

ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2009-CP-23-7707

RECEIVED
FEB 10 2014
SC Court of Appeals

R.C. Frederick Hanold, III and Rose F. Hanold, and Carol R. Mitchell and George P. Mitchell, Jr., ... Respondents,

v.

Watson's Orchard Property Owners Association, Inc., a South Carolina Corporation, and Pelham Farm, LLC, a South Carolina Corporation, Legacy One, LLC, a South Carolina Corporation, SESP LLC, a South Carolina Corporation, an unknown Trustee of the Revocable Trust Agreement Dated March 19, 1996 established by James B. Stephens as amended, and unknown Jay Stephens and Mike Stephens as Co-Personal Representative of the Estate of James B. Stephens, ... Defendants,

Of whom Pelham Farm, LLC, a South Carolina Corporation, Legacy One, LLC, a South Carolina Corporation, an unknown Trustee of the Revocable Trust Agreement Dated March 19, 1996 established by James B. Stephens as amended, and unknown Jay Stephens and Mike Stephens as co-Personal Representative of the Estate of James B. Stephens, are the Appellants.

v.

Property Owners in Watson's Orchard Subdivision: N. Carter Poe, III; McNally Reeves, as Trustee of the Residual Trust under item Five of the Last Will and Testament of Hattie L. Reeves dated February 9, 1998; Janet B. Yusi; Lucy S. Tiller; James G. Stephens; Rachel P. McKaughan; Ramon J. Ashy and Jana Ashy; Christopher D. Scalzo and Heather V. Scalzo; Erma R. Rash, as Trustee of the Erma R. Rash Revocable Trust dated February 12, 2010; James Edwin Conrad, as Trustee of the James Edwin Conrad Living Trust dated September 7, 2010; Sue Lane Conrad; Horst H. H. Eschenberg and Floride C. Eschenberg; Caryl L. Clover, as Trustee of the Caryl L. Clover Revocable Living Trust Agreement dated May 12, 1999; Mary F. Newell; Timothy M. Conroy and Elizabeth W. Conroy; Nathan Scolari; Joel Wells Norwood and Lynn Norwood; J. Lynn Shook; Juan Hernandez and Janice M. Pelletier; Scott P. Payne and Kathleen H. Payne; Joe G. Thomason and Dana L. Henry Thomason; Traci Segura; Cameron E. Smith and Joan B. Smith; Charles E.

Howard and Sharon F. Howard; Penelope J. Galbraith; Meredith C. Vry; Delores B. Mitchell; Lisette M. Silva and Mary F. Colley; Ilona K. Alford and William G. Alford; George T. McLeod and Martha T. McLeod; Ronald S. Wilson and Robin E. Wilson; The Merrill J. Gildersleeve and Anore L. Novak Revocable Living Trust dated November 1, 1996; Anna Marie T. Azores and Kim O. Gococo; Ashley Westrope as Trustee of Martha Randolph Westrop Trust dated June 6, 1988; Cliff C. Jollie and Martha W. Jollie; David A. Saliny and Xiaoli Saliny; Lecia S. Franklin; Dean D. Varner and Deborah P. Varner; W. Frank Durham, Jr.; Christine M. Howard; Samuel P. Howard, Jr. and Jane H. Howard; Manfred E. Kramer and Jane J. Kramer; Mary J. Steele; James J. Barrett, III and Kimberly A. Barrett; Richard A. Herman and Patricia L. Herrman,.....Third-Party Defendants.

**RECORD ON APPEAL
VOL. I**

Randall S. Hiller
SC Bar No. 2513
Randall S. Hiller, P.A.
850 -B Wade Hampton Blvd. (29609)
Post Office Box 1716
Greenville, South Carolina 29602
Telephone: (864) 232-0026
Facsimile: (864) 242-692

ATTORNEY FOR RESPONDENTS

William D. Herlong
SC Bar No. 1428
The Herlong Law Firm, LLC
531 S. Main Street, Suite 201 (29601)
Post Office Box 2003
Greenville, SC 29602
Telephone: (864) 382-3801
Facsimile: (888) 501-1278

ATTORNEY FOR APPELLANTS

February 7, 2013

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2009CP2307707

FILED
CLERK OF COURT
GREENVILLE CO. S.C.
2009 FEB 22 PM 1:08

R C Frederick Hanold III vs. Watsons Orchard Property Owners Association Inc

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this 22nd day of February, 2012.

Court Reporter:

PRESIDING JUDGE - G Edward Welmaker

This judgment was entered on the 22nd day of February, 2012, and a copy mailed first class this 22nd day of February, 2012, to attorneys of record or to parties (when appearing pro-se) as follows:

Stephen Fulton Shaw 27 S Main Street Tavelers
Rest, SC 29690
Randall Scott Hiller Po Box 1716 850-B Wade
Hampton Blvd Greenville, SC 29602

William D. Herlong Herlong Law Firm PO 2003
Greenville, SC 29602

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

NOTICE: THE PLAINTIFFS HAVE BEEN ADVISED OF THE COURT'S ORDER TO DISMISS THE ACTION AND HAVE BEEN ADVISED OF THE COURT'S ORDER TO DISMISS THE ACTION.

Paul B. Wickensher Greenville County Clerk Of Court
- Clerk of Court

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SCCA SCRPC Form 4 Revised 06/2008

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

R.C. Frederick Hanold, III and Rose F.)
Hanold, and Carol R. Mitchell and George)
P. Mitchell, Jr.,)

Plaintiffs/CounterDefendants,)

v.)

Watson's Orchard Property Owners)
Association, Inc., a South Carolina)
Corporation, and Pelham Farm, LLC, a)
South Carolina Corporation, Legacy One,)
LLC, a South Carolina Corporation, SESP)
LLC, a South Carolina Corporation, an)
unknown Trustee of the Revocable Trust)
Agreement Dated March 19, 1996)
established by James B. Stephens as)
amended, and unknown Jay Stephens and)
Mike Stephens as Co-Personal)
Representative of the Estate of James B.)
Stephens,)

Defendants/CounterPlaintiffs.)

v.)

Property Owners in Watson's Orchard)
Subdivision:)
N. Carter Poe, III;)
McNally Reeves, as Trustee of the)
Residual Trust under item Five of the Last)
Will and Testament of Hattie L. Reeves)
dated February 9, 1998;)
Janet B. Yusi;)
Lucy S. Tiller;)
James G. Stephens;)
Rachel P. McKaughan;)
Ramon J. Ashy and Jana Ashy;)
Christopher D. Scalzo and)
Heather V. Scalzo;)
Erma R. Rash, as Trustee of the Erma R.)
Rash Revocable Trust dated February 12,)
2010;)
James Edwin Conrad, as Trustee of the)
James Edwin Conrad Living Trust dated)

COURT OF COMMON PLEAS
CASE NO. 2009-CP-23-7707

7092 SEP 22 PM 1:08
FILED-CLERK OF COURT
GREENVILLE CO. S.C.
2009 SEP 22 PM 1:08

**ORDER FOR ENTRY OF
DEFAULT AGAINST THIRD-
PARTY DEFENDANTS**

September 7, 2010;)
 Sue Lane Conrad;)
 Horst H. H. Eschenberg and Floride C.)
 Eschenberg;)
 Caryl L. Clover, as Trustee of the Caryl L.)
 Clover Revocable Living Trust Agreement)
 dated May 12, 1999;)
 Mary F. Newell;)
 Timothy M. Conroy and Elizabeth W.)
 Conroy;)
 Nathan Scolari;)
 Joel Wells Norwood and Lynn Norwood;)
 J. Lynn Shook;)
 Juan Hernandez and Janice M. Pelletier;)
 Scott P. Payne and Kathleen H. Payne;)
 Joe G. Thomason and Dana L. Henry)
 Thomason;)
 Traci Segura;)
 Cameron E. Smith and Joan B. Smith;)
 Charles E. Howard and Sharon F.)
 Howard;)
 Penelope J. Galbraith;)
 Meredith C. Vry;)
 Delores B. Mitchell;)
 Lisette M. Silva and Mary F. Colley;)
 Ilona K. Alford and William G. Alford;)
 George T. McLeod and Martha T.)
 McLeod;)
 Ronald S. Wilson and Robin E. Wilson;)
 The Merrill J. Gildersleeve and Anore L.)
 Novak Revocable Living Trust dated)
 November 1, 1996;)
 Anna Marie T. Azores and Kim O.)
 Gococo;)
 Ashley Westrope as Trustee of Martha)
 Randolph Westrop Trust dated June 6,)
 1988;)
 Cliff C. Jollie and Martha W. Jollie;)
 David A. Saliny and Xiaoli Saliny;)
 Lecia S. Franklin;)
 Dean D. Varner and Deborah P. Varner;)
 W. Frank Durham, Jr.;)
 Christine M. Howard;)
 Samuel P. Howard, Jr. and Jane H.)
 Howard;)
 Manfred E. Kramer and Jane J. Kramer;)
 Mary J. Steele;)
 James J. Barrett, III and Kimberly A.)
 Barrett;)

Richard A. Herman and Patricia L.
Herrman,

Third-Party Defendants.

)
)
)
)

ORDER FOR ENTRY OF DEFAULT

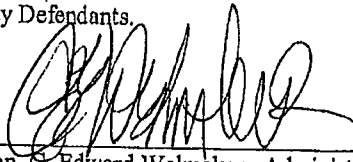
The Third-Party Complaint in this action was filed on July 7, 2012, against the Third-Party Defendants. Each of the Third Party Defendants was all served by November 30, 2011 (see Proof of Service, filed November 30, 2011). As to each of the Third Party Defendants, more than thirty days have elapsed from the date of service and no appearance has been made and no answer to the complaint has been filed.

Accordingly, pursuant to Rule 55(a) of the South Carolina Rules of Civil Procedure, default is entered against each of the Third Party Defendants.

IT IS SO ORDERED.

Date:

2/20/12



Hon. G. Edward Welmaker, Administrative Judge

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B WICKENSIMER

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2009CP2307707

R C Frederick Hanold III Rose F Hanold

2012 JUL -9

Watsons Orchard
Property Owners
Association Inc
Legacy One LLC
James B Stephens
Mike Stephens
N Carter Poe III

Pelham Farm LLC

Carol R Mitchell

George P Mitchell Jr

SESP LLC

Jay Stephens

James B Estate Of
Stephens

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

This matter is before me upon the Defendants' Motion for Summary Judgment and the Plaintiffs' Motion for Summary Judgment pursuant to Rule 56 of the SCRPC. Representing the Plaintiff is Randall Scott Hiller, and representing the Defendant is William D. Herlong.

Under Rule 56 a party is entitled to a judgment as a matter of law if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact. "Summary judgment is appropriate when it is clear there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed." *McClanahan v. Richland County Council*, 350 S.C. 433, 437, 567 S.E.2d 240, 242 (2002).

"At the summary judgment stage of litigation, 'the judge does not weigh conflicting evidence with respect to a disputed material fact ... Nor does the judge make credibility determinations with respect to statements made in affidavits'" *L & W Wholesale, Inc. v. Gore*, 305 S.C. 250, 407 S.E.2d 658 (Ct. App. 1991). The credibility of

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SCCA SCRPC Form 4C (Revised 12/2011)

evidence is properly a question for the jury. *Weaver v. Lentz*, 348 S.C. 672, 581 S.E.2d 360 (Ct. App. 2002).

In cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 673 S.E.2d 801 (2009). If triable issues exist, those issues must go to the jury. *Mulherin-Howell v. Cobb*, 362 S.C. 588, 608 S.E.2d 587 (Ct.App.2005). Having fully reviewed the facts, memorandum and oral arguments, this Court finds that genuine issues of material fact exist. Both the Defendants' and the Plaintiffs' Motions for Summary Judgment are therefore DENIED.

