Hollow Rd., they will account for the extended length driveway in their offer. Please advise us of any assistance you can offer or how to proceed.

Sincerely,
Graham Piper

Driveway proposals from Mountain View Pointe Drive (yellow mark) vs from Doug Hollow Rd. (red mark) to proposed building site. Approximately 200 ft long from MVP Dr. vs. 800 ft long from Doug Hollow Rd.



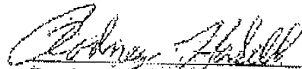
STATE OF SOUTH CAROLINA)

COUNTY OF OCONEE)

ACKNOWLEDGEMENT AND
CERTIFICATION

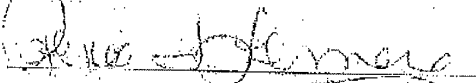
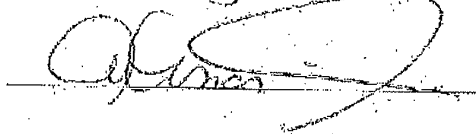
WE, Rodney Halsell and Barbara Halsell, the undersigned purchasers of Parcel A S-Tract 7149.02, 4.715 acres, Seneca, SC, do hereby acknowledge any and all restrictions, protective covenants, easements and rights-of-way imposed upon this property and we do further acknowledge that we have reviewed the survey on this property and further certify to McLaurin Law, LLC, that all contingencies have been met on the Contract for the sale and purchase of this property.

Dated the 2nd day of December, 2020.


Rodney Halsell


Barbara Halsell

Witnesses:



Application for Encroachment Permit

S.C. Department of Transportation
Form 637 (Rev 03/2017)

Contact Information

Applicant:
Street:

City:
State: Zip Code:
Phone: (501)240-0416 Fax:
Email: RHHALSELL@YAHOO.COM
Contact: Rod Hall

Project Location

Primary County: Oconee

County	Local Name

1. Type of Encroachment: DRIVEWAY - SINGLE RESIDENTIAL

Personal driveway on 4.7 acre property, 20' wide asphalt surface where it meets Doug Hollow that narrows as it enters property. Property parcel ID 151-02-01-003

2. Description of Location:

Near the end of Doug Hollow Rd close to Lighthouse restaurant, just west of the corner of Doug Hollow & Mountain View Point Dr on the right-hand side of Doug Hollow, I have marked the roadway with small white lines per my conversation with Barbara Dean to make it easy to see.

(Attach sketch indicating road way features such as: pavement width, shoulder width, sidewalk and curb and gutter location, significant drainage structures, north arrow, right of way width, and location of the proposed encroachment with respect to the roadway exterior and the nearest intersecting road on the State system.)

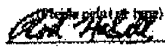
2. The undersigned applicant hereby requests the SCDOT to permit encroachment on the SCDOT right of way as described herein. It is expressly understood that the encroachment, if and when constructed, shall be installed in accordance with the sketch attached hereto and made a part hereof. The applicant agrees to comply with and be bound by the SCDOT's 'A Policy for Accommodating Utilities on Highways Rights of way', 'Standard Specifications for Highway Construction', the 'General Provisions' and 'Special Provisions', attached hereto or made a part hereof by reference, during the installation, operation and maintenance of said encroachment within the SCDOT's Right of Way. **DISCHARGES OF STORM WATER AND NON-STORM WATER:** Work within State Highway right-of-way shall be conducted in compliance with all applicable requirements of the National Pollutant Discharge Elimination System (NPDES) permit(s) issued to the Department of Transportation (Department), to govern the discharge of storm water and non-storm water from its properties. Work shall also be in compliance with all other applicable Federal, State and Local laws and regulations, and with the Department's Encroachment Permits Manual and encroachment permit. The encroachment permit will not be issued until the applicant has received an NPDES construction permit from SC Department of Health and Environmental Control.

The applicant agrees to comply with all current SCDOT Standards Specifications for Highway Construction including all Supplemental Technical Specifications. The applicant hereby further agrees, and binds his/her/its heirs, personal representatives, successors, assigns, to assume any and all liability for accidents or injuries to persons, or damage to property, including the highway, that may be caused by the construction, maintenance, use, moving or removing of the physical appurtenances contemplated herein, and the applicant agrees to indemnify and hold SCDOT harmless from and against any and all claims for personal injury and/or property damage which may be sustained by reason of the construction, maintenance or existence of said encroachment on the SCDOT's right of way.

PLAINTIFF'S
EXHIBIT

Applicant's Name: Rod Hubell

Date: 12/02/2020

Applicant's Sig: 

Title: Lead Engineer

For Office Use Only

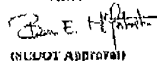
For Office Use Only

In accordance with your request and subject to all the provisions, terms, conditions, and restrictions stated in the application and the general and special provisions attached hereto, the SCDOT hereby approves your application for an encroachment permit. This permit shall become null and void unless the work contemplated herein shall have been completed prior to:

☐ No Attached Special Permit and/or Permit Application

NPDES Permit

None


(Date received by res. Maint. Engr.)

Benjamin E. McIntosh

2021.01.05-14H-2143-05/00
(Date)

(SCDOT Approval)

General Provisions

Application for Encroachment Permit General Provisions

1. **DEFINITIONS:** The word "Permittee" used herein shall mean the name of the person, firm, or corporation to whom this permit is addressed, his, her, its, heirs, personal representatives, successors and assigns. The word "DEPARTMENT" shall mean the South Carolina Department of Transportation.
2. **NOTICE PRIOR TO STARTING WORK:** Before starting the work contemplated herein within the limits of the highway right of way, the Department's Resident Maintenance Engineer in the county in which the proposed work is located shall be notified 24 hours in advance so that he may be present while the work is under way.
3. **PERMIT SUBJECT TO INSPECTION:** This permit shall be kept at the site of the work at all times while said work is under way and must be shown to any representative of the Department or law enforcement officer on demand.
4. **PROTECTION OF HIGHWAY TRAFFIC:** The applicant shall be responsible for the protection of the highway traffic at all times during the construction, maintenance, removing or moving of the encroachment permitted herein. Detours, barricades, warning signs and flagmen, as necessary, shall be provided by and at the expense of the Permittee and shall be in accordance with the "Manual on Uniform Traffic Control Devices" (MUTCD). The work shall be planned and carried out so that there will be the least possible inconvenience to the motoring public. The Permittee agrees to observe all rules and regulations of the Department while carrying on the work contemplated herein and take all other precautions that circumstances warrant.
5. **STANDARDS OF CONSTRUCTION:** All work shall conform to the Department's standards of construction and shall be performed in a workman-like manner. The applicant shall make adequate provisions for maintaining the proper drainage of the highway as it may be affected by the encroachment permitted herein. All work shall be subject to the supervision and satisfaction of the Department.
6. **FUTURE MOVING OF PHYSICAL APPURTENANCES:** If, in the opinion of the State Highway Engineer, it should ever become necessary to move or remove the physical appurtenances, or any part thereof contemplated herein, on account of change in location of the highway, widening of the highway, or for any other sufficient reason, such moving shall be done on demand of the Department at the expense of the Permittee.
7. **RESTORATION OF HIGHWAY FACILITIES UPON MOVING OR REMOVING OF PHYSICAL APPURTENANCES:** If, and when, the physical appurtenances contemplated herein shall be moved or removed, either on the demand of the Department or at the option of the Permittee, the highway and facilities shall immediately be restored to their original condition at the expense of the Permittee.
8. **COSTS:** All work in connection with the construction, maintenance, moving or removing of the physical appurtenances contemplated herein shall be done by and at the expense of the Permittee.
9. **ADDITIONAL PERMISSIONS:**
 - (a) It is distinctly understood that this permit does not in any way grant or release any rights lawfully possessed by the abutting property owners. The Permittee shall secure any such rights, as necessary, from said abutting property owners.
 - (b) The Permittee shall be responsible for obtaining all other approvals or permits necessary for installation of the encroachment from other government entities.

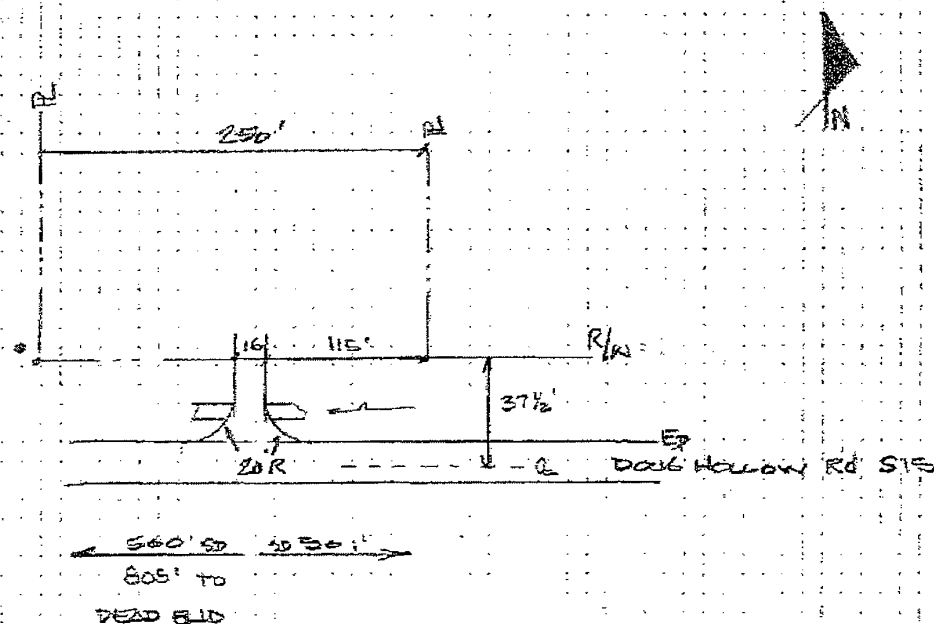
- (c) There shall be no excavation of soil nearer than two feet to any public utility line or appurtenant facility except with the consent of the owner thereof, or except upon special permission of this Department after an opportunity to be heard is given the owner of such line or appurtenant facility.
10. **ADDITIONAL WORK PERFORMANCE:**
- (a) All crossings over the highway shall be constructed in accordance with "Specifications for Overhead Crossings of Light and Power Transmission Lines and Telegraph Lines over each other and over Highway Rights of Way in South Carolina," as approved by the Public Service Commission of South Carolina and effective as of date of this permit.
- (b) All tunneling, boring, or jacking shall be done in such a way as not to disturb the highway surfacing.
- (c) No pavement shall be cut unless specifically authorized herein.
- (d) No excavation shall be nearer than three feet to the edge of pavement unless specifically authorized herein.
- (e) Underground facilities will be located at minimum depths as defined in the "Utility Accommodations Manual" for the transmittant, generally as follows: 4 feet minimum for hazardous or dangerous transmittant, 3 feet minimum for other lines. The Department may approve shallower depths if adequate protection is provided. Such approval must be obtained in writing.
- (f) Service and other small diameter pipes shall be jacked, driven, or otherwise forced underneath the pavements on any surfaced road without disturbing the pavement. The section under the highway pavement and within a distance of three (3) feet on either side shall be continuous without joints.
11. **ACCESS:**
- (a) Permittee is responsible for maintaining reasonable access to private driveways during construction.
- (b) It is expressly provided that, with respect to any limited access highway, the Permittee shall not have or gain access from the main traveled way of the highway, or the on or off ramps to such facility, except upon approval by the Department.
12. **DRIVEWAYS:**
- (a) The existing crown of the highway shall be continued to the outside shoulder line of the highway.
- (b) If the driveway or approach is concrete pavement, the pavement shall be constructed at least 6 inches thick and with a minimum of class 2500 concrete. There shall be a bituminous expansion joint, not less than 3/4 inches in thickness, placed between the highway paving and the paving of the approach for the full width of the approach.
13. **BEAUTIFICATION:**
- (a) All trees, plants, flowers, etc. shall be placed in accordance with the provisions specifically stipulated herein.
- (b) All trees, plants, flowers, etc. shall be maintained by, and at the expense of, the Permittee and the provisions of this permit shall become null and void, if and when said Permittee ceases to maintain said trees, plants, flowers, etc.
14. **AS-BUILT PLANS:**
- (a) The applicant shall provide the Department with survey-quality as-built plans in accordance with the requirements set forth in the Department's "A Policy for Accommodating Utilities on Highway Rights of Way".

DRIVEWAY CONNECTION

NAME OF REQUESTOR: RON WATSON PHONE NUMBER: 901-240-0446 POSTED SPEED LIMIT: 35

TAX MAP NUMBER: 151-02-01-033 STATE ROAD NAME: DOG HOLLOW STATE ROAD # 0.45

REMARKS:



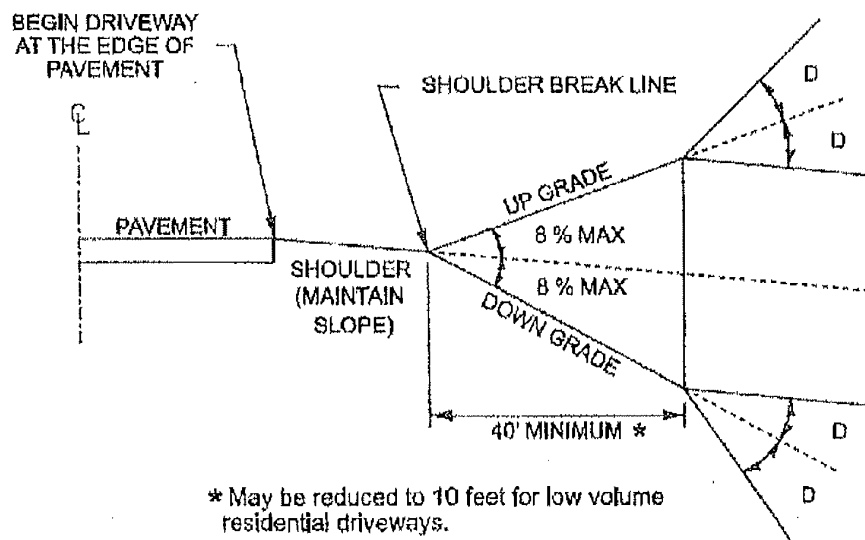
Approach Grade and Side Slope for Low/Medium Volume Drives

Where a shoulder exists, the profile grade of the approach from the edge of the pavement shall slope at the same rate as the highway shoulder for the full width of the shoulder. As shown in

Figure 3-4, a difference in grade, not to exceed plus or minus 8 percent, shall be maintained from the edge of the shoulder for a minimum distance of 40 feet. Low-volume drives can have an additional grade change at this point not to exceed 14 percent total grade change from the shoulder grade. Also, driveways shall have a maximum side slope ratio of 4:1. These items should be clearly labeled on the driveway profile in the encroachment permit application.

