

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Perry M. Buckner, Circuit Court Judge

Case No. 2009-CP-15-469
Appellate Case No. 2013-001642

The Retreat at Edisto Co-owners Association, Inc., Gerald Bachelor, Lisa Bachelor, James Currell, Rose Marie Currell, Jervey McKelvey, Barry Smith, Joseph Zuyus, and Emily Zuyus, Plaintiffs

Of whom The Retreat at Edisto Co-owners Association, Inc., Gerald Bachelor, Lisa Bachelor, James Currell, Rose Marie Currell, Jervey McKelvey, Barry Smith are the Respondents,

v.

The Retreat at Edisto, LLC, W. Mark Steedley, individually, Terry Hoff d/b/a Terry Hoff Construction, Handcrafted Homes, LLC, G & S Supply Co., Georgia-Pacific Building Products, LLC, Georgia-Pacific Wood Products, LLC, General PreCast Manufacturing Co., Inc., Banks Construction Company, Stroble Site Services, LLC, Eugene H. Brislin, P.E., James J. Barlow Engineering, P.C., PFS Corporation, James Glenn, Waynes Reeves, and Mike Miller, Defendants.

Of whom The Retreat at Edisto, LLC is the Appellant.

And

G & S Supply Co., Inc.,

Third-Party Plaintiff.

vs.

James Pritchard d/b/a Low Country Exteriors and Edson A. Barros d/b/a Sunshine Vinyl Siding,

Third Party Defendants.

RECORD ON APPEAL

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FEB 19 2014

SC Court of Appeals

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STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

IN THE COURT OF COMMON PLEAS
CASE NO.: 2009-CP-15-469

The Retreat at Edisto Co-owners
Association, Inc. Gerald Bachelor, Lisa
Bachelor, James Currell, Rose Marie
Currell, Jervy McKelvey, Barry Smith,
Joseph Zuyus, and Emily Zuyus,

Plaintiffs,

vs.

The Retreat at Edisto, LLC; W. Mark,
Steedley, individually ; Terry Hoff d/b/a
Terry Hoff Construction; Handcrafted
Homes, LLC; G&S Supply Co., Georgia-
Pacific Building Products, LLC, Georgia-
Pacific Wood Products, LLC, General
PreCast Manufacturing Co., Inc.; Banks
Construction Company; Stroble Site
Services, LLC, Eugene H. Brislin, P.E.;
James J. Barlow, P.E.; Barlow Engineering,
P.C., PFS Corporation; James Glenn; Wayne
Reeves; and Mike Miller

Defendants.

G & S Supply Co., Inc.

Third-Party Plaintiff,

vs.

James Pritchard d/b/a Low Country
Exteriors and Edson A. Barros d/b/a
Sunshine Vinyl Siding,

Third-Party Defendants,

ORDER

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2013 JUN -6 PM 4:43

#1
DMB

This matter comes before the Court on the Plaintiff Retreat at Edisto Co-Owners' Association, Inc.'s (hereinafter "HOA") cause of action for declaratory judgment pursuant to

S.C. Code Ann. 15-53-10 et seq., as amended. The HOA seeks the following declarations from this Court:

(A) That Defendant W. Mark Steedley and Defendant Retreat at Edisto, LLC, their successors and/or assigns, have no legal property interest in the common elements of the Regime, specifically including, but not limited to, that 3.724 acre parcel of property described as Exhibit A to the Master Deed of the Retreat at Edisto Horizontal Property Regime, recorded at the Colleton County Register of Deeds at Book 924, Page 138.

(B) That Defendant W. Mark Steedley, Defendant Retreat at Edisto, LLC, their successors and/or assigns, do not have any legal right to develop any portion of the 3.724 acre parcel of property described as Exhibit A to the Master Deed of the Retreat at Edisto Horizontal Property Regime, recorded at the Colleton County Register of Deeds at Book 924, Page 138, or to expand the Retreat at Edisto Horizontal Property Regime, or to control or cause to be commenced any construction of structures on the Property.

#2
PMB

The relevant pleading is HOA's Fifth Amended Complaint. Defendant W. Mark Steedley¹ and Defendant Retreat at Edisto, LLC (hereinafter "Defendants") served an Answer to the Fifth Amended Complaint and asserted a counterclaim asking this Court to declare that Defendants maintain "rights to develop Phase II of the Retreat at Edisto as set forth in the Master Deed and Amendment thereto." See Amended Answer and Counter Claims of The Retreat at Edisto, LLC and W. Mark Steedley to the Plaintiffs' Fifth Amended Complaint, ¶ 74. HOA replied to the counter claim and asserted various affirmative defenses, including the statute of frauds.

This matter was originally before the Honorable Carmen T. Mullen on cross motions for summary judgment. Judge Mullen found for the HOA. Defendants appealed the order and the Court of Appeals reversed the order finding summary judgment to be inappropriate because

¹ Defendant W. Mark Steedley only asserts an interest in this matter by virtue of his membership in The Retreat at Edisto, LLC.

Defendants presented the “requisite scintilla of evidence on the question of its intent.” See Unpublished Opinion No 2012-UP-558. The Court held that the interpretation and construction of the master deed and amendment was a question for the finder of fact. A non-jury hearing was therefore held on April 29, 2013 before the Honorable Perry M. Buckner. Appearing for HOA were W. H. Bundy, Jr., Esquire and M. Brent McDonald, Esquire and appearing for Defendants was David Haller, Esquire.

The Court has carefully considered the evidence presented at the hearing and based upon the evidence and the credibility of the witnesses, the Court finds as follows:

STANDARD OF REVIEW

#3
PMB
“A declaratory judgment action is neither legal nor equitable,” and the determination is made according to the underlying issues. Auto Owners Insurance Company v. Newman, 385 S.C. 187, 191, 684 S.E.2d 541, 543 (2009).

The construction of a clear and unambiguous deed is a question of law for the court. Hammond v. Lindsay, 277 S.C. 182, 184, 284 S.E.2d 581, 582 (1981); Hunt v. Forestry Comm'n, 358 S.C. 564, 568, 595 S.E.2d 846, 848 (Ct.App.2004); see also Vause v. Mikell, 290 S.C. 65, 68, 348 S.E.2d 187, 189 (Ct.App.1986) (“The construction of an unambiguous deed is a question of law, not fact.”). When a deed is reasonably susceptible to more than one interpretation it is ambiguous, and the question of its construction is for the finder of fact. See S.C. Dept. of Nat. Resources v. Town of McClellanville, 345 S.C. 617, 550 S.E.2d 299 (2001).

“In construing a deed, the intention of the grantor must be ascertained and effectuated, unless that intention contravenes some well settled rule of law or public policy.” K & A Acquisition Grp., LLC v. Island Pointe, LLC, 383 S.C. 563, 682 S.E.2d 252, 262 (2009) (internal quotation marks omitted). “In determining the grantor's intent, the deed must be construed as a whole and effect given to every part if it can be done consistently with the law.” Id. “The intention of the grantor must be found within the four corners of the deed.” Id.

FINDINGS OF FACT

(1) This is a case concerning a condominium regime located on a 3.724 acre parcel of property on Edisto Island, South Carolina and commonly known as The Retreat at Edisto Horizontal Property Regime (the "Regime").

(2) The Defendants argue that they have a right to develop a Phase II on the 3.724 acre parcel of property and continue to have such right into the future. The HOA argues that even if the Defendants had a right to develop Phase II in the past, the Defendants never exercised any right to develop Phase II and any legal ability to exercise such right has now expired.

#4
PMB
(3) On or about December 13, 2000, Defendants executed the Master Deed of the Retreat at Edisto Horizontal Property Regime (the "Master Deed"). The Master Deed was recorded on January 11, 2001 at the Colleton County Register of Deeds at Book 924, Page 138. The Master Deed originally contained language creating seven (7) separate apartment buildings, each containing four (4) units, to be located on a 3.724 acre parcel of property. At the time of the filing of the Master Deed, the entire 3.724 acre parcel of property as well as the other property described in Exhibit A of the Master Deed became "common elements" in which each of the twenty eight (28) "apartments" retained an undivided ownership right.² There is no language in the Master Deed stating that the 3.724 acre parcel is divisible or is comprised of more than one legal lot.

(4) Sometime after the filing of the Master Deed, Defendants encountered problems with zoning and permitting of all seven (7) buildings by the Town of Edisto Beach, the United States Army Corps of Engineers, and the South Carolina Department of Health and Environmental Control's Office of Coastal Resource Management.

(5) The Defendants were not able to develop the twenty-eight 28 units and seven (7)

² The words "common elements" and "apartments" are terms of art and are defined in the Master Deed as well as the South Carolina Horizontal Property Act, codified at S.C. Code Ann. §§ 27-31-10 *et seq.*

buildings proposed in the Master Deed. There was no evidence presented at the hearing that the Defendants were granted approval of the permits necessary to implement Phase II.

(6) In response to permitting and zoning problems, on or about July 27, 2001, prior to any sales of the units occurring, Defendants filed the First Amendment to the Master Deed for the Retreat at Edisto Horizontal Property Regime (the "Amendment"). The Amendment is filed at the Colleton County Register of Deeds at Book 945, Page 140. The Amendment reduced the number of units from twenty eight (28) units to twelve (12) units.

(7) Notwithstanding the reduction in the number of units, the Amendment reaffirmed its submission of the entire 3.724 acre parcel of property to the Regime that now consisted of three (3) buildings, each with four (4) units and each of the units having an undivided interest in the common elements for the entire 3.724 acre property.

#5
PMB
(8) Howard Yates, Esq. testified for the HOA. He was qualified as an expert in real estate law. Yates opined to a reasonable degree of certainty that the entire 3.724 acres was submitted to the Regime by the Master Deed and the Amendment and the Defendants did not have any vested property rights in the 3.724 acre property at any time from July 27, 2001 up to the time of the hearing in this matter. W. Mark Steedley testified that the Defendants did not have any fee interest in the 3.724 acres after the property was submitted to the Regime.

(9) The Amendment went on to state that the Defendants could develop a second phase, Phase II, if certain actions and measures were taken, these measures and actions were both included in the Amendment and required by law. Yates testified that these actions and measures were required to be taken by the Defendants in order to vest any right to develop Phase II because according to the express language of the Amendment, Defendants were under no obligation to develop any portion of Phase II. See Amendment, ¶ 7. Yates testified to a reasonable degree of certainty that because the Amendment did not vest any property rights in Defendants, it was necessary pursuant to the language of the Amendment to have a subsequent

filing that was required to vest a property right in the Defendants. Yates testified that title to property must be vested somewhere. At the time of the filing of the Amendment, the title to the property was with the 12 units.

(10) A subsequent filing never occurred. All property rights, therefore, continue to be vested in the 12 unit owners.

(11) In pertinent part, the Amendment stated as follows:

“The Grantor hereby adds the following new Article XXXV to read as follows:

EXPANSION OF REGIME

The Town of Edisto Beach (hereinafter the “Town”) originally approved a twenty-eight unit condominium project for the real property hereby submitted to the Regime. Due to unforeseen circumstances, the Town has granted final approval for twelve (12) units and the Grantor has agreed to the development of the project in stages or phases as defined herein. **The Town has not granted final approval for Phase II and Grantor is under no obligation to develop Phase II of the Regime.**

#6
PMB

Development Stages. The Grantor proposes to develop the real estate shown on the site plan marked Exhibit “C” to the Master Deed as a single regime by constructing seven (7) buildings as depicted on Exhibit “B” and “C” to the Master Deed. **Phase I is compromised of Buildings 6, 7 and 5 and Phase II may include a maximum of four (4) additional buildings containing (4) apartments each, pending approval by the Town and the election of Grantor to proceed with the development with all or a portion of Phase II.**

Maximum Number of Apartments. The maximum number of apartments in Phase II shall be sixteen (16) Apartments. The plot plans and floor plans shall be as depicted in Exhibits “B” and “D” to the Master Deed. **All improvements in Phase II shall be completed prior to submission to the Regime and shall be used for residential purposes.**

Timetable. The Grantor, its successors and assigns, or any person or entity owning the right to develop and construct proposed Phase II, Buildings 1, 2, 3 and 4 as shown on Exhibit “B” to the Master Deed may, at their sole discretion, stage the development and construction of the improvements into two stages, with no guarantee to the purchasers of Apartments in Phase I that subsequent stages or phases will be developed. It is the Grantor’s intention to develop the proposed Phase II, Buildings 1, 2, 3, and 4 as Phase II of the regime. **The Grantor, it’s successors and assigns on persons/entities owning the adjoining property hereby reserve the right and privilege to determine on or before July 31, 2005, whether or not to proceed with the additional stage of development and the parties hereto agree that if the Grantor so decides, the Apartments shall be in a**

regime which consist of two stages or phases. The determination of the Grantor, its successors and assigns or person/entities owning the adjoining property as to the stages of the project may be on, before or after the sale of Apartments in Phase I.

Percentage Interest Chart. The percentage interests in the General and Limited Common Elements of each Apartment owner before and after addition of Phase II of proposed development shall be according to the chart attached hereto as Exhibit "E" to the Master Deed.

#7
KAB

Master Deed Amendment for Phase II. To add Phase II pursuant to the option reserved under this article, the Grantor shall prepare, execute, and record an amendment to this Master Deed that shall contain a plot plan showing the location of the Buildings and any other improvements, and a set of floor plans of the Buildings which shall show graphically the dimensions, area, and location of each Apartment therein and the location of General and Limited Common Elements affording access to each Apartment. The plans shall show graphically insofar as possible and describe in detail the Common Elements in the Buildings, both Limited and General. The plans shall be certified by an engineer or architect authorized and licensed to practice in this state. Instead of recording new plot plans and floor plans as required, the Grantor may record new certifications by a licensed engineer or architect of plot plans and floor plans previously recorded if those plans show all of improvements required by this section.

Easements for Phase II Development. The Grantor hereby reserves unto itself, its successors and assigns, a commercial easement, which shall be transferable to Grantor's successors and assigns, for ingress, egress, access and for the installation of utilities and other improvements over and under common elements to facilitate in all respects the construction of the Phase II buildings. The parties hereto acknowledge that the interest and rights reserved by Grantor herein include the right to exclude any Co-owners, their invitees and licensees, from using the common elements around the proposed building pads (see Exhibit "B" to the Master Deed) during the course of the construction of Phase II Buildings. **This commercial easement shall automatically terminate on July 31, 2005.**"

(Emphasis Added).

(12) Defendants' authorized representative drafted the Master Deed and the Amendment. Defendants unilaterally selected the terms of the Amendment including the deadline of July 31, 2005 to "add Phase II pursuant to the option reserved."

(13) There have not been any additional amendments to the Master Deed, either prior to July 31, 2005 or up to the time of the hearing on this matter.

#8
PrnB

(14) When the language of the Master Deed and Amendment is read as a whole, Defendants were under no obligation to develop Phase II at the time of the filing of the Amendment. Defendants were required to take certain steps to create and develop Phase II. The Amendment does say that it was Defendants' "intention to develop the proposed Phase II, Buildings 1, 2, 3, and 4 as Phase II of the regime" at the time of the filing of the Amendment, however, when the instrument is read as a whole, it was the Defendants' intention not to be required to develop Phase II. *See* Article XXXV of Amendment ("Grantor is under no obligation to develop Phase II of the Regime."). Therefore, in order to actually have the right and the obligation to develop Phase II, Defendants were required to comply with the terms of the Amendment as a whole. To the extent these provisions create an ambiguity, I find that the intention of Defendants was to have the option to develop Phase II without the requirement to do so. As such, it was the intention of Defendants, as evidenced in the language of the Amendment, to include additional requirements to add Phase II if it so desired. It was also the intention of the Defendants to be clear about what obligations it had to develop a Phase II. At the time of the filing of the Amendment it had none. The Defendants included the additional requirements to add Phase II in order to be clear whether or not it assumed an obligation and what the exact terms of the obligation it assumed were going to be. This construction is consistent with the language of the Amendment and the evidence presented at the hearing.

(15) There was no evidence that prior to or after July 31, 2005 Defendants drafted, created, or filed a second amendment to the Master Deed creating Phase II. Yates testified that he searched the title and there was no subsequent filing to the Amendment. There is no evidence that any construction ever took place for Phase II. There was no evidence presented to the Court of any final approval given by the Town prior to July 31, 2005, to implement Phase II. It is

undisputed that no building permits were issued for any construction in Phase II prior to July 31, 2005. It is undisputed that prior to July 31, 2005, Defendants did not obtain the requisite state or federal permits. It is undisputed that prior to July 31, 2005, Defendants did not file the certification of an engineer or an architect for the plans for Phase II or any variation of the plans. It is undisputed that Defendants did not convey any **express** intention, oral or written, to HOA, or anyone else, of their intent to develop Phase II prior to July 31, 2005. 30(b)(6) Deposition of Retreat at Edisto, LLC, pp. 113-114 (offered into evidence at hearing).

#9
PMB
(16) It is undisputed that the "Commercial Easement" held by Defendants automatically expired on July 31, 2005 by its express terms. Any construction at the Regime would require a commercial easement over the common elements as they have already been conveyed to unit owner. This is further evidence of the intention of Defendants that any right to develop Phase II expired on July 31, 2005.

(17) Steedley testified that Defendants, prior to July 31, 2005, engaged in some initial efforts to evaluate if and how Phase II could be developed, including hiring an engineer to evaluate permitting. Steedley argues that this evidences Defendants' intention to develop Phase II. Steedley was forthright and honest with the Court, and his testimony leads this Court to believe that Steedley did desire to implement Phase II at some indeterminate time in the future. However, I find that the testimony of Steedley does not change the written language of the Master Deed and Amendment and their attendant requirements. While this finding arguably works a hardship on Steedley, it does not change the fact that the Master Deed and Amendment must be complied with before Phase II can be implemented. If it were to grant Steedley relief, this Court would be in the untenable position of rewriting the Master Deed and Amendment to conform to Steedley's stated intention in his testimony. That is not the task of the Court.

(18) It is undisputed that the Phase II cannot be developed other than with four more buildings with four units each. There was no evidence presented at the hearing as to what

Defendants' intention was as it relates to how it proposes to develop Phase II. The language of the Master Deed and Amendment clearly require an election to proceed with a defined Phase II including recorded plans and engineering drawings as well as a percentage interest chart.

(19) There was no evidence presented at the hearing as to any time frame in which Defendants intended to develop Phase II if the July 31, 2005, time frame is read out of the document. Therefore, the intention of Defendants and the language of the Master Deed and Amendment was to have the July 31, 2005, date be a deadline so that all who purchased and all who searched the title would be able to tell what property was part of the Regime and what undivided interest each unit had in the common elements.

#10
JMB
(20) It was the intention of Defendants in the Master Deed and the Amendment to have a right but not an obligation to develop Phase II. It was the intention of the Defendants to have the deadline of July 31, 2005, to exercise the right to develop Phase II. It was the intention of the Defendants to include certain provisions in the Amendment that were required to exercise its right to develop Phase II. The Defendants have not complied with the required provisions to exercise its right to develop Phase II prior to or after July 31, 2005. The Master Deed and Amendment is construed accordingly, and the Defendants have no present rights in the 3.724 acres.

FINDINGS OF LAW

(21) HOA presented the 30(b)(6) testimony of the Defendant Retreat at Edisto, LLC wherein it testified that the Amendment and the terms of Amendment alone provide it with the alleged present right to develop Phase II of the common elements of the Regime. 30(B)(6) Deposition of Retreat at Edisto, LLC, p. 105, line 25 – p. 107, line 7.

(22) The Amendment states that “[t]he Town has not granted final approval for Phase II and Grantor is under no obligation to develop Phase II of the Regime.” Therefore, at the time of the filing of the Amendment the Town had not granted final approval for Phase II. According

to the plain language of the Amendment, in order for the Defendants to have any right or obligation to develop Phase II on the property encumbered by the Regime, the Defendants must have secured final approval by the Town for a specific Phase II development. See Amendment, ¶ 7. There is currently no evidence that the Town granted final approval for any type of Phase II development prior to July 31, 2005 or after.

(23) Paragraph 7 of the Amendment goes on to require, in pertinent part, as follows:

“To add Phase II pursuant to the option reserved under this article, the Grantor [Defendant/Developer] shall...”

#11
RMB
The Amendment lists a number of actual requirements by which Defendants might “add” Phase II. This is coupled with the plain language that Defendants were under no obligation to develop Phase II. As such, the Amendment itself did not create any present property rights in the Defendants. It only provided notice that there may be a Phase II in the future if the Defendants took certain measures, legal and otherwise. Yates testified that this language created the option to develop Phase II and that there were conditions precedent necessary to exercise the option, most important the recordation of an instrument showing that Phase II was to be developed.

(24) “[S]trict compliance with time limits contained in a contract will not ordinarily be enforced, except with regard to option contracts.” Alexander’s Land Co., LLC v. M&M&K Corp., 390 S.C. 582, 703 S.E.2d 207 (2010) (citing Faulkner v. Millar, 319 S.C. 216, 220, 460 S.E.2d 378, 380 (1995) ((citing Dargan v. Page, 222 S.C. 520, 73 S.E.2d 705 (1952))). “When an option is subject to a condition precedent, in addition to manifesting acceptance within the stated time, the optionee must satisfy the conditions, and the contract will not be specifically enforced until any such conditions are met. Alexander’s Land Co., LLC, 703 S.E.2d at 214 (2010) (citing 25 Richard A. Lord, Williston on Contracts § 67:84 (4th ed. 2002)). “It is well settled in South Carolina that option contracts are strictly construed in favor of the optionor and

against the optionee. Id. “Furthermore, if the option requires performance in a certain manner, time is of the essence and exact compliance with the terms of the option are required.” Id.

(25) In the Amendment, Defendants gave themselves the deadline of July 31, 2005, to complete the conditions precedent required in order to develop Phase II. The terms of a deed must be construed against its drafter. See Heritage Federal Savings and Loan Association v. Eagle Lake and Golf Condominiums, 318 S.C. 535, 458 S.E.2d 561 (Ct.App. 1995). It is undisputed that the foregoing requirements were not complied with prior to July 31, 2005.

(26) Notwithstanding the failure to comply with the foregoing, Defendants contend that they in fact made a “determination” to develop Phase II prior to July 31, 2005. However, the Defendants concede that it was not made in writing. It is undisputed that nothing was recorded. It is undisputed that no one was notified of the determination. See 30(B)(6) Deposition of Retreat at Edisto, LLC, pp. 112-113 offered at hearing.

(27) The Court disagrees that a mere determination by Defendants was all that was required for the Defendant to exercise any developments rights it may have had pursuant to the Amendment. However, the manner in which the Defendant contends such election was made—without a writing and without any notification to anyone—is itself legally insufficient. In South Carolina, the statute of frauds requires that an interest in property must be manifested by a writing. S.C. Code Ann. § 32-3-10, as amended. Here, it is undisputed that no such writing exists because the language of the Amendment does not vest or convey any property interests in the Defendants.

(28) Moreover, in the Amendment Defendants reserved themselves a commercial construction easement necessary to actually develop Phase II; however, the easement “automatically” terminated on July 31, 2005. “In determining the grantor’s intent, the deed must be construed as a whole and effect given to every part if it can be done consistently with the law.” Gardner v. Mozingo, 293 S.C. 23, 25, 358 S.E.2d 390, 391-92 (1987). Even if this Court

were to disregard the foregoing conditions precedent and the failure to properly create Phase II, Defendants no longer hold the required construction easement necessary to actually develop Phase II. This deadline is read by the Court to further support its holding that July 31, 2005 was the final date to develop Phase II.

(29) Additionally, the law demands that covenants that restrict the free use of property must be strictly construed against limitations upon the property's free use. Hyer v. McRee, 306 S.C. 210, 410 S.E.2d 604 (Ct.App.1991). Where there is doubt, the doubt must be resolved in favor of the property's free use. Id.

#13
PMB
(30) If this Court were to adopt the position of Defendants, then no potential purchaser of the existing units would have any notice of the intentions of Defendants with regard to Phase II, and there would be no deadline in which such intentions would be known. The existing unit owners would be incapable of freely disposing of their interest in their unit as well as the accompanying interest in the common elements as that would be unknown indefinitely.

(31) Therefore, the fee use and alienation of the property is significantly encumbered. Any doubt in the construction of the deed is therefore resolved in favor of the HOA.

(32) Pursuant to the language of the Master Deed and Amendment and the evidence offered at the hearing, the Defendants do not have the right to develop a Phase II on the 3.724 acres constituting the Regime.

CONCLUSION

For all the foregoing reasons, I find in favor of the HOA and declare as follows:


(A) That Defendant W. Mark Steedley and Defendant Retreat at Edisto, LLC, their successors and/or assigns, have no legal property interest in the common elements of the Regime, specifically including, but not limited to, that 3.724 acre parcel of property described as

Exhibit A to the Master Deed of the Retreat at Edisto Horizontal Property Regime, recorded at the Colleton County Register of Deeds at Book 924, Page 138.

(B) That Defendant W. Mark Steedley, Defendant Retreat at Edisto, LLC, their successors and/or assigns, do not have any legal right to develop any portion of the 3.724 acre parcel of property described as Exhibit A to the Master Deed of the Retreat at Edisto Horizontal Property Regime, recorded at the Colleton County Register of Deeds at Book 924, Page 138, or to expand the Retreat at Edisto Horizontal Property Regime, or to control or cause to be commenced any construction of structures on the Property.

(C) It is further ordered that the Register of the Office of Deeds for Colleton County shall accept and record this Order in the Direct and Cross Indexes to Deeds and Miscellaneous Instruments. The Register of the Office of Deeds shall file this Order in the name of Defendant Retreat at Edisto, LLC and in both the Direct and Cross Indexes to Deeds and Miscellaneous Instruments.

IT IS SO ORDERED!



The Honorable Perry M. Buckner

Walterboro, South Carolina
~~_____~~, 2013

June 6

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

The Retreat at Edisto Co-Owners
Association, et al.

Plaintiffs,

v.

The Retreat at Edisto, LLC.

Defendant.

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
)
)

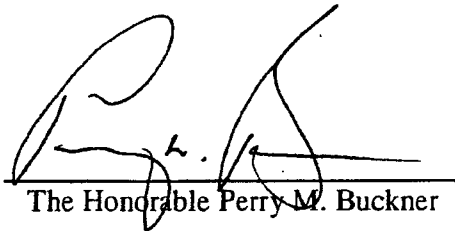
) CIVIL ACTION NO.: 2009-CP-15-00469
)

) ORDER DENYING DEFENDANT'S
) MOTION FOR NEW TRIAL AND/OR
) TO ALTER OR AMEND JUDGMENT
)
)
)
)
)
)
)
)

Defendant's Motion for New Trial and/or to Alter or Amend Judgment is respectfully
DENIED.

IT IS SO ORDERED.

June 27, 2013
Walterboro, SC


The Honorable Perry M. Buckner

2013 JUN 28 AM 11:25
COLLETON COUNTY
COMMON PLEAS

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

) IN THE COURT OF COMMON PLEAS
) CASE NO.: 2009-CP-15-469
)

The Retreat at Edisto Co-owners Association,
Inc., Gerald Bachelor, Lisa Bachelor, James
Currell, Rose Marie Currell, Jervy McKelvey,
Barry Smith, Joseph Zuyus, and Emily Zuyus,

Plaintiff,

vs.

) **FIFTH AMENDED COMPLAINT**
) **(JURY TRIAL DEMANDED)**
)

The Retreat at Edisto, LLC; W. Mark
Steedley, individually; Terry Hoff d/ba
Terry Hoff Construction; Handcrafted
Homes, LLC; G&S Supply Co.; Georgia-
Pacific Building Products, LLC;
Georgia-Pacific Wood Products, LLC;
General PreCast Manufacturing Co., Inc.;
Banks Construction Company; Stroble Site
Services, LLC; Eugene H. Brislin, P.E.; James J.
Barlow, P.E.; Barlow Engineering, P.C., PFS
Corporation; James Glenn; Wayne Reeves; and
Mike Miller

Defendants.

G&S Supply Co., Inc.,

Third-Party Plaintiff,

vs.

James E. Pritchard d/b/a Low Country
Exteriors and Edson A Barros d/b/a
Sunshine Vinyl Siding,


Third-Party Defendants.

PATRICIA C. GRAN,
COLLETON COUNTY
COMMON PLEAS
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Plaintiffs complaining of the Defendants herein, would allege and show as follows:

answer to the said Fifth Amended Complaint upon the subscriber, W. H. Bundy, Jr., Esquire, of Smith, Bundy, Bybee & Barnett, P.C., Post Office Box 1542, Mt. Pleasant, South Carolina 29465-1542, within thirty (30) days after service thereof, exclusive of the day of service; and if you fail to do so judgment by default will be rendered against you for the relief demanded in the Fifth Amended Complaint.

SMITH, BUNDY, BYBEE & BARNETT, P.C.



W. H. Bundy, Jr., Esquire
M. Brent McDonald, Esquire
Post Office Box 1542
Mt. Pleasant, South Carolina 29465-1542
Telephone: (843) 881.1623
Attorneys for Plaintiffs

Mt. Pleasant, South Carolina
January 6, 2011

PARTIES AND JURISDICTION

1. Plaintiff, The Retreat at Edisto Co-owners Association, Inc. (the "Association"), is an eleemosynary (non-profit) South Carolina corporation which was established on or about December 18, 2000.

2. Plaintiffs, Gerald Bachelor and Lisa Bachelor, are citizens and residents of the State of Georgia and are the owners of Unit 5B in the Retreat at Edisto Condominiums located at 126 Jungle Road, Edisto Beach, South Carolina, which is governed by the Retreat at Edisto Co-Owners Association, Inc. pursuant to the Master Deed and By-laws.

3. Plaintiffs, Rose Marie Currell and James Currell, are citizens and residents of Ontario, Canada and are the owners of Unit 6C in the Retreat at Edisto Condominiums located at 126 Jungle Road, Edisto Beach, South Carolina, which is governed by the Retreat at Edisto Co-Owners Association, Inc. pursuant to the Master Deed and By-laws.

4. Plaintiff, Jervey McKelvey, is a citizen and resident of the State of North Carolina and is the owner of Unit 7C in the Retreat at Edisto Condominiums located at 126 Jungle Road, Edisto Beach, South Carolina, which is governed by the Retreat at Edisto Co-Owners Association, Inc. pursuant to the Master Deed and By-laws.

5. Plaintiff, Barry Smith, is a citizen and resident of the State of North Carolina and is the owner of Unit 7B in the Retreat at Edisto Condominiums located at 126 Jungle Road, Edisto Beach, South Carolina, which is governed by the Retreat at Edisto Co-Owners Association, Inc. pursuant to the Master Deed and By-laws.

6. Plaintiffs, Joseph Zuyus and Emily Zuyus, are citizens and residents of the State of North Carolina and are the owners of Unit 7D in the Retreat at Edisto Condominiums located

at 126 Jungle Road, Edisto Beach, South Carolina, which is governed by the Retreat at Edisto Co-Owners Association, Inc. pursuant to the Master Deed and By-laws.

7. Plaintiffs Bachelor, Bachelor, Currell, Currell, McKelvey, Smith, Jordan, Zuyus and Zuyus are sometimes herein referred to as "unit owners" or "Individual Plaintiffs."

8. The Association is organized for the purposes of governing a horizontal property community known as The Retreat at Edisto Horizontal Property Regime (the "Regime").

9. Defendant, Handcrafted Homes, LLC ("Handcrafted Homes"), is a corporation organized and existing under the laws of a state other than South Carolina, and owned property, supplied, sold and/or marketed materials and products and/or did business in the State of South Carolina. That at all times relevant hereto, Handcrafted Homes was engaged in the construction, repair, manufacture, installation, design, provision, marketing, and/or sale of a product known as modular construction and such product was manufactured, designed, constructed, repaired, provided, incorporated into, and/or installed on the buildings which are the subject of this action.

10. Defendant, Terry Hoff d/b/a Terry Hoff Construction ("Hoff"), is an individual who upon information and belief resides in the state of South Carolina and engaged in business and entered into contracts in the state of South Carolina. That at all times relevant hereto, Hoff was engaged in the construction, repair, improvement, design, and/or general contracting of residential condominiums on real property which gives rise to this action.

11. Defendant The Retreat at Edisto, LLC, is a South Carolina limited liability corporation, organized and existing under the laws of the State of South Carolina, and owned property and/or did business in the State of South Carolina. That at all times relevant hereto, The Retreat at Edisto, LLC was engaged in the development, construction, improvement, marketing, design, and/or sale of residential condominiums and real property which is the subject of this

action. Defendant Retreat at Edisto, LLC will sometimes hereinafter be referred to as the Defendant/Developer.

12. That Defendant W. Mark Steedley is or was a majority shareholder, alter-ego, sole member, member, and/or managing-member of Defendant/Developer. Upon information and belief, Defendant W. Mark Steedley resides in the state of South Carolina and was, at all times relevant hereto, engaged in the development, improvement, marketing, design, and/or sale of residential condominiums and real property which is the subject of this action.

13. Upon information and belief, at all times relevant to this Complaint, there existed an agency relationship by and between Defendant/Developer and W. Mark Steedley, with W. Mark Steedley acting both individually and as the principal for Defendant/Developer acting by and through W. Mark Steedley.

14. The Plaintiffs are informed and believe, and thereupon allege, that Defendant/Developer and W. Mark Steedley, and each of them, are, and at all times mentioned herein were the alter-egos, successors in interest, parents, subsidiaries, agents, partners, associates, joint venturers, servants, employees and/or other authorized representatives of each other and in doing the things herein alleged were acting within the course and scope of their respective authority, agency, employment, and/or other representation, and with the knowledge, consent, approval and/or ratification of each other.

15. That Defendant/Developer, at all times relevant hereto, was subject to the dominion and control of Defendant W. Mark Steedley and/or the dominion and control of others acting under Defendant W. Mark Steedley's direction and control, and that Defendant/Developer and Defendant W. Mark Steedley is an alter-ego of the other.

16. That Defendant W. Mark Steedley is personally responsible in an individual capacity for the acts, omissions, debts, obligations, and liabilities, stated herein, of Defendant/Developer.

17. That Defendant W. Mark Steedley and Defendant/Developer will now sometimes hereinafter collectively be referred to as ("Defendant/Developer").

18. That Defendant G&S Supply Co. ("G&S"), is upon information and belief a corporation organized under the laws of the state of South Carolina and is engaged in the construction, repair, installation, sale, and/or provision of materials on condominiums projects in South Carolina. More specifically, Defendant G&S constructed, sold, provided, and/or installed the windows and doors and other construction tasks assigned to this subcontractor by Hoff.

19. Defendant Georgia-Pacific Building Products, LLC is, upon information and belief, a limited liability corporation organized and existing under the laws of a state other than South Carolina and regularly transacts business in South Carolina and regularly produces, manufactures, markets, sells and distributes products for the use and consumption in South Carolina.

20. Defendant Georgia-Pacific Wood Products, LLC is, upon information and belief, a limited liability corporation organized and existing under the laws of a state other than South Carolina and regularly transacts business in South Carolina and regularly produces, manufactures, markets, sells and distributes products for the use and consumption in South Carolina.

21. At times hereinafter, Defendant Georgia-Pacific Building Products, LLC and Defendant Georgia-Pacific Wood Products, LLC will be collectively referred to as the "Georgia-Pacific Defendants."

22. Defendant General PreCast Manufacturing Co., Inc. ("General") is, upon information and belief, a corporation organized and existing under the laws of the State of South Carolina which regularly transacts business in the State of South Carolina. At all times hereinafter mentioned, Defendant General constructed, designed, provided materials and labor for, and/or manufactured a concrete retaining wall or wall which is located at the property which is the subject of this action and owned by the Plaintiffs.

23. Defendant Banks Construction Company ("Banks") is, upon information and belief, a corporation organized and existing under the laws of the State of South Carolina which regularly transacts business in the State of South Carolina. At all times hereinafter mentioned, Defendant Banks laid the asphalt for the parking lot located at the property which is the subject of this action and owned by the Plaintiffs.

24. Defendant Stroble Site Services, LLC ("Stroble") is, upon information and belief, a limited liability corporation organized and existing under the laws of the State of South Carolina which regularly transacts business in the State of South Carolina. At all times hereinafter mentioned and upon information and belief, Defendant Stroble performed site work at the property which is the subject of this action in 2000, 2001, and 2002. Defendant Stroble also was responsible for building a wooden wall, fence, and/or retaining structure in 2000, 2001, and 2002. Upon information and belief, Defendant W. Mark Steedley is a member and/or manager of Defendant Stroble.

25. Defendant Eugene Brislin, P.E. ("Brislin"), is upon information and belief, a citizen and resident of the state of South Carolina and at all times relevant hereto provided, designed, stamped and/or signed engineering plans and/or specifications for the subject property

and provided engineering services and/or contract administration services during the construction of the Project.

26. Defendant James J. Barlow, is upon information and belief, a citizen and resident of the state of North Carolina and at all times relevant hereto provided, designed, stamped and/or signed engineering plans and/or specifications for the subject property and provided engineering services during the construction of the Project.

27. Defendant Barlow Engineering, P.C., is upon information and belief, a professional corporation organized and existing under the laws of the state of North Carolina and at all times relevant hereto provided, designed, stamped and/or signed engineering plans and/or specifications for the subject property and provided engineering services during the construction of the Project notwithstanding the fact that it failed to obtain the proper Certificate of Authorization to perform engineering services in the state of South Carolina.

28. Defendants James J. Barlow and Barlow Engineering, P.C. will sometimes hereinafter be referred to collectively as "Defendant Barlow."

27. Defendant PFS Corporation is, upon information and belief, a corporation organized and existing under the laws of the State of Wisconsin and at all times relevant hereto reviewed and approved engineering and/or architectural plans for the project which is the subject of this action and represented that the plans and specifications met the codes and regulations set forth by the South Carolina Building Codes Council.

28. Defendant James Glenn ("Glenn") is, upon information and belief, a citizen and resident of the State of South Carolina and at all times material hereto supplied materials and labor for the driving of pilings at the project which is the subject of this action.

29. Defendant Wayne Reeves ("Reeves") is, upon information and belief, a citizen and resident of the State of South Carolina and at all times material hereto supplied materials and labor for the construction of some or all of the porches and decks on the project which is the subject of this action.

30. Defendant Mike Miller ("Miller") is, upon information and belief, a citizen and resident of the State of South Carolina and at all times material hereto supplied materials and labor for the construction of some or all of the concrete parking slabs on the project which is the subject of this action.

31. This Court has jurisdiction over the parties for the claims that are hereinafter set forth in this Complaint and venue is proper in this forum. The Plaintiffs also have standing to bring the causes of action asserted herein.

FACTS

32. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

33. The Regime is a multi-family residential horizontal property regime consisting of three (3) buildings which each contain four (4) units.

34. Plaintiffs are informed and believe that in or about late 2000 the Defendant/Developers entered into a contract with Defendant Hoff to construct seven four unit condominium buildings (the "Project"). The Project was originally planned to be completed in two phases. Phase I consisted of the three buildings, a club house, a retaining wall, and associated fencing and paving. Phase II was proposed to consist of four additional buildings that were never constructed.

35. Upon information and belief, the contract required Defendant Hoff to act as the

construction manager and general contractor for the Project and to supervise and oversee the construction of the Project. Moreover, Defendant Hoff and/or the Defendant/Developer supplied some of the materials and labor for the completion of the Project and/or subcontracted with various individuals and or entities, including Defendant Handcrafted Homes, LLC, Defendant G&S Supply Co., Defendant Georgia-Pacific Building Products, LLC, Defendant Georgia-Pacific Wood Products, LLC, Defendant General PreCast Manufacturing Co., Inc., Defendant Banks Construction Company, Defendant Stroble Site Services, LLC., Defendant Brislin, Defendant Barlow, Defendant PFS Corporation; Defendant Glenn, Defendant Reeves and Defendant Miller, to supply some of the materials and/or labor for the Project.

36. Defendant/Developers and/or Defendant Hoff also entered into a contract with Defendant Handcrafted Homes for the construction, provision, sale, design, and/or installation of certain modular systems or modular buildings that were manufactured and designed to be assembled on-site. Upon information and belief, subsequent to the on-site assembly of the modular systems or buildings, certain other work, material provision, and construction was necessary to complete the buildings, including foundation work, the construction of the retaining wall, driving of pilings, and other work.

37. Upon information and belief, Defendant Brislin designed and supplied the engineering plans for the foregoing preliminary work and performed contract administration duties and supervision during the work.

38. Defendant Handcrafted Homes produced plans and specifications for the modular buildings in which they manufactured, constructed, marketed, designed, and sold. These plans and specifications were signed and stamped by Defendant Barlow and approved by Defendant PFS Corporation as compliant with the South Carolina building codes council requirements.

Upon information and belief, Defendant Brislin also reviewed and approved the Handcrafted Homes' plans and specifications in general and as in accordance with his previously designed foundation plans.

39. Defendant Handcrafted Homes then manufactured, constructed, marketed, and designed the modular system buildings and supplied and/or sold the same to Defendant Hoff or Defendant/Developers for the use and installation upon the Project and performed some of the work necessary and supplied some of the materials necessary for the on-site assembly and/or the completion of the buildings. Defendant Handcrafted Homes knew or should have known that the Plaintiffs in the present action would be the actual user of the product that Handcrafted Homes put into the stream of commerce.

40. That upon information and belief, Defendant Handcrafted Homes, Defendant Barlow, Defendant Brislin, and/or Defendant PFS Corporation knew or should have known of the deficiencies in design and/or installation of the modular system or buildings. Despite this knowledge, actual or constructive, Defendant Handcrafted Homes, Defendant Barlow, Defendant Brislin, and/or Defendant PFS Corporation went forward with the design, approval, production, manufacture, marketing, construction, provision, sale, and/or installation of the modular system or buildings.

41. The Georgia Pacific Defendants held themselves out to both the construction industry and the public at large as being knowledgeable in the design and manufacture of exterior building products and as being providers of quality building products, including an exterior trim product known as "Prime Trim" for use as fascia, soffit, corner board, window trim, door trim, trim, and general exterior use on homes, apartments, condominiums, buildings and other structures in South Carolina and the United States.

42. The Georgia Pacific Defendants marketed and represented their Prime Trim product as being a low maintenance product that was superior to real wood trim products and was suitable for use on the coastal region of South Carolina.

43. The Georgia Pacific Defendants' Prime Trim product is defective and fails to perform as intended because it prematurely deteriorates, rots, swells, buckles, splits, checks, cracks, delaminates, absorbs water, wraps, and/or bulges under normal conditions and exposure; causes consequential water and structural damage; and promotes the growth of health threatening mold, mildew, fungi, termites and other insects in the structures on which it is installed.

44. The Georgia Pacific Defendants marketed, sold, and distributed Prime Trim without adequate installation instructions and warnings regarding the problems, risks, and dangers associated with the installation and use of the product.

45. The Georgia Pacific Defendants' Prime Trim product is not merchantable, is not of fair and average quality, fails to comply with applicable industry standards and building codes, is not fit for the ordinary purpose for which the product was sold and used, and will not pass without objection in the trade.

46. The Georgia Pacific Defendants knew or should have known that their Prime Trim product was defective, would fail and deteriorate prematurely under normal conditions and exposures, and was not suitable for use as an exterior building product.

47. Upon information and belief the majority of the Georgia Pacific Defendants' sales of the Prime Trim product are made through building products distributors to contractors and subcontractors, who in turn sell the product to the end user of the product, the property owner or their representative.

48. That the Defendant/Developer and/or Defendant Hoff contracted with Defendant G&S as a subcontractor to perform work as a subcontractor, including but not limited to the installation of the trim, doors and windows on the project, and to supply materials, including but not limited to the doors, windows, and Prime Trim product for the Project. That Defendant G&S performed such work and supplied such materials on the Project.

49. That the Defendant/Developer and/or Defendant Hoff contracted with Defendant General as a subcontractor to perform work and/or supply materials as a subcontractor, including but not limited to, the construction of a linear concrete retaining wall.

50. That the Defendant/Developer and/or Defendant Hoff contracted with Defendant Banks as a subcontractor to perform work and/or supply materials as a subcontractor, including but not limited to, the construction of the asphalt parking lot.

51. That the Defendant/Developer and/or Defendant Hoff contracted with Defendant Stroble as a subcontractor to perform work and/or supply materials as a subcontractor, including but not limited to, performing site work for the property which is the subject of this action and constructing portions of a fence and/or a retaining wall.

52. That the Defendant/Developers created the non-profit Plaintiff Association and filed the Master Deed for the Regime on or about December 13, 2000. The Master Deed conveyed all the property to unit owners and the Association, including that property that was originally planned to be Phase II. The Defendant/Developer then controlled the Board of the Association—due to its continued “ownership” of the majority of the Units—which has been charged since its inception and through the date of this filing by the Master Deed of the Regime and By-laws with its obligations to, *inter alia*, maintain and repair the common elements of the regime, as well as numerous other duties, loyalties, and responsibilities, as outlined in the Master

Deed, By-laws drafted and filed by the Defendant/Developers, and the laws of the State of South Carolina.

53. During the period the Defendant/Developers controlled the Association the Defendant/Developers sold units within the Regime. The Defendant/Developer also, as charged in the Master Deed, represented to the Association that varied and sundry repairs and maintenance was performed to Regime property in accordance with the duties and responsibilities under the Master Deed, By-Laws, and South Carolina law.

54. That on or about July 10, 2001, Defendant Hoff and/or Defendant Brislin represented that the Project was substantially complete and all work was performed in a careful, diligent, and workmanlike manner and in accordance with industry standards and building codes.

55. Upon information and belief, at this time, the Defendant/Developer was having trouble securing the needed permits, zoning approvals, and financing to construct Phase II on the Regime property. Therefore, on or about July 27, 2001, the Defendant/Developer amended the Master Deed dated December 13, 2000 allegedly pursuant to authority granted to the Defendant/Developer under section XXV of the Master Deed.

56. In this amendment the Defendant/Developer recognized the permit, zoning and finance issues and stated that it was the position of the Defendant/Developer that it was under no obligation to actually develop Phase II.

57. The Defendant/Developer ultimately gave itself until July 31, 2005 to complete Phase II. If by that date the Defendant/Developer had not completed with Phase II, the Defendant/Developer would lose any right it had to develop the property that was part of the common elements of the Regime and appurtenant to each of the twelve (12) units that were previously conveyed.

58. The Defendant/Developer failed to take any measures to develop Phase II on or before July 31, 2005.

59. In mid 2008, however, the Defendant/Developer filed a *lis pendens* on the subject property and took the position that the Defendant/Developer still maintained rights in the property despite having conveyed the property to the Plaintiffs pursuant to the Master Deed.

60. Subsequent to the filing of the *lis pendens*, the Association performed routine maintenance and inspections on one of the Buildings. At this time, the Association discovered deterioration of the Buildings. The Association then hired experts to inspect that building and the remainder of the buildings named herein. The experts discovered substantial damage in the buildings, including but not limited to premature deterioration of the Prime Trim, and as well as other structures on the property including the pre-cast and wooden retaining walls. Additionally, major construction deficiencies related to the modular system or buildings and major construction deficiencies in the construction of Buildings were discovered.

61. The latent construction deficiencies have led to property damage caused by an occurrence that began at or about the time of substantial completion of the work performed by each of the Defendants, though the physical manifestation of the property damage could not have been and was not discovered until only recently by the Plaintiffs and their experts, and has led to damage to portions of the Project other than the work of each of the Defendants.

FOR A FIRST CAUSE OF ACTION
(Negligence as to all Defendants)

62. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

63. The Defendants were negligent, careless, reckless, willful and wanton in one or more of the following particulars, to-wit:

- (a) in selling, manufacturing, and/or constructing deficient buildings;
- (b) in selling, manufacturing, and/or constructing the buildings with defective windows;
- (c) in selling, manufacturing, and/or constructing a defective retaining wall;
- (d) in selling, manufacturing, and/or constructing buildings with defective siding and trim;
- (e) in selling, manufacturing, and/or constructing buildings with inadequate water barriers;
- (f) in selling, manufacturing, and/or constructing buildings without weather proof building envelopes and exteriors;
- (g) in failing to properly warn purchasers;
- (h) in misrepresenting the condition of the buildings and/or building materials to purchasers and/or owners;
- (i) in improperly installing, aligning, constructing, fastening, gasketing, sealing, setting up, and/or manufacturing modular boxes;
- (j) in covering up deficiencies;
- (k) in failing to give proper disclosure;
- (l) in improperly anchoring decks and porch deck roofs;
- (m) in failing to properly supervise its contractors and/or subcontractors;
- (n) in failing to perform construction in accordance with applicable building codes and industry standards;
- (o) in tendering common elements to the Homeowners' Association in a deficient condition;
- (p) in failing to act as reasonable persons would in circumstances then and there

- prevailing and in such other failures as will be shown during discovery and at trial;
- (q) in failing to construct, design, and/or apply proper foundation requirements, wood piles, and in failing to apply, construct, and/or design proper bracing and fastening requirements for the pile design;
 - (r) in failing to comply with the applicable Fire Ratings and Safety Codes;
 - (s) in failing to perform a meaningful evaluation of the property;
 - (t) in failing construct or design proper parking slabs;
 - (u) in selling, manufacturing, marketing, and/or designing defective and/or dangerous products;
 - (v) in failing to exercise due care;
 - (w) in violating the manufacturer's industry standards;
 - (x) in improperly constructing or designing the roof trusses and gable end walls;
 - (y) in improperly constructing or designing the first floor framing;
 - (z) in improperly installing or failing to install shear walls and fire walls;
 - (aa) in improperly installing flashing and, in some cases, failing to install required flashing;
 - (bb) in improperly installing roofing felt and roof sheathing;
 - (cc) in improperly constructing, designing, and/or installing the HVAC system;
 - (dd) in failing to properly perform site work and/or grading work on the property;
 - (ee) in failing to properly construct any or all portions of the retaining wall so as to avoid damage to other portions of the property;
 - (ff) in failing to properly assemble, construct, and/or design the precast and wooden portions of the retaining wall so as to avoid damage to other portions of the project;

(gg) in approving plans and specifications that did not meet codes and regulations set forth by the South Carolina Building Codes Council;

(hh) in failing to ensure proper foundation plans and specifications were produced and/or supplied that were in accordance with the design of the Project and the plans and specifications;

(ii) in failing to properly pour the parking slabs so as to avoid damage to other portions of the project and prevent premature deterioration.

64. The Defendant each owed the Plaintiffs a legal duty that was breached by one or more of the foregoing particulars.

65. Said failures above-described have proximately damaged Plaintiffs in an amount of actual damages and in addition thereto by virtue of the gross negligence and willfulness of the Defendants and reckless disregard for the rights of others including, but not limited to, Plaintiffs, Plaintiffs are entitled to an award of punitive damages.

66. That the significant portion of the damage alleged herein took place after the completion of operations and/or the completion of the work that led to the occurrence herein described. That a significant number of the particular failures described above have resulted in property damage to other portions of the property rather than just damage to the failures themselves and were the result of an accident or continuous exposure to harmful conditions.

FOR A SECOND CAUSE OF ACTION
(Breach of Implied Warranties as to Defendant/Developers)

67. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

68. That the sale of the units by the Defendant/Developers, their affiliates, agents, joint venturers, parent companies, and/or partners whether named or unnamed in the Deeds of Transfer, contained as a matter of law implied warranties of fitness for a particular purpose,

merchantability, workmanship and habitability, which warranties were not effectively disclaimed pursuant to the case law in such cases made and provided.

69. That the Defendant/Developers, their affiliates, associates and joint venturers, whether named or unnamed, on the Deeds of Transfer have breached the aforesaid implied warranties proximately resulting in damage to the Plaintiffs, in an amount to be determined and, in addition thereto, Defendant/Developers are liable for incidental, special and consequential damages as a direct and proximate result thereof in an amount to be determined by the Trier of Fact.

FOR A THIRD CAUSE OF ACTION
(Breach of Fiduciary Duty as to Defendant/Developers)

70. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

71. The Defendant/Developers were required to use good judgment and act in the utmost good faith to complete the formation of and operate the Regime until it was turned over to the Association's control.

72. The Defendant/Developers prior to turning the Regime over to the control of the homeowners, had the unilateral ability to determine the assessments against individual owners and was required to fund shortfalls between the assessments necessary to perform the duties and obligations of the Master Deed and By-laws and the assessments actually collected from individual unit owners.

73. The Defendant/Developers provided some maintenance and repair of the common areas prior to turning the Association over to the homeowners, however, the repairs and maintenance done were substandard and inadequate and were intended to and, in fact did,

conceal instead of correct the latent defects that existed in the common areas and in the units of which Defendant/Developers were or should have been aware.

74. That the Defendant/Developers owed a fiduciary duty to the Association and its members to insure that the common areas were in good repair at the time they were conveyed to the Association or to provide the Association with funds sufficient to effectuate any needed repairs to those common areas as required by the law in South Carolina in such cases made and provided.

75. Further, the Defendant/Developers owed a duty to the Plaintiffs to turn over common areas that were not substandard and that were in good repair.

76. That the Defendant/Developers negligently, carelessly, recklessly, willfully and wantonly failed to turn over common areas that were in good repair and were not substandard and failed to protect property interests of the Plaintiffs in conformity with the customary and normal standards in the condominium management industry.

77. That the Defendant/Developers failed to provide sufficient capital replacement reserves at the time of the turn over to effectuate the necessary repairs and to bring the substandard common elements up to a state of good repair.

78. That as a direct a proximate result of the reckless, willful, negligent and wanton conduct of said Defendant/Developers, Plaintiffs have and will be required to expend substantial sums of money in order to investigate, design the repair and implement the necessary repairs and alterations to bring the units and the common elements to a state or condition which is consistent with the price paid for the units and with the numerous representations made by the Defendant/Developers all in an amount of actual and punitive damages to be determined.

FOR A FOURTH CAUSE OF ACTION

(Breach of Implied Warranty Of Workmanlike Service As to Defendant Handcrafted Homes,
Defendant G&S, Defendant Hoff, Defendant Stroble, Defendant Banks, Defendant General,
Defendant Reeves, Defendant Glenn, Defendant Miller)

79. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

80. That Defendant Hoff, Defendant G&S, Defendant General, Defendant Banks, Defendant Stroble, Defendant Reeves, Defendant Glenn, Defendant Miller, and Defendant Handcrafted Homes are, upon information and belief, contractors and hold themselves out to the general public as qualified to perform construction work and therefore impliedly warrant as a matter of law that any work they undertake and any material they supply in the construction or repair of a dwelling will be performed in a careful, diligent and workmanlike manner in accordance with the industry standards and the applicable building code and in conformity with the plans and specifications for the project. The Defendants impliedly warranted as a matter of law that the building would be habitable and fit for its intended purpose.

81. That in the performance of this work and/or the provision of materials Defendant Handcrafted Homes, Defendant G&S, Defendant General, Defendant Banks, Defendant Stroble, Defendant Reeves, Defendant Glenn, Defendant Miller, and Defendant Hoff breached the aforesaid implied warranty of workmanlike service in that the work they did was not fit for its intended purpose, was not done with quality materials, was not habitable, was not merchantable, was not of fair and average quality, failed to comply with applicable industry standards and building codes, and would not pass without objection in the trade.