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk:

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2137

Judge Code

Date

For Clerk of Court Office Use Only

7/9/12
This judgment was entered on 7/9/12, and a copy mailed first class or placed in the appropriate attorney's box on 7/9/12 to attorneys of record or to parties (when appearing pro se) as follows:

Randall Scott Hiller Po Box 1716 850-B Wade Hampton
Blvd Greenville, SC 29602

ATTORNEY(S) FOR THE PLAINTIFF(S)

William D. Herlong Herlong Law Firm PO 2003 Greenville,
SC 29602

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of
Court - Clerk of Court

Court Reporter

CPFORM4M
SCCA SCRCP Form 4C (Revised 12/2011)

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF GREENVILLE

CASE NO: 2009CP2307707

IN THE COURT OF COMMON PLEAS

R C Frederick Hanold III vs. Watsons Orchard Property Owners Association Inc

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court;

Dated at Greenville, South Carolina, this 19th day of October, 2012.

Court Reporter:

PRESIDING JUDGE - G Edward Welmaker

This judgment was entered on the 19th day of October, 2012, and a copy mailed first class this 19th day of October, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

Stephen Fulton Shaw 27 S. Main St. Travelers
Rest, SC 29690
Randall Scott Hiller 850-B Wade Hampton Blvd.
Greenville, SC 29609

William D. Herlong 531 S. Main St., Ste. 201 [Zip
29601] PO Box 2003 Greenville, SC 296022003
Register of Deeds County Square

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

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SCCA SCRPC Form 4 Revised 06/2008

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
C.A. NO.: 2009-CP-23-7707

R.C. Frederick Hanold, III and Rose)
F. Hanold, and Carol R. Mitchell and)
George P. Mitchell, Jr.,)

Plaintiffs/Counter)
Defendants)

v.)

ORDER

Watson's Orchard Property Owners)
Association, Inc., a SC Corporation)
And Pelham Farm, LLC, a SC)
Corporation, Legacy One, LLC, a)
SC Corporation, SESP, LLC, a)
SC Corporation, an unknown Trustee)
Of the Revocable Trust Agreement)
Dated March 19, 1996 established)
By James B. Stephens as amended)
And unknown Jay Stephens and)
Mike Stephens as Co-Personal)
Representative of the Estate of James)
B. Stephens,)

Defendants/Counter)
Plaintiffs)

v.)

Property Owners in Watson's)
Orchard Subdivision, et al)

Third Party)
Defendants)

FILED
CLERK OF COURT
JAN 19 PM 2:58

This declaratory judgment action was tried before me on September 4 and 5, 2012. Randall S. Hiller, Esq. represented the Plaintiffs and William B. Herlong, Esq. represented the Defendants. The Third Party Defendants, comprising all of the remaining title holders of lots in Watson's Orchard Subdivision did not answer the third party complaint.

#1
#2

Plaintiffs seek a declaration that the agreement to release Declaration of Restrictions and Protective Covenants filed of record by the Defendants in the Greenville County ROD Office on November 9, 2009 in Deed Book 2364 at Page 2445 and as amended on December 21, 2009 in Deed Book 2366 at Page 1183 are invalid. The Plaintiff contends the number of votes calculated by the Defendants violated the provisions of the original covenants and restrictions which results in a failure to obtain sufficient votes to authorize the release. I agree.

The historical background of the factual circumstances leading to the recordation of the covenants and restrictions which are the subject of this action are not in dispute. In the 1960s Richard Watson and his wife began to develop their substantial landholdings, which up until that time had been an Orchard. The property stretched from what is now Interstate 385 up to and across Pelham Road. Restrictions were placed on the entire property owned by Mr. Watson requiring the properties use as single family residential. Subsequently, a subdivision plat was recorded creating 47 lots in what is known as Watson's Orchard Subdivision. These lots were developed into upscale homes.

In late 1979 it became apparent to Mr. Watson that the restricted property south of Pelham Road would realize a greater value if developed commercially. As a result he entered into negotiations with the owners of the subdivided lots in Watson's Orchard for the purpose of obtaining a release of the restrictions as to residential use for substantially all the property he owned south of Pelham Road.

Those negotiations ultimately resulted in all but J.B. Stephens agreeing to execute a release of the restrictions in exchange for the transfer of a buffer zone consisting of approximately 22 acres which was to be developed and sold as single family residential lots. The buffer zone was to be subject to previously approved covenants and restrictions which were very similar to the covenants already in place on the Watson's Orchard Subdivision. The property was to be owned by a corporation, the Defendant Watson's Orchard Property Owners Association, Inc., a for profit South Carolina corporation (WOPOA), which was tasked with the responsibility of developing and selling the subject parcels. The stock in the corporation was granted to the then owners of the 46 remaining lots in Watson's Orchard who would ultimately realize the financial benefits when the property was sold. While Mr. Stephens did not participate in the creation of the

#2
27

corporation or receive any stock in the corporation his cooperation was gained by allowing his purchase from the corporation of approximately 6 acres directly across Pelham Road from his home which contained sufficient property to allow it to be subdivided into 5 residential lots.

At the conclusion of the negotiations a friendly suit was initiated by Watson's company to confirm the transaction and quiet title to the premises being released from the covenants and restrictions.

Lincoln of South Carolina, Inc., as Declarant, then imposed the Covenants and Restrictions which are the subject of this action upon the 22 acres and thereafter conveyed the property to the Defendant, Watson's Orchard Property Owners Association, Inc.. The Defendant, Watson's Orchard Property Owners Association, Inc., then conveyed the approximately 6 acre tract of land to J.B. Stephens (Stephens tract), whose successors are also Defendants in this action.

Although the restrictive covenants only apply to the 2 tracts of land initially conveyed to Watson's Orchard Homeowners Association the covenants may not be amended without a majority vote of the current property owners of Watson's Orchard Subdivision.

Public records reflect that the property which is the subject of the covenants and restrictions has since 1981 consisted of 3 tracts of land for property tax purposes and there has never been a plat filed for record of any of the subject property.

Both parties acknowledged at trial that if, as Plaintiff contends, the votes attributed to the WOPOA tracts and Stephens tract were not valid then the amended declarations as filed were equally invalid for lack of a majority. The Defendants' contend that the Defendants' properties qualified for multiple votes under the language contained therein. For the many reasons set forth hereinbelow the Court concludes that it does not.

South Carolina has been a record notice state since at least 1839. Title 30 of the *South Carolina Code of Laws* is entirely devoted to public records and recordation of documents with Chapter 7 thereof specifically stating that recordation is essential to validity. This state maintains facilities in every County solely for the purpose of the recordation of documents affecting real estate.

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Both sides agree that the language contained within the covenants that must be interpreted and applied by this Court is as follows:

“...by vote of a majority of the then owners of the lots into which the property described above shall have been developed and in Watson’s Orchard Subdivision...”

I find this language unambiguous. “The main guide in contract interpretation is to ascertain and give legal effect to the intentions of the parties as expressed in the language of the contract” Gilbert v. Miller, 586 S.C.2nd 861 (Ct. App. 2003). “If a contract’s language is clear and capable of legal construction, this Court’s function is to interpret its lawful meaning and the intent of the parties as found in the agreement” *id* at 30-31 586 S.C.2nd at 864. “A clear and explicit contract must be construed according to the terms the parties have used, with the terms to be taken and understood in their plain, ordinary and popular sense” *id*, 586 S.C.2nd at 864. “Under the parol evidence rule, extrinsic evidence is inadmissible to vary or contradict the terms of a contract” Penton v. J.F. Cleckley & Co., 486 S.C.2nd 742 (1997).

“Words of restrictive covenant will be given the common, ordinary meaning attributed to them at the time of their execution” Taylor v. Lindsey, 332 S.C. 1, 498 S.C.2nd 862 (1998). “Restrictive covenants are contractual in nature, so that the paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document” (emphasis added) Taylor v. Lindsey (infra).

When “the language imposing restrictions upon use of property is unambiguous, the restrictions will be enforced according to their obvious meaning”, Shipyard Property Owners Association v. Mangiaracina, 307 S.C. 299, 414 S.C.2nd 705 (Ct.App. 1992).

It is the Plaintiffs’ contention that the 1981 covenants and restrictions, interpreted from the four corners of the document, is unambiguous and thus no further evidence is admissible regarding the parties’ intent and they should be, and can be, enforced according to their obvious meaning.

The covenants themselves, other than the provision allowing enforcement and voting by property not subject to the covenants, were not atypical of residential covenants and restrictions utilized in that time frame. They restrict the property to single family residential use, prohibit certain nuisance and noxious activities, establish an architectural

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committee for control of the type and character of homes to be built thereon, regulate mailboxes and establish certain minimum lot sizes and building sizes that the property may be developed.

Subsequent to the imposition of the covenants by Lincoln of South Carolina, Inc., it conveyed the premises burdened by the restrictive covenants to Watson's Orchard Property Owner's Association, Inc., a corporation formed for the purpose stated in its articles of incorporation to "...engage in the business of selling and developing approximately 22.12 acres of residential real estate..." (emphasis added). Immediately after acquiring title, the property association conveyed a tract of land to the predecessor in title of the other Defendants. At the time of the attempt to remove the covenants from the premises the public records would reflect that neither of the tracts have ever applied for, been approved for or recorded a subdivision plat, nor have any homes been constructed thereon.

Applying these standards and giving the words "lot" and "developed" the plain, ordinary meaning which would have been attributed to them at the time of their execution means exactly what it says, lots that have been developed. To construe it in any other way would essentially eliminate the language from the covenants entirely. It is not permissible for this Court, in the face of clear and unambiguous language, to attempt to ascertain whether the Declarant of the document might have intended it to say something other than what it does. In order to read this language in the manner proposed by the Defendant it would be necessary to insert additional language into the covenants. That is not the Court's province. It does not say might be developed, it does not say may be developed, it does not say could be developed. It says that the lots into which the property shall have been developed will have a vote.

Because I have found the original covenants and restrictions unambiguous I have not relied upon or considered the additional evidence submitted other than as set forth below, ~~however were it necessary to do so I would find that such evidence supports the~~ interpretation I have applied to the covenants.

Having determined that the language within the covenants are clear and unambiguous and having given them their plain and ordinary meaning the only issue

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remaining is whether the subject premises have been developed into lots as contemplated by the covenants.

The Plaintiffs' position, supported by the testimony of the administrator of the Greenville County Planning Commission, is that absolutely nothing has been done to the subject property subsequent to the recording of the covenants that could or would constitute its development into lots. The testimony was uncontradicted that there existed at the time of the recordation of the covenants a subdivision ordinance in Greenville County and such subdivision ordinance has remained in place, with some amendments, throughout the existence of the covenants. It is uncontradicted that in order to subdivide or offer for sale, in compliance with the Ordinance, the five lots the Defendant contends have been developed would require the submission to the planning commission of a plat meeting the requirements of the ordinance, stamped as recordable and then the recording of the plat. The evidence is also uncontradicted that no such application was made, no plat was ever submitted, no approval was ever granted and no plat was ever recorded. Finally, it was also uncontradicted that the subject property had a single tax map number and, as of the date of the attempted cancellation of the restrictive covenants, the property could not be legally sold as Five (5) individual lots.

In addition to the Greenville County Subdivision Ordinance, Section 30-5-240 of our recordation statute specifically requires the recordation of a plat whenever property is subdivided for the purpose of sale or offering of sale and Section 30-5-230 authorizes reference in recorded documents to recorded plats in lieu of the necessity of a metes and bounds description of the property.