High and major volume drives should be designed in accordance with Chapter 5 of this manual and Chapter 15 of the SCHDM.

Figure 3-4: Medium Volume Driveway Approach Grade



* May be reduced to 10 feet for low volume residential driveways.

D = Maximum 6 percent grade change for low volume driveways. D for all other driveways should be 0 percent.

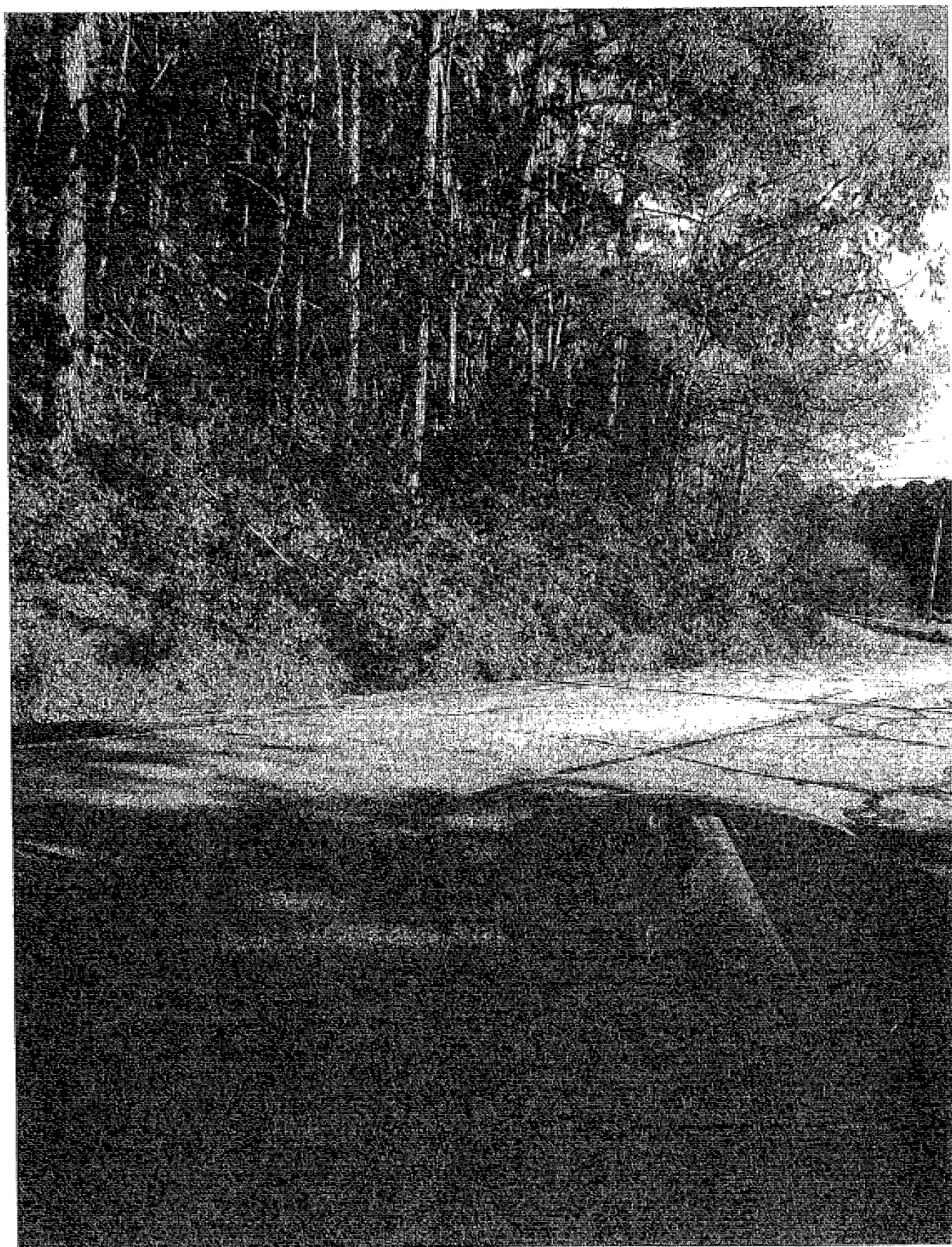
Provisions for New or Existing Residential Driveways SCDOT Oconee County

CALL BEFORE YOU DIG

- The requestor shall notify Barbara Dean with SCDOT – Oconee at days prior to begin work and when work is finished
- The owner shall be responsible for the maintenance for the permitted driveway, including any drainage structures.
- SCDOT does not authorize any work outside the right of way on private property. A written agreement will need to be supplied.
- Failure to comply with all the permit requirements will result in a stop work order until these issues are in compliance
- The requestor shall be responsible for any and all damages that may occur as a result of this installation
- No landscaping within the SCDOT right of way without an approved Landscaping Permit
- The applicant is responsible for obtaining all necessary permits for this project
- The driveway will be installed according to the approved permit drawings and specifications
- If any changes need to be made to the original approved permit, a letter of revision along with a new drawing will need to be submitted along with the permit number as a reference
- The permit will expire 1 year from the date of approval. If the work is not performed within the 1 year a letter of extension will need to be submitted along with the permit number for reference
- When or if there is a change to property ownership, all responsibilities and liabilities of the owner as it pertains to these standards shall become those of the new owner's heirs, successors, or assignees upon the legal transfer of ownership.
- The ditches and/or shoulders disturbed during the installation shall be re-established to proper grade, original cross section, stabilized and all pipes cleared by requestor
- Traffic control will be furnished by the requestor (when applicable)
- Sediment and erosion control devices shall be used to minimize the movement of sediment (when applicable)
- Applicant shall make adequate provisions for maintaining the proper drainage of the highway as it may be affected by the encroachment permitted herein.
- Driveways are to consist of minimum of 6" stabilized aggregate base, 4" asphaltic base course and 2" of asphalt concrete surface.
- If changes are made to the **EXISTING** entrance, e.g. widening, moving or if land use changes from one residential home, to additional homes or commercial (RV/camping, subdivision, business etc.) a new permit will need to be submitted
- Applicant agrees to comply with all current SCDOT Standards and Specifications for Highway Construction including all Supplemental Technical Specifications. The applicant hereby further agrees and binds his/hers/its heirs, personal representatives, successors, assigns, to assume any and all liability for accidents or injuries to persons, or damage to property, including the highway, that may be caused by the construction, maintenance, use, moving or removing of the physical appurtenances contemplated herein, and the applicant agrees to indemnify and hold the SCDOT harmless from and against any and all claims for personal injury and/or property damage which

may be sustained of the construction, maintenance or existence of said encroachment on the SCDOT's right of way.

- Applicant is responsible for maintaining reasonable access to private driveways.
- This permit is only applicable for SCDOT right of way
- Applicant can use either Reinforced Concrete Pipe (RCP) or High Density Polyethylene Pipe (HDPE)
- This permit does NOT include approval for new utility connections or utility relocations within the SCDOT right of way. A separate utility permit will need to be submitted by the local utility name and not by the requestor



Google Maps

State Rd S-37-15

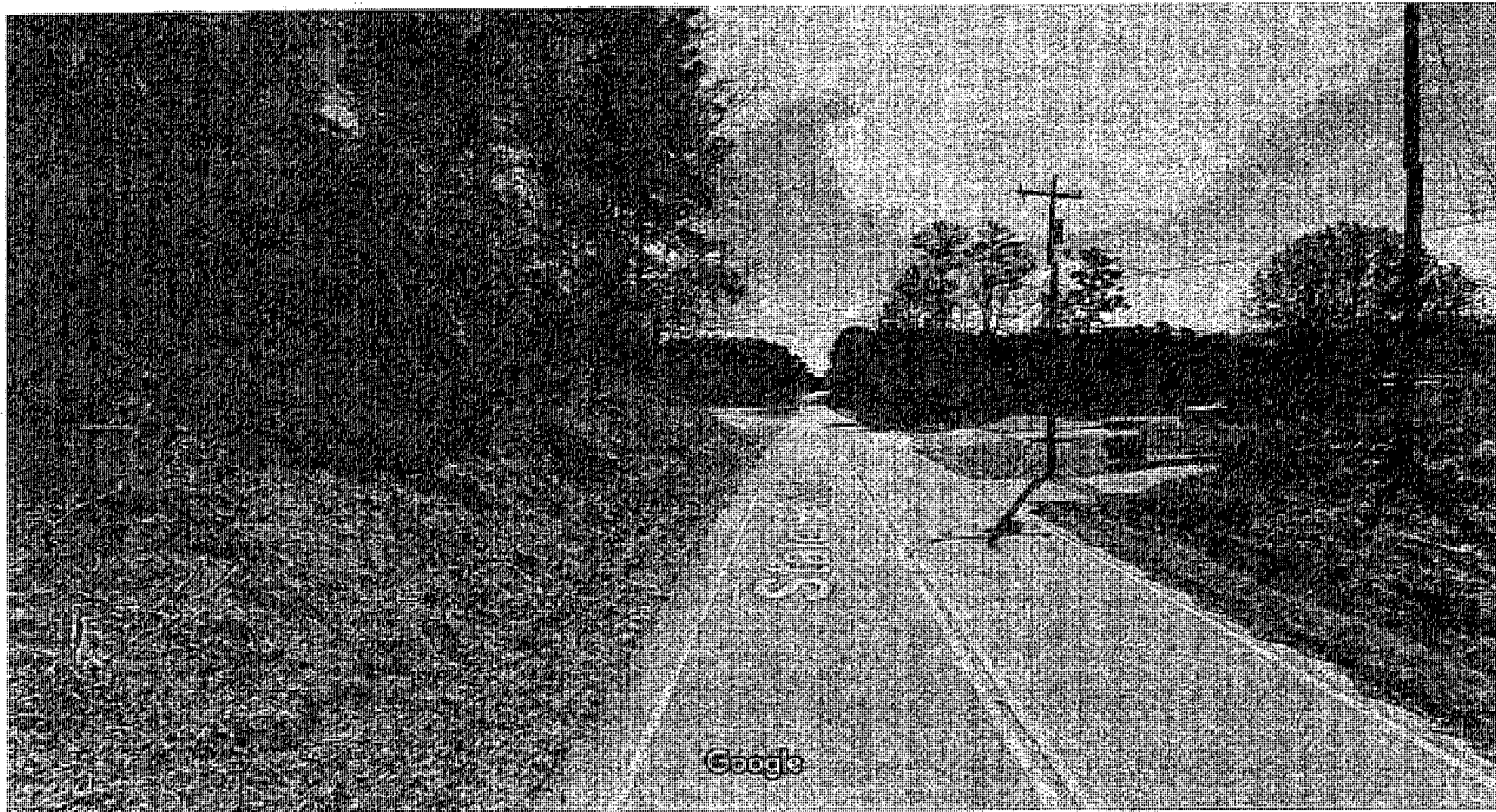
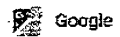


Image capture: Apr 2013 © 2020 Google

Seneca, South Carolina



Street View

<https://www.google.com/maps/@34.7759438,-82.9166285,3a,75y,84.21h,89t/data=!3m7!1e1!3m5!1sA1UuJ7PQb1qBiNH1kcoq43jw12e0!5s20130401T000000!7t13312!8i6656>

LINE	BEARING	DISTANCE
L1	N 19° 21' 43" E	66.47
L2	S 59° 57' 03" E	69.92
L3	S 07° 38' 40" W	68.14
L4	N 05° 12' 45" W	115.07
L5	N 05° 11' 16" W	194.48

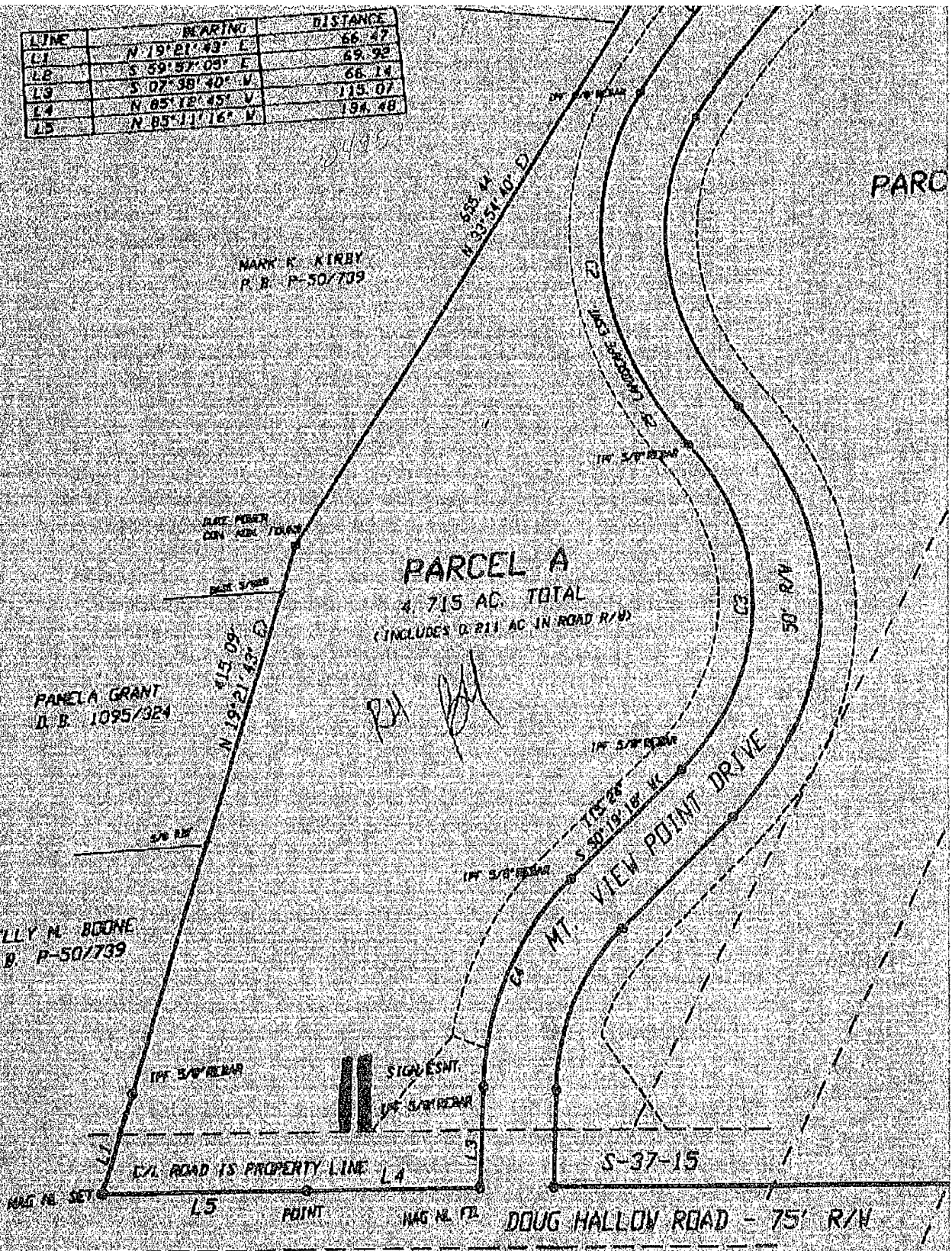
MARK K. KIRBY
P.B. P-50/739

PARCEL A

4.715 AC. TOTAL
(INCLUDES 0.211 AC. IN ROAD R/W)

PAMELA GRANT
D.B. 1095/324

KELLY M. BOONE
P.B. P-50/739



SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION
Encroachment Permit

Permit No : 240790

Permit Decision Date :

1/7/2021

Expiration Date : 1/7/2022

Type

Permit : DRIVEWAY -
SINGLE
RESIDENTIAL

Location:

<u>District</u>	<u>Work County</u>	<u>Type</u>	<u>Route</u>	<u>Aux</u>	<u>Begin MP</u>	<u>End MP</u>
3	Oconee, SC S-		15	None	1.148	1.148

Contact Information

Applicant: RodHalsell

Phone:

Contact: Rod Halsell

Address:

City:

State:

Zip:

Comments

Near the end of Doug Hollow Rd close to Lighthouse restaurant. Just west of the corner of Doug Hollow & Mountain View Point Dr on the right/north side of Doug Hollow. I have marked the roadway with small white lines per my conversation with Barbara Dean to make it easy to see.

