

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION # 2009-CP-26-10523

Elizabeth A. Crotty and James K. Orzech,)
)

Plaintiffs,)

vs.)

Windjammer Village of Little River,)
South Carolina, Property Owners')
Association, a South Carolina)
Eleemosynary Corporation,)

Defendant.)

VERIFIED COMPLAINT

FILED
HORRY COUNTY
2009 OCT 28 PM 4:48
MELANIE HUGGINS-WARD
CLERK OF COURT
CERTIFIED COPY

The Plaintiffs complaining of Defendant herein, would show unto this Honorable Court as follows:

1. Plaintiffs are citizens and residents of Horry County, South Carolina.
2. Defendant is a South Carolina Not-for-Profit Corporation situate and doing business in Horry County, South Carolina, and is the duly constituted property owners association for the Windjammer Village of Little River Subdivision and is charged with conduct of its operation pursuant to its Bylaws and South Carolina Law.
3. The real property which is the subject of this controversy is located wholly in Horry County, South Carolina and both the parties and subject matter are within the jurisdiction of this Honorable Court.
4. Heretofore, on or about July 15, 2002, Defendant did, by General Warranty Deed filed for record in the Office of the ROD for Horry County South Carolina in Real Estate Deed Book 2499 at Page 0759, convey to Plaintiff Elizabeth A. Crotty, Lot A, Block E of Windjammer Village of Little River, as shown and depicted on a plat of said property prepared by C.B. Berry, RLS dated November 16, 1998 and recorded in Plat Book 159 at Page 70 in the Office of the RMC for Horry County, South Carolina. The Deed and Plat referred to herein are attached hereto and incorporated herein as consolidated Exhibit "A".



5. The Plat by which the property which is the subject of this dispute was conveyed to the Plaintiffs shows and depicts a paved circular driveway.

6. Subsequently, Plaintiff Elizabeth A. Crotty did, for valuable consideration, convey the identical property previously conveyed to her by Defendant to Elizabeth A. Crotty and James K. Orzech, as joint tenants, and this conveyance is filed of record in the Office of the ROD for Horry County, South Carolina in Real Estate 2976 at Page 0935.

7. Recently, Defendant has made known at public forums and other venues, and in direct communications with other lot owners in Windjammer Village, its intention to remove the circular driveway shown and depicted on Exhibit "A" and that intention is evidenced by a newsletter sent out to lot owners/association members. A copy of said newsletter is attached hereto and incorporated herein as Exhibit "B".

8. Further, in order to authorize the removal of said driveway, Defendant has undertaken to send out to various homeowners/members of the Association a ballot, which in Provision 2 seeks association approval to "Remove the existing mailbox circle road and use the property to enlarge the present garden keeping the POA property intact and enhancing the entrance to the Village." A copy of said Ballot with attached before and after renderings are attached hereto and incorporated herein as consolidated Exhibit "C".

9. Plaintiffs are informed and believe that the Defendant has contacted sitework contractors and obtained bids for the removal of the circular driveway in front of their home, and Defendant is both posturing and imminently poised to undertake the closure of the driveway.

10. Plaintiffs are informed and believe that an individual or entity which acquires title to real property referencing a plat is entitled to a private easement by implication with respect to the public street, alleyway or traffic circle shown and depicted on that Plat.

11. Plaintiffs are informed and believe that a conveyance of land that references a plat depicting streets, traffic, circle and right-of-way conveys to a purchaser (i.e., the Plaintiffs), as a matter of law, a private easement by implication, whether or not there is a dedication to public use, and the conveyance by Defendant to Plaintiffs have effected a complete and irrevocable dedication of that circular driveway to the Grantees' permanent and unfettered use.

12. As a direct and proximate result of Defendant's manifestation of not only its intent, but also its overt action to deny Plaintiffs access to their property and use of the driveway described in the conveyance to them by Defendant, Plaintiffs will and are imminently threatened to suffer irreparable injury to its property rights which damage is difficult to quantify with legal damages, and that irreparable harm will result to Plaintiffs if Defendant's present course of conduct is allowed to continue, and that an even greater injury will be inflicted upon Plaintiffs by denial of temporary injunctive relief than would be inflicted upon Defendant by granting such relief.