82. Defendant Hoff's, Defendant G&S's, Defendant General's, Defendant Banks', Defendant Stroble's, Defendant Reeve's, Defendant Glenn's, Defendant Miller's and Defendant

Handcrafted Home's respective work was performed in a defective and negligent fashion and as a direct and proximate cause, resulted in the damage to the Plaintiffs as aforesaid.

FOR AN FIFTH CAUSE OF ACTION
(Negligent Misrepresentation as to Defendant/Developers)

83. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

84. That as more particularly described herein the Defendant/Developers made numerous representations to the Plaintiffs.

85. That Plaintiffs have determined that the representations made by Defendants were false and that the Defendants failed to exercise due care, not only in failing to discover defects in the project, but also in failing to communicate information about the true condition of the property. That the Defendants had a pecuniary interest in making such false representations despite the duty of care the Defendants owed to the Plaintiffs. As a result, Plaintiffs have suffered pecuniary loss as a direct and proximate result of their reliance on the representations and/or omissions in its reports.

86 In justifiable reliance on numerous false representations of fact made by the Defendants, *inter alia*, that the buildings and site were in overall good condition and that the deficiencies, if any, were age related or minor deferred maintenance concerns that were being addressed, the Association has now been damaged thereby as is hereinabove set forth and the Association is now required to expend substantial sums to repair the common elements as is hereinabove set forth, all proximately causing damage to the Plaintiffs.

FOR A SIXTH CAUSE OF ACTION
(Negligent Misrepresentation as to the Defendant Handcrafted Homes, Defendant Huff
Defendant G&S, Defendant PFS, Defendant General, Defendant Banks, Defendant Stroble,
Defendant Reeves, Defendant Glenn, and Defendant Miller)

87. Plaintiff repeats and realleges each and every allegation of this Complaint as if fully set forth herein verbatim.

88. That as more particularly described herein Defendants, Handcrafted Homes, Huff, G&S, General, Banks, Reeves, PFS, Glenn, Miller, and Stroble, made numerous representations to the Plaintiffs, their agents or predecessors in interest, relating to the sufficiency, quality, extent, and/or safety of their work and services.

89. That the Defendants had a pecuniary interest in making the representations alleged herein.

90. That the Defendants owed a duty of care to see that the Defendants conveyed truthful information to the Plaintiffs, their agents or predecessors in interest.

91. That the Defendants breached that duty by failing to exercise due care and the Plaintiffs justifiably relied on the representations.

92. In the justifiable reliance on numerous false representations of fact made by the Defendants, *inter alia*, that the buildings were designed and/or constructed in accordance with industry standards and applicable building codes, and the modular system or buildings did not contain defects in construction or design, that the site work and retaining wall were sufficient for the construction of the buildings and surrounding necessities and amenities, that the paving or asphalt work was proper, safe, sufficient and performed in accordance with the plans and specifications, that the retaining wall was constructed and designed in a safe and reliable manner, that the plans and specifications relating to the design and construction of the building were constructed as permitted, that safety and building codes and ordinances were followed, that the porches and decks were properly designed and constructed, that the Plaintiffs have now been damaged thereby as is hereinabove set forth and the Plaintiffs are now required to expend

substantial sums to repair the property damage as is hereinabove set forth, all proximately causing damage to the Plaintiffs. The Plaintiffs are additionally damaged by the consequential, incidental, special, and indirect damages that were and continue to be proximately caused by the conduct of the Defendants.

FOR A SEVENTH CAUSE OF ACTION

(Breach of Express Warranties and Implied Warranties of Merchantability, Habitability, Fitness for Intended Use, and Plans and Specifications as to Defendant Handcrafted Homes)

93. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

94. That as hereinabove stated, the Plaintiffs were injured and continue to be injured by Defendant Handcrafted Home's product, the modular system, in violation of the implied warranties listed above and in violation of South Carolina Code Ann. Section 36-2-314 and Section 36-2-315.

95. That the injury was proximately caused by Defendant Handcrafted Home because the product was in a defective condition, unreasonably dangerous to the Plaintiffs and that the product does not pass without objection in the trade, is not of fair and average quality within the description, is not fit for the ordinary purpose for which they were sold, and/or do not run with even kind or quality.

96. That the product at the time of the accident was in essentially the same condition as when it left the control of Defendant Handcrafted Home and was in fact inspected, installed, certified and/or reviewed by Defendant Handcrafted Home on site and Defendant Handcrafted Home knew or had reason to know the particular purpose for which its product was required, to wit: for use in luxury condominiums that were situated on the coast of Edisto, South Carolina.

97. That as a direct result of Defendant Handcrafted Home's manufacture, sale, design, installation, and/or construction of the modular system certain express and implied warranties arose as a matter of law and out of representations made by Defendant Handcrafted Home and disclosures made by the Plaintiffs, their representatives, agents, predecessors or assigns. That the implied warranties include, but are not limited to, the implied warranty of merchantability, implied warranty of fitness for a particular purpose, implied warranty of habitability, and the implied warranty of plans and specifications. Additionally, certain express warranties were made on numerous occasions that include but are not limited to statements made contemporaneous with the sale of the product and statements made subsequent to the inspection of the product.

98. That none of the express or implied warranties were properly disclaimed as a matter of law.

99. That in the performance of this work Defendant Handcrafted Homes breached the aforesaid warranties in that the modular system or buildings and the plans and specifications therefor were defective, dangerous, unsuitable, would not pass without objection, failed to comply with industry standards, and not fit for its intended use or ordinary purpose. Moreover, the modular system could not pass without objection under the product description, *inter alia*, the system failed to prevent water infiltration and in fact led to increased water infiltration into the subject property.

100. That as a direct and proximate cause of the Defendant Handcrafted Home's breach of the warranties stated herein the Plaintiffs have sustained actual, direct, consequential, incidental, and special damages in an amount to be shown at trial. Further, as a result of

Defendant Handcrafted Home's reckless, knowing, and/or wanton breach of the implied warranties Plaintiffs are entitled to punitive damages.

FOR A EIGHTH CAUSE OF ACTION
(Strict Liability as to Defendant Handcrafted Homes)

101. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

102. That Defendant Handcrafted Homes has engaged and continues at the time of filing of this action to be engaged in the business of selling, constructing, manufacturing, designing, and/or marketing the modular product or system.

103. That Defendant Handcrafted Home expects the modular system/product and the modular system/product in fact reaches the user or consumer without substantial change in the condition in which it was sold.

104. That, as stated above, the modular system/product is unreasonably dangerous to the ordinary consumer in the community considering its characteristics.

105. That as a direct and proximate cause of the Defendant Handcrafted Homes' sale, design, manufacture, and/or marketing of the product stated herein the Plaintiffs have sustained actual, direct, consequential, incidental, and special damages in an amount to be shown at trial and the Defendant Handcrafted Home is strictly liable therefore.

FOR A NINTH CAUSE OF ACTION
(Breach of Express Warranty as to the Georgia Pacific Defendants)

106. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

107. The Georgia Pacific Defendants made express warranties as to the condition durability and performance of their Prime Trim product; including expressly warranting that their

Prime Trim would be free from defects and perform as was marketed and represented by the Georgia Pacific Defendants.

108. The Georgia Pacific Defendants breached their express warranties because the Prime Trim product is defective, fails to perform as intended, prematurely deteriorates, rots, swells, buckles, splits, checks, cracks, delaminates, absorbs water, wraps, and/or bulges under normal conditions and exposure; causes consequential water and structural damage; and promotes the growth of health threatening mold, mildew, fungi, termites and other insects in the structures on which it is installed; and does not perform as represented and warranted.

109. The Prime Trim is not merchantable; is not of fair average quality; fails to comply with applicable industry standards and building codes; is not fit for the ordinary and intended purpose for which the product was sold and used; and will not pass without objection in the trade.

110. As a direct and proximate result of the failure of the Prime Trim to perform as warranted, the Plaintiffs have suffered actual and consequential damages; including, but not limited to, damages arising from the need to remove and replace the Prime Trim, damages from the cost of repairing water damage and structural damage caused by the defects in and the failure of the Prime Trim, and damages arising out of the depreciation and loss of use of the property which is the subject of this action.

FOR A TENTH CAUSE OF ACTION

(Breach of Implied Warranties as to the Georgia Pacific Defendants)

111. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

112. In marketing, selling and distributing their Prime Trim product, the Georgia Pacific Defendants extended implied warranties of merchantability, habitability and fitness for a

particular purpose as to the condition, durability and performance of the Prime Trim, including impliedly warranting that their Prime Trim product would be free from defects and perform as marketed and represented by the Defendants.

113. The Georgia Pacific Defendants breached their implied warranties because the Prime Trim product is defective, fails to perform as intended, prematurely deteriorates, rots, swells, buckles, splits, checks, cracks, delaminates, absorbs water, wraps, and/or bulges under normal conditions and exposure; causes consequential water and structural damage; and promotes the growth of health threatening mold, mildew, fungi, termites and other insects in the structures on which it is installed; and does not perform as represented and warranted.

114. The Prime Trim is not merchantable; is not of fair average quality; fails to comply with applicable industry standards and building codes; is not fit for the ordinary and intended purpose for which the product was sold and used; and will not pass without objection in the trade.

115. As a direct and proximate result of the failure of the Prime Trim to perform as warranted, the Plaintiffs have suffered actual and consequential damages; including, but not limited to, damages arising from the need to remove and replace the Prime Trim, damages from the cost of repairing water damage and structural damage caused by the defects in and the failure of the Prime Trim, and damages arising out of the depreciation and loss of use of the property which is the subject of this action.

FOR AN ELEVENTH CAUSE OF ACTION

(Professional Negligence as to the Defendant Brislin, Defendant PFS, and Defendant Barlow)

116. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

117. Defendants Brislin, Defendant PFS, and Defendant Barlow owed a duty to the Plaintiffs and breached the same because they were negligent, careless, reckless, willful and wanton in one or more of the following particulars, to-wit:

- (a) in failing to exercise due care in the production and design of architectural and/or engineering plans and specifications;
- (b) in failing to exercise due care in the performance of contract administration duties;
- (c) in failing to design the project to ensure that it was free of design defects;
- (d) in failing to review the construction to ensure that the project was free of construction defects and that it was built in substantial accordance with the design plans and specifications;
- (e) in approving and/or allowing the substitution of materials that were not of like kind and quality as the materials originally specified and/or not fit for the intended purpose of the project;
- (f) in approving materials that were not fit for the intended purpose of the project;
- (g) in violating the applicable building codes.

118. That each of the foregoing constitutes a breach of the professional standard of care due and owing the Plaintiffs by Defendant Brislin, Defendant PFS, and Defendant Barlow. (A copy of an Affidavit alleging an act of professional negligence against Defendants Brislin, PFS, and Barlow is attached hereto as Exhibit A).

119. Said failures above-described have proximately damaged Plaintiffs in an amount of actual, incidental, special, and consequential damages and in addition thereto by virtue of the negligence per se in the violation of applicable building codes, gross negligence and willfulness of Defendant Brislin, Defendant PFS, and Defendant Barlow and reckless disregard for the rights of others, Plaintiffs are entitled to an award of punitive damages.

FOR A TWELFTH CAUSE OF ACTION

(Breach of Express Warranties and Implied Warranties of Fitness for Intended Use and Plans and Specifications as to Defendant Brislin, Defendant Barlow, and Defendant PFS)

120. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

121. That as hereinabove stated, the Plaintiffs are injured and continue to be injured by defective construction and design of the Project.

122. That as a direct result of Defendant Brislin's, Defendant PFS', and Defendant Barlow's design, plans and specifications, and/or contract administration for the construction of the Project, certain express and implied warranties arose as a matter of law and out of representations made by Defendant Brislin, Defendant PFS, and Defendant Barlow and the production, approval, and/or stamping of plans and specifications by Defendant Brislin, Defendant PFS, and Defendant Barlow. That the implied warranties include, but are not limited to, the implied warranty of fitness for a particular purpose and the implied warranty of plans and specifications.

123. That none of the express or implied warranties were properly disclaimed as a matter of law.

124. That in the performance of this work Defendant Brislin, Defendant PFS, and Defendant Barlow breached the aforesaid warranties in that the design of the Project and the plans and specifications therefore were defective, dangerous, unsuitable, would not pass without objection, failed to comply with industry standards, and were not fit for its intended use or ordinary purpose. Moreover, the design failed to prevent water infiltration and in fact led to increased water infiltration into the subject property and the design failed to adequately provide for structural considerations.

125. That as a direct and proximate cause of the Defendant Brislin's, Defendant PFS', and Defendant Barlow's breach of the warranties stated herein the Plaintiffs have sustained actual, direct, consequential, incidental, and special damages in an amount to be shown at trial.

DECLARATORY JUDGMENT ACTION

126. Plaintiffs repeat and reallege each and every allegation of this Complaint as if fully set forth herein verbatim.

127. The Plaintiffs bring this cause of action pursuant to the South Carolina Declaratory Judgment Act, codified at S.C. Code Ann. § 15-53-10 *et seq.*, seeking a declaration of rights between the Plaintiffs and Defendant/Developer as those rights are affected by the Master Deed of the Retreat at Edisto Horizontal Property Regime and any controlling amendments thereto.

128. On or about December 13, 2000, the Defendant/Developer granted all its right, title, and interest in the property which is the subject of this action to the Regime, its governing body—the Association—and the individual unit owners. The Defendant/Developer retained some "control" over the property due to its position as the majority unit owner as all the units had not yet been sold.

129. On or about July 27, 2001 the Defendant/Developer exercised that continued control and "amended" the Master Deed to allow itself the right to construct Phase II of the Project which was delayed do to permitting and zoning issues.

130. The Defendant Developer chose to set the date of July 31, 2005 as the deadline on which the Defendant/Developer could exercise any purported rights to develop the property that now belonged to Regime, by and through the Association and/or the individual unit owners.

131. Subsequent to that amendment and prior to July 31, 2005 the Defendant/Developer sold all the units at the Regime and no longer had the control over the Board of the Regime and no longer had control as a "majority" unit owner and all the right title and interest in the common elements was vested in the individual owners.

132. The Defendant/Developer took no action to develop the property prior to or on July 31, 2005.

133. The Defendant/Developer now takes the position that it has the right in perpetuity to develop the property despite its lack of ownership and despite that it deeded all its interest in the property to the Plaintiffs and the individual unit owners.

134. The Plaintiffs hereby seek a declaration from this Court that:

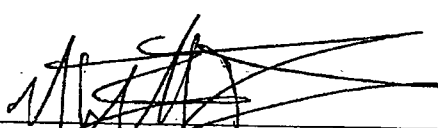
- (a) the Defendant/Developer has no legal property interest in the common elements of the Regime;
- (b) that the Defendant/Developer has no right to develop the property or to control construction, if any, on the property;
- (c) a determination of the legal rights and responsibilities of the parties relative to the development of Phase II of the Regime.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court:

1. Enter judgment against all Defendants, jointly and severally, in an amount to be determined for actual, special, incidental and consequential damages and, in addition thereto, award punitive damages.
2. That the Court award attorney's fees and costs to the Plaintiffs and for such other and further relief as the Court may deem just and proper.
3. That this Court enter a Declaratory Judgment that:

- (a) the Defendant/Developer has no legal property interest in the common elements of the Regime;
 - (b) that the Defendant/Developer has no right to develop the property or to control construction, if any, on the property;
 - (c) a determination of the legal rights and responsibilities of the parties relative to the development of Phase II of the Regime.
4. That the Court award all other relief that is deems just and proper.

SMITH, BUNDY, BYBEE & BARNETT, P.C.



W. H. Bundy, Jr., Esquire
M. Brent McDonald, Esquire
Post Office Box 1542
Mt. Pleasant, South Carolina 29465-1542
Telephone: (843) 881.1623
Attorneys for Plaintiffs

Mt. Pleasant, South Carolina
January 6, 2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2009-CP-15-469

The Retreat at Edisto Co-owners)
Association, Inc., et al.)

Plaintiffs,)

vs.)

The Retreat at Edisto, LLC, et al.)

Defendants.)

Affidavit of Timothy W. Rickborn, MS, P.E.

G & S Supply Co., Inc.)

Third-Party Plaintiff,)

vs.)

James Pritchard d/b/a Low Country)
Exteriors and Edson A. Barros d/b/a)
Sunshine Vinyl Siding,)

Third-Party Defendants.)

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS
2011 JAN 14 PM 12:37

Personally appeared before me, the undersigned, who being duly sworn, states as follows:

1. I am a Registered Professional Engineer in the State of South Carolina. I am also licensed in North Carolina, Georgia, and Louisiana.
2. I have actual professional knowledge and experience in the area of structural engineering as a result of having been regularly engaged in the active practice of structural engineering and design for the past 18 years.
3. My education, training, and experience are set forth in the attached CV (Exhibit A).
4. It is my belief that my education, training, and experience qualify me to render expert opinions with regard to the construction drawings titled "Handcrafted Homes Project: P_01-00234_2 Condominiums". The drawings are dated July 21, 2000 and were signed and sealed by the structural engineer of record (SER), stamped by James J. Barlow, P.E. (SC P.E. No. 19584) on August 28, 2000. The drawings also bear approval stamps by PFS Corporation dated August 31, 2000.

5. I am familiar with the standard of care that should be exercised by a reasonably prudent engineer in the design, and review of building applications from a life safety, as well as industry standard aspect, in both residential and commercial settings.
6. I have reviewed the construction drawings titled "Handcrafted Homes Project: P_01-00234_2 Condominiums" signed and sealed by the structural engineer of record (SER), stamped by James J. Barlow, P.E. (SC P.E. No. 19584) and approved by PFS Corporation. Additionally, I have visited the site and conducted field observations. The documents and data I have reviewed are the type of documents and data which I would consider in rendering an expert opinion in this case. After my review of these documents and data, it is my opinion to a reasonable degree of engineering certainty that there was a breach of the standard of care provided by James J. Barlow, P.E., Barlow Engineering, P.C., and PFS Corporation in the design and approval of the buildings at the Retreat at Edisto.
7. Based upon the facts and documents available to me at this time, I find deficiencies related to the performance of James J. Barlow, P.E., Barlow Engineering, P.C., and PFS Corporation to include, but not limited to, the following:
 - a. The plans do not provide adequate information regarding the field connection of the individual modular units to each other;
 - b. The plans do not provide complete floor framing and roof framing plans;
 - c. The plans do not provide complete details or specifications for the framing systems and connections to achieve a continuous load path;
 - d. The plans do not provide complete details of all structural connections such as chord splices, corner and wall intersection details, and beam connections;
 - e. The pile foundation plan and details provided by Mr. Barlow and Barlow Engineering, P.C. do not provide sufficient specifications for the timber piles used in the construction of the pile foundation system;
 - f. The pile foundation plan lacks basic information regarding the applicable building code and the flood loading conditions for which the pile foundation was designed;
 - g. The pile foundation plan does not include sufficient specifications and details for the installation of the cross bracing and knee bracing;
 - h. The plans do not include adequate specifications or general notes to indicate the minimum material properties assumed for the structural design of each material and the referenced standards used for the design of all structural members;
 - i. The pile foundation plan contains the title block for Barlow Engineering, P.C. At the time the plans were signed and sealed by Mr. Barlow, the company Barlow Engineering, P.C. did not hold a valid Certificate of Authorization as required by the South Carolina Code of Laws.
8. The issues listed above in which the standard of care was not met are not exhaustive. As further investigation is conducted, additional issues or conditions associated with the construction of the project may be discovered. I reserve the right to supplement or amend this affidavit and/or my professional opinion after reviewing additional design


calculations, construction drawings, correspondence, data, records, depositions, or other information relating to the construction and design of The Retreat at Edisto.

FURTHER AFFIANT SAYETH NOT.



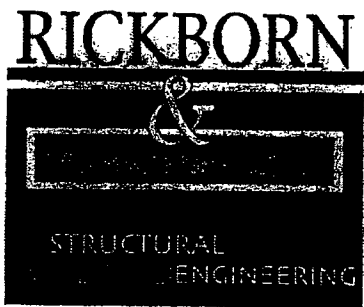
Timothy W. Rickborn, MS, PE

Sworn to before me this 2nd day of
December, 2010.



Notary Public

My Commission Expires: 3/5/14



CURRICULUM VITAE

Timothy W. Rickborn, MS, PE

EDUCATION

Bachelor of Science, Civil Engineering, Clemson University, 1991
Master of Science, Civil Engineering, Clemson University, 1992

PROFESSIONAL REGISTRATION

Registered Professional Engineer (Structural I), State of South Carolina
License No. 19142 – Issued June 1998
Registered Professional Engineer (Structural I), State of Georgia
License No. 27214 – Issued September 2001
Registered Professional Engineer (Structural I), State of North Carolina
License No. 27286 – Issued December 2001
Licensed Professional Engineer (Structural I & Structural II), State of Louisiana
License No. 32543 – Issued July 2006

PROFESSIONAL EXPERIENCE

<i>November 2001 – Present</i>	President/Senior Structural Engineer Rickborn & Associates, LLC Mount Pleasant, South Carolina
<i>March 1993 – November 2001</i>	Structural Engineer/Project Manager WrightPadgettChristopher, Inc. Mount Pleasant, South Carolina
<i>August 1991 – December 1992</i>	Civil Engineering Graduate Assistant Clemson University Clemson, South Carolina
<i>May 1991 – August 1991</i>	Junior Engineer US Army Corps of Engineers Charleston, South Carolina

FIELDS OF COMPETENCE

- Structural Engineering
- Structural Evaluation & Inspection of Existing Structures
- Technical & Administrative Management of Building Projects
- Destructive & Non-Destructive Testing
- Wood & Masonry Design
- Concrete & Steel Design
- Foundation Design
- Repair & Renovation of Existing Structures
- Preparation of Construction Documents
- Forensic Investigations

REPRESENTATIVE PROJECT EXPERIENCE

- Replacement & Expansion of Cumberland United Methodist Church, Florence, SC – Design of structural steel moment frame building to replace original sanctuary building constructed in 1911 with extensive termite damage. Rear of new building also contains an additional 5,000 square feet of space as part of previously planned expansion project. Special consideration required for reconstructing sanctuary building with modern materials to match appearance of original building constructed with load bearing brick masonry walls and heavy timber roof trusses. Special consideration also required for design of sanctuary building roof system utilizing structural steel trusses and wood roof and ceiling purlins.
- Weingarten Residence, Kiawah Island, SC – Structural design of approximately 16,000 square feet single family residence located in Coastal V Flood Zone. Special consideration required for design of breakaway brick veneer jack arches and seismic detailing of three reinforced masonry fireplaces and chimneys.
- Kiawah Island Main Gate, Kiawah Island, SC – Work involved design and construction inspection of 700 square foot community gate house located in Coastal A Flood Zone. Special consideration required for design of foundation system to prevent flotation of structure due to dry floodproofing and design of post and beam structural system to resist wind and seismic lateral forces while accommodating windows in perimeter of structure.
- Hampton County Courthouse Condition Assessment, Addition & Roof Repair, Hampton, SC – Work involved structural condition assessment of historic courthouse and adjacent administration building. Findings were used to establish goals for phased renovation and rehabilitation of structures. The first phase involved preparation of roof repairs and design of second floor rear addition.

- Falk Residence, Kiawah Island, SC – Structural design of approximately 10,000 square foot single family residence located in Coastal A Flood Zone. Special consideration required for flood venting of the ground floor in accordance with FEMA's 2000 Coastal Construction Manual and design of the first floor system due to stone floor finish throughout and exterior architectural trim detailing.
- Providence Baptist Church Educational Building, Daniel Island, SC – Structural design of approximately 6,000 square foot building to be used for church offices, meeting rooms and classrooms. Structure constructed adjacent to existing chapel and was designed using the wind and seismic loading provisions of the 2000 International Building Code.
- Deal Residence, Dewees Island, SC – Structural design of approximately 3,300 square foot single family residence located in Coastal V Flood Zone. Special consideration required for field-built exposed trusses at large second floor room with vaulted ceiling and rear porch cantilevered spiral staircase.
- Said Residence, Kiawah Island, SC – Structural design of approximately 7,500 square foot single family residence located in Coastal V Flood Zone. Special consideration required for large open rooms, masonry fireplaces and chimneys and six-foot eave overhangs.
- Jasper County Courthouse Condition Assessment, Ridgeland, SC – Work involved structural condition assessment of historic courthouse. Findings were used to establish goals for phased renovation and rehabilitation of structure.
- Moultrie Playground Ballfield Lighting Foundation, Charleston, SC – Design of pile foundations to support new ballfield light poles. Special considerations required for wind loads and poor subsurface conditions of site.
- James Residence, Prince George Ocean, Pawley's Island, SC – Structural design of approximately 6,000 square foot single family residence located in Coastal V Flood Zone. Special consideration required for detailing of sloped and vaulted roof connections and large wrap-around exterior porch.
- Dorchester County Wastewater Treatment Plant Expansion, North Charleston, SC – Design of various structures for first phase of project that will ultimately double the capacity of the wastewater treatment plant. Structures include a two-story sludge dewatering facility constructed with masonry and cast-in-place concrete to support two 15 ton centrifuges, a cast-in-place concrete headworks system and several new pump stations constructed with masonry and cast-in-place concrete.

- Cassique Clubhouse at Kiawah Island, SC – Work involved design and construction inspection of 30,000 square foot clubhouse located in Coastal Flood Zone A. Special consideration required for design of foundation system to prevent flotation of structure due to floodproofing of basement level.
- Whirlin' Waters at Wannamaker County Park, North Charleston, SC – Design and Construction inspection of 40 acre waterpark. Structures include wave pool, mechanical building and other support structures.
- Darby Residence, Mount Pleasant, SC – Structural design of approximately 6,000 square foot wood framed structure located in Coastal Flood Zone A. Special consideration required for five-foot eave overhangs.
- Lovelace Office Building, Conway, SC – Work involved design of three story, 26,000 square foot office building. The structure consists of premanufactured wood roof trusses with structural steel framing and a concrete slab-on-grade. Foundations consist of individual spread footings interconnected by grade beams. The structural loads for the building were obtained using the provisions of the 2000 International Building Code.
- Olde Park Subdivision Bridge, Mount Pleasant, SC – Structural design and construction inspection of 180-foot cast-in-place concrete flat slab bridge. Special consideration of critical construction schedule required.
- Salt Marsh Bridge #2, Park West Subdivision, Mount Pleasant, SC – Structural design and construction inspection of 120-foot long cast-in-place concrete flat slab bridge. Design required careful consideration of the surrounding marsh environment.
- Charleston Music Hall, Charleston, SC – Structural inspection and evaluation of existing historic structure for incorporation into new facility as lobby, design of repair/renovation drawings for historic structure, and design of new structural steel structure supported on pile foundation. Reviewed submittals and shop drawings, foundation inspection, renovation inspection, structural steel inspection and monitoring of critical construction sequences.
- Supplemental Weather Radar (SWR), NAVSTA Guantanamo Bay, Cuba – Inspection, analysis and upgrading of existing steel tower for installation of a new SWR assembly and dome structure to meet current wind load provisions.

- Kiawah Island Beach Club, Kiawah Island, SC – Structural design of original wood framed structure. Original pile supported structure was destroyed by fire and subsequently rebuilt. Rebuilt structure required design of new foundation system to resist lateral forces in Coastal V-Zone (wind, water, seismic) utilizing undamaged piles below grade and reinforced masonry foundations.
- Additional Earth Station Radar Assemblies, WCBD TV, Mount Pleasant, SC – Design of pile foundations to support new radar structures. Special considerations required for wind and flood loads to maintain communication capabilities of television station as an essential facility.
- Cowles Residence, Kiawah Island, SC – Structural design and preparation of documents for construction of 5,000 square foot wood framed structure. Special consideration required for proximity to marsh environment, location in Coastal Flood Zone A and unique architectural features.
- Colleton County Prison Expansion, Walterboro, SC – Structural design of cold-formed steel framed cell modules and implementation into cellblock. Design offered as an alternative to conventional construction techniques that would have disrupted security for an extended period.
- Chicora Sales Center, Surfside Beach, SC – Work involved structural design of approximately 12,000 square foot wood framed commercial structural. Also responsible for submittal review and field observation to check for compliance with structural design documents.

Other projects include:

- Structural Design
 - Wicked Stick Clubhouse, Surfside, SC
 - Ashton Glenn & Southwood Subdivisions, Surfside, SC
 - Eastport Subdivision, Little River, SC
 - Wando Concrete Batch Plant #2 Foundation, Charleston, SC
- Condition Surveys of Historic Structures
 - Christ Church Hall, Savannah, GA
 - Hampton County Courthouse, Hampton, SC
 - Carolina Shipping Building, Charleston, SC

- Structural Investigation & Repairs
Hampton Inn, Meeting Street, Charleston, SC
Georgetown County High School Gymnasium, Georgetown, SC
Fairway Oaks Villas, Georgetown, SC
Dunes Pointe Condominium Walkways, Myrtle Beach, SC
- Structural Renovations/Additions to Historic Structures
3 St. Michael's Alley, Charleston, SC
107 Hibben Street, Mount Pleasant, SC
Harbour Club Rooftop Bar, Charleston, SC
Klauber Building, St. George, SC
Hampton County Courthouse, Hampton, SC

PROFESSIONAL MEMBERSHIPS & AFFILIATIONS

- American Society of Civil Engineers (ASCE)
Clemson University Chapter President (1990-1991)
Student Steel Bridge Competition Judge, Clemson University (1996)
National Student Steel Bridge Competition Judge, Clemson University (2000)
- Chi Epsilon Honor Society
- International Code Council (ICC)
- National Council of Examiners for Engineering and Surveying (NCEES)
Structural Exam Committee Development Volunteer
- Structural Engineers Association of South Carolina (SEA of SC)
Founding Member (2005)
Charleston Chapter President (2006-2009)
Code Advisor Committee Member (2006-present)
State Vice-President (2007-2008)

PUBLICATIONS

- *FEMA Home Builders Guide to Seismic- and Wind-Resistant Construction: Volume 2: Wind-Resistant Construction*, 1994
- "Aerial Photo Interpretation of the Damage to Structures Caused by Hurricane Hugo", December 1992, Master of Science Thesis, Timothy W. Rickborn, Department of Civil Engineering, Clemson University, Clemson, South Carolina

PRESENTATIONS

- "Building Code Compliance – Are We Fooling Ourselves?", October 2009, Presented at Hurricane Hugo 20th Anniversary Symposium on Building Safer Communities - Improving Disaster Resilience, North Charleston, SC
- "Examples of Performance-Based Wind Design for Residential Structures in Louisiana", August 2006, Presented to Baton Rouge Homebuilders Association, Baton Rouge, LA
- "Performance-Based Wind Design for Residential Structures", April 2004, Presented to Horry/Georgetown Homebuilders & Building Officials Association
- "Failures of Exterior Insulation and Finish System (EIFS) in Residential Structures", February 1997, Presented to Peninsula Homeowner's Association, Cornelius, North Carolina
- "Failures of Exterior Insulation and Finish Systems (EIFS) in Residential Construction", December 1996, Presented to W.R. Bonsal Company Sales Representatives
- "Residential Construction in Coastal South Carolina", April 1994, Presented to Horry/Georgetown Homebuilders Association

STATE OF SOUTH CAROLINA)
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 COUNTY OF COLLETON)
)
 The Retreat at Edisto Co-owners)
 Association, Inc., et al.)
)
 Plaintiffs,)
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 vs.)
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 The Retreat at Edisto, LLC, et al.)
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 Defendants.)
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 G & S Supply Co., Inc.)
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 Third-Party Plaintiff,)
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 vs.)
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 James Pritchard d/b/a Low Country)
 Exteriors and Edson A. Barros d/b/a)
 Sunshine Vinyl Siding,)
)
 Third-Party Defendants.)
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IN THE COURT OF COMMON PLEAS

CASE NO.: 2009-CP-15-469

Affidavit of Timothy W. Rickborn, MS, P.E.

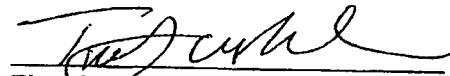
PATRICIA C. GRAHAM
 COLLETON COUNTY
 COMMON PLEAS
 2011 JAN 14 PM 12:57

Personally appeared before me, the undersigned, who being duly sworn, states as follows:

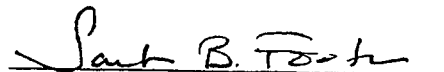
1. I am a Registered Professional Engineer in the State of South Carolina. I am also licensed in North Carolina, Georgia, and Louisiana.
2. I have actual professional knowledge and experience in the area of structural engineering as a result of having been regularly engaged in the active practice of structural engineering and design for the past 18 years.
3. My education, training, and experience are set forth in the attached CV (Exhibit A).
4. It is my belief that my education, training, and experience qualify me to render expert opinions with regard to the pile foundation plan (Sheet S101) entitled "Edisto Retreat Pile Plan Layout". The foundation plan is dated October 17, 2000 and bears the signature and seal by the structural engineer of record (SER), Mr. Eugene H. Brislin, Jr., P.E. (SC P.E. No. 14560). The date of the signature and seal on the pile foundation by Mr. Brislin was August 17, 2000.

5. I am familiar with the standard of care that should be exercised by a reasonably prudent structural engineer in the design, and review of building applications from a life safety, as well as industry standard aspect, in both residential and commercial settings.
6. I have reviewed the pile foundation plan (Sheet S101) entitled "Edisto Retreat Pile Plan Layout" signed and sealed by the structural engineer of record (SER) for the foundation system, Mr. Eugene H. Brislin, Jr., P.E. I have also reviewed the file produced by Mr. Brislin pursuant to a subpoena issued in the above referenced case. Additionally, I have visited the site and conducted field observations. The documents and data I have reviewed are the type of documents and data which I would consider in rendering an expert opinion in this case. After my review of these documents and data, it is my opinion to a reasonable degree of engineering certainty that there was a breach of the standard of care provided Eugene H. Brislin, Jr., P.E. in the design of the pile foundation system for the residential structures at the Retreat at Edisto.
7. Based upon the facts and documents available to me at this time, I find deficiencies related to the performance of Eugene H. Brislin, Jr., P.E. to include, but not limited to, the following:
 - a. The pile foundation plan provides insufficient specifications for the timber piles used in the construction of the pile foundation system and lacks sufficient specification and detailing of the bracing and connections for the foundation system;
 - b. The pile foundation plan lacks basic information regarding the applicable building code and loading conditions for which the foundation was designed;
 - c. The pile foundation plan and the file produced by Mr. Brislin fail to include calculations for wind, seismic, and flood loads on the foundation system;
 - d. The pile foundation plan incorrectly states that no soils investigation was prepared for the site when the file produced by Mr. Brislin contains a copy of the soils investigation report.
8. The issues listed above in which the standard of care was not met are not exhaustive. As further investigation is conducted, additional issues or conditions associated with the construction of the project may be discovered. I reserve the right to supplement or amend this affidavit and/or my professional opinion after reviewing additional design calculations, construction drawings, correspondence, data, records, depositions, or other information relating to the construction and design of The Retreat at Edisto.

FURTHER AFFIANT SAYETH NOT.


Timothy W. Rickborn, MS, PE

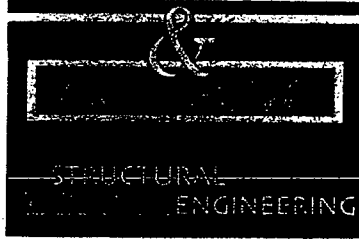
Sworn to before me this 2nd day of
December, 2010.



Notary Public

My Commission Expires: 3/5/14

RICKBORN



CURRICULUM VITAE

Timothy W. Rickborn, MS, PE

EDUCATION

Bachelor of Science, Civil Engineering, Clemson University, 1991
Master of Science, Civil Engineering, Clemson University, 1992

PROFESSIONAL REGISTRATION

Registered Professional Engineer (Structural I), State of South Carolina
License No. 19142 – Issued June 1998
Registered Professional Engineer (Structural I), State of Georgia
License No. 27214 – Issued September 2001
Registered Professional Engineer (Structural I), State of North Carolina
License No. 27286 – Issued December 2001
Licensed Professional Engineer (Structural I & Structural II), State of Louisiana
License No. 32543 – Issued July 2006

PROFESSIONAL EXPERIENCE

<i>November 2001</i> – <i>Present</i>	President/Senior Structural Engineer Rickborn & Associates, LLC Mount Pleasant, South Carolina
<i>March 1993</i> – <i>November 2001</i>	Structural Engineer/Project Manager WrightPadgettChristopher, Inc. Mount Pleasant, South Carolina
<i>August 1991</i> – <i>December 1992</i>	Civil Engineering Graduate Assistant Clemson University Clemson, South Carolina
<i>May 1991</i> – <i>August 1991</i>	Junior Engineer US Army Corps of Engineers Charleston, South Carolina

FIELDS OF COMPETENCE

- Structural Engineering
- Structural Evaluation & Inspection of Existing Structures
- Technical & Administrative Management of Building Projects
- Destructive & Non-Destructive Testing
- Wood & Masonry Design
- Concrete & Steel Design
- Foundation Design
- Repair & Renovation of Existing Structures
- Preparation of Construction Documents
- Forensic Investigations

REPRESENTATIVE PROJECT EXPERIENCE

- Replacement & Expansion of Cumberland United Methodist Church, Florence, SC – Design of structural steel moment frame building to replace original sanctuary building constructed in 1911 with extensive termite damage. Rear of new building also contains an additional 5,000 square feet of space as part of previously planned expansion project. Special consideration required for reconstructing sanctuary building with modern materials to match appearance of original building constructed with load bearing brick masonry walls and heavy timber roof trusses. Special consideration also required for design of sanctuary building roof system utilizing structural steel trusses and wood roof and ceiling purlins.
- Weingarten Residence, Kiawah Island, SC – Structural design of approximately 16,000 square feet single family residence located in Coastal V Flood Zone. Special consideration required for design of breakaway brick veneer jack arches and seismic detailing of three reinforced masonry fireplaces and chimneys.
- Kiawah Island Main Gate, Kiawah Island, SC – Work involved design and construction inspection of 700 square foot community gate house located in Coastal A Flood Zone. Special consideration required for design of foundation system to prevent flotation of structure due to dry floodproofing and design of post and beam structural system to resist wind and seismic lateral forces while accommodating windows in perimeter of structure.
- Hampton County Courthouse Condition Assessment, Addition & Roof Repair, Hampton, SC – Work involved structural condition assessment of historic courthouse and adjacent administration building. Findings were used to establish goals for phased renovation and rehabilitation of structures. The first phase involved preparation of roof repairs and design of second floor rear addition.

- Falk Residence, Kiawah Island, SC – Structural design of approximately 10,000 square foot single family residence located in Coastal A Flood Zone. Special consideration required for flood venting of the ground floor in accordance with FEMA's 2000 Coastal Construction Manual and design of the first floor system due to stone floor finish throughout and exterior architectural trim detailing.
- Providence Baptist Church Educational Building, Daniel Island, SC – Structural design of approximately 6,000 square foot building to be used for church offices, meeting rooms and classrooms. Structure constructed adjacent to existing chapel and was designed using the wind and seismic loading provisions of the 2000 International Building Code.
- Deal Residence, Dewees Island, SC – Structural design of approximately 3,300 square foot single family residence located in Coastal V Flood Zone. Special consideration required for field-built exposed trusses at large second floor room with vaulted ceiling and rear porch cantilevered spiral staircase.
- Said Residence, Kiawah Island, SC – Structural design of approximately 7,500 square foot single family residence located in Coastal V Flood Zone. Special consideration required for large open rooms, masonry fireplaces and chimneys and six-foot eave overhangs.
- Jasper County Courthouse Condition Assessment, Ridgeland, SC – Work involved structural condition assessment of historic courthouse. Findings were used to establish goals for phased renovation and rehabilitation of structure.
- Moultrie Playground Ballfield Lighting Foundation, Charleston, SC – Design of pile foundations to support new ballfield light poles. Special considerations required for wind loads and poor subsurface conditions of site.
- James Residence, Prince George Ocean, Pawley's Island, SC – Structural design of approximately 6,000 square foot single family residence located in Coastal V Flood Zone. Special consideration required for detailing of sloped and vaulted roof connections and large wrap-around exterior porch.
- Dorchester County Wastewater Treatment Plant Expansion, North Charleston, SC – Design of various structures for first phase of project that will ultimately double the capacity of the wastewater treatment plant. Structures include a two-story sludge dewatering facility constructed with masonry and cast-in-place concrete to support two 15 ton centrifuges, a cast-in-place concrete headworks system and several new pump stations constructed with masonry and cast-in-place concrete.

- Cassique Clubhouse at Kiawah Island, SC – Work involved design and construction inspection of 30,000 square foot clubhouse located in Coastal Flood Zone A. Special consideration required for design of foundation system to prevent flotation of structure due to floodproofing of basement level.
- Whirlin' Waters at Wannamaker County Park, North Charleston, SC – Design and Construction inspection of 40 acre waterpark. Structures include wave pool, mechanical building and other support structures.
- Darby Residence, Mount Pleasant, SC – Structural design of approximately 6,000 square foot wood framed structure located in Coastal Flood Zone A. Special consideration required for five-foot eave overhangs.
- Lovelace Office Building, Conway, SC – Work involved design of three story, 26,000 square foot office building. The structure consists of premanufactured wood roof trusses with structural steel framing and a concrete slab-on-grade. Foundations consist of individual spread footings interconnected by grade beams. The structural loads for the building were obtained using the provisions of the 2000 International Building Code.
- Olde Park Subdivision Bridge, Mount Pleasant, SC – Structural design and construction inspection of 180-foot cast-in-place concrete flat slab bridge. Special consideration of critical construction schedule required.
- Salt Marsh Bridge #2, Park West Subdivision, Mount Pleasant, SC – Structural design and construction inspection of 120-foot long cast-in-place concrete flat slab bridge. Design required careful consideration of the surrounding marsh environment.
- Charleston Music Hall, Charleston, SC – Structural inspection and evaluation of existing historic structure for incorporation into new facility as lobby, design of repair/renovation drawings for historic structure, and design of new structural steel structure supported on pile foundation. Reviewed submittals and shop drawings, foundation inspection, renovation inspection, structural steel inspection and monitoring of critical construction sequences.
- Supplemental Weather Radar (SWR), NAVSTA Guantanamo Bay, Cuba – Inspection, analysis and upgrading of existing steel tower for installation of a new SWR assembly and dome structure to meet current wind load provisions.

- Kiawah Island Beach Club, Kiawah Island, SC – Structural design of original wood framed structure. Original pile supported structure was destroyed by fire and subsequently rebuilt. Rebuilt structure required design of new foundation system to resist lateral forces in Coastal V-Zone (wind, water, seismic) utilizing undamaged piles below grade and reinforced masonry foundations.
- Additional Earth Station Radar Assemblies, WCBD TV, Mount Pleasant, SC – Design of pile foundations to support new radar structures. Special considerations required for wind and flood loads to maintain communication capabilities of television station as an essential facility.
- Cowles Residence, Kiawah Island, SC – Structural design and preparation of documents for construction of 5,000 square foot wood framed structure. Special consideration required for proximity to marsh environment, location in Coastal Flood Zone A and unique architectural features.
- Colleton County Prison Expansion, Walterboro, SC – Structural design of cold-formed steel framed cell modules and implementation into cellblock. Design offered as an alternative to conventional construction techniques that would have disrupted security for an extended period.
- Chicora Sales Center, Surfside Beach, SC – Work involved structural design of approximately 12,000 square foot wood framed commercial structural. Also responsible for submittal review and field observation to check for compliance with structural design documents.

Other projects include:

- Structural Design
 - Wicked Stick Clubhouse, Surfside, SC
 - Ashton Glenn & Southwood Subdivisions, Surfside, SC
 - Eastport Subdivision, Little River, SC
 - Wando Concrete Batch Plant #2 Foundation, Charleston, SC
- Condition Surveys of Historic Structures
 - Christ Church Hall, Savannah, GA
 - Hampton County Courthouse, Hampton, SC
 - Carolina Shipping Building, Charleston, SC

- Structural Investigation & Repairs
 - Hampton Inn, Meeting Street, Charleston, SC
 - Georgetown County High School Gymnasium, Georgetown, SC
 - Fairway Oaks Villas, Georgetown, SC
 - Dunes Pointe Condominium Walkways, Myrtle Beach, SC
- Structural Renovations/Additions to Historic Structures
 - 3 St. Michael's Alley, Charleston, SC
 - 107 Hibben Street, Mount Pleasant, SC
 - Harbour Club Rooftop Bar, Charleston, SC
 - Klauber Building, St. George, SC
 - Hampton County Courthouse, Hampton, SC

PROFESSIONAL MEMBERSHIPS & AFFILIATIONS

- American Society of Civil Engineers (ASCE)
 - Clemson University Chapter President (1990-1991)
 - Student Steel Bridge Competition Judge, Clemson University (1996)
 - National Student Steel Bridge Competition Judge, Clemson University (2000)
- Chi Epsilon Honor Society
- International Code Council (ICC)
- National Council of Examiners for Engineering and Surveying (NCEES)
 - Structural Exam Committee Development Volunteer
- Structural Engineers Association of South Carolina (SEA of SC)
 - Founding Member (2005)
 - Charleston Chapter President (2006-2009)
 - Code Advisor Committee Member (2006-present)
 - State Vice-President (2007-2008)

PUBLICATIONS

- *FEMA Home Builders Guide to Seismic- and Wind-Resistant Construction: Volume 2: Wind-Resistant Construction*, 1994
- "Aerial Photo Interpretation of the Damage to Structures Caused by Hurricane Hugo", December 1992, Master of Science Thesis, Timothy W. Rickborn, Department of Civil Engineering, Clemson University, Clemson, South Carolina

PRESENTATIONS

- “Building Code Compliance – Are We Fooling Ourselves?”, October 2009, Presented at Hurricane Hugo 20th Anniversary Symposium on Building Safer Communities - Improving Disaster Resilience, North Charleston, SC
- “Examples of Performance-Based Wind Design for Residential Structures in Louisiana”, August 2006, Presented to Baton Rouge Homebuilders Association, Baton Rouge, LA
- “Performance-Based Wind Design for Residential Structures”, April 2004, Presented to Horry/Georgetown Homebuilders & Building Officials Association
- “Failures of Exterior Insulation and Finish System (EIFS) in Residential Structures”, February 1997, Presented to Peninsula Homeowner’s Association, Cornelius, North Carolina
- “Failures of Exterior Insulation and Finish Systems (EIFS) in Residential Construction”, December 1996, Presented to W.R. Bonsal Company Sales Representatives
- “Residential Construction in Coastal South Carolina”, April 1994, Presented to Horry/Georgetown Homebuilders Association

STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON)

IN THE COURT OF COMMON PLEAS)
)
CASE NO. 2009-CP-15-469)

THE RETREAT AT EDISTO CO-)
OWNERS ASSOCIATION, INC., GERALD)
BACHELOR, LISA BACHELOR, JAMES)
CURRELL, ROSE MARIE CURRELL,)
JERVEY McKELVEY, BARRY SMITH,)
JOSEPH ZUYUS, AND EMILY ZUYUS)

DEFENDANTS', THE RETREAT AT)
EDISTO, LLC AND W. MARK)
STEEDLEY, ANSWER AND ASSERT)
CROSS CLAIMS AND COUNTER)
CLAIMS TO PLAINTIFFS' FIFTH)
AMENDED COMPLAINT)
(Jury Trial Demanded))

Plaintiff,)

v.)

THE RETREAT AT EDISTO, LLC; W.)
MARK STEEDLEY; INDIVIDUALLY;)
TERRY HOFF d/b/a TERRY HOFF)
CONSTRUCTION; HANDCRAFTED)
HOMES, LLC; AND G&S SUPPLY CO.)
GEROGIA-PACIFIC BUILDING)
PRODUCTS, LLC, GEORGIA PACIFIC)
WOOD PRODUCTS, LLC, GENERAL)
PRECAST MANUFACTURING CO., INC.,)
BANK CONSTRUCTION COMPANY,)
AND STROBLE SITE SERVICES, LLC)

Defendants)

G&S SUPPLY CO., INC.)

Fifth-Party Plaintiff,)

v.)

JAMES E. PRITCHARD d/b/a LOW)
COUNTRY EXTERIORS AND EDSON A.)
BARROS d/b/a SUNSHINE VINYL)
SIDING)

Fifth-Party Defendants)

The Defendants, The Retreat at Edisto, LLC, and W. Mark Steedley, Individually,

(hereinafter "these Defendants"), answering the Fifth Amended Complaint of the Plaintiffs, above named, alleges and says as follows:

1. All the allegations contained in Plaintiffs' Fifth Amended Complaint that are not specifically admitted are denied with strict proof thereof demanded.

PARTIES AND JURISDICTION

2. Upon information and belief, the allegations contained in Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 of the Plaintiffs' Fifth Amended Complaint are not directed at these Defendants so no response is required. To the extent one is required, these Defendants deny the same with strict proof thereof demanded.

3. Defendant, The Retreat at Edisto, LLC, admits the allegations contained in Paragraph 11 of the Plaintiffs' Fifth Amended Complaint to the extent that The Retreat at Edisto, LLC is a limited liability corporation, under South Carolina law and did business in the State of South Carolina. The remaining allegations, as written, are denied with strict proof thereof demanded.

4. Defendant W. Mark Steedley admits so much of Paragraph 12 of the Plaintiffs' Fifth Amended Complaint that he resides in South Carolina and he was a member of Edisto Beach Land Development Company, LLC at the time The Retreat at Edisto, LLC developed the Retreat at Edisto. All remaining allegations, as written, are denied with strict proof thereof demanded.

5. These defendants deny as written the allegations contained in Paragraphs

¹ For simplicity "these Defendants" are used in answering many allegations in the Fifth Amended Complaint due to the use of Defendant/Developer phrase used in the Fifth Amended Complaint but these Defendants do not admit they are one in the same; rather, they deny this and state they are in fact distinct entities. It is to simplify the answering process and counsel for these Defendants retain the right to clarify which specific Defendant the allegation would be referring to, either one or jointly together.

13, 14, 15, 16 and 17 of the Plaintiffs' Fifth Amended Complaint with strict proof thereof demanded.

6. The allegations contained in Paragraphs 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 27, 28, 29, and 30 of the Plaintiffs' Fifth Amended Complaint are not directed at these Defendants so no response is required. However, to the extent a response is required, this defendants deny the same with strict proof thereof demanded.

7. That the allegations of paragraph 31 of the Plaintiffs' Fifth Amended Complaint are conclusions of law and the defendant is not required to answer the same.

FACTS

8. In response to Paragraph 32 of the Plaintiffs' Fifth Amended Complaint, these defendants hereby repeats a realleges Paragraphs 1 through 7 above as if fully set forth verbatim herein.

9. Upon information and belief these defendants admit the allegations contained in Paragraph 33 of the Plaintiffs' Fifth Amended Complaint.

10. These defendants deny the allegations contained in Paragraph 34 of the Plaintiffs' Fifth Amended Complaint with strict proof thereof demanded.

11. These Defendants deny as written the allegations contained in Paragraphs 35 and 36 of the Plaintiffs' Fifth Amended Complaint with strict proof thereof demanded.

12. In response to the allegations contained in Paragraphs 37 and 38 of the Plaintiffs' Fifth Amended Complaint, these Defendants admit Brislin provided

engineering expertise and that Handcrafted Home supplied a modular building for the Retreat Project. All remaining allegations are denied with strict proof thereof demanded.

13. Paragraphs 39, 40, 41, 42, 43, 44, 45, 46, and 47 of the Plaintiffs' Fifth Amended Complaint are not directed at these Defendants such that no response is required.

14. In response to the allegations contained in Paragraphs 48, 49, 50 and 51 of the Plaintiffs' Fifth Amended Complaint, these Defendants admit so much that G&S, General Pre-Cast, Banks Construction and Stroble worked in various capacities at different times in constructing the Retreat at Edisto. All remaining and inconsistent allegations are denied with strict proof thereof demanded.

15. These defendants deny the allegations contained in Paragraph 52 of the Plaintiffs' Fifth Amended Complaint with strict proof thereof demanded.

16. These Defendants admit that various repairs were made during the period claimed, all other allegations are denied with strict proof thereof demanded.

17. The allegations contained in Paragraph 53 of the Plaintiffs' Fifth Amended Complaint are not directed at these Defendants so no response is required.

18. Paragraph 54 of the Plaintiffs' Fifth Amended Complaint are not directed at these Defendants such that no response is required.

19. In response to Paragraphs 55, 56, 57, 58, 59 and 60 of the Plaintiffs' Fifth Amended Complaint, references are made to certain records and documents which these Defendants would say speak for themselves. Further reference is made to the

abandonment by these Defendants in pursuing to develop what the Plaintiffs refer to as "Phase II" which these Defendants deny with strict proof thereof demanded. Further answering, these Defendants admit a lis pendens action was filed on the subject property. Any and all other allegations in Paragraphs 55, 56, 57, 58, 59 and 60 of the Plaintiffs' Fifth Amended Complaint, not specifically admitted, are denied with strict proof thereof demanded.

20. In response to Paragraph 61 of the Plaintiffs' Fifth Amended Complaint, these Defendant deny the same with strict proof thereof demanded.

ANSWERING THE FIRST CAUSE OF ACTION
(Negligence as to all Defendants)

21. In response to the allegations contained in Paragraph 62 of the Plaintiffs' Fifth Amended Complaint, these defendants hereby repeat and reallege Paragraphs 1 through 20 above as if fully set forth herein.

22. These Defendants deny the allegations contained in Paragraphs 63 (including subparts a-ii) 64, 65 and 66 of the Plaintiffs' Fifth Amended Complaint with strict proof thereof demanded.

ANSWERING THE SECOND CAUSE OF ACTION
(Breach of Implied Warranties as to Defendant/ Developers)

23. In response to the allegations contained in Paragraph 67 of the Plaintiffs' Fifth Amended Complaint, these defendants hereby repeat and reallege Paragraph 1 through 22 above as if fully set forth herein.

24. These Defendants deny the allegations contained in Paragraphs 68 and 69 of the Plaintiffs' Fifth Amended Complaint with strict proof thereof demanded.

ANSWERING THE THIRD CAUSE OF ACTION
(Breach of Fiduciary Duty as to Defendant/Developers)

25. In response to the allegations contained in Paragraph 70 of the Plaintiffs' Fifth Amended Complaint, these defendants hereby repeat and reallege Paragraph 1 through 24 above as if fully set forth herein.

26. Paragraphs 71, 72, 73, 74, and 75 of the Plaintiffs' Fifth Amended Complaint make reference to duties and obligations as outlined in the Mater Deed and By-Laws to which these Defendants state those documents speak for themselves. To the extent Plaintiffs misstate, mischaracterize, misquote, or fail to fully state the terms of those documents, those allegations are denied. Further these Paragraphs state conclusions of law which no response is required. These Defendants deny any and all remaining allegations in Plaintiffs' Paragraphs 71, 72, 73, 74 and 75 of the Plaintiffs' Fifth Amended Complaint and any assumptions upon which they are based and demands strict proof thereof.