Defendant's arguments to the contrary are essentially threefold. Primarily, the Defendant relies upon the prefatory language contained within the deed from WOPOA which states "containing five (5) lots" and then references a plat which was never recorded (and per the testimony of the planning commission could never be recorded). The actual description contained within the deed is a metes and bounds description of the boundary of the entire tract. The Defendant also relies on various documents contained within the 1980 lawsuit and the repetition of the "five lots" referenced in various attorneys' files and indexes. Finally, the Defendant contends that the aforementioned

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language in the deed constituted a subdivision for the purposes of creating additional votes pursuant to the covenants without regard to its otherwise illegality as a subdivision.

Despite the fact that the character of the property owned by the Defendants has not changed in thirty years, no subdivision plat has ever been prepared or recorded and the claimed lots within the property could not be legally be sold, the Defendant wishes this Court to award it votes for lots that do not and cannot legally exist only long enough for the Defendants to vote that the lots will never exist.

These arguments are unpersuasive. The documents and the deed relied upon by the Defendants are transactions between the Defendants. The Declarant of the Covenants and Restrictions was not a party to the conveyance and the Covenants were recorded in advance of the deed. The intent of the parties to the conveyance has no relevancy whatsoever to the intent of the Declarant of the Covenants. Even were that not the case, I find no evidence whatsoever that any attempt or effort was made to develop this property in the context that I have determined the covenants require. To the contrary, the only evidence of the intent of the Grantee for the Stephens tract was the testimony of his personal attorney that he had no intention of preparing or filing a subdivision plat because he purchased the property as a buffer for his existing residence.

As stated previously, South Carolina is a record state. Everyone is presumed to know the law. Six acres of property having a single tax map number for thirty consecutive years does not and can not qualify under the clear language of the covenants as having been developed into five lots. Whether it could have, should have, or whether someone somewhere intended that it be does not equate to actually doing it as the law in the State of South Carolina requires it to be done. It is plain and obvious under the language of the covenants that these properties were intended to be subdivided into lots, sold and to have houses sitting upon them long before the date for renewal of the covenants arrived. It is equally plain and obvious that doing nothing that the law required to develop and sell the property could not qualify as developing lots in the context of the covenants. To construe "lots which shall have been developed" to mean anything other than the lots being developed in accordance with local and state law would require both a complete disregard of all of the above enumerated factors to be considered in interpreting covenants and abandoning all common sense. Simply drawing lines on a piece of paper

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or referring to their property as lots is obviously not what the covenants intended "shall have been developed" to mean.

Defendant's testimony from the former and current directors of the Greenville County Planning Commission implying that it was not uncommon to violate the statute or that no one had been prosecuted for violating the statute is irrelevant. This Court will not "find" that a subdivision occurred in violation of state and county law under any circumstances. "The authorities from the earliest time to the present unanimously hold that no court will lend its assistance in any way towards carrying out the terms of an illegal contract. In case any action is brought which it is necessary to prove the illegal contract in order to maintain the action, courts will not enforce it, nor will they enforce any alleged rights directly springing from such contract", Jackson v. Bi-Lo Stores, Inc., 437 S.C.2nd 168 (Ct. App. 1993). "The general rule, well established in South Carolina, is that courts will not enforce a contract when the subject matter of the contract or an act required for performance violates public policy as expressed in constitutional provisions, statutory law, or judicial decision", Beach Co. v. Twillman, Ltd., 566 S.C.2nd 863 (Ct. App. 2002). It is a well-settled principle of contract law that "a contract to do an act which is prohibited by statute, or which is contrary to public policy, is void, and cannot be enforced in a court of justice." McConnell v. Kitchens, 20 S.C. 430, 43738 (1884); see also Pendarvis v. Berry, 214 S.C. 363, 369, 52 S.E.2d 705, 707 (1949) ("Men may enter into any agreements they please and, as between themselves, may either respect or disregard them. When, however, they are submitted to the courts for adjudication, they must be tested and governed by the law.") (quoting Gilliland v. Phillips, 1 S.C. 152 (1869).

Even were this Court not prohibited in aiding in the avoidance of the law, it is the Court's conclusion that the deed and unrecorded survey do not, nor did they, constitute a subdivision of the property under state or local law nor did they constitute the development of the property into lots under the plain language of the covenants.

During the course of the trial the Defendants proffered purported expert testimony, over the objection of the Plaintiff, which ultimately was decidedly unhelpful. After careful review the Court is of the opinion that the Plaintiffs' objection to this testimony and evidence was well founded. The testimony of the experts amounted to

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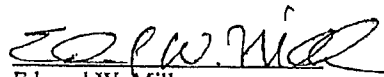
nothing more than an expression of their opinion as to how the covenants and restrictions should be interpreted and how the subsequent treatment of the property should be applied to that interpretation. The opinions themselves displayed, at times, a lack of complete knowledge of the circumstances as well as a complete lack of any citation to authority to support the opinions. Ultimately the experts opined only on the very issue that it is the sole responsibility of this Court to determine, the construction and application of the facts and law. I have not relied on any of those opinions in making my rulings in this matter.

Based upon the forgoing I make the following findings of fact:

1. That the subject matter and the parties are within the jurisdiction of and properly before this Court.
2. That the covenants and restrictions recorded in Deed Book 1140 at Page 961 applies and restricts the property which is the subject of this action.
3. That the covenants and restrictions are unambiguous.
4. That the covenants and restrictions unambiguously provide a vote for the purpose of amending the covenants only to lots which shall have been developed.
5. That the property owned by the Defendant, Watson's Orchard Property Association, Inc. and the property presently owned by the Defendants, Pelham Farm, LLC, Legacy One, LLC, SESP, LLC, an unknown trustee of the revocable trust agreement dated March 19, 1996 established by James B. Stephens as amended, and J. Stephens and Mike Stephens as co-personal representatives of the estate of James B. Stephens, has not been developed into lots for the purpose of being entitled to vote to amend or modify the restrictive covenants.
6. That the agreement to release declarations and restrictions and protective covenants recorded in Deed Book 2364 at Page 2445 on November 9, 2009 and as amended by recording in Deed Book 2366 at Page 1183 on December 21, 2009 in the ROD Office for Greenville County are void and of no force and effect.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, That the agreement to release declarations and restrictions and protective covenants recorded in Deed Book 2364 at Page 2445 on November 9, 2009 and as amended by recording in Deed Book 2366 at Page 1183 on December 21, 2009 in the ROD Office for Greenville County are void and of no force and effect.

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Edward W. Miller
Circuit Court Judge, 13th Circuit

Dated: 10/19/12

Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER

JUDGMENT IN A CIVIL CASE

CASE NO: 2009-CP-23-7707

2013 JAN 28 P 3:59

R.C. Frederick Hanold, III and Rose F. Hanold, and Carol R. Mitchell and George P. Mitchell, Jr. v. Watson's Orchard Property Owners Association, Inc.

CHECK ONE:

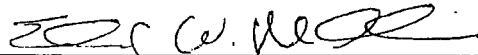
- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy: ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☒ Statement of Judgment by the Court:

Defendant's Motion for Reconsideration is Denied.

Dated at Greenville, South Carolina, this 16th day of January, 2013.

Court Reporter:



PRESIDING JUDGE - EDWARD W. MILLER

This judgment was entered on the 1/28/13, and a copy mailed first class this 1/28/13, to attorneys of record or to parties (when appearing pro se) as follows:

William D. Herlong P.O. Box 2003 531 S. Main St., Ste. 201
Greenville, SC 29602

Randall S. Hiller P.O. Box 1716 Greenville, SC 29602

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

2009 SEP -8 P 4:42

R. C. FREDERICK HANOLD, III and
ROSE F. HANOLD

CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER

DECLARATORY JUDGMENT
COMPLAINT

2009-CP-23-7707

and

C/A No. _____

CAROL R MITCHELL and
GEORGE P. MITCHELL, JR.

(JURY TRIAL)

Plaintiffs

-vs-

WATSON'S ORCHARD PROPERTY
OWNERS ASSOCIATION, INC.,
a South Carolina Corporation, and

PELHAM FARM, LLC, a South Carolina Corporation, LEGACY ONE, LLC, a South Carolina Corporation, SESP LLC, a South Carolina Corporation, an unknown Trustee of The Revocable Trust Agreement Dated March 19, 1996 established by James B. Stephens as amended, and unknown JAY STEPHENS and MIKE STEPHENS as Co-Personal Representative of the Estate of James B. Stephens.

Defendants.

THE PLAINTIFF SEEKS declaratory relief to determine the rights of the parties. The Plaintiffs, complaining of the Defendants herein, would respectfully show the Court and allege herein:

PARTIES AND JURISDICTION

1. The Plaintiffs are citizens and residents of the County of Greenville, State of South Carolina and owner of a real property parcel within the Watson's Orchard Subdivision which is situated in Greenville County, South Carolina.

2. The Plaintiff is informed and believes that the Defendants, WATSON'S ORCHARD PROPERTY OWNERS ASSOCIATION, INC., PELHAM FARM, LLC, LEGACY ONE, LLC, and SESP, LLC is a corporate person organized under the state laws of South Carolina whose principal place of business is in the County of Greenville, State of South Carolina. Further that the unknown Trustee of The Revocable Trust Agreement Dated March 19, 1996 established by James B. Stephens as amended and JAY STEPHENS and MIKE STEPHENS as Co-Personal Representative of the Estate of James B. Stephens are residents of Greenville County, South Carolina.

3. The properties which are the subject of this action are situate in the County of Greenville, State of South Carolina.

4. All matters and things herein are within the jurisdiction of this Court.

THIS ACTION is brought under the provisions of the South Carolina Uniform Declaratory Judgment Act, S.C. Code Ann. § 15-53-10, et seq. (1976) as amended; there is a real and justiciable controversy between the parties and, by these proceedings, the Plaintiffs ask that the Court inquire into, and declare, the respective rights and obligations of the parties hereto arising out of the facts set forth below.

FACTUAL BACKGROUND

5. The plaintiff in this action is a homeowner in the subdivision Watson's Orchard.
6. The defendant is a South Carolina corporation whose shareholders include some current and some former homeowners or lot owners in the subdivision.
7. In 1962, the original developer developed a large tract of land near the intersection of Pelham and Haywood roads in Greenville County, S.C.

8. A smaller portion of that larger tract described above was developed into the subdivision Watson's Orchard that is the subject of this lawsuit.
9. All of the lands described above were subordinate to Restrictions and Protective Covenants which provided predominantly for single family residential use of the lands.
10. As the characteristics of the area changed, the developer or his assigns, sought to increase the intensity and use of the subject lands from single family residential to multi-family residential and commercial/office.
11. In order to facilitate more intensive uses for some of the larger tract of lands, while preserving the single family residential nature of the Watson's Orchard subdivision within that larger tract of lands, the developer and Watson's Orchard land owners agreed to create a buffer property that would shield Watson's Orchard from more intensive uses.
12. To create the buffer described above, in 1981, the developer dedicated a 14.79 acre tract on the south side of Pelham Road (Pelham Road Tract) and a 6.2 acre tract on the east side of Haywood Road (Haywood Road Tract). These lands effectively buffer Watson's Orchard from the more intensive uses that now exist on the larger tract.
- 13. The method that the developer used to dedicate the lands was through a deed to a corporation established exclusively to hold and protect the buffer land tracts. That corporation is the defendant in this case (Watson's Orchard Property Owners Association, Inc.).

NATURE OF THE CONTROVERSY

14. The nature of the controversy at hand is:

- A. That the Watson's Orchard Property Owners Association, Inc. claims ownership of lands in fee simple by the individual corporate shareholders (many of whom no longer reside in Watson's Orchard) when the purpose of granting the lands was for the benefit of the Watson's Orchard Subdivision.
- B. That the Watson's Orchard Property Owners Association, Inc. has taken steps to eliminate restrictive covenants and market the lands in controversy (Pelham Road and Haywood Road Tracts) for sale as more intensive commercial use when the lands were granted by the developer as a buffer against such more intensive development.
- C. That, with respect to removing or altering restrictive covenants for the Watson's Orchard Subdivision, the Watson's Orchard Property Owner's Association, Inc. is asserting voting privileges for an adjacent parcel(s) of lands (Stephens Property) whereas that parcel(s) is not within the Watson's Orchard Subdivision or is otherwise disqualified to provide its owners with voting privileges pertaining to alterations or amendments to the Watson's Orchard Subdivision's restrictive covenants.