Special Provisions:

0001 - THE ENTIRE WIDTH OF ROAD SHALL BE RESURFACED AS SHOWN ON ATTACHED DOCUMENTATION.

0201 - DRIVEWAYS ARE TO CONSIST OF A MINIMUM OF 6" STABILIZED AGGREGATE BASE, 4" ASPHALTIC BASE COURSE AND 2" OF ASPHALT CONCRETE SURFACE COURSE.

0204 - SIDEWALK OR CURB AND GUTTER REMOVAL SHALL BE REPLACED FROM JOINT TO JOINT.

0207 - PIPE USED IN THIS INSTALLATION SHALL BE IN ACCORDANCE WITH SCDOT SPECIFICATION SC-M-714 AND COMPLY WITH CURRENT SCDOT POLICY.

0301 - THE DITCHES AND/OR SHOULDERS DISTURBED DURING THE INSTALLATION SHALL BE RE-ESTABLISHED TO PROPER GRADE, ORIGINAL CROSS SECTION, STABILIZED, AND ALL DRAIN PIPES CLEARED.



0302 - NO EXCAVATION SHALL BE LEFT OPEN ALONG HIGHWAY.

0306 - TRAFFIC CONTROL, LIGHTS, SIGNS AND FLAG-MEN WILL BE FURNISHED BY APPLICANT AND WILL CONFORM TO PART VI OF THE MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES.

0310 - FIELD CHANGES, IF NECESSARY, MUST BE APPROVED IN WRITING BEFORE ACTUAL CONSTRUCTION OF PROPOSED CHANGES.

0312 - THE PERMITTEE SHALL HOLD THE DEPARTMENT HARMLESS FOR DAMAGES TO BOTH UPSTREAM AND DOWNSTREAM PROPERTIES.

0318 - THE APPLICANT SHALL BE RESPONSIBLE FOR IMMEDIATE REMOVAL OF SUCH TRAFFIC HAZARDS AS MUD, DEBRIS, LOOSE STONE, AND TRASH AS MAY BE WASHED OR SPILLED ON THE TRAVELED ROADWAY AS A RESULT OF THE PROPOSED WORK.

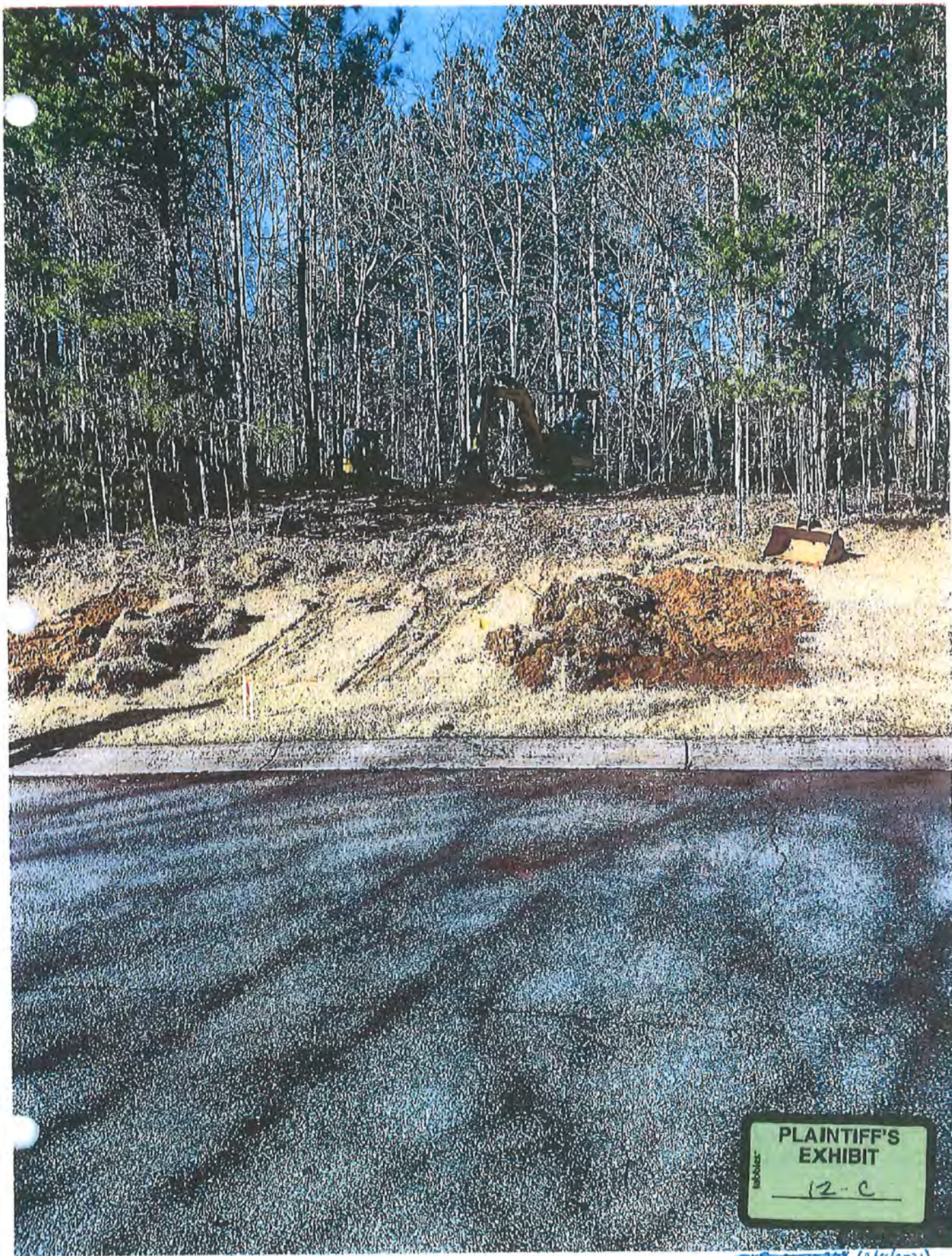




PLAINTIFF'S
EXHIBIT
12-B

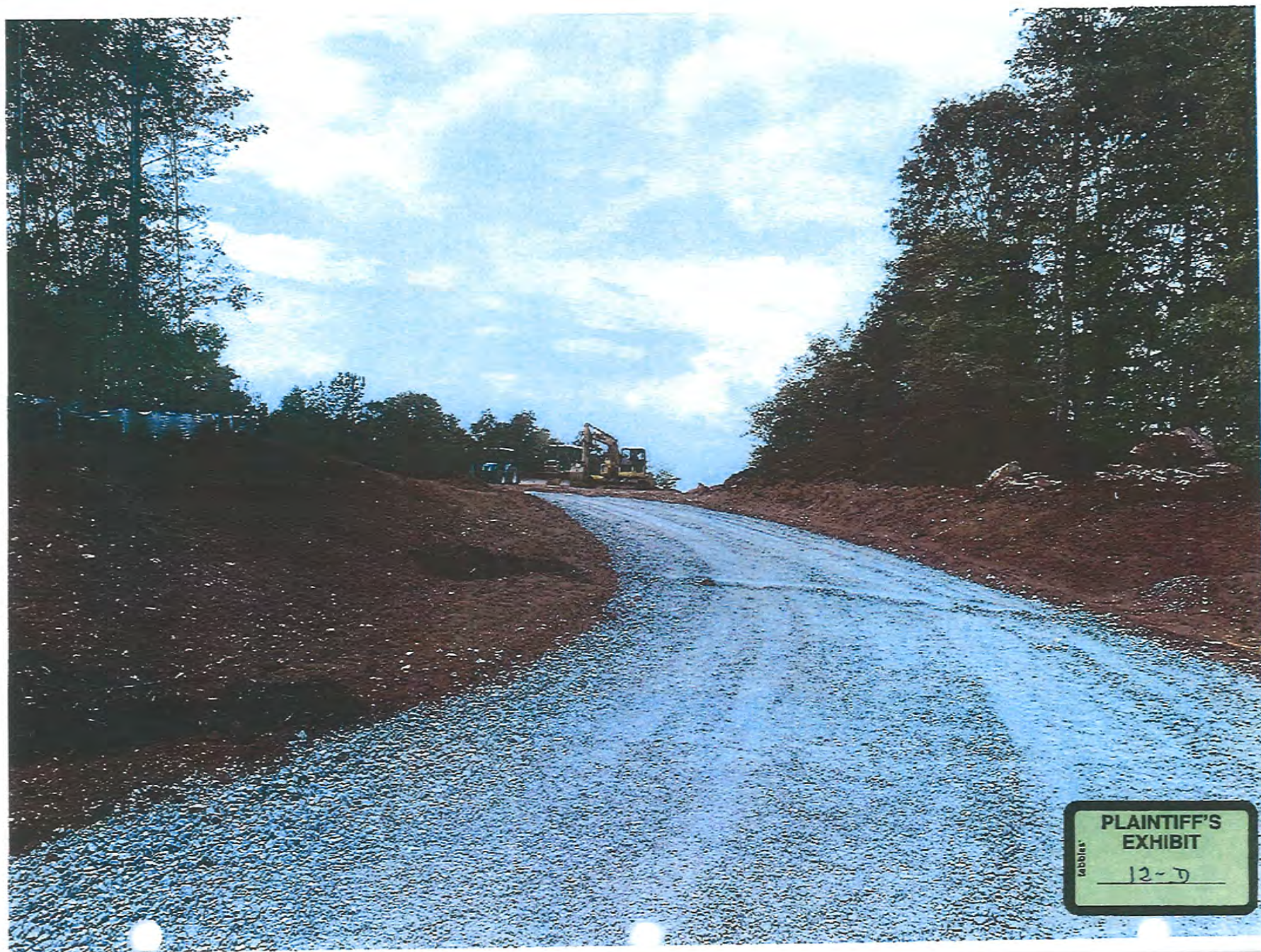
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PLAINTIFF'S
EXHIBIT
12-C

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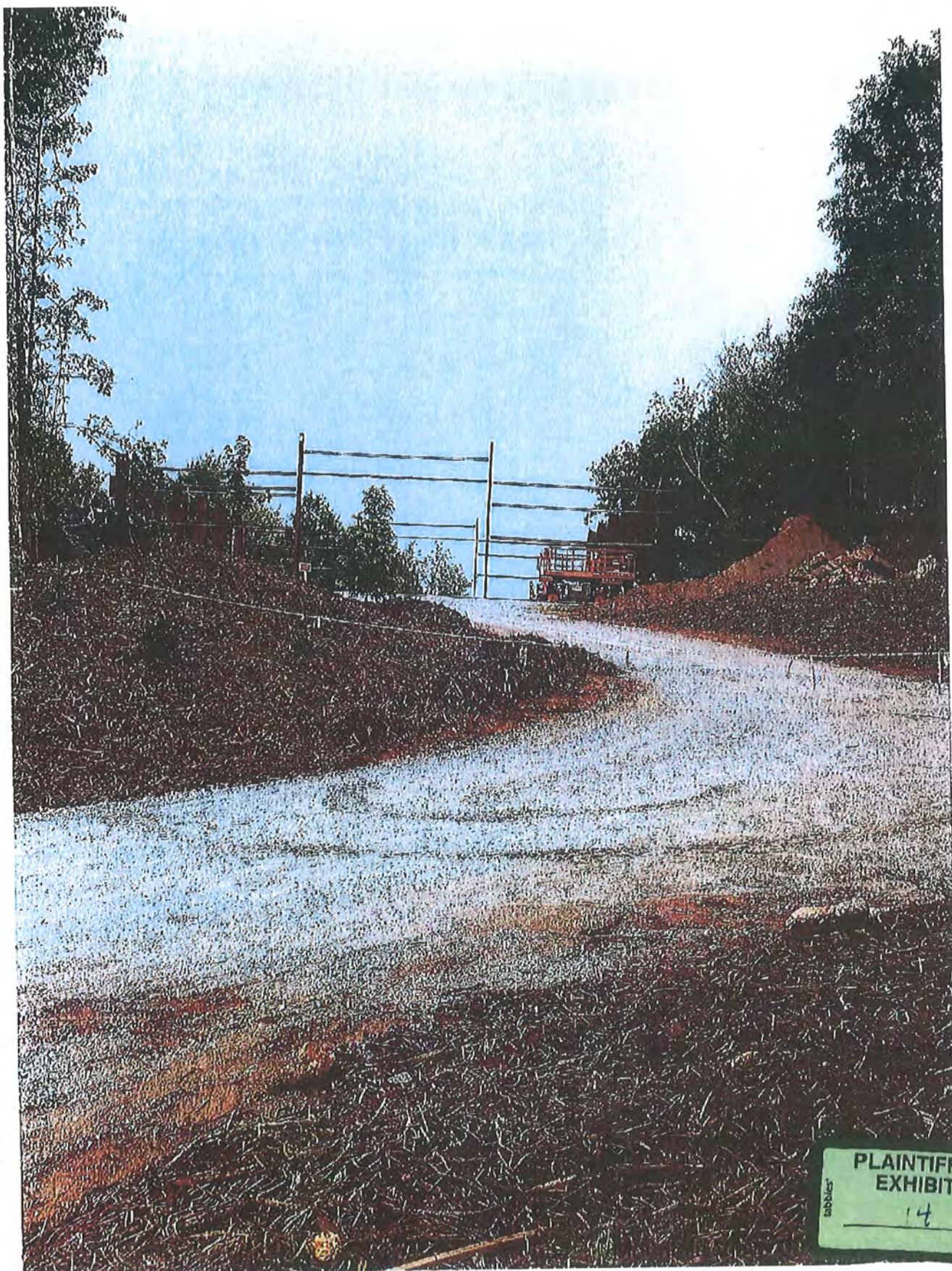