27. These Defendants deny the allegations contained in Paragraphs 76, 77 and 78 of the Plaintiffs' Fifth Amended Complaint with strict proof thereof demanded.

ANSWERING THE FIFTH CAUSE OF ACTION
(Breach of Implied Warranty of Workmanlike Service as to Defendant Handcrafted Homes, Defendant G&S and Defendant Hoff, Defendant Stroble, Defendant Banks Defendant General, Defendant Reeves, Defendant Glenn, and Defendant Miller)

28. In response to the allegations contained in Paragraph 79 of the Plaintiffs' Fifth Amended Complaint, these defendants hereby repeat and reallege Paragraphs 1 through 27 above as if fully set forth herein.

29. The allegations contained in Paragraphs 80, 81 and 82 of the Plaintiffs' Fifth Amended Complaint are not directed at these Defendants such that no response is required.

ANSWERING THE FIFTH CAUSE OF ACTION
(Negligent Misrepresentation as to Defendant/Developer)

30. In response to the allegations contained in Paragraph 83 of the Plaintiffs' Fifth Amended Complaint, these defendants hereby repeat and reallege Paragraphs 1 through 29 above as if fully set forth herein.

31. These Defendants deny as written the allegations contained in Paragraphs 84, 85 and 86 of the Plaintiffs' Fifth Amended Complaint with strict proof thereof demanded.

ANSWERING THE SIXTH CAUSE OF ACTION
(Negligent Misrepresentation as to the Defendant Handcrafted Homes, Defendant Huff, Defendant G&S, Defendant General, Defendant Banks, Defendant Stroble, Defendant Reeves, Defendant Glenn and Defendant Miller)

32. In response to the allegations contained in Paragraph 87 of the Plaintiffs' Fifth Amended Complaint, these defendants hereby repeat and reallege Paragraphs 1 through 31 above as if fully set forth herein.

33. The allegations contained in Paragraphs 88, 89, 90, 91 and 92 of the Plaintiffs' Fifth Amended Complaint are not directed at these Defendants, therefore no response is required. In the event a response is required, these Defendants deny the same with strict proof thereof demanded.

ANSWERING THE SEVENTH CAUSE OF ACTION
(Breach of Express Warranties and Implied Warranties of Merchantability, Habitability, Fitness for Intended Use, and Plans and Specifications as to Defendant Handcrafted Homes)

34. In response to the allegations contained in Paragraph 93 of the Plaintiffs' Fifth Amended Complaint, these defendants hereby repeat and reallege Paragraphs 1 through 33 above as if fully set forth herein.

35. The allegations contained in Paragraphs 94, 95, 96, 97, 98, 99 and 100 of the Plaintiffs' Fifth Amended Complaint are not directed at these Defendants, therefore no response is required. In the event a response is required, these Defendants deny the same with strict proof thereof demanded.

ANSWERING THE EIGHTH CAUSE OF ACTION
(Strict Liability as to Defendant Handcrafted Homes)

36. In response to the allegations contained in Paragraph 101 of the Plaintiffs' Fifth Amended Complaint, these defendants hereby repeat and reallege Paragraphs 1 through 35 above as if fully set forth herein.

37. The allegations contained in Paragraphs 102, 103, 104 and 105 of the Plaintiffs' Fifth Amended Complaint are not directed at these Defendants, therefore no response is required. In the event a response is required, these Defendants deny the same with strict proof thereof demanded.

ANSWERING THE NINTH CAUSE OF ACTION

(Breach of Express Warranty as to the Georgia Pacific Defendants)

38. In response to the allegations contained in Paragraph 106 of the Plaintiffs' Fifth Amended Complaint, these defendants hereby repeat and reallege Paragraphs 1 through 37 above as if fully set forth herein.

39. The allegations contained in Paragraphs 107, 108, 109 and 110 of the Plaintiffs' Fifth Amended Complaint are not directed at these Defendants, therefore no response is required. In the event a response is required, these Defendants deny the same with strict proof thereof demanded.

ANSWERING THE TENTH CAUSE OF ACTION

(Breach of Implied Warranties as to the Georgia Pacific Defendants)

40. In response to the allegations contained in Paragraph 111 of the Plaintiffs' Fifth Amended Complaint, these defendants hereby repeat and reallege Paragraphs 1 through 39 above as if fully set forth herein.

41. The allegations contained in Paragraphs 112, 113, 114 and 115 of the Plaintiffs' Fifth Amended Complaint are not directed at these Defendants, therefore no response is required. In the event a response is required, these Defendants deny the same with strict proof thereof demanded.

ANSWERING THE ELEVENTH CAUSE OF ACTION

(Professional Negligence as to the Defendant Brislin, Defendant PFS and Defendant Barlow)

42. In response to the allegations contained in Paragraph 116 of the Plaintiffs' Fifth Amended Complaint, these defendants hereby repeat and reallege Paragraphs 1 through 41 above as if fully set forth herein.

43. The allegations contained in Paragraphs 117 (including subparts a-g), 118 and 119 of the Plaintiffs' Fifth Amended Complaint are not directed at these Defendants, therefore no response is required. In the event a response is required, these Defendants deny the same with strict proof thereof demanded.

ANSWERING THE TWELFTH CAUSE OF ACTION

(Professional Negligence as to the Defendant Brislin, Defendant PFS and Defendant Barlow)

44. In response to the allegations contained in Paragraph 120 of the Plaintiffs' Fifth Amended Complaint, these defendants hereby repeat and reallege Paragraphs 1 through 43 above as if fully set forth herein.

45. The allegations contained in Paragraphs 121, 122, 123, 124 and 125 of the Plaintiffs' Fifth Amended Complaint are not directed at these Defendants, therefore no response is required. In the event a response is required, these Defendants deny the same with strict proof thereof demanded.

**RESPONDING TO
THE DECLARATORY JUDGMENT ACTION**

46. In response to the allegations contained in Paragraph 126 of the Plaintiffs' Fifth Amended Complaint, these defendants hereby repeat and reallege Paragraphs 1 through 45 above as if fully set forth herein.

47. Paragraph 127 of the Plaintiffs' Fifth Amended Complaint states conclusions of law which these Defendants are neither required to admit or deny and therefore deny the same with strict proof thereof demanded.

48. In response to the allegations contained in Paragraph 128, 129, 130 and 131 of the Plaintiffs' Fifth Amended Complaint, these Defendants would admit that they

oversaw this Development as a member of the Edisto Land Beach Development Company LLC, at the time the Retreat at Edisto LLC developed the Retreat at Edisto. Further, Paragraphs 128, 129, 130 and 131 make reference to the Master Deed of the Retreat at Edisto Horizontal Property Regime to which these Defendants respond the terms of which speak for themselves. To the extent Plaintiffs misstate, mischaracterize, or fail to fully state the terms of Master Deed of the Retreat at Edisto Horizontal Property Regime, those allegations are denied. These Defendants deny any and all remaining allegations in Paragraphs 128, 129 130 and 131 of the Plaintiffs' Fifth Amended Complaint, the assumptions upon which they are based, and demands strict proof thereof.

49. These Defendants deny the allegations contained in Paragraphs 132, 133 and 134 (including subparts a-c) of the Plaintiffs' Fifth Amended Complaint with strict proof thereof demanded and the Prayer for Relief being the remaining allegations to the Plaintiffs' Complaint.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
THESE DEFENDANTS ALLEGE AND SAYS:
(Breach of Warranty as to Plans and Specifications)

50. Specifications and drawings were furnished by others for the use of the defendants in the construction of the project and thereby impliedly warranted the sufficiency of the plans, specifications and drawings for the purpose in view and impliedly warranted that they fully and accurately disclosed all information necessary for the proper construction of the project. That the plans, specifications and drawings furnished by the were defective, insufficient, conflicting and

incomplete and by breaching the foregoing warranties which are implied by law and such constitutes a complete defense to all claims of the plaintiff.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
THESE DEFENDANTS ALLEGE AND SAYS:
(Failure to Join a Necessary Party)

51. That the plaintiffs failed to join a necessary and indispensable party pursuant to the provisions of SCRCR Rule 19 and, therefore, the within action should be dismissed pursuant to the provisions of SCRCR Rule 12(b)(7).

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
THESE DEFENDANTS ALLEGE AND SAYS:
(Failure to Maintain)

52. That plaintiffs were obligated to maintain the structure against normal wear, tear and deterioration due to age and the elements and plaintiff failed to do so and such is the direct and proximate cause of the damages suffered by the plaintiff and such constitutes a complete defense to the claims of the plaintiff.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
THESE DEFENDANTS ALLEGE AND SAYS:
(Failure to Mitigate Damages)

53. That the plaintiffs have failed to take prompt and reasonable action under the circumstances to avoid the occurrence of additional damage to the structure and such failure to mitigate damages constitutes a complete defense as to that portion of damages which could have been otherwise avoided by reasonable and prompt action on the part of the plaintiff.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
THESE DEFENDANT ALLEGE AND SAYS:
(Failure to State Facts Sufficient)

54. That the Complaint fails to state facts sufficient to constitute a cause of action and the Complaint should be dismissed pursuant to the provisions of SCRCR Rule 12(b)(6).

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
THESE DEFENDANTS ALLEGE AND SAYS:
(Intervening & Superseding Negligence)

55. That if these defendants were negligent, which is specifically denied, the injuries and damages sustained by the plaintiff, if any, were due to and caused by and were the direct and proximate result of the intervening and superseding negligence, carelessness, recklessness, willfulness and wantonness of others.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
THESE DEFENDANTS ALLEGE AND SAYS:
(Comparative Negligence)

56. Whatever injuries and damages, if any, that were sustained by the Plaintiffs, were due to and caused by, and were the direct and proximate result of, the negligence of the Plaintiffs, which negligence was greater than the negligence of these Defendants, if any, which is specifically denied, contributing thereto as a proximate cause, without which the same would not have occurred. The injuries and damages, if any, sustained by the Plaintiff were due to and caused by, and were the direct and proximate result of the Plaintiffs' own negligence, and the Plaintiffs' recovery, if any, should be barred or reduced in proportion to the amount

of such negligence.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
THESE DEFENDANTS ALLEGE AND SAYS:
(Laches/Waiver)

57. That the plaintiffs neglected for an unreasonable and unexplained length of time to provide notice of such alleged deficiencies to these defendants who has been prejudiced by the delay and such unreasonable delay and resulting prejudice constitutes a complete defense to the claims of the plaintiff.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
THESE DEFENDANTS ALLEGE AND SAYS:
(Notice and Opportunity to Correct)

58. That even if these defendants impliedly warranted the habitability and fitness of the structure (which is expressly denied); and even if these defendants breached such implied warranty (which is also expressly denied), the plaintiff failed to give any reasonable and meaningful notice to these defendants as to the existence of the alleged breach and failed to give the defendants a reasonable opportunity to correct such alleged defects, and such failure to give notice constitutes a complete defense to the claims of the plaintiffs for breach of warranty of habitability.

FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
THESE DEFENDANTS ALLEGE AND SAYS:
(Notice and Opportunity to Correct Workmanship)

59. That the plaintiffs failed to give any reasonable and meaningful notice to the defendants as to the existence of the alleged breach and failed to give the

defendants a reasonable opportunity to correct such alleged defects, (the existence of which is denied) and such failure to give notice constitutes a complete defense to the claims of the plaintiffs for breach of warranty of workmanship.

**FURTHER ANSWERING THE COMPLAINT
AND AS AN AFFIRMATIVE DEFENSE THERETO,
THESE DEFENDANTS ALLEGE AND SAYS:
(Statue of Limitations)**

60. These Defendants would claim the defense of Statute of Limitations as a complete bar to any and all causes of actions asserted in the Plaintiffs' Fifth Amended Complaint.

**FURTHER ANSWERING AND FOR A FIRST CAUSE OF ACTION AND
ASSERTING CROSS CLAIMS AGAINST THE FOLLOWING:**

Handcrafted Homes, Defendant G&S, Defendant Hoff, Defendant Stroble,
Defendant Banks, Defendant General, Defendant Georgia-Pacific Building
Products, LLC and Georgia-Pacific Wood Products, LLC. Eugene H. Brislin
P.E., James J. Barlow, P.E.; Barlow Engineering, P.C., P.F.S. Corporation;
James Glenn; Wayne Reeves and Mike Miller
(Equitable/Contractual Indemnity and Contribution)

These Defendants, The Retreat at Edisto LLC and W. Mark Steedley, Individually, reasserts and realleges the previous allegations of this answer as fully and completely as if restated herein verbatim.

61. If these Defendants are compelled to pay damages for any reason in this matter, these Defendants would allege that any liability these Defendants have for the damages would be an imputation of liability upon these Defendants as a result of wrongful acts or omissions committed by Handcrafted Homes, Defendant G&S, Defendant Hoff, Defendant Stroble, Defendant Banks, Defendant General, Defendant Georgia-Pacific Building Products, LLC and Georgia-Pacific Wood

Products, LLC., Eugene H. Brislin P.E., James J. Barlow, P.E.; Barlow Engineering, P.C., P.F.S. Corporation; James Glenn; Wayne Reeves and Mike Miller.

62. These Defendants are entitled to full indemnification and/or contribution from Handcrafted Homes, Defendant G&S, Defendant Hoff, Defendant Stroble, Defendant Banks, Defendant General, Defendant Georgia-Pacific Building Products, LLC and Georgia-Pacific Wood Products, LLC. Eugene H. Brislin P.E., James J. Barlow, P.E.; Barlow Engineering, P.C., P.F.S. Corporation; James Glenn; Wayne Reeves and Mike Miller for any liability these Defendants are found to have to the Plaintiffs in this action and these Defendants are entitled to recover from Handcrafted Homes, Defendant G&S, Defendant Hoff, Defendant Stroble, Defendant Banks, Defendant General, Defendant Georgia-Pacific Building Products, LLC and Georgia-Pacific Wood Products, LLC., Eugene H. Brislin P.E., James J. Barlow, P.E.; Barlow Engineering, P.C., P.F.S. Corporation; James Glenn; Wayne Reeves and Mike Miller, the amount of any monies these Defendants are adjudged to owe the Plaintiffs or which it pays the Plaintiffs in settlement of Plaintiffs' claims, plus the cost of investigating and defending the claims including reasonable attorney's fees.

63. These Defendants are informed and believe that they are entitled to a judgment against Handcrafted Homes, Defendant G&S, Defendant Hoff, Defendant Stroble, Defendant Banks, Defendant General, Defendant Georgia-Pacific Building Products, LLC and Georgia-Pacific Wood Products, LLC., Eugene H. Brislin P.E., James J. Barlow, P.E.; Barlow Engineering, P.C., P.F.S. Corporation; James Glenn;

Wayne Reeves and Mike Miller for the full amount of any judgment the Plaintiffs obtain against these Defendants in this matter and in addition, all costs of investigating and defending this claim including reasonable attorney's fees for these Defendants' attorneys.

**FURTHER ANSWERING AND FOR A FIRST CAUSE OF ACTION AND
ASSERTING COUNTERCLAIMS AGAINST ALL PLAINTIFFS**
(Declaratory Judgment)

64. This is a cause of action pursuant to the South Carolina Declaratory Judgment Act.
65. In or about July of 2001, the First Amendment to the Master Deed of The Retreat at Edisto Horizontal Property Regime was filed with the Register of Deeds for Colleton County.
66. Plaintiffs are bound by the Master Deed and its Amendment.
67. Among other things, the Amendment provides:

The Grantor, its successors and assigns, or any person or entity owning the right to develop and construct Proposed Phase II, Buildings 1, 2, 3, and 4 as shown on Exhibit B to the Master Deed may, at their sole discretion, stage the development and construction of the improvements into two stages or phases, with no guarantee to the purchasers of the Apartments in Phase I that subsequent stages or phases will be developed. *It is the Grantor's intention to develop the proposed Phase II, Buildings 1, 2, 3, and 4 as Phase II of the regime (emphasis added). The Grantor, its successors and assigns or persons/entities owning the adjoining property hereby reserve the right and privilege to determine on or before July 31, 2005, whether or not to proceed with the additional stage of development and the parties hereto agree that if the Grantor so decides, the Apartments shall be in a regime which consists of two stages or phases. The determination of the Grantor, its successors and assigns or persons/entities owning the adjoining property as to the stages of the project may be on, before, or after the sale of the Apartments in Phase I.*

68. Defendant The Retreat at Edisto, LLC, as Grantor, properly exercised its rights under the Master Deed and First Amendment to maintain its development rights.
69. In addition to the express language of the Master Deed and Amendment stating The Retreat at Edisto's intentions to proceed with additional stages of development, The Retreat at Edisto has continued with its development plans, by, among other things:

- a. Hiring engineers for Phase II;
- b. Applying for appropriate permitting with South Carolina Regulatory agencies;
- c. Defending a legal action brought by a neighbor against The Retreat and the plaintiff HOA; and
- d. Filing *lis pendens* on against the property to protect its rights immediately upon learning of a contradictory claim.

70. A dispute has arise between the plaintiffs and The Retreat at Edisto, LLC over the meaning and legal effect of the Master Deed and its Amendment and whether The Retreat at Edisto has exercised its rights.

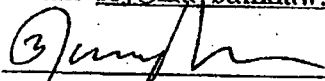
71. The Retreat at Edisto believes unequivocally that it has fully and completely taken all steps necessary to proceed with Phase II of the development and that it retains all rights to development Phase II.

72. Plaintiffs claim that defendant W. Mark Steedley individually may have some interest in the property rights at issue here. Defendant Steedley only claims an interest by virtue of his membership in The Retreat at Edisto, LLC.

73. The Retreat at Edisto prays for an order declaring that it maintains all rights to develop Phase II of The Retreat at Edisto as set forth in the Master Deed and Amendment thereto.

{Signature Block on Following Page}

MAYBANK LAW FIRM, LLC
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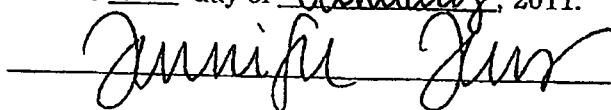
Roy P. Maybank (S.C. # 69643)
Amanda R. Maybank (S.C. # 69825)
Jason A. Daigle (S.C. # 73308)
Attorneys for the Defendant
The Retreat at Edisto, LLC and W. Mark Steedley

Charleston, South Carolina
1/28, 2011

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by mailing, e-mailing, facsimile, or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 28 day of January, 2011.



STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

) IN THE COURT OF COMMON PLEAS
) CASE NO.: 2009-CP-15-469
)

The Retreat at Edisto Co-owners Association,
Inc., Gerald Bachelor, Lisa Bachelor, James
Currell, Rose Marie Currell, Jervey McKelvey,
Barry Smith, Joseph Zuyus, and Emily Zuyus,

Plaintiff,

vs.

**PLAINTIFFS' REPLY TO
DEFENDANTS RETREAT AT
EDISTO, LLC'S AND W. MARK
STEEDLEY'S COUNTERCLAIMS
(JURY TRIAL DEMANDED)**

The Retreat at Edisto, LLC; W. Mark
Steedley, individually; Terry Hoff d/ba
Terry Hoff Construction; Handcrafted
Homes, LLC; G&S Supply Co.; Georgia-
Pacific Building Products, LLC;
Georgia-Pacific Wood Products, LLC;
General PreCast Manufacturing Co., Inc.;
Banks Construction Company; Stroble Site
Services, LLC; Eugene H. Brislin, P.E.; James J.
Barlow, P.E.; Barlow Engineering, P.C., PFS
Corporation; James Glenn; Wayne Reeves; and
Mike Miller

Defendants.

G&S Supply Co., Inc.,

Third-Party Plaintiff,

vs.

James E. Pritchard d/b/a Low Country
Exteriors and Edson A Barros d/b/a
Sunshine Vinyl Siding,

Third-Party Defendants.

Plaintiffs, replying to the Defendants' Retreat at Edisto, LLC and W. Mark Steedley's
Counterclaim (collectiveley referred to as "Defendants") allege and show unto the Court as
follows:

FOR A FIRST DEFENSE
(General Denial)

1. Each and every allegation not hereinafter specifically admitted or modified is denied and strict proof demanded thereof.

2. No response is required to Paragraphs 1– 63 of Defendants' Answer, Crossclaims, and Counterclaims as these paragraphs constitute the Defendants' Answer to the Plaintiffs' Complaint and Crossclaims not relevant to this Defendant. To the extent any response is required, the allegations are denied.

**FOR A SECOND DEFENSE AND AS A REPLY
TO THE DEFENDANTS' COUNTERCLAIM**

3. With regard to Paragraph 64, Plaintiffs repeat and reallege their responses herein as if fully set forth herein verbatim.

4. Paragraph 64 is admitted.

5. Paragraphs 65 and 66 are admitted only to the extent they are consistent with the actual language of the Master Deed and any properly executed and filed amendments thereto. To the extent the allegations are stated for any other purpose, they are denied.

6. Paragraph 67 is denied and the Plaintiffs crave reference to the actual language of the Master Deed and any properly executed and filed amendments thereto.

7. Paragraphs 68, 69, including its subparts are denied, 70, 71, 72, and 73 are denied.

**FOR A THIRD DEFENSE TO DEFENDANTS' COUNTERCLAIM
AND BY WAY OF AN AFFIRMATIVE DEFENSE**

8. Plaintiffs repeat and reallege their responses to allegations contained in Paragraphs 1 through 7, above, as if fully set forth herein verbatim.

9. The Defendants' Counterclaim fails to state facts sufficient to constitute a cause of action and should be dismissed pursuant to Rule 12(b)(6), South Carolina Rules of Civil Procedure.

**FOR A FOURTH DEFENSE TO DEFENDANTS' COUNTERCLAIM
AND BY WAY OF AN AFFIRMATIVE DEFENSE**

10. Plaintiffs repeat and reallege their responses to allegations contained in Paragraphs 1 through 9, above, as if fully set forth herein verbatim.

11. Plaintiffs are informed and believe that the Defendants' Counterclaim is barred by the doctrine of estoppel and/or the doctrine of waiver.

**FOR A FIFTH DEFENSE TO DEFENDANTS' COUNTERCLAIM
AND BY WAY OF AN AFFIRMATIVE DEFENSE**

12. Plaintiffs repeat and reallege their responses to allegations contained in Paragraphs 1 through 11, above, as if fully set forth herein verbatim.

13. Plaintiffs are informed and believe that the Defendants' Counterclaim is barred by the doctrine of laches and/or the applicable statute of limitations.

**FOR A SIXTH DEFENSE TO DEFENDANTS' COUNTERCLAIM
AND BY WAY OF AN AFFIRMATIVE DEFENSE**

14. Plaintiffs repeat and reallege their responses to allegations contained in Paragraphs 1 through 13, above, as if fully set forth herein verbatim.

15. That the Defendants' Counterclaim is barred by the applicable statute of frauds, including SC Code Ann. 32-3-10, due and owing to the fact that the Defendants claim an interest in real property in this state without a sufficient writing reflecting such interest.

**FOR AN SEVENTH DEFENSE TO DEFENDANTS' COUNTERCLAIM
AND BY WAY OF AN AFFIRMATIVE DEFENSE**

16. Plaintiffs repeat and reallege their responses to allegations contained in Paragraphs 1 through 15, above, as if fully set forth herein verbatim.

17. Plaintiffs hereby give notice that they intend to rely upon such other affirmative defenses as may become available or apparent during the course of discovery and thus reserves the right to amend its pleadings to assert such defenses.

WHEREFORE, Plaintiffs pray that Defendants' counterclaims be dismissed with prejudice, demand that judgment against all Defendants be entered as set forth in its Fifth Amended Complaint, and for cost of reasonable attorneys' fees, costs and disbursements of this action and for such other relief as this Court deems just and proper.

SMITH, BUNDY, BYBEE & BARNETT, P.C.



W. H. Bundy, Jr., Esquire
M. Brent McDonald, Esquire
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Attorneys for Plaintiffs

Mt. Pleasant, South Carolina
2/2, 2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON)

The Retreat at Edisto Co-owners)
Association, et al.)
)
Plaintiffs,)
)
versus)
)
The Retreat at Edisto, LLC,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO. 2009-CP-15-00469

**DEFENDANTS' MOTION FOR
NEW TRIAL AND/OR TO ALTER
OR AMEND JUDGMENT**

TO: PLAINTIFFS AND THEIR COUNSEL

Pursuant to SCRCP Rule 59, defendants The Retreat at Edisto, LLC and W. Mark Steedley move the Court for a new trial and/or for an order altering or amending its Order of June 6, 2013, on the following grounds:

1. The Court erred in allowing the "expert" testimony of Howard Yates, Esq. as an expert in real estate law. Mr. Yates' testimony, and the findings of fact based on his testimony, "reads as if it could have been [plaintiffs'] oral argument to the trial court at the ... hearing." *Dawkins v. Fields*, 580 S.E.2d 433, 354 S.C. 58 (holding that, "expert testimony on issues of law is inadmissible.") Defendants are entitled to a new trial.
2. The Order misconstrues the Master Deed and the effect of the First Amendment. The Order is correct that, "the entire 3.724 acre parcel of property as well as the other property described in Exhibit A of the Master Deed became 'common elements' in which each of the twenty eight (28) apartments retained an undivided ownership right." Order at 4. However, the fallacy behind the Plaintiffs argument is that the developer lost the right to develop on that land once transferred. All of the units and buildings planned in the Master Deed were always going to

be built on the same property that is at the heart of the issues in this case. The single impact of the First Amendment was to have buildings already planned in the Master Deed be built at different times or in stages. *Heritage Fed. Sav. & Loan Ass'n v. Eagle Lake & Golf Condo.*, 318 S.C. 535, 458 S.E.2d 561 (Ct. App. 1995)(holding that the intention of the General Assembly in enacting the Horizontal Regime Act was, “to permit changes to the master deed necessary to carry out the intentions of the developer”). Both the Master Deed and the First Amendment grant to the HOA, “The land on which the building stands, more fully described above, together with all the other real property described in “Exhibit A.” See Master Deed (Plaintiff’s 1) at 6; First Amendment (Plaintiff’s 2) at 2. Simply put, the First Amendment’s change was one of timing of building, not of quantity of what was deeded. Regardless of when the buildings were built, the HOA and all of its members were keeping the same undivided interest in that land—which is what they were given in the Master Deed. To the extent the court ruled otherwise, it is in error.

3. The Order errs in finding any conditions precedent or “additional requirements” in the First Amendment other than the defendants right to make an election to develop Phase II.

4. The Order errs in finding that the First Amendment is an “option contract.” Even the improper testimony of Mr. Yates conceded that the contract did not contain the necessary elements for an option contract.

5. The Order errs in adding a requirement that the defendants’ election to build Phase II be in writing. In doing so, the Court has re-written the Horizontal Regime Act and the Master Deed. The Statute of Frauds is inapplicable to this case. The Master deed and First Amendment state the defendants’ interest. The Court erred in holding that “recorded plans and engineering

drawings as well as a percentage interest chart” must be filed to confirm the election to proceed with Phase II. There is no language in the deed to support this holding.

7. The court erred in holding that July 31, 2005 was a ‘deadline’ to do anything other than make an election to proceed with Phase II. “In equity, strict compliance with time limits contained in a contract will not ordinarily be enforced, except in regards to option contracts.” *Alexander’s Land Co. v. M&M&K Corp., et al.*, 703 S.E.2d 207, 390 S.C. 582 (2010). What constitutes a reasonable amount of time is determined on a case-by-case basis. *S.C.E.&G. v. Hartough*, 654 S.E.2d 87, 375 S.C. 541 (Ct. App. 2007) citing *Wall v. Huguenin*, 305 S.C. 100, 103, 406 S.E.2d 347, 349 (1991)(holding a delay of thirteen years was reasonable where the property was the subject of two lawsuits).

8. The trial court fully failed to apply the South Carolina Horizontal Regime Act, which allows for the development of condominium projects such as The Retreat on phases.

9. The court erred in granting plaintiff’s judgment on all grounds stated in its Order.

10. The court erred in failing to grant the defendants’ judgment. Defendants incorporate by reference the proposed order submitted to the court as referenced. (Attached as Exhibit A).

WHEREFORE the plaintiff prays for the relief requested herein and for such other relief as the court deems just, prudent, and proper.

HALLER LAW FIRM, P.C.


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ATTORNEY FOR DEFENDANTS

13th day of June, 2013

Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF COLLETON)
)
 The Retreat at Edisto Co-owners)
 Association, et al.)
)
 Plaintiffs,)
)
 versus)
)
 The Retreat at Edisto, LLC,)
)
 Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT
 CASE NO. 2009-CP-15-00469

**ORDER GRANTING JUDGMENT TO
 DEFENDANT THE RETREAT AT
 EDISTO, LLC**

THIS MATTER was before the Court for a non-jury trial by consent of the parties. The Retreat at Edisto Co-Owners Association (hereinafter “Co-Owners”) and The Retreat at Edisto, LLC (hereinafter “Grantor”) have asserted cross-claims seeking a declaration of their rights in a Master Deed to a horizontal property regime and its First Amendment. Specifically, the parties contest whether the Grantor properly elected its right to develop a Phase II. Because the First Amendment properly reserved an election right as allowed by the South Carolina Horizontal Property Regime Act and because there is no dispute that Grantor took actions consistent with its election prior to the election date, I hold Grantor maintains the right to develop Phase II.

FINDINGS OF FACT

Two witnesses were called. The Co-owners called Howard Yates, Esq., who I certified as an expert in real estate law over Grantor’s objection. Grantor called W. Mark Steedley, its manager. The parties stipulated into evidence the Master Deed, the First Amendment of the Master Deed, the plat of the property, and the South Carolina Horizontal Property Regime Act. Based on the evidence and testimony before me, I find as follows:

Exhibit A

The Retreat at Edisto, LLC was formed for the purpose of developing a multi-family development called The Retreat at Edisto on Edisto Beach in Colleton County. Grantor then created a horizontal property regime by Master Deed dated December 13, 2000, and recorded January 11, 2001 in Deed Book 924, Page 138 with the Clerk of Court for Colleton County. Co-owner Association is comprised of the owners of the ocean view condominiums known as The Retreat at Edisto. The other named plaintiffs are condominium owners in the Retreat at Edisto development.

At the time the Master Deed was filed, the town of Edisto Beach had approved a twenty-eight (28) unit condominium development. However, due to unforeseen circumstances, the town granted final approval for only (12) units. Thus, as allowed by Article XXV of the Master Deed of the Retreat at Edisto-- and before any of the units of the development were sold-- Grantor amended the Master Deed by way of the First Amendment to the Master Deed of the Retreat at Edisto Horizontal Property Regime dated July 27, 2001, and recorded in Deed Book 945, Page 150 with Clerk of Court for Colleton County ("First Amendment"). Grantor added Article XXXV to the Master Deed in this First Amendment, which reads in part:

The Grantor, its successors and assigns, or any person or entity owning the right to develop and construct Proposed Phase II, Buildings 1, 2, 3, and 4 as shown on Exhibit B to the Master Deed may, at their sole discretion, stage the development and construction of the improvements into two stages or phases, with no guarantee to the purchasers of the Apartments in Phase I that subsequent stages or phases will be developed. It is the Grantor's intention to develop the proposed Phase II, Buildings 1, 2, 3, and 4 as Phase II of the regime. The Grantor, its successors and assigns or persons/entities owning the adjoining property hereby reserve the right and privilege to determine on or before July 31, 2005, whether or not to proceed with the additional stage of development and the parties hereto agree that if the Grantor so decides, the Apartments shall be in a regime which consists of two stages or phases. The determination of the Grantor, its successors and assigns or persons/entities owning the adjoining property as to the stages of the project may be on, before, or after the sale of the Apartments in Phase I.

Phase II will be developed on property described as part of the general common elements. Master Deed at 6.

Phase I was completed and Grantor eventually sold all of the condominium units pursuant to the terms and conditions of the Master Deed and its First Amendment. Thereafter, Grantor continued to address various permitting and zoning issues associated with Phase II and constantly asserted its right to develop it. From late 2004 or early 2005 until the events that lead to this suit, Grantor has hired engineers to work on various surveying, wetland delineation, and other construction preparation activities for Phase II, actively sought to obtain the needed storm water management permits from SCDHEC for Phase II, defended itself, with the HOA as co-defendant, against an action brought by a neighboring property owner over the condition of the area around Phase II, and continued to work with the Town of Edisto Beach for more advantageous zoning to allow for development of the property.

In 2009, Co-Owners brought this suit claiming Grantor had no further right to develop Phase II. Grantor filed a lis pendens and brought a counter-claim seeking a declaration that it retained a right to develop Phase II under the deed. The parties filed cross-motions for summary judgment. Judge Mullen ruled in favor of the Co-owners. The Court of Appeals reversed and required the circuit court to hold a trial focused on the Grantor's intent.

Mr. Yates testified that Grantor had not properly exercised its right to develop Phase II because it had not filed any election with the Register of Deeds with the election. However, he acknowledged that neither the deed nor the Horizontal Property Regime Act requires any such writing.

Mr. Steedley, who signed both the Master Deed and the First Amendment on behalf of the Grantor and caused it to be drafted, testified that it was the Grantor's intention to develop

Phase II and to reserve for itself in the deed the right to develop Phase II to the further extent allowed by law.

CONCLUSIONS OF LAW

This is an action to interpret a deed on property located in Colleton County. This court has jurisdiction over the subject matter of this controversy and personal jurisdiction over the parties named herein. Venue is proper in Colleton County.

Declaratory judgment actions are reviewed on the basis of the underlying claim. *Eldridge v. City of Greenwood*, 331 S.C. 398, 416, 503 S.E.2d 191, 200 (1998). "In construing a deed, the intention of the grantor must be ascertained and effectuated unless that intention contravenes some well-settled rule of law or public policy." *Gardner v. Mozingo*, 293 S.C. 23, 25, 358 S.E.2d 390, 392 (Ct. App. 1987). The grantor's intent must be found from the four corners of the deed, giving the entire deed its fair reading. *Id.*¹

Co-owners assert Grantor did not properly elect to develop Phase II by July 31, 2005 because it did not file a writing with the Register of Deeds by that date. I disagree.

The Master Deed allowed the Grantor to amend it while Grantor controlled the development. There is no dispute that the First Amendment was amended in this time period; in fact, all of the Co-owners purchased their units with the First Amendment in place. Our courts have recognized and upheld a developer's right to amend a Master Deed to ensure consistency with its intention. *Heritage Fed. Sav. & Loan Ass'n v. Eagle Lake & Golf Condo.*, 318 S.C. 535, 458 S.E.2d 561 (Ct. App. 1995). In *Heritage Federal*, a developer amended the master deed to allow for development of a condominium project into stages pursuant to a similar amendment

¹ The Court of Appeals found there were genuine issues of material fact relating to the Grantor's intention of the meaning of the July 31, 2005 date and whether the deed contained "conditions precedent" to that election.

provision held by Grantor. In holding amendments could include division into phases, the Court of Appeals there held, "...the provision is designed to permit changes to the master deed necessary to carry out the intentions of the developer in establishing the regime and ensuring the recorded documents comply with the requirements of the Horizontal Property Regime Act." *Id.* at 541, 565. Hence, to the extent Co-owners contend Grantor cannot amend the Master Deed to later allow for development into phases, that argument has already been rejected by the Court of Appeals.

The First Amendment is clear as to the Grantor's intention: "It is the Grantor's intention to develop the proposed Phase II, Buildings 1, 2, 3, and 4 as Phase II of the regime." First Amendment at 5. Accordingly, the court will review the Master Deed and the First Amendment consistent with the Grantor's stated intention to build Phase II.

The First Amendment provides, "The Grantor, its successors and assigns or persons/entities owning the adjoining property hereby reserve the right and privilege to determine on or before July 31, 2005, whether or not to proceed with the additional stage of development and the parties hereto agree that if the Grantor so decides, the Apartments shall be in a regime which consists of two stages or phases." First Amendment at 5. Reading this language with the Grantor's stated intention, I hold that the Grantor reserved the right to decide by July 31, 2005, whether to build Phase II.

The language in the First Amendment is consistent with the South Carolina Horizontal Property Regime Act. The Act allows for developers to build developments such as The Retreat in phases, provided that the developer states in the deed, "The dates by which the owner submitting such property to condominium ownership *will elect* whether or not he will proceed with each stage of development." S.C. Code Ann. §27-31-100(g)(2)(emphasis added). Even Mr.

Yates acknowledged that the First Amendment's language was consistent with the Act. Inasmuch as the deed complies with the Act, the court is compelled to read the deed and apply the Grantor's stated intention that it intends to develop Phase II. Accordingly, the language means that The Retreat at Edisto, LLC may elect by July 31, 2005 whether to build Phase II and the only deadline is to make that election.

There is no dispute that Grantor decided to proceed with Phase II by July 31, 2005, and was actively pursuing that direction. Instead, Co-owners assert the election must be made in writing and, failing to file a writing voids any decision. While acknowledging that neither the Master Deed, First Amendment, nor the Act requires a writing, Co-owners point to the Statute of Frauds for the requirement of a filed writing. S.C. Code Ann. § 32-3-10. The Statute of Frauds, requires a writing, "to charge any person upon any contract or sale of lands, tenements or hereditaments or any interest in or concerning them." S.C. Code Ann. 32-3-10(d). However, the First Amendment is a writing. The deed specifically states what the Co-owners receive (a proportional interest in the common elements) and what the Grantor retains (a right to develop Phase II). The Co-owners retain that identical proportional interest with Phase II or without it. Each of the Co-owners knew at the time of purchase of their units what they were getting and what the Grantor retained. Further, had the General Assembly wished to impose a further duty on developers to file a writing to make their election, it would have said so. *S.C. Farm Bureau Mut. Ins. Co. v. Mumford*, 299 S.C. 14, 19, 382 S.E.2d 11, 14 (Ct.App.1989) ("Once the legislature has made [a] choice, there is no room for the courts to impose a different judgment based upon their own notions of public policy.") Accordingly, this argument lacks merit.

Co-owners further argue the First Amendment is an option contract that must be specifically complied with. However, the deed does not contain any of the characteristics of an option contract:

(1) they are unilateral contracts where the optionor, for a valuable consideration, grants the optionee a right to make a contract of purchase but does not bind the optionee to do so; (2) they are continuing offers to sell, irrevocable during the option period; and (3) the transition of an option into a contract of purchase and sale can only be effected by an unqualified and unconditional acceptance of the offer in accordance with the terms and within the time specified in the option contract.

Alexander's Land Co. v. M&M&K Corp., et al., 703 S.E.2d 207, 390 S.C. 582 (2010). Even Mr. Yates acknowledged that, though the deed contains the word "option" in it, it does not meet the requirements of an option contract. Reading the deed with the Grantor's unequivocal intention, the Court finds the First Amendment is not an option contract.

Co-owners argue the First Amendment contains conditions precedent to the Grantor's election, namely zoning and permitting approval, relying on this language: "... and Phase II may include a maximum of four (4) apartments each, pending zoning approval by the Town and the election of Grantor to proceed with the development with all or a portion of Phase II." First Amendment at 5. I disagree.

"A condition precedent is an act which must occur before performance by the other party is due." *Alexander's Land Co. v. M&M&K Corp., et al.*, 703 S.E.2d 207, 390 S.C. 582 (2010). Unlike the option contract in *Alexander's Land*, which specifically used the term "condition precedent," there is nothing in the language that indicates the Grantor required itself to satisfy any act to make its election to proceed with Phase II. Reading the provisions relied on by the Co-owners with the Grantor's unequivocal intention, it is clear the intent is to allow the Grantor to make its election and continue to work on zoning and permit issues.

Co-owner's point to language in the First Amendment reserving for the Grantor a commercial easement to build Phase II that claims to "automatically terminate on July 31, 2005" as requiring completion of Phase II by the Grantor. First Amendment at 6. "In equity, strict compliance with time limits contained in a contract will not ordinarily be enforced, except in regards to option contracts." *Alexander's Land Co. v. M&M&K Corp., et al.*, 703 S.E.2d 207, 390 S.C. 582 (2010). What constitutes a reasonable amount of time is determined on a case-by-case basis. *S.C.E.&G. v. Hartough*, 654 S.E.2d 87, 375 S.C. 541 (Ct. App. 2007) citing *Wall v. Huguenin*, 305 S.C. 100, 103, 406 S.E.2d 347, 349 (1991)(holding a delay of thirteen years was reasonable where the property was the subject of two lawsuits) and *Ridglea Interests, Inc. v. Gen. Lumber Co.*, 343 S.W.2d 490, 493 (Tex.Civ.App.1961) ("noting that a reasonable time is such time as is necessary conveniently to do what the contract requires to be done as soon as circumstances will permit and that what is a reasonable time depends on the nature and character of the thing to be done, the circumstances of the particular case, and the difficulties surrounding its accomplishment"). Like *Wall*, this case has been the subject of two lawsuits and multiple permitting issues. However, the record is undisputed that Grantor has continued to work toward development of Phase II. While that issue is not specifically before me, reading these tenants of law with the Grantor's intention to build Phase II, I decline to read the words "termination" as limiting or otherwise defining the Grantor's rights.

Lastly, the Co-owners argue that the reading requested by the Grantor makes it impossible for the future owners to know what they are purchasing and for their closing attorneys to bind title. However, as stated above, each of the Co-owners obtains only a proportional interest in the common areas, which includes only the land under the buildings of Phase II, not the buildings themselves. ("General common elements mean and include: (1) the

land on which the building stands, more fully described above, together with all other real property described in Exhibit "A;" Master Deed at 6.) Hence, whether the election is made or not does not alter or change what current or future Co-owners have in the property—a percentage interest in the common elements as a whole. See Table of Values, Exhibit E to Master Deed.

For these reasons, the Court rules the Grantor's intent was "to decide" whether to proceed with Phase II by July 31, 2005, that it has done so, and that it retains the right to build Phase II in a reasonable amount of time.

THEREFORE IT IS ORDERED that judgment be entered in favor of The Retreat at Edisto, LLC retaining the right to develop Phase II; and

IT IS FURTHER ORDERED that The Retreat at Edisto's Co-owner's Association request for judgment in its favor be denied.

IT IS FURTHER ORDERED that Co-owners be restrained from interfering with Grantor's right to develop Phase II.

AND IT IS SO ORDERED!!

The Honorable Perry M. Buckner
Presiding Judge

This ____ day of _____, 2013

Walterboro, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON) CASE NO.: 2009-CP-15-469

RETREAT AT EDISTO, LLC,)
CO-OWNERS ASSOC., INC., ET AL)

PLAINTIFFS,)

v.)

TRANSCRIPT OF RECORD

THE RETREAT AT EDISTO, LLC,)
ET AL,)

DEFENDANTS.)

APRIL 29TH, 2013
COMMENCING AT
WALTERBORO, SOUTH CAROLINA
BEFORE THE HONORABLE PERRY M. BUCKNER, JUDGE.

APPEARANCES:

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1 THE COURT: Let the record reflect that I've had a
2 short meeting with counsel, a pre-trial meeting, and they
3 tell me that they have marked with the court reporter all of
4 their exhibits. I've asked them that if there is anything
5 the Court could do to help them effectuate the resolution of
6 this matter. They feel like that it needs to be heard by
7 the Court. I certainly understand that.

8 Each side has advised the Court that they have one
9 witness to call in support of their respective positions.
10 Because this is the week of the Judicial Conference, it is a
11 chambers week, and it is also the week of the Clerk of
12 Court's conference, which started yesterday. I do not have
13 anyone from the Clerk's office in the courtroom simply
14 because they're short-handed because my clerk and deputy
15 clerk are at the conference, and rather than make another
16 person from downstairs come up, I will swear any witnesses.

17 Your court reporter for this trial will be my resident
18 court reporter, Becky Hill. She lives here in Walterboro.
19 I have advised counsel that I have read all of the
20 pleadings. There are five amended complaints, by the way,
21 in this matter. I won't comment on the number of
22 amendments.

23 I have read the pre-trial Brief of the plaintiff. I've
24 read the pre-trial Brief of the defendant. I have read
25 Judge Mullen's Order granting summary judgment on the issue,

1 as I understand from the parties is the issue they wish to
2 present for trial today, which would be the declaratory
3 judgment issue. And I have also read the Precurium Opinion
4 of the South Carolina Court of Appeals when they reversed
5 Judge Mullen's Order granting summary judgment.

6 I've advised the parties of that in the pre-trial
7 conference, because I wanted them to be aware that I was
8 aware of the background of this case from the pleadings, and
9 I think we're ready to proceed now.

10 The action that we're trying is The Retreat at Edisto
11 Co-Owner's Association, et al. vs. The Retreat at Edisto,
12 LLC. Present in my courtroom this afternoon, I'm going to
13 have counsel identify who they are and who they represent,
14 beginning with counsel for the plaintiff.

15 MR. BUNDY: May it please the Court?

16 THE COURT: Yes, sir.

17 MR. BUNDY: Thank you, Your Honor. Bill Bundy,
18 representing the plaintiffs, from Smith, Bundy, Bynum and
19 Barnett.

20 MR. MCDONALD: Your Honor, may it please the Court?
21 Brent McDonald, also on behalf of the plaintiffs.

22 THE COURT: Spell your last name for the court
23 reporter.

24 MR. BUNDY: Bundy, B-U-N-D-Y.

25 THE COURT: Very well.

1 MR. MCDONALD: And that's Brent McDonald,
2 M-C-D-O-N-A-L-D.

3 THE COURT: Very well.

4 MR. MCDONALD: Your Honor, this is President of the Co-
5 Owner's Association, my client, her name is Emily Zuyus,
6 Z-U-Y-U-S. Thank you.

7 THE COURT: Welcome. Happy to have you. Counsel for
8 the defendants.

9 MR. HALLER: Thank you, Your Honor. May it please the
10 Court? I'm David Haller, H-A-L-L-E-R, for the defendant.

11 THE COURT: I see you also have your client with you,
12 Mr. Steedley; is that correct?

13 MR. HALLER: Yes, sir.

14 THE COURT: Let the record reflect that Mark Steedley
15 is also present in the courtroom on behalf of The Retreat at
16 Edisto, LLC, seated at the table with Mr. Haller.

17 All right, gentleman, I don't see any need for opening
18 statement in this case, so I think we need to proceed. I
19 will give you a brief closing after I've taken all the
20 testimony that each of you seek to present.

21 Mr. Bundy, you may call your first witness.

22 MR. BUNDY: Thank you, Your Honor. The plaintiff will
23 call Howard Yates to the stand.

24 THE COURT: Mr. Yates, if you will come around by my
25 trusted friend, Mr. Padgett, he will meet you right over

1 here. Put your file down and if you will put your left hand
2 on the Bible and raise your right hand.

3 (Whereupon, the witness, Mr. Howard Yates, is duly
4 sworn.)

5 THE COURT: Thank you, sir. Please come around here,
6 have a seat, make yourself comfortable. Adjust that
7 microphone, Howard, to your height. It's going to amplify
8 your voice. It's for Becky and also for my attorneys and
9 the people in the courtroom. Please begin by stating your
10 full name, spelling your last name for the court reporter.

11 MR. YATES: My name is Joseph Howard Yates, Jr. Yates
12 is spelled Y-A-T-E-S.

13 THE COURT: Now, Mr. Haller, let me tell you a rule
14 that Judge Buckner has. When you're going to object, you
15 can stand. Otherwise, one lawyer speaks in my courtroom at
16 a time; one lawyer stands in my courtroom at a time. You
17 don't interrupt Mr. Bundy and, likewise, Mr. Bundy is not
18 going to interrupt you.

19 Now, I recognize that you told me in pre-trial that you
20 have an objection to this witness, but we haven't reached
21 that portion yet and I'm sure you want to make it
22 contemporaneous with whatever objection you wish to make.

23 MR. HALLER: Your Honor, there are actually two grounds
24 for our objection.

25 THE COURT: Then, you didn't tell me your other ground

1 in pre-trial, did you?

2 MR. HALLER: I'm sorry, Your Honor. The initial ground
3 is that Mr. Yates is never identified in discovery as either
4 a fact witness or an expert witness. And it was not until
5 Friday afternoon when we received the pre-trial Brief that
6 we knew that Mr. Yates would be testifying.

7 THE COURT: Would you like a continuance of this
8 matter, Mr. Haller, in order to take Mr. Yates' deposition
9 in order to adequately prepare for this?

10 MR. HALLER: I don't think that's necessary.

11 THE COURT: That's not a question. It's a yes or no,
12 because the decision of a continuance is mine and not yours.
13 I'm offering it to you at this time if you feel you will
14 somehow be legally prejudiced by Mr. Yates testifying during
15 the trial of this case. Is the answer you want one or you
16 do not?

17 MR. HALLER: I don't believe that's necessary, Judge.

18 THE COURT: Very well. What is your second ground,
19 because I would have granted it had you asked for it.

20 MR. HALLER: Yes, sir. I will wait until the questions
21 are asked.

22 THE COURT: Very well. Mr. Bundy, direct examination.
23 Please use the Rostrum. That microphone should be on.
24 Bring your file and come on up.

25 So everyone will know, this courthouse is 192 years

1 old. It is on the National Register for Historic Places.
2 We are very proud that County Council sought to restore it.
3 However, the acoustics in this building are not the best.
4 Judge Buckner has shot a shotgun all of his life without ear
5 protection. I now wear a hearing aid as a result of that.
6 My court reporter likes me because I talk loud because of my
7 hearing problem. She would like for y'all to do the same
8 thing because of the acoustics in this 192-year old
9 building. Your witness, Mr. Bundy.

10 MR. BUNDY: For the record, I also wear hearing aids,
11 because I didn't wear hearing protection and I also listened
12 to too much rock-n-roll.

13 THE COURT: There we go.

14 DIRECT EXAMINATION

15 BY MR. BUNDY:

16 Q Mr. Yates, would you give the Judge the benefit of
17 your education background, please.

18 A I'm a graduate of the University of South Carolina in
19 Columbia. I graduated in 1972. I worked for many years as
20 a paralegal for my father. He was a real estate attorney,
21 Howard Yates, Sr. I went to the Mississippi College School
22 of Law. I started in 1981 and graduated; this was in
23 Jackson, Mississippi.

24 I passed the South Carolina Bar and I do primarily Real
25 Estate Law and I assist the Charleston County Bar and put on

1 CLE seminars and I speak at several seminars and teach a
2 course called Title Examinations at the Charleston School of
3 Law.

4 Q Okay. And you're a sole practitioner?

5 A I am.

6 Q And how long have you been actively practicing law?

7 A Since 1985.

8 Q Okay. And what is the area of your practice?

9 A It's primarily real estate, probate estates.

10 Q As it relates to real estate transactions, give the
11 judge an idea of the type of legal work you do in real
12 estate?

13 A Well, I've worked for many years as a paralegal with my
14 father where I would be at the record office, or the RMC
15 Office, or as we call it in Charleston County, ROD. In
16 other counties where I would actually go in and abstract the
17 title and check the deeds, mortgages, plats, et cetera, and
18 give an opinion, or help my father give an opinion before I
19 became a lawyer, as to whether the property is marketable
20 and what encumbrances, liens, et cetera, are out there that
21 need to be resolved prior to putting a property into the
22 stream of commerce.

23 Q Do you handle real estate transactions?

24 A Yes.

25 Q And how many titles do you think you've researched over

1 your career so far?

2 A I've been helping my father since 1972, so it's been
3 several hundred.

4 Q All right. And do you write title insurance, or do you
5 have the ability to write title insurance?

6 A No, I don't. I'm under the -- it was Lawyer's Title,
7 now it's Land America. I'm on their approved list, but I
8 don't have an agency relationship.

9 Q Okay. What else with regards to real estate do you do
10 besides searching titles? Do you also write opinion letters
11 regarding market ability of title?

12 A Yes, I do that.

13 Q Have you ever testified in Court before?

14 A Yes.

15 Q As an expert witness?

16 A Yes, I have.

17 Q And in what areas have you been previously qualified as
18 an expert?

19 A Well, in property boundary line disputes, ownership
20 issues, competing ownership issues in property.

21 Q Okay. And you've been qualified in the Circuit Courts
22 in the State of South Carolina?

23 A Yes, I have.

24 Q On how many separate occasions?

25 A I'd say probably six or seven.

1 Q Okay. Is part of your practice, in fact, testifying as
2 an expert witness in real estate matters?

3 A I don't testify as an expert witness professionally; I
4 just do it occasionally when I'm asked by different lawyers.

5 Q Okay. And have you been asked to give an opinion in
6 this case?

7 A Yes, I have.

8 Q Okay. Before you go any further ---

9 MR. BUNDY: Your Honor, at this point, I'd move to
10 qualify the witness as an expert in real estate
11 transactions, title searches, opinions of title, and
12 marketability of title.

13 THE COURT: Very well. Mr. Haller?

14 MR. HALLER: Your Honor, we certainly don't contest Mr.
15 Yates' background as an expert witness.

16 THE COURT: Right now, I'm dealing just with
17 qualifications, and I understand there may be a subsequent
18 objection from what you told me in pre-trial. But right
19 now, I'm dealing on the issue of qualification.

20 MR. HALLER: As long as we can ---

21 THE COURT: And I will let you cross-examine this
22 witness, if you so desire, as to qualifications.

23 MR. HALLER: Mr. Yates' reputation does not need any
24 additional questioning from me, as long as we retain our
25 right as to specific questions that may be asked.

1 THE COURT: Absolutely.

2 MR. HALLER: Thank you, Your Honor.

3 THE COURT: Thank you. So I understand there is no
4 objection as to qualifications?

5 MR. HALLER: No, sir.

6 THE COURT: The witness is qualified without objection,
7 Mr. Bundy. You may proceed.

8 MR. BUNDY: Thank you, Your Honor.

9 DIRECT EXAMINATION CONTINUES

10 Q Mr. Yates, what were you asked to do?

11 A I was asked to examine the record that Judge Buckner
12 talked about previously, before we started, as to the
13 documents that he had looked at, orders of the Court,
14 appeals, etc.

15 Q Okay. For the record, can you identify Plaintiff's
16 Exhibit Number One, which is in evidence, I believe, without
17 objection.

18 THE COURT: Is that correct, Mr. Haller?

19 MR. HALLER: That's correct, Your Honor.

20 THE COURT: So he's moving it in at this time. I
21 realize that the two of y'all had an agreement, you told me
22 at pre-trial. He's moving Plaintiff's One in without
23 objection.

24 MR. HALLER: Without objection.

25 THE COURT: Becky, Plaintiff's Exhibit Number One,

1 which has been handed to the witness at this time, will be
2 admitted into evidence in the trial of this case, without
3 objection.

4 (Plaintiff's Exhibit Number One, Master Deed of the
5 Retreat at Edisto, LLC, is received into evidence.)