FOR A FIRST DECLARATION

15. The Plaintiffs would show that the Corporation "Watson's Orchard Property Owners Association, Inc." was established, and should exist, solely as a holding company to hold the Pelham Road Tract and Haywood Road Tract as a fiduciary for the benefit of the Watson's Orchard Subdivision and not for the pecuniary interests of the current individual corporate shareholders.

FOR A SECOND DECLARATION

16. The Plaintiffs would show that the shares of the corporation were originally intended, and should now and forever into the future, inure an undivided partial interest to each current subdivision lot (owner) within the Watson's Orchard subdivision.

FOR A THIRD DECLARATION

17. The Plaintiffs would show that the Pelham Road and Haywood Road Tracts were granted by the developer to the Watson's Orchard Property Owner's Association, Inc., for the purpose of insuring a buffer against more intensive development.

FOR A FOURTH DECLARATION

18. The Plaintiffs would show that the owners of the "Stephens Property," (Pelham Farm LLC, Legacy one LLC, and SESP LLC along with the estate (Revocable Trust Agreement dated March 19, 1996 established by James B Stephens as amended), are not entitled to vote or are otherwise disqualified to vote on any proposal or motion to remove or alter restrictive covenants for the Watson's Orchard Subdivision.

WHEREFORE, the Plaintiffs petition that this Court inquire into these matters and declare that:

1. the Watson's Orchard Property Owners Association, Inc." was established, and should exist, solely as a holding company to hold the Pelham Road Tract and Haywood Road Tract as a fiduciary for the benefit of the Watson's Orchard Subdivision and not for the pecuniary interests of the individual corporate shareholders;

2. each current subdivision lot (owner) within the Watson's Orchard subdivision shall have, now and forever into the future, be the sole owners of an undivided partial interest to the Pelham Road and Haywood Road Tracts and that all shares of the Watson's Orchard Property Owners Association, Inc. shall permanently attach to the several subdivision lots and each lot's owner.
3. the Pelham Road and Haywood Road Tracts were granted by the developer to the Watson's Orchard Property Owner's Association, Inc., for the purpose of insuring a buffer against more intensive development;
4. the owners of the "Stephens Property," (Pelham Farm LLC, Legacy one LLC, and SESP LLC along with the estate (Revocable Trust Agreement dated March 19, 1996 established by James B Stephens as amended), are not entitled to vote or are otherwise disqualified to vote on any proposal or motion to remove or alter restrictive covenants for the Watson's Orchard Subdivision;

FURTHER, that this Court enjoin and restrain the Watson's Orchard Property Owners Association, Inc. from using the property for any uses which are more intensive than the current uses within the Watson's Orchard Subdivision together with costs and any other relief this Court deems just and proper.

Filed this 8th day of September, 2009.

STEPHEN FULTON SHAW, Esq.
P.O. Box 744
Mauldin, SC 29662
(877) 600-7429
SC Bar No. 76811
steve@shawlegalfirm.com
Attorney for defendants

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

R. C. FREDERICK HANOLD, III and
ROSE F. HANOLD

(1st AMENDED)
DECLARATORY JUDGMENT
COMPLAINT

and

C/A No. 2009 - CP - 23 - 7707

CAROL R MITCHELL and
GEORGE P. MITCHELL, JR.
Plaintiffs

(JURY TRIAL)

-vs-

WATSON'S ORCHARD PROPERTY
OWNERS ASSOCIATION, INC.,
a South Carolina Corporation, and

PELHAM FARM, LLC, a South Carolina Corporation, LEGACY ONE, LLC, a South Carolina Corporation, SESP LLC, a South Carolina Corporation, an unknown Trustee of The Revocable Trust Agreement Dated March 19, 1996 established by James B. Stephens as amended, and unknown JAY STEPHENS and MIKE STEPHENS as Co-Personal Representative of the Estate of James B. Stephens.
Defendants.

FILED
CLERK OF COURT
GREENVILLE
SOUTH CAROLINA

2009 SEP 10 P 3:04

THE PLAINTIFF SEEKS declaratory relief to determine the rights of the parties. The Plaintiffs, complaining of the Defendants herein, would respectfully show the Court and allege herein:

PARTIES AND JURISDICTION

1. The Plaintiffs are citizens and residents of the County of Greenville, State of South Carolina and owner of a real property parcel within the Watson's Orchard Subdivision which is situated in Greenville County, South Carolina.
2. The Plaintiff is informed and believes that the Defendants, WATSON'S ORCHARD PROPERTY OWNERS ASSOCIATION, INC., PELHAM FARM, LLC, LEGACY ONE,

LLC, and SESP, LLC is a corporate person organized under the state laws of South Carolina whose principal place of business is in the County of Greenville, State of South Carolina. Further that the unknown Trustee of The Revocable Trust Agreement Dated March 19, 1996 established by James B. Stephens as amended and JAY STEPHENS and MIKE STEPHENS as Co-Personal Representative of the Estate of James B. Stephens are residents of Greenville County, South Carolina.

3. The properties which are the subject of this action are situate in the County of Greenville, State of South Carolina.
4. All matters and things herein are within the jurisdiction of this Court.

THIS ACTION is brought under the provisions of the South Carolina Uniform Declaratory Judgment Act, S.C. Code Ann. § 15-53-10, et seq. (1976) as amended; there is a real and justiciable controversy between the parties and, by these proceedings, the Plaintiffs ask that the Court inquire into, and declare, the respective rights and obligations of the parties hereto arising out of the facts set forth below.

FACTUAL BACKGROUND

5. The plaintiff in this action is a homeowner in the subdivision Watson's Orchard.
6. The defendant is a South Carolina corporation whose shareholders include some current and some former homeowners or lot owners in the subdivision.
7. In 1962, the original developer developed a large tract of land near the intersection of Pelham and Haywood roads in Greenville County, S.C.
8. A smaller portion of that larger tract described above was developed into the subdivision Watson's Orchard that is the subject of this lawsuit.

9. All of the lands described above were subordinate to Restrictions and Protective Covenants which provided predominantly for single family residential use of the lands.
10. As the characteristics of the area changed, the developer or his assigns, sought to increase the intensity and use of the subject lands from single family residential to multi-family residential and commercial/office.
11. In order to facilitate more intensive uses for some of the larger tract of lands, while preserving the single family residential nature of the Watson's Orchard subdivision within that larger tract of lands, the developer and Watson's Orchard land owners agreed to create a buffer property that would shield Watson's Orchard from more intensive uses.
12. To create the buffer described above, in 1981, the developer dedicated a 14.79 acre tract on the south side of Pelham Road (Pelham Road Tract) and a 6.2 acre tract on the east side of Haywood Road (Haywood Road Tract). These lands effectively buffer Watson's Orchard from the more intensive uses that now exist on the larger tract.
13. Simultaneously or shortly thereafter, the Watson's Orchard Property Owner's Association, Inc., bargained and sold a portion of the Pelham Road Tract (hereafter, "Stephens Property") to Pelham Properties, Inc. (Attached as Exhibit C).
14. The method that the developer used to dedicate the lands was through a deed to a corporation established exclusively to hold and protect the buffer land tracts (attached as Exhibits B & D). That corporation is the defendant in this case (Watson's Orchard Property Owners Association, Inc.).

NATURE OF THE CONTROVERSY

15. The nature of the controversy at hand is:

- A. That the Watson's Orchard Property Owners Association, Inc. claims ownership of lands in fee simple by the individual corporate shareholders (many of whom no longer reside in Watson's Orchard) when the purpose of granting the lands was for the benefit of the Watson's Orchard Subdivision.
- B. That the Watson's Orchard Property Owners Association, Inc. has taken steps to eliminate restrictive covenants and market the lands in controversy (Pelham Road and Haywood Road Tracts) for sale as more intensive commercial use when the lands were granted by the developer as a buffer against such more intensive development.
- C. That, with respect to removing or altering restrictive covenants for the Watson's Orchard Subdivision, the Watson's Orchard Property Owner's Association, Inc. is asserting voting privileges for an adjacent parcel(s) of lands (Stephens Property) whereas that parcel(s) is not within the Watson's Orchard Subdivision or is otherwise disqualified to provide its owners with voting privileges pertaining to alterations or amendments to the Watson's Orchard Subdivision's restrictive covenants.

FOR A FIRST DECLARATION

16. The Plaintiffs would show that the Corporation "Watson's Orchard Property Owners Association, Inc." was established, and should exist, solely as a holding company to hold the Pelham Road Tract and Haywood Road Tract as a fiduciary for the benefit of the Watson's Orchard Subdivision and not for the pecuniary interests of the current individual corporate shareholders.

FOR A SECOND DECLARATION

17. The Plaintiffs would show that the shares of the corporation were originally intended, and should now and forever into the future, inure an undivided partial interest to each current subdivision lot (owner) within the Watson's Orchard subdivision.

FOR A THIRD DECLARATION

18. The Plaintiffs would show that the Pelham Road and Haywood Road Tracts were granted by the developer to the Watson's Orchard Property Owner's Association, Inc., for the purpose of insuring a buffer against more intensive development.

FOR A FOURTH DECLARATION

19. The Plaintiffs would show that the owners of the "Stephens Property," (Pelham Farm LLC, Legacy one LLC, and SESP LLC along with the estate (Revocable Trust Agreement dated March 19, 1996 established by James B Stephens as amended), are not entitled to vote or are otherwise disqualified to vote on any proposal or motion to remove or alter restrictive covenants for the Watson's Orchard Subdivision.

WHEREFORE, the Plaintiffs petition that this Court inquire into these matters and declare that:

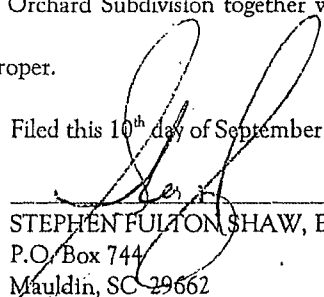
1. the Watson's Orchard Property Owners Association, Inc." was established, and should exist, solely as a holding company to hold the Pelham Road Tract and Haywood Road Tract as a fiduciary for the benefit of the Watson's Orchard Subdivision and not for the pecuniary interests of the individual corporate shareholders;

2. each current subdivision lot (owner) within the Watson's Orchard subdivision shall have, now and forever into the future, be the sole owners of an undivided partial interest to the Pelham Road and Haywood Road Tracts and that all shares of the Watson's Orchard Property Owners Association, Inc. shall permanently attach to the several subdivision lots and each lot's owner.
3. the Pelham Road and Haywood Road Tracts were granted by the developer to the Watson's Orchard Property Owner's Association, Inc., for the purpose of insuring a buffer against more intensive development;
4. the current owners of the "Stephens Property," (Pelham Farm LLC, Legacy one LLC, and SESP LLC along with the estate (Revocable Trust Agreement dated March 19, 1996 established by James B Stephens as amended), are not entitled to vote or are otherwise disqualified to vote on any proposal or motion to remove or alter restrictive covenants for the Watson's Orchard Subdivision;

FURTHER, that this Court enjoin and restrain the Watson's Orchard Property Owners Association, Inc. from using the property for any uses which are more intensive than the current uses within the Watson's Orchard Subdivision together with costs and any other relief this Court deems just and proper.

I hereby CERTIFY that a true and correct copy of the forgoing has been provided, via US Mail to: Charles E. Howard as Registered Agent for Watson's Orchard Property Owners Association, Inc., 213 Highbourne Drive, Greenville, SC 29615 this 10th day of September, 2009.