13. Plaintiffs have no adequate remedy at law, and based on the clear and unequivocal case law in South Carolina, Plaintiffs are likely to prevail on the merits of this Complaint.

14. Without a temporary injunction protecting Plaintiffs' common law property rights, immediate irreparable harm is inevitable.

15. Plaintiffs are informed and believe that injunctive relief, both temporary and permanent, is an appropriate remedy for the current threat to and prospective misappropriation of their vested property rights.

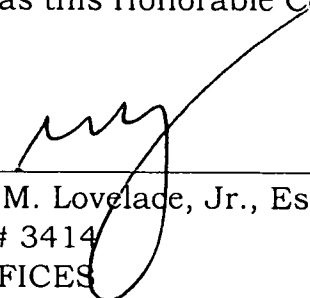
16. Plaintiffs are further informed and believe that time is of the essence in resolving the issues now before the Court and to avoid further irreparable harm to Plaintiffs, Plaintiffs respectfully request that the Court issue a Temporary Injunction and set a date, within ten (10) days after the issuance and filing of the Temporary Injunction Order for a hearing as to whether it is just and proper to dismiss this Complaint or make the preliminary injunctive relief permanent.

17. The driveway which is the subject of this controversy has been in place in the Windjammer Village Subdivision for at least ten (10) years, and Plaintiffs are informed and believe that the granting of the relief sought can or in no way result in any financial harm or economic hardship to Defendant and is, accordingly, informed and believe that only a nominal bond is necessary as the Court, in its discretion, may approve.

WHEREFORE, Plaintiffs pray for relief against Defendant as follows:

a. That this Court immediately issue a temporary injunction order and simultaneously schedule, within ten (10) days, a hearing at its first available convenience to take testimony with regard to the issues in controversy and either dismiss the preliminary relief granted or enter its Order for a permanent injunction; and

b. For such other and further relief as this Honorable Court may deem just and proper.



Richard M. Lovelace, Jr., Esquire
SC Bar # 3414
LAW OFFICES
RICHARD M. LOVELACE, JR., P.A.
Post Office Box 1704
Conway, S.C. 29528
Telephone: (843) 248-7321
Attorney for Plaintiffs

Conway, South Carolina
20th day of October, 2009

VERIFICATION

PERSONALLY appeared before me the undersigned, who, being first duly sworn, deposes and says that they have read the facts contained in the foregoing Verified Complaint; and that they know the same to be true of their own knowledge and belief.

Elizabeth A. Crotty
Elizabeth A. Crotty

James K. Orzech
James K. Orzech

SWORN to and subscribed before me
this 28 day of October, 2009.

Susan P. Shelley (L.S.)
Notary Public for South Carolina
My Commission Expires: 12/19/11

FILED
Horry County
2009 OCT 28 PM 4:48
MELANIE HUGGINS-WARD
CLERK OF COURT

Exhibit "A"

81724

FILED
STATE OF SOUTH CAROLINA
COUNTY OF Horry
REGISTER OF DEEDS

TITLE TO REAL ESTATE

WHEREAS, pursuant to the Declaration of Covenants and Restrictions of Windjammer Village of Little River, the Windjammer Village of Little River, South Carolina, Property Owners' Association, at a duly called meeting of its members and by an affirmative written vote of a majority of its members, was authorized to take bids upon and sell the below described property to the highest bidder;

WHEREAS, it is the express intent of this conveyance that the below described property shall cease to be a common element of the subdivision and shall be considered a single family lot subject to the Declaration of Restrictions of Windjammer Village of Little River and the By-Laws of the Windjammer Village of Little River, South Carolina, Property Owners' Association;

WHEREAS, Elizabeth A. Crotty was the highest bidder on said property and does hereby expressly agree to be bound by the Declaration of Restrictions of Windjammer Village of Little River and the By-Laws of the Windjammer Village of Little River, South Carolina, Property Owners' Association

WHEREAS, Windjammer Village of Little River, South Carolina, Property Owners' Association hereby desires to sell and Elizabeth A. Crotty hereby desires to purchase the below described property; and

NOW THEREFORE, KNOWN ALL MEN BY THESE PRESENTS, That It, Windjammer Village of Little River, South Carolina, Property Owners' Association in the State aforesaid, for and in consideration of the sum of Thirty-five Thousand One and No/100 (\$ 35,001.00) Dollars to it paid by Elizabeth A. Crotty, 2121 Brunswick Circle, Little River, South Carolina 29566, in the State aforesaid, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Elizabeth A. Crotty, her heirs and assigns forever, the following described property, to wit:

DEED
2499 0759

STATE 92³⁰ COUNTY 39⁰⁵

EXEMPT YES NO

ASSESSOR 119-09-02-025
7-11-02

Handwritten initials and number 759

ALL AND SINGULAR, all that certain piece, parcel or lot of land, together with improvements thereon, situate, lying and being in Little River Township, Horry County, South Carolina, being designated as LOT A, Block E of Windjammer Village of Little River, as appears upon a plat of said property by C. B. Berry, R.L.S., dated November 16, 1998 and recorded in Plat Book 159, Page 70, Horry County Records.

SUBJECT to the Declaration of Covenants and Restrictions appearing of record for Windjammer Village of Little River, Horry County Records.

The above described property shall no longer be considered a common element of Windjammer Village of Little River and shall be used as a single family residence, shall be subject to monthly dues and special assessments and shall be subject to all the rules and regulations of the By-Laws of Windjammer Village of Little River, South Carolina, Property Owners Association, including but not limited to, the architectural and other committees authorized from time to time by the Board of Directors.

BEING a portion of the identical property as conveyed unto the Grantor herein by Deed recorded in Deed Book 780, Page 660, Horry County Records.

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

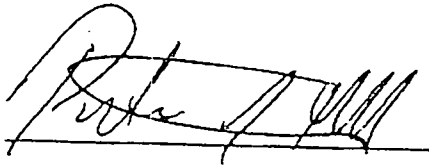
TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Elizabeth A. Crotty, her Heirs and Assigns forever,

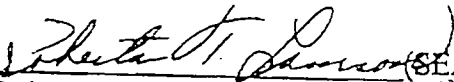
And it does hereby bind itself and its Successors, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said Elizabeth A. Crotty, her Heirs and Assigns, against it and its successors and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

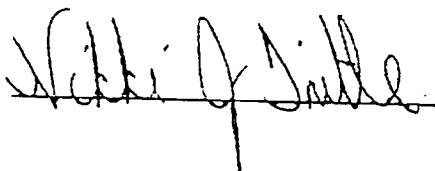
WITNESS our Hands and Seals this 15th day of July in the year of our Lord two thousand and two and in the two hundred and twenty seventh year of the Sovereignty and Independence of the United States of America.

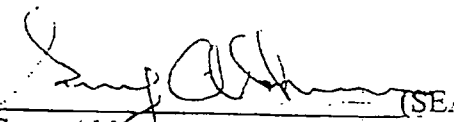
SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Windjammer Village of Little River,
South Carolina, Property Owners'
Association



By:  (SEAL)
Roberta T. Lamson
Its: President

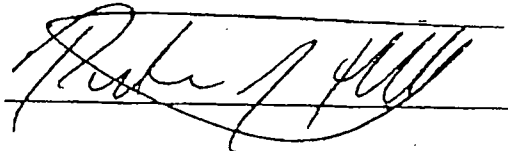


By:  (SEAL)
Garry Alderman
Its: Second Vice-President

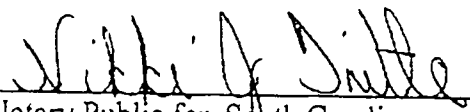
STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

PROBATE

PERSONALLY appeared before me, the undersigned witness and made oath that (s)he saw the within-named Windjammer Village of Little River, South Carolina, Property Owners' Association, by its duly authorized officers, sign, seal and as its act and deed deliver the within written Deed for the uses and purposes therein mentioned and that (s)he with the other witness whose name is subscribed above, witnessed the execution thereof.



SWORN to before me this
15th day of July, 2002.

 (L.S.)
Notary Public for South Carolina
My commission expires: 3-25-2006

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

AFFIDAVIT

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

1. Property located at Lot A, Block E, Windjammer Village of Little River, Little River, South Carolina 29566, bearing Horry County Tax Map Number 119-09-02-025 was transferred by Windjammer Village of Little River, South Carolina, Property Owners' Association to Elizabeth A. Crotty on July 15, 2002.