6 THE COURT: Plaintiff's One is now in evidence. You
7 may proceed.

8 MR. BUNDY: Thank you, Your Honor.

9 Q Mr. Yates, will you describe for the Court and the
10 record, please, what Exhibit One is?

11 A Exhibit One is the Master Deed of The Retreat at Edisto
12 and it was filed in the Register of Deeds Office for
13 Colleton County; I'm just looking for the book and page.
14 It's in Book 924. Part of the top of these pages were cut
15 off, but it is in Book 924, I would say that it probably
16 begins at Page 154. I can tell you specifically if you will
17 allow me to find the ---

18 Q I don't think it's important at this point. That's a
19 certified copy of this Master Deed?

20 A Yes.

21 Q In fact, we picked it up today, didn't we?

22 A That's correct. Just a few minutes ago.

23 Q What is a Master Deed, Mr. Yates?

24 A A Master Deed -- well, I'll back up and say that a
25 condominium is essentially a mini-city, and a Master Deed is

1 the constitution, or it is the road map, for the condominium
2 as to how it's going to be governed; rights and obligations
3 of the unit owners.

4 Q Okay. And is there any statutory authorization for a
5 Master Deed in this state?

6 A Yes, there is the South Carolina Horizontal Property
7 Regime Act.

8 Q Okay. Does that Horizontal Property Regime Act specify
9 every single thing that has to be in a Master Deed or does
10 it just give you the boundaries and the outlines of what
11 needs to be done?

12 MR. HALLER: Your Honor, we would object to the extent
13 that that question calls for a conclusion of law.

14 THE COURT: I think it does, but I think that you did
15 not object to his qualifications as a legal expert, so that
16 objection, obviously, is waived and overruled. You may
17 proceed and answer the question, Mr. Yates.

18 A Mr. Bundy, the South Carolina Horizontal Property
19 Regime Act has requirements that must be in all of the
20 condominiums.

21 Q Okay. And what specific condominium are we talking
22 about in this case?

23 A This is The Retreat at Edisto.

24 Q Have you reviewed and read Exhibit One, which is the
25 Master Deed?

1 A I have read specific portions of it. I haven't looked
2 at portions that were not applicable to this case.

3 Q Have you had any experience in Master Deeds, such as
4 reading Master Deeds or drawing Master Deeds in the past?

5 A I haven't drawn a Master Deed, but I have read several
6 Charleston County Master Deeds.

7 Q Okay. Can you identify Plaintiff's Exhibit Two,
8 please?

9 A Plaintiff's Exhibit Two is the First Amendment to the
10 Master Deed of The Retreat at Edisto Horizontal Property
11 Regime. It was recorded in Book 945 at Page 140 in the
12 Register of Deeds Office for Colleton County.

13 MR. BUNDY: Your Honor, at this time, I would move to
14 introduce Exhibit Two.

15 THE COURT: Mr. Haller, any objection as to Plaintiff's
16 Two?

17 MR. HALLER: No, Your Honor.

18 THE COURT: Becky, Plaintiff's Exhibit Two will be
19 admitted in evidence without objection.

20 (Plaintiff's Exhibit Number Two, First Amendment to the
21 Master Deed of The Retreat at Edisto Horizontal Property
22 Regime, is received into evidence.)

23 THE COURT: Plaintiff's Two is now in evidence. You
24 may proceed.

25 MR. BUNDY: Thank you, Your Honor.

1 Q Mr. Yates, would you identify Plaintiff's Exhibit
2 Three, please?

3 A Yes, this is a plat and it's entitled "Boundary survey
4 of TMS number 356-16-00-068, a total of 3.724 acres owned by
5 The Retreat at Edisto, LLC." This plat was dated January
6 8th, 2001, and it was recorded January 11th, 2001, in plat
7 Book 684 at Page 3. And the reason it is kind of patched
8 together is the register of deeds did not have a copy that
9 would, or at least we couldn't make this thing reduce to the
10 point that you could still see the numbers on it, so we had
11 to do it in pieces.

12 Q And this has been certified as an accurate copy?

13 A Yes, it has.

14 MR. BUNDY: Your Honor, at this time, we would move to
15 introduce this as Plaintiff's Exhibit Three.

16 THE COURT: As to plaintiff's three, Mr. Haller?

17 MR. HALLER: No objection, Your Honor.

18 THE COURT: Becky, Plaintiff's Exhibit Number Three
19 will be admitted into evidence in the trial of this case,
20 without objection.

21 (Plaintiff's Exhibit Number Three, Plat, is received
22 into evidence.)

23 You may proceed, Mr. Bundy.

24 Q Mr. Yates, what is in the parlance of Master Deeds and
25 Horizontal Property Regimes? What is the declarant? What

1 does that legal term mean?

2 A The declarant is generally the developer, the person
3 that is putting the Master Deed on record and will be
4 selling units in the condominium regime.

5 Q And is the declarant the entity that creates the Master
6 Deed?

7 A Correct.

8 Q Through its lawyers, agents, or whatever?

9 A Yes.

10 Q Okay. So the punitive or the future owners of these
11 projects have no input into the Master Deed?

12 A No, that is something that is done unilaterally by the
13 declarant.

14 Q And is it correct that what goes into the Master Deed
15 is governed by the Horizontal Property Regime Act?

16 A Correct.

17 Q Is it permissible to put things in the Master Deed that
18 don't conflict the Horizontal Property Regime Act? Can you
19 add things that aren't in the Horizontal Property Regime
20 Act?

21 A I think you can.

22 Q Okay. Now, who is the declarant in this Master Deed?

23 A The declarant is The Retreat at Edisto, LLC.

24 Q The defendant in this case?

25 A Correct.

1 Q Now, what were you -- have you looked -- what else
2 besides these three documents have you reviewed in order to
3 arrive at your opinions? What else have you done? Tell the
4 judge what else you've done.

5 A Well, I've examined the record from these prior trials
6 on this and examined Judge Mullen's Order, and the Court of
7 Appeals Order, and just reviewed the documents. Also, I
8 came here a little earlier this morning and went in the
9 record office and spent a couple hours looking at the deeds
10 that were conveyed out from the developer, The Retreat at
11 Edisto, LLC, to the unit owners, the current unit owners. I
12 wanted to see what the deeds looked like, etc.

13 Q And are there mortgages on some of this property?

14 A I didn't look, but I'm sure there are.

15 Q Okay. How many units have been sold?

16 A Twelve, I believe.

17 Q Is that all of the units that you believe that exist?

18 A Yes.

19 Q Okay. If you would explain to the Court what the
20 original idea was as it related to the development of this
21 Horizontal Property Regime prior to Exhibit Number Two,
22 which is the First Amendment. Do you understand my
23 question?

24 A Yes. I believe they intended to develop several more
25 buildings, or construct several more buildings, in which

1 | there would be four units. I think it was 28 or 26 units
2 | that they initially intended. I can't remember the exact
3 | number, but because of different zoning and density
4 | requirements, the developer wasn't able to be able to
5 | construct what he had wanted to construct.

6 | Q Okay. And what did that -- how does that relate, if at
7 | all, to the Addendum to this Master Deed, or the Amendment
8 | to this Master Deed? How does that situation relate in your
9 | opinion to the Amendment?

10 | A Well, it appears to me that they were able to develop
11 | three buildings with four units in each and future
12 | development was going to be a problem, and the developer
13 | created an amendment that would allow him if he decided at a
14 | certain time -- not he, but it, the right to expand the
15 | regime.

16 | Q Now, what is the date of the Amendment?

17 | A The Amendment was executed on July 27th, 2001.

18 | Q At that time, had any units been built or sold?

19 | A No.

20 | Q Okay. So prior to any construction or any sale of any
21 | condominiums, the developer, the declarant, changed the
22 | makeup of the way this project was going to be developed; is
23 | that correct?

24 | A Correct.

25 | Q Okay. In terms of your opinion -- well, let me back up

1 a second. What were you asked to look at and give an
2 opinion about?

3 A I was asked to look at this Amendment that created the
4 opportunity for the declarant to have Phase II, and I was
5 asked to determine whether or not the option, or the
6 opportunity for the declarant to go into Phase II was
7 exercised in a proper manner, and if I had an opinion as to
8 that.

9 Q Okay. And what research did you do? What actions did
10 you take in order to make a determination or to arrive at,
11 ultimately, an opinion, as to whether or not the declarant
12 did properly exercise its option?

13 A Well, I look in the RMC, or Register of Deeds Office,
14 to see if there was any filing in a timely manner,
15 indicating that they had decided to exercise their option to
16 purchase, and of course, I read documents and relied on my
17 knowledge of property law in exercising options.

18 Q And did you find any such document?

19 A No, I found no document.

20 Q What was it that you were looking for? If it had been
21 exercised, what would you have expected to have found?

22 A Well, Mr. Bundy, there is a doctrine I remember that
23 was discussed at law school, it's called the Equal Dignities
24 Doctrine, and that if I am, well, in the nature of an option
25 or a deed, if I am going to exercise or accept according to

1 an offer or an option, my acceptance has to be with the same
2 formality and with the same dignity as the document that
3 creates my option. And so my thought, my opinion, would be
4 that if The Retreat at Edisto had decided to exercise that
5 option, that they should have had it recorded in the RMC
6 Office, properly filed, because that is notice to the world,
7 and without that, an option, in my opinion, was -- and I
8 won't tell the judge what the law is, but if you don't
9 exercise an option, then the option expires.

10 Q Okay. And you found no such document?

11 A No, I didn't.

12 Q Okay. What else did you do? What else did you look
13 for? What else did you search other than the documents
14 we've previously discussed?

15 A Well, I've searched the documents in the record office
16 and I searched the grantor index just a little while ago in
17 the Register of Deeds office, and that's all.

18 Q Okay. Did you call the declarant to ask them what
19 their intent was with regard to this option?

20 A No.

21 Q Why not?

22 A No, that is not reasonable, in my opinion.

23 Q When you search a title -- you've searched titles,
24 correct?

25 A Correct.

1 Q When you search a title for a punitive buyer, do you
2 call up the seller to make sure that what was in his or her
3 head conforms to what was in the deed?

4 A No. I rely entirely on what is in the record.

5 Q Okay. So with this title search, you rely on record
6 notice?

7 A Correct.

8 Q Now, hypothetically, if someone came to you today and
9 said, "Mr. Yates, I want to buy a condominium over at The
10 Retreat." Okay? And you wanted to search the title for it.
11 Would you put an exception in your opinion letter today as
12 it relates to the option?

13 A No.

14 Q Why not?

15 A Well, the option was not exercised, and therefore, the
16 option dies. And there's been nothing on the record that
17 would indicate that there was any revival, or acceptance, or
18 anything that would indicate to me that the option had not
19 terminated.

20 Q When you search a title and there has been a mechanic's
21 lien and you determine in your title search that more than a
22 year, or more than six months, has transpired since the
23 filing of that mechanic's lien, do you have an opinion as to
24 whether that -- does that mechanic's lien, in your opinion,
25 affect the title at that point?

1 A No. That mechanic's lien, if they did not pursue the
2 correct manner in which foreclosed the mechanic's lien, it
3 would terminate.

4 Q It expires as a matter of course, correct?

5 A Correct.

6 Q So no release of mechanic's lien is necessary in that
7 instance?

8 A No.

9 Q How does that scenario compare with what we have here?

10 A Well, I think it's very similar. I think in the sense
11 that this thing had a drop-dead date, so to speak, or a
12 deadline date of 2005; I think July 31st of 2005 and there
13 was nothing to indicate an acceptance, and in fact, the
14 declarant created the option to purchase if they wanted to,
15 the option to develop, and he didn't do anything to indicate
16 on the record as notice to all the world that he was
17 intending to develop. If we're looking at the objective
18 theory of contracts, not the subjective theory, as to what
19 may be in someone's mind, we have to look at what is on the
20 actual four corners of the document.

21 Q And at the time the Master Deed was filed and the
22 Amendment was filed, the person or the entity in sole
23 control of the contents and requirements of those documents
24 was the defendant; is that correct?

25 A That's correct.

1 Q All right. Let me ask you this, in the original Master
2 Deed, what was conveyed to the 12 people who bought?

3 A Well, I was a little confused when the developer
4 conveyed these 12 units. The unit holders required, in my
5 opinion, a percentage interest in the common areas, and so
6 that when all 12 units were conveyed, then the developer had
7 conveyed all pieces of the pie, or all sticks in the bundle
8 of rights, and I don't know that the developer has title to
9 the property anymore.

10 Q Now, let's look at Exhibit Two and let's look at page
11 2, under "General common elements mean and include (A)," at
12 the bottom of the page.

13 MR. BUNDY: Your Honor, do you have a copy of this?

14 THE COURT: I do not. Do you have another copy?

15 MR. BUNDY: Yes, Your Honor. I apologize, Your Honor,
16 for not giving you one sooner.

17 (Hands copy up to the Court.)

18 MR. BUNDY: We're on page two at the bottom of the
19 page, parenthesis A, Your Honor.

20 THE COURT: Very well. Mr. Haller, are you there?

21 MR. HALLER: Yes, sir.

22 THE COURT: Proceed.

23 Q It's entitled "General common elements mean and
24 include, and it says, "(A) The land on which the building
25 stands more fully described above," now, "together with all

1 real property described in Exhibit "A" to the Master Deed."
2 Now, is Exhibit "A" to the Master Deed, what we've
3 identified here in evidence as Exhibit Three?
4 A Yes.
5 Q So what is the acreage on that, that was transferred to
6 those 12 units?
7 A Parcel A is reflected as 3.724 acres.
8 Q So 3.724 acres, that's the entire tract, was
9 transferred jointly and severally to those 12 entities,
10 those 12 individuals, correct?
11 A Correct.
12 Q Okay. Has that ever changed? Is there anything in the
13 title that has removed that from those 12 people?
14 A I haven't seen anything to do it.
15 Q And if any one of those 12 people were to come to you
16 today to sell, or if somebody was to come to buy one of
17 those units, what would be your opinion as to their
18 ownership interest once they bought as it relates to that
19 three acres?
20 A Well, I would -- my opinion would be if someone were
21 buying a unit in there, they have an undivided interest in
22 the entire 3.7 or so acres.
23 Q Now, let's turn, Mr. Yates, to Page 4.
24 A This is on the Amendment?
25 Q This is on Amendment, Exhibit Two, of the record.

1 Under Seven, it says, "The Grantor," that's the defendant in
2 this case, right?

3 A Correct.

4 Q "Hereby adds the following new Article XXXV to read as
5 follows." What is your understanding with regard to the
6 purpose of this article? What's the declarant attempting to
7 do here?

8 A Well, he's attempting to expand the regime to create a
9 Phase II.

10 Q The last sentence says, "The town has not granted final
11 approval for Phase II and Grantor is under no obligation to
12 develop Phase II of the Regime." What is your understanding
13 of that?

14 A Well, you know, it's not a mandatory; it's not a
15 "shall". It is a "may". He may, if he can comply with all
16 of the different conditions preceding in order to be able to
17 get the permits.

18 Q Like Judge Anderson used to say, it's "precatory".

19 A Precatory, correct.

20 Q Now, let's turn to the next page, under "Development
21 Stages."

22 A Correct.

23 MR. BUNDY: Are we all together, Judge?

24 THE COURT: I'm with you. For the record, this is
25 Plaintiff's Exhibit Two, Page 5, Mr. Haller. Are you with

1 us?

2 MR. HALLER: Yes, sir.

3 THE COURT: Proceed.

4 MR. BUNDY: Thank you, Your Honor.

5 Q Under Development Stages ---

6 MR. BUNDY: I'm just going to read it real quick, Your
7 Honor.

8 Q "Under development stages, the Grantor proposes to
9 develop the real estate shown on the site plan marked
10 Exhibit "C" to the Master Deed as a single regime by
11 constructing seven (7) buildings as described. Phase I is
12 comprised -- I left something out, "buildings six, seven and
13 five."

14 "And Phase II," this is what I want to talk to you
15 about, "may include a maximum of four (4) additional
16 buildings containing four (4) apartments each, pending
17 approval by the Town and the election of Grantor to proceed
18 with the development with all or a portion of Phase II."
19 What is your understanding, or as someone who searches
20 titles and gives legal opinion regarding real estate, as to
21 the language and the election of Grantor to proceed with
22 development with all or a portion of Phase II?

23 A Well, first we have the conjunction "and" where he had
24 to have planning from the Town, and the election to proceed
25 with the development so that he would have to give some

1 objective manifestation of his intent to proceed, and that,
2 in my opinion, would require, under the Equal Dignity's
3 Doctrine, that it be in writing and filed and attached in a
4 manner so that this Master Deed can be tracked to find an
5 exercise of the option.

6 Q Have you seen any evidence of approval by the Town?

7 A No.

8 Q So you've seen no evidence -- there might be, but
9 you've seen no evidence of approval of the town and you've
10 seen no evidence in the record of the election of the
11 Grantor to proceed with development of all or a portion of
12 Phase II?

13 A I have not.

14 Q Putting aside the Equal Dignity Rule, have you seen any
15 writing whatsoever, at all, that shows there was an election
16 of the Grantor to proceed?

17 A No, I haven't seen anything.

18 Q What would a title searcher do if he's trying to give
19 an opinion of title to somebody who wants to buy one of
20 these things about this? How would you handle that as a
21 title researcher if you had nothing in the record?

22 A Well, do you mean if someone wanted to buy one of the
23 existing?

24 Q One of the existing; let's start with one of the
25 existing.

1 A Well, one of the existing units, and if I had nothing
2 in the record to reflect that he had exercised that option,
3 my opinion is that he's lost that right.

4 Q And the purchase price, the value of that unit, is
5 different; is it not? If it's joint and several, three
6 point something acres are jointly and severally owned as to
7 just a unit and one or two acres, right?

8 A Correct.

9 Q So this is important to know what it is you're buying
10 and what the extent of it is?

11 A I would agree.

12 Q And then we go through the Timetable. Now, tell me
13 what ---

14 THE COURT: Refer to the exhibit.

15 MR. BUNDY: I'm sorry, Your Honor. Exhibit Two, page
16 5, Timetable; third little paragraph.

17 THE COURT: Are you there, Mr. Haller?

18 MR. HALLER: Yes, Your Honor.

19 THE COURT: Proceed.

20 Q Is it correct that according to this paragraph, "The
21 Grantor, in its sole discretion, may stage the development
22 with no guarantee to the purchasers of Apartments in Phase I
23 that subsequent stages or phases will be developed"; is that
24 not correct?

25 A Correct.

1 Q So the Grantor was not obligated to do anything?

2 A No, he was not.

3 Q He simply had the option to do something?

4 A Yes.

5 Q Is there a deadline, in your opinion, about which the
6 developer had to exercise that option?

7 A In my opinion, the deadline was one that was created by
8 the developer and that would be on or before July 31st,
9 2005.

10 Q And you get that from the language which says under
11 Timetable, "It's the Grantor's intention to develop Phase
12 II, buildings one, two, three, and four is Phase II, the
13 Grantor, its successors, assigns, owning the adjoining
14 property hereby reserve the right to determine on or before
15 July 31, 2005"?

16 A Yes. Yes.

17 Q "Whether or not to proceed." And again, you've seen no
18 evidence that anything was filed to that effect?

19 A No, I haven't.

20 Q Under "Compatibility," page 5 of Exhibit Two, down
21 under "Compatibility". What is the significance, if any, of
22 the first word "If the regime is expanded"? What does that
23 tell you?

24 A Well, it means that it may not be in the event, or it's
25 a condition "if it is, then".

1 Q Okay. Let's go to Page 6 of Exhibit Two, "Master Deed
2 Amendment for Phase II." Do you see that?

3 A Yes.

4 Q Does it say, "To add Phase II pursuant to the option
5 reserved under this article"? Do you consider this to be an
6 option?

7 A I do.

8 Q Okay. And what is the legal importance of an option
9 with regards to how they are interpreted and how they are
10 exercised, as opposed to any other type of condition
11 preceding, as opposed to a condition preceding in a
12 contract?

13 A Well, an option must be exercised in a strict manner,
14 and it is -- options are strictly construed, and if this
15 option is not exercised by this deadline that the -- in
16 fact, The Retreat is the Optionor. He is giving himself,
17 and he is -- well, he is Optionor and Optionee, and that he
18 is giving himself the right to do this up to this point on
19 July 31st, 2005, or whenever that date is. And if he
20 doesn't comply, he set the terms, then it terminates.

21 Q Okay. It goes on to read, "To add Phase II," that's
22 what we're talking about, Phase II, right?

23 A Correct.

24 Q "Pursuant to the option reserved under this article,
25 the Grantor shall," do you see that? It's a mandatory

1 requirement, "He shall."
2 A Yes.
3 Q "Prepare, execute, and record an amendment to the
4 Master Deed." Did you see any evidence of that?
5 A No.
6 Q It simply does not exist.
7 A No, it doesn't.
8 Q That was not done, correct?
9 A Correct.
10 Q And did you check again to see if it was there today?
11 Has it been done even as of today?
12 A No, I didn't see anything.
13 Q Okay. And it was supposed to have been done in 2005?
14 A Correct.
15 Q Okay. So we're roughly about eight years late and it
16 still hasn't been done?
17 A Correct.
18 Q Okay. "That shall contain a plot plan showing the
19 location of the building." Did you find anything like that?
20 A No.
21 Q "A set of floor plans which shall show geographically
22 the dimensions, area, and location of each apartment." Did
23 you find that?
24 A No.
25 Q "And the location of General and Limited Common

1 Elements affording access." Did you see that?

2 A No, I didn't.

3 Q "The plan shall be certified by an engineer or
4 architect authorized and licensed to practice in the state .
5 Instead of recording new plot plans and floor plans, the
6 Grantor may record new certifications by a licensed engineer
7 or architect of plot plans and floor plans previously
8 recorded if those plans show all of improvements required by
9 this section." Did you find any of that?

10 A I didn't see those.

11 Q Mr. Yates, up until this point in reviewing this
12 document, have you been confused or has anything seemed
13 ambiguous to you? Is any of this language ambiguous based
14 upon your training and expertise?

15 A No. In my opinion, there is no ambiguity. He has
16 established an option. We've got the language. We've got a
17 date. We don't have an exercise within that timeframe. And
18 I don't think it's ambiguous at all.

19 Q Let's go down to Easements. This is on Exhibit Two,
20 page 6 entitled, "Easements for Phase II Development." Do
21 you see that?

22 A Yeah, I see it.

23 Q "The Grantor hereby reserves unto itself a commercial
24 easement." Why would a Grantor want to have a commercial
25 easement if he was the Grantor? Couldn't he just go in

1 there and do whatever he wanted to do?

2 A Well, if he has conveyed everything out he would want
3 to reserve an easement to himself.

4 Q Well, it says twelve units were conveyed. He didn't
5 owe anything anymore, did he?

6 A That's correct.

7 Q I believe you said in conversation to me Professor
8 Spitz says the title always has to be somewhere?

9 A Title is somewhere; it's not held in abeyance.

10 Q Okay. So this title was not held in abeyance, this
11 three acres and some odd, it belonged to the twelve people
12 who owned these units?

13 A Correct.

14 Q And in order to enter their property, the declarant
15 needed a commercial easement?

16 A Correct.

17 Q The last sentence relates to that easement. Can you
18 read it into the record?

19 A The last sentence says, "This commercial easement shall
20 automatically terminate on July 31st, 2005."

21 Q Now, how does that date compare with the date selected
22 by the declarant when he had to amend and file these
23 documents of his intent?

24 A Identical.

25 Q You got any idea how he would have actually built these

1 units, legally, if he would have exercised his right on July
2 30th, 2005, and then on July 31st, 2005, this commercial
3 easement expired?

4 A I don't know how he could do it and if -- the question
5 that I have, if he were to convey or if he were to build,
6 who would certify that he has title to these footprints
7 where he wants to build the units, and who would convey the
8 title to these proposed units. I'm just a little confused
9 as to that as well.

10 Q In it's current situation with the declarant claiming
11 they still have the right to develop, does it put a cloud in
12 this title, in your opinion, with this ongoing litigation?

13 A Yeah, I think it does.

14 Q Okay. And do you have an opinion as to whether or not
15 this Court should issue an Order removing that cloud, based
16 upon the failure of the declarant to exercise the option?

17 MR. HALLER: Your Honor?

18 THE COURT: Sustained. I don't believe Mr. Yates is
19 qualified to give an opinion as to what the Court should do.
20 I think that goes beyond his ability as a lawyer. I
21 certainly understand you will argue for that Mr. Bundy, but
22 I don't think that's within Mr. Yates' purview. Proceed.

23 MR. BUNDY: May I try it again?

24 THE COURT: Certainly.

25 Q Would a Court Order declaring the option rights expired

1 remove the cloud off the title these people own? A Yes,
2 it would. When you are conveying property, there are
3 present and future deed covenants that the Grantor makes.
4 The present are seasoned right to convey covenant against
5 encumbrances. Future covenants are covenant of warranty,
6 there was a general warranty deed given covenant of further
7 assurance and then a covenant of quiet enjoyment. In my
8 opinion, the developer, Grantor, has breached the covenant
9 for quiet enjoyment by establishing a cloud, of placing this
10 cloud, on the property where we don't know just where we are
11 within rights, whatever rights -- I believe he has no
12 rights, but he's asserting those rights, and so I think it
13 would affect marketability of these properties.

14 Q This issue is affecting the alienability of this
15 property, the ability of my client to sell; is it not?

16 A Correct. I would think so.

17 MR. BUNDY: One minute, Your Honor. That's all we
18 have, Your Honor. Thank you very much.

19 THE COURT: Cross-examination.

20 MR. HALLER: Thank you, Your Honor. May it please the
21 Court?

22 THE COURT: Bring your file on up here Mr. Haller and
23 use my rostrum so you have the benefit of the microphone for
24 Becky and Judge Buckner.

25 MR. HALLER: Thank you, Your Honor. I'll do my best.

1 CROSS-EXAMINATION

2 BY MR. HALLER:

3 Q Good afternoon, Mr. Yates.

4 A Hello.

5 Q Now, when the plaintiff members bought at The Retreat,
6 they bought pursuant to the terms of the Master Deed and the
7 First Amendment Deed, correct?

8 A Yes.

9 Q And when they did that, they agreed to all of the terms
10 that were in that deed, right?

11 A Yes.

12 Q And they could have, if they didn't like the terms of
13 that deed, they could have gone and bought somewhere else,
14 right?

15 A Certainly. But the developer also agreed to the same
16 terms.

17 Q Okay. We're going to get to that, but as to what the
18 plaintiff's understood, they understood all of that at the
19 time that they purchased their property; right?

20 A Yes.

21 Q Okay. Now, the Master Deed allows for amendment of it,
22 doesn't it?

23 A Correct.

24 Q All right. So you don't contend that the amendment
25 that The Retreat of Edisto did, the First Amendment was

1 improper, was it?

2 A No. It was proper.

3 Q Okay. Because that's what the Master Deed allowed for,
4 and that's what the plaintiffs agreed to, right?

5 A Yes.

6 Q All right. And so, once they made the amendment, and
7 of course this amendment, I think you testified to earlier,
8 this amendment was done before anybody brought any property,
9 right?

10 A That's right.

11 Q So all those people knew what they were getting into to
12 begin with?

13 A Yes.

14 Q All right. Now, the intent of the Grantor is the
15 primary element and the primary rule for interpreting a
16 Master Deed, right?

17 A Well, I think we have to also look at the documents,
18 the four corners of the documents. He can intend something
19 completely different than what he wrote in the documents, so
20 I think the documents are going to have to control.

21 Q But when you read a deed to determine what is control,
22 you're looking to see what the Grantor's intent is to
23 effectuate that, aren't you?

24 A Well, I'm looking at the deed.

25 Q Right. And reading into that -- is it your testimony

1 today that it's not the Grantor's intent that it's to be
2 looked at?

3 A Well, if there's no ambiguity, you don't need to go
4 past the four corners of the document.

5 Q My question is, just a simple yes or no. Is it your
6 testimony today that the Grantor's intent is not what is at
7 issue when interpreting a deed?

8 A You're trying to box me into a corner where I'm going
9 to say yes or no. If there is an ambiguity, then we'll look
10 at the Grantor's intent. In my opinion, if there is no
11 ambiguity, no latent or patent, then we go with the four
12 corners of the document and we don't look at the Grantor's
13 intent.

14 Q Now, the Court of Appeals, the opinion that you read in
15 this matter, found that the deed was ambiguous, didn't it?

16 A That was their opinion, correct.

17 Q Well, and you know what the law of the case rule is?

18 A Yes.

19 Q All right. And that applies here, doesn't it?

20 A I guess from what the Court of Appeals said that --
21 they've overturned the Lower Court.

22 Q All right. So, it's ambiguous?

23 A Well, in their opinion, but I guess if that's what they
24 say then I have a different opinion.

25 Q All right. If the Court of Appeal is right, the

1 Grantor's intent is at issue, right? Let me clarify my
2 question. If the Court of Appeals is right, that the deed
3 is ambiguous as to the Grantor's intent, then the Grantor's
4 intent is what you say would be used to determine how to
5 read the document, right?

6 A I'd have to look at that opinion of the Court to see
7 just what they said was ambiguous.

8 Q Okay. Can I get you to turn to Exhibit Number Two,
9 page 5?

10 A Yes.

11 Q And Mr. Bundy asked you some questions about the
12 paragraph entitled "Timetable?"

13 A Yes.

14 Q Could you go down to the second full sentence. Do you
15 see that Mr. Yates? It starts, "It is the Grantor's
16 intention"?

17 A Yeah.

18 Q All right. Tell me if I read this right. "It is the
19 Grantor's intention to develop the proposed Phase II
20 buildings One, Two, Three, and Four as Phase II of the
21 regime." Did I read that correctly, sir?

22 A Yes.

23 Q And so when the plaintiffs bought these units, they
24 knew that it was the Grantor's intention to build Phase II,
25 correct?

1 A Yes. He's conditioned his intention, too.

2 Q We're going to get into that in just a minute. Now you
3 testified about the Horizontal Property Regime Act?

4 A Yes.

5 Q Now the Horizontal Property Regime Act allows for
6 property to be developed in phases, doesn't it?

7 A It does.

8 Q And in fact, it specifically allows for, in the Master
9 Deed, for a Grantor to elect when to put in or when to build
10 a certain phase, doesn't it?

11 A I'd have to look at the statute, but I believe it does.

12 Q Well, I've got a copy of it.

13 MR. HALLER: Your Honor, may I approach the witness?

14 THE COURT: You may.

15 Q Mr. Yates, I'm going to represent to you, this is
16 section 27-31-100. I'm going to get you to see subsection
17 G, and tell me if I'm reading it right. "In the event the
18 owner or property submitting it for establishment of a
19 Horizontal Property Regime proposes to develop the property
20 as a single regime, but in two or more stages," and then it
21 goes on to say in section two, "The dates by which the owner
22 is submitting such property to condominium ownership will
23 elect whether or not to proceed with each stage of the
24 development." Did I read that right?

25 A Yes.

1 Q Okay. How about take a moment, if you would, sir, and
2 look through the statute and tell me where it says that that
3 election has to be done by filing or in writing?

4 A Well, it doesn't say so, but the reason it doesn't is
5 that we're dealing with land. When we're dealing with land,
6 we'll have the Statute of Frauds that requires a writing. I
7 think it's too obvious that if you want to say someone can
8 wake up with an intention one morning and say, "Well, I'm
9 going to now expand it," you're going to have to follow the
10 same formality and the same dignity, because we're looking
11 at things that require writing, so it's implied in fact.

12 Q Okay. The Statute of Frauds is a very old law,
13 correct?

14 A Oh, yes.

15 Q The Statute of the Horizontal Property Regime Act,
16 relatively new law, correct?

17 A Correct.

18 Q The property regimes are a relatively new creation of
19 development?

20 A Since probably about the 1960's.

21 Q Okay. And you'd agree with me, new law trumps old law?

22 A No.

23 Q You don't agree with that?

24 A No.

25 Q Okay. Is there anything in the Horizontal Property

1 Regime that says that there's a filing requirement to
2 maintain the election?

3 A No.

4 Q All right. How about look again at Exhibit Two, page
5 number 5, same paragraph, the Timetable paragraph. That
6 next sentence, from what we were reading just a moment ago.
7 It says, "The Grantor, its successors and assigns, or
8 persons, entities, owning the adjoining property hereby
9 reserve the right and privilege to determine on or before
10 July 31st, 2005, whether or not to proceed with the
11 additional stage of development, and the parties hereto
12 agree that if the Grantor so decides the Apartment shall be
13 in a regime, which consists of two stages or phases." Did I
14 read that right, sir?

15 A Correct.

16 Q All right. Now, let's talk about the word
17 "determined". Would you agree with me that to determine and
18 to elect have the same meaning? For example, today you've
19 determined to wear a blue tie or today you elected to wear a
20 blue tie?

21 A I think they're similar.

22 Q Okay. And so to the extent that the Master Deed
23 allowed The Retreat to amend the Master Deed to comply with
24 the Horizontal Property Regime Act, The Retreat put in here
25 the date on which it was going to determine, or elect, to

1 make that decision; correct?

2 A Yes.

3 Q And there's nothing in either the deed or the statute
4 which specifically requires that determination to be in
5 writing, does it?

6 A Well, it is common Hornbook law that if you're dealing
7 with real estate and you're going to elect all persons or
8 whosoever are not going to be able to know that someone has
9 defined that they are now going to create a new Phase II,
10 you have got to have something in writing; you've put this
11 in writing. In the first place, you did the amendment in
12 writing, and so it only follows that if you're going to
13 elect that you're going to follow the same procedure that
14 you did and follow the same things that you put as
15 restraints on you.

16 Q And had the buyers wanted to have that writing
17 component in there, they could have asked for it at the time
18 they purchased this property, couldn't they have?

19 A Well, the Grantor -- they could do it at any time. The
20 Grantor has given a general warranty deed and the grantor
21 developer, warranties go downstream and liabilities go
22 upstream. They can go upstream and sue this person for
23 breach of quiet enjoyment. So they don't have to ask for
24 this; this person is warranting. He's promising that
25 they're going to have quiet enjoyment to this general common

1 area.

2 Q Right. Subject to the terms that they agreed to or
3 understood that they were binded to when they purchased the
4 property as set forth in the deed in it's amendment, right?

5 A Yes, sir.

6 Q Okay. Now, you indicated that you thought there were
7 some condition precedents ---

8 A Precede.

9 Q Precedent in the deed. And I think the one that you
10 testified to was "pending zone and approval," which is on
11 Exhibit Two, page 5. Can I turn your attention to that?
12 It's in the first paragraph entitled "Developmental Stages."

13 A Yes. "The Grantor proposes to develop the real estate
14 shown on the site planning marked Exhibit 'C'"; is that
15 right?

16 Q Yes, sir. And specifically, I was talking about the
17 last subsection of the second paragraph -- excuse me, the
18 second sentence where it says "Pending zoning approval by
19 the Town." As I understand, it's your opinion that that's a
20 condition precedent; is that right?

21 A Yes.

22 Q All right. What's the date that that condition
23 precedent, according to the terms, has to be reached?

24 A Well, I think everything has to be reached by August --
25 excuse me, whatever that date was, July 31st, 2005.

1 Q All right. Show me the specific language that says
2 that "pending zoning approval must be done on July 31,
3 2005."

4 A Well, I think it's implied, in fact, because by his own
5 initiative he's put a date in here, the date that his
6 commercial easement is going to expire; the date that he's
7 going to have to make an election by implication. He's got
8 the same date on this, otherwise, it would not follow.

9 Q Okay. So nothing in the four corners of the document
10 says that; you're just implying that?

11 A I think I'm reasonable in implying it.

12 Q What are the elements of an option contract?

13 A Well, that in an option, you have an Offeror, and
14 Offerree, Optionor, Optionee. You have a description of the
15 property that is going to be purchased. You have the terms
16 of purchase; I'm talking about just a general option. And
17 you usually, when I do options, I will have the terms of
18 contract attached as Exhibit A to the option, and I will
19 have the date, time, manner, in which the optionee is going
20 to exercise that option if I'm giving him an option. I'm
21 holding it off the market, and if he doesn't comply
22 strictly, then he doesn't exercise it right.

23 Q And those are generally contracts for sale, right?

24 A Yes.

25 Q And where one party has a right to do something to the

1 detriment of the second for valuable consideration; would
2 you agree with me?

3 A Yes.

4 Q All right. Here, when The Retreat at Edisto, LLC,
5 reserved its right to retain, it didn't give any valuable
6 consideration, did it?

7 A Well, I think the valuable consideration would be in
8 the fact that it would make more money if it were able to
9 sell more units.

10 Q Except it had at first, didn't it?

11 A Well, it sold units, and all of them went between \$250
12 to \$289,000 and if he could develop another phase with x
13 number of units, he would make more money. I think that's
14 valuable consideration.

15 Q Except the Grantor had that property to begin with,
16 didn't it?

17 A It did, but it did not have the right to develop the
18 other section.

19 Q All right. I think -- didn't we establish already he
20 had the right to amend under the ---

21 A Oh, yes. Yeah, he owned the whole thing at that time.
22 There were no other grantees.

23 Q Let me turn your attention, Mr. Yates, please to
24 Exhibit Number Two, page 5, yet one more time.

25 A Certainly.

1 Q The second paragraph where it says "The maximum number
2 of Apartments."
3 A Yes.
4 Q All right. The second line of that says -- tell me if
5 I read that right. "All improvements to Phase II shall be
6 completed prior to submission to the regime and shall be
7 used for residential purposes," correct?
8 A Correct.
9 Q Now, would you agree with me that that means that until
10 it's done, there is nothing to submit. Until the buildings
11 are built, there is nothing to submit?
12 A Yes. If all improvements in Phase II shall be
13 completed, so what he would have to do is to have gotten all
14 of his permits, zoning density, and various other things,
15 and have constructed these prior to submission to the
16 regime.
17 Q And that would include any engineering plats as well,
18 correct?
19 A Yes.
20 Q The maximum number of apartments that can be built is
21 16, right?
22 A I believe so. I'm not positive.
23 Q That means he could build two, couldn't he?
24 A Yeah.
25 MR. HALLER: Beg the Court's indulgence, Your Honor.

1 Thank you, Mr. Yates. Nothing further, Your Honor.

2 THE COURT: Redirect?

3 MR. BUNDY: Just a couple, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. BUNDY:

6 Q Mr. Yates, if you will, look at page 6, the first two
7 lines of Exhibit Two. It says, "Master Deed Amendment for
8 Phase II: to add Phase II, pursuant to the option reserved
9 under this article, the Grantor shall prepare, execute, and
10 record the Amendment to the Master Deed." Was that done?

11 A To add Phase II, no, it was simply not done.

12 Q Okay. Where is the Horizontal Property Regime? Do you
13 have that statute?

14 A Uh-huh (affirmative).

15 Q This one here. On cross-examination, you were
16 referenced the Horizontal Property Regime Act; correct?

17 A Yes.

18 Q And that talks about doing things in phases, right?

19 A Correct.

20 Q Doesn't that contemplate each phase? You don't
21 transfer all the real estate at one time and then back it up
22 and divide it. You just simply transfer the portion that's
23 on in Phase I for the buildings you built, right?

24 A That was the thing that caused me so much question is
25 when you are developing in phases, you will restrict, or

1 limit, geographically the property that you are going to add
2 to the next phase. But in this case, they developed and
3 conveyed and interest in everything and they didn't accept
4 or reserve the title to the Phase II.

5 Q They didn't take the real estate and divide it up into
6 phases?

7 A Correct.

8 Q And that's what you have to do in order to do this,
9 right?

10 A That was my concern as to who was going to be the
11 Grantor to these proposes condominiums in Phase II.

12 Q This isn't like a life estate, is it? This is a title
13 to real estate.

14 A And the deeds were all General Warranty Deeds and there
15 was no reservation -- well, there was a reservation in the
16 Master Deed in the amendment, but there was no geographic
17 reservation in the legal description saying we're not
18 conveying to you this by whatever compass bearing and
19 distances that we would need to do.

20 Q So how, if he had of exercised the option and gone out
21 and built 16 buildings, okay, would he have been able to
22 sell the dirt underneath those buildings?

23 A I don't think so. I wouldn't pass title on it.

24 Q That's all I have.

25 MR. BUNDY: Thank you, Your Honor.

1 THE COURT: Recross, limited to redirect.

2 MR. HALLER: Yes, sir. Just one question.

3 RECROSS-EXAMINATION

4 BY MR. HALLER:

5 Q What language in the Horizontal Property Regime Act
6 says that the property has to be subdivided for phases?

7 THE COURT: Rephrase that question for me, Counsel, so
8 that the Court understands exactly what you're asking.

9 MR. HALLER: Yes, sir. I would like to know from the
10 witness what language in the Horizontal Property Regime Act
11 requires that phase property be submitted as property and
12 not as development.

13 A I don't think that there is any specific language that
14 deals with this. This is common, first year property law
15 that we're dealing with if you're going to submit a regime
16 to a property and you are going to sell everything according
17 to the giant regime, then you don't have anything that you
18 have reserved in order to develop into Phase II.

19 Q Thank you. No further questions.

20 THE COURT: Mr. Haller, any objection since you've
21 provided this witness, and now Mr. Bundy has also examined
22 on redirect of the witness, a document which contains either
23 a portion or all of the statute in South Carolina, which is
24 referred to as the Horizontal Property Regime Act. Any
25 objection to making that an exhibit now so that whoever

1 grades my paper is familiar with what y'all are asking this
2 witness to review?

3 MR. HALLER: No, sir, I don't have any objection.

4 MR. BUNDY: No objection.

5 THE COURT: Hand that, please, to my court reporter.

6 She is going to mark that as Defendant's One, without
7 objection.

8 (Defendant's Exhibit Number One, LexisNexis SC Code 27-
9 31-100(D), is received into evidence.)

10 MR. HALLER: Consisting of subsection G ---

11 THE COURT: Well, no, it actually contains a lot more
12 than that.

13 MR. HALLER: Your Honor, the code section is 27-31-100.

14 THE COURT: There you go.

15 MR. HALLER: And Your Honor, this is my only copy which
16 I would like to use for argument as well.

17 THE COURT: And I will tell you what I'll do, David,
18 for that. Give it to my ace law clerk and you will have a
19 copy back since Ms. Hill is going to keep that one.

20 MR. HALLER: Thank you, Your Honor.

21 THE COURT: Mr. Yates, you may step down from the
22 witness stand and you are excused -- any objection to the
23 witness being excused, from the defendant?

24 MR. HALLER: No, sir.

25 THE COURT: From the plaintiff?

1 MR. BUNDY: None, Your Honor.

2 THE COURT: Mr. Yates, you are excused from the trial
3 of this case. Watch your step. Leave my exhibits with me.
4 Mr. Bundy, you may call your next witness.

5 MR. BUNDY: Your Honor, the only thing we have left is
6 some deposition excerpts that we have copies that we would
7 like to give to you; I don't want to read them to you and I
8 know you don't want me to read to you.

9 THE COURT: And I have in your pre-trial brief, you
10 didn't send me the actual depositions, so I need them. Any
11 objection, Mr. Haller?

12 MR. HALLER: No, Your Honor.

13 THE COURT: If you will hand those to the court
14 reporter. Let's make it Plaintiff's Number Four, without
15 objection. Plaintiff's Four.

16 (Plaintiff's Exhibit Number Four, deposition excerpts
17 for use at trial, is received into evidence.)

18 THE COURT: All right. Let the record reflect that the
19 plaintiff has now submitted into evidence Plaintiff's
20 Exhibit Number Four, deposition excerpts for use at trial,
21 from the deposition of W. Mark Steedley and the 30(b)(6)
22 deposition of Retreat at Edisto, LLC, which the Court will
23 need to review, although I had in the pre-trial Brief, the
24 designations, I did not actually have the copies of the
25 deposition. I now have it without objection from the

1 defendants.

2 Mr. Bundy, you may call your next witness on behalf of
3 the plaintiffs.

4 MR. BUNDY: May it please the Court, the plaintiff
5 rests.

6 THE COURT: Very well. Mr. Haller, are you ready to
7 proceed?

8 MR. HALLER: Yes, sir, Your Honor.

9 THE COURT: Very well. Would you call your first
10 witness, please?

11 MR. HALLER: Yes, sir. The defendant calls W. Mark
12 Steedley.

13 THE COURT: Mr. Steedley, please come forward to be
14 sworn.

15 (Whereupon, the witness, W. Mark Steedley, is duly
16 sworn.)

17 THE COURT: Please have a seat up here. Watch your
18 steps on those stairs. Adjust the chair. Adjust the
19 microphone. State your full name and spell your last name
20 for the court reporter, please.

21 MR. STEEDLEY: My name is William Mark Steedley, S-T-E-
22 E-D-L-E-Y.

23 THE COURT: Your witness, counsel. Direct examination.

24 MR. HALLER: Thank you, Your Honor.

25 May it please the Court?

1 DIRECT EXAMINATION

2 BY MR. HALLER:

3 Q Mr. Steedley, are you affiliated with The Retreat at
4 Edisto, LLC?

5 A Yes.

6 Q How so?

7 A I am the manager and sole member.

8 Q Have you always been the only member?

9 A No, I have not. I had a partner, Ms. Dorothy Carter,
10 who is deceased.

11 Q In 2001, were you and Ms. Carter members of The
12 Retreat?

13 A Yes.

14 Q What was the purpose of The Retreat at Edisto, LLC?

15 A The purpose was to build 28 condominiums and sell them.

16 Q Describe for the Court the original plan for The
17 Retreat.

18 A The parcel was about three and a half acres, a little
19 more than that, but it was located on Edisto Beach, which I
20 believe the address was 126 Jungle Road and the parcel was
21 located between Jungle Road and Palmetto Boulevard, which is
22 the main -- the ocean is right there. So we put a pool, we
23 did put a pool, and a tennis court.

24 Q Mr. Steedley, briefly I want to show what was
25 previously marked as Plaintiff's Exhibit Number Three and

1 tell me that this is what you intended for The Retreat to
2 look like.

3 A Yes.

4 Q Now, to effectuate the plans for The Retreat, as I
5 understand it, these would be condominiums.

6 A Right.

7 Q To effectuate those plans, did you cause a Master Deed
8 to be written?

9 A Yes.

10 Q And I'm going to show you what is marked as Plaintiff's
11 Exhibit Number One and see if this is the Master Deed that
12 The Retreat had written to effectuate those plans. A Yes,
13 it is.

14 Q All right. And what was the intent of the Master Deed?

15 A To create a regime to manage the condominiums.

16 Q Were any of the units built when the Master Deed was
17 filed?

18 A No.

19 Q Okay. Did The Retreat reserve unto itself any rights
20 in the Master Deed?

21 A Yes.

22 Q What were those rights?

23 A The rights were to amend them if necessary.

24 Q Could I ask you to turn to page 22?

25 A (Witness complies.)

1 Q Specifically, page 22, which is entitled "Amendment of
2 Master Deed." Would you please read the first sentence of
3 the second paragraph?

4 A "Without limiting the foregoing, the Grantor, its
5 successors or assigns, "acting alone" to have the power but
6 not the obligation at any time (and from time to time) to
7 amend the Master Deed to call the same to conform to the
8 requirements to the South Carolina Horizontal Property Act.
9 The Federal National Mortgage Association, and/or the
10 Federal Home Loan Mortgage Association, as set forth,
11 respectfully, in FNMA Conventional Home Mortgage Selling
12 Contract Supplement" and "Seller's Guide to Conventional
13 Mortgages," as the same may be amended from time to time."

14 Q Did you intend in your limitation to The Retreat's
15 right to amend?

16 A No.

17 Q All right. At some point, did an amendment become
18 necessary?

19 A Yes.

20 Q All right. Tell the Court what happened, please.

21 A Well, the Town of Edisto Beach, we released on Phase I
22 and we had 12 units and we had gotten into some issues with
23 the OCRM, as far as the storm water plans go. At that point
24 in time, we decided with the help of my attorney, Mr. Wayne
25 Unger, to do two phases.

1 Q All right. And did those circumstances lead to The
2 Retreat drafting and creating a first Amendment to the
3 Master Deed?

4 A Yes.

5 Q All right. Sir, I'm going to hand you what's been
6 previously marked as Plaintiff's Exhibit Number Two. See if
7 that is the first Amendment that you just read.

8 A It is.

9 Q What was the intention of drafting and filing the first
10 Amendment?

11 A Basically, to, again, get the approval to go ahead and
12 construct the 12 units and then, you know, the economy
13 wasn't that great at the time, and we decided to do a few
14 phases.

15 Q Okay. Mr. Steedley, if I can get you to turn to page
16 5.

17 THE COURT: Which exhibit?

18 MR. HALLER: Exhibit Two, Your Honor. Page 5, the
19 first amendment and to the paragraph entitled, "Timetable."

20 THE COURT: Tell us when you're there.

21 MR. STEEDLEY: It's page 2?

22 THE COURT: No, page 5 of Plaintiff's Exhibit Number
23 Two. Mr. Bundy, you got a copy?

24 MR. BUNDY: Yes, Your Honor.

25 MR. STEEDLEY: All right. I got it. The Timetable?

1 MR. HALLER: Yes, sir.

2 A "The Grantor, its subject and assigns, or any person or
3 entity owning the right to develop and construct proposed
4 Phase II, Buildings 1, 2, 3 and 4 as shown on Exhibit "B" to
5 the Master Deed, may at their sole discretion, stage the
6 development and construction of the improvements into two
7 stages or phases, with no guarantee to the purchasers of
8 Apartments in Phase I that subsequent stages or phases will
9 be developed. It is the Grantor's intention to develop the
10 proposed Phase II, Buildings 1, 2, 3, and 4 as Phase II of
11 the regime. The Grantor, its successors and assigns or
12 persons/entities owning the adjoining property hereby
13 reserve the right and privilege to determine on or before
14 July 31st, 2005, whether or not to proceed with the
15 additional stage of development and the parties hereto agree
16 that if the Grantor so decides, the Apartments shall be in a
17 regime which consists of two stages or phases. The
18 determination of the Grantor, its successors and assigns, or
19 persons/entities owning the adjoining property as to the
20 stages of the project may be on, before, or after the sale
21 of Apartments in Phase I."

22 Q Thank you, sir. Who are the persons/entities owning
23 the adjoining property?

24 A Well, as far as the -- well, personally, I own some of
25 the property and Palmetto Plaza of Edisto still owns some

1 property.

2 Q The persons/entities that are described in the deed,
3 who is that intended to be?

4 A The Retreat at Edisto, LLC.

5 Q What did The Retreat intend the July 31st date that is
6 referenced in the section that you just read?

7 MR. BUNDY: Objection. Parole Evidence Rule. If his
8 answer is going to be outside ---

9 THE COURT: He can certainly testify as to what his
10 intentions are, Mr. Bundy, but I don't believe he testifies
11 as to what other parties intentions may have been; do you
12 understand, Counsel?

13 MR. HALLER: Yes, sir.

14 THE COURT: To that extent, it is sustained in part;
15 overruled in part. Rephrase the question, Mr. Haller.

16 Q Mr. Steedley, you signed the first Amendment on behalf
17 of The Retreat at Edisto, LLC?

18 A Yes, I did.

19 Q Okay. The Retreat at Edisto's intent, when they had
20 this document drafted, the first Amendment drafted, what was
21 its intentions as to July 31st, 2005?

22 A That was when we would decide to proceed or not to
23 proceed.

24 Q All right. Was July 31st, 2005, intended to be a
25 deadline to have Phase II completed?

1 A No.

2 Q Was July 31st, 2005, intended to be a deadline for
3 construction of Phase II to begin?

4 A No.

5 Q Was there any intent for anything else to happen or be
6 done in order to move forward with Phase II other than The
7 Retreat at Edisto's election to move forward?

8 A No.

9 Q What, if anything, did the regime give The Retreat in
10 exchange for the right to proceed with Phase II?

11 A Rephrase that for me.

12 Q Sure. What did the homeowner's association give to The
13 Retreat at Edisto Beach in order to proceed with Phase II?

14 A Nothing.

15 Q All right. How many units had been sold at The Retreat
16 by the time the first amendment was put into place?

17 A All of them.

18 Q Is the deed a contract for purchase?

19 A No.

20 Q All right. Did, in fact, The Retreat at Edisto make a
21 determination to proceed with Phase II?

22 A Yes.

23 Q When did it do that?

24 MR. BUNDY: Objection.

25 THE COURT: Grounds?

1 MR. BUNDY: It violates the Parole Evidence Rule. The
2 document requires a writing for them to show their intent.

3 THE COURT: I understand the objection. I think you
4 have to limit your question to what he personally felt, for
5 purposes of this trial. Obviously, the position of the
6 plaintiffs is that having one witness testify when we're
7 dealing with land violates the Parole Evidence Rule.
8 However, I understand from your previous that Mr. Steedley
9 signed on behalf of the defendant, The Retreat at Edisto,
10 LLC, and certainly he can testify as to what he intended to
11 do and what he, himself, did, either individually or in his
12 capacity for the LLC; do you understand?

13 MR. HALLER: I do, Your Honor.

14 THE COURT: Now, hold on, Mr. Bundy, do you understand
15 my ruling?

16 MR. BUNDY: Yes, Your Honor.

17 THE COURT: All right. Anything else, Mr. Bundy,
18 because you're still standing, and only one lawyer stands in
19 my courtroom at a time. Proceed.

20 Q Mr. Steedley, did The Retreat at Edisto, LLC, take any
21 action to begin development of Phase II?

22 A Yes. We continually were working with an engineer, Joe
23 Edelmann, who has an engineering company was HEG, H-E-G, and
24 RCM, the Corps, and the town for zoning; yes, we continually
25 worked on that.

1 Q When you say "The Corps", you mean?
2 A The Army Corps of Engineers, yeah.
3 Q And that's for permitting?
4 A Yeah.
5 Q When did you begin those efforts?
6 A Well, we did it actually after we did Phase II. I
7 can't tell you an exact time, but that's when we had some
8 issues. We were going to build more than 12 and that's when
9 had to revise the storm water, which was a pretty big issue,
10 so we continued to work on that.
11 THE COURT: Now, hold on one minute. Mr. Steedley, you
12 just said "after you did phase II." And I don't understand
13 that answer at all. So I want you to explain that answer to
14 the Court.
15 A Your Honor, I'm sorry. It's Phase I.
16 THE COURT: All right. Proceed, Mr. Haller.
17 Q Did those efforts begin before July 31st, 2005?
18 A Yes.
19 Q All right. Did you have any other complications?
20 A Yes, we did. We had a neighbor adjoining us, on the
21 adjoining property who had some flooding issues, which we
22 didn't feel like we were responsible, but a lawsuit was
23 brought and which was the Homeowner's Association was also a
24 defendant, and it was settled. During that period of time,
25 my partner passed away and I had a lawsuit with her heirs

1 and then, this lawsuit here.

2 Q So three lawsuits?

3 A Uh-huh (affirmative), yeah.

4 Q Does The Retreat at Edisto still intend to develop
5 Phase II?

6 A Yes.

7 Q Please answer any questions that Mr. Bundy may have.

8 MR. HALLER: Thank you, Your Honor.

9 THE COURT: Mr. Haller, I now have for you, a copy of
10 what you gave the Court as an exhibit, which is now
11 Defendant's One. So you can use it in your argument.

12 MR. HALLER: Thank you, Your Honor.

13 THE COURT: Mr. Bundy, cross-examination.

14 MR. BUNDY: Thank you.

15 CROSS-EXAMINATION

16 BY MR. BUNDY:

17 Q Good afternoon, Mr. Steedley. I don't think we've met.
18 My name is Bill Bundy.

19 A Yes, sir.

20 Q I have a few questions for you. If you would turn to
21 the Master Deed, page 22. I think your attorney asked you
22 to look at that.