Filed this 10th day of September, 2009.


STEPHEN FULTON SHAW, Esq.
P.O. Box 744
Mauldin, SC 29662
(877) 600-7429
SC Bar No.: 76811
steve@shawlegalfirm.com
Attorney for Plaintiffs

FILED
STATE OF SOUTH CAROLINA GREENVILLE CO. S.C.
COUNTY OF GREENVILLE JAN 16 4 22 PM '81
DONNIE S. TANKERSLEY
R.M.C.

DECLARATION OF RESTRICTIONS
AND PROTECTIVE COVENANTS

EX 140 PAT 961

8

EXHIBIT

A

The undersigned, Lincoln of South Carolina, Inc., a South Carolina corporation, hereinafter known as "Declarant", the owner of the properties described in Exhibit "A" annexed hereto and made a part hereof by reference, deems it in the best interest of itself and future owners of said properties to subject said properties to the protective covenants, restrictions, conditions, servitudes and easements herein set forth.

NOW, THEREFORE, Declarant hereby declares that all of the properties described in Exhibit "A" shall be held, sold and conveyed subject to the following covenants, restrictive covenants and conditions, which are hereby imposed upon said property for the purpose of protecting the value and desirability of said property and the covenants, conditions and restrictions hereinafter set forth shall with the property described in Exhibit "A" and be binding upon all parties having any right, title or interest in the said described properties or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof and all owners of property in Watson's Orchard Subdivision as shown on plat recorded in the R.M.C. Office for Greenville County in Plat Book 000; Page 88, and the lot in Plat Book 4-C, Page 133, hereinafter referred to as "Watson's Orchard Subdivision", until January 1, 2010 at which time said covenants, conditions, and restrictions shall be automatically extended for successive periods of ten (10) years each unless, by vote of a majority of the then owners of the lots into which the property described above shall have been developed and in Watson's Orchard Subdivision, the within covenants, conditions and restrictions are changed or amended, in whole or in part. In the event such vote shall take place, such vote shall be cast by the legal title holder of each individual lot, provided, however, that only one vote shall be cast for each lot in the event legal title thereto shall be held jointly or otherwise.

If the undersigned, its successors or assigns, or any property owner of any lot into which the property described above shall subsequently be cut should violate or attempt to violate any of the covenants, conditions, and restrictions herein contained, it shall be lawful for any person or persons owning any of the real estate subject to these restrictions or in Watson's Orchard Subdivision to prosecute any proceeding at law or in equity against the person or persons violating or attempting to violate same; to either prevent him or them from so doing, or to recover damages or costs for such violations.

Invalidation of any one of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

ARTICLE I.

USES PERMITTED AND PROHIBITED

(1) All lots shall be used exclusively for residential purposes. No other use shall be erected, altered, placed or permitted to remain on any lot other than one detached single family residential dwelling not to exceed two and one-half stories in height, and a garage attached or detached for private passenger automobiles and service quarters, and which shall have been approved by the Architectural Committee for qualification of workmanship and materials, harmony of external design with existing structure and as to location with respect to topography and finished grade elevation.

(2) No trailer, basement, tent, shack, garage, barn or other out-building erected upon any lot shall at any time be used as a residence either temporarily or permanently. No structure of a temporary nature shall be used as a residence and no house trailer shall be placed on any lot either temporarily or permanently.

(3) No obnoxious or offensive activity shall be carried on anywhere on the property subject to these covenants nor shall anything be done thereon which may be or become an annoyance, nuisance, or menace to the neighborhood. No lot or any part thereof shall be used for any business or commercial purpose.

(4) All fuel oil tanks or containers shall be covered or buried underground consistent with normal safety precautions.

(5) No animals shall be kept, maintained or quartered on any lot or tract in this subdivision except that usual household pets may be kept in reasonable numbers for the pleasure of the occupants.

(6) Garbage and trash cans, wood piles and clothes drying in yards must be so located that they will not be visible from the street.

(7) Property owners will be required to keep tall shrubbery or hedges trimmed to reasonable limits where air circulation or view from surrounding property may be adversely affected or where traffic hazards may be created.

(8) Provisions must be made by the property owners for adequate off-street parking of all vehicles.

(9) Particular care must be given to the design and location of carports or garages. Carports or garages must be located away from the principal front elevation of the house so that the main view of the house from the street will not be directly obscured by a carport or garage.

(10) A five-foot easement is reserved over and across all side lot lines and a ten-foot easement is reserved over and across all rear lot lines for drainage and utility installation and maintenance; provided that when more than one lot shall be used as a site for only one residence, the aforesaid five-foot easement shall apply only with respect to the exterior lines of such consolidated lot.

(11) Nothing herein contained shall be construed to prohibit the use of more than one lot or portions of one and more lots as a single residential building site, provided that said lot would otherwise meet the requirement as to size, frontage, set-back line and directional facing of said building as determined by the Architectural Committee.

ARTICLE II.

SET-BACKS, LOCATION AND SIZE OF IMPROVEMENTS AND OF BUILDING PLOTS

(1) No building shall be erected on any lot nearer to the front street line than 75 feet or nearer to the side street line than 50 feet. Any such building shall face toward the front line of the lot except that buildings to be constructed on corner

lots shall face in the direction designated by the Architectural Committee. No building or structure shall be located nearer to any interior side lot line than the distance represented by ten percent of the width of the lot (at the building set-back line) on which said building is to be located.

(2) Proportion and lot size restrictions are imposed as follows:

(i) The 14.78 acre tract of land fronting on Pelham Road described in Exhibit "A" shall have all lots facing Pelham Road with a minimum frontage of 200 feet, and a minimum lot size of 55,000 square feet.

(ii) The approximate 8-acre tract of land lying between Haywood Road and Watson's Orchard Subdivision described in Exhibit "A" shall be developed in such manner so that the frontage of all lots shall face inward toward Watson's Orchard Subdivision. Each lot shall have a minimum area of 1.5 acres, and the property may not be subdivided in any manner to allow more than 4 lots. Access shall have building setbacks in Watson's Orchard Subdivision only. No direct access to Pelham or Haywood Roads shall be allowed, and no lot or structure situated thereon shall be designed to provide ingress from or egress directly to Pelham or Haywood Roads.

(3) No wall, fence, or hedge shall be erected across or along the front of any lot and nearer to the front lot line than the building set-back line having a height of more than three feet unless approved by the Architectural Committee. No corner lot shall have a wall, fence or hedge erected any closer to the street than the front building line of any adjacent lot unless approved by the Architectural Committee. Any such wall, fence, or hedge proposed to be erected or placed on any such lot whether as part of the architect's residence design or a later addition must receive the approval in writing of the Architectural Committee.

(4) No lot shall be recut so as to face in any direction other than the front line of the lot, nor shall it be recut so as to make any building site smaller than is provided for herein.

(5) No one-story, split-level or story-and-a-half residence shall be constructed containing less than 2,200 square feet of heated floor space exclusive of porches, garages, and breezeways. In computing the square footage of any

split-level or story-and-a-half residence or any residence containing a basement which is finished and heated, one-half credit shall be given for the area above or below the ground floor with a minimum of 2,000 square feet on the ground floor. No two-story residence shall be erected containing less than 1,400 square feet of heated floor space on the ground floor nor less than 1,100 square feet of heated floor space on the second floor exclusive of porches, garages, and breezeways.

ARTICLE III.

APPROVAL OF PLANS

(1) The Architectural Committee for this subdivision shall be composed of:

(i) Three residents and owners in Watson's Orchard Subdivision;

(ii) A competent architect licensed to practice in South Carolina who shall be selected by lot owners in Watson's Orchard Subdivision.

(iii) A competent, experienced builder and contractor licensed in the State of South Carolina who shall be selected by lot owners in Watson's Orchard Subdivision.

In the event of a vacancy on the Architectural Committee or the failure or inability of any member to act, the vacancy shall be filled temporarily or permanently as may be necessary by appointment by lot owners in Watson's Orchard Subdivision. The appointment shall be within the categories set forth above. The members of the Architectural Committee shall be appointed for a term of one year but may be reappointed for additional terms with no limit on the number of additional terms to which they can be reappointed. In all matters, a majority vote shall govern.

(2) No improvements shall be erected, placed, altered, or changed on any lot in this subdivision until and unless the building plans, specifications, and plot plan showing the proposed type of construction, exterior design, location of residence, walks, drives and fences have been approved in writing by the Architectural Committee as to conformity and harmony of external design and consistence of plan with existing residences on other lots in the subdivision and as to the location of the structure with respect to topography and finished ground elevation.

(3) In order to prevent duplication of buildings or improvements to be constructed in this subdivision, the Committee is vested with full authority to approve or disapprove plans for the construction of any building or improvement with its major features so similar to an existing building or improvements as to be considered a substantial duplication thereof in the discretion of the Committee. The Architectural Committee shall further have the right to refuse to approve any such plans, specifications, or plot plans. In making its decisions the Committee shall take into consideration the suitability of the proposed building or other improvement, the materials of which it is to be built, whether or not it is in harmony with the surroundings and what effect it will have on other residences already constructed and what effect it will have on the outlook from adjacent or neighboring property.

(4) In the event that the Committee fails to approve or disapprove such plans within thirty (30) days after they have been submitted to it, or if no suit is made on the erection or alteration of such building or improvement has been commenced before such erection or alteration is substantially completed, approval of the Architectural Committee will be conclusively presumed and this covenant will be deemed to have been fully complied with. The term "building or improvement" shall be deemed to include the erection, placement or alteration of any wall, fence, driveway or parking area.

(5) Application for approval as required herein shall be made to the Committee at the principal residence of the then President of Watson's Orchard Subdivision, Inc., Watson's Orchard, Greenville, S. C., 29615, and at the time of making such application, the building plans, specifications, and plot plans shall be submitted in duplicate. One copy of such plans and specifications will be retained by the Committee, and the other copy will be returned to the applicant with approval or disapproval plainly noted thereon.

(6) No member of this committee shall be liable for any act or omission except willful misconduct or gross and inexcusable neglect.

(7) The Architectural Committee is authorized by a unanimous vote of all its members to approve or ratify in the construction or alteration of any building

minor violations of the set-back, location and size of improvements provisions of these Restrictions if in the opinion of all the members of the Committee such shall be necessary to prevent undue hardship. The approval or ratification by the Committee in accordance with this paragraph shall be binding on all persons.

ARTICLE IV.
MISCELLANEOUS

(1) No signs shall be permitted on any lots except that a single sign affecting property for sale or for rent or security signs may be placed on any such lot providing such sign is not more than 24 inches wide and 18 inches high.

(2) All residences shall have a standard letter size metal mailbox as approved by the Postmaster General, which is to be erected by the owner at the height required by the Post Office Department. All boxes and posts shall be kept in a good state of repair at all times. Any deviation from this shall be approved by the Architectural Committee.

(3) No boat, mobile home, trailer, camper, or self-contained recreational vehicle of any kind shall be parked on any lot in the subdivision for a period of more than the time necessary to load or unload such vehicle and in no event shall such vehicle be allowed to remain on the lot more than 24 hours at any one time, except that lot owners who may own such vehicles may park them so there is minimum visibility from the street.

(4) The removal of any tree which is in excess of six (6) inches in diameter (dbh) will require prior approval of the Architectural Committee.

IN WITNESS WHEREOF, the undersigned has executed this document under seal this 15th day of January, 1981.

In the presence of:

Philip H. Grayson
Olivia A. Smith

LINCOLN OF SOUTH CAROLINA, INC., (SHAL)

BY: *B. W. Boney*
President & Secretary

FILE 140 CASE 968

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

PROBATE

PERSONALLY appeared the undersigned witness and made oath that (s) he saw
the within named Lincoln, South Carolina, Inc. sign, seal and as its act and deed
deliver the within written Declaration of Restrictions and Protective Covenants and
that (s) he, with the other witness subscribed above, witnessed the execution thereof.