The transaction was (Check one):

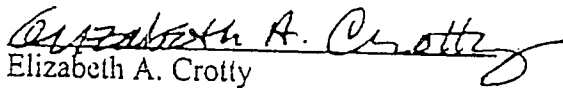
XX an arm's length real property transaction and the sales price paid or to be paid in money or money's worth was \$35,001.00.

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

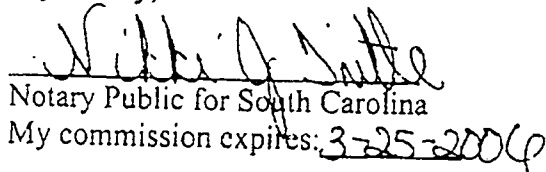
The above transaction is exempt, or partially exempt, from the recording fee as set forth in S.C. Code Ann. Section 12-24-10 et seq. because the deed is: N/A.

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

I further understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars and imprisoned not more than one year, or both.


Elizabeth A. Crotty

SWORN to before me this 15th
day of July, 2002.


Notary Public for South Carolina
My commission expires: 3-25-2004

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

762



STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

AFFIDAVIT

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

1. Property described as 2148 Gamecock Circle, Little River, SC 7566, bearing Horry County Tax Map Number 119-09-02-025, was transferred by ELIZABETH A. CROTTY, on September 7, 2005

The transaction was (check one):

An arm's length real property transaction and the sales price paid or to be paid in money or money's work was \$ _____.

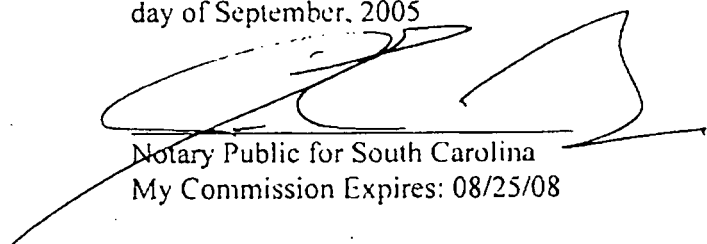
Not an arm's length real property transaction and the fair market value of the property is \$ _____.

The above transaction is exempt, or partially exempt, from the recording fee as set forth in S.C. Code Ann. Section 12-24-10 et. seq. because: As per §12-24-40 (14), this Deed is transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal. This Affidavit serves to establish 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.

As required by Code Section 12-24-70, We state that we are responsible persons who were connected with the transaction as the Grantors. We further understand that persons required to furnish this affidavit who willfully furnish a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned no more than one year, or both.


ELIZABETH A. CROTTY

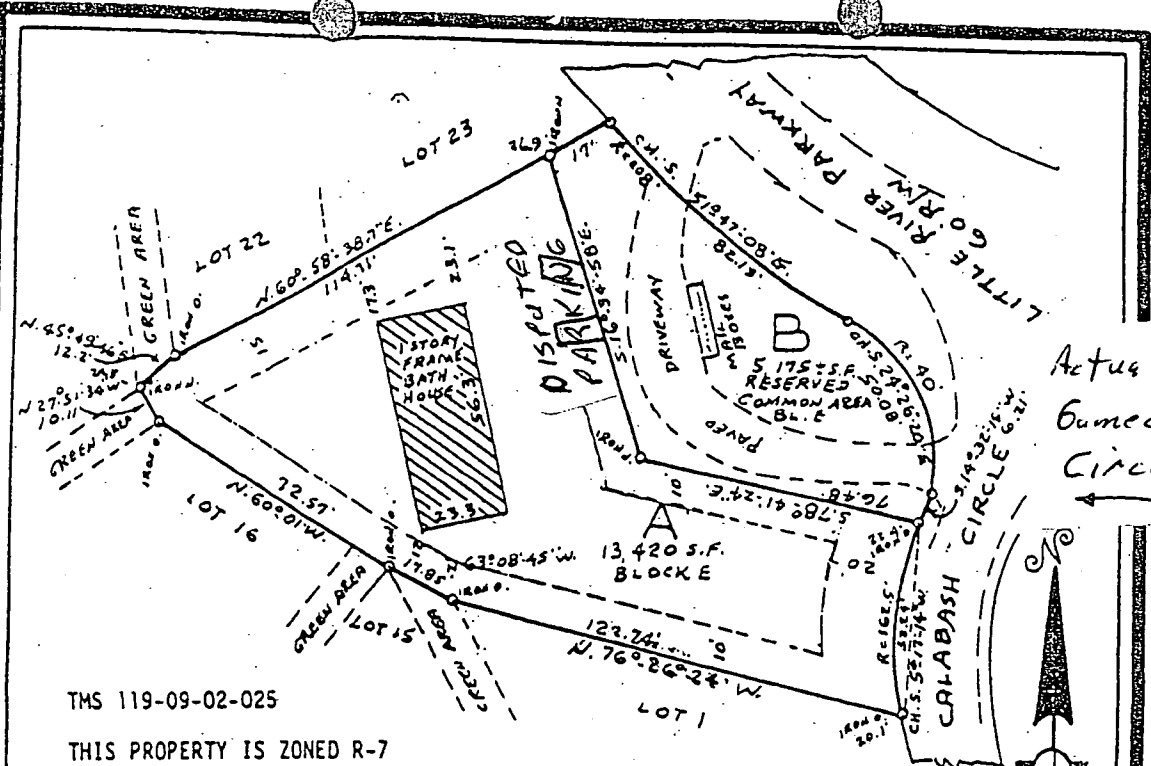
Sworn to before me this 7th
day of September, 2005