23 MR. BUNDY: That's Exhibit Number One for the record,
24 Your Honor.

25 THE COURT: Now, I don't have a copy of the entire

1 thing. Is there an extra one?

2 MR. BUNDY: Here is a copy of Exhibit One, Your Honor.

3 THE COURT: Thank you, sir. Let the record reflect
4 that the Court now has a copy of Plaintiff's Exhibit One and
5 so does the witness, and so does counsel for the plaintiff.

6 Proceed.

7 MR. BUNDY: Thank you, Your Honor.

8 Q Page 22, Mr. Steedley; are you with me?

9 A Yes, sir.

10 Q Under Amendment of Master Deed, what it says here is
11 that "Neither this Master Deed nor any of its provisions
12 shall be revoked or amended without the acquiescence of the
13 Co-owner's owning at least two-thirds (2/3) of the
14 Apartments." Do you see that?

15 A Yes, sir.

16 Q Mr. Steedley, are you a co-owner of any of these
17 Apartments?

18 A At the time, I probably was.

19 Q No, today, are you?

20 A Today, no.

21 Q Did you ever control 2/3 of the ownership of those
22 units?

23 A Yes.

24 Q Okay. Did you control 2/3 of those units -- when did
25 you lose control of the 2/3 of the units?

1 A I can't tell you a date.

2 Q You wouldn't be able to amend the Master Deed today,
3 would you?

4 A (NO RESPONSE.)

5 Q Mr. Steedley?

6 A I do not know.

7 Q You don't know?

8 A I don't know.

9 Q Well, let's look at it. It says, "You can only amend
10 it with 2/3 of the total interest of the Apartments." Do
11 you own any of the Apartments?

12 A No.

13 Q So as a matter of fact, you could not, today, amend a
14 Master Deed, correct?

15 A Sure, yes.

16 Q And how long has that been the case, Mr. Steedley? How
17 long has it been since you've had the ability to amend the
18 Master Deed?

19 A About seven or eight years.

20 Q Seven or eight years, okay. Now, if you would, let's
21 look at the last sentence of the Master Deed, this first
22 paragraph on page 22. It says, "Any such amendment or
23 revocation shall be executed and subscribed with the same
24 formalities required in South Carolina for the making of
25 deeds and recorded in the public records of Colleton

1 County." Do you see that? It's in the last sentence of
2 that paragraph.

3 A Okay.

4 Q Have you ever recorded any other amendments to this
5 Master Deed, other than Exhibit Two, which is a record in
6 this case, Exhibit Two?

7 A Have I recorded them?

8 Q Yes.

9 A I wouldn't have recorded them.

10 Q Have you ever had anybody do it for you?

11 A No.

12 Q Has it ever been done?

13 A Not to my knowledge.

14 Q Mr. Steedley, let's look at Exhibit Two, page 5, under
15 Timetable.

16 MR. BUNDY: Your Honor, do you have the plat in front
17 of you?

18 THE COURT: I do not have the plat. The court reporter
19 has the plat. Do you have Exhibit Two, Mr. Haller, as well
20 as Exhibit One?

21 MR. HALLER: Yes, I do, Your Honor.

22 Q Mr. Steedley, I'm going to hand you, or show you,
23 Plaintiff's Exhibit Three, which is in evidence. Do you
24 recognize that as the plat?

25 A Yes, I do.

1 Q And that's the plat that was attached to the Master
2 Deed?

3 A I think.

4 Q And that's the plat that was referenced in the
5 Amendment, correct?

6 A Yes.

7 Q Okay. And when you sold all of the 12 units, the
8 people who owned those 12 units owned that entire piece of
9 property jointly and in common, did they not?

10 A In my opinion, no.

11 Q Well, are you -- you heard what Mr. Yates' said? That
12 was his opinion as a lawyer, you heard that?

13 A I heard that, but I heard a lot of things he said which
14 I don't understand.

15 Q Can you point to somewhere in these documents which
16 refutes the statement that, in fact, when you created this
17 Master Deed, according to its written terms, the 12 people
18 who bought those units owned the entire piece of property
19 jointly and severally as a common element?

20 A It was, as you see, you're talking about this deed
21 right here. As you can see, this deed has the four units
22 that sold. It also has the four units that were to be
23 built, so I did not give away those rights to develop. Why
24 would I do that?

25 Q You didn't understand that you did that?

1 A No, I don't.

2 Q You didn't understand at the time that you may have
3 done that.

4 A I hired an attorney and what he did, I respect his
5 work.

6 Q I understand. Let's turn to Page Two of Exhibit Two,
7 Mr. Steedley. Do you see where it says, "General common
8 elements mean and include"? Do you see that? It's at the
9 bottom of page Two.

10 A Okay.

11 Q It says, "General common elements mean and include: the
12 land on which the building stands more fully described
13 together with real property, Exhibit A to the Master Deed."
14 so the land is a common element that is owned in common by
15 the people who own those 12 units, correct?

16 A Correct.

17 Q Did you reserve title to any square inch of that piece
18 of property as depicted on that plat?

19 A In the deed, I reserved the right to develop it.
20 Whenever I sold them that property, they were aware that I
21 would develop more property, so why again, why would I give
22 it away?

23 Q Your answer is a little different than the question.
24 All I'm asking you is very simply where did you reserve
25 title to the real estate? In any of these documents?

1 A No, I guess.

2 Q Now, let's look, let's go back to page 5 and see what
3 you did reserve on this timetable. Page 5, under timetable.
4 Are you with me?

5 A Uh-huh (affirmative).

6 Q In the middle it says, "The Grantor." That was your
7 company, right? The Grantor, the defendant in this case?

8 A Yes.

9 Q "Its successors and assigns and persons owning the
10 adjoining property." Point out to me, if you would, or to
11 the judge, what adjoining property you're talking about.

12 A I'm talking about this property right here. (Referring
13 to the plat.)

14 THE COURT: Hold on a second. Mr. Haller, do you want
15 to come up so you can view this?

16 Becky, let the record reflect that we are holding --
17 I'm holding one side and Mr. Steedley is holding the other
18 side of Plaintiff's Exhibit Number Three, which is a plat,
19 which has been admitted into evidence without objection.
20 Mr. Bundy has asked a question and has asked the witness to
21 use his finger on Plaintiff's Exhibit Three.

22 MR. BUNDY: With the Court's permission, I would like
23 to use a marker, if that's okay at this point.

24 THE COURT: All right.

25 Q If you would, specifically, Mr. Steedley, my question

1 is this. Exhibit Two, page 5, paragraph entitled timetable
2 references owning the adjoining property. Okay? If you
3 would, with this yellow marker, color in the adjoining
4 property that you're talking about.

5 THE COURT: He's asking the witness to do it, Becky,
6 for the record on Plaintiff's Exhibit Number Three with a
7 highlighter.

8 A (Witness complies.)

9 THE COURT: Can you see that Mr. Haller?

10 MR. HALLER: Yes, sir.

11 Q Okay. If you would ---

12 MR. BUNDY: Your Honor, may I get my glasses?

13 THE COURT: Absolutely.

14 MR. BUNDY: I'm not seeing too well.

15 THE COURT: I can tell you that I've had to have mine
16 for a number of years.

17 MR. BUNDY: Well, I have contacts in and I still can't
18 see.

19 Q All right. Mr. Steedley, let's talk about adjoining
20 property. First off, will you take this black pen and make
21 a circle around the piece of property that we're talking
22 about there, the 3.724 acres.

23 MR. HALLER: Your Honor, may I approach?

24 THE COURT: You may.

25 Q Okay. So am I correct that one, two, three, four,

1 five, six, seven pieces of adjoining property ---
2 A Actually, there is ---
3 THE COURT: You have to speak up, now.
4 A Seven, yes, uh-huh (affirmative).
5 Q Seven pieces of adjoining property, are they not part
6 of the 3.724 acres?
7 A No.
8 Q Okay.
9 A The only thing, I gave it an easement.
10 Q So the title -- can we number these, Mr. Steedley?
11 Number one, two, three, four, five, six, and seven? Okay,
12 do you see that?
13 A Yes.
14 Q Those seven pieces of property were in whose name? Who
15 owned those properties?
16 A These two were in my name. Personally number one and
17 number two; the other five here ---
18 Q Three, four, five, six and seven?
19 A That is Palmetto Plaza of Edisto, LLC. I still own
20 those.
21 Q And those seven pieces of property have nothing to do
22 with this Master Deed, do they?
23 A No.
24 Q They're not part of it. You didn't deed it to anybody;
25 they're not part of it. So those seven pieces of property,

1 that's part of what you're talking about where you're
2 reserving the right to develop those seven pieces of
3 adjoining property?

4 A No.

5 Q Oh, you're not referring to those?

6 A No.

7 Q Okay.

8 A I'm referring to right here. As it says right there,
9 proposed building.

10 Q Okay. Let's use different numbers then. So the
11 adjoining property that you're referring to in Timetable,
12 page 5 on Exhibit Two, can we call those eight, nine, ten
13 and eleven? Is that fair?

14 A Sure.

15 Q Just for identification purposes. And that, in fact,
16 is within the property that we're talking about.

17 A Yes.

18 Q What are they adjoining to? What real estate are they
19 adjoining to?

20 THE COURT: You can step back, Mr. Haller.

21 A They're adjoining the existing condominiums, the
22 regime, this building right here.

23 Q That's just a building, though, Mr. Steedley, correct?

24 A Sure.

25 Q It's not a separate piece of titled real estate, is it?

1 A Sure, yeah, it is separate title real estate. I mean
2 as far as the building right here? It's a condominium.

3 Q The title to the real estate, there's only one title to
4 this real estate that's involved, right?

5 A Yes.

6 Q What do you understand the term "adjoining" to mean?

7 A Adjoining would be next to.

8 Q Correct. So the properties that we have previously
9 numbered one through seven are by definition adjoining
10 properties, correct?

11 A Those are, yes.

12 Q Eight, nine, ten and eleven are by definition not
13 adjoining properties because they are included within the
14 piece of property. How could a piece of property be
15 adjoining within itself?

16 A I don't know.

17 Q Okay. That's all I have.

18 MR. BUNDY: Thank you, Your Honor.

19 THE COURT: Redirect?

20 MR. HALLER: No questions, Your Honor.

21 THE COURT: Mr. Steedley, you may step down from the
22 witness stand. Watch your step on those stairs. I now want
23 to hold the exhibit that's been written on. Let me take a
24 look at this. Let the record reflect that I have now
25 reviewed the black pen markings with numbers, some of which

1 have circles, some of which do not, as well as the yellow
2 highlighted marks that were made by Mr. Steedley during his
3 examination.

4 All right. Mr. Haller, call your next witness.

5 MR. HALLER: Your Honor, the defense rests.

6 THE COURT: Is there any reply testimony from the
7 plaintiff?

8 MR. BUNDY: No reply from the plaintiff, Your Honor.

9 THE COURT: Very well. I will hear both of you,
10 briefly, in argument. I think I'm well aware of the issue
11 in this case. Because you are -- you know, I teach this
12 class each year, I teach the new judges class, and one of
13 the questions I'm frequently asked is whether or not -- we
14 have a rule for closing argument in civil court. We don't
15 have a rule in the Rules of Criminal Procedure, and
16 therefore, what some people believe is the Rules of Civil
17 Procedure apply to criminal court. Anyway, the party with
18 the burden of proof has the right to open and close. You
19 have to open in full. I'm happy to hear from you, Mr.
20 Bundy, first, if you're going to do that. We don't have a
21 jury here and I think I understand it pretty well, but I'd
22 like to hear you summarize what you believe the evidence has
23 shown for the Court.

24 MR. BUNDY: Are we going to dispense with typical
25 motions? I'm a little bit concerned about ---

1 THE COURT: If you would like to make any motions,
2 that's why I asked Mr. Haller at the close of your case, but
3 I'll be happy to hear any motions you feel are necessary to
4 protect the interest of your client.

5 MR. BUNDY: Thank you, Your Honor. Your Honor, at this
6 point, we would move for directed verdict under clear
7 evidence.

8 One, there's no evidence in the record from this LLC.
9 There's no documents in here regarding any minute meetings
10 they may have had about any of his intention. An individual
11 could come in here -- there was no -- there was just no
12 foundation, no legal foundation for any of these things.
13 Plus, the documents are clear on their face, and so we
14 believe we're entitled to a directed verdict.

15 THE COURT: Mr. Haller, I don't need to hear from you
16 on that and I'll tell you why. I respectfully deny that
17 motion. Court of Appeals held that the language of the
18 First Amendment to the Master Deed is susceptible to more
19 than one interpretation, and thus, that language was held by
20 them to be ambiguous.

21 At this point, I believe that's the law of this case.
22 Now, I realize the standard that the Court of Appeals was
23 applying at that time, Mr. Bundy, was summary judgment and
24 they had to view the evidence in the light most favorable to
25 the developer. And they felt that the developer presented a

1 scintilla of evidence on the question of the intent in order
2 to create a genuine issue of material fact. And while the
3 standard at directed verdict is somewhat different, I
4 believe an issue of fact is created under that
5 interpretation for which this Court feels that it is bound.
6 So your motion for directed verdict is respectfully denied.

7 Are there any motions from the defendant?

8 MR. HALLER: Your Honor, our motion would be on the
9 same grounds.

10 THE COURT: And for the same reasons, Mr. Haller, your
11 motion is also denied.

12 MR. HALLER: Thank you, Your Honor.

13 THE COURT: Mr. Bundy, I'm ready to hear from you on
14 summation, unless there are other motions on behalf of the
15 plaintiff.

16 MR. BUNDY: No further motions, Your Honor.

17 THE COURT: Happy to hear from you.

18 CLOSING ARGUMENT

19 BY MR. BUNDY:

20 Thank you. Your Honor, I'll be brief. I don't know
21 what the intent was, but it was not accomplished whatever
22 that intent was, was not accomplished. They transferred --
23 what legally happened here was they created a Horizontal
24 Property Regime and they did it in a fashion that is very
25 unusual. I've been doing this for 30-something years and

1 I've never seen it this way. When you develop a property
2 regime in phases, you say this is phase I, here's the deed
3 to phase I. These are the buildings I'm going to put on
4 Phase I. And I reserve the right to put the rest of my land
5 into this regime, into this declarants regime at a later
6 date. That's how it's done.

7 What was done here was, intentionally or otherwise, as
8 a matter of law, all of this land was transferred to the 12
9 unit owners. Put that aside. And that's just -- that is
10 the way it is, legally. And that's why this is such a
11 problem and that's why we need Your Honor to fix it, because
12 without a declaration of where we are, my clients can't sell
13 their property. They can't do anything out there. They're
14 not able to alienate it. There's no way to get clear title.
15 There's no way to transfer it. So that's a serious problem.

16 Now, why did we get in this problem? We got in this
17 problem -- and it may not have been a problem if Mr.
18 Steedley had in fact done what he voluntarily imposed upon
19 himself, which was that by July 31, 2005, I'm going to file
20 something to let all the world know that I have -- and I
21 didn't have to do this. It was purely up to me, whether I
22 wanted to do it, because if you read the deed, it says over
23 and over again, "I may do it." It's my intention to do it.
24 I don't have to do it. It's my intention to loan you
25 \$1,000, but I ain't got to loan you \$1,000. Okay?

1 Perfectly wonderful intention to have. But he put upon
2 himself, and the Master Deed clearly says that you have to,
3 like Howard Yates said, the dignity rule, the Equal Dignity
4 Rule. The Master Deed codifies the Equal Dignity Rule,
5 because it says whenever you want to do something to modify
6 the master deed, you have to do it the same way that you
7 called for.

8 It's unfortunate how we got to where we are. I'm sorry
9 Mr. Steedley is where he is. But the truth of the matter is
10 my clients are where they are. Mr. Steedley, if he had done
11 something by July 2005, probably could have figured out a
12 way to work out his title problems one way or the other. He
13 may have been able to figure a way to do that. But having
14 waited eight years and not done anything -- not done
15 anything, even as we sit here today, he has not done
16 anything. And as a practical matter, Judge, if you rule in
17 his favor, what are you gonna do? How much longer does he
18 get? What's your ruling gonna say? Basically, what you're
19 going to have to do is do something that nobody has asked
20 you to do, which is to reform the deed. You're going to
21 have to reform the Master Deed to say that I, Judge Buckner,
22 now give you until this date to do it."

23 If there is no date by which he has to do these things,
24 it violates the rule against perpetuities. Then we've got
25 all kinds of problems, and I know I won't be the one to

1 figure that out, because I don't know how that really works, but
2 I know that you can't have an interest in real estate
3 forever not tied to something. This land will just sit
4 there forever. My clients pay the property taxes on it. He
5 doesn't pay any property taxes. My clients are paying all
6 these property taxes, and so they're stuck with this piece
7 of property which he has put a cloud on. It's unfortunate
8 we are where we are, but I think as a matter of law, we
9 don't have much choice.

10 THE COURT: Mr. Bundy, is it your position, and so you
11 don't have to come up here and look at it again, I'm
12 referring to what you wrote on the bottom of Plaintiff's
13 Exhibit Three, and that would be what Mr. Steedley
14 identified with yellow marks and what you wrote as eight,
15 nine, ten and eleven.

16 It's your position that eight, nine, ten and eleven
17 could have been reserved in the Master Deed, but you
18 believe, according to the opinion of Mr. Yates, that any
19 interest, rights, claim, title of interest was conveyed out
20 in that Master Deed and that is what you think presented the
21 problem that brings us to the Court today.

22 MR. BUNDY: No, Your Honor. That's just another
23 problem we have. Okay? The problem that brings us to the
24 Court today is the failure of the defendant to file a
25 document by July 31st, 2005.

1 THE COURT: Well, Mr. Bundy, if I recall, you asked Mr.
2 Yates and also asked Mr. Steedley, and you said even if he
3 had filed something by July 31st -- we'll call it another
4 amendment to the Master Deed.

5 MR. BUNDY: Right.

6 THE COURT: If he had not done something with the
7 conservation easement, which was necessary in order to
8 access the property ---

9 MR. BUNDY: The commercial easement.

10 THE COURT: Or the commercial easement, whatever it was
11 designated.

12 MR. BUNDY: Right. Right.

13 THE COURT: I'm sorry. I said conservation. It is
14 commercial. How would he have been able to implement
15 construction?

16 MR. BUNDY: I have no idea. And that -- but he drafted
17 all of this. This is his document. The fact that his
18 document is internally difficult is not my client's problem.
19 Furthermore, that's just the drop dead date. There was
20 nothing that would have prevented him ---

21 THE COURT: Well, he says there was no drop dead date.
22 He says that the document doesn't say that this was a drop
23 dead date for construction or a drop dead date for anything
24 because it's solely reserved to him. Do you believe that's
25 possible in light of the construction of this document on

1 | behalf of the plaintiff?

2 | MR. BUNDY: No, Your Honor. Unless you go outside the
3 | document and let him alter the document. The document, if
4 | you read the document, the four corners of the document, it
5 | says in no less than a half of a dozen places, you've got to
6 | file something. File something on the Master Deed by July
7 | 31, 2005, and the evidence is that it simply was not done.
8 | It's his date. We didn't pick it. He did. He could have
9 | put anything in there, I guess, he wanted to, but he decided
10 | to put something in the chain of title, in the record title,
11 | saying that if I don't do this by this date, we're done,
12 | because I'm not required to do it. I just have an intent to
13 | do it.

14 | THE COURT: Is it your understanding, and I'm not sure
15 | this was presented to me in the evidence. What was clear to
16 | me was that Mr. Steedley testified, and I think you agree
17 | factually that there had been at the time of the filing of
18 | the first amendment, no Apartments or condominiums had been
19 | sold. You agree with that, do you not?

20 | MR. BUNDY: I believe that's correct.

21 | THE COURT: No one has bothered to tell the Court
22 | factually what difference in sales, although you touched on
23 | it with the 2/3 argument that you raised from the Master
24 | Deed on page 22. What occurred from the time of the filing
25 | of the first amended document, which is plaintiff's Two and

1 July 31st, 2005, insofar as sales of Apartments was
2 concerned? Do you know?

3 MR. STEEDLEY: I don't know.

4 THE COURT: I'll ask Mr. Haller that question.

5 MR. HALLER: Your Honor, all of the Apartments are
6 sold.

7 THE COURT: Prior to July 31st, 2005?

8 MR. HALLER: Well before.

9 THE COURT: Okay. Go ahead, Mr. Bundy. Anything else?

10 MR. BUNDY: Nothing, other than I think they have the
11 burden of proof. Once I put in these documents to show
12 these deadlines and these dates, to put in some evidence
13 that in fact something happened, that they did something.
14 There's been no evidence put before you at all, zero, that
15 they did anything to evidence their intent to anyone.

16 THE COURT: And you mean by that, a writing?

17 MR. BUNDY: I mean a writing; there's nothing ---

18 THE COURT: Because of the Statute of Frauds, you think
19 a writing is required?

20 MR. BUNDY: Absolutely. Absolutely. But there wasn't
21 even any testimony that there was any oral notification.
22 There's been no testimony at all of any evidence given to
23 any third party about his intent to develop, even as we sit
24 here today, no evidence of it at all. Thank you, Your
25 Honor.

1 THE COURT: Thank you very much. Mr. Haller, I'm
2 happy to hear from you.

3 MR. HALLER: Thank you, Your Honor. May it please the
4 Court.

5 THE COURT: Yes, sir.

6 CLOSING ARGUMENT

7 BY MR. HALLER:

8 Your Honor, the core standard is what was the Grantor's
9 intention and the words speak for themselves. The Grantor
10 said, "I reserve the right to determine whether to go on
11 with Phase II by July 31st, 2005."

12 THE COURT: And you think that's the reason why the
13 Court of Appeals felt there was ambiguous language in the
14 amendment to the Master Deed, Mr. Haller, because of that
15 one sentence reversing the decision of Judge Mullen to grant
16 summary judgment to the plaintiff?

17 MR. HALLER: I think there were -- I think that that
18 alone, Your Honor, together with the fact that this General
19 Assembly, as Mr. Yates testified to, a special land use
20 statute, a Horizontal Property Regime Act, and used the word
21 "to elect," which Mr. Yates also said, and I think Your
22 Honor can take notice, to elect and to determine are
23 mutually the same word and the General Assembly, in its
24 wisdom, did not say that there had to be any filing, that
25 there had to be any declaration, that there had to be any

1 notice to anybody. It left it within the confines of the
2 developer. And I think the reason for that, because as
3 we've seen in this case, development takes on a life of its
4 own.

5 THE COURT: Well, even if that were correct, your
6 interpretation of silence in the Horizontal Property Regime
7 Act means that it can stay in the mind of the Grantor
8 forever with no notice, written notice, of any kind.
9 Doesn't that present a problem as to how long that would
10 occur where in the facts of this case, Mr. Yates opines in
11 his opinion that title has been conveyed out and no longer
12 rests in your client, The Retreat at Edisto, LLC, Mr.
13 Haller. So isn't that a completely different situation
14 because of the facts of this case?

15 MR. HALLER: I don't believe so, Your Honor.

16 THE COURT: Why not?

17 MR. HALLER: Because the deed first says that the land
18 underneath the building has been conveyed and then goes on
19 to talk about that additional phases will be built. So it's
20 completely consistent that ---

21 THE COURT: How will you put another building on the
22 land if the land has been conveyed out? That's the problem,
23 isn't it?

24 MR. HALLER: Because there's a reservation of rights to
25 build that property. There's no fee simple. There is a

1 reservation of rights to build on that property, much like
2 an easement, let's say. There's a reservation of rights,
3 which the deed goes on to say that the Grantor retains
4 ownership of those buildings ---

5 THE COURT: And you think that reservation exists in
6 perpetuity?

7 MR. HALLER: Your Honor, under the law, strict
8 compliance with time limits contained in the contract would
9 not ordinarily be enforced, except with regard to option
10 contracts, and I'd like to talk for a minute about an option
11 contract.

12 THE COURT: All right.

13 MR. HALLER: And there's case law out there.

14 THE COURT: I understand what you're talking about, but
15 I first want you to answer the Court's question, do you
16 believe that right, that you say exists, that's in the mind
17 of your client at this time, exists in perpetuity?

18 MR. HALLER: I believe that as long -- no, sir.

19 THE COURT: How long does it exist for your client to
20 have in his mind without a writing that he has the right to
21 develop other pieces of a property for which title has been
22 conveyed out? Or do you concede that fee simple to the land
23 has been conveyed out?

24 MR. HALLER: I think under the law, a reasonable amount
25 of time, and there is case law to the effect of 13 years.

1 THE COURT: How would a title checker be able to
2 determine what a reasonable amount of time is in order to
3 certify title if one of these Apartments were sold?

4 MR. HALLER: What they're giving up, Your Honor, is the
5 stated amount of the common elements that are set in the
6 deed. So if Your Honor, for example, if Your Honor looks at
7 Exhibit One, I think it's sub-exhibit E to Exhibit One. It
8 sets out there the percentage of ownership and the common
9 elements that you obtain when you buy the property.

10 And what exhibit E sets out is today at 12 units, what
11 each individual owner has and what each individual owner
12 have had if there were 28 units. But all they have is that
13 percentage ownership. They don't have the right to go build
14 their own property there. They don't have the right to do
15 anything else. It's just a percentage and ownership of it
16 and the Homeowners Association manages that and the ones
17 that built and then conveyed pursuant to the terms of the
18 deed, those people then have their percentage in ownership.

19 THE COURT: I understand that's your argument, Mr.
20 Haller, but my question remains -- you're talking about the
21 rights now to people in the Apartments. I'm asking you how
22 a title checker could possibly determine how long your
23 client could have in his mind that he's reserved the right
24 to build further.

25 MR. HALLER: And respectfully, Your Honor ---

1 THE COURT: If you're checking the title, you're
2 telling me that a title checker would have to talk to your
3 client in order to determine what a reasonable amount of
4 time is or do you think there has to be litigation and the
5 Court has to set a reasonable amount of time?

6 MR. HALLER: No, sir. What they obtain -- when a title
7 checker only goes this far, as to that property, you get a
8 limited interest because it's common elements, period.

9 THE COURT: Does the deed in any way reserve a portion
10 of this 3.7 acres on Plaintiff's Exhibit Three? Does it
11 reserve any of this property title to any of this land in
12 your client?

13 MR. HALLER: It reserves the right to develop Phase II.

14 THE COURT: That was in the amendment.

15 MR. HALLER: Yes, sir.

16 THE COURT: In the Master Deed, and you may want to
17 answer this, in the Master Deed, does it reserve any of this
18 property that is on this plat, titled to this property, in
19 your client?

20 MR. HALLER: Subject to the right to amend, no, sir.

21 THE COURT: All right. Go ahead.

22 MR. HALLER: But as Mr. Yates testified, he reserved a
23 right to amend the deed, which he did. To clarify for all
24 the people who then later came to buy exactly what they
25 would get, which is a percentage, and what they never lost,

1 Your Honor, was a percentage ownership in where Buildings 1,
2 2, 3 and 4, they never had -- they're not losing anything.
3 They will always have it. The only thing they had was a
4 percentage ownership in it. Then, once the building goes on
5 top of it, they still have the percentage ownership and the
6 land underneath it. They're not losing anything. It's
7 always what they had; the percentage of ownership in the
8 common element.

9 Now, as to whether or not this is an option contract,
10 this is not an option contract. An option contract is
11 between two separate and distinct individuals where in one
12 case a seller would give to a potential buyer the right for
13 valuable consideration to buy. We don't have a buyer. The
14 roles are reversed for this to be an option contract, Your
15 Honor. And I think that is what Mr. Yates understood when
16 he was talking about this. He was actually saying the
17 Grantor gave an option from one to the next, excuse me, gave
18 an option to himself. He didn't do that. Pursuant to the
19 statute, the Horizontal Property Regime, he reserved the
20 right to build a Phase II and I would ask Your Honor's
21 attention to the case of Heritage Federal Savings and Loan
22 v. Eagle Gulf Lake and ---

23 THE COURT: You cited it in your pre-trial Brief and
24 I'm aware of it, and I've read it.

25 MR. HALLER: Yes, sir. Which specifically says that

1 the Horizontal Property Regime Act is designed to allow
2 developers to reserve certain rights pursuant to the deed,
3 or excuse me, pursuant to the statute.

4 THE COURT: It actually requires that there be certain
5 things in the amendment, which you are familiar with.

6 MR. HALLER: Yes, sir.

7 THE COURT: And then it's silent on things, and your
8 argument is you can do additional things if it's silent, but
9 you have to comply with at least what's required by the
10 statute; is that correct?

11 MR. HALLER: I would say we have to comply with what is
12 in the statute. Now, as to the silence, I leave that to the
13 wisdom of the General Assembly.

14 THE COURT: Very well. So you don't think it's an
15 option, even though in some portions of these documents, the
16 documents themselves refer to it as an option.

17 MR. HALLER: I think there is in one place the word
18 option used and that is the option to build, not an option
19 to buy. And even Mr. Yates agreed that the standard option
20 contract, and I'll refer Your Honor to the case of Alexander
21 Land, which is 703, SC 2d, 207, in which the elements of an
22 option contract are set out. And it says one person for
23 another for valuable consideration reserves an option to buy
24 something specific, not to reserve a right to do something.

25 THE COURT: Anything else?

1 MR. HALLER: Your Honor, just to respond briefly to one
2 point that Mr. Bundy made. That there was testimony that
3 the defendant had begun doing work before July 31st, 2005,
4 and that there were multiple things which, including this
5 lawsuit, which have held those things up.

6 THE COURT: I believe it was described in your pre-
7 trial Brief, as well as Mr. Bundy's, as unforeseen
8 circumstances, Mr. Haller.

9 MR. HALLER: Yes, sir. I think there were some
10 unforeseen circumstances, but Your Honor, I would ask you to
11 think of this. One of the reasons I would think that the
12 General Assembly gave developers the leeway to elect and not
13 a hard and fast deadline as the plaintiffs want is because
14 of the uncertainty of development. So for example, let's
15 say if they had begun and were almost finished with
16 construction on July 1st of 2005, and then God forbid,
17 another Hugo hit and knocked it all down, then under that
18 theory, it would be the plaintiff's argument that the
19 defendant, the Grantor, even though it had completed
20 everything, had lost all of its rights. That cannot be what
21 the General Assembly intended when it said we are going to
22 allow you to develop in Phases and we're going to give you
23 the leeway to elect, not to complete. If it had wanted to
24 say you must complete something on a particular day, it
25 would have said you must complete on a specific day, and

1 instead it said, you can elect on a certain day.

2 THE COURT: You agree, Mr. Haller, that Mr. Steedley's
3 attorney drew the Master Deed.

4 MR. HALLER: Yes, sir.

5 THE COURT: You agree that Mr. Steedley's attorney drew
6 the deed for the amendment?

7 MR. HALLER: Yes, sir.

8 THE COURT: And in that deed for the amendment -- or
9 let's start with the Master Deed conveyed out all title in
10 the land. Right title of interest in the land itself.

11 MR. HALLER: Subject to ---

12 THE COURT: The dirt.

13 MR. HALLER: Yes, sir. Subject to the percentages that
14 were set out in the ---

15 THE COURT: Then the lawyer for Mr. Steedley in the
16 amendment imposed, I assume with your client's consent, a
17 date of July 31st, 2005, in which -- and I don't know why
18 that date was chosen. No one asked Mr. Steedley that other
19 than the fact it's reflected in the documents as a date in
20 which as you pointed out and it's been said many times that
21 the Grantor to determine on or before July 31st, 2005,
22 whether or not to proceed with the additional stage of
23 development and there has never been, that I know of, unless
24 you tell me now in argument that I've missed something, any
25 writing to evidence an intent other than the sentence that

1 you pointed out that it was a proposed intention of Mr.
2 Steedley's and therefore, the LLC, to build a Phase II at
3 the time of executing the amendment; is that correct?

4 MR. HALLER: That's correct. There's nothing been
5 filed, Your Honor.

6 THE COURT: Very well. Thank you very much, Mr.
7 Haller. I want to thank you both for being well-prepared on
8 this. It is a privilege as a judge to have lawyers who are
9 well prepared, and I want to say that in front of your
10 clients, because I want them to know that. Very often,
11 clients -- I can assure you that when I try cases, I know
12 the difference between lawyers -- and my young law clerk is
13 sitting over here who is going to be a great lawyer. I told
14 the lawyers in pre-trial that Camden is going to be a great
15 lawyer. He listens and it amazes me how much he picks up to
16 be as young as he is. He has seen good lawyers and he has
17 seen lawyers who are not prepared. Both of you were
18 examples of lawyers who were extremely prepared. He
19 appreciates that as a law clerk now, and I can assure you
20 that Judge Buckner appreciates it as a Judge, and I thank
21 you for that.

22 Now, I'm going to ask you both to pull out your pens,
23 Mr. Haller and Mr. Bundy. I'm going to ask you both to
24 present proposed Orders on this. I'm going to give you,
25 because I think the issue is pretty well defined. I do need

1 to read and I have not read your excerpts, so I'm going to
2 be getting my law clerk to make a copy and give Becky back
3 the originals, so all the originals will be with the court
4 reporter. I've reviewed every other exhibit, including
5 Plaintiff's Exhibit Three, which has been marked on
6 extensively during the trial of this case.

7 I'm going to ask that your proposed Orders be submitted
8 to me within two weeks of today; so you've got 14 days from
9 today to submit your proposed Orders. Please submit them to
10 me at P.O. Drawer 470, Walterboro, 29488. Please copy
11 opposing counsel on your transmittal of the proposed Orders.
12 Please include a self-addressed, stamped envelope with
13 sufficient postage affixed thereto.

14 Mr. Bundy and Mr. Haller, do not send me a 50-page
15 proposed Order and send me an envelope of one stamp. I have
16 to pay my own postage. I will not accept the excuse that my
17 secretary did it or my paralegal did it. You know how -- if
18 you want to be verbose, which I don't think really is a good
19 idea, although some lawyers think that tracing the history
20 of the statute of frauds for instance, would be helpful to
21 the Court. I'm not interested in a history of the statute
22 of frauds. I think I'm pretty much aware of the issue. So
23 make sure you send me enough postage so I can get your Order
24 back to you.

25 Now when you send me that Order, we all know that law

1 clerks do all the work for judges. Most judges don't admit
2 that, but I want these clients to know, because they work
3 hard. I work this young man, so y'all know, he works every
4 night; he works every weekend. I work every weekend. A lot
5 of you think judges have some banker's hours, and I can
6 assure you that is not true. He is always here with me.
7 You will find him here at 9:00 at night. You'll find him
8 here with me on Sunday mornings and Saturdays, because we do
9 try to keep up. So when you send me a proposed Order, send
10 him a proposed Order. His name is Camden Hodge. He is my
11 law clerk. He is at P.O. Drawer 470. He gets a working
12 copy. To comply with the 14-day time deadline, you can e-
13 mail me your proposed Order and I want you to send him --
14 and of course you have to copy opposing counsel.

15 My e-mail address is pbucknerj@sccourts.org. My law
16 clerk's e-mail address is pbucknerlc@sccourts.org. If you
17 e-mail me, you're still going to have to send me a self-
18 addressed stamped envelope with sufficient postage affixed
19 thereto.

20 I think 14 days is plenty of time, but before I adjourn
21 this record I want to make sure that nobody is getting ready
22 to enter into a 14-day trial, because I will certainly
23 accomodate you. I know this has been one of my oldest cases
24 in Colleton County on my civil docket, and both of you know
25 that. So I'm anxious that this brings some resolution to

1 this matter. I know, Mr. Bundy, your client wants
2 resolution and I know Mr. Steedley and his LLC wants
3 resolution, which is exactly why Mr. Haller did not move for
4 a continuance at the outset of this trial when I told him I
5 would grant him one since he wanted to object to the
6 surprise of Mr. Yates's testimony, because I would have
7 given him the opportunity to take Mr. Yates's deposition had
8 he so desired, but there needs to be some end to litigation,
9 particularly lengthy and protracted litigation and
10 unnecessary litigation expense. Anyone need more time?

11 MR. BUNDY: Your Honor, normally I'm always ready to
12 go. Mr. McDonald and I just finished a two week non-jury
13 trial and we have a very big Brief we have to write for
14 Judge Nichols and I think that's due in two weeks. I got a
15 Return to the Court of Appeals Remittitur yesterday, and so
16 I've got to write a petition in five days.

17 THE COURT: How much time do you want?

18 MR. BUNDY: Just another week; 21 days if that's okay.

19 THE COURT: I don't have a bit of problem with that.

20 Will that help you also, Mr. Haller?

21 MR. HALLER: Yes, sir, thank you.

22 THE COURT: Both of you got 21 days.

23 MR. BUNDY: Thank you, Your Honor. All right. Make a
24 note that your proposed orders either by e-mail or United
25 States Mail will be due in my office within 21 days from

1 today. Please copy opposing counsel. Thank you for your
2 excellent preparation. The record is now closed in
3 connection with this hearing.

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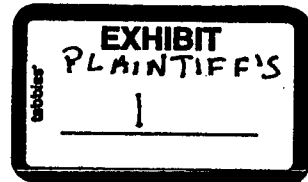
THIS AGREEMENT IS SUBJECT TO BINDING ARBITRATION PURSUANT TO
THE SOUTH CAROLINA ARBITRATION ACT S.C. CODE ANN.
SECTION 15-48-10, et seq. (1976), AS AMENDED

MASTER DEED
OF
THE RETREAT AT EDISTO
HORIZONTAL PROPERTY REGIME
(AN EXPANDABLE REGIME)
Edisto Beach, South Carolina

Developer:

THE RETREAT AT EDISTO, L.L.C.

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Colleton County, SC
Patricia C. Brant



MASTER DEED

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MASTER DEED
for
THE RETREAT AT EDISTO
Horizontal Property Regime
(an Expandable Regime)

Colleton County, Edisto Beach, South Carolina

The Retreat at Edisto, LLC having its principal office at 495 Highway 174, Edisto Island, South Carolina, hereinafter referred to as the "Grantor," as the sole owner of the land and improvements hereinafter described, does hereby make, declare, and publish its intention and desire to submit, and does hereby submit, the lands and buildings herein described, together with all other improvements thereon, including all easements, rights, and appurtenances thereto belonging, to a Horizontal Property Regime (to be known as The Retreat at Edisto Horizontal Property Regime, hereinafter called "the Regime") in the manner provided for by the South Carolina Horizontal Property Act, as amended, S.C. Code Ann. Sec. 27-31-10 et seq. (1976). In conformity with Sections 27-31-30 and 27-31-100 of said Act, the Grantor sets forth the following particulars:

I

LEGAL DESCRIPTION

The lands (the "Real Property") which are hereby submitted to the Regime are described on Exhibit "A" attached hereto and made a part hereof by reference. The Real Property as so described has an area set forth on the survey referenced in said Exhibit "A."

II

SURVEY AND DESCRIPTION OF IMPROVEMENTS

Incorporated herein by reference, as if set forth in full herein, is a plat, referred to in Exhibit "A," showing the location of the building and other improvements (a copy of said plat is attached hereto as Exhibit "B"), an architectural site plan attached hereto as Exhibit "C", floor plans of the buildings which show graphically the dimensions, area, and location of each apartment and General Common Elements affording access to each Apartment. Said floor plans are attached hereto as Exhibit "D." The buildings containing the Apartments have an aggregate area set forth thereon.

III

APARTMENTS AND GENERAL AND LIMITED COMMON ELEMENTS

The Regime consists of Apartments and General and Limited Common Elements submitted to the Regime, as said terms are hereinafter defined.

There are seven (7) separate apartment buildings each containing four apartments. Each apartment building is assigned a separate identifying number (1-7) designation as depicted on the Plat attached hereto as Exhibit "B". Each apartment within each building shall be designated as A, B, C or D. Apartment "A" within each building shall be the apartment located on the second floor left hand side of the building as viewed from the Front Elevation (see Exhibit "D" for a rendition of the Front Elevation). Apartment "B" within each building shall be the apartment located on the second floor on the right hand side of the building as viewed from the Front Elevation. Apartment "C" within each building shall be the apartment located on the first floor on the left side of the building as viewed from the Front Elevation. Apartment "D" within each building shall be the apartment located on the first floor on the right hand side of the building as viewed from the Front Elevation. Apartments, as the term is used herein, shall mean and comprise the twenty-eight (28) separate Apartments which are depicted in Exhibit "D" to this Master Deed, including but not limited to the space, partition walls, fixtures, HVAC system and appliances therein, excluding, however, all spaces and improvements lying beneath the undecorated and/or unfinished inner surfaces of the perimeter walls and floors, and above the undecorated and/or unfinished inner surfaces of the ceilings of each Apartment, and further excluding all spaces and improvements lying beneath the undecorated and/or unfinished inner surface of all interior load-bearing columns, and further excluding all pipes, ducts, wires, conduits and other facilities running through any interior wall or partition for the furnishing of utility services to Apartments and Limited and General Common Elements. The Apartments include the living room, kitchen area, including appliances therein, bathrooms, bedrooms, closets and the HVAC System, notwithstanding the fact that parts of the HVAC System lie within the inner surfaces of the perimeter of walls and floors and outside of the building itself. There are twenty-eight (28) Apartments and they are generally described as follows:

Apartments 1 through 28. The Apartments contain approximately 1280 square feet in heated space and 130 square feet in storage space. Each Apartment is contained on one floor and is comprised of three (3) bedrooms, three (3) bathrooms, a kitchen area and a living room.

It is understood, however, that the general descriptions above, together with the descriptions thereof depicted in Exhibit "D" are as designed by Grantor and do not reflect any modification made by the owners of the individual Apartment.

General common elements mean and include:

- (1) The land on which the building stands, more fully described above, together with all the other real property described in Exhibit "A";

MASTER DEED OF THE RETREAT AT EDISTO 2000-479VIM

104.077
The Retreat, LLC0488

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(2) The foundations, main walls, roofs, halls and communication ways of the buildings in existence or to be installed;

(3) The yards, patio, shrubs, planter boxes, exterior lights, fire alarms, fire hoses, signs, and storm drainage system, except as otherwise provided or stipulated;

(4) The compartments or installations of central services such as power, light, telephone, television, cold and hot water, refrigeration, generator, fuel tank and water pump, garbage, and the like, including maintenance or janitorial facilities;

(5) The swimming pool and tennis court facilities;

(6) In general, all devices or installations existing for common use; and

(7) All other elements of the property rationally of common use or necessary to its existence, upkeep, and safety.

Limited Common Elements means and includes:

(1) Any exterior stairways, balconies, entrance or exit ways, and all exterior doors and windows or other fixtures designed to serve one or more, but less than all Apartments, are limited common elements allocated exclusively to such Apartment or Apartments.

(2) If any flue, duct, wire, conduit, load bearing wall, load bearing column, or any other fixture lies partially within and partially outside the designated boundaries of an Apartment, any portion serving only that Apartment is a limited common element allocated solely to that Apartment.

(3) There shall be assigned to each Apartment three (3) parking spaces. Two parking spaces will be assigned to each Apartment under the building in which each Apartment is contained. There shall also be one guest parking space assigned to each Apartment, which shall be located in the parking areas around the lagoon shown on Exhibit "B" and "C".

IV

OWNERSHIP OF APARTMENTS AND APPURTENANT INTEREST IN GENERAL COMMON ELEMENTS

An Apartment in the Regime may be individually conveyed and encumbered and may be the subject of ownership, possession, or sale, and of all types of juridical acts, inter vivos or mortis causa, as if it were solely and entirely independent of the other Apartments in the Regime of which it forms a part, and the corresponding individual titles and interests are recordable. Any

apartment may be held and owned by more than one person as tenants in common or in any other form of real property ownership recognized in this State.

An Apartment owner shall have the exclusive ownership of his Apartment and shall have a common right to a share, with the other Co-owners, in the common elements of the Regime, equivalent to the percentage representing the value of the individual Apartment, with relation to the value of the whole Regime. This percentage, which is set forth on Exhibit "E" attached hereto and made a part hereof by reference, shall have a permanent character, and shall not be altered without the acquiescence of the Co-owners representing all the Apartments of the Regime.

The basic value, which shall be fixed for the sole purpose of this Master Déed and irrespectively of the actual value, shall not prevent each Co-owner from fixing a different circumstantial value to his Apartment in all types of acts and contracts.

V

RESTRICTION AGAINST FURTHER SUBDIVIDING
OF APARTMENTS AND SEPARATE CONVEYANCE
OF APPURTENANT COMMON ELEMENTS, ETC.

No Apartment may be divided or subdivided into a smaller Apartment or smaller Apartments than as described in Exhibit "D" attached hereto, nor shall any Apartment, or portion thereof, be added to or incorporated into any other Apartment. The undivided interest in the General and Limited Common Elements declared to be an appurtenance to each Apartment shall not be conveyed, devised, encumbered, or otherwise dealt with separately from said Apartment and the undivided interest in General and Limited Common Elements appurtenant to each Apartment shall be deemed conveyed, devised, encumbered, or otherwise included with the Apartment even though such undivided interest is not expressly mentioned or described in the instrument conveying, devising, encumbering, or otherwise dealing with such Apartment. Any conveyance, mortgage, or other instrument which purports to effect the conveyance, devise, or encumbrance, or which purports to grant any right, interest or lien in, to, or upon an Apartment, shall be null, void, and of no effect insofar as the same purports to affect any interest in an Apartment and its appurtenant undivided interest in General and Limited Common Elements, unless the same purports to convey, devise, encumber, or otherwise trade or deal with the entire Apartment. Nothing herein contained shall be construed as limiting or preventing ownership of any Apartment and its appurtenant undivided interest in the General and Limited Common Elements by more than one person or entity as tenants in common, joint tenants, or any other form of real property ownership recognized in this State. All Common Elements, including but not limited to parking and recreational facilities, shall be owned by the Regime and may not be subject to a lease between the Apartment owners (or the Association) and another party.

VI

HORIZONTAL PROPERTY REGIME
SUBJECT TO RESTRICTIONS, ETC.

Each and every Apartment and the General and Limited Common Elements shall be, and are hereby declared to be, subject to the restrictions, easements, conditions, and covenants prescribed and established herein, governing the use of said Apartment and General and Limited Common Elements, and setting forth the obligations and responsibilities incident to ownership of each Apartment and its appurtenant undivided interest in the General and Common Elements. Said Apartments and General and Limited Common Elements are further declared to be subject to the restrictions, easements, conditions, and limitations now of record affecting the land and improvements of the Apartment.

VII

PERPETUAL NON-EXCLUSIVE EASEMENTS
IN GENERAL COMMON ELEMENTS

The General Common Elements shall be, and are hereby declared to be, subject to a perpetual non-exclusive easement in favor of all of the Co-owners of Apartments in the Horizontal Property Regime for their use and the use of their immediate family, guests, and invitees, for all proper and normal purposes, and for the furnishing of services and facilities for which the same are reasonably intended, or the enjoyment of said Co-owners of Apartments. Notwithstanding anything above provided in this article, The Retreat at Edisto Co-owners Association, Inc.; (hereinafter called "the Association") shall have the right to establish the rules and regulations pursuant to which the Co-owner or Co-owners of any Apartment may be entitled to the use of any General or Limited Common Elements.

The entrance from Jungle Road as shown on Exhibit "C" is achieved by a perpetual easement reserved by Grantor and submitted to the Regime by this Master Deed. The entrance crosses over a proposed bridge for which State and Federal permits have not been finalized at the time this Master Deed has been executed by Grantor. If for any reason the necessary permits for the construction of the proposed bridge are not obtained, Grantor shall provide access to the project from Jungle Road via an alternate route. Grantor hereby reserves the right to provide for the alternate route from Jungle Road by filing in the Office of the Clerk of Court for Colleton County an amendment to this Master Deed to submit the alternate route to the Regime on Grantor's terms and conditions and without the consent of the Co-owners.

The Grantor reserves unto itself and its successors or assigns an easement, including a construction easement, through all General and Limited Common Elements as may be reasonably necessary for the purpose of discharging Grantor's rights or obligations of exercising special Grantor rights reserved in this Master Deed.

VIII

PERPETUAL EXCLUSIVE EASEMENT TO USE
LIMITED COMMON ELEMENTS

Each Co-owner shall have the exclusive right to use the Limited Common Elements allocated to such Co-owner's Apartment for his use and the use of his immediate family, guests, and invitees for all proper and normal purposes. Such right to use shall be a perpetual exclusive easement in favor of such Co-owner.

IX

EASEMENT FOR UNINTENTIONAL
AND NON-NEGLIGENT ENCROACHMENTS

In the event that any portion of the General and Limited Common Elements now or hereafter encroaches upon any Apartment, or vice versa, or in the event that any portion of one Apartment now or hereafter encroaches upon another Apartment, a valid easement for the encroachment and for the maintenance of the same, so long as it stands, does and shall exist.

X

RESTRAINT UPON SEPARATION AND PARTITION
OF GENERAL AND LIMITED COMMON ELEMENTS

The Common elements, both general and limited, shall remain undivided and shall not be the object of an action for partition or division of the co-ownership. Any covenant to the contrary shall be void.

All of the Co-owners or the sole owner of the Regime may waive the Regime and regroup or merge the records of the individual apartments with the Real Property, provided that the individual apartments are unencumbered, or if encumbered, that the creditors in whose behalf the encumbrances are recorded agree to accept as security the undivided portions of the property owned by the debtors.

Subject to the other provisions of this Article X, unless all of the first mortgagees (based upon one vote for each first mortgage owned) or owners (other than the Grantor) of the Apartments have given their prior written approval, the Association shall not be entitled to:

(a) by act or omission, seek to abandon or terminate the Regime or legal status of the project as a condominium;

(b) change the pro rata interest or obligations of any Apartment for the purpose of: (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or

condemnation awards, or (ii) determining the pro rata share of ownership of each Apartment in the General and Limited Common Elements;

(c) partition or subdivide any Apartment; or

(d) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the common elements. The granting of easements for public utilities or for other public purposes consistent with the intended use of the common elements by the Regime or Association shall not be deemed a transfer within the meaning of this subparagraph (d).

The vote of Co-owners representing two-thirds of the total value of the property shall be required to modify the system of administration of the Association. These provisions shall not apply to amendments to the constituent documents or termination of the Condominium Regime made as a result of destruction, damage, or condemnation pursuant to the provisions of this Master Deed or the other constituent documents.

XI

RIGHTS OF ELIGIBLE MORTGAGE HOLDERS AND ELIGIBLE INSURERS OR GUARANTORS

1. Notice of Action. Upon written request to the Association, identifying the name and address of the holder, insurer, or guarantor and the Apartment number or address, any such eligible mortgage holder or eligible insurer or guarantor will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Regime or any Apartment on which there is a first mortgage held, insured, or guaranteed by such eligible mortgage holder or eligible insurer or guarantor, as applicable;

(b) Any delinquency in the payment of assessments or charges owed by a Co-owner of a Apartment subject to a first mortgage held, insured, or guaranteed by such eligible holder or eligible insurer or guarantor, which remains uncured for a period of sixty (60) days;

(c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and

(d) Any proposed action which would require the consent of a specified percentage of eligible mortgage holders as specified in this Master Deed.

2. Other Provisions for Eligible Mortgage Holders. To the extent permitted by applicable law, eligible mortgage holders shall also be afforded the following rights:

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(a) Any restoration or repair of the Regime, after a partial condemnation or damage, due to an insurable hazard, shall be performed substantially in accordance with this declaration (Master Deed) and the original plans and specifications, unless other action is approved by eligible holders holding mortgages on Apartments which have at least fifty-one percent (51%) of the votes of Apartments subject to eligible mortgage holders;

(b) Notwithstanding S.C. Code Ann. Section 27-31-250 (1976), any election to terminate the legal status of the Regime after substantial destruction or a substantial taking in condemnation of the Regime property must require the approval of eligible holders holding mortgages on Apartments which have at least fifty-one percent (51%) of the votes of Apartments subject to eligible holder mortgages;

(c) No reallocation of interests in the common areas resulting from a partial condemnation or partial destruction of such a Regime may be affected without the prior approval of eligible holders holding mortgages on all remaining Apartments, whether existing in whole or in part, and which have at least fifty-one percent (51%) of the votes of such remaining Apartments subject to eligible holder mortgages; and

(d) When professional management has been previously required by any eligible mortgage holder, insurer, or guarantor, whether such entities became an eligible mortgage holder, insurer or, guarantor at that time or later, any decision to establish self-management by the Association shall require the prior consent of Co-owners of Apartments to which at least sixty-seven percent (67%) of the votes in the Association are allocated and the approval of eligible holders holding mortgages on Apartments which have at least fifty-one percent (51%) of the votes of Apartments subject to eligible mortgages holders.

3. Non-Material Amendments to Master Deed. An addition or amendment to this Master Deed, By-Laws, or other exhibits shall not be considered material if it is for the purpose of correcting technical errors or for the exercise of rights retained by Grantor in this Master Deed. An eligible mortgage holder who receives a written request to approve additions or amendments who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

4. Material Amendments to Master Deed. In addition to the foregoing requirements, Amendments of a material nature must be agreed to by apartment owners who represent at least sixty-seven percent (67%) of the total allocated votes in the Association and by eligible mortgage holders who represent at least fifty-one percent (51%) of the votes that are subject to mortgages held by eligible holders. An eligible mortgage holder who receives a written request to approve additions or amendments who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request. A change to any of the provisions governing the following would be considered as material:

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- (a) voting rights;
- (b) increases in assessments that raise the previously assessed amount by more than twenty-five percent (25%), assessment liens, or the priority of the assessment liens;
- (c) reductions in reserves for maintenance, repair, and replacement of common elements;
- (d) responsibility for maintenance and repairs;
- (e) reallocation of interests in the General or Limited Common Elements;
- (f) redefinition of any Apartment boundaries;
- (g) convertibility of Apartments into common elements; or vice versa;
- (h) expansion or contraction of the Regime, or the addition, annexation, or withdrawal of property to or from the Regime;
- (i) hazard or fidelity insurance requirements;
- (j) imposition of any restrictions on the leasing of the Apartments;
- (k) imposition of any restrictions on an Apartment owner's right to sell or transfer his or her Apartment; and
- (l) any provisions that expressly benefit mortgage holders, insurers, or guarantors.

XII

RESIDENTIAL USE RESTRICTION

Each Apartment is hereby restricted to residential use by the Co-owner or Co-owners thereof, their immediate families, guests, tenants, lessees, licensees, and invitees; provided, however, that so long as the Grantor shall retain any interest in the Regime, it may utilize an Apartment or Apartments of its choice owned or leased by Grantor from time to time, for a sales office, model, or other usage for the purpose of selling Apartments in said Regime. Grantor may assign this commercial usage right to such other persons or entities as it may choose. However, this right of commercial usage retained by Grantor shall cease when Grantor has conveyed all of its interest in the Property to third persons. No "For Sale" or "For Rent" signs or the like shall be permitted on any General or Limited Common Element or any Apartment so as to be visible from any General

MASTER DEED OF THE RETREAT AT EDISTO/2000-479JDM

or Limited Common Element or public street or area, other than any sign placed upon the sales office or model by Grantor. Nothing herein shall prevent the Association from leasing portions of the Common Elements to management companies for use as an office, model or other purpose connected with the management of the Regime or to grant licenses and easements over the common areas for utilities, roads, and other purposes reasonably necessary or usable for the proper maintenance and operation of the Regime. Any lease or rental agreement concerning the use of the Apartment must be in writing and subject to the requirements of the Master Deed and the rules and regulations of the Association.