Witnessed before me this 18th day of January, 1989.

Alvin D. Smith

[Signature] (U.S.)
Notary Public for South Carolina
My Commission Expires 12-31-89

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

EXHIBIT "A"

ALL that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Greenville, containing 14.70 acres, as is more fully shown on a plat entitled "Survey for Richard Watson", prepared by Carolina Surveying Company, dated June 27, 1880, revised August 10, 1880, revised August 27, 1880, revised September 3, 1880, and revised December 1, 1880, and having according to said plat, the following metes and bounds, to-wit:

BEGINNING at a stake on the southern side of Palham Road, at its intersection with Haywood Road and running thence along the southern side of Palham Road, N. 84-07 E. 1,392.7 feet to a stake; running thence N. 87-55 E. 98.5 feet to a stake; running thence S. 85-23 E. 100.8 feet to a stake; running thence S. 70-11 E. 100.0 feet to a stake; running thence S. 72-58 E. 98.6 feet to a stake; running thence S. 68-57 E. 389.1 feet to a stake at the intersection of Palham Road and a proposed road; running thence with the curvature of said intersection, the chord of which is S. 25-48 E. 43.6 feet to a stake; running thence with the western side of said proposed road, S. 17-20 W. 270.8 feet to a stake at the corner of a tract containing 22.18 acres; running thence with the line of said tract, the following courses and distances to-wit: N. 68-57 W. 387.9 feet to a stake; N. 82-20 W. 255.8 feet to a stake; S. 84-07 W. 1,433.1 feet to a stake on the eastern side of Haywood Road; running thence with the eastern side of Haywood Road, N. 8-08 W. 250.8 feet to a stake at the intersection of Haywood Road and Palham Road; running thence with the curvature of said intersection, the chord of which is N. 40-08 E. 71.0 feet to the point of beginning.

ALSO, ALL that certain piece, parcel or tract of land situate, lying and being in the County of Greenville, State of South Carolina, and being shown and designated as Tract A and plat recorded in the RMC Office for Greenville County in Plat Book C, at Page 80, and having according to said plat, the following metes and bounds, to-wit:

BEGINNING at an iron pin at Palham Road at the corner of property now or formerly of Adams, and running with the line of the Adams property, N. 14-35 E. 1327 feet to an iron pin; thence S. 72 E. 340 feet, thence S. 14-35 W. 1185 feet to Palham Road; thence with the northern side of Palham Road, S. 82-50 W. 376 feet to the point of beginning.

LESS, HOWEVER: ALL that certain piece, parcel or lot of land situate, lying and being in Greenville Township near the City of Greenville, and having, according to a plat recorded in Plat Book 5-D, at Page 1, RMC Office for Greenville County, and shown on survey by Dalton & Neves, Engineers, dated October, 1875, as property of the Grantor and having, according to said plat, the following metes and bounds, to-wit:

BEGINNING at an iron pin on the north side of Palham Road, formerly property of Nell Baker Adams, and running thence with Palham Road, N. 84-25 E. 75-15 feet to an iron pin; thence with intersection of said road and intersection of Haywood Road, N. 37-45 E. 58.97 feet to an iron pin; thence with Haywood Road, N. 0-18 W. 281.20 feet to an iron pin; thence with property of Nell Baker Adams, S. 14-35 W. 260.4 feet to an old iron pin; thence S. 14-35 W. 70.35 feet to the beginning.

ALSO, LESS, HOWEVER: Subject to that certain right-of-way easement granted to the South Carolina Highway Department covering approximately 2.28 acres of the above described property.

RECORDED: JAN 16 1981 at 4:22 P.M.

200649

EXHIBIT "A"

ALL that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Greenville, containing 14.79 acres, as is more fully shown on a plat entitled "Survey for Richard Watson", prepared by Carolina Surveying Company, dated June 27, 1930, revised August 18, 1930, revised August 27, 1930, revised September 3, 1930, and revised December 1, 1930, and having according to said plat, the following metes and bounds, to-wit:

BEGINNING at a stake on the southern side of Pelham Road, at its intersection with Haywood Road and running thence along the southern side of Pelham Road, N. 84-07 E. 1,381.7 feet to a stake; running thence N. 87-55 E. 89.5 feet to a stake; running thence S. 81-23 E. 100.6 feet to a stake; running thence S. 78-11 E. 100.0 feet to a stake; running thence S. 72-58 E. 90.6 feet to a stake; running thence S. 68-37 E. 338.4 feet to a stake at the intersection of Pelham Road and a proposed road; running thence with the curvature of said intersection, the chord of which is S. 25-49 E. 43.8 feet to a stake; running thence with the western side of said proposed road, S. 17-26 W. 270.6 feet to a stake at the corner of a tract containing 23.15 acres; running thence with the line of said tract, the following courses and distances to-wit: N. 88-57 W. 387.9 feet to a stake, N. 02-20 W. 250.9 feet to a stake; S. 84-07 W. 1,433.1 feet to a stake on the eastern side of Haywood Road; running thence with the eastern side of Haywood Road, N. 8-00 W. 250.8 feet to a stake at the intersection of Haywood Road and Pelham Road; running thence with the curvature of said intersection, the chord of which is N. 40-08 E. 71.0 feet to the point of beginning.

ALSO: ALL that certain piece, parcel or tract of land situate, lying and being in the County of Greenville, State of South Carolina, and being shown and designated as Tract A and plat recorded in the RMC Office for Greenville County in Plat Book C, at Page 60, and having according to said plat, the following metes and bounds, to-wit:

BEGINNING at an iron pin at Pelham Road at the corner of property now or formerly of Adams, and running with the line of the Adams property, N. 14-35 E. 1337 feet to an iron pin; thence S. 72 E. 349 feet; thence S. 14-35 W. 1159 feet to Pelham Road; thence with the northern side of Pelham Road, S. 83-50 W. 370 feet to the point of beginning.

LESS, HOWEVER: ALL that certain piece, parcel or lot of land situate, lying and being in Greenville Township near the City of Greenville, and having, according to a plat recorded in Plat Book 5-O, at Page 1, RMC Office for Greenville County, and shown on survey by Dalton & Nevins, Engineers, dated October, 1975, as property of the Grantor and having, according to said plat, the following metes and bounds, to-wit:

BEGINNING at an iron pin on the north side of Pelham Road, formerly property of Nell Baker Adams, and running thence with Pelham Road, N. 84-25 E. 75-15 feet to an iron pin; thence with intersection of said road and intersection of Haywood Road, N. 37-46 E. 68.97 feet to an iron pin; thence with Haywood Road, N. 0-18 W. 231.20 feet to an iron pin; thence with property of Nell Baker Adams, S. 14-35 W. 250.4 feet to an old iron pin; thence S. 14-35 W. 70.35 feet to the beginning.

ALSO, LESS; HOWEVER: Subject to that certain right-of-way easement granted to the South Carolina Highway Department covering approximately 2.20 acres of the above described property.

RECORDED JAN 10 1981 at 4:22 P.M.

21654

GREENVILLE, S.C.

JAN 16 4 23 PM '81

DONNIE S. TANKERSLEY
R.M.E.

1140 PAGE 970

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

DECLARATION OF RESTRICTIONS
AND PROTECTIVE COVENANTS

The undersigned, Lincoln of South Carolina, Inc., a South Carolina corporation, and Steven Van Aulen

hereinafter known as "Declarant", the owner of the properties described in Exhibit "A" annexed hereto and made a part hereof by reference, deems it in the best interest of the present and future owners of said properties to subject said properties to the following covenants, restrictions, conditions, servitudes and easements herein set forth:

NOW, THEREFORE, Declarant hereby declares that all of the properties described in Exhibit "A" shall be held, sold and conveyed subject to the following covenants, restrictions, conditions, which are hereby imposed upon the property for the purpose of protecting the value and desirability of said property and the covenants, conditions and restrictions hereinafter set forth shall run with the property described in Exhibit "A", and be binding upon all parties having any estate or interest in the said described properties or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof and all owners of property in Watson's Orchard Subdivision as shown on plat recorded in the Office for Greenville County in Plat Book 000, Page 99, and the lot in Plat Book 1-C, Page 183, hereinafter referred to as "Watson's Orchard Subdivision", and all owners in a tract containing 14.79 acres fronting on Palham Road, adjoining the above described property (Buffer Zone).

I.

HEIGHT OF STRUCTURES

A. Any side of a structure facing toward the property known as Watson's Orchard Subdivision cannot exceed two stories in height above present ground level as to structures located on the Northern side of the proposed central road leading from Haywood Road to Palham Road through the said Property, except said structure may have a basement in addition to the two stories in height so long

as the basement is below ground level and does not have an opening on the side facing toward the property known as Watson's Orchard Subdivision.

B. Any side of a structure facing toward the property known as Watson's Orchard Subdivision cannot exceed three stories in height above present ground level as to anything located on the Southern side of the proposed central road leading from Haywood Road to Palham Road through the said Property, except said structure may have a basement in addition to the three stories in height so long as the basement is below ground level and does not have an opening on the side facing toward the property known as Watson's Orchard Subdivision.

II.

SIGNS

Lights and other signs shall be prohibited on said property unless they conform to the following requirements:

- A. No sign shall have an altitude greater than ten (10) feet above the contour at the rear of the Buffer Zone at the closest point to the sign.
- B. Signs north of the central road are further limited to a maximum height of twenty-five (25) feet above ground level, and south of the central road to thirty-five (35) feet of height above ground level.
- C. No sign shall move or revolve.
- D. No sign shall blink or flash on and off.

III.

USES PERMITTED & PROHIBITED

A. Parcels 1, 2, 3 and 4 described in Exhibit "A" can be used for commercial use. No industrial or service use or other less restrictive use than commercial shall be allowed on said Parcels 1, 2, 3 and 4. Said parcels shall continue as commercial property, except, however, said commercial property may be used subsequently for a more restrictive use, such as multi-family use.

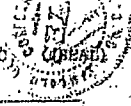
B. Parcel 5 and 6 described in Exhibit "A" shall be restricted to multi-family or more restrictive use.

IN WITNESS WHEREOF, the undersigned have executed this document under

and this 15th day of January, 1891.

Witnessed by:
[Signature]
[Signature]

BY: *[Signature]*
 President & Secretary
[Signature]



SOUTH CAROLINA)
 COUNTY OF GREENVILLE) PROBATE

PERSONALLY appeared the undersigned witness and made oath that he is
 the undersigned Lincoln of South Carolina, Inc; and *[Signature]*
 and as their act and deed deliver the within written Declaration of Intent
 and Probate, Covenants, and that (s)he, with the other witness subscribed to
 and witnessed the execution thereof.

Witnessed by me this 16th
 day of January, 1891.
[Signature] (N.S.)
 Notary Public for South Carolina
 My Commission Expires 10-15-90.

[Signature]

CONTINUED ON NEXT PAGE

Parcel 1: containing 2.50 acres - Commercial

ALL that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Greenville, containing 2.50 acres, as is more fully shown on a plat entitled "Survey for Richard Watson", prepared by Carolina Surveying Company, dated June 27, 1980, revised August 19, 1980, revised August 21, 1980, revised September 3, 1980, and revised December 1, 1980, and having according to said plat, the following metes and bounds, to-wit:

BEGINNING at an iron pin on the eastern side of Haywood Road located S. 40-00 E. 71.0 feet and S. 8-00 E. 250.8 feet from its intersection with Pulham Road at the corner of a tract containing 14.70 acres and running thence with the line of said tract N. 84-07 E. 535.0 feet to an iron pin at the corner of a tract containing 28.30 acres and running thence with the line of said tract S. 8-04 E. 271.25 feet to an iron pin on the northern side of a Proposed Road and running thence with the northern side of said Proposed Road, the following courses and distances to-wit: N. 89-33 W. 85.8 feet; N. 81-50 W. 108.4 feet; N. 80-58 W. 351.28 feet to an iron pin at the intersection of said Proposed Road and Haywood Road, and running thence with the curvature of said intersection, the chord of which is N. 49-05 W. 57.77 feet to an iron pin on the eastern side of Haywood Road, and running thence with the eastern side of Haywood Road, N. 8-06 W. 152.2 feet to the point of beginning.