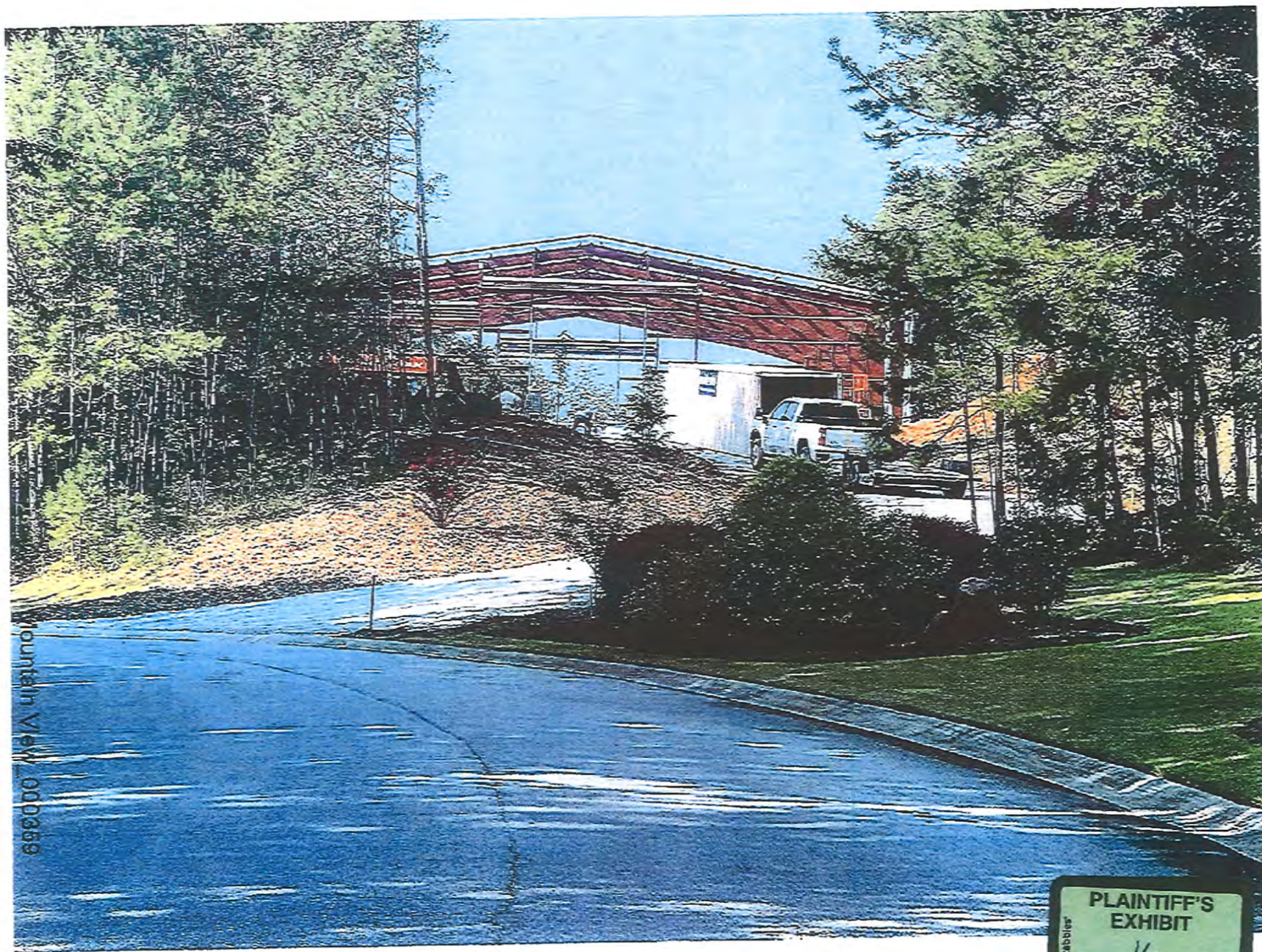
PLAINTIFF'S
EXHIBIT
12-F





tabbies
**PLAINTIFF'S
EXHIBIT**
14











Doc ID: 001813350009 Type: DEED
BK 1677 PG 284-292

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

LIMITED WARRANTY DEED
(TITLE TO REAL ESTATE
NOT EXAMINED)

KNOW ALL MEN BY THESE PRESENTS, that CRESCENT COMMUNITIES S.C., LLC, a Delaware limited liability company ("Grantor"), for and in consideration of the sum of [See attached Affidavit of Value] and other good and valuable consideration to Grantor in hand paid at or before the sealing of these presents by MOUNTAIN VIEW POINTE OWNERS ASSOCIATION, INC., a South Carolina non-profit corporation ("Grantee"), whose address is c/o Association Management Group, Attn: Starr Greenleaf, 3104 Grandview Drive, Suite B, Simpsonville, South Carolina, 29680, the receipt of which is hereby acknowledged, and subject to the easements, restrictions, reservations and conditions ("Exceptions") set forth on Exhibit A, has granted, bargained, sold and released and by these presents does grant, bargain, sell and release unto Grantee, Grantee's successors and assigns forever, all of that certain real property situated in Oconee County, South Carolina (collectively, "Property"), as more particularly described on Exhibit B.

TOGETHER WITH, subject to the Exceptions, all and singular, the rights, members, hereditaments and appurtenances to the Property belonging or in any way incident or appertaining, including, but not limited to, all improvements of any nature located on the Property and all easements and rights-of-way appurtenant thereto.

TO HAVE AND TO HOLD, subject to the Exceptions, all and singular, the Property unto Grantee, Grantee's successors and assigns forever.

And Grantor does hereby bind Grantor, Grantor's successors and assigns to warrant and forever defend, all and singular, the Property unto Grantee, Grantee's successors and assigns, against Grantor and Grantor's successors lawfully claiming, or to claim, the same or any part thereof.

[Remainder of Page Left Intentionally Blank - Signature Page Follows]

002309

Mds
10.00

OCONEE COUNTY
STATE TAX _____
COUNTY TAX _____
EXEMPT ☒

THIS PROPERTY DESIGNATED AS
MAP 151 SUB 02 BLK 01 PARC 032. P/b
ON OCONEE COUNTY TAX MAPS
Debbie Smith
OCONEE COUNTY ASSESSOR

Recorded this 18 day of Aug
Book 2008 Page 32,901
Fee _____
Andrea R. Nix
Auditors Oconee County, S.C.

DRAWN BY:
Nancy L. O'Leary, Esq.
Parker Poe Adams & Bernstein, LLP
Three Wachovia Center
401 South Tryon Street, Suite 3000
Charlotte, North Carolina 28202

MAIL TO:
Grantee
PPAB 14597662

FILED FOR RECORD
OCONEE COUNTY, S.C.
REGISTER OF DEEDS
2008 AUG 15 P 4:21

Pland. FF's
19

IN WITNESS WHEREOF, CRESCENT COMMUNITIES S.C., LLC has caused this instrument to be executed by its duly authorized officer this 12th day of August, 2008.

WITNESSES:

CRESCENT COMMUNITIES S.C., LLC,
a Delaware limited liability company

Sandra S. Lewis
First Witness (Print Name)

By: Scott Munday
Print Name: Scott Munday
Its: Vice President

Sandra S. Lewis
First Witness (Signature)

Kay H. Arnette
Second Witness (Signature)

Kay H. Arnette
Second Witness (Print Name)

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

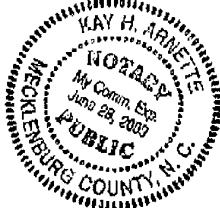
Personally appeared before me, Sandra S. Lewis (First Witness) and made oath that he/she saw the within named Crescent Communities S.C., LLC, a Delaware limited liability company, by Scott Munday, its Vice President, sign and as the limited liability company's act and deed, deliver the within written Deed; and that (s)he with Kay H. Arnette (Second Witness) witnessed the execution thereof.

Sworn to before me this 12th
day of August, 2008.

Sandra S. Lewis
Signature of First Witness

Kay H. Arnette
Notary Public for Mecklenburg Co., NC
My Commission Expires 06-28-09

[NOTARY SEAL]



PPAH 1459766v2

EXHIBIT A

Exceptions

1. All covenants, conditions, easements and restrictions of record, including, but not limited to, those contained in that document entitled, "Declaration of Covenants, Conditions and Restrictions for Mountain View Points" ("Declaration") recorded in Deed Book 1250, Page 93, in the Office of the Register of Deeds for Oconee County ("Oconee County Registry"), as supplemented, amended and/or re-recorded, from time to time.
2. The lien for ad valorem taxes for the year 2008 and subsequent years, not yet due and payable.
3. Easement to Blue Ridge Electric Cooperative recorded in Deed Book 9-A, at Pages 43 and 44, Oconee County Registry.
4. All land below the 804' contour was conveyed to Duke Power Company in Deed Book 10-V, Page 40, Oconee County Registry.
5. Right of Way Agreement between Crescent Resources, Inc. and Duke Energy Corporation recorded July 17, 1998 in Deed Book 986, Page 257, Oconee County Registry.
6. Easement for emergency warning siren between Crescent Resources, Inc. and Duke Energy Corporation recorded July 18, 2000 in Deed Book 1098, Page 150, Oconee County Registry.
7. By accepting and recording this deed, Grantee signifies Grantee's understanding that Duke Power Company has certain privileges and easements affecting the Property which include the right, privilege and easement of backing, ponding, raising, flooding or diverting the waters of Lake Keowee and its tributaries upon and over the Property, as more specifically described in instruments recorded in the Oconee County Registry, including, without limitation, the 810 foot flood easement to Duke Power Company (presently known as Duke Energy Corporation) ("Duke") recorded in Deed Book 633, Page 154, and Deed Book 652, Page 269, Oconee County Registry.
8. By accepting and recording this deed, Grantee acknowledges for itself and its successors and assigns as follows: Duke controls access to, use of and water levels in Lake Keowee. Grantee must receive a permit from Duke (or a successor manager of Lake Keowee under authority from the Federal Energy Regulatory Commission) prior to placing or constructing any pier, structure or other improvement within or upon, or conducting any activity altering the topography of, the hydroelectric project surrounding and encompassing the waters of Lake Keowee. Grantor makes no oral, express or implied representation or commitment as to the likelihood of Grantee obtaining such a permit, nor as to the continued existence, purity, depth or levels of water in Lake Keowee, and Grantor shall have no liability with respect to these matters. Construction of any such improvements is also subject to the recorded restrictions and easements affecting the Property.

PPAB 1439766v2

9. All matters which may be shown by a current survey of the Property or apparent upon reasonable inspection of the Property.
10. Any lien or right to a lien for labor, services or material heretofore or hereafter furnished.
11. Nothing shall be held to impose any restriction on any land of Grantor not hereby conveyed.

FFAB 1459766v2

EXHIBIT B

C.O.S. Property

C.O.S. parcel containing approximately 0.057 acres, more or less, located adjacent to Lot 7 and Lot 8, together with an exclusive access easement in favor of the Boatslip Lot Owners, as defined in the Declaration, over the area labeled "15' access easement" running along the boundary line between Lot 7 and Lot 8, all as more particularly shown on plat entitled "MOUNTAIN VIEW POINTE", dated October 22, 2002, recorded November 12, 2002, in Plat Book A910, Pages 1 and 2, Oconee County Registry.

DERIVATION: This being the identical property conveyed to Crescent Communities S.C., LLC by corrective title to real estate recorded in Deed Book 1426, at Page 274, Oconee County Registry.

Tax Map No. 151-02-01-032

PPAB 1459766v2

6. The deed recording fee is computed as follows:

- (a) Place the amount listed in item 4 above here: _____
- (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: _____

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

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

9. I 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 dollars or imprisoned not more than one year, or both.

Responsible Person Connected with the Transaction

Scott Munday
Scott Munday, Vice President

SWORN to before me this 12th
day of Aug., 2008.