XIII

USE OF GENERAL COMMON ELEMENTS
SUBJECT TO RULES OF ASSOCIATION

The use of General Common Elements by the Co-owner or Co-owners of all Apartments, and all other parties authorized to use the same shall be at all times subject to such reasonable rules and regulations as may be prescribed and established governing such or which may hereafter be prescribed and established by the Association.

XIV

HORIZONTAL PROPERTY REGIME TO BE USED FOR
LAWFUL PURPOSES, RESTRICTION AGAINST NUISANCES, ETC.

No immoral, improper, offensive, or unlawful use shall be made of any Apartment or of the General and Limited Common Elements, nor any part thereof, and all laws, zoning ordinances, and regulations of all governmental authorities having jurisdiction over the Regime shall be observed. No Co-owner of any Apartment shall permit or suffer anything to be done or kept in his Apartment, or on the General or Limited Common Elements, which will increase the rate of insurance on the Regime, or which will obstruct or interfere with the rights of other occupants of the building or annoy them by unreasonable noises, nor shall any such Co-owner undertake any use or practice which shall create and constitute a nuisance to any other Co-owner of an Apartment, or which interferes with the peaceful possession and proper use of any other Apartment or the General or Limited Common Elements.

XV

RIGHT OF ENTRY INTO APARTMENTS IN EMERGENCIES

In case of any emergency originating in or threatening any Apartment, regardless of whether the Co-owner is present at the time of such emergency, the Board of Directors of the Association or any other person or firm authorized by it, or the building superintendent or managing agent, shall have the right to enter such Apartment for the purpose of remedying or abating the cause of such emergency, and such right of entry shall be immediate. To facilitate entry in the event of any

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such emergency, the Co-owner of each Apartment, if required by the Association, shall deposit under the control of the Association a key to such Apartment.

XVI

RIGHT OF ENTRY FOR MAINTENANCE
OF GENERAL COMMON ELEMENTS

Whenever it is necessary to enter any Apartment for the purpose of performing any maintenance, alteration, or repair to any portion of the Common Elements, the Co-owner of each Apartment shall permit other Co-owners or their representatives, or the duly constituted and authorized agent of the Association, to enter such Apartment, provided that such entry shall be made only at reasonable times and with reasonable advance notice.

XVII

LIMITATION UPON RIGHT OF CO-OWNERS
TO ALTER AND MODIFY APARTMENTS

No Co-owner of an Apartment shall permit any structural modification or alterations to be made therein without first obtaining the written consent of the Association, whose consent may be withheld if a majority of the Board of Directors of said Association determine, in their sole discretion, that such structural modifications or alterations would affect or in any manner endanger the building in part or in its entirety. If the modification or alteration desired by the Co-owner of any residential Apartment involves the removal of any permanent interior partition, the Association shall have the right to permit such removal so long as the permanent interior partition to be removed is not a load-bearing partition, and so long as the removal thereof would in no manner affect or interfere with the provision of utility services constituting General or Limited Common Elements located therein. No Co-owner shall cause the porch abutting his Apartment to be enclosed, or cause any improvements or changes to be made on the exterior of the building, the porches, or railings, including painting or other decoration, or the installation of electrical wiring, wire, screening, any railing cover, television antenna, machines or air conditioning units which may protrude through the walls or roof of the building, or in any manner change the appearance of any portion of the building, including porches and railings not within the walls of such Apartment. No storm panels or awnings shall be affixed to any Apartment without first obtaining the written consent of the Association.

XVIII

RIGHT OF THE ASSOCIATION TO ALTER AND IMPROVE
GENERAL AND LIMITED COMMON ELEMENTS AND ASSESSMENT THEREFOR

The Association shall have the right to make or cause to be made alterations, modifications, and improvements to the General and Limited Common Elements, provided such alterations,

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modifications, or improvements are first approved in writing by the Board of Directors of the Association and also by the Co-owners of sixty-seven percent (67%) or more of the Apartments in the entire Regime. The cost of such alterations, modifications, or improvements shall be assessed as common expenses and collected from the Co-owners of all Apartments according to their percentage of ownership of the General and Limited Common Elements.

XIX

MAINTENANCE AND REPAIR BY CO-OWNERS OF APARTMENTS

Every Co-owner must perform promptly all maintenance and repair work within his Apartment which, if omitted, would adversely affect the Regime in its entirety or in a part belonging to other Co-owners, and is expressly responsible for the damages and liability which his failure to do so may engender. The Co-owner of each Apartment shall be liable and responsible for the maintenance, repair, and replacement, as the case may be, of all air conditioning and heating equipment located within the Apartment, hot water heaters, stoves, refrigerators, garbage disposals, dishwashers, fans, or other appliances or equipment, including any fixtures and/or their connections or receptacles required to provide water, light, power, telephone, television, and sewerage and sanitary service to his Apartment and which may now or hereafter be situated in his Apartment including toilets, lavatories, sinks, tubs, and showers. Such Co-owner shall further be responsible and liable for maintenance, repair, and replacement of any and all window glass, glass doors, wall, ceiling and floor surfaces or coverings, painting, decorating and furnishings, and all other accessories which such Co-owner may desire to place or maintain in his Apartment. Whenever the maintenance, repair, and replacement of any items for which the Co-owner of an Apartment is obligated to maintain, repair, or replace at his own expense is occasioned by any loss or damage which may be covered by any insurance maintained in force by the Association, the proceeds of the insurance received by the Association, or the Insurance Trustee hereinafter designated, shall be used for the purpose of making such maintenance, repair, and replacement. Any cost of maintenance, repair, or replacement, by reason of the applicability of any deductibility provision of such insurance which is not paid by the insurance of the Association, shall be paid by such Co-owner. Reference is made to S.C. Code Ann. Section 27-31-250 (1976) as amended, which is controlling of insurance proceeds use when said code section is applicable by its terms.

XX

MAINTENANCE AND REPAIR OF GENERAL
AND LIMITED COMMON ELEMENTS BY THE ASSOCIATION

The Association, at its expense, shall be responsible for the maintenance, repair, and replacement of all of the General and Limited Common Elements, including those portions thereof which contribute to the support of the building, and all conduits, ducts, plumbing, wiring, and other facilities located in the General or Limited Common Elements for the furnishing of utility services to the Apartments and said General and Limited Common Elements. Should any

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incidental damage be caused to any Apartment by virtue of any work which may be done or caused to be done by the Association in the maintenance, repair, or replacement of any General or Limited Common Elements, the Association shall, at its expense, repair such incidental damage. The Association shall also be responsible for insuring that the Association's management company, if any, conducts a visual inspection of the building a minimum of twice a year, or as necessary, for the purpose of determining needed repairs and maintenance to insure that the building does not deteriorate and compromise the water tight nature of the exterior skins and to effect the maintenance repair and replacement of these exterior skins.

The visual inspection shall include, but not be limited to, the following:

1. Sealant around doors, windows, and all dissimilar materials.
2. Re-coat, as necessary, the Thompson Water Seal product, or similar product, on the street side walkways at each raised floor slab.
4. Roof, flashing and roof penetrations of mechanical units.
5. Handrail sleeves and anchorage.

XXI

PERSONAL LIABILITY AND RISK OF LOSS OF CO-OWNER
AND APARTMENT AND SEPARATE INSURANCE COVERAGE, ETC.

The Co-owner of each Apartment may, at his own expense, obtain insurance coverage for loss of or damage to any furniture, furnishings, personal effects, and other personal property belonging to such Co-owner and may, at his own expense and option, obtain insurance coverage against personal liability or injury to the person or property of another while within such Co-owner's Apartment or upon the General or Limited Common Elements. All such insurance obtained by the Co-owner of each Apartment shall, where available, provide that the insurer waives its right of subrogation as to any claims against other Co-owners of Apartments, the Association, and the respective servants, agents and guests of said other Co-owners and the Association. Risk of loss or, damage to any furniture, furnishings, personal effects, and other personal property (other than such furniture, furnishings, and personal property constituting a portion of the General or Limited Common Elements or which is insured by the Association) belonging to a Co-owner or carried on the person of the Co-owner of each such Apartment or carried by such Co-owner in, to, or upon General or Limited Common Elements shall be borne by the Co-owner of each such Apartment. All furniture, furnishings, and personal property constituting a portion of the General or Limited Common Elements and held for the joint use and benefit of all Co-owners of all Apartments shall be covered by such insurance as shall be maintained in force and effect by the Association as hereinafter provided. The Co-owner of an Apartment shall have no personal liability for any damages caused by the Association or in connection with the use of the General or Limited Common Elements. The Co-owner of an Apartment shall be liable for injuries or damage resulting from an accident in his own Apartment, to the same extent and degree that the Co-owner of a house would be liable for an accident occurring within the house.

XXII

CONDEMNATION

A. Apartments Acquired. If an Apartment is acquired by eminent domain, or if part of an Apartment is acquired by eminent domain, leaving the Apartment owner with a remnant which may not practically or lawfully be used for any purpose permitted by this Master Deed, the award must compensate the Apartment owner for his Apartment and its General and Limited Common Element interest, whether or not any General or Limited Common Element interest is acquired. Upon acquisition, unless the decree otherwise provides, that Apartment's entire General and Limited Common Element interest, votes in the Association, and common expense liability are automatically reallocated to the remaining Apartments in proportion to the respective interests and votes, and the Association shall promptly prepare, execute, and record an amendment to this Master Deed reflecting the reallocations. Any remnant of an Apartment remaining after part of an Apartment is taken under this subsection is thereafter a General and Limited Common Element.

B. Part of Apartment Acquired. Except as provided above, if part of an Apartment is acquired by eminent domain, the award must compensate the Apartment owner for the reduction of value of the Apartment and its common element interest. Upon acquisition, (1) that Apartment's Limited and General Common Element percentage interest, votes in the Association, and common expense liability are reduced in proportion to the reduction in size of the Apartment, and (2) the portion of Limited and General Common Element interest, votes, and common expense liability divested from the partially acquired Apartment are automatically reallocated to that Apartment and the remaining Apartments in the percentages set out in Exhibit "D".

C. Claims. The Board of Directors of the Association shall have exclusive authority to negotiate and settle on behalf of the owners all claims arising from condemnation of any portion or all of the Apartments or General or Limited Common Elements and the owners hereby appoint the Board of Directors as their attorney in fact for this purpose. Any proceeds from such condemnation shall be distributed in accordance with the provisions of Article XXIII INSURANCE, Paragraph F Insurance Proceeds.

XXIII

INSURANCE

A. Hazard Insurance. The Association shall insure all Apartments and all General and Limited Common Elements against all hazards and risks normally covered by a standard hazard policy, including fire and lightning, the hazards and risks covered by "extended coverage," vandalism, and malicious mischief, and by hazards or risks covered by the National Flood Insurance Act, windstorm and hail policies and all other coverage commonly required by lending institutions in the area. All Apartments and all General and Limited Common Elements shall be insured for the full replacement cost thereof, and where possible, the policy of insurance shall

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have a full replacement cost rider. Each year the Association shall update the replacement value cost rider. Such insurance shall cover only the Apartments and General and Limited Common Elements. No insurance of the contents of the Apartment (other than the fixtures originally installed therein by Grantor and being a part of such Apartment) shall be provided by the Association. The hazard insurance obtained by the Association may provide that any amount not to exceed One Thousand Dollars (\$1,000.00) shall be deductible from any indemnity payable on account of a single loss, but any such deductible portion shall be borne by the Association as a Common Expense regardless of the number of Co-owners directly affected by the loss.

B. Liability Insurance. The Association shall also obtain premises liability insurance on all Apartments and General and Limited Common Elements and the policy shall provide for a single limit indemnity of not less than Two and One-Half Million Dollars (\$2,500,000.00) and cover bodily and personal injury and property damage. Such liability insurance shall cover claims of one or more Co-owners against one or more Co-owners as well as claims of third parties against one or more Co-owners. The Association shall not be required however, to obtain public liability insurance covering accidents occurring within the limits of an Apartment or off the Regime Property. If available at a reasonable cost, the Association shall cause premises medical payment coverage to be included within the policy of liability insurance.

C. General Provisions. All insurance obtained on the Apartments and General and Limited Common Elements by the Association shall be written in the name of the Association as trustee for the Owners, and the cost of such insurance shall be a common expense. All such insurance shall be obtained from a company or companies licensed to do business in the State of South Carolina and currently rated "A" or better by Best's Insurance Ratings. No such insurance shall be permitted to expire except upon resolution of sixty-seven percent (67 %) of the Co-owners to that effect and all mortgagees. Duplicate originals of all policies of hazard insurance obtained on the Property by the Board of Directors, together with proof of payment of the premiums thereon, shall be delivered upon request to any Co-owner or to any person holding a security interest in an Apartment.

D. Hazard Policy Provisions. All policies of hazard insurance on the Apartments and General and Limited Common Elements obtained by the Board of Directors shall provide as follows:

1. The indemnity payable on account of any damage to or destruction of the Apartments or General and Limited Common Elements shall be payable to the owner and/or to any persons holding security interests in any damaged Apartments as their interests may appear;
2. The policy shall not be canceled without thirty (30) days' prior written notice to the Board of Directors and to every holder of a security interest in any Apartment who is named in the policy or an endorsement thereto;
3. No Co-owner shall be prohibited from insuring his own Apartment for his own benefit;

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4. No insurance obtained by a Co-owner on his own Apartment shall be brought into contribution with the insurance obtained by the Board of Directors;

5. If the Board of Directors determines that it is possible to obtain such a provision, no right to subrogation shall exist against any owner or members of his household or his social guests;

6. If possible, the policy should provide that the insurer shall not be entitled to reconstruct in lieu of paying the indemnity in cash if the owners determine, in the manner provided in the Master Deed, not to repair or restore the damaged property; and

7. The policy shall not be canceled on account of the actions of one or more of the Co-owners.

If a policy of insurance containing all of the foregoing provisions cannot be obtained at a reasonable cost, one or more of such provisions may be waived by resolution of a sixty-seven percent (67%) of the Co-owners and fifty-one percent (51%) of the mortgagees of Apartments.

E. Claims. The Board of Directors of the Association shall have exclusive authority to negotiate and settle on behalf of the owners all claims arising under policies of hazard insurance obtained on the Property by the Board of Directors except to the extent institutional mortgagees are granted such rights by Co-owners. In the event of damage to or destruction of any portion of the Apartments or General or Limited Common Elements, the Board of Directors shall promptly file a claim for any indemnity due under any such policies. The Board of Directors shall simultaneously notify the holders of any security interest in the Property who may be entitled to participate in such claim of the filing of same.

F. Insurance Proceeds. If the insurance proceeds exceed Five Thousand (\$5,000.00) Dollars, the net proceeds received by the Board of Directors from any indemnity paid under a policy of hazard insurance obtained on the Property by the Board of Directors shall promptly be paid by the Board of Directors to an Insurance Trustee as trustee or the Co-owners as hereinafter provided. The Insurance Trustee shall be a state or federally chartered bank or savings and loan association selected by the Board of Directors and having trust powers and capital and surplus of Five Million Dollars (\$5,000,000.00) or more or a Professional Property Management Company with a like amount of Fidelity insurance coverage. The Insurance Trustee shall hold the insurance proceeds in trust and disburse said proceeds, after deduction of all reasonable fees and expenses of the Insurance Trustee, as follows:

1. If the Co-owners determine, in the manner provided in the Master Deed, not to reconstruct the damaged property, the Insurance Trustee shall distribute the insurance proceeds among all the owners and/or mortgagees with liens upon the Apartments, as their respective interests may appear, in proportion to their respective undivided interests in the portion or portions of the property damaged or destroyed.

2. If the Board of Directors is required to provide for the reconstruction of the damaged property, the Insurance Trustee shall disburse the insurance proceeds to the person or persons employed by the Board of Directors to effect such reconstruction in accordance with written authorizations submitted to the Insurance Trustee by the architect supervising the reconstruction or by the Board of Directors. Any portion of the insurance proceeds remaining after all the costs of reconstructing the Property have been paid shall be disbursed to the Co-owners and their mortgagees in proportion to their interests in the portion or portions of the property repaired or restored.

In making disbursements of the insurance proceeds, the Insurance Trustee shall be entitled to rely upon the written authorization submitted as provided above or upon any written certification of facts submitted to the Insurance Trustee by the Board of Directors as hereinafter provided without further inquiry. The Insurance Trustee shall in no event be responsible for obtaining insurance on the Property, paying the premiums on any such insurance, or filing claims for any payments due under any such insurance.

G. Insurance by Owners. Each co-owner shall be responsible for obtaining such amounts of the following types of insurance as he deems necessary or desirable:

1. Hazard insurance on the contents of his Apartment and on improvements made to his Apartment; and
2. Liability insurance covering accidents occurring within the boundaries of his Apartment.

XXIV

APPORTIONMENT OF TAX OR SPECIAL ASSESSMENT
IF LEVIED AND ASSESSED AGAINST THE REGIME AS A WHOLE

In the event that any taxing authority having jurisdiction over the Regime shall levy or assess any tax or special assessment against the Regime as a whole, as opposed to levying and assessing such tax or special assessment against each Apartment and its appurtenant undivided interest in General and Limited Common Elements as now provided by law, then such tax or special assessment so levied shall be paid as a common expense by the Association, and any taxes or special assessments which are to be levied shall be included wherever possible, in the estimated annual budget of Association, or shall be separately levied and collected as an assessment by the Association, against all of the Co-owners of Apartments and said Apartments if not included in said annual budget. The amount of any tax or special assessment paid or to be paid by the Association in the event that such tax or special assessment is levied against the Regime, as a whole, instead of against each separate Apartment and its appurtenant undivided interest in General and Limited Common Elements shall be apportioned among the Co-owners of all Apartments so that the amount of such tax or special assessment so paid or to be paid by the

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Association and attributable to and to be paid by the Co-owner or Co-owners of each Apartment shall be that portion of such total tax or special assessment which bears the same ratio to said total tax or special assessment as the undivided interest in General and Limited Common Elements appurtenant to each Apartment bears to the total undivided interest in General and Limited Common Elements appurtenant to all Apartments. In the event that any tax or special assessment shall be levied against the Regime in its entirety, without apportionment by the taxing authority of the Regime and appurtenant undivided interests in General and Limited Common Elements, then the assessment by the Association, which shall include the proportionate share of such tax or special assessment attributable to each Apartment and its appurtenant undivided interest in General and Limited Common Elements, shall separately specify and identify the amount of such assessment attributable to such tax or special assessments and the amount of such tax or special assessment so designated shall be a lien prior to all mortgages and encumbrances upon any Apartment and its appurtenant undivided interest in General and Limited Common Elements, regardless of the date of the attachment and/or recording of such mortgage or encumbrance, to the same extent as though such tax or special assessment had been separately levied by the taxing authority upon each Apartment and its appurtenant undivided interest in General and Limited Common Elements.

XXV

AMENDMENT OF MASTER DEED

Neither this Master Deed nor any of its provisions shall be revoked or amended without the acquiescence of the Co-owners owning at least two-thirds (2/3) of the Apartments and at least two-thirds (2/3) of the total interest in the General and Limited Common Elements and the record holders of encumbrances affecting at least two-thirds (2/3) of the Apartments and at least two-thirds (2/3) of the total interest in the General and Limited Common Elements, except that the system of administration as set forth in the Articles of Incorporation and By-Laws may be amended and modified from time to time in accordance with the provisions of the South Carolina Horizontal Property Act and other applicable provisions of the Code of Laws of South Carolina. Any such amendment or revocation shall be executed and subscribed with the same formalities required in South Carolina for the making of deeds, and recorded in the public records of Colleton County.

Without limiting the foregoing, the Grantor, its successors or assigns, "acting alone" shall have the power, but not the obligation, at any time (and from time to time), to amend the Master Deed to cause the same to conform to the requirements of the South Carolina Horizontal Property Act, the Federal National Mortgage Association, and/or the Federal Home Loan Mortgage Corporation, as set forth, respectively, in "FNMA Conventional Home Mortgage Selling Contract Supplement" and "Seller's Guide to Conventional Mortgages," as the same may be amended from time to time.

REMEDIES IN EVENT OF DEFAULT

The Co-owner or Co-owners of each Apartment shall be governed by and shall comply with the provisions of this Master Deed, the Articles and the By-Laws of the Association, and its rules and regulations as any of the same are now constituted or as they may be adopted and/or amended from time to time. A default by the Co-owner or Co-owners of any Apartment shall entitle the Association or the Co-owner or Co-owners of other Apartments to the following relief:

A. Failure to comply with any of the terms of this Master Deed or other restrictions and regulations contained in the Articles of Incorporation, By-Laws of the Association, its rules and regulations, or decisions made pursuant thereto shall be grounds for relief which may include, without intending to limit the same, an action to recover sums due for damages, injunctive relief, foreclosure of lien or any combination thereof. Relief may be sought by the Association, or if appropriate, by an aggrieved Co-owner of an Apartment or both;

B. The Co-owner or Co-owners of each Apartment shall be liable for the expense of any maintenance, repair, or replacement rendered necessary by his act, neglect, or carelessness, or by that of any member of his family, or his or their guests, employees, agents, or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy, or abandonment of an Apartment or its appurtenances. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation;

C. In any proceeding arising because of an alleged default by the Co-owner of any Apartment, the Association, if successful, shall be entitled to recover the costs of the proceedings and such reasonable attorney's fees as may be determined by the Court, and the Co-owner of any Apartment shall be entitled to such attorney's fees and costs if successful in such action;

D. The failure of the Association or of the Co-owner of an Apartment to enforce any right, provision, covenant, or condition which may be granted by this Master Deed or other above mentioned documents shall not constitute a waiver of the right of the Association or of the Co-owner of an Apartment to enforce such right, provision, covenant, or condition in the future;

E. All rights, remedies, and privileges granted to the Association or the Co-owner (s) of an Apartment pursuant to any terms, provisions, covenants or conditions of this Master Deed or other above mentioned documents, shall be deemed to be cumulative and the exercise of any one or more shall not be deemed to constitute an election of remedies nor shall it preclude the party thus exercising the same from exercising such other and additional right, remedies, or privileges as may be available to such party at law or in equity; and

F. The failure of the Grantor or the lender to enforce any right, privilege, covenant, or condition which may be granted to them, or either of them, by this Master Deed or other above mentioned document shall not constitute waiver of the right of either of said parties to thereafter enforce such right, provision, covenant, or condition in the future.

XXVII

USE OR ACQUISITION OF INTEREST IN THE
REGIME TO RENDER USER OR ACQUIRER SUBJECT
TO PROVISIONS OF MASTER DEED RULES AND REGULATIONS
BYLAWS AND BINDING ARBITRATION

All present or future Co-owners, tenants, or any other person who might use the facilities of the Regime in any manner are subject to the provisions of this Master Deed and all documents appurtenant thereto and incorporated herewith. The acquisition or rental of any Apartment, or the mere act of occupancy of any Apartment, shall signify that the provisions of this Master Deed, By-laws, and Rules and Regulations of the Association are accepted and ratified in all respects. Such owner or occupant agrees that any dispute arising out of use, ownership or occupancy of an apartment or the Common Elements in Regime and any complaint against the Grantor shall be settled by binding arbitration pursuant to the South Carolina Arbitration Act.

XXVIII

COUNCIL OF CO-OWNERS ASSOCIATION,
CONTROL OF BOARD OF DIRECTORS

Subject to the remainder of this paragraph, the Grantor may appoint and remove members of the Board of Directors of the Association of the Co-owners ("Board") for a period not exceeding five (5) years from the date of the first conveyance of any Apartment to a person other than the Grantor. This period of Grantor control terminates no later than sixty (60) days after conveyance of seventy-five percent (75%) of the Apartments to Apartment owners other than the Grantor. The Grantor may voluntarily surrender the right to appoint and remove members of the Board before termination of that time period. After termination of the Grantor's control, any or all of the Board of Directors may be removed or replaced by written petition signed by the Co-owners having more than fifty percent (50%) of the votes of the Association. The petition shall state the name(s) of the Board of Directors being removed and the name(s), address(es) and telephone number(s) of the replacement Director(s).

Whenever Grantor shall be entitled to designate and select any person or persons to serve on any Board of Directors of the Association, the manner in which such person or persons shall be designated shall be as provided in the Articles and/or By-Laws of the Association. Grantor shall have the right to remove any person or persons selected by it to act and serve on said Board of Directors and to replace such person or persons with another person or other persons to act and serve in the place of any director or directors so removed from the remainder of the unexpired

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term of any director or directors so removed. Any director designated and selected by Grantor need not be an owner or a resident in the Regime. Anything to the contrary notwithstanding, the power in the Grantor to designate directors shall terminate on January 1, 2006.

Any representative of Grantor serving on the Board of Directors of the Association shall not be required to disqualify himself upon any vote upon any management contract or other matter between Grantor and Association where the said Grantor may have a pecuniary or other interest. Similarly, Grantor as a member of the Association, shall not be required to disqualify itself in any vote which may come before the membership of the Association upon any management contract or other matter between Grantor and Association where Grantor may have a pecuniary or other interest.

Transfer of Rights. All rights, duties and obligations of the Grantor herein may be experienced or performed by the Grantor, its successors and assigns.

XXIX

ANNUAL REPORTS TO BE PROVIDED TO LENDER

So long as any institutional lender is the Co-owner or holder of a mortgage encumbering an Apartment in the Regime, the Association shall furnish said lender upon request with at least one copy of the annual financial statement and report of the Association audited satisfactorily, setting forth such details as the said lender may reasonably require, including a detailed statement of annual carrying charges or income collected and operating expense, with such financial statement and report to be furnished within ninety (90) days following the end of each fiscal year.

Such statement shall be prepared in accordance with generally accepted accounting principles and shall contain the certificate of the accountant or accounting firm to that effect. Further, the accountant or accounting firm shall include as a special item(s) any information to which a reasonable man would attach importance in the management of his own financial affairs, should said information not appear readily from the face of the statement.

The Association shall make available to Apartment owners, lenders, lien holders, insurers, or guarantors of any first mortgage current copies of the Master Deed, By-Laws, other rules concerning the project and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances.

Any holder, insurer, or guarantor of a first mortgage shall be entitled, upon written request, to a financial statement of the immediately preceding fiscal year, free of charge to the party so requesting.

Any financial statement requested pursuant to this section shall be furnished within a reasonable time following such request.

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SEVERABILITY

In the event that any of the terms, provisions, or covenants of this Master Deed are held to be partially or wholly invalid or unenforceable for any reason whatsoever, such holding shall not affect, alter, modify, or impair in any manner whatsoever any of the other terms, provisions, or covenants hereof or the remaining portions of any terms, provisions, or covenants held to be partially invalid or unenforceable.

XXXI

MASTER DEED BINDING UPON GRANTOR, ITS
SUCCESSOR AND ASSIGNS, AND SUBSEQUENT CO-OWNERS

The restrictions and burdens imposed by the covenants of this Master Deed are intended to and shall constitute covenants running with the land, and shall constitute an equitable servitude upon each Apartment and its appurtenant undivided interest in General and Limited Common Elements. This Master Deed and all easements reserved herein shall be binding upon Grantor, its successors and assigns, and upon all parties who may subsequently become Co-owners of Apartments in the Regime and their respective heirs, legal representative, and successors and assigns.

XXXII

DEFINITIONS

The definitions contained in S. C. Code Ann. Section 27-31-10 (1976), are hereby incorporated herein and made a part hereof by reference. The word "Unit" shall have the same meaning as "Apartment".

XXXIII

MISCELLANEOUS

Attached hereto as Exhibit "F" and made a part hereof by reference is the Engineer's Certificate required by S. C. Code Ann. Section 27-31-110 (1976).

Attached hereto as an Appendix and made a part hereof by reference is a copy of the By-Laws of the Association, as required by S. C. Code Ann. Section 27-31-150 (1976).

Developer retains the right to use one of the Apartments as a sales office, so long as such use complies with the ordinances of the Town of Edisto Beach.

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IN WITNESS WHEREOF, the Grantor has executed this Master Deed this 13th day of December, 2000.

Signed, sealed and delivered in the presence of:

Adam E. Barr
James A. Duggan

THE RETREAT AT EDISTO, L.L.C.
W. Mark Steedley
By: W. Mark Steedley
Its: Managing Member

STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON)

PROBATE

Personally appeared before me the undersigned witness and made oath that (s) he saw the within-named The Retreat at Edisto, L.L.C., by W. Mark Steedley., its Managing Member sign, seal and as its act and deed, deliver the within written instrument for the uses and purposes therein mentioned, and that (s)he with the other witness witnessed the execution thereof.

Adam E. Barr

Sworn to before me this 13
day of December, 2000
Charlotte D. Male (L.S.)
Notary Public for South Carolina
My Commission Expires: 5/21/02

EXHIBITS

- A Property Description
- B Plat
- C Site Plan
- D Floor Plans
- E Table of Values
- F Engineers Certificate
- G Articles of Incorporation of Association
- H By-Laws

EXHIBIT "A"

PROPERTY DISCRIPTION: STAGE I

MASTER DEED OF THE RETREAT AT EDINTO200-47404

PARCEL 1: All that certain piece, parcel or tract of land situate, lying and being at Edisto Beach in the County of Colleton, State of South Carolina, being shown and designated as Parcel "A" containing 3.724 acres of highland and wetlands on a plat entitled "BOUNDARY SURVEY OF TMS #356-16-00-068 A TOTAL OF 3.724 ACRES OWNED BY 'THE RETREAT AT EDISTO, L.L.C.' LOCATED ON EDISTO ISLAND, COLLETON COUNTY" prepared by David W. Spell, RLS #11477, dated January 8, 2001, and recorded in the Office of the Clerk of Court for Colleton County in Plat Slide 684 at Page 3, said plat being incorporated herein as a part of this description and said lot being bounded now or formerly and measuring more or less as follows: On the Northeast by lands of Jungle Shores, LLC and measuring thereon One Hundred Twenty-Six and Ninety-One Hundredths (126.91') feet; on the Southeast by Lots 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 of Block A, TMS #356-15-00-096 and TMS #356-15-00-097 and measuring thereon a total of One Thousand Eighty-Five and Seventy-Four Hundredths (1,085.74') feet; on the Southwest, Southeast, Northeast and Southeast by TMS #356-15-00-097 and measuring thereon Five and Seventeen Hundredths (5.17') feet; Twenty-Four and Fifty Hundredths (24.50') feet, Four and Ninety-Three Hundredths (4.93') feet and Thirty-Six and Seventy-Eight Hundredths (36.78') feet, respectively; on the Southeast by Lot B, Block A, and Lot A, Block A, and measuring thereon a total of Eighty and Sixty Hundredths (80.60') feet; on the Southwest and Southeast by Lot V, Block 2, and measuring thereon Seventy and Six Hundredths (70.06') feet and One Hundred Forty-Nine and Eighty Hundredths (149.80') feet, respectively; on the Southwest by Mary Street 50' R/W and measuring thereon One Hundred Thirty and Eighty Hundredths (130.80') feet; on the North by Lot U, Block 2, and measuring thereon Eighty-Six and One Hundredth (86.01') feet; on the Northwest by Lot S, Block 2, and measuring thereon Eighty-Three and Twelve Hundredths (83.12') feet; on the Northeast by Lot R, Block 2, and measuring thereon Twenty-Six and Forty-Seven Hundredths (26.47') feet; on the Northwest by Lots R, Q, P, O, N, and M, Block 2, 25' ingress/egress easement, lands of W. Mark Steedley and measuring thereon a total of Eight Hundred Forty-One and Fifty-Six Hundredths (841.56') feet; on the Northeast by Parcel "B" and Parcel "C" and measuring thereon Eight and Seventy-Three Hundredths (8.73') feet and Fourteen and Three Hundred Thirty-Eight Thousandths (14.338') feet, respectively; on the Northwest and West by Parcel "C" and measuring thereon Three Hundred Seventy-Two and Ninety-Three (372.93') feet and Forty-Three and Fifty-Four Hundredths (43.54') feet, respectively; and on the Northwest by lands of Jungle Shores, LLC and measuring thereon Nine and Fifty Hundredths (9.50') feet.

PARCEL 2: A 10' pedestrian easement running in a southeasterly direction from Parcel 1 described hereinabove to Palmetto Boulevard a/k/a SC Hwy 174 as shown on a plat entitled "BOUNDARY SURVEY OF TMS #356-16-00-068 A TOTAL OF 3.724 ACRES OWNED BY 'THE RETREAT AT EDISTO, L.L.C.' LOCATED ON EDISTO ISLAND, COLLETON COUNTY" prepared by David W. Spell, RLS #11477, dated January 8, 2001, and recorded in the Office of the Clerk of Court for

Colleton County in Plat Slide 684 at Page 3.

Parcels 1 and 2 being the same property conveyed to The Retreat at Edisto, L.L.C. by deed of Edisto Beach Land Development, LLC dated January 2, 2001, 2000, and recorded in the Office of the Clerk of Court for Colleton County in Deed Book 923 at Page 286.

PARCEL 3: A 25' ingress/egress easement running in a northwesterly direction from Parcel 1 described hereinabove to Jungle Road a/k/a SC Hwy 590 as shown on a plat entitled "BOUNDARY SURVEY OF TMS #356-16-00-068 A TOTAL OF 3.724 ACRES OWNED BY THE RETREAT AT EDISTO, L.L.C.' LOCATED ON EDISTO ISLAND, COLLETON COUNTY" prepared by David W. Spell, RLS #11477, dated January 8, 2001, and recorded in the Office of the Clerk of Court for Colleton County in Plat Slide 684 at Page 3.

Parcel 3 being the same easement conveyed to The Retreat at Edisto, L.L.C. by deed of W. Mark Steedley dated January 2, 2001, and recorded in the Office of the Clerk of Court for Colleton County in Deed Book 923 at Page 291.

EXHIBIT "B"

PLAT

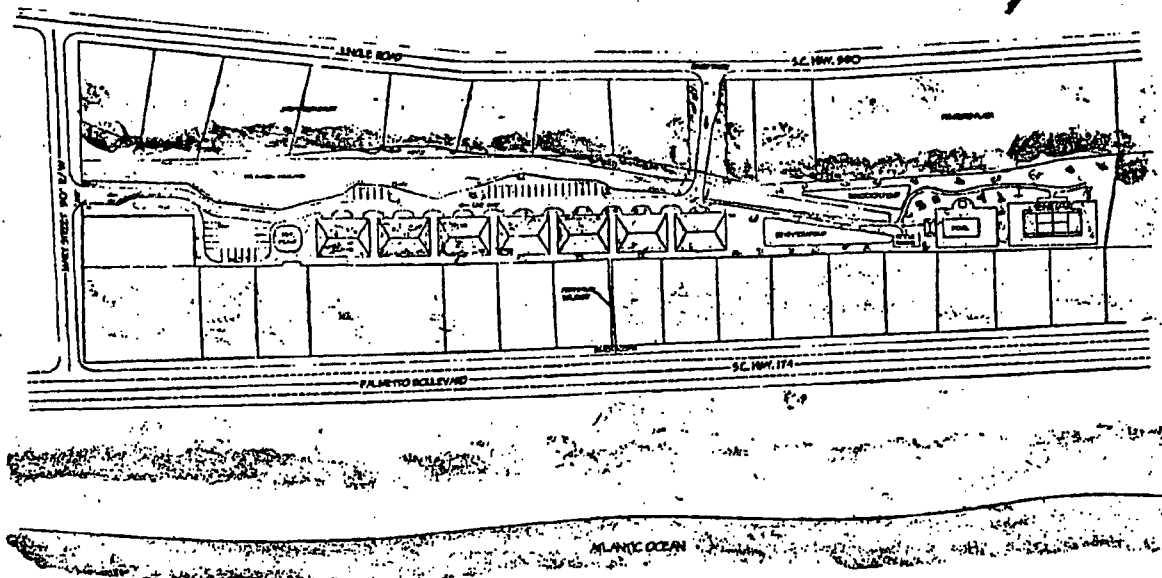
FOR LOCATION OF PLAT SEE PLAT BOOK 684 AT PAGE 3 LOCATED IN
THE OFFICE OF THE CLERK OF COURT FOR COLLETON COUNTY.

EXHIBIT "C"

SITE PLAN

000000202 RI:00924 PG:00171

RETREAT AT EDISTO BEACH



ARCHITECTURAL SITE PLAN

ISLAND DRAFTING SERVICES INC. DRAWN BY: DAN & GMS

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EXHIBIT "D"

FLOOR PLAN

MASTER DEED OF THE RETREAT AT EDISTO/2000-479JIM

104.077
The Retreat, LLC0516

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HCH



H AND CRAFTED HOMES

A N HHHUNT COMPANY

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001	FLOOR PLAN 1ST & 2ND FLOOR PLAN
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001	PLUMBING LAYOUT 1ST & 2ND FLOOR PLUMBING LAYOUT
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001	CROSS SECTION TENANT SEPARATION
001	MEAT & AGG LAYOUT
001	FIRE SPRINKLER LAYOUT

NOTES:

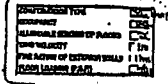
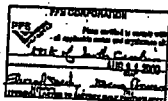
1. IT IS THE BUILDERS RESPONSIBILITY TO INSURE THAT ALL INFORMATION IN THIS PACKAGE COMPLIES TO STATE AND LOCAL ORDINANCES.
2. ALL HVAC EQUIPMENT IS SUPPLIED AND INSTALLED BY BUILDER PER STATE AND LOCAL CODES.
3. BUILDER IS RESPONSIBLE FOR ALL SERVICE ENTRY CONNECTIONS TO MAIN SERVICE PANEL.
4. BUILDER IS RESPONSIBLE FOR ALL PLUMBING CONNECTIONS UNDER 1st FLOOR JOIST AND ALL CONNECTIONS BETWEEN FLOOR AND CEILING.
5. THE BUILDER MUST INFORM THE MANUFACTURER IF THE UNIT IS BEING SHIPPED INTO THERMAL ZONE 11 IN THE STATE OF NORTH CAROLINA.
6. THE BUILDER MUST INFORM THE MANUFACTURER IF THE UNIT IS BEING SHIPPED INTO GREENVILLE, SC IN ORDER TO COMPLY WITH LOCAL RADON CODES.
7. IF THE HOME IS BEING SHIPPED INTO 110 MPH WIND ZONE, ALL FASTENING AND BASEMENT DESIGN MUST COMPLY TO PAGE P-2 OF THE DETAIL MANUAL.

DESIGN SPEC:

1. OCCUPANCY CLASSIFICATION: RESIDENTIAL OCCUPANCY - GROUP R
2. OCCUPANCY SUBCLASSIFICATION: R2 - MULTIPLE DWELLINGS
3. CONSTRUCTION TYPE: TYPE VI - 1 HOUR PROTECTED
4. DESIGN CRITERIA:
 - a) ROOF LIVE LOAD: 20 PSF
 - b) ROOF DEAD LOAD: 15 PSF
 - c) FLOOR LIVE LOAD: 40 PSF
 - d) FLOOR DEAD LOAD: 20 PSF
5. USE FACTOR: 1.0
6. MINIMUM SOIL BEARING CAPACITY: 2000 PSF
7. WIND ZONE: 110 MPH
8. SEISMIC HAZARD EXPOSURE GROUP: GROUP 1
9. SEISMIC PERFORMANCE CATEGORY: CATEGORY C
10. FASTENING:
 - a) FASTENING TO BE PER BY 2003 TABLE 2006.1
 - b) FASTENING NOT SPECIFIED IN TABLE 2006.1 TO BE PER SECTION 2006.2.
11. MECC:
 - a) NUMBER OF STOREYS: 2
 - b) SETBACK FROM ADJACENT PROPERTY LINES: 5 MIN.
 - c) TENANT SEPARATION WALLS: 1 HOUR.

GENERAL NOTES:

1. APPLICABLE CODES:
 - a) 1997 STANDARD BUILDING CODE
 - b) 1999 NATIONAL ELECTRICAL CODE
 - c) 1997 STANDARD PLUMBING CODE
 - d) 1997 STANDARD MECHANICAL CODE
 - e) 1997 STANDARD FIRE PREVENTION CODE



APPROVED
10/1/2003



PLANT LOCATION:
101 EASTERN MINERALS ROAD
HENDERSON, NC 27538
PHONE (252) 438-0001
FAX (252) 430-8882

PROJECT: P_01-00234_2 CONDOMINIUMS

DATE	10/1/2003
PROJECT	P_01-00234_2
DESCRIPTION	CONDOMINIUMS
LOCATION	HENDERSON, NC
SCALE	AS SHOWN
DATE	10/1/2003
PROJECT	P_01-00234_2
DESCRIPTION	CONDOMINIUMS
LOCATION	HENDERSON, NC
SCALE	AS SHOWN

104-077
The Retreat, LLC0517

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FOUNDATION NOTES:

1. SIZE OF FOOTING IS BASED ON AN ALLOWABLE SOIL PRESSURE OF 2,000 PSY. IF THE SOIL IS LESS, THE FOOTING MUST BE DESIGNED IN ACCORDANCE WITH ACCEPTED ENGINEERING PRACTICE.
2. FOUNDATIONS MUST BE A MINIMUM OF 18" BELOW GRADE AND IN NO CASE LESS THAN THE FROST LINE.
3. CONCRETE TO DEVELOP A MINIMUM 28 DAY COMPRESSIVE STRENGTH OF 2,500 PSI.
4. BASEMENT DOORS AND WINDOWS ARE THE RESPONSIBILITY OF THE BUILDER.
5. CRAWL SPACE VENTILATION REQUIREMENTS: a) THE OPENINGS SHALL BE PROVIDED WITH CORROSION RESISTANT WIRE MESH, WITH THE LEAST DIMENSION BEING 1/8", b) THE MINIMUM NET AREA OF VENTILATION OPENINGS SHALL BE NOT LESS THAN 1 SQUARE FOOT FOR EACH 100 SF OF CRAWL SPACE AREA.
6. INSTALL THERMITE SHIELDS PER LOCAL CODE.
7. BUILDER IS TO USE ROTAR TYPE 'S' FOR FOUNDATION CONSTRUCTION PER STATE AND LOCAL CODE.
8. ANCHOR BOLT 1/2" DIAMETER AT 6'-0" O.C.
9. CRAWLSPACE ACCESS TO BE 18" HIGH AND 24" WIDE.
10. THE BUILDER IS TO COMPLETE THE FOUNDATION INCLUDING: FOOTING DRAINS, VAPOR BARRIER, TREATED KILL PLATES, WATERPROOFING, INSULATION, BACK FILL, AND ALL ELECTRICAL, PLUMBING, AND MECHANICAL INSTALLATIONS ON BASEMENT. ALL WORK MUST COMPLY WITH STATE AND LOCAL CODES.

PLUMBING NOTES:

1. DRAIN, WASTE, AND VENT LINES ARE PVC-DWV CONFORMING TO ASTM D-2665.
2. WATER SUPPLY LINES ARE CROSSLINKED POLYETHYLENE TUBING CONFORMING TO ASTM F-876.
3. ALL VENTS THROUGH ROOF MUST PENETRATE A MINIMUM OF 12".
4. RESERVED.
5. A MECHANICAL CONNECTION MUST BE MADE BETWEEN PVC AND ABS.
6. ALL BATHTUBS INCLUDING GARDEN, WHIRLPOOL, AND HOT TUBS SHALL HAVE A MINIMUM OVERFLOW OF 1 1/2".
7. PIPING BETWEEN FIRST AND SECOND FLOORS IS SITE INSTALLED.
8. FREEZE PROTECTION ON CRAWLSPACE PIPING PLUS ALL WORK ON SITE SHALL BE APPROVED BY THE LOCAL BUILDING INSPECTOR.
9. PIPING SHALL BE FIELD TESTED BEFORE CONCEALMENT.
10. ON SITE CONNECTIONS FOR DRAIN AND VENT LINES WILL BE BETWEEN FLOOR AND CEILING IN CRAWLSPACE, AND IN ATTIC AREA.
11. FROST PROOF ROSE BIBS WITH BACKFLOW PREVENTERS WILL BE SHIPPED LOOSE FOR BUILDER TO INSTALL ON SITE.

ELECTRICAL NOTES:

1. ALL WIRING TO BE IN ACCORDANCE WITH THE LATEST ADOPTED NEC.
2. BUILDER IS RESPONSIBLE FOR PERFORMING COMPLETE CIRCUIT TESTING PRIOR TO SERVICE CONNECTION FOR ALL SITE WIRING.
3. EXTERIOR WEATHERPROOF RECEPTACLES AND LIGHT FIXTURES SHIPPED LOOSE FOR ON SITE INSTALLATION BY BUILDER.
4. ALL ELECTRICAL BOXES ON EXTERIOR WALLS TO BE SEALED WITH FOAM GASKETS.
5. CO SHOCK DETECTORS WIRED FOR SIMULTANEOUS OPERATION.
6. FOR ELECTRICAL CALCULATIONS, SEE DETAIL BOOK.
7. ALL CONDUCTORS, DEVICES, AND EQUIPMENT SHALL BE LABELED AND/OR LISTED BY A NATIONALLY RECOGNIZED TESTING AGENCY AND INSTALLED IN ACCORDANCE WITH THAT LISTING, MANUFACTURER'S INSTRUCTIONS, AND ALL APPLICABLE CODES.
8. RECEPTACLES MAY NOT BE OVER ANY PART OF AN ELECTRIC HEAT UNIT.
9. GARAGE RECEPTACLES OF APPLICABLE, BATH RECEPTACLES, CRAWLSPACE RECEPTACLES, AND EXTERIOR RECEPTACLES ARE TO BE GFCI PROTECTED.
10. KITCHEN RECEPTACLES SERVING COUNTERTOPS ARE TO BE GFCI PROTECTED.
11. BATHROOMS SHALL HAVE A DEDICATED 80 AMP CIRCUIT.
12. LAUNDRY CIRCUITS ARE STANDARD IN CRAWLSPACE MODELS.
13. A SUB-FEED WILL BE REQUIRED IF ALL CIRCUITS DO NOT FIT IN A SINGLE PANEL BOX.
14. A CIRCUIT BREAKER OR RECEPTACLE MAY PROVIDE GFCI PROTECTION.
15. WASHER RECEPTACLES INSTALLED IN A BATHROOM SHALL BE GFCI PROTECTED REGARDLESS OF THE PRESENCE OF A DOOR SEPARATING THE LAUNDRY AREA FROM THE BATHROOM AREA.
16. ILLUMINATION SHALL BE PROVIDED FOR ALL WORKING SPACES ABOUT SERVICE EQUIPMENT.
17. A RECEPTACLE MUST BE WITHIN 25' OF EACH HEATING, AIR CONDITIONING, AND REFRIGERATION UNIT.
18. PANEL BOXES IN CRAWLSPACE UNITS ARE INSTALLED BY MANUFACTURER. PANEL BOXES IN OTHER UNITS MAY BE WIRED AND THEN TEMPORARILY FASTENED TO THE UNDERSIDE OF THE UNIT OR MAY BE SHIPPED LOOSE FOR WIRING AND INSTALLATION BY BUILDER AT SITE.
19. CONNECTION FROM PANEL BOX TO SERVICE IS THE RESPONSIBILITY OF THE BUILDER.

HEAT NOTES:

1. SEE SCHEDULES PAGE FOR INSULATION REQUIREMENTS.
2. ALL WINDOWS AND DOORS ARE TO BE WEATHERSTRIPPED.
3. SEE WINDOW SCHEDULE FOR U-F VALUES OF WINDOWS AND DOORS.
4. CONNECTED ELECTRIC BASEBOARD HEAT LOAD WILL NOT EXCEED BOX OF ITS CAPACITY (3750 WATTS OR 15' OF HEAT BASED ON 1'-0" = 250 WATTS).
5. 1'-0" OF HYDRONIC BASEBOARD = .580 BTUH AT 180 DEGREES WATER TEMPERATURE.
6. FOR HWB HEAT SYSTEMS THE MANUFACTURER SUPPLIES THE COVER, ELEMENTS, CAPS, ELBOWS WITH BLEEDER VALVE AND (2) SECTIONS OF TYPE 1/2" COPPER PIPE STUBBED THROUGH THE FLOOR. ALL ELSE IS THE RESPONSIBILITY OF THE BUILDER.
7. A FRAMED CHASE CAN BE PROVIDED UPON THE REQUEST OF THE BUILDER. THE CHASE CAN BE USED FOR FLEETS OR DUCTS TO BE INSTALLED ON SITE BY BUILDER.

GENERAL NOTES:

1. ALL GAS PIPE LINES FOR APPLIANCES AND OTHER DEVICES ARE THE RESPONSIBILITY OF THE BUILDER.
2. ALL EXHAUST FANS IN KITCHEN, BATHS, DRYER ETC. TO BE VENTED TO OUTSIDE AIR.
3. BATT INSULATION TO BE GLUED TO ATTIC ACCESS PANEL.
4. BUILDER TO INSTALL INSULATION BETWEEN THE UNITS AT FLOOR, WALL, AND CEILING AREA ON SITE.
5. ALL HORIZONTAL SHEATHING JOINTS ON EXTERIOR WALLS TO BE SEALED.
6. INTERIOR WALLS AROUND THE BASEMENT STAIRS TO BE INSULATED WITH R-13 INSULATION.
7. SHIP LOOSE APPLIANCES AND/OR EQUIPMENT SHALL BE INSTALLED ON SITE BY THE BUILDER PER THE PRODUCT MANUFACTURER'S INSTRUCTIONS.
8. ALL MATERIAL, ASSEMBLY, CONSTRUCTION, AND EQUIPMENT SHALL MEET THE REGULATIONS OF THE STATE BUILDING CONSTRUCTION CODE.
9. PLASTIC PIPE SHALL BE PROTECTED BY 1/16" STEEL WHEN PIPE PASSES THROUGH WOOD MEMBERS LESS THAN 1 1/4" FROM EDGE OF MEMBER.
10. ANY STRUCTURAL MEMBER SUBJECT TO HOLE DRILLING, CUTTING, OR NOTCHING, SHALL BE LEFT IN A SAFE STRUCTURAL CONDITION. ALL WORK MUST BE DONE IN ACCORDANCE WITH THE STRUCTURAL REQUIREMENTS OF THE APPLICABLE CODES.
11. WATER HEATERS IN ENCLOSED SPACES MUST HAVE A 2' MINIMUM CLEARANCE OR INTERIOR FINISH OF ENCLOSURE MUST HAVE A FLAME SPREAD RATING OF 25 OR LESS.
12. CHIMNEY AND FLUES FOR ALL TYPES OF FIREPLACES MUST COMPLY WITH APPLICABLE CODES. ALL FIREPLACES MUST BE UL LISTED.
13. BATH FAN OUTPUT IS 70 CFM MINIMUM.
14. KITCHEN RANGE EXHAUST FAN OUTPUT IS 135 CFM MINIMUM.
15. SAFETY GLAZING IS REQUIRED FOR ANY WINDOW LESS THAN 18" ABOVE FLOOR LEVEL AND THE EXPOSED AREA OF AN INDIVIDUAL PANE IS GREATER THAN 9 SF.
16. SAFETY GLAZING IN ANY WINDOW THAT IS WITHIN A 24" ARC OF A DOOR IN A CLOSED POSITION.
17. THE ATTIC SPACE IS TO BE VENTED BY A COMBINATION OF PERFORATED EAVE AND RIDGE VENTS. THE MINIMUM NET FREE VENTILATION AREA SHALL BE 1/300 OF THE AREA OF THE SPACE VENTILATED.
18. CEILING ACCESS TO BE 22" X 30".
19. LABELS AND DATA PLATES TO BE INSTALLED ON THE INSIDE OF THE PANEL BOX COVER.
20. ALL UNSPECIFIED FASTENING PER CODE.
21. IF RADON PROTECTION IS REQUIRED A 2" PVC PIPE WILL RUN FROM THE BASEMENT TO THE ATTIC WITH A COILED WIRE CIRCUIT IN THE ATTIC THAT IS CONNECTED TO A DEDICATED CIRCUIT.