Parcel 2: containing 28.047 acres - Commercial

ALL that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Greenville, containing 28.047 acres, as is more fully shown on a plat entitled "Survey for Richard Watson", prepared by Carolina Surveying Company, dated June 27, 1980, revised August 19, 1980, revised August 27, 1980, revised September 3, 1980, and revised December 1, 1980, and having according to said plat, the following metes and bounds, to-wit:

BEGINNING at an iron pin located S. 52-31 E. 83 feet from a concrete right-of-way monument on the northern side of Interstate - 385 at the corner of property of Mobil Oil Corporation and a tract containing 3.50 acres and running thence with the line of property of Mobil Oil Corporation N. 0-01 E. 101.3 feet; S. 88-59 E. 132.4 feet; N. 0-01 E. 189.0 feet; N. 60-59 W. 190.9 feet to an iron pin in the eastern side of Haywood Road; running thence with the eastern side of Haywood Road, N. 4-21 W. 100.65 feet; N. 7-02 W. 87.0 feet; N. 8-04 W. 12.5 feet to the intersection of a Proposed Road, and running thence with the curvature of said intersection, the chord of which is N. 40-57 E. 92.8 feet, and running thence with the southern side of said Proposed Road, S. 60-59 E. 354.78 feet; S. 84-10 E. 88.8 feet; S. 73-20 E. 92.5 feet; S. 01-49 E. 93.4 feet; S. 02-57 E. 1848.48 feet; S. 54-31 E. 100.88 feet; S. 55-39 E. 100.56 feet to an iron pin at the corner of a tract containing 10.40 acres; running thence with the line of said tract S. 38-13 W. 758.8 feet to an iron pin on the northern side of Interstate-385; running thence with the northern side of Interstate-385, N. 45-53 W. 399.8 feet to a concrete monument, N. 52-39 W. 608.8 feet to a concrete monument; running thence N. 52-31 W. 687.1 feet to the point of beginning.

Parcel 3: containing 1.20 acres - Commercial

ALL that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Greenville, containing 1.20 acres, as is more fully shown on a plat entitled "Survey for Richard Watson", prepared by Carolina Surveying Company, dated June 27, 1980, revised August 19, 1980, revised August 27, 1980, revised September 3, 1980, and revised December 1, 1980, and having according to said plat, the following metes and bounds, to-wit:

TO BE CONTAINED

BEGINNING at an iron pin on the western side of a Proposed Road located S. 25-48 E. 43.8 feet, S. 17-20 W. 270.8 feet, S. 88-57 E. 10 feet, and S. 17-10 W. 894.74 feet from its intersection with Pelham Road, and running thence with the western side of said Proposed Road, S. 20-23 W. 84.53 feet, S. 28-36 W. 87.18 feet, S. 32-64 W. 97.18 feet, and S. 38-03 W. 39.3 feet, thence with the curvature of said Proposed Road, the chord of which is S. 81-03 W. 35.36 feet; running thence with the northern side of said Proposed Road, N. 53-57 W. 200 feet to the corner of a tract containing 22.15 acres; running thence with the line of said tract N. 42-40 E. 210 feet and N. 64-28 E. 205.89 feet to the point of beginning.

Parcel 4: containing 1.58 acres - Commercial

ALL that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Greenville, containing 1.58 acres, as is more fully shown on a plat entitled "Survey for Richard Watson", prepared by Carolina Surveying Company, dated June 27, 1980, revised August 10, 1980, revised August 27, 1980, revised September 3, 1980, and revised December 1, 1980, and having according to said plat, the following metes and bounds, to-wit:

BEGINNING at an iron pin on the eastern side of a Proposed Road located S. 17-10 W. 894.1 feet from its intersection with Pelham Road in the line of property of Pate, and running thence with the line of property of Pate, S. 8-14 E. 808.84 feet to an iron pin on the northern side of said Proposed Road, and running thence with the northern side of said Proposed Road, N. 57-55 W. 53.33 feet; N. 58-47 W. 98.37 feet, N. 55-39 W. 89.37 feet and N. 54-31 W. 40.38 feet, thence with the curvature of said Proposed Road, the chord of which is N. 9-14 W. 35.2 feet to an iron pin on the eastern side of said Proposed Road, and running thence with the eastern side of said Proposed Road, N. 30-03 E. 38.1 feet, N. 32-54 E. 102.7 feet; N. 25-38 E. 102.7 feet; N. 20-23 E. 88.0 feet, and N. 17-10 E. 108 feet to the point of beginning.

Parcel 5: containing 22.15 acres - Multi-Family

ALL that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Greenville, containing 22.15 acres, as is more fully shown on a plat entitled "Survey for Richard Watson", prepared by Carolina Surveying Company, dated June 27, 1980, revised August 10, 1980, revised August 27, 1980, revised September 3, 1980, and revised December 1, 1980, and having according to said plat, the following metes and bounds, to-wit:

BEGINNING at an iron pin on the western side of a Proposed Road located S. 28-48 E. 43.8 feet and S. 17-20 W. 270.8 feet from the intersection of said Proposed Road and Pelham Road at the corner of a tract containing 14.79 acres, and running thence with said Proposed Road, S. 88-57 E. 10 feet; thence with the western side of said Proposed Road, S. 17-18 W. 894.74 feet to an iron pin at the corner of a tract containing 1.20 acres; running thence with the line of said tract S. 64-28 W. 205.89 feet and S. 42-40 W. 210 feet to an iron pin on the northern side of said Proposed Road, and running thence with the northern side of said Proposed Road, N. 53-57 W. 890.43 feet; N. 57-32 W. 89.7 feet and N. 88-33 W. 41.6 feet to an iron pin at the corner of a tract containing 1.58 acres, and running thence with the line of said tract N. 8-00 W. 271.25 feet to an iron pin in the line of said 14.79 acre tract, and running thence with the line of said tract, N. 64-07 E. 880.1 feet; S. 82-28 E. 250.9 feet, and S. 88-57 E. 907.0 feet to the point of beginning.

Parcel 0: containing 10.40 acres - Multi-Family

All that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Greenville, containing 10.40 acres, as is more fully shown on a plat entitled "Survey for Richard Watson", prepared by Carolina Surveying Company, dated June 27, 1990, revised August 18, 1990, revised August 22, 1990, revised September 1, 1990, and revised December 1, 1990, and having according to said plat, the following lines and bounds, to-wit:

BEGINNING at a concrete right-of-way monument on the northeastern edge of the right-of-way of 1994, at the corner of property of Fate, and running thence along the northern edge of said right-of-way, N. 48-55-W. 727.7 feet to an iron pin at the corner of said right-of-way, and running thence along the southern edge of said right-of-way, S. 42-13-E. 188.6 feet to an iron pin at the corner of said right-of-way, and running thence along the southern edge of said right-of-way, S. 88-47-E. 100.00 feet to an iron pin at the corner of said right-of-way, and running thence along the line of said property, S. 78-14-W. 185.4 feet to the point of beginning.

RECORDED JAN 16 1991

at 4:23 P.M.

20650

FILED
GREENVILLE, S.C.

JAN 16 4 23 PM '81

V. 1140 PAGE 976

STATE OF SOUTH CAROLINA, H.C.)
COUNTY OF GREENVILLE)
DONNIE S. YANKERLEY)
ADDITION TO DECLARATION OF RESTRICTIONS
AND PROTECTIVE COVENANTS

WHEREAS, by Declaration of Restrictions and Protective Covenants dated the
15th day of January, 1981, the undersigned, Lincoln of
South Carolina, Inc., a South Carolina corporation, and Steven Van Aulen,
hereinafter known as "Declarant", imposed certain protective covenants, restrictions,
conditions, servitudes and easements on certain property described in said Declaration,
and

WHEREAS, Declarant deems it in the best interest of themselves and future owners
of said properties to further restrict a portion of said properties,

NOW, THEREFORE, Declarant hereby declares that the property hereinafter
described shall be held, sold and conveyed subject to the following easements, restrictive
covenants and conditions, which are hereby imposed against said property for the
purpose of protecting the value and desirability of said property, and the other
properties described in Exhibit "A" in the aforesaid Declaration; that the covenants,
conditions and restrictions hereinafter set forth shall run with the property hereinafter
described, and be binding upon all parties having any right, title or interest in the
said property or any part thereof, their heirs, successors and assigns and shall inure
to the benefit of each owner thereof and all owners of property in Watson's Orchard
Subdivision as shown on plat recorded in the R.M.C. Office for Greenville County
in Plat Book 000, at Page 88, and the lot in Plat Book 4-C, at Page 133, hereinafter
referred to as "Watson's Orchard Subdivision", and all owners in a tract containing
14.78 acres fronting on Pelham Road, adjoining the above described property (Buffer
Zone) and the properties described in Exhibit "A" of said Declaration.

The property hereinafter described is a portion of the property described in
Exhibit "A" in the aforesaid Declaration as Parcel 1: containing 2.50 acres - commercial.

The purpose of this Addition to the aforesaid Declaration of Restrictions and
Protective Covenants is to restrict the property hereinafter described against use

for commercial purposes notwithstanding the fact that said property is zoned E-1 Commercial.

The Declarant hereby declares that the following described property is hereby restricted against use for commercial purposes, and the same may be used for multi-family purposes.

Said property is described as:

ALL that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Greenville, as is more fully shown on a plat entitled "Survey for Richard Watson", prepared by Carolina Surveying Company, dated June 27, 1980, revised August 18, 1980, revised August 27, 1980, revised December 3, 1980, revised December 2, 1980, revised December 3, 1980, revised December 22, 1980; and having according to said plat, the following metes and bounds, to-wit:

TO FIND THE POINT OF BEGINNING, BEGIN at the intersection of Haywood Road and a Proposed Road, and running thence with the curvature of said intersection, the chord of which is S. 48-03-E. 37.77 feet to an iron pin on the northern side of said Proposed Road, and running thence S. 80-50-E. 351.25 feet to an iron pin; thence continuing with the northern side of said Proposed Road, S. 81-50-E. 109.4 feet to an iron pin; thence continuing, S. 08-33-E. 53.3 feet to an iron pin, which iron pin marks the POINT OF BEGINNING; running thence N. 8-00-W. 205.2 feet to an iron pin in the rear line of a tract containing 8.20 acres; running thence N. 84-07-E. 17.4 feet to an iron pin; running thence, S. 8-00-E. 271.25 feet to an iron pin on the northern side of said Proposed Road; running thence with the northern side of said Proposed Road, N. 89-33-W. 13.0 feet to the point of beginning.

IN WITNESS WHEREOF, the undersigned have executed this document under seal this 15th day of January, 1981.

In the presence of:

Alfred D. Smith
Alfred D. Smith

LINCOLN OF SOUTH CAROLINA, INC.
BY *B. W. Gause*
President & Secretary
Steven Van Aulen (SEAL)

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) PROBATE

PERSONALLY appeared the undersigned witness and made oath that (s) he saw the within named Lincoln of South Carolina, Inc., and Steven Van Aulen sign, seal and as their act and deed deliver the within Addition to Declaration of Restrictions and Protective Covenants and that (s) he, with the other witness subscribed above, witnessed the execution thereof.

SWORN to before me this 15th day of January, 1981.