Notary Public for South Carolina
My Commission Expires: 08/25/08

**THIS DEED WAS PREPARED WITHOUT THE BENEFIT
OF A TITLE EXAMINATION**

937





Actually
Bumcock
Circle

TMS 119-09-02-025

THIS PROPERTY IS ZONED R-7
BUILDING SETBACKS ARE:
FRONT 20'
REAR 15'
SIDES 10'

THIS PROPERTY IS LOCATED IN FLOOD ZONE X
COMMUNITY PANEL NO. 450104 0367 F
EFFECTIVE DATE: SEPT. 3, 1992

MAP SHOWING DIVISION
OF COMMON AREA LOT IN
BLOCK E OF WINDJAMMER VILLAGE
NEAR LITTLE RIVER -

CERTIFICATE OF OWNERSHIP & DEDICATION
WE HEREBY CERTIFY THAT WE ARE THE OWNERS
OF THE PROPERTY SHOWN AND DESCRIBED HEREON
AND THAT WE HEREBY ADOPT THIS PLAN OF
SUBDIVISION WITH OUR FREE CONSENT, ES-
TABLISH THE MINIMUM BUILDING RESTRICT-
TION LINES AND DEDICATE ALL STREETS,
ALLEYS, WALKS, PARKS AND OTHER OPEN
SPACE TO PUBLIC OR PRIVATE USE AS
NOTED.

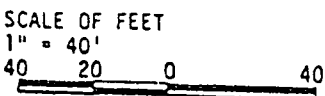
LITTLE RIVER TOWNSHIP - HORRY COUNTY, S. C.
REF: DEED RECORDED IN DEED BOOK 780,
PAGE 660, HORRY COUNTY RECORDS.
OWNED BY
WINDJAMMER VILLAGE PROPERTY OWNERS ASSOCIATION

Ronald F. ... 11/16/98
FOR WINDJAMMER VILLAGE PROPERTY OWNERS ASSOCIATION DATE

ELEVATIONS ARE FROM U. S.
QUADRANGLE MAP "CALABASH."

APPROVED FOR
RECORDING

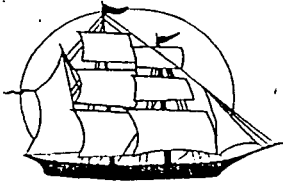
Joseph ...
11/18/98



I hereby state that to the best of my knowledge,
information, and belief, the survey shown herein
was made in accordance with 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; also there are no visible
encroachments or projections other than shown.

C. B. Berry
C. B. BERRY, R.L.S., S.C. NO. 2075
NORTH MYRTLE BEACH, S.C. 29582
(803) 272-6303
NOVEMBER 16, 1998

Exhibit "B"



The Windjammer Village Breeze

windjammerpoa.com
opinions@windjammerpoa.com
wjvpoa@sc.rr.com
843-249-2460
Fax: 843-280-4840
Emergency: 843-742-7749

September 2009

Volunteer of the Month!