APPROVED

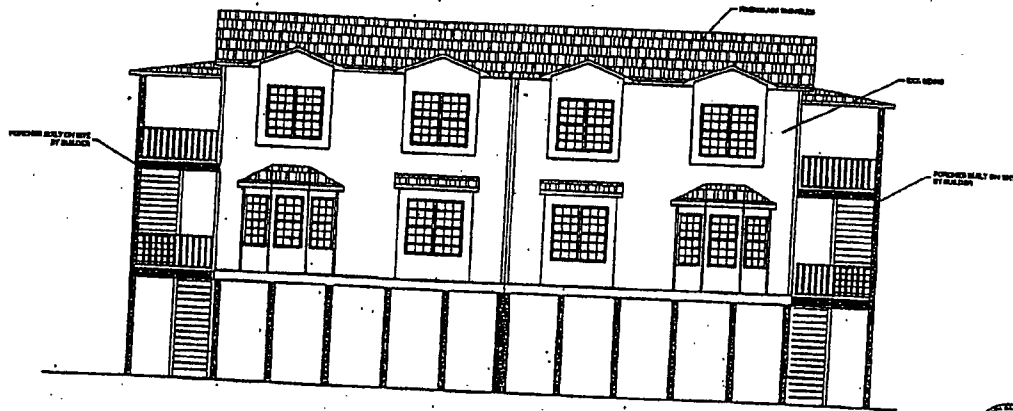
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HandCrafted Homes
104.077 The Retreat, LLC0619

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104.077
The Retreat, LLC 0621



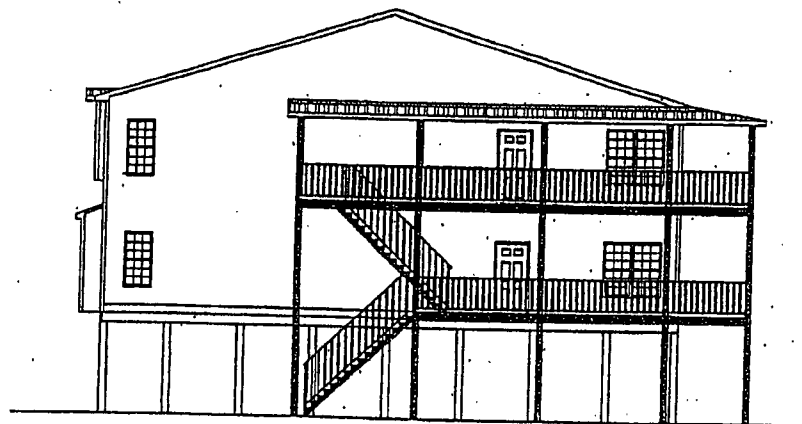
FRONT ELEVATION

APPROVED
AS SHOWN
11/11/11



DATE	11/11/11	BY	HandCrafted Homes
PROJECT	104.077	LOCATION	The Retreat, LLC 0621
SCALE	AS SHOWN	DESIGNED BY	HandCrafted Homes
DATE	11/11/11	BY	HandCrafted Homes

241

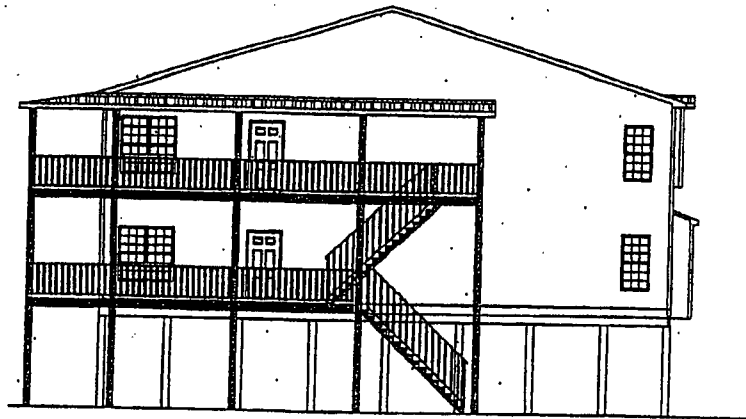


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The Retreat, LLC 0523

APPROVED
6/21/08
[Signature]

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6/21/08
104.077
6/21/08

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104.077
The Retreat, LLC0624

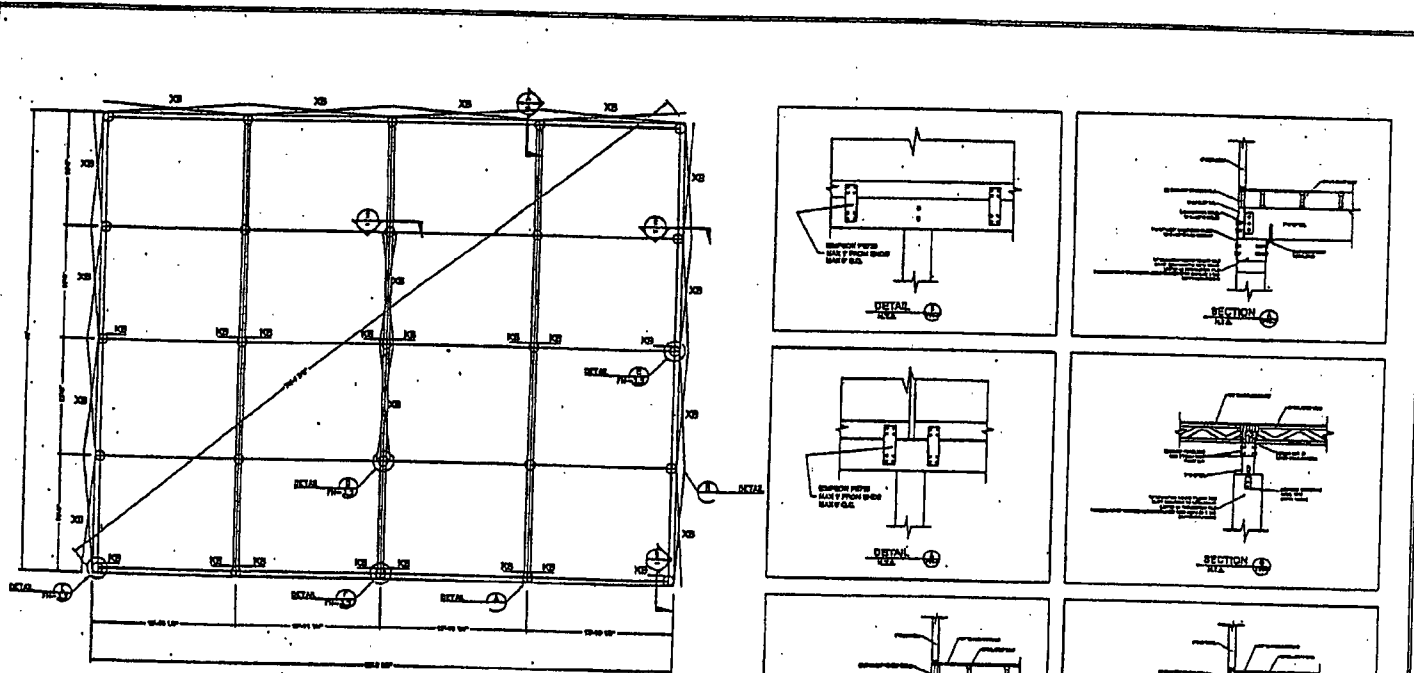
APPROVED
MS 1180



HandCrafted Homes
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The Retreat, LLC0624

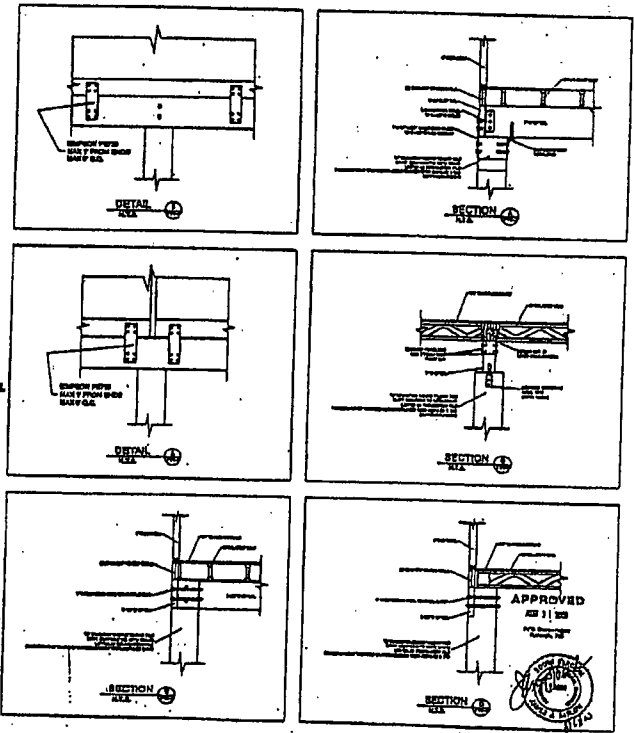
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104 077
The Retreat, LI 00525



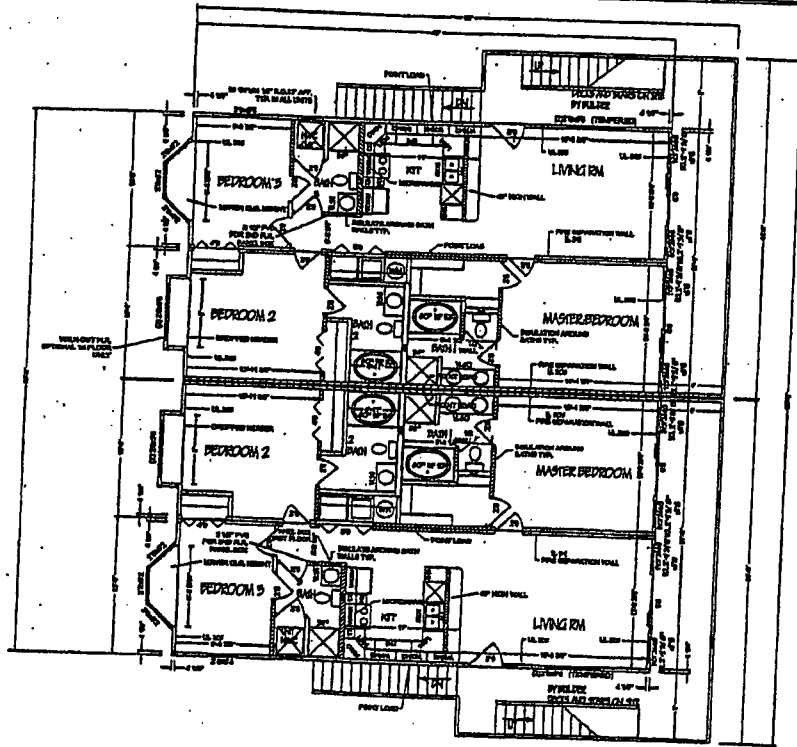
FOUNDATION NOTES:

1. ALL DIMENSIONS MUST BE CONFIRMED BY BUILDER ON SITE.
2. NEVER SCALE DRAWINGS! USE DIMENSIONS ONLY.
3. DESIGN IS BASED ON A MINIMUM SOIL BEARING CAPACITY OF 2000 PSF. SITE SOIL CONDITIONS MUST BE VERIFIED.
4. MINIMUM PILING EMBEDMENT = 30".
5. DISTANCE FROM GRADE TO TOP OF PILING NOT TO EXCEED 12'-0".
6. ALL CONCRETE TO HAVE A MIN. 90 DAY COMPRESSIVE STRENGTH OF 3000 PSI.
7. PILING CAN BE NOTCHED TO ACCEPT OTHER SERVICE, EXCEPT WHERE NOTED ON DETAILS, (NOT TO EXCEED 50% OF AREA).
8. FOUNDATION DESIGN IS SUBJECT TO LOCAL REQUIREMENTS.
9. FOUNDATION DESIGN MUST BE APPROVED BY LOCAL AUTHORITY HAVING JURISDICTION PRIOR TO CONSTRUCTION.
10. FOUNDATION DETAILS FOR PORCHES, DECKS, ELEVATOR SHAFT AND MACHINE ROOM ARE NOT A PART OF THIS PACKAGE.
11. ALL FASTENERS AND CONNECTORS TO BE HOT-DIP GALVANIZED.



BARLOW ENGINEERING, P.C. 1000 ROUTE 1 WESTFIELD, MA 01085 TEL: 413-253-1111 FAX: 413-253-1112	DATE: _____ SCALE: _____ SHEET NO.: _____ TOTAL SHEETS: _____	HandCrafted Homes 1000 ROUTE 1 WESTFIELD, MA 01085 TEL: 413-253-1111 FAX: 413-253-1112 FN-3
	APPROVED [Stamp] DATE: _____	

245



FIRST FLOOR PLAN

APPROVED
AS SHOWN
DATE



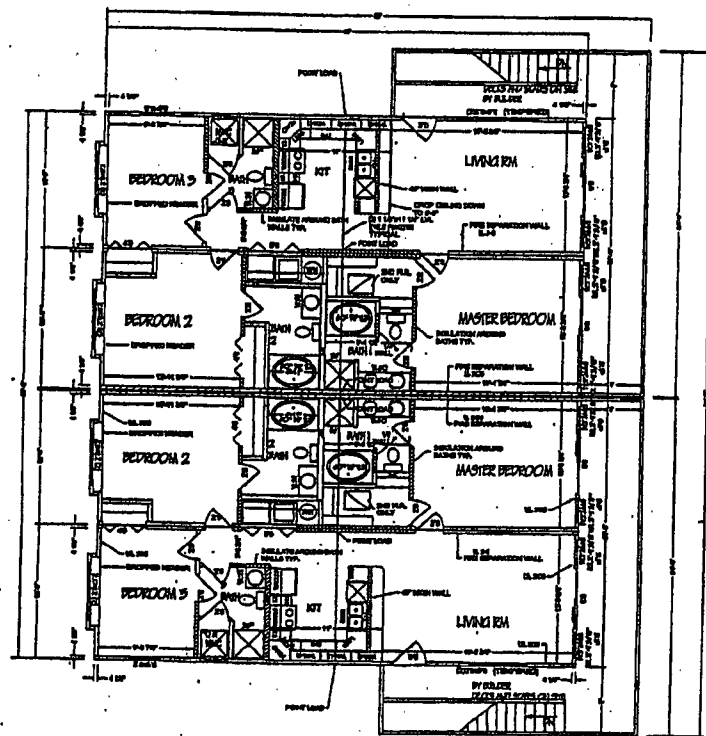
NO.	DATE	REVISION

HandCrafted Homes
 11000 N. 11th St., Suite 100, Scottsdale, AZ 85258
 (480) 344-1100
 www.handcraftedhomes.com

104.077
The Retreat, LLC0527

246

104,077
The Retreat, LLC0528



NOTED CEILING HEIGHT FOR THE KITCHEN, BATHS,
MASTER BR W.C., MASTER BATH, AND UTILITY
AREA.

APPROVED
AUG 21 2008



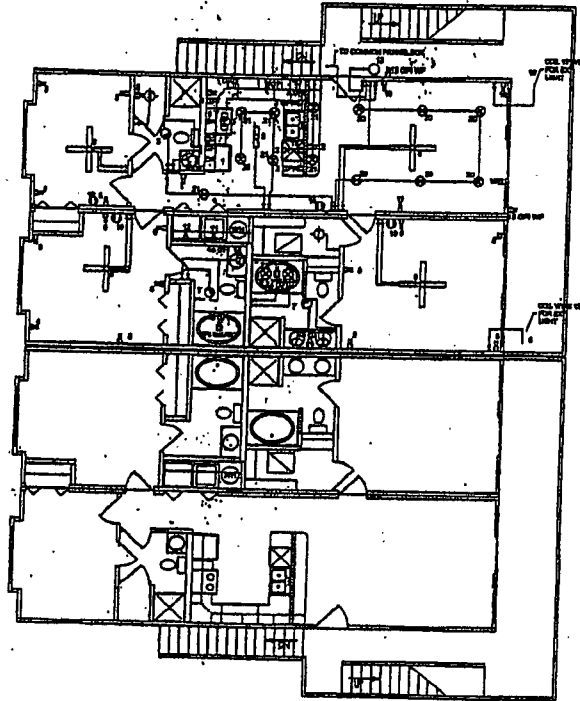
SECOND FLOOR PLAN

NO.	DATE	BY	DESCRIPTION

HandCrafted Homes
104,077
The Retreat, LLC0528
P-2

248

104.077
The Retreat, LLC 0530



TYP. SECOND FLOOR ELECTRICAL

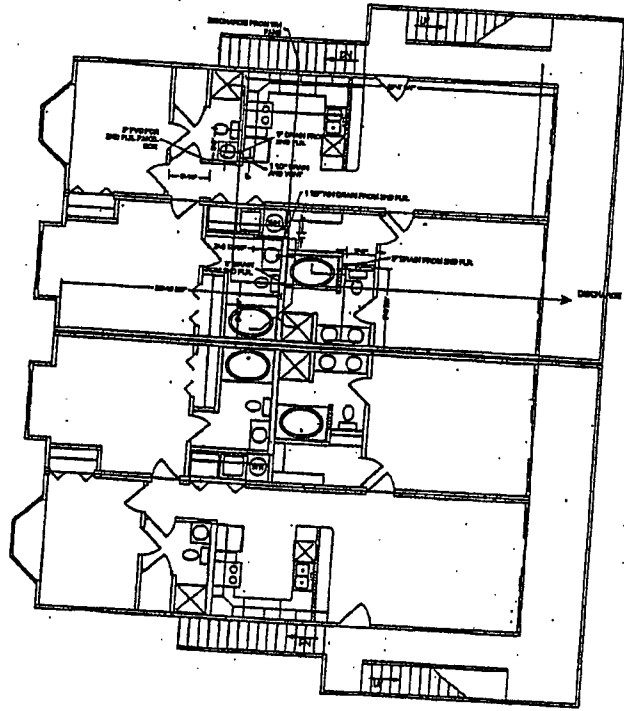
APPROVED
AUG 11 2008
104.077



Project Name	HandCrafted Homes
Project No.	
Sheet No.	EL-2
Scale	
Revision	

249

104.077
The Retreat, LLC0631

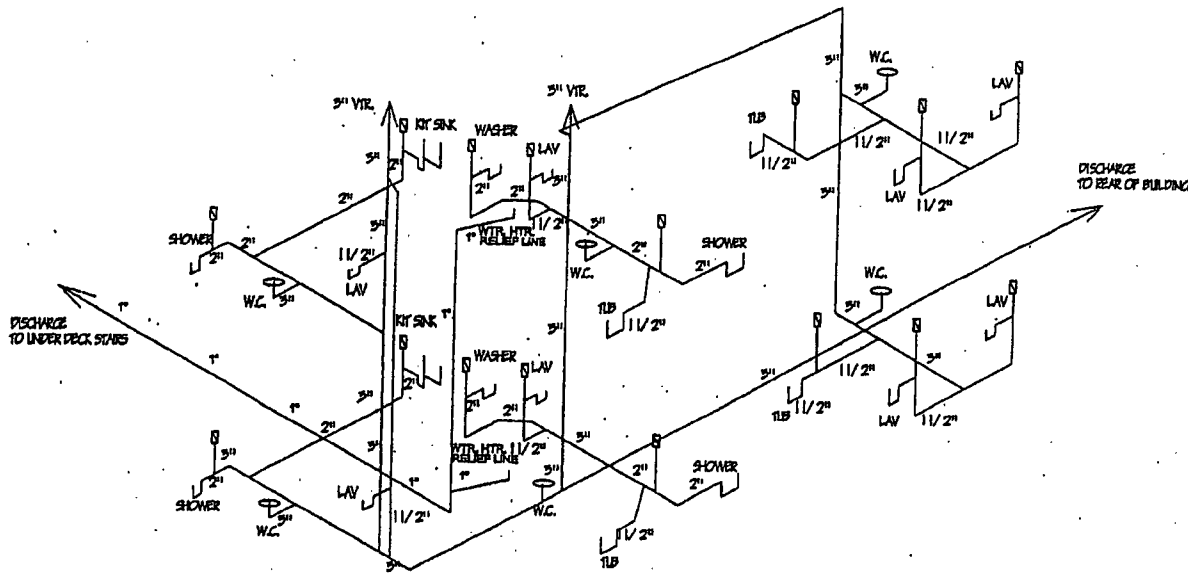


APPROVED
AS IS



HandCrafted Homes

251



DISCHARGE TO UNDER DECK STAIRS

DISCHARGE TO REAR OF BUILDING

APPROVED
M E L L O S
PLUMBER



LAV
 DRAIN LINE
 VENT LINE

DRYW NOTES

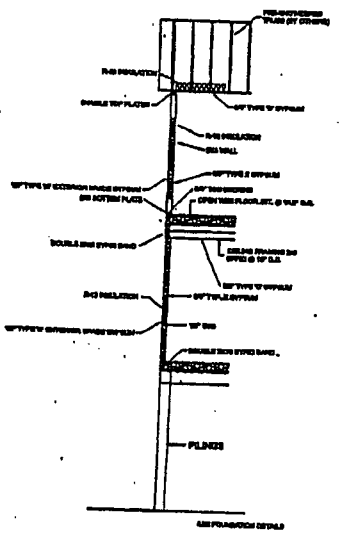
TRAP SIZE	WALL PER FOOT	SOFTENERS VENT PER TRAP FOOT	DRYW NUMBER
1/2"	1/2"	1/2"	
3/4"	3/4"	3/4"	
1"	1"	1"	
1 1/2"	1 1/2"	1 1/2"	
2"	2"	2"	
3"	3"	3"	

HandCrafted Homes
 104.077
 The Retreat LLC0583

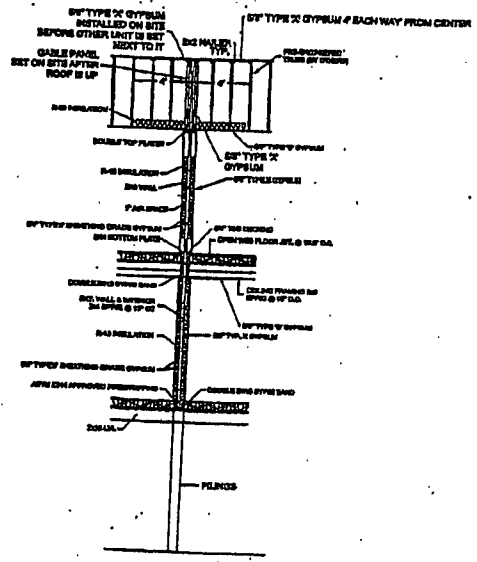
JWW-1

104.077
The Retreat LLC0583

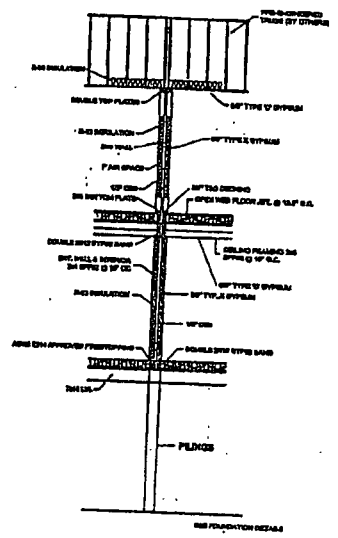
253



UL L305
TYP. EXTERIOR WALL



(2) UL 305 WALLS
FIRE SEPARATION WALL



UL L341
MARRIAGE WALLS BETWEEN SAME UNIT

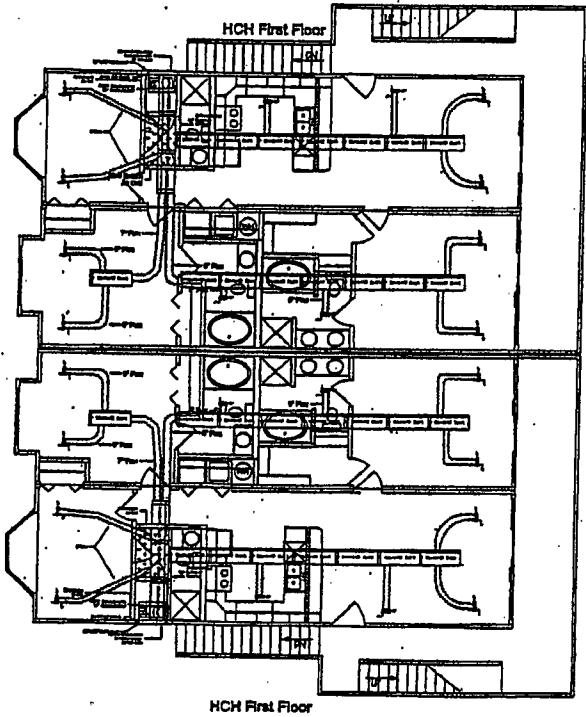
APPROVED
JUL 11 1983
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The Retreat, LLC0535

DATE	REVISION	BY	HandCrafted Homes

254

104,077
The Retreat, LLC0536



APPROVED
08/11/00



DATE	08/11/00
PROJECT	104,077
CLIENT	The Retreat, LLC0536
ARCHITECT	HandCrafted Homes
DESIGNER	[Signature]
SCALE	1/8" = 1'-0"
NO.	H-1

EXHIBIT "E"

TABLE OF VALUES

Apartment No:	Assigned Value	Percentage of interest in General Common Element
1	\$100.00	3.5714285%
2	\$100.00	3.5714285%
3	\$100.00	3.5714285%
4	\$100.00	3.5714285%
5	\$100.00	3.5714285%
6	\$100.00	3.5714285%
7	\$100.00	3.5714285%
8	\$100.00	3.5714285%
9	\$100.00	3.5714285%
10	\$100.00	3.5714285%
12	\$100.00	3.5714285%
13	\$100.00	3.5714285%
14	\$100.00	3.5714285%
15	\$100.00	3.5714285%
16	\$100.00	3.5714285%
17	\$100.00	3.5714285%
18	\$100.00	3.5714285%
19	\$100.00	3.5714285%
20	\$100.00	3.5714285%
21	\$100.00	3.5714285%
22	\$100.00	3.5714285%
23	\$100.00	3.5714285%
24	\$100.00	3.5714285%
25	\$100.00	3.5714285%
26	\$100.00	3.5714285%
27	\$100.00	3.5714285%
28	\$100.00	3.5714285%

EXHIBIT "F"

TO MASTER DEED OF
THE RETREAT AT EDISTO HORIZONTAL PROPERTY REGIME
ENGINEER'S CERTIFICATE

Pursuant to S. C. Code Ann. Section 27-31-110 (1976), I certify that the Regime plans described in the attached Exhibit "B and C" and the written description of Twenty-eight (28) Apartments of The Retreat at Edisto Horizontal Property Regime (situate upon real estate described in the attached Exhibit "A"), fully depict the layout, dimensions, location, and area of the Apartments and the general and limited common elements of the Regime.

ENGINEERS:

By: Robert Power

Its: _____

Engineer's S.C. License No. 13416

CHARLESTON, South Carolina

Dated: 12-15, 2000.

EXHIBIT "G"

ARTICLES OF INCORPORATION OF ASSOCIATION

MASTER DEED OF THE RETREAT AT EDISTO/2000-479VIM

104.077
The Retreat, LLC0540

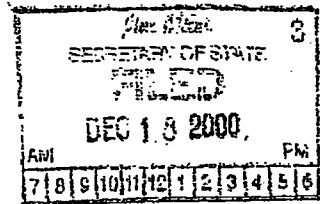
CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM FILE COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

DEC 18 2000



SECRETARY OF STATE OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

NONPROFIT CORPORATION
ARTICLES OF INCORPORATION



1. The name of the proposed corporation is The Retreat at Edisto Co-Owners Association, Inc.
2. The initial registered office of the corporation is 495 Highway 174, Edisto Island, SC 29438
 - A. The initial registered agent of the nonprofit corporation at such address is: W. Mark Steedley.
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 495 Highway 174, Edisto Island, SC 29438
6. If this nonprofit corporation is either a public benefit or religious corporation (box ~~a~~ or b of ¶3, is checked), complete (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.

I CERTIFY THIS TO BE A TRUE
AND CORRECT COPY

NOTARY PUBLIC FOR SC
MY COMMISSION EXPIRES 5/21/02

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The Retreat, LLC0541

B. Upon dissolution of the corporation, consistent with law, the remaining assets of the corporation shall be distributed to:

7. If the corporation is a mutual benefit corporation (box "c" of ¶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 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, the applicable comments thereto, and the instructions to this form):

9. The name and address (with zip code) of each incorporator is as follows (only one is required):

W. Mark Steedley
P. O. Box 10
Edisto Island, SC 29438

10. Each original director of the nonprofit corporation must sign the articles but only if the directors are named in these articles:

Signature of Director (if named in articles)

Signature of Director (if named in articles)

11. Each incorporator must sign the articles.

W. Mark Steedley
Signature of incorporator
W. MARK STEEDLEY



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
INITIAL ANNUAL REPORT OF CORPORATIONS

COPY CL-1

(Rev. 6/10/99)
3134

File Number _____ ENDING PERIOD _____ Month _____ Year _____ SID number _____

NAME OF CORPORATION
The Retreat at Edisto Co-Owners Association, Inc.

ADDRESS OF CORPORATION (NUMBER AND STREET)
495 Highway 174

CITY AND STATE
Edisto Island, SC ZIP 29438 COUNTY
Colleton

Date "Application for Charter" filed with Secretary of State DEC 18 2000 For Secretary of State Use Only.

Date of "Request for authority to do business in this state" (Foreign Corp.) _____

IRS Employer Identification Number _____ Business Code (Office Use Only) _____

1. State of Incorporation: South Carolina

2. Nature of principal business in South Carolina: property owners association

3. Location of registered office of the corporation in the state of South Carolina is 495 Highway 174 in the city of Edisto Island. Registered agent at such address is W. Mark Steedley

4. Location of principal office in South Carolina (street, city and county): 495 Highway 174, Edisto Island, Collet

5. Date business commenced in South Carolina: _____ Telephone # 843-869-2151

6. Indicate date corporation closes its books: December

7. If a professional corporation, are all shareholders, one-half of the directors (or individuals functioning as directors) and all officers (other than the secretary and treasurer) qualified to practice the professional services engaged in by the corporation?

8. The names and business addresses of the directors (or individuals functioning as directors) and principal officers in the corporation are:

SSN	Name/Title	Business Address and Office
<u>247-86-5386</u>	<u>W. Mark Steedley/Incorporator</u>	<u>495 Highway 174, Edisto Island, SC 29437</u>

ATTACH REMITTANCE HERE

9. The total number of authorized shares of capital stock itemized by class and series, if any, within each class is as follows:

Number of Shares	Class	Series
<u>N/A</u>		

10. The total number of issued and outstanding shares of capital stock itemized by class and series, if any, within each class is as follows:

Number of Shares	Class	Series
<u>N/A</u>		

1. Fee due with this report	1.	25	00
2. Interest due	2.		
3. Penalty due	3.		
4. Total - Fee, Interest and Penalty (Make remittance payable to SC Department of Revenue.)	4.	\$	

AFFIDAVIT

I, the undersigned incorporator or principal officer of the corporation for which this return is made, declare that this return, including accompanying statements and schedules, has been examined by me and is to the best of my knowledge and belief a true and complete return made in good faith:

THIS RETURN PREPARED BY _____

DATE _____

W. Mark Steedley
SIGNATURE OF INCORPORATOR OR OFFICER AUTHORIZED TO SIGN

_____ TITLE

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The Retreat, LLC0543

EXHIBIT "H"

BY-LAWS

MASTER DEED OF THE RETREAT AT EDISTO/2000-479UIM

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The Retreat, LLC0544

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BYLAWS OF
The Retreat at Edisto Co-owners Association, Inc.

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THE RETREAT AT EDISTO BYLAWS/2006-179/11M

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STATE OF SOUTH CAROLINA)

COUNTY OF COLLETON)

BY-LAWS
OF THE RETREAT AT EDISTO
CO-OWNERS ASSOCIATION, INC

1. IDENTITY

These are the By-Laws of The Retreat at Edisto Co-owners Association, Inc., for the purpose of administering The Retreat at Edisto Horizontal Property Regime, a horizontal property regime established pursuant to S.C. Code Ann. Section 27-31-10 et seq. (1976) (hereinafter called "the Regime"). The Regime is identified by the name Retreat at Edisto and is located upon the real property in Colleton County, South Carolina, described on Exhibit "A" attached hereto and made a part hereof by reference.

(a) The provisions of these By-Laws are applicable to the Regime, and the terms and provisions hereof are expressly subject to the effect of the terms, provisions, conditions, and authorizations contained in the Articles of Incorporation and which may be contained in the formal Master Deed which will be recorded in the public records of Colleton County, South Carolina, at the time said property and the improvements now or thereafter situate thereon are submitted to the plan of condominium ownership, the terms and provisions of said Articles and Master Deed to be controlling whenever the same may be in conflict herewith;

(b) All present or future co-owners, tenants, future tenants, or their employees, or any other person that might use the Regime or any of the facilities thereof in any manner are subject to the regulations set forth in these By-Laws and in said Charter and Master Deed;

(c) The office of the Association shall be at 495 Highway 174, Edisto Island, South Carolina, 29438 or such other place as the Board of Directors of the Association may designate from time to time;

(d) The fiscal year of the Association shall be the calendar year; and

(e) The seal of the Association shall bear the name of the Association and the words "South Carolina."

2. POWERS OF THE ASSOCIATION

The powers of the Association shall include the following provisions:

(a) The Association shall have all of the common law and statutory powers of a nonprofit corporation which are not in conflict with the laws of South Carolina.

(b) The Association shall have all of the powers and duties prescribed for the "Council of Co-Owners" as set forth in the Act, and all such other powers and duties reasonably

THE RETREAT AT EDISTO BYLAWS/2000-479/TMM

necessary to operate the Regime pursuant to the Master Deed, including but not limited to the following:

(i) To make and collect assessments against the members as co-owners to defray the costs, expenses and losses of the Regime.

(ii) To use the proceeds of assessments in the exercise of its powers and duties.

(iii) To maintain, repair, replace, improve and operate the property of the Regime.

(iv) To purchase insurance upon the Regime property including all apartments and common elements, and insurance for the protection of the Association and the co-owners.

(v) To reconstruct improvements after casualty.

(vi) To make and amend reasonable regulations respecting the use for the Regime property.

(vii) To enforce by legal means the provisions of the Act, the Master Deed and the regulations promulgated thereunder for the use of the Regime property, including, but not limited to, issuing fines for violation of same.

(viii) To contract for the management of the Regime and to delegate to such manager all powers and duties of the Association except such as are specifically required by the Master Deed to have approval of the Board of Directors of the Association or of the co-owners.

(ix) To employ personnel to perform the services required for proper operation of the Regime and to terminate such employment.

(x) To foreclose any lien for unpaid assessments in like manner as any mortgagee of real property, as provided in the Master deed of the Regime and the By-Laws of this Association.

(c) All funds and the title to all properties acquired by the Association and the proceeds thereof shall be held in trust for the members in accordance with the provisions of the Act and the Master Deed

(d) The powers of the Association shall be subject to and shall be exercised in accordance with the provisions of the Act and the Master Deed.

(e) The Association will not take steps which will serve to facilitate the transaction of specific business by its members or promote the private interest of any member, or engage in any

THE RETREAT AT EDISTO BYLAWS/2000-479/JIM

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activity which would constitute a regular business of a kind ordinarily carried on for profit, and no part of the net earnings of the Association shall inure to the benefit of any private individual. In the event of the liquidation or dissolution of the Association, whether voluntary or involuntary, no member shall be entitled to any distribution or division of its remaining property or its proceeds, and the balance of all money and other property received by the corporation from any source, after the payment of all debts and obligations of the Association, shall be used or distributed exclusively for such purposes as those set forth in the Code of Laws of South Carolina for nonprofit corporations.

(f) The Association holds, or desires to hold, property in common for social or fraternal purposes and is not organized for the purpose of profit or gain to the members, other than is above stated, or for the insurance of life, health, accident or property.

3. MEMBERS

The qualification of members, the manner of their admission and voting by members shall be as follows:

(a) The co-owners of each of the apartments shall be a member of the Association, and no other persons or entities shall be entitled to membership. The Association shall have only so many memberships as there are apartments in the Regime, with each member having a vote equal to the percentage of his right to share in the common elements of the Regime set forth in Exhibit "___" to the Master Deed and in accordance with the Act. Voting rights will be exercised in the manner provided by these By-Laws of the Association.

(b) Change of membership in the Association shall be established by the recording in the Office of the Clerk of Court for Colleton County, South Carolina, of a deed or other instruments establishing a change of record title to an Apartment in the Regime and the delivery to the Association of a certified copy of such instrument, the new co-owner designated by such instrument thereby becoming a member of the Association. The membership of the prior co-owner shall be thereby terminated.

4. MEMBERSHIP, VOTING, QUORUM, PROXIES

(a) The qualification of members, the manner of their admission to membership and termination of such membership, and voting by members, shall be as set forth in the preceding Section 3.

(b) The quorum at members' meetings shall consist of persons entitled to cast a majority (51% of the value of the property) of the votes of the entire membership. The joinder of a member in the action of a meeting by signing and concurring in the minutes thereof shall constitute the presence of such person for the purpose of determining quorum.

(c) The vote of the co-owners of an Apartment owned by more than one person or by a corporation or other entity shall be cast by the person named in a certificate signed by all of the co-owners of the Apartment and filed with the Secretary of the Association. Such certificate shall be valid until revoked by subsequent certificate. If such a certificate is not on file, the vote of such co-owners shall not be considered in determining the requirement for a quorum, nor for any other purpose.

(d) Votes may be cast in person or by proxy. Proxies must be filed with the secretary before the appointed time of the meeting for which their use is sought.

(e) Approval or disapproval of an Apartment co-owner upon any matters, whether or not the subject of an Association meeting, shall be by the same person who casts the vote of such co-owner in an Association meeting.

(f) Except where otherwise required under the provisions of the Articles of Incorporation of the Association, these By-Laws, the Master Deed, or where the same may otherwise be required by law, the affirmative vote of the co-owners of a majority of the Apartments represented at any duly called members' meeting at which a quorum is present shall be binding upon the members.

5. ANNUAL AND SPECIAL MEETINGS OF MEMBERSHIP

(a) The annual members' meeting shall be held at the office of the Association or such other place as may be designated by the Board of Directors, at 12:00 noon, Eastern Daylight Time, on the third Saturday in October, of each year, or at such other date and time as set by the Board of Directors after proper notice for the purpose of electing directors and of transacting any other business authorized to be transacted by the members; provided, however, that if that day is a legal holiday, the meeting shall be held at the same hour on the next succeeding Saturday. The first annual meeting shall be held in 2000.

(b) Special members' meetings shall be held whenever called by the President or Vice President or by a majority of the Board of Directors and must be called by such officers upon receipt of a written request from the members of the Association owning a majority of the Apartments.

(c) Notice of all members' meetings, regular or special, shall be given by the President, Vice President, or Secretary of the Association, or other officers of the Association in the absence of said officers, to each member, unless waived, in writing. Such notice is to be written or printed and shall include a description of any matter as required by '33-31-705, of the Code of Laws of South Carolina (1976), as amended, and shall state the time and place of the member's meeting and shall be given to each member not less than ten (10) days nor more than sixty (60) days prior to the date set for such meeting. Notice shall be mailed first class or registered mail or presented personally to each member within said time. If presented personally, receipt of such notice shall be signed by the member, indicating the date on which such notice was received by

THE RETREAT AT EDISTO BYLAWS/2000-479/TJM

him. If mailed, such notice shall be deemed properly given five (5) days after being deposited in the United States Mail, addressed to the member at his post office address as it appears in the records of the Association, the postage thereon prepaid or where otherwise provided by Section 33-31-141 of the Code of Laws of South Carolina (1976), as amended from time to time. Proof of such mailing shall be given by Affidavit of the person giving the notice. Any member may, by written waiver of notice signed by such member, waive such notice, and such waiver, when filed in the records of the Association, whether before or after the holding of the meeting, shall be deemed equivalent to the giving of such notice to such member. If any members' meeting cannot be organized because a quorum has not been attained, or because the greater percentage of the membership required to constitute a quorum for particular purposes has not attended, wherever the latter percentage of attendance may be required as set forth in the Articles of Incorporation, these By-Laws, or the Master Deed, the members who are present, either in person or by proxy, may adjourn the meeting, from time to time until a quorum, or the required percentage of attendance greater than a quorum, is present.

(d) At meetings of membership, the President shall preside or, in the absence of him, the membership present shall select a chairman.

(e) The order of business at annual members' meeting, and, as far as practical, at any other members' meeting, shall be:

- i) Calling of the roll and certifying proxies;
- ii) Proof of notice of meeting or waiver of notice;
- iii) Reading of Minutes;
- iv) Reports of officers, president and chief financial officer;
- v) Reports of committees;
- vi) Appointment by chairman of inspectors of election;
- vii) Election of directors;
- viii) Unfinished business;
- ix) New business; and
- x) Adjournment.

6. BOARD OF DIRECTORS

(a) The initial Board of Directors of the Association (hereinafter sometimes referred to as the "Board") shall be comprised of three (3) directors. Subject to the remainder of this paragraph, the Grantor may appoint and remove members of the Board for a period not exceeding five (5) years from the date of the first conveyance of an Apartment to a person other than the Grantor. The period of Grantor control terminates no later than sixty (60) days after conveyance of seventy-five percent (75%) of the Apartments to Apartment owners other than the Grantor. The Grantor may voluntarily surrender the right to appoint and remove members of the Board before termination of that time period.

Whenever Grantor shall be entitled to designate and select any person or persons to serve on any Board of Directors of the Association, the manner in which such person or persons shall be designated shall be as provided in the Master Deed and/or By-Laws of the Association and Grantor shall have the right to remove any person or persons selected by it to act and serve on said Board of Directors and to replace such person or persons with another person or other persons to act and serve in the place of any director or directors so removed for the remainder of the unexpired term of any director or directors so removed. Any director designated and selected by Grantor need not be a resident in the Regime. Anything to the contrary notwithstanding, the power in the Grantor to designate directors shall terminate on January 1, 2006.

Any representative of Grantor serving on the Board shall not be required to disqualify himself upon any vote upon any management contract or other matter between Grantor and Association where the said Grantor may have a pecuniary or other interest. Similarly, Grantor as a member of the Association, shall not be required to disqualify itself in any vote which may come before the membership of the Association upon any management contract or other matter between Grantor and Association where Grantor may have a pecuniary or other interest. This provision does not limit or restrict the requirement of Section 33-31-831, Code of Laws of South Carolina (1976), as amended.

An individual Co-owner other than Grantor engaged by the Regime in a commercial operation or otherwise earning monies from servicing the premises, i.e. rental company, contractor, hardware store, painter, or property manager may not serve on the Board as long as the individual is engaged in a business performing a service in connection with the Regime.

(b) Election of directors shall be conducted in the following manner:

i) Grantor, as Sponsor of the Regime, shall, at the beginning of the election of the Board designate and select that number of the members of the Board which it should be entitled to designate and select in accordance with the provisions of these By-Laws, and upon such designation and selection by Grantor by written instrument presented to the meeting at which such election is held, said individuals so designated and selected by Grantor shall be deemed and considered for all purposes directors of the Association, and shall thenceforth perform the duties of such directors until their successors shall have been selected or elected in accordance with the provisions of these By-Laws;

ii) All members of the Board whom Grantor shall not be entitled to designate and select under the terms and provisions of these By-Laws shall be elected by a plurality of the votes cast at the annual meeting of the members of the Association immediately following the designation and selection of the members of the Board whom Grantor shall be entitled to designate and select;

iii) Vacancies in the Board may be filled until the date of the next annual meeting by the remaining directors, except that should any vacancy in the Board be created in any directorship previously filled by a person designated and selected by Grantor, such vacancy shall be filled by

THE RETREAT AT EDISTO BYLAWS/2000-079714

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The Retreat, LLC0552

Grantor designating and selecting, by written instrument delivered to any officer of the Association, the successor director to fill the vacated directorship for the unexpired term thereof;

iv) At the first annual meeting of the members held after the property identified herein has been submitted to the plan of condominium ownership and the Master Deed has been recorded in the public records of Colleton County, South Carolina, the term of office of the three (3) directors shall be as follows: One director to serve one (1) year, one director to serve two (2) years and one director to serve three (3) years. Thereafter, as many directors of the Association shall be elected at the annual meeting as there are regular terms of office of directors expiring at such time, and the term of the directors so elected at the annual meeting of the members each year shall be for two (2) years expiring at the second annual meeting following their election, and thereafter until their successors are duly elected and qualified or until removed in the manner elsewhere provided or as may be provided by law for the removal of directors of South Carolina Nonprofit Corporation Act. If, at the time of the first annual meeting, Grantor still has the right to appoint directors, then Grantor shall have the right to designate and select two (2) directors whose term of office shall be established at two (2) years, and one (1) director whose term of office shall be established at one year;

v) In the election of directors, there shall be appurtenant to each Apartment as many votes for directors as there are directors to be elected, provided, however, that no member or co-owner of any Apartment may cast more than one vote for any person nominated as director, it being the intent hereof that voting for directors shall be non-cumulative;

vi) In the event that Grantor, in accordance with the privilege granted unto it, selects any person or persons to serve on any Board, the said Grantor shall have the absolute right at any time, in its sole discretion, to replace any such person or persons with another person or persons to serve on said Board. Replacement of any person or persons designated by Grantor to serve on any Board shall be made by written instrument delivered to the President or Secretary of the Association or to the presiding officer of the Board, which instrument shall specify the name or names of the person or persons designated as successor or successors to the person or persons so removed from said Board. The removal of any director and designation of his successor shall be effective immediately upon delivery of such written instrument by Grantor to such officer of the Association and the director;

(c) The organizational meeting of newly elected Board shall be held within ten (10) days of its election, at such time and at such place as shall be fixed by the directors at the meeting at which they were elected, and no further notice of the organization meeting shall be necessary provided a quorum shall be present;

(d) Regular meetings of the Board may be held without notice at such time and place as shall be determined from time to time by a majority of the directors;

(e) Special meetings of the directors may be called by the President and must be called by the Secretary at the written request of one-third (1/3) of the votes of the Board or upon written

THE RETREAT AT EDISTO BYLAWS/2000-479/11M

petition signed by the Co-owners of one-third (1/3) of the Apartments. Not less than two (2) days notice of a meeting shall be given to each director personally, or by mail, telephone, or telegram, which notice shall state the time, place, and purpose of the meeting;

(f) Any director may waive notice of a meeting before or after the meeting and such waiver shall be deemed equivalent to the giving of notice;

(g) A quorum at a directors' meeting shall consist of the directors entitled to cast a majority of the votes of the entire Board. The acts of the Board approved by a majority of the votes present at a meeting at which a quorum is present shall constitute the acts of the Board, except as specifically otherwise provided in the Articles of Incorporation, these By-Laws, or the Master Deed. If any director's meeting cannot be organized because a quorum has not attended or because the greater percentage of the directors required to constitute a quorum for particular purposes has not attended, wherever the latter percentage of attendance may be required as set forth in the Articles of Incorporation, these By-Laws, or the Master Deed, the directors who are present may adjourn the meeting, from time to time, until a quorum, or the required percentage of attendance greater than a quorum, is present. At any adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice. The joinder of a director in the action of a meeting by signing and concurring the minutes thereof shall constitute the presence of such director for the purpose of determining a quorum;

(h) The presiding officer of directors' meetings shall be the President. In the absence of the President, the directors present shall designate one of their number to preside;

(i) Directors' fees, if any, shall be determined by the members of the Association;

(j) The Board shall manage and direct the affairs of the Association and subject to any restrictions imposed by law, by the Master Deed, or these By-Laws, may exercise all of the powers of the Association subject only to approval by the members when such is specifically required of these By-Laws. The Board shall exercise such duties and responsibilities as shall be incumbent upon it by law, the Master Deed, or these By-Laws, as it may deem necessary or appropriate in the exercise of its powers and shall include, without limiting the generality of the foregoing, the following:

i) To make, levy, and collect assessments against members and members' Apartments to defray the cost of the common areas and facilities of the Regime, and to use the proceeds of said assessments in the exercise of the powers and duties granted unto the Association;

ii) To carry out the maintenance, care, upkeep, repair, replacements, operation, surveillance, and the management of the general and limited elements, services, and facilities of the Regime wherever the same is required to be done and accomplished by the Association for the benefit of its members;

iii) To carry out the reconstruction of improvements after casualty and the further improvement of the property, real and personal;

iv) To make and amend regulations, after Notice and Consent, governing the use of the property, real and personal, in the Regime and to establish fines for the violation of same, so long as such regulations or amendments thereto and fines do not conflict with the restrictions and limitations which may be placed upon the use of such property under the terms of the Articles of Incorporation and Master Deed;

v) To acquire, operate, lease, manage, and otherwise trade and deal with property, real and personal, including Apartments in the Regime, as may be necessary or convenient in the operation and management of the Regime, and in accomplishing the purposes set forth in the Master Deed; provided, however, that any agreement for professional management of the Regime, or any other contract providing for services of the Grantor, may not exceed three (3) years. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice; provided, further, that any contract entered into prior to passage of control of the Association from the Grantor may be terminated by the Association without cause and without penalty at any time after the transfer of control upon not more than ninety (90) days notice to the other party thereto unless ratified by a majority of the Board after passage of control;

vi) By competitive bidding, to contract for the management of the common areas and facilities in the Regime and to designate to such contractor all of the powers and duties of the Association, except those which may be required by the Master Deed to have approval of the Board or membership of the Association;

vii) To enforce by legal means the provisions of the Articles of Incorporation and By-Laws of the Association, the Master Deed, and the regulations and fines hereinafter promulgated governing use of the property in the Regime;

viii) To pay all taxes and assessments which are liens against any property of the Regime, other than Apartments and the appurtenances thereto, and to assess the same against the members and their respective Apartments subject to such liens;

ix) To carry insurance for the protection of the members and the Association against casualty and liability;

x) To pay all costs of power, water, sewer, and other utility services rendered to the condominium and not billed to the owners of the separate Apartments; and

xi) To employ personnel for reasonable compensation to perform the services required for proper administration of the purposes of the Association, as well as to dismiss said personnel; and

xii) To assign, reassign, or designate parking spaces for exclusive use to such Co-Owners as it shall decide and to revoke such assignment or designation from time to time.

(k) The first Board shall be comprised of three (3) persons designated to act and serve as directors in the Articles of Incorporation. Said persons shall serve until their successors are elected or appointed at the first meeting of the members of the Association called after the property identified herein has been submitted to the plan of condominium ownership and the Master Deed has been recorded in the public records of Colleton County, South Carolina. Should any member of said first Board be unable to serve for any reason, a majority of the remaining members of the Board shall have the right to select and designate a party to act and serve as a director for the unexpired term of said director who is unable to serve;

(l) The undertakings and contracts authorized by said first Board shall be binding upon the Association in the same manner as though such undertakings and contracts had been authorized by the first Board duly elected by the membership after the property identified herein has been submitted to the plan of condominium ownership and said Master Deed has been recorded in the Colleton County public records, so long as any undertakings and contracts are within the scope of powers and duties which may be exercised by the Board in accordance with all applicable Regime Documents;

(m) Directors may be removed from office in the manner provided by law for the removal of directors of South Carolina nonprofit corporations.

7. ADDITIONAL PROVISIONS ABOUT MEETINGS OF MEMBERS AND DIRECTORS

(a) Notwithstanding anything contained in these By-Laws to the contrary, any meeting of members or Board may be held at any place within or without the State of South Carolina or by telephone conference.

(b) To the extent now or from time to time hereafter permitted by the laws of South Carolina, the Board may take any action which they might take at a meeting of directors without a meeting. One or more written consents of any such action so taken, signed by each director, is to be retained in the Association's minute book and given equal dignity by all persons to the minutes of meetings duly called and held.

(c) Any action of the members may be taken by written ballot in accordance with '33-31-704, Code of Laws of South Carolina (1976), as amended, or by written consent in accordance with '33-31-704 of said Code.

8. OFFICERS

(a) The executive officers of the Association shall be a President, who shall be a director, a Vice President, a Treasurer, and a Secretary, all of whom shall be elected annually by the Board

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of Directors and who may be peremptorily removed by vote of the directors at any meeting. No person may hold more than two (2) offices. The Board, shall from time to time, elect such other officers or committees and designate their powers and duties as the Board shall find to be required to manage the affairs of the Association.

(b) The President shall be the principal executive officer of the Corporation and subject to the control of the Board. He or she shall, in general, supervise and control all of the business and affairs of the Corporation. He or she shall preside at all meetings of the shareholders and of the Board. He or she may sign, with the Secretary or any other proper officer of the Corporation authorized by the Board, any deeds, mortgages, bonds, contracts, or other instruments which the Board has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board or by these By-Laws to some other officer or agent of the Association, or shall be required by law to be otherwise signed or executed; and in general shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board.

(c) The Vice President shall, in the absence or disability of the President, exercise the powers and perform the duties of President. He shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the directors.

(d) The Secretary shall keep the minutes of all proceedings of the directors and the members. He shall attend to the giving and serving of all notices to the members and directors, and such other notices required by law. He shall have custody of the seal of the Association and affix the same to instruments requiring a seal when duly signed. He shall keep the records of the Association, except those of the Treasurer, perform all other duties incident to the office of Secretary of any association, and as may be required by the directors or President.

(e) The Treasurer shall have custody of all of the property of the Association, including funds, securities, and evidences of indebtedness. He shall keep the assessment rolls, the accounts of members, and the books of the Association in accordance with good accounting practices. He shall perform all other duties incident to the office of Treasurer.

(f) The compensation of all officers and employees of the Association shall be fixed by the Board. This provision shall not preclude the Board from employing the Grantor as an employee of the Association, nor preclude the contracting with the Grantor for management of the Regime. Officers need not be apartment owners.

9. INDEMNIFICATION

Every director, officer, employee or agent of the Association shall be indemnified by the Association to the fullest extent permitted by law, for Non-Profit Corporations, against (a) reasonable expenses, including attorney's fees, actually and necessarily incurred by him in connection with any threatened, pending or completed action, suit or proceedings, whether civil, criminal, administrative or investigative, and whether or not brought by or on behalf of the

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Association, seeking to hold him liable by reason of the fact that he was acting in such capacity, and (b) reasonable payments made by him in satisfaction of any judgment, money decree, fine, penalty, or settlement for which he may have become liable in any such action, suit, or proceeding; and whether or not he continues to be such director, officer, or agent at the time of incurring or imposition of such costs, expenses or liabilities.

The Board of Directors of the Association shall take all such action as may be necessary and appropriate to authorize the Association to pay the indemnification required by this Charter including without limitation, to the extent needed, making a good faith evaluation of the manner which the claimant for indemnity acted and of the reasonable amount of indemnity due him.

Such right shall inure to the benefit of the legal representatives of any such person and shall not be exclusive of any other rights to which such person may be entitled apart from the provisions of this Charter.

The Board of Directors of the Association shall have the power to purchase and maintain insurance on behalf of any such person who has or is such a director, officer, employee or agent against any liability asserted against him in any such capacity, arising out of his status as such.

10. FISCAL MANAGEMENT

The provisions for fiscal management of the Association set forth in the Master Deed shall be supplemented by the following provisions:

(a) The assessment roll shall be maintained in a set of accounting books in which there shall be an account for each Apartment. Such an account shall designate the name and address of the Co-owner or Co-owners, the amount of each assessment against the amounts paid upon the account and, the balance due upon assessments;

(b) The initial Board shall adopt a budget for the period commencing upon submission of the property to Horizontal Property Regime, continuing through the end of the following calendar year, and shall establish assessments for that period;

(c) The Board shall adopt a budget for each calendar year, which shall contain estimates of the cost of performing the functions of the Association, including, but not limited to, the following items:

(i) Common expense budget, which shall include without limiting the generality of the foregoing, the estimated amounts necessary for maintenance and operation of General Common Elements, landscaping, street and walkways, office expenses, retention pond maintenance, utility services, casualty insurance, liability insurance, administration, and reserves (operating and replacement); and

(ii) Proposed assessments against each member. Copies of the budget and proposed assessments shall be given to each member at each annual meeting. If the budget is subsequently amended before the assessments are made, a copy of the amended budget shall be furnished to each concerned member. Delivery of a copy of any budget or amended budget to each member shall not affect the liability of any member for any such assessment, nor shall delivery of a copy of such budget or amended budget be considered as a condition precedent to the effectiveness of said budget and assessments levied pursuant thereto, and nothing herein contained shall be construed as restricting the right of the Board, at any time, in their sole discretion to levy an additional assessment in the event that the budget originally adopted shall appear to be insufficient to pay costs and expenses of operation and management, or in the event of emergencies.

(d) The Board shall determine the method of payment of such assessments and the due dates thereof and shall notify the members thereof. The assessments will initially be on a monthly-in-advance basis unless changed by a vote of the majority of the Board;

(e) The depository of the Association shall be such bank, savings and loan, or other Federally Insured depositories as shall be designated from time to time by the directors and in which the monies of the Association shall be deposited. Withdrawal of monies from such accounts shall be only by checks signed by such persons as are authorized by the directors.

(f) The Board shall require fidelity bonds from all officers and employees of the Association and from any contractor handling or responsible for Association funds. The amount of such bonds shall be determined by the directors, but shall be at least the amount of the total annual estimated operating expense and revenues. The premiums on such bonds shall be paid by the Association as a common expense.

11. PARLIAMENTARY RULES

Roberts Rules of Order (latest edition) shall govern the conduct of corporate proceedings when not in conflict with the Articles of Incorporation and these By-Laws or with the statutes of the State of South Carolina.