Alfred D. Smith
Notary Public for South Carolina
My Commission Expires: 10-15-80

RECORDED JAN 16 1981 at 4:23 P.M.

20653

LINCOLN OF SC TO WOPO

Pelham Rd Prop

Greenwich Building and Loan Association
STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

KNOW ALL MEN BY THESE PRESENTS, that Lincoln of South Carolina, Inc.,
A Corporation chartered under the laws of the State of South Carolina and having a principal place of business at
Greenville, South Carolina, in consideration of One Dollar and 00/100 Dollars,
the receipt of which is hereby acknowledged, has granted, bargained, sold, and released, and by these presents does grant, bargain, sell and
release unto Watson's Orchard Property Owners Association, Inc., its successors and assigns,
forever:

ALL that certain piece, parcel or tract of land situate, lying and being in the State
of South Carolina, County of Greenville, containing 14.78 acres, as is more fully shown
on a plat entitled "Survey for Richard Watson", prepared by Carolina Surveying Company,
dated June 27, 1930, revised August 19, 1930, revised August 27, 1930, revised September
7, 1930, and revised December 1, 1930, and having according to said plat, the following
metes and bounds, to-wit:

BEGINNING at a stake on the southern side of Pelham Road, at its intersection
with Haywood Road and running thence along the southern side of Pelham Road, N. 84-07
E. 1,391.7 feet to a stake; running thence N. 87-55 E. 69.8 feet to a stake; running
thence S. 83-33 E. 100.6 feet to a stake; running thence N. 70-11 E. 100.0 feet to a
stake; running thence S. 72-50 E. 69.8 feet to a stake; running thence S. 59-37 E.
335.4 feet to a stake at the intersection of Pelham Road and a proposed road; running thence
with the curvature of said intersection, the chord of which is S. 25-48 E. 43.8 feet to a stake;
running thence with the western side of said proposed road, S. 17-20 W. 219.6 feet to a stake
at the corner of a tract containing 22.15 acres; running thence with the line of said tract,
the following courses and distances to-wit: N. 58-57 W. 387.9 feet to a stake; N. 87-20 W.
256.8 feet to a stake; S. 81-07 W. 1,433.1 feet to a stake on the eastern side of Haywood Road;
running thence with the eastern side of Haywood Road, N. 8-08 W. 259.8 feet to a stake at
the intersection of Haywood Road and Pelham Road; running thence with the curvature of
said intersection, the chord of which is N. 40-08 E. 71.0 feet to the point of beginning.

(11) S. 3-54 E. 2-1-57
This conveyance is made subject to any restrictions, reservations, zoning ordinances
or encumbrances that may appear of record, on the recorded plat(s) or on the premises.

Being a portion of the property conveyed to the grantor by Richard P. Watson, Jr.,
by deed recorded in the REC Office for Greenville County on October 7, 1930 in Deed Book
1131, at Page 881, and by deed of Northwest First National Bank of Miami, as Trustee under
the will of Evelyn Peyton Watson recorded in the REC Office for Greenville County on October
7, 1930 in Deed Book 1131, at Page 887.

Together with all and singular the rights, liberties, franchises and appurtenances to said premises belonging or in any wise incident or
appertaining; to have and to hold unto and unto the grantees hereinafter named unto the grantees, heirs, assigns and assigns forever. And the grantor does hereby bind himself and his successors to warrant and defend unto and singular
to all persons unto the grantees and the grantees' heirs and assigns and against every person whomsoever lawfully claiming or to
claim the same or any part thereof.

IN WITNESS WHEREOF the grantor has caused its corporate seal to be affixed hereto and these presents to be subscribed by its duly authorized
officers, this 15th day of January 19 81

Signed, sealed and delivered in the presence of

Richard P. Watson, Jr.
Richard P. Watson, Jr.

LINCOLN OF SOUTH CAROLINA, INC.
A Corporation
By *Richard P. Watson, Jr.*
President
Secretary

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Notary

Personally appeared the undersigned whose name and address are set forth in the within named Cor-
poration, by its duly authorized officers, who read and as the grantor's act and deed signed the within instrument and that it is
his act and deed as so subscribed above and attested the within instrument.

Subscribed to before me this 15th day of January 19 81

Richard P. Watson, Jr. (1581)

Notary Public for South Carolina
My Comm. Expires 10-15-88

WITNESSED
JAN 16 1981

1129 P. M. 11/11/81

LINCOLN OF SC TO WOPO HAYWOOD BUFFER

Grantee's mailing address: c/o L. W. Brumby, 800 J. P. [unclear] Greenville, S. C. 29616
 STATE OF SOUTH CAROLINA
 COUNTY OF GREENVILLE

KNOW ALL MEN BY THESE PRESENTS, that Lincoln of South Carolina, Inc.,
 A Corporation chartered under the laws of the State of South Carolina and having a principal place of business at
 Greenville, State of South Carolina, for and in consideration of the sum of \$140,000.00
 (140,000 Dollars),
 the receipt of which is hereby acknowledged, has granted, conveyed, sold, and released, and by these presents does grant, convey, sell and
 release unto Watson's Orchard Property Owners Association, Inc., its successors and assigns
 forever:

ALL that certain place, parcel or tract of land situate, lying and being in
 the County of Greenville, State of South Carolina, and being shown and designated
 as Tract A and plat recorded in the RMC Office for Greenville County in Plat Book
 C, at Page 80, and having according to said plat, the following notes and bounds,
 to-wit:

BEGINNING at an iron pin at Pelham Road, at the corner of property now of
 formerly of Adams, and running with the line of the Adams property, N. 14-35 E.
 1337 feet to an iron pin; thence S. 72 E. 348 feet; thence S. 14-35 W. 1183 feet
 to Pelham Road; thence with the northern side of Pelham Road; S. 83-50 W. 370
 feet to the point of beginning. (11509-5423-1-9)

LESS, HOWEVER: All that certain place, parcel or lot of land situate, lying
 and being in Greenville Township near the City of Greenville, and having, according
 to a plat recorded in Plat Book S-O, at Page 1, RMC Office for Greenville County, and
 shown on survey by Dalton & Neves, Engineers, dated October, 1975, as property of
 the Grantor and having, according to said plat, the following notes and bounds, to-
 wit:

BEGINNING at an iron pin on the north side of Pelham Road, formerly property
 of Nell Baker Adams, and running thence with Pelham Road, N. 74-25 E. 75-15 feet
 to an iron pin; thence with intersection of said road and intersection of Haywood
 Road, N. 37-45 E. 80-87 feet to an iron pin; thence with Haywood Road, N. 8-18 W.
 251.20 feet to an iron pin; thence with property of Nell Baker Adams, S. 14-35 W.
 250.4 feet to an old iron pin; thence S. 14-35 W. 70.33 feet to the beginning.

ALSO, LESS, HOWEVER: Subject to that certain right-of-way easement
 granted to the South Carolina Highway Department covering approximately 2.28
 acres of the above described property.

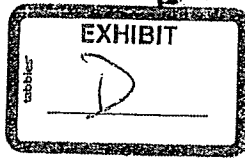
(over...)

Together with all and singular the rights, tenements, improvements and appurtenances to said premises belonging in anywise incident or
 appertaining to have and to hold all and singular the premises before mentioned unto the grantees, and the grantees' heirs, or
 assigns and assigns forever, and the grantor does hereby bind itself and its successors to warrant and forever defend all and singular
 the premises unto the grantees and the grantees' heirs or assigns and assigns forever every person whose name lawfully claiming or to
 claim the same or any part thereof.

IN WITNESS whereof the grantor has caused its corporate seal to be affixed hereto and these presents to be subscribed by its duly authorized
 officers, this 15th day of January 1981

SIGNED, sealed and delivered in the presence of
 [Signature] [Signature]
 STATE OF SOUTH CAROLINA
 COUNTY OF GREENVILLE
 LINCOLN OF SOUTH CAROLINA, INC. (SEAL)
 A Corporation
 [Signature] President
 [Signature] Secretary

Personally appeared the undersigned whose name and name each that they are the authorized Cor-
 poration, by its duly authorized officers, sign, seal and on the premises set and read before the within before said and that is to
 the effect whereunto subscribed above witnessed the execution thereof.
 Subscribed and sworn to before me this 15th day of January 1981
 [Signature]
 Notary Public for South Carolina
 My Comm. Expires 12-31-82
 Notary Seal



STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF GREENVILLE 2009 OCT 12 } P 4: 48 CASE NO. 2009-CP-23-7707

R.C. Frederick Hanold, III and Rose F.)
Hanold, and Carol R. Mitchell and George)
P. Mitchell, Jr.,)
GREENVILLE CO. S.C.
PAUL F. WICKS, JUDGE

Plaintiffs,)

v.)

ANSWER OF WATSON'S
ORCHARD PROPERTY
OWNERS ASSOCIATION, INC.

Watson's Orchard Property Owners')
Association, Inc., a South Carolina)
Corporation, and Pelham Farm, LLC, a)
South Carolina Corporation, Legacy One,)
LLC, a South Carolina Corporation, SESP)
LLC, a South Carolina Corporation, an)
unknown Trustee of the Revocable Trust)
Agreement Dated March 19, 1996)
established by James B. Stephens as)
amended, and unknown Jay Stephens and)
Mike Stephens as Co-Personal)
Representative of the Estate of James B.)
Stephens,)

Defendants.)

Defendant Watson's Orchard Property Owners Association, Inc. ("WOPOA"),
answers the Amended Complaint (the "(1st Amended) Declaratory Judgment Complaint")
as set forth below (each allegation not specifically admitted is denied).

1. Paragraph 1 is admitted upon information and belief.
2. Paragraph 2 is admitted as to WOPOA. WOPOA is without knowledge or
information sufficient to a belief as to the truth of the remaining averments in the
paragraph.
3. Paragraph 3 is admitted.

4. Paragraph 4 asserts a legal conclusion and does not require a response. WOPOA asserts, however, upon information and belief, that this matter is equitable and not subject to trial by jury and therefore should be transferred to the Master-in-Equity.

5. With respect to Paragraph 5, it is believed that the Hanolds own a lot and the Mitchells own a lot in the Watson's Orchard subdivision.

6. Paragraph 6 is admitted.

7. Paragraph 7 is admitted.

8. Paragraph 8 is admitted.

9. Paragraph 9 is admitted.

10. Paragraph 10 is denied.

11. Paragraph 11 is denied.

12. With respect to Paragraph 12, the separation of the Pelham Road Tract and the Haywood Road Tract is admitted. The remainder of the Paragraph is denied.

13. Paragraph 13 is admitted.

14. With respect to Paragraph 14, it is admitted that the Pelham Road Tract and the Haywood Road Tract were deeded to WOPOA, one of the defendants in this action. The deed speaks for itself. The remainder of the paragraph is denied.

15. Paragraph 15 is denied.

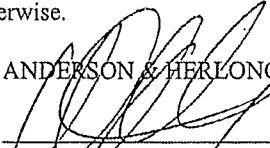
16. Paragraph 16 is denied.

17. Paragraph 17 is denied.

18. Paragraph 18 is denied.

19. Paragraph 19 is denied.

20. WOPOA denies that plaintiffs are entitled to any of the relief requested in the prayer to the Amended Complaint or otherwise.


ANDERSON & HERLONG, LLC

William B. Herlong
SC Bar No. 14283
111 E. North Street [Zip 29601]
P.O. Box 2105
Greenville, SC 29602-2105
(864) 255-9255
william@ahlf.us

Attorneys for Watson's Orchard Property
Owners Association, Inc.

Greenville, South Carolina
October 12, 2009

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

COURT OF COMMON PLEAS
CASE NO. 2009-CP-23-7707

R.C. Frederick Hanold, III and Rose F.
Hanold, and Carol R. Mitchell and George
P. Mitchell, Jr.,)

Plaintiffs/CounterDefendants,