Don't bug her when she's out in the truck spraying! **Judy Panarello** is on a mission, as our first line of defense, declaring a war on bugs. Thank you **Judy** for your efforts to rid our neighborhood of those pesky insects which leave us itching and twitching!

THANK YOU



The Village People!

Condolences...

to the families of **Marjorie Datthyn**, Calabash Circle, and **Reid Baker**, Adams Circle, on their recent passing.

A memorial celebration will be held Oct 2 for long-time resident **Bettie Aiken** by her family from 3pm to 5pm at the clubhouse. Light refreshments will be served. All who knew **Bettie** are welcome.

.....
If you have an item you'd like to see here - birthday, anniversary, etc., please drop it at the office, call or email Pat Pelton at patpelton@verizon.net

Board

It was decided at our September 15th meeting of the BOD to make a motion to remove Rosanne Pazoga from the board and suspend her until the vote of the membership is counted. There have been ongoing differences between Rosanne and the rest of the members of the board, Village volunteers and employees. We therefore, decided for the good of the Village to remove Rosanne. We will be preparing a ballot asking the members to support us in this decision to remove Roseanne. Article 5-4 of the by-laws states: Any Director may be removed at any time with or without cause by a majority vote of the members of the Association. Action to remove a director may be initiated by a majority of the Board of Directors or upon submission of a petition by 25% of the qualified voting Members. A majority of those voting is required for removal.

Also, there has been an ongoing argument with the owners of BOO, Elizabeth Crotty and James Orzech, as to the way they access their property. They continue to park in front of their house using the mailbox driveway for access to their property. Every other home in Windjammer Village must use the circle roads to access property. This has resulted in ongoing legal bills. The contract of purchase had stated the property must be accessed from Gamecock Circle. It was stated in writing and the bid was reduced by \$3000 due to the fact they were going to have to install a long driveway. The current Board of Directors feels it is too important to make the decision on its own, and we will be sending it out to the membership for a vote. Some thoughts that we are entertaining are:

- 1 Enforce the current contract.
2. Move the mail boxes down to become parallel with the road like all other mailboxes in the community with ample room to park off the road. Remove mailbox circle road and use property as another garden/park. This would be a nice entrance to our Village. This will keep the lot intact, eliminate anyone from driving on POA property and could be sold in the future, if necessary. Members have voiced their concerns regarding the parking on this property.

Fines:

- 2 - \$300 fines for throwing a homemade bomb; 1 - \$100 fine for underage driving; 1 - \$100 fine for still allowing a cat to roam free; 3 letters for overgrown lots; and 1 letter for leaving a trailer on the property

Beautification

.....
The contract for the front entrance maintenance was signed.
ADOPT A HIGHWAY PICKUP -SC 179 to North Carolina Border; Meet at POA Office Saturday, September 26th 9:00am. Wear long pants and bring gloves. Vests and bags will be provided. Your help would be greatly appreciated. A good project for teens who need to do community service. More info: Call John Phalen 249-4862

Exhibit "C"



Windjammer Village of Little River, Inc.
2200 Little River Drive
Little River, SC 29566-9119
Voice: 843-249-2460 Fax: 843-280-4840
E-mail: wjvpoa@sc.rr.com

You are being asked to vote on the following two issues.

1. Removal of a Board of Directors Member

By-Law Article V #4 states: Any Director may be removed at any time with or without cause by a majority vote of the members of the Association. Action to remove a director may be initiated by a majority of the Board of Directors voting in a duly called and conducted meeting of the Directors or upon submission of a petition by 25% of the qualified, voting Members. A majority of those voting is required for removal.

The current Board of Directors needs your vote on the matter of the removal of Rosanne Pazoga from the Board of Directors. We feel that due to irreconcilable differences among the Board of Directors, employees and volunteers, it is in the best interest of the Windjammer Village POA that Rosanne Pazoga is removed from the Board of Directors.

2. Mailboxes at Gamecock Circle

Move the mailboxes that service Calabash Circle, Gamecock Circle and Dykman Circle down to become parallel with the road like all the other mailboxes in the Village with ample room to park off the road. Remove the existing mailbox circle road and use the property to enlarge the present garden keeping the POA property intact and enhancing the entrance to the Village.

To be eligible to vote, current POA dues, assessments and fines, including late payments, must be made by Tuesday, November 10, 2009. Do not include payments with this ballot.