Kay H. Arnette
Notary Public for Mecklenburg Co., NC
My Commission Expires: Oct-28-09



INFORMATION

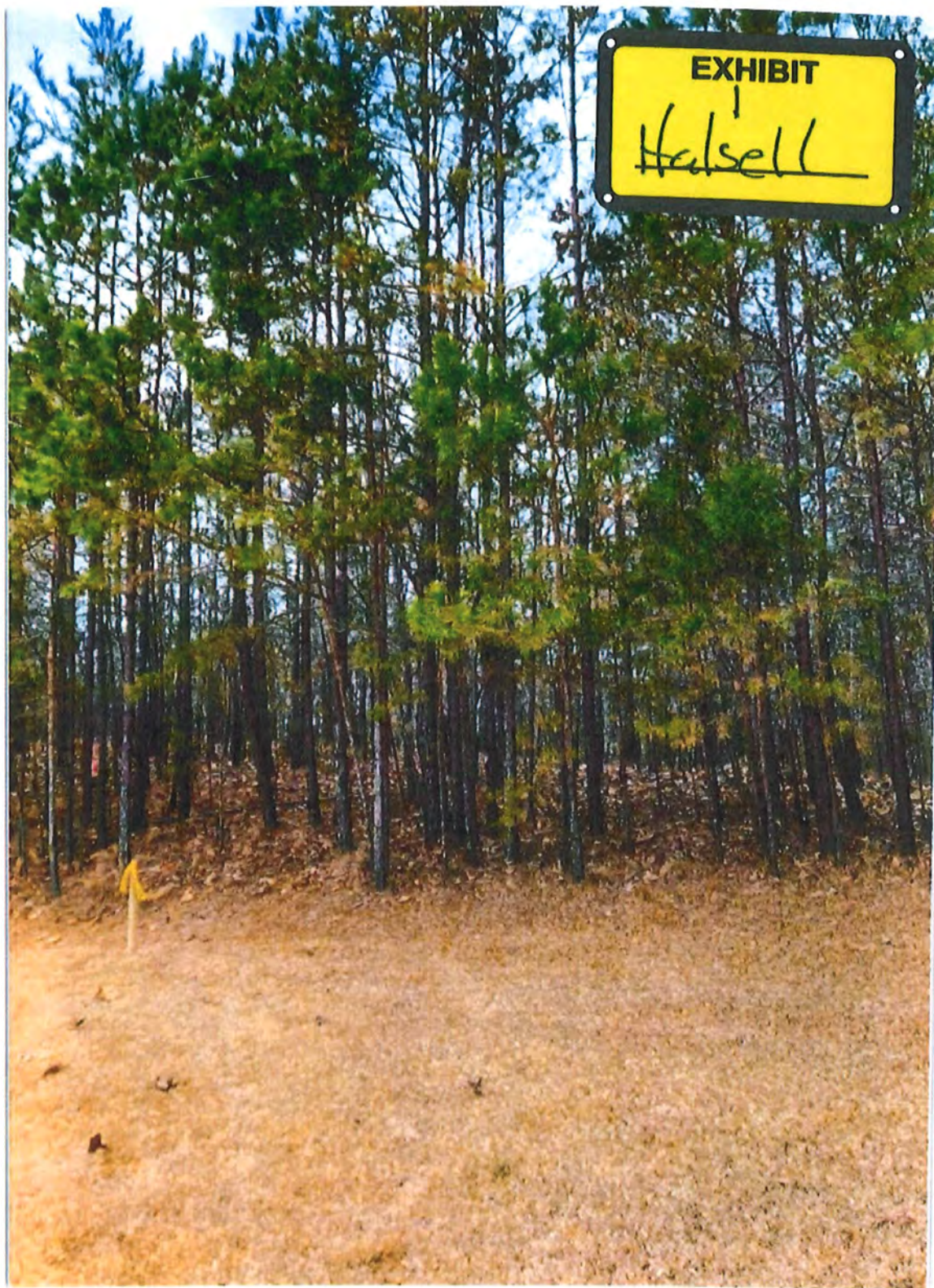
Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and its stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

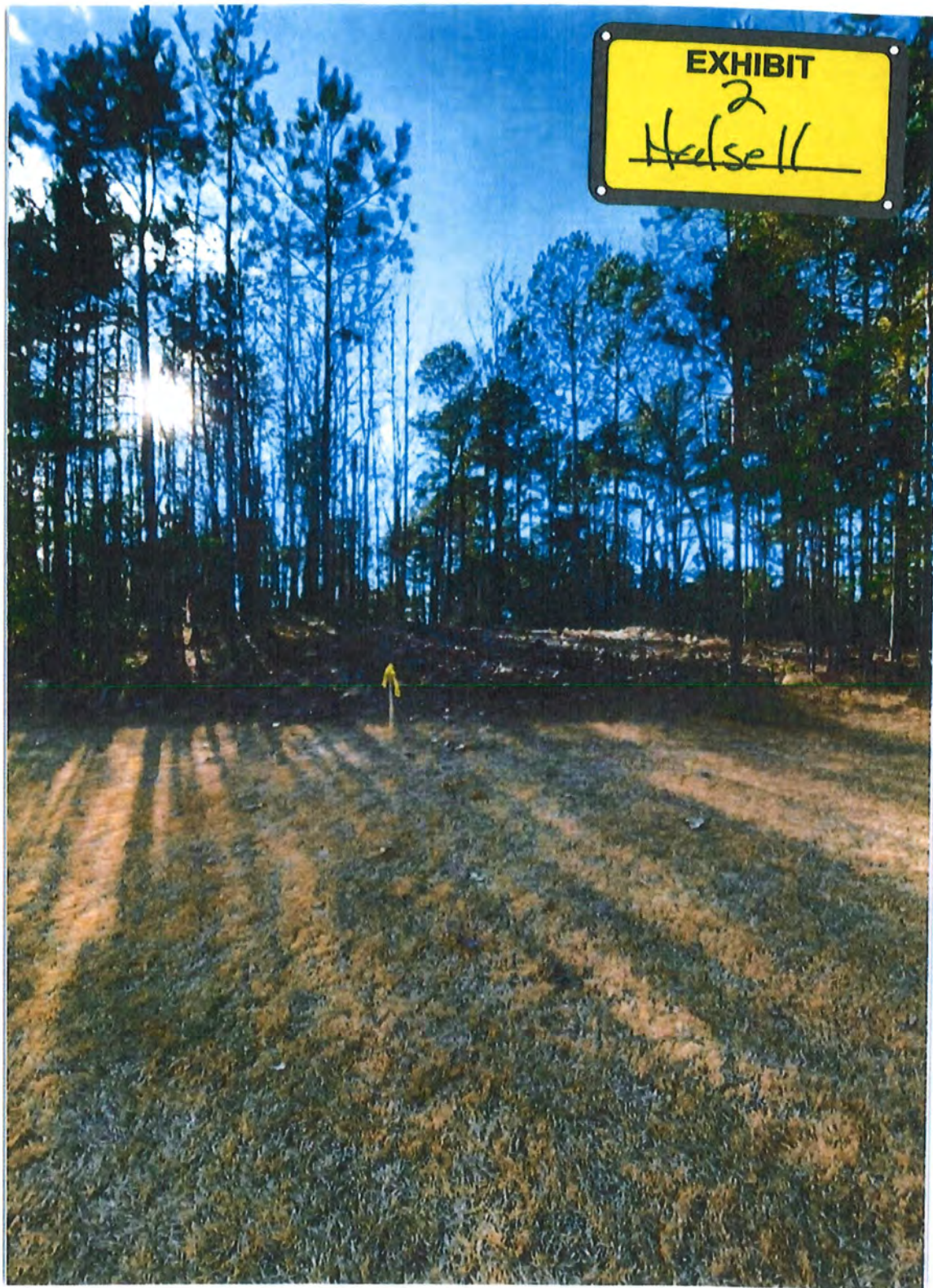
Exempted from the fee are deeds:

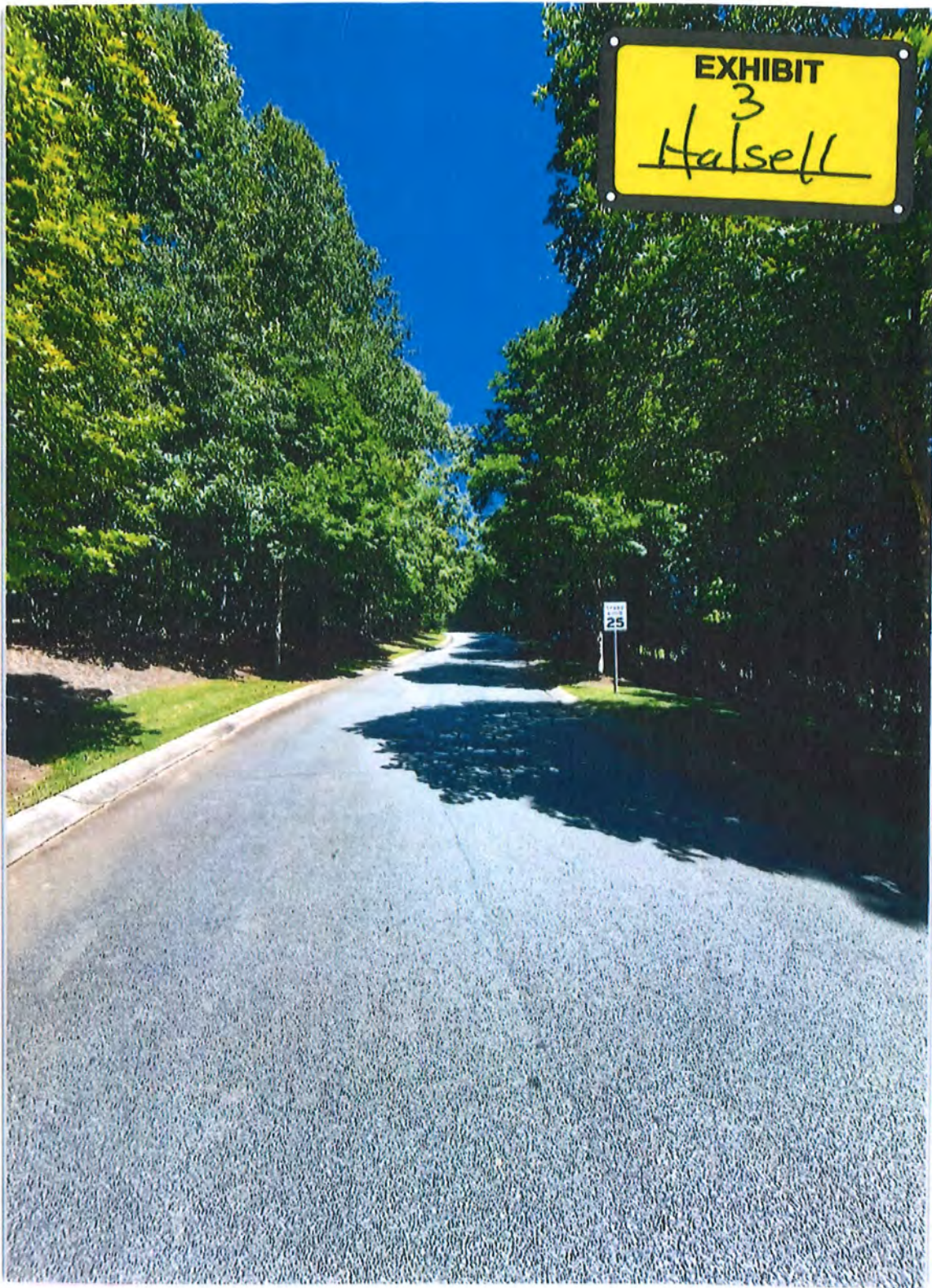
- (1) transferring realty in which the value of the realty, as defined in Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any of the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;

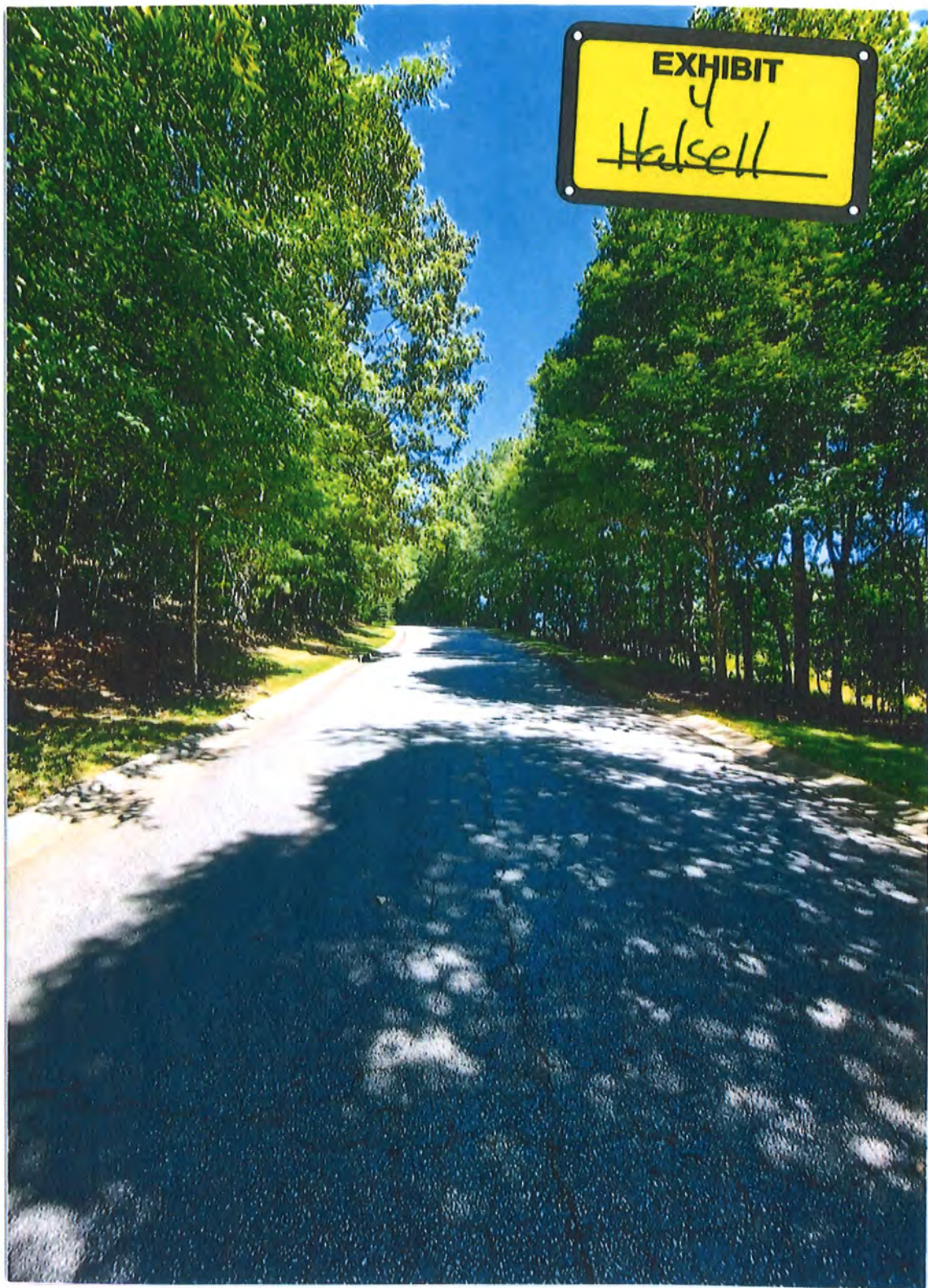
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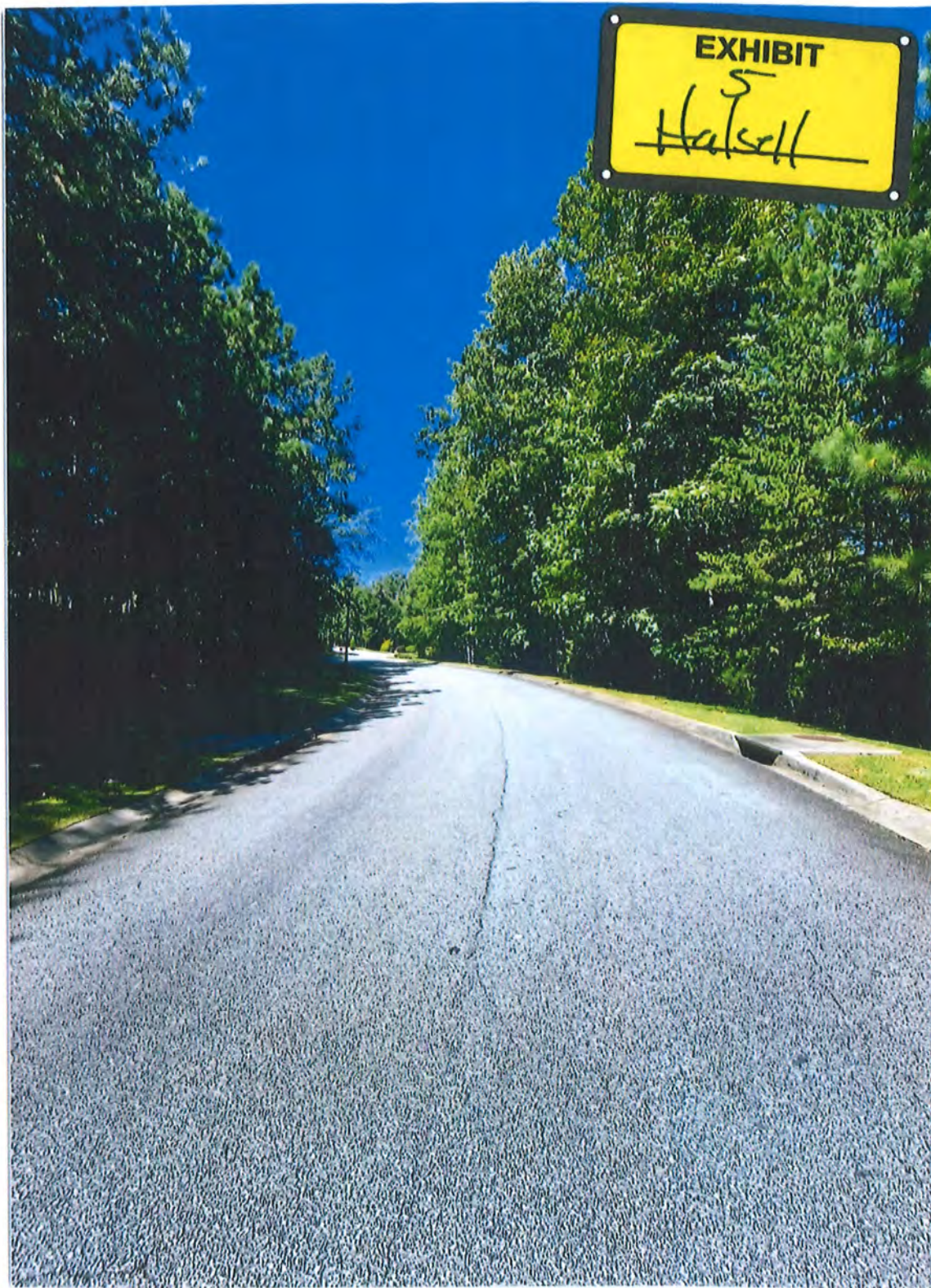
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership;
- (12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed;
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed pursuant to foreclosure proceedings;
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty; and
- (15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