12. ASSESSMENTS: LIABILITY, LIEN AND ENFORCEMENT

The Board, as and for the co-owners, is given the authority to administer the operation and management of the Regime, it being recognized that the delegation of such duties to one entity is in the best interests of the co-owners of all Apartments. To properly administer the operation and management of the project, the Association will incur, for the mutual benefit of all of the co-owners of Apartments, costs and expenses which will be continuing or non-recurring costs, as the case may be, which costs and expenses are sometimes herein referred to as "common expense." To provide the funds necessary for such proper operation and management, the said Board is hereby granted the right to make, levy, and collect assessments against the co-owners of all Apartments and said Apartments. In furtherance of said grant of authority to the Board to

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make, levy, and collect assessments to pay the costs and expenses for the operation and management of the Regime, the following provisions shall be operative and binding upon the co-owners of all Apartments, to wit:

(a) All assessments levied against the co-owners of Apartments and said Apartments shall be uniform and, unless specifically otherwise provided for in these By-Laws, the assessments made by the Board shall be in such proportion that the amount of assessment levied against each co-owner of an Apartment and his Apartment shall bear the same ratio to the total assessment made against all co-owners of Apartments and their Apartments as does the undivided interest in General Common Elements appurtenant to each Apartment bear to the total undivided interest in the Regime;

(b) The Board, in establishing said annual budget for operation, management, and maintenance of the project shall include therein a sum to be collected and maintained as reserve fund for replacement of General Common Elements, which reserve fund shall be for the purpose of enabling the Association to replace structural elements and mechanical equipment constituting a part of the General Common Elements as well as the replacement of personal property which may constitute a portion of the General Common Elements held for the joint use and benefit of all the co-owners of all Apartments. The amount to be allocated to such reserve fund for replacements shall be established by said Board so as to accrue and maintain at all times a sum reasonably necessary to anticipate the need for replacements of said General Common Elements. The amount collected and allocated to the reserve fund for replacements from time to time shall be maintained in a separate account by the Association, although nothing herein contained shall prohibit the Association from applying any monies in such reserve fund for replacements to meet other needs or requirements of the Association in operating or managing the project in the event of emergencies or in the event the sums collected from the co-owners of Apartments are insufficient to meet the then fiscal financial requirements of the Association, but it shall not be a requirement that these monies be used for such latter purposes, as a separate assessment may be levied therefor if deemed to be preferable by the Board in the sole discretion of said Board;

(c) Additionally, a working capital fund must be established for the initial months of the project operation equal to at least a two months' estimated common area charge for each Apartment. Each Apartment's share of the working capital fund must be collected and transferred to the Association at the time of closing of the sale of each Apartment estate and maintained for the use and benefit of the Association. The contribution to the working capital fund for each unsold Apartment shall be paid to the Association within sixty (60) days after the date of the conveyance of the first Apartment in the project. The purpose of the fund is to ensure that the Association will have cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed necessary or desirable by the Board. Amounts paid into the fund are not to be considered as advance payment of regular assessments. The Grantor shall not use the working capital funds to pay any of its expenses, reserve contributions, construction costs, or to make up any budget deficits while it is in control of the Association. However, when unsold Apartments are sold, the Grantor may reimburse itself for funds it paid the Association for an

unsold Apartment's share of the working capital fund by using funds collected at Closing when the Apartment is sold;

(d) The Board, in establishing said annual budget for operation, management, and maintenance of the project, shall include therein a sum to be collected as a general operating reserve which shall be used to provide a measure of financial stability during periods of special stress when such sums may be used to meet deficiencies existing from time to time as a result of delinquent payment of assessments by co-owners of Apartments, emergencies, or other reasons placing financial stress upon the Association;

(e) All monies collected by the Association shall be treated as the separate property of the Association and such monies may be applied by the said Association to the payment of any expense of operating and managing the Regime or to the proper undertaking of all acts and duties imposed upon it by virtue of these By-Laws and the Articles of Incorporation and Master Deed of the said Association. As the monies for any assessment are paid unto the Association by any co-owner of an Apartment the same may be commingled with the monies paid to the Association by the other Co-owners of Apartments. All funds and other assets of the Association, and any increments thereto or profits derived therefrom or from the leasing or use of General Common Elements, shall be held for the benefit of the members of the Association, who shall own any common surplus in the proportions of their percentage of undivided interest in the Regime. No member of the Association shall have the right to assign, hypothecate, pledge, or in any manner transfer this interest therein, except as an appurtenance to his Apartment;

(f) The payment of any assessment or installment thereof due to the Association shall be in default if such assessment, or any installment thereof, is not paid unto the Association on or before the due dates for such payment. When in default, the Board may accelerate the remaining installments of the annual assessment upon notice thereof to the Apartment co-owner, whereupon the entire unpaid balance of the annual assessment shall become due upon the date stated in the notice which shall not be less than ten (10) days after the date of the notice. In the event any assessment, installment, or accelerated assessments are not paid within twenty (20) days after their due date, the Association, through its Board, may proceed to enforce and collect the said assessments against the Apartment co-owner owing the same in any manner provided for by the Act, including the right of foreclosure and sale. When in default, the delinquent assessment or delinquent installment thereof due to the Association shall bear interest at the highest rate allowed by law until such delinquent assessment or installment thereof and all interest due thereon has been paid to the Association. If any assessment or installment thereof is not paid when due, the Board may assess such late fees and interest as it deems appropriate from time to time;

(g) The co-owner or co-owners of each Apartment shall be personally liable to the Association for the payment of all assessments, regular or special, which may be levied by the Association while such party or parties are co-owner or co-owners of an Apartment in the Regime. In the event that any co-owner or co-owners are in default in payment of any assessment or installment thereof owed to the Association, such co-owner or co-owners of any Apartment

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shall be personally liable for interest on such delinquent assessment or installment thereof as above provided, and for all costs of collecting such assessment or installment thereof and interest thereon, including a reasonable attorney's fee, whether suit is brought or not;

(h) No co-owner may exempt himself from liability for any assessment levied against such co-owner and his Apartment by waiver of the use or enjoyment of any of the General Common Elements, by abandonment, or in any other manner;

(i) Recognizing that the necessity for providing proper operation and management of the project entails the continuing payment of costs and expenses therefor which results in benefit to all of the co-owners of Apartments and that the payment of such common expense represented by the assessments levied and collected by the Association is necessary in order to preserve and protect the investment of the co-owner of each Apartment, the Association is hereby granted a lien upon such Apartment and its appurtenant undivided interest in General Common Elements, which lien shall secure and does secure the monies due for all assessments now or hereafter levied against the co-owner of each Apartment, such lien shall also secure interest, if any, which may be due on the amount of any delinquent assessments owing to the Association and all costs and expenses, including a reasonable attorney's fee, which may be incurred by the Association in enforcing this lien upon said Apartment and its appurtenant undivided interest in the General Common Elements. The lien granted to the Association may be foreclosed in the same manner as mortgages may be foreclosed in the State of South Carolina. In any suit for the foreclosure of said lien, the Association shall be entitled to rental from the co-owner of any Apartment from the date on which the payment of any assessment or installment thereof became delinquent and shall be entitled to the appointment of a receiver for said Apartment. The rental required to be paid shall be equal to the rental charged on comparable type of Apartments in Edisto Beach, South Carolina. The lien granted to the Association shall further secure such advances for taxes and payments on account of superior mortgages, liens, or encumbrances which may be required to be advanced by the Association in order to preserve and protect its lien. The Association shall further be entitled to interest at the highest rate allowed by law on any such advance made for such purpose. All persons, firms, or corporations who shall acquire, by whatever means, any interest in the ownership of any Apartment, are hereby placed on notice of the lien granted to Association and shall acquire such interest in any Apartment expressly subject to such lien. The lien shall be subordinate to all mortgages or other liens duly recorded prior to the filing of the lien encumbering the Apartment;

(j) The lien herein granted unto Association shall be effective from and after the time of recording in the public records of Colleton County, South Carolina, a claim of lien stating the description of the Apartment encumbered thereby, the name of the record co-owner, the amount, and the date when due. The lien shall include only assessments which are due and payable when the claim of lien is recorded, plus interest, costs, attorney fees, advances to pay taxes and prior encumbrances, and interest thereon, all as above provided. Such claims of lien shall be signed and verified by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record;

(k) In the event that any person, firm, or corporation shall acquire title to any Apartment and its appurtenant undivided interest in General Common Elements by virtue of any foreclosure, judicial sale, or deed in lieu of foreclosure, such person, firm, or corporation so acquiring title shall only be liable and obligated for assessments as shall accrue and become due and payable for said Apartment and its appurtenant undivided interest in General Common Elements subsequent to the date of acquisition of such title and shall not be liable for the payment of any assessments which were in default and delinquent at the time it acquires such title. In the event of the acquisition of title to an Apartment by foreclosure, judicial sale, or deed in lieu of foreclosure, any assessment or assessments as to which the party so acquiring title shall not be liable shall be absorbed and paid by all co-owners of all Apartments as part of the common expense, although nothing herein contained shall be construed as releasing the party liable for such delinquent assessment from the payment thereof or the enforcement of collection of such payment by means other than foreclosure;

(l) Whenever any Apartment may be sold or mortgaged by the co-owner thereof, which sale shall be concluded only upon compliance with other provisions of these By-Laws, the Association, upon written request of the co-owner of such Apartment, shall furnish a statement verifying the status of payment of any assessment which shall be due and payable to Association by the owner of such Apartment to the proposed purchaser or mortgagee. Such statement shall be executed by an officer of the Association and any purchaser or mortgagee may rely upon such statement in concluding the proposed purchase or mortgage transaction, as Association shall be bound by such statement. Any holder of any mortgage on any Apartment shall have the right at all reasonable times and frequency to inquire as to the past due status of any assessment payments. The Association shall, upon request, promptly notify any such mortgagee when any assessment payment becomes more than sixty (60) days past due or when any default in the performance of any obligation required by the Master Deed or these By-Laws as to such Apartment is not cured within sixty (60) days;

(m) In the event that an Apartment is to be sold or mortgaged at the time when payment of any assessment against the co-owner of said Apartment is due to the Association, such Apartment shall be in default, whether or not a claim of lien has been recorded by the Association. Then the proceeds of such purchase or mortgage shall be applied by the purchaser or mortgagee first to payment of any then delinquent assessment or installment thereof due to the Association before the payment of any proceeds of purchase or mortgage proceeds to the co-owner of any Apartment who is responsible for payment of such delinquent assessment;

(n) Institution of a suit at law to attempt to effect the collection of payment of delinquent assessments shall not be deemed to be an election by the Association which shall prevent its thereafter seeking enforcement of the collection of any sums remaining owing to it by foreclosure, nor shall proceeding by foreclosure to attempt to effect such collection be deemed an election precluding the institution of suit at law to attempt to effect collection of any sums then remaining owing it; and

(o) Notwithstanding anything in these By-Laws to the contrary, it is declared that until December 31, 2001, but no later than sixty (60) days after conveyance by Grantor of the first Apartment to a co-owner, each Apartment shall be exempt from the assessment created herein until such time as the Apartment is conveyed by the Grantor to a Co-owner. Except as expressly provided herein, no Apartment and its appurtenant percentage interest shall be exempt from said assessment.

13. MANAGER

(a) Employment. The Board may employ a professional Manager to assist in or take charge of the administration of the Council and the Property. The Board shall solicit competitive bids for such management.

(b) Authority and Duties. The Manager shall have such authority and duties as may be determined by the Board and shall report to the Board or to the President, as the Board may determine.

(c) Compensation. The Manager shall receive such compensation as the Board may determine.

14. DEFINITIONS

The definitions contained in ' 27-31-20 S. C. Code Ann. (1976), are hereby incorporated herein and made a part hereof by reference. The word "Unit" shall have the same meaning as "Apartment".

15. CONFLICTS

In the event of any conflict between the provisions of the Master Deed and the provisions of these By-Laws, the provisions of the Master Deed shall control.

16. SEVERABILITY

The provisions of these By-Laws are severable, and the invalidity of one or more provisions thereof shall not be deemed to impair or affect in any manner the enforceability or effect of the remainder hereof.

17. CAPTIONS

The captions herein are inserted only as a matter of convenience and or reference and in no way define, limit, or describe the scope of these By-Laws or the intent of any provision hereof.

18. GENDER AND NUMBER

All pronouns used herein shall be deemed to include the masculine, the feminine, and the neuter, as well as and the singular and the plural whenever the context requires or permits.

19. AMENDMENT TO BY-LAWS

Amendments to these By-Laws shall be proposed and adopted in the following manner:

(a) Amendments to these By-Laws may be proposed by the Board acting upon vote of the majority of the directors, or by members of the Association owning a majority of the total value of the property in the Regime, whether meeting as members or by instrument in writing signed by them;

(b) Upon any amendment or amendments to these By-Laws being proposed by said Board or members, such proposed amendment or amendments shall be transmitted to the President of the Association, or other officer of the Association in absence of the President, who shall thereupon call a special joint meeting of the members of the Board and the membership for a date not sooner than twenty (20) days or later than sixty (60) days from receipt by such officer of the proposed amendment or amendments, and it shall be the duty of the Secretary to give to each member written or printed notice of such meeting in the same form and in the same manner as notice of the call of a special meeting of the members is required as set forth herein;

(c) In order for amendment or amendments to become effective, the same must be approved by an affirmative vote of the members owning not less than two-thirds (2/3) of the total value of the property in the Regime and the vote of any Mortgagees as required by the Master Deed. Thereupon, such amendment or amendments to these By-Laws shall be transcribed, certified by the President and Secretary of the Association, and a copy thereof recorded in the public records of Colleton County, South Carolina, within ten (10) days from the date on which any amendment or amendments have been affirmatively approved by the directors and members;

(d) At any meeting held to consider such amendment or amendments to the By-Laws, the written vote of any member of the Association shall be recognized if such member is not in attendance at such meeting or represented thereat by proxy, provided such written vote is delivered to the Secretary of the Association at or prior to such meeting; and

(e) Notwithstanding the foregoing provisions of this Section 19, no amendment to these By-Laws which shall abridge, amend or alter the right of The Grantor to designate and select members of the Board, as provided in Section 6 hereof, may be adopted or become effective without the prior written consent of the Grantor. No amendment shall be effective until all the requirements of the Master Deed have been met.

20. RIGHT TO NOTICE AND COMMENT

Before the Board adopts or amends Rules, whenever the Master Deed or By Laws require that an action be taken after "Notice and Comment," and at any other time the Board determines, the Co-owners have the right to receive notice of the proposed action and the right to comment orally or in writing. Notice of the proposed action shall be given to each Co-owner in writing and shall be delivered personally or by mail to all Co-owners at such address as appears in the records of the Association or published in a newsletter or similar publication routinely circulated to all Co-owners. The notice shall be given not less than five (5) days before the proposed action is to be taken. It shall invite comment to the Board orally or in writing before the scheduled time of the meeting. The right to Notice and Comment does not entitle a Co-owner to be heard at a formally constituted meeting.

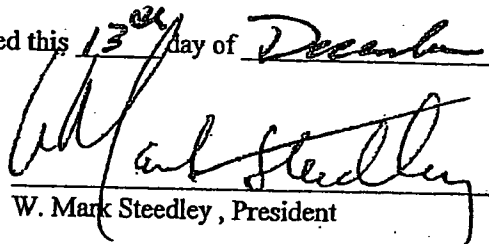
21. RIGHT TO NOTICE AND HEARING

Whenever the Master Deed or By Laws require that an action be taken after "Notice and Hearing," the following procedure shall be observed: The party proposing to take the action (e.g., the Board, a committee, an officer, the Manager, etc.) shall give written notice of the proposed action to all Co-owners or Occupants of Apartments whose interest would be significantly affected by the proposed action. The notice shall include a general statement of the proposed action and the date, time, and place of the hearing. At the hearing, the affected person shall have the right, personally or by a representative, to give testimony orally, in writing, or both (as specified in the notice), subject to reasonable rules of procedure established by the party conducting the meeting to assure a prompt and orderly resolution of the issues. Such evidence shall be considered in making the decision, but shall not bind the decision makers. The affected person shall be notified of the decision in the same manner in which notice of the meeting was given. Failure to provide such notice shall not invalidate any action taken.

22. APPEALS

Any person having a right to Notice and Hearing shall have the right to appeal to the Board from a decision of persons other than the Board by filing a written notice of appeal with the Board within ten (10) days after being notified of the decision. The Board shall conduct a hearing within thirty (30) days, giving the same notice and observing the same procedures as were required for the original meeting.

The foregoing is the original set of By-Laws adopted this 13th day of December, 2000.


W. Mark Steedley, President

APARTMENTS AND GENERAL AND LIMITED COMMON ELEMENTS

The Regime consists of Apartments and General and Limited Common Elements in Stage I and any other stages hereinafter submitted to the Regime, as said terms are hereinafter defined.

Apartments, as the term is used herein, shall mean and comprise the twelve (12) separate Apartments in Stage I, which Apartments are contained in Buildings 5, 6, and 7 as shown on the plat attached to the Master Deed as Exhibit "B". Each apartment within each building shall be designated as A, B, C or D. Apartment "A" within each building shall be the apartment located on the second floor left hand side of the building as viewed from the Front Elevation (see Exhibit "D" for a rendition of the Front Elevation). Apartment "B" within each building shall be the apartment located on the second floor on the right hand side of the building as viewed from the Front Elevation. Apartment "C" within each building shall be the apartment located on the first floor on the left side of the building as viewed from the Front Elevation. Apartment "D" within each building shall be the apartment located on the first floor on the right hand side of the building as viewed from the Front Elevation. Apartments, as the term is used herein, shall mean and comprise the twelve (12) separate Apartments and a typical floor plan for the Apartments is demonstrated graphically on the attached Exhibit "D" to this Master Deed, including but not limited to the space, partition walls, fixtures, HVAC system and appliances therein, excluding, however, all spaces and improvements lying beneath the undecorated and/or unfinished inner surfaces of the perimeter walls and floors, and above the undecorated and/or unfinished inner surfaces of the ceilings of each Apartment, and further excluding all spaces and improvements lying beneath the undecorated and/or unfinished inner surface of all interior load-bearing columns, and further excluding all pipes, ducts, wires, conduits and other facilities running through any interior wall or partition for the furnishing of utility services to Apartments and Limited and General Common Elements. The Apartments include the living room, kitchen area, including appliances therein, bathrooms, bedrooms, closets and the HVAC System, notwithstanding the fact that parts of the HVAC System lie within the inner surfaces of the perimeter of walls and floors and outside of the building itself. There are twelve (12) Apartments and they are generally described as follows:

Apartments A, B, C and D, Building 5; Apartments A, B, C and D, Building 6 and Apartments A, B, C and D, Building 7. The Apartments contain approximately 1280 square feet in heated space and 130 square feet in storage space. Each Apartment is contained on one floor and is comprised of three (3) bedrooms, three (3) bathrooms, a kitchen area and a living room.

It is understood, however, that the general descriptions above, together with the descriptions thereof depicted in Exhibit "D" to the Master Deed are as designed by Grantor and do not reflect any modification made by the owners of the individual Apartment.

General common elements mean and include:

- (a) The land on which the building stands, more fully described above, together with all the other real property described in Exhibit "A" to the Master Deed;

(b) The foundations, main walls, roofs, halls and communication ways of the buildings in existence or to be installed;

(c) The yards, patio, shrubs, planter boxes, exterior lights, fire alarms, fire hoses, signs, and storm drainage system, except as otherwise provided or stipulated;

(d) The compartments or installations of central services such as power, light, telephone, television, cold and hot water, refrigeration, generator, fuel tank and water pump, garbage, and the like, including maintenance or janitorial facilities;

(e) The swimming pool, exercise room and tennis-court facilities;

(f) In general, all devices or installations existing for common use; and

(g) All other elements of the property rationally of common use or necessary to its existence, upkeep, and safety.

Limited Common Elements means and includes:

(a) Any exterior stairways, balconies, entrance or exit ways, storage rooms and all exterior doors and windows or other fixtures designed to serve one or more, but less than all Apartments, are limited common elements allocated exclusively to such Apartment or Apartments.

(b) If any flue, duct, wire, conduit, load bearing wall, load bearing column, or any other fixture lies partially within and partially outside the designated boundaries of an Apartment, any portion serving only that Apartment is a limited common element allocated solely to that Apartment.

(c) There shall be assigned to each Apartment three (3) parking spaces. Two parking spaces will be assigned to each Apartment under the building in which each Apartment is contained. The parking spaces or bays under each building shall be assigned to each apartment as depicted on Exhibit "T" attached hereto and incorporated herein by reference. There shall also be one guest parking space available to each Apartment, which shall be located in the parking areas around the lagoon shown on Exhibits "B" and "C" to the Master Deed.

(3) Article VII entitled "PERPETUAL NON-EXCLUSIVE BASEMENTS IN GENERAL COMMON ELEMENTS" is hereby amended to delete and remove the following language from the Master Deed:

"The entrance from Jungle Road as shown on Exhibit "C" to the Master Deed is achieved by a perpetual easement reserved by Grantor and submitted to the Regime by this Master Deed. The entrance crosses over a proposed bridge for which State and Federal permits have not been finalized at the time this Master Deed has been executed by Grantor. If for any reason the necessary permits for the construction of the proposed

bridge are not obtained, Grantor shall provide access to the project from Jungle Road via an alternate route. Grantor hereby reserves the right to provide for the alternate route from Jungle Road by filing in the Office of the Clerk of Court for Colleton County an amendment to this Master Deed to submit the alternate route to the Regime on Grantor's terms and conditions and without the consent of the Co-owners."

- (4) Article XXXII entitled "DEFINITIONS" is hereby amended to add the following language:

The word "Phase" or "Phases" shall have the same meaning as "Stage" or "Stages."

- (5) Article XXXIII entitled "Miscellaneous" is hereby amended to add the following language:

Any controversy, dispute or claim arising out of or relating to this Master Deed or breach of the terms, conditions and obligations provided herein, shall be settled by arbitration pursuant to South Carolina law and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

- (6) Grantor hereby adds the following new Article XXXIV to read as follows:

NOTICE OF RESTRICTION

A portion of the Real Property is submerged property, or lies within the critical area, as shown on Exhibit "B." All activities on or over, and all uses of, the submerged land or other critical areas are subject to the jurisdiction of the South Carolina Department of Health and Environmental Control, including, but not limited to, the requirement that any activity or use must be authorized by the South Carolina Department of Health and Environmental Control. Any owner is liable to the extent of his ownership for any damages to, any inappropriate or unpermitted uses of, and any duties or responsibilities concerning any submerged land, coastal waters or any other critical areas. Notice, as required by Section 48-39-330, S.C. Code Ann., is hereby given that the property which is the subject of this contract is or may be affected by baselines, setback lines, jurisdiction lines, seaward corners of all habitable structures, and erosion rates as established by the South Carolina Department of Health and Environmental Control.

- (7) The Grantor hereby adds the following new Article XXXV to read as follows:

EXPANSION OF REGIME

The Town of Edisto Beach (hereinafter the "Town") originally approved a twenty-eight unit condominium project for the real property hereby submitted to the Regime. Due to unforeseen circumstances, the Town has granted final approval for only twelve (12) units and the Grantor has agreed to the development of the project in stages or phases as defined herein. The Town has not granted final approval for Phase II and Grantor is under no obligation to develop Phase II of the Regime.

Development Stages. The Grantor proposes to develop the real estate shown on the site plan marked Exhibit "C" to the Master Deed as a single regime by constructing seven (7) buildings as depicted on Exhibit "B" and "C" to the Master Deed. Phase I is comprised of Buildings 7, 6 and 5 and Phase II may include a maximum of four (4) additional buildings containing four (4) apartments each, pending zoning approval by the Town and the election of Grantor to proceed with the development with all or a portion of Phase II.

Maximum Number of Apartments. The maximum number of apartments in Phase II shall be sixteen (16) Apartments. The plot plans and floor plans shall be as depicted in Exhibits "B" and "D" to the Master Deed. All improvements in Phase II shall be completed prior to submission to the Regime and shall be used for residential purposes.

Timetable. The Grantor, its successors and assigns, or any person or entity owning the right to develop and construct proposed Phase II, Buildings 1, 2, 3 and 4 as shown on Exhibit "B" to the Master Deed may, at their sole discretion, stage the development and construction of the improvements into two stages or phases, with no guarantee to the purchasers of Apartments in Phase I that subsequent stages or phases will be developed. It is the Grantor's intention to develop the proposed Phase II, Buildings 1, 2, 3, and 4 as Phase II of the regime. The Grantor, its successors and assigns or persons/entities owning the adjoining property hereby reserve the right and privilege to determine on or before July 31, 2005, whether or not to proceed with the additional stage of development and the parties hereto agree that if the Grantor so decides, the Apartments shall be in a regime which consists of two stages or phases. The determination of the Grantor, its successors and assigns or persons/entities owning the adjoining property as to the stages of the project may be on, before or after the sale of Apartments in Phase I.

Percentage Interest Chart. The percentage interests in the General and Limited Common Elements of each Apartment owner before and after addition of Phase II of proposed development shall be according to the chart attached hereto as Exhibit "E" to the Master Deed.

Compatibility. If the Regime is expanded to include Phase II, the buildings and Apartments erected in Phase II will be compatible with the other Building and Apartments in Phase I of the Regime in terms of architectural style, quality of construction and principal materials employed in construction, and size.

Restriction to Apply to New Apartments. All restrictions in this Master Deed affecting use, occupancy, and alienation of Apartments will apply to Apartments within Phase II.

Location of Building. To the extent possible, the location of Buildings and other improvements in Phase II shall be as shown on Exhibit "B" to the Master Deed.

Limited Common Elements. Any Limited Common Elements created within Phase II will be of the same general types and sizes as those within the other parts of the Regime.

Master Deed Amendment for Phase II. To add Phase II pursuant to the option reserved under this article, the Grantor shall prepare, execute, and record an amendment to this Master Deed that shall contain a plot plan showing the location of the Buildings and any other improvements, and a set of floor plans of the Buildings which shall show graphically the dimensions, area, and location of each Apartment therein and the location of General and Limited Common Elements affording access to each Apartment. The plans shall show graphically insofar as possible and describe in detail the Common Elements in the Buildings, both Limited and General. The plans shall be certified by an engineer or architect authorized and licensed to practice in this state. Instead of recording new plot plans and floor plans as required, the Grantor may record new certifications by a licensed engineer or architect of plot plans and floor plans previously recorded if those plans show all of improvements required by this section.

Grantor Owner of All Apartments Created. The Grantor shall be the owner of all Apartments hereby created. The amendment to the Master Deed must assign an identifying number or letter to each Apartment created and reallocate percentage interest in the Regime.

Assessments. During the period of time in which structures in Phase II are under construction by the Grantor and not completed, no assessments shall be charged against the Grantor as the Co-owner of Apartments in that Phase until both the completion of said Apartments in that Phase and its inclusion in the Regime and the dues shall be assessed against the Co-owners (including the Grantor) of those Apartments in that Phase which shall have been completed, proportionately, inter se.

Easements for Phase II Development. The Grantor hereby reserves unto itself, its successors and assigns, a commercial easement, which shall be transferable to Grantor's successors and assigns; for ingress, egress, access and for the installation of utilities and other improvements over and under common elements to facilitate in all respects the construction of the Phase II buildings. The parties hereto acknowledge that the interest and rights reserved by Grantor herein include the right to exclude any Co-owners, their invitees and licensees, from using the common elements around the proposed building pads (see Exhibit "B" to the Master Deed) during the course of the construction of Phase II Buildings. This commercial easement shall automatically terminate on July 31, 2005.

(8) The Grantor hereby adds the following new Article XXXVII to read as follows:

XXXVII

COUNCIL OF CO-OWNERS ASSOCIATION

Powers. The Regime shall be governed by a South Carolina non-profit corporation known as The Retreat at Edisto Co-Owners Association, Inc., (referred to as the "Association"). A copy of the Articles of Incorporation of the Association is attached to the Master Deed as Exhibit "G". The Association shall have all common law and statutory powers of a non-profit corporation which are not in conflict with the laws of South Carolina. The Association shall have all of the powers and duties prescribed for the "Council of Co-Owners" as set forth in the Act, and all such

other powers and duties reasonably necessary to operate the Regime pursuant to this Master Deed, including but not limited to the following:

- (i) To make and collect assessments against members as co-owners to defray the costs, expenses and losses of the Regime.
- (ii) To use the proceeds of assessments in the exercise of its powers and duties.
- (iii) To maintain, repair, replace, improve and operate the property of the Regime.
- (iv) To purchase insurance upon the Regime property including all apartments and common elements, and insurance for the protection of the Association and the co-owners.
- (v) To reconstruct improvements after casualty.
- (vi) To make and amend reasonable regulations respecting the use of the Regime property.
- (vii) To enforce by legal means the provisions of the Act, this Master Deed and the regulations promulgated thereunder for the use of the Regime property, including, but not limited to, issuing fines for violation of same.
- (viii) To contract for the management of the Regime and to delegate to such manager all powers and duties of the Association except such as are specifically required by this Master deed to have approval of the Board of Directors of the Association or of the co-owners.
- (ix) To employ personnel to perform the services required for proper operation of the Regime and to terminate such employment.
- (x) To foreclose any lien for unpaid assessments in like manner as any mortgagee of real property, as provided in this Master Deed of the Regime and the By-Laws of this Association.

All funds and the title to all properties acquired by the Association and the proceeds thereof shall be held in trust for the members in accordance with the provisions of the Act and this Master Deed. The powers of the Association shall be subject to and shall be exercised in accordance with the provisions of the Act and this Master Deed. The Association will not take steps which will serve to facilitate the transaction of specific business by its members or promote the private interest of any member, or engage in any activity which would constitute a regular business of a kind ordinarily carried on for profit, and no part of the net earnings of the Association shall inure to the benefit of any private individual. In the event of the liquidation or dissolution of the Association, whether voluntary or involuntary, no member shall be entitled to any distribution or division of its remaining property or its proceeds, and the balance of all money and other

property received by the corporation from any source, after the payment of all debts and obligations of the Association, shall be used or distributed exclusively for such purposes as those set forth in the Code of Laws of South Carolina for nonprofit corporations.

Members. The qualification of members, the manner of their admission and voting by members shall be as follows:

A. The Co-owner of each of the apartments shall be a member of the Association, and no other persons or entities shall be entitled to membership. The Association shall have only so many memberships as there are apartments in the Regime, with each member having a vote equal to the percentage of his right to share in the common elements of the Regime set forth in Exhibit "E" to the Master Deed and in accordance with the Act. Voting rights will be exercised in the manner provided by the By-Laws of the Association.

B. Change of membership in the Association shall be established by the recording in the Office of the Clerk of Court for Colleton County, South Carolina, of a deed or other instruments establishing a change of record title to an Apartment in the Regime and the delivery to the Association of a certified copy of such instrument, the new co-owner designated by such instrument thereby becoming a member of the Association. The membership of the prior co-owner shall be thereby terminated.

(9) The Grantor hereby adds the following new Article XXXVIII to read as follows:

XXXVIII

ASSESSMENTS FOR YEARS 2001 AND 2002

In consideration of the staging of the development of the Regime resulting in increased common expense liability, the Grantor hereby binds itself, its successors and assigns, to contribute to the payment of assessments levied by the Association during the years 2001 and 2002. The Grantor hereby agrees on behalf of itself, its successor and assigns, to limit the Phase I unit owners' maximum annual assessment liability for the year 2001 to Three Thousand Nine Hundred Sixty and 00/100 (\$3,960.00) Dollars payable in monthly installments. The Grantor further agrees on behalf of itself, its successors and assigns, to limit the Phase I unit owners' maximum annual assessment liability for the year 2002 to Four Thousand Two Hundred and 00/100 (\$4,200.00) Dollars payable in monthly installments. The Grantor shall pay to the Association the deficiency resulting between the maximum amount collectible from the Phase I unit owners and the actual amount expended by the Association in the years 2001 and 2002. Beginning in the year 2003, the Association shall levy and collect assessments for the care, upkeep and the surveillance of the regime property and its general and limited common elements in the manner provided for in the Master Deed and Bylaws of the Association without further contribution from Grantor.

(10) Attached hereto and incorporated herein by reference is amended Exhibit "E" to the Master Deed.

(11) The Bylaws of the Association (Exhibit "H") are hereby amended as follows:

Bylaw 3. Members, Section (a). The Exhibit referred to in this section is Exhibit "E" to the Master Deed, attached hereto and incorporated herein by reference.

IN WITNESS WHEREOF, the Grantor has executed this First Amendment to the Master Deed this 27th day of July, 2001.

Signed, sealed and delivered in the presence of:

Adrian E. Barr
[Signature]

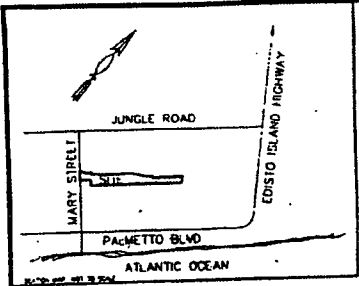
THE RETREAT AT EDISTO, L.L.C.
[Signature]
By: W. Mark Steedley
Its: Managing Member

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 27th day of July by Mark W. Steedley, Managing Member of The Retreat at Edisto, L.L.C.

Adrian E. Barr
Notary Public for South Carolina
My Commission Expires: May 4, 2009



F.L.S. ZONE DATA
 COUNTY PANEL #655414 0001 T
 REISED OCTOBER 16, 1992
 BASE FLOOD ELEVATION 16'
 FLOOD ZONE AE

A
 DELTA = 67° 47' 26"
 RADIUS = 44.79'
 LENGTH = 43.97'
 TANGENT = 34.87'
 CHORD = 8.95' 34' 33" L
 CB = 4.33'

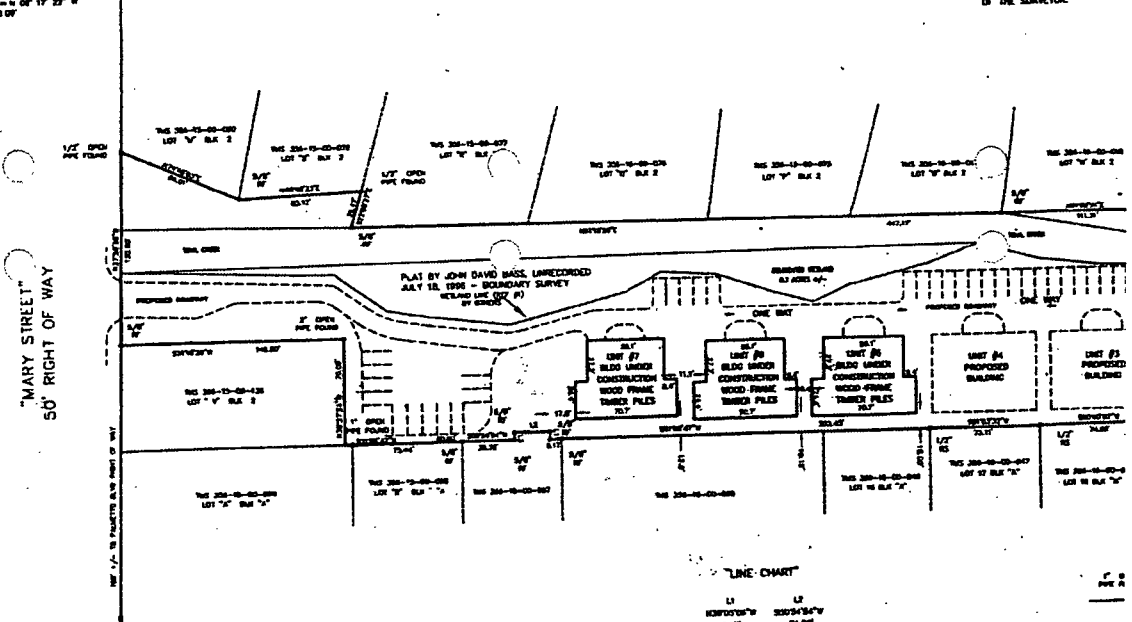
B
 DELTA = 67° 47' 26"
 RADIUS = 44.79'
 LENGTH = 43.97'
 TANGENT = 34.87'
 CHORD = 8.95' 34' 33" L
 CB = 4.33'

C
 DELTA = 67° 47' 26"
 RADIUS = 44.79'
 LENGTH = 43.97'
 TANGENT = 34.87'
 CHORD = 8.95' 34' 33" L
 CB = 4.33'

- LEGEND**
- PROPERTY LINE
 - RIGHT-OF-WAY
 - ADJACENT PROPERTY
 - EDGE OF PAVEMENT
 - CENTERLINE
 - REBAR SET (NEW)
 - ROD SET
 - IRON PIPE FOUND (OLD)
 - CONCRETE MONUMENT FOUND (OLD)
 - CALCULATED POINT
 - REBAR FOUND (OLD)
 - ROD FOUND (OLD)

NOTES:
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DAVID SPELL SURVEYING, P.O. BOX 507, EDISTO ISLAND, SC 29438 (843) 869-0703



"LINE CHART"

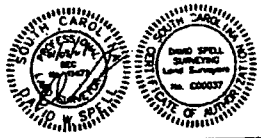
L1	100°00'00"	L7	100°00'00"
L2	5.57'	L8	5.57'
L3	100°00'00"	L9	100°00'00"
L4	4.47'	L10	4.47'
L5	100°00'00"	L11	100°00'00"
L6	14.50'	L12	14.50'

EXHIBIT
PLAINTIFFS
3

CERTIFIED TRUE COPIES OF RECORDS
Karla Williams
 REGISTER OF DEEDS, COLLETON COUNTY, SC
 DATE: 8-30-10

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON 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 A SURVEY AS SPECIFIED THEREIN. ALSO THERE ARE NO VISIBLE ENCUMBRANCES OR PROJECTIONS OTHER THAN SHOWN AND DESCRIBED BY APPROPRIATE METHOD.

David Spell
 SURVEYOR

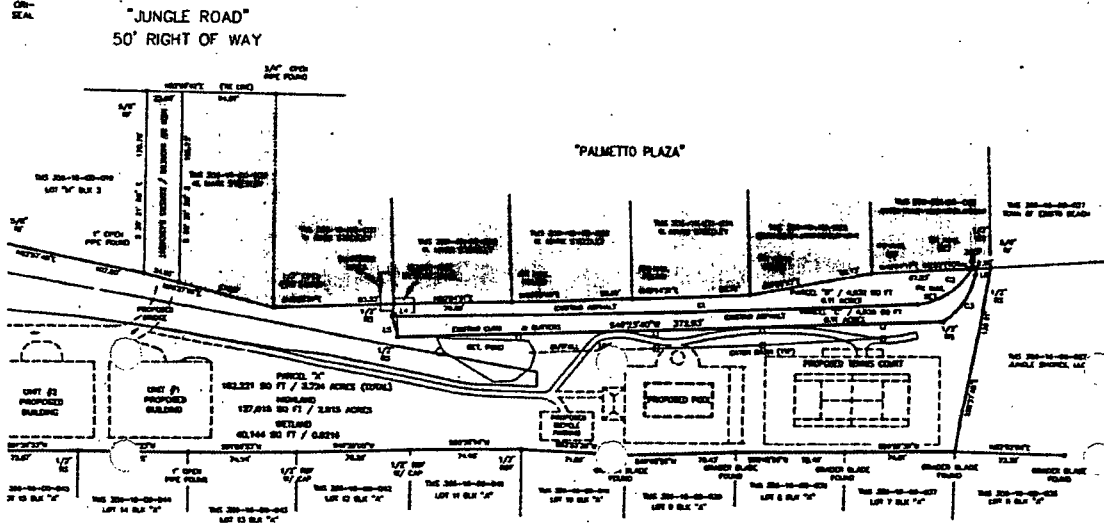


(SEAL ATTACHED)

SURVEY REGISTERED BY: 8

- REFERENCES
- 1) TMS #356-16-00-068
PLAN BY JOHN DAVID BASS, UNRECORDED
JULY 18, 1998 - BOUNDARY SURVEY
 - 2) DEED BOOK 707, PAGE 246
COLLETON COUNTY REC.
JULY 18, 1998 - BOUNDARY SURVEY
 - 3) TREE & TOPOGRAPHIC BY MARK ELLIS
SEPT 25, 1999, REVISED DEC 03, 1999
 - 4) SUBDIVISION OF PARCELS "A" INTO
PARCELS "A" & "B" TOTAL OF 1.8 AC
BY MARK ELLIS, DATED DEC 02, 2000
NOT RECORDED ON THIS DATE

BY
JAMES
HAS
THE
ON-
SEA.



BLVD"
WAY

1/14
Surveyed by
John D. Bass
1/8/01
Patricia A. Bass

BOUNDARY SURVEY
OF
TMS #356-16-00-068
A TOTAL OF 3.724 ACRES
OWNED BY
"THE RETREAT AT EDISTO, L. L. C."
LOCATED ON EDISTO ISLAND, COLLETON COUNTY
DATE: JANUARY 08, 2001 SCALE: 1" = 50'

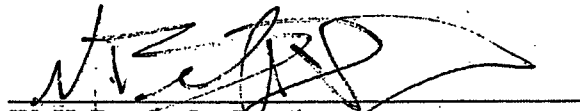


PLAZA
WAY

PLAZA
WAY

29.6

SMITH, BUNDY, BYBEE & BARNETT, P.C.



W. H. Bundy, Jr., Esquire
M. Brent McDonald, Esquire
Post Office Box 1542
Mt. Pleasant, South Carolina 29465-1542
Telephone: (843) 881-1623
**Attorney for Plaintiff The Retreat at Edisto Co-owners
Association, Inc.**

Mt. Pleasant, South Carolina
April 26, 2013

CERTIFICATE OF SERVICE

I, Sarah Foster Rock, an employee of Smith, Bundy, Bybee & Barnett, P.C., hereby certify that true and correct copies of the Deposition Excerpts for use at Trial of the Deposition of W. Mark Steedley and the 30(b)(6) Deposition of Retreat at Edisto, LLC, were served on all parties via Electronic Mail this 26th day of April, 2013 as follows:

The Honorable Perry M. Buckner, III
c/o Camden Hodge, Esquire, Law Clerk to the Honorable Perry M. Buckner, III
101 Hampton Street
Walterboro, SC 29488-0470
pbucknerlc@sccourts.org

Roy P. Maybank, Esq.
Maybank Law Firm, LLC
531 Savannah Highway
P.O. Box 12579
Charleston, SC 29422
roy@maybanklaw.com
**Attorney for The Retreat at Edisto, LLC
and W. Mark Steedley**

David K. Haller, Esquire
Haller Law Firm, PC
115 River Landing Drive, Suite 102
Charleston, SC 29492
dhaller@hallerlawfirm.com
**Attorneys for Stroble Site Services, LLC
and Co-counsel for The Retreat at Edisto,
LLC and W. Mark Steedley**


Sarah Foster Rock

1 Q. So these were undeveloped lots? Owners
2 of undeveloped lots?

3 A. Uh-huh.

4 Q. Is that a yes?

5 A. Yes.

6 Q. I'm sorry, I'm not trying to be rude
7 but she can't take down uh-huhs or head nods or
8 things like that.

9 A. Yes.

10 Q. Okay. So you ultimately got sewer and
11 water to the beach properties?

12 A. Yes.

13 Q. Okay. What occurred next as far as you
14 can remember?

15 A. The town cut the -- would only give us
16 the first phase which is 12 -- 12 units. And they
17 cut the project. They also in some ways cut the
18 project down from 28 to 18 and I believe that had
19 something to do with density of the area. You know,
20 we decided to build the three buildings of four each
21 and --

22 Q. Had any construction began at this
23 point?

24 A. Not yet. You know, your time frame, I
25 can't really tell you. Say construction, what are

1 further understanding that you had some right to
2 develop the property?

3 A. Yes.

4 Q. Okay. Where in here, in this master
5 deed, does it reference that right that you continue
6 to have? And I'll make this real easy because I'm
7 not trying to be tricky. I understand there's a
8 first amendment of the master deed and we're going
9 to go through it. I'm just trying to make sure that
10 it's not -- that you don't take the position that
11 anywhere in the master deed itself references that,
12 that right that you purport to have.

13 MR. MAYBANK: Do you want to read it?
14 Do you want to take the time to read it? It's your
15 right. I would suggest you do. Do you want to take
16 a break and let him read it?

17 THE WITNESS: Sure.

18 MR. MCDONALD: Yeah, I don't care.

19 MR. MAYBANK: Let's do that.

20 (A recess transpired.)

21 BY MR. MCDONALD:

22 Q. Mr. Steedley, we're back on the record.
23 Have you had a chance to review the master deed?

24 A. I've reviewed it, yes.

25 Q. Okay. And where in this master deed

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1 does the Retreat at Edisto, LLC reserve itself the
2 authority to develop the remainder of the property
3 and/or to continue to own the remainder of the
4 property?

5 A. It -- in the original deed, it did not
6 but in the revised amended deed, it does give us the
7 right to do it.

8 Q. Okay. That's fine. So but this master
9 deed that we're looking at without the first
10 amendment to the master deed does not allow -- does
11 not retain any property interest in the Retreat at
12 Edisto, LLC; is that right?

13 MR. MAYBANK: Object to the form.

14 THE WITNESS: Rephrase that.

15 BY MR. MCDONALD:

16 Q. I'm sorry, yeah. I'll ask you again.

17 Setting aside the first amendment to
18 this master deed, the master deed that we're looking
19 at -- we might as well go ahead and mark it since we
20 got a copy of it.

21 (STEEDLEY EXH. 28, Master Deed of Retreat
22 at Edisto Horizontal Property Regime, was marked for
23 identification.)

24 BY MR. MCDONALD:

25 Q. As Exhibit 28. It's your testimony

1 that there's no language in the original master deed
2 that reserves any property rights to the Retreat at
3 Edisto, LLC; is that right?

4 MR. MAYBANK: Object to the form.

5 THE WITNESS: Again, I'm not an
6 attorney so I do not -- I do not see anything.

7 Q. Okay.

8 A. I don't have a legal background to say.

9 Q. Okay. That's fine. Just want to be
10 sure. But you did sign it as the declarant,
11 correct, on behalf of Retreat at Edisto, LLC,
12 correct?

13 A. That's my signature, yes.

14 (STEEDLEY EXH. 29, First Amendment to the
15 Master Deed of the Retreat at Edisto Horizontal
16 Property Regime, was marked for identification.)

17 BY MR. MCDONALD:

18 Q. All right. I'm going to hand you --
19 we'll mark this as Exhibit 29 and I'm going to hand
20 you a document. Will you take the opportunity to
21 review that?

22 MR. MAYBANK: Probably should have
23 given it all to him at one time.

24 MR. MCDONALD: I'm sorry, yeah. I
25 didn't even think about that.

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1 to happen down line; is that right?

2 MR. MAYBANK: Object to the form.

3 THE WITNESS: (No response.)

4 BY MR. MCDONALD:

5 Q. I got you.

6 All right. The second portion of that
7 says: In addition to zoning approval, it says, and
8 the election of grantor to proceed with the
9 development with all or a portion of Phase II, do
10 you see that?

11 A. Where is that?

12 Q. I'm sorry, it's in the same paragraph
13 and it's at the very bottom.

14 A. Okay.

15 Q. Okay. The grantor is Retreat at
16 Edisto, LLC, correct? If you look at the front
17 portion of the page, it will --

18 A. Yes.

19 Q. Okay. Has the Retreat at Edisto, LLC
20 elected to proceed with the development of all or
21 portion of Phase II?

22 A. Sure.

23 Q. When did that occur?

24 A. It occurred all during this period of
25 time when we were trying to get the -- we were

1 getting permits or engineering, surveying, we've
2 been doing that, doing everything -- well, on or
3 before 2005, we got the documentation.

4 Q. Okay. But when was -- an election is
5 required pursuant to this document and when was that
6 election made?

7 A. I can't tell you.

8 Q. Okay.

9 A. I don't recall.

10 Q. Who did you notify of the election?

11 MR. MAYBANK: Object to the form.

12 THE WITNESS: I didn't have to notify
13 anybody.

14 BY MR. MCDONALD:

15 Q. That's fine. So is the answer, you
16 didn't notify anybody?

17 A. I didn't have to notify anybody.

18 Q. But is the answer to the question that
19 you did not notify anyone?

20 A. I didn't have to.

21 Q. That's fine. So the answer is no?

22 MR. MAYBANK: Object to the form.

23 THE WITNESS: I didn't have to.

24 BY MR. MCDONALD:

25 Q. Okay. Did you notify any of the unit

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1 owners that an election had been --

2 A. I didn't have to.

3 Q. Okay. But did you, that's the
4 question?

5 A. I didn't have to.

6 Q. Well, we can sit here all day and --

7 A. No. Okay, well, no.

8 Q. Okay. Thank you.

9 Why is it your position that you didn't
10 have to notify anyone of the election?

11 A. Because it doesn't say anywhere in this
12 deed that I have to.

13 Q. Okay. And could you -- well, we'll
14 come back to that. That's okay.

15 All right. Under the timetable portion
16 of Page 5, it says: The grantor and successors and
17 assigns or any person or entity owning the right to
18 develop and construct proposed Phase II.

19 Is it your position that Retreat at
20 Edisto, LLC could actually convey its right to
21 construct and develop Phase II?

22 A. Rephrase that.

23 Q. Okay. It says the grantor, which we've
24 determined to be the Retreat at Edisto, LLC,
25 correct?

120

1 I've been working on, no.

2 Q. Okay. Is it your position -- well, let
3 me ask you this way: What is your position as to
4 how long you have in to the future to develop or
5 construct Phase II to the extent you have any right?

6 A. I didn't know that there was any time
7 restraints.

8 Q. Okay. So hundred years from now if you
9 haven't done it yet, as long as you made your
10 determination on or before July 31st, 2005 you could
11 still develop and construct?

12 MR. MAYBANK: Object to the form.

13 THE WITNESS: I can't tell you -- I
14 don't know. I don't know how it works legally. I
15 don't know.

16 BY MR. MCDONALD:

17 Q. Okay.

18 A. There may be some time frame on it. I
19 don't know what that might be.

20 Q. Okay. Flip to Page 6 at the top. It
21 says: Master deed amendment for Phase II. Have you
22 had a chance to review it?

23 A. Which one is that, I'm sorry?

24 Q. The master deed amendment for Phase II,
25 that paragraph.

C

Effective:[See Text Amendments]

Code of Laws of South Carolina 1976 Annotated Currentness

Title 27. Property and Conveyances

Chapter 31. Horizontal Property Act

Article 1. General Provisions

→→ § 27-31-100. Master deed or lease; contents.

The master deed or lease creating and establishing the horizontal property regime shall be executed by the owner or owners of the real property making up the regime and shall be recorded with the register of mesne conveyance or clerk of court of the county where such property is located. The master deed or lease shall express the following particulars:

(a) The description of the land whether leased or in fee simple, and the building or buildings in existence or to be constructed, if applicable, expressing their respective areas;

(b) The general description and number of each apartment, expressing its area, location and any other data necessary for its identification;

(c) The description of the general common elements of the property, and, in proper cases, of the limited common elements restricted to a given number of apartments, expressing which are those apartments;

(d) The value of the property and of each apartment, and, according to these basic values, the percentage appertaining to the co-owners in the expenses of, and rights in, the elements held in common; and

(e) The name by which the horizontal property regime is to be known followed by the words "HORIZONTAL PROPERTY REGIME."

(f) A description of the full legal rights and obligations, both currently existing and which may occur, of the apartment owner, the co-owners, and the person establishing the regime. The master deed of any horizontal property regime developed under the provisions of this chapter that contains any submerged land shall contain a notice of restriction stating that all activities on or over and all uses of the submerged land or other critical areas are subject to the jurisdiction of the South Carolina Department of Health and Environmental Control, including, but not limited to, the requirement that any activity or use must be authorized by the South Carolina Department of Health and Environmental Control. The notice shall further state that any owner is liable to the extent of his ownership for any damages to, any inappropriate or unpermitted uses of, and any duties or responsibilities concerning any submerged land, coastal waters, or any other critical area.



(g) In the event the owner of property submitting it for establishment of a horizontal property regime proposes to develop the property as a single regime but in two or more stages or proposes to annex additional property to the property described in the master deed, the master deed shall also contain a general description of the plan of development, including:

(1) The maximum number of units in each proposed stage of development;

(2) The dates by which the owner submitting such property to condominium ownership will elect whether or not he will proceed with each stage of development;

(3) A general description of the nature and proposed use of any additional common elements which the owner submitting property to condominium ownership proposes to annex to the property described in the master deed, if such common elements might substantially increase the proportionate amount of the common expenses payable by existing unit owners;

(4) A chart showing the percentage interest in the common elements of each original unit owner at each stage of development if the owner submitting property to condominium ownership elected to proceed with all stages of development.

(h) Any restrictions or limitations on the lease of a unit including, but not limited to, the amount and term of the lease.

CREDIT(S)

HISTORY: 1962 Code § 57-503; 1962 (52) 1866; 1967 (55) 449; 1970 (56) 2572; 1973 (58) 783; 1984 Act No. 463, §§ 2, 6; 1987 Act No. 143, § 1; 1993 Act No. 181, § 488; 1999 Act No. 86, § 3.


Current through End of 2013 Reg. Sess.

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END OF DOCUMENT

CERTIFICATION

Pursuant to Rule 210 SCARP, I certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

A handwritten signature in black ink, appearing to read "D. K. Haller", written over a horizontal line.

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ATTORNEY FOR THE APPELLANT

February 18, 2014

Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM COLLETON COUNTY
Court of Common Pleas

Perry M. Buckner, Circuit Court Judge

Case No. 2009-CP-15-469
Appellate Case No. 2013-001642

The Retreat at Edisto Co-owners Association, Inc., Gerald Bachelor, Lisa Bachelor, James Currell, Rose Marie Currell, Jervey McKelvey, Barry Smith, Joseph Zuyus, and Emily Zuyus, Plaintiffs

Of whom The Retreat at Edisto Co-owners Association, Inc., Gerald Bachelor, Lisa Bachelor, James Currell, Rose Marie Currell, Jervey McKelvey, Barry Smith are the Respondents,

v.

The Retreat at Edisto, LLC, W. Mark Steedley, individually, Terry Hoff d/b/a Terry Hoff Construction, Handcrafted Homes, LLC, G & S Supply Co., Georgia-Pacific Building Products, LLC, Georgia-Pacific Wood Products, LLC, General PreCast Manufacturing Co., Inc., Banks Construction Company, Stroble Site Services, LLC, Eugene H. Brislin, P.E., James J. Barlow Engineering, P.C., PFS Corporation, James Glenn, Waynes Reeves, and Mike Miller, Defendants.

Of whom The Retreat at Edisto, LLC is the Appellant.

And

G &S Supply Co., Inc.,

Third-Party Plaintiff.

vs.

James Pritchard d/b/a Low Country Exteriors and Edson A. Barros d/b/a Sunshine Vinyl Siding,

Third Party Defendants.

Proof of Service

I certify that I caused to be served the Record on Appeal on counsel for the Respondent at the address stated below:

W.H. Bundy, Jr., Esq.
M. Brent McDonald, Esq.
1037 Chuck Dawley Boulevard #100
Mount Pleasant, SC 29464


David K. Haller

January 27th, 2014

Charleston, South Carolina