1. Are you in favor of Rosanne Pazoga's removal from the Board?

Yes
 No

Yes
 No

2. Are you in favor of moving the mailboxes and enlarging the garden?

Yes
 No

Yes
 No

Please place this ballot in the envelope marked "BALLOT". Place the ballot envelope into the one with your return address and return to the POA Office.

DEADLINE TO RETURN BALLOTS - NOVEMBER 14, 2009.
Ballots with no return address will not be counted.

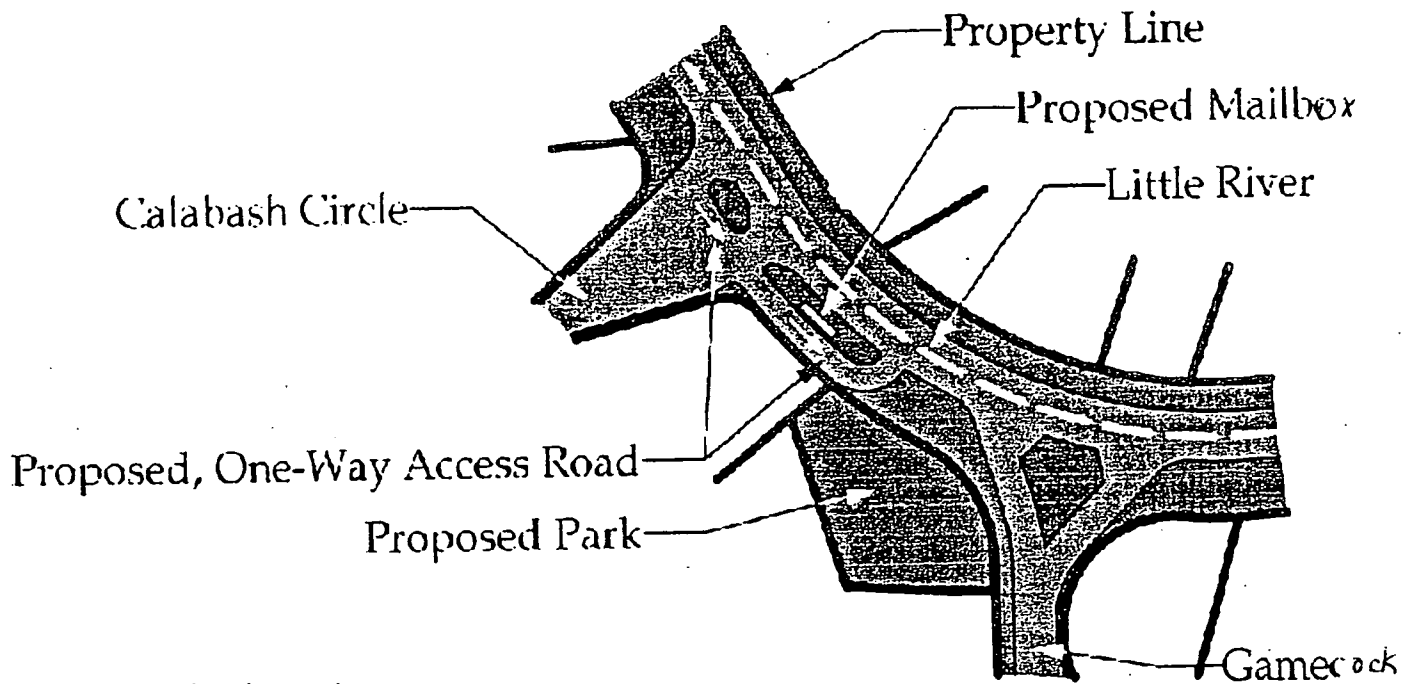
Below please find a preliminary proposal of how we will move the mailboxes. We will be meeting with the Postmaster when this is approved.

The Goal is to make a nicer entrance to Windjammer Village.

Over the past 2 year we have been working on and planning to update the Circle entrances, Paving the Roads, Circles and Rework the mailboxes throughout the village. We are working with the already approved street budget and it will not affect your dues.

The mailbox placement will allow you to turn in pick up your mail and return back to little river road without being in the traffic of Little River Road. The existing POA property will be used as a park and enhance our village entrance

Proposed Configuration



Current Configuration