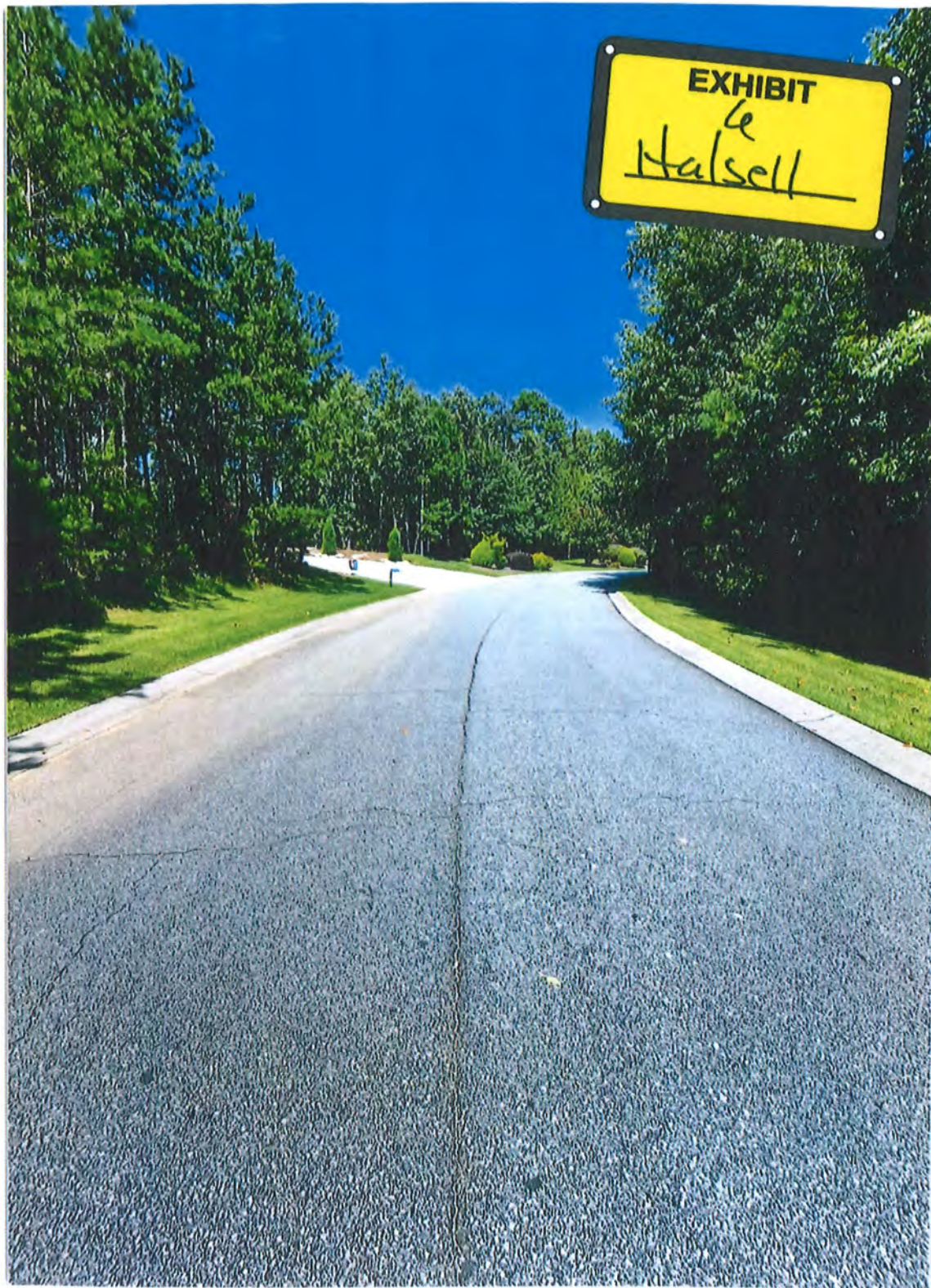


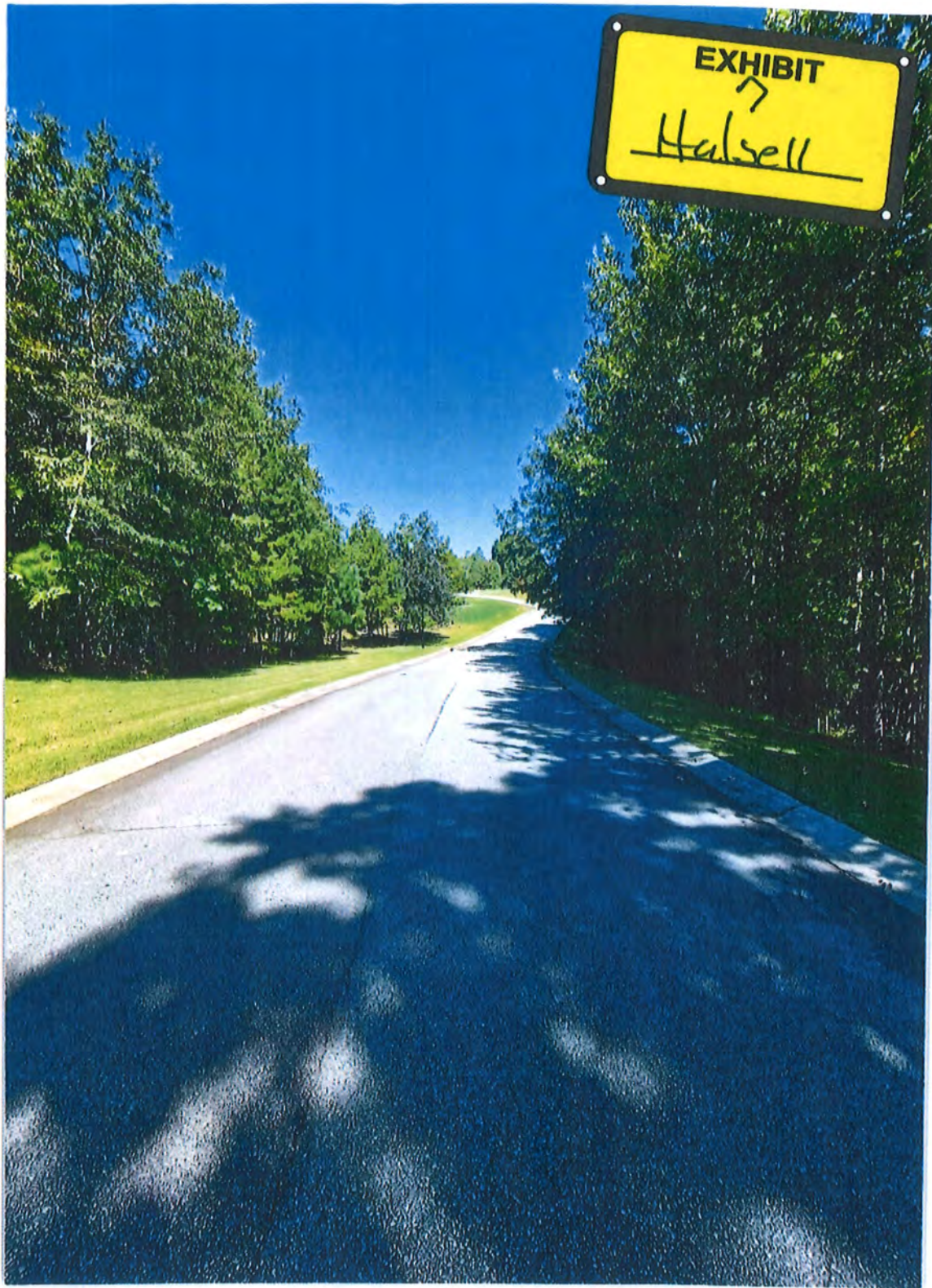


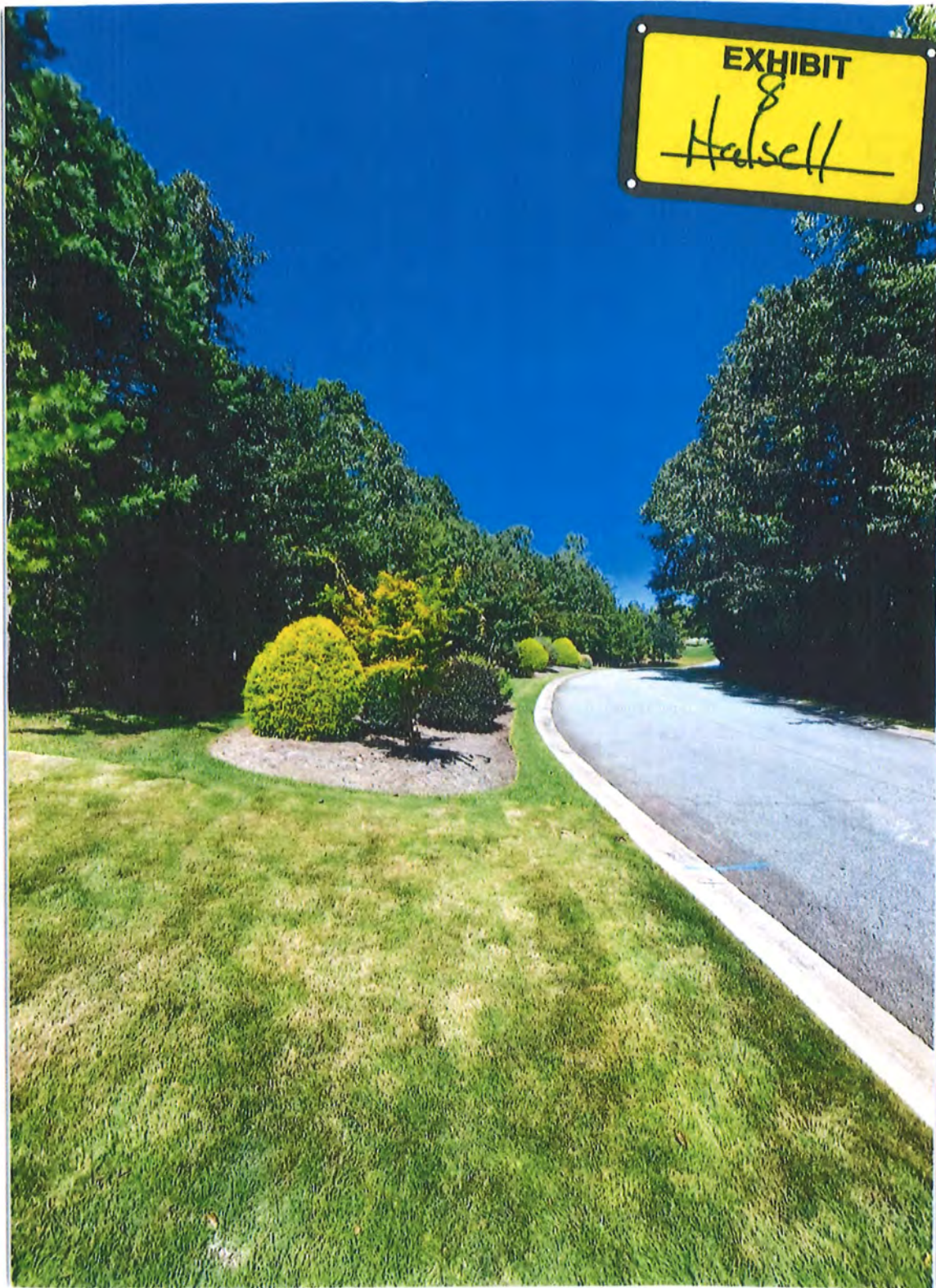


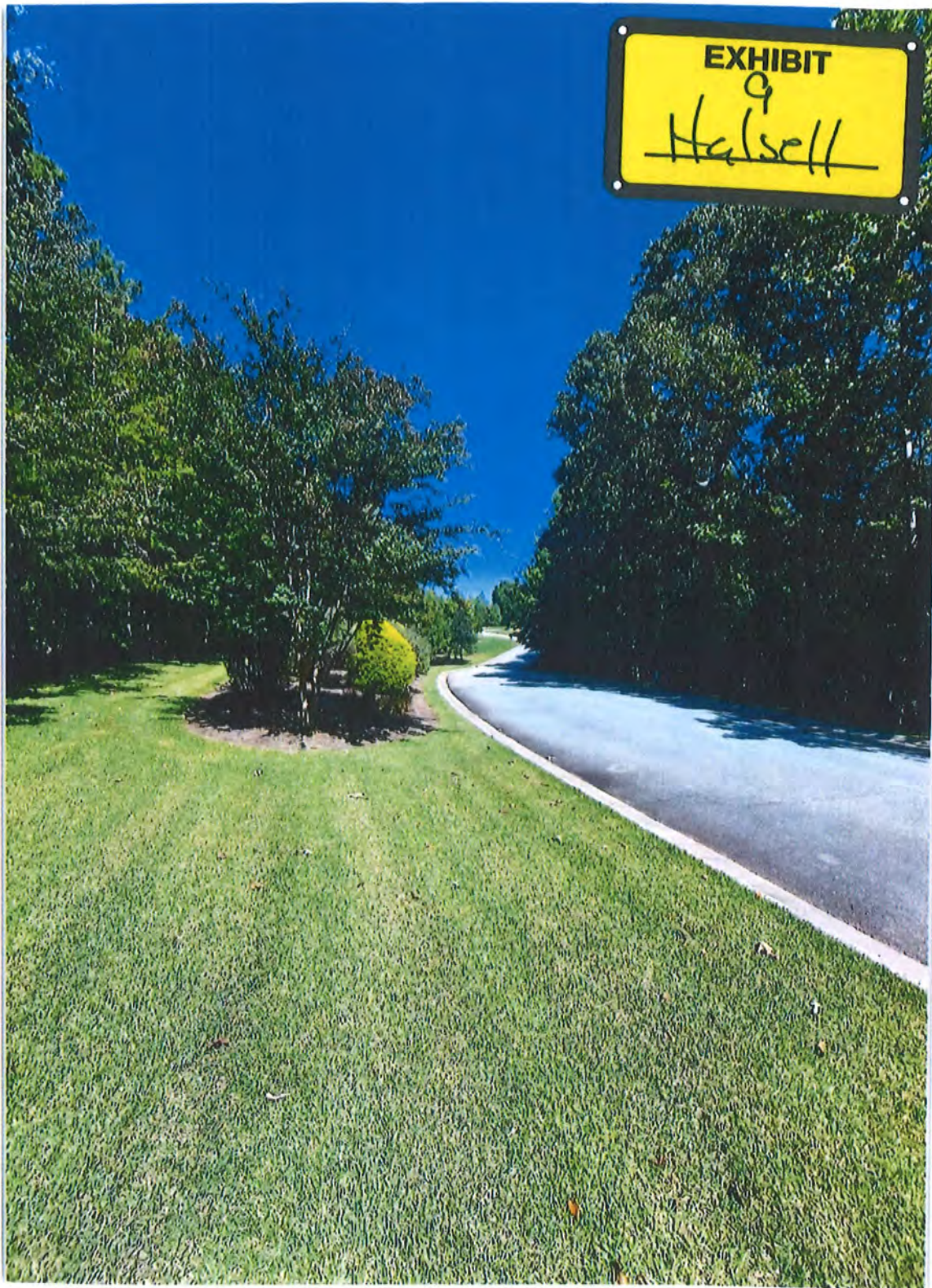


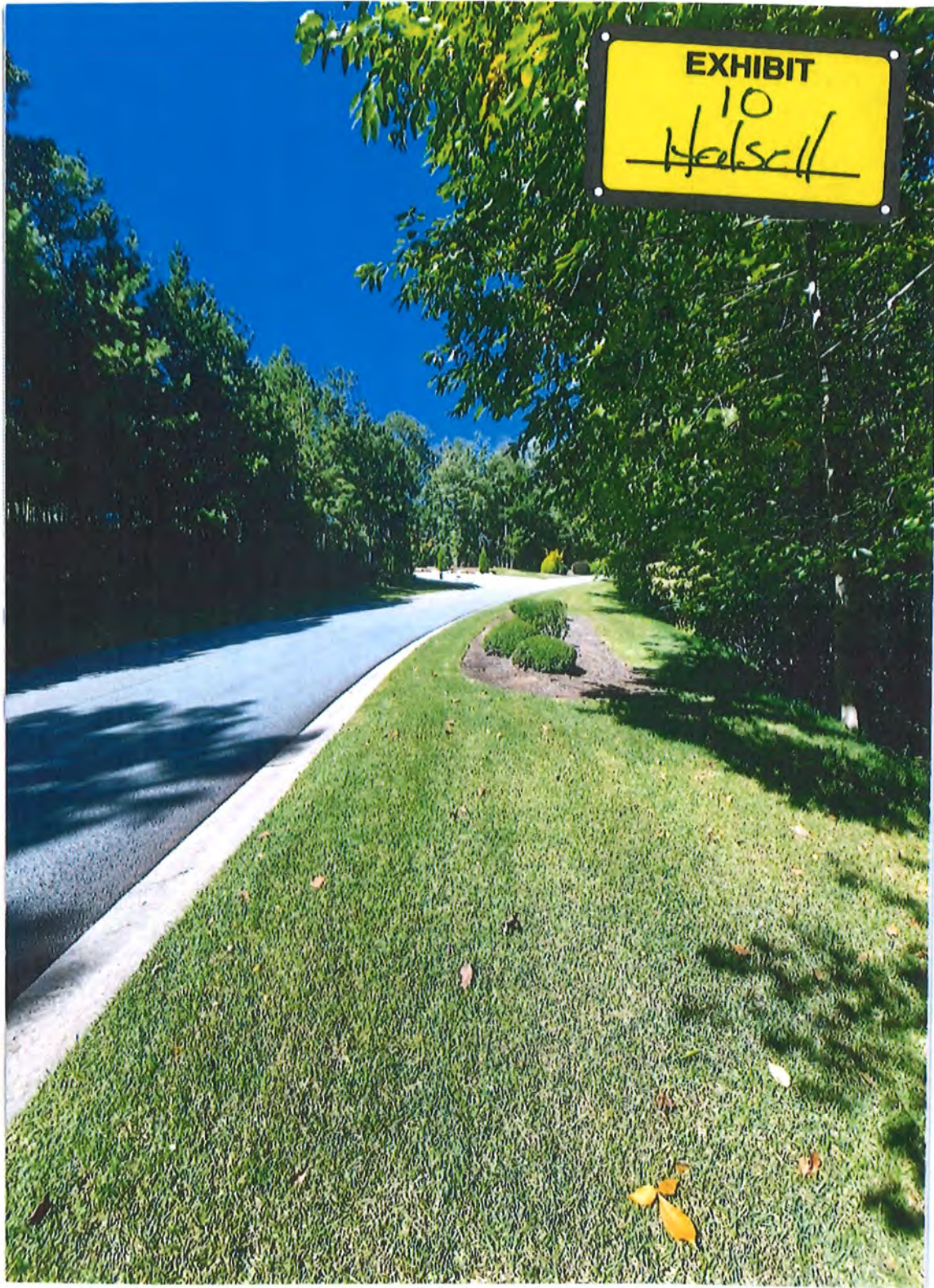




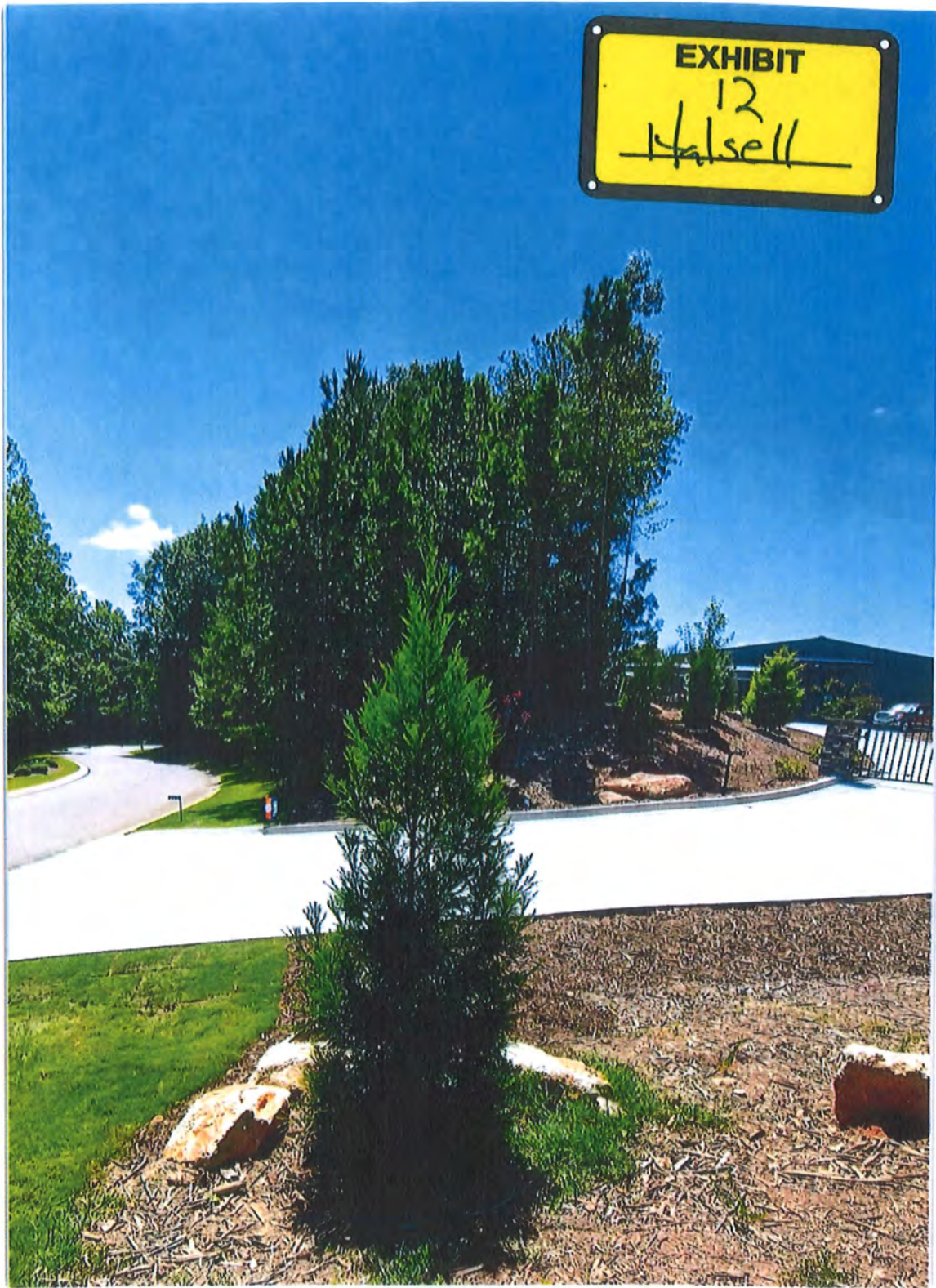


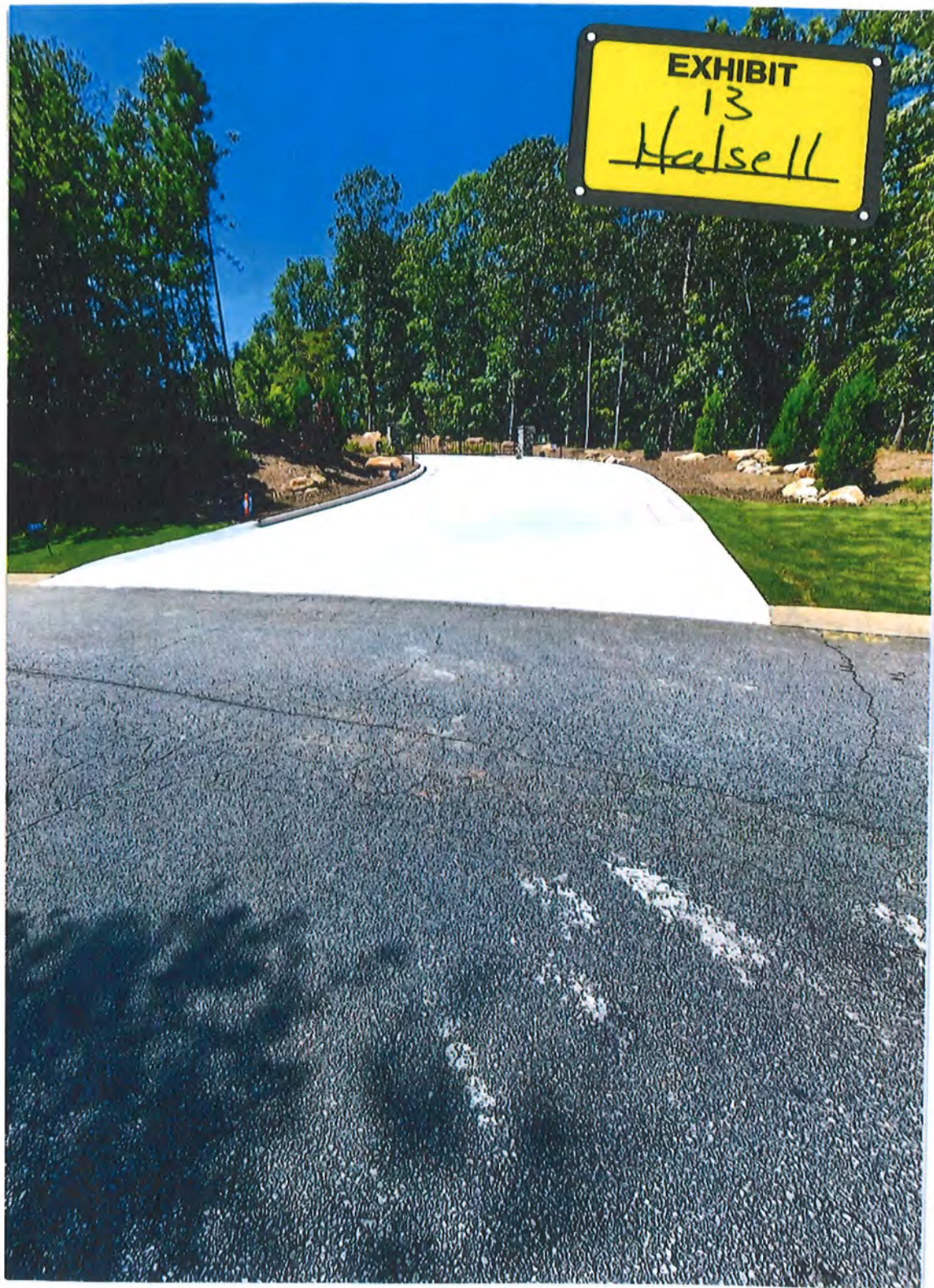


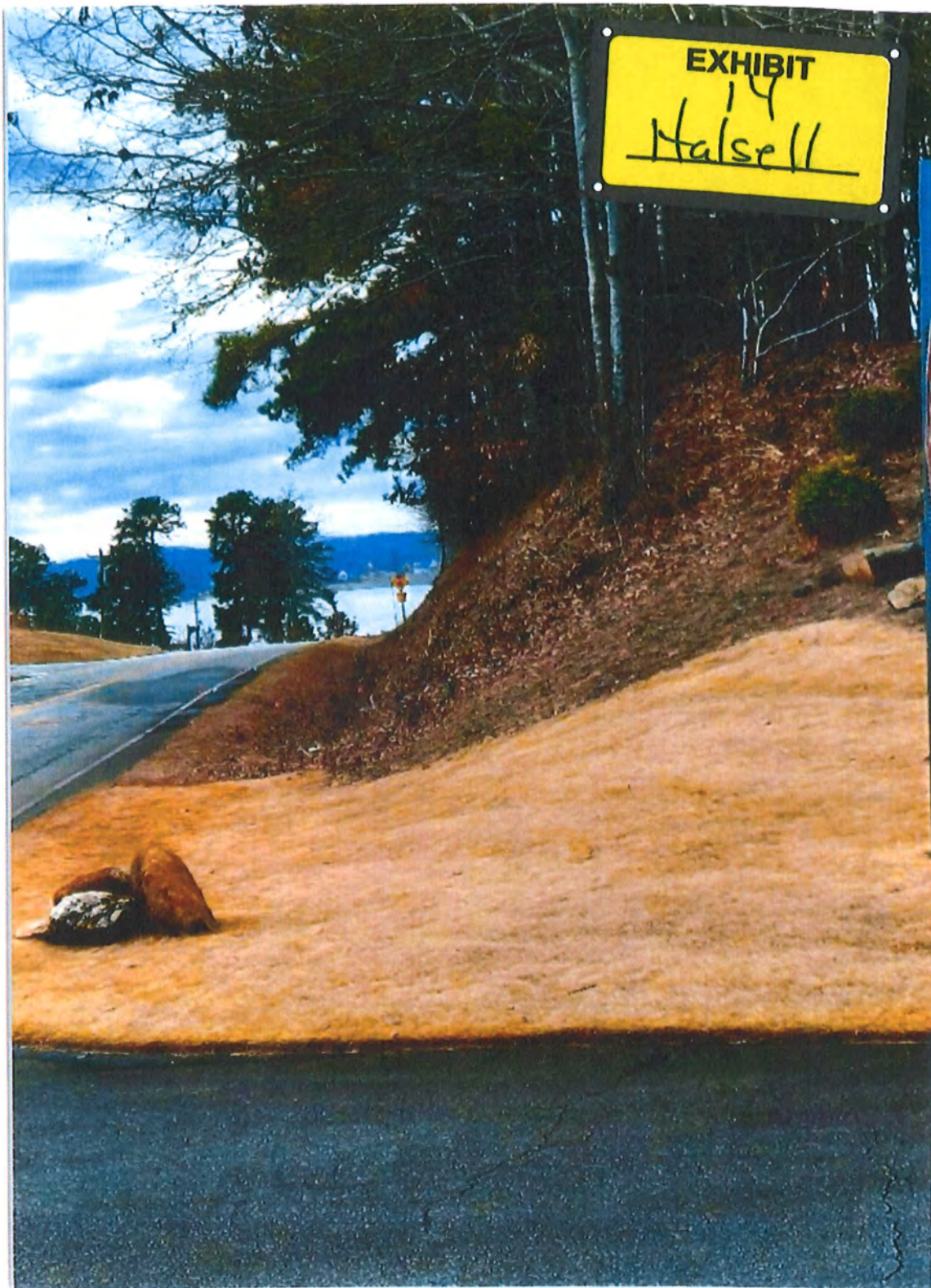


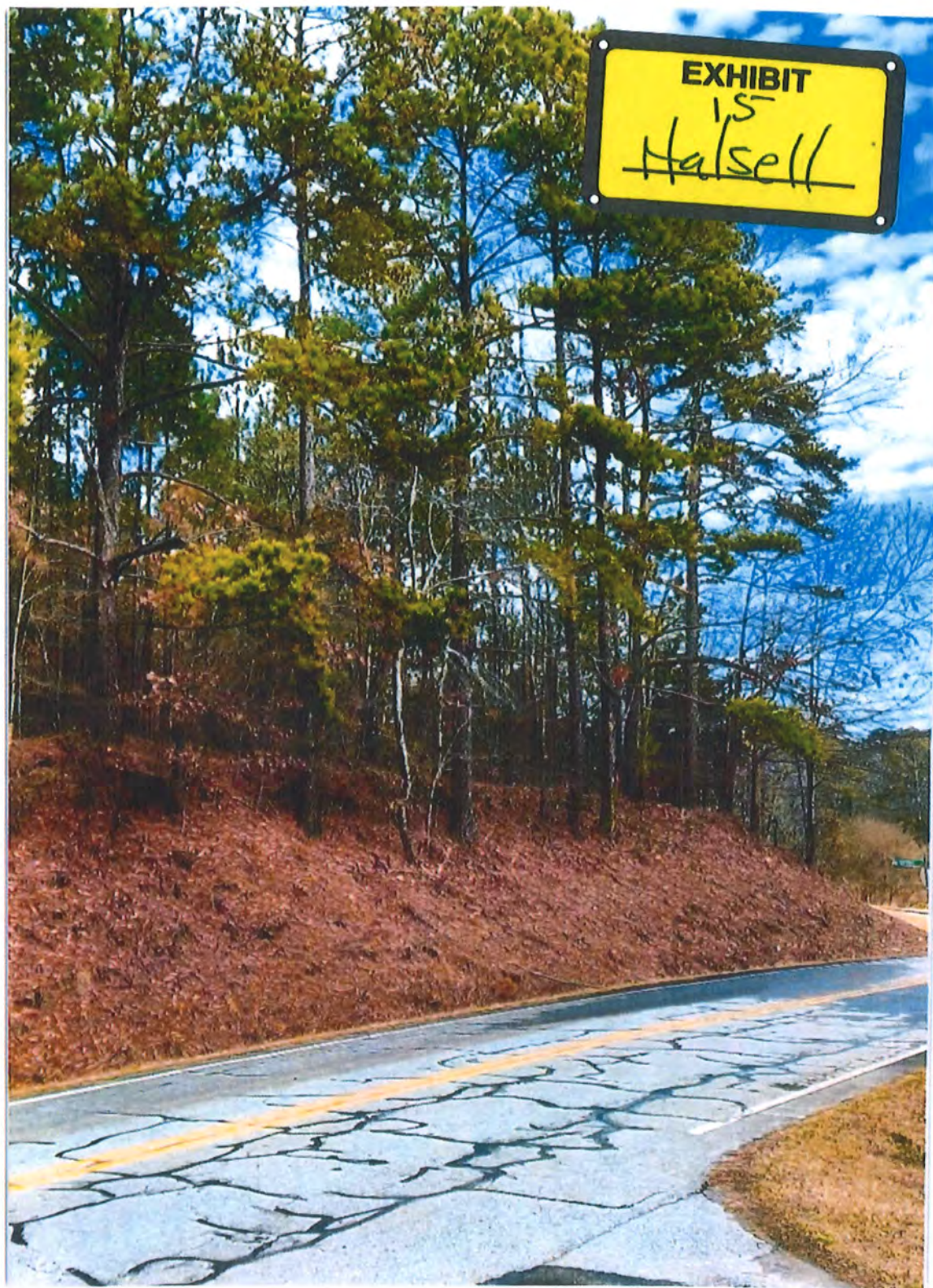


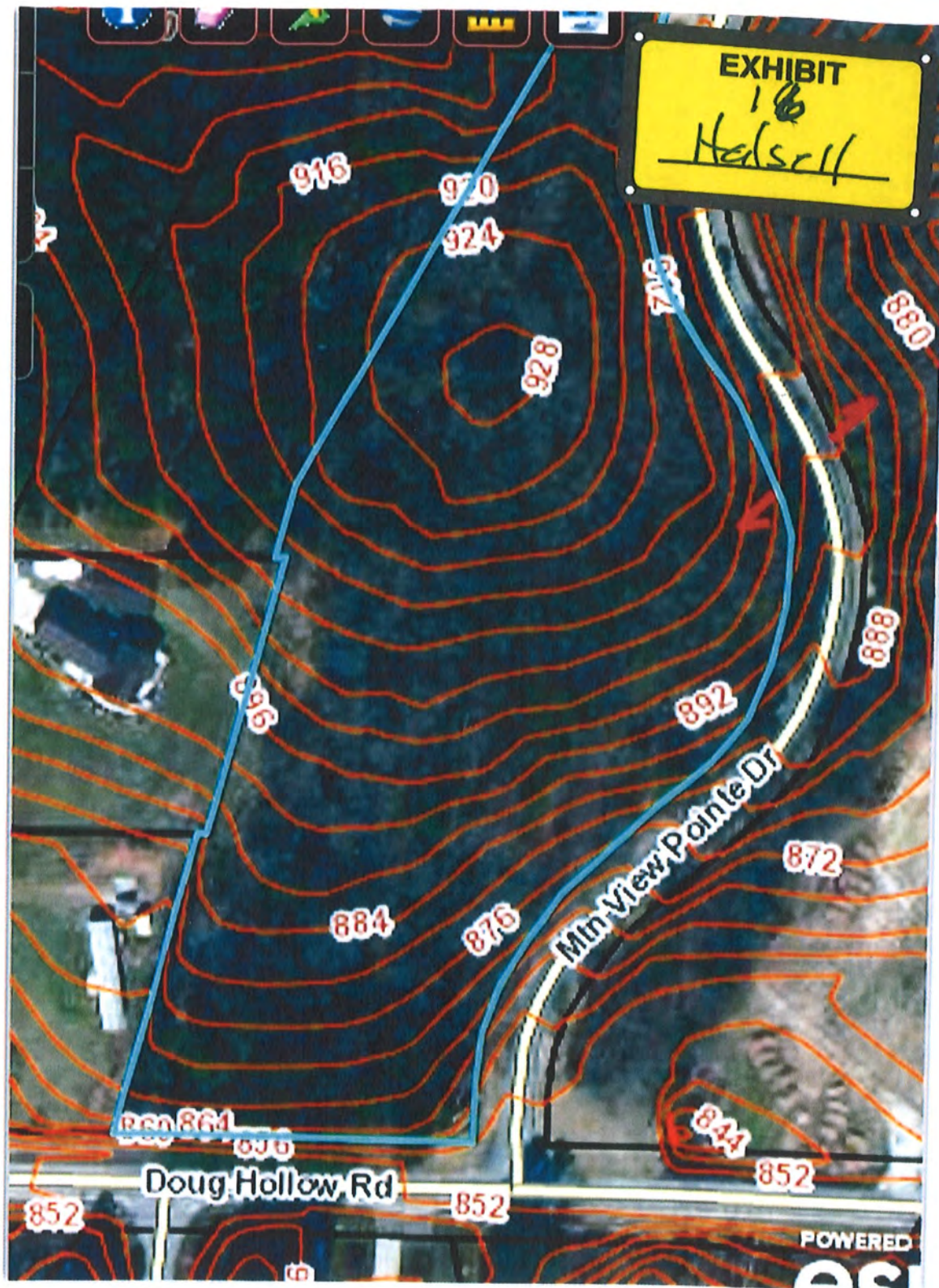














Landscaping Details

Halsell side of Mountain View Pointe Drive

1,125' of road frontage Total area of non-exclusive landscape easement this side of road is 28,125 sq ft

Bed #1 42' x 15'	630 sq ft	95 sq ft within easement	535 sq ft or 85% within ROW
Bed #2 87' x 20'	1,740 sq ft	522 sq ft within easement	1,218 sq ft or 70% within ROW

Piper side of Mountain View Pointe Drive

1,225' of road frontage Total area of non-exclusive landscape easement this side of road is 30,625 sq ft

Bed #3 35' x 9'	315 sq ft	0 within easement	100% within ROW
Bed #4 58' x 10'	580 sq ft	29 sq ft within easement	95% within ROW

Total Footprint of Landscape Easement

Halsell side	28,125 sq ft
Piper side	30,625 sq ft
Total	58,750 sq ft

Total area landscaped by Mountain View Pointe Owners Association:

3,265 sq ft or 6% (note: 71% of area maintained is within the public road right of way)

Total area landscaped within the landscape easement is 646 sq ft or 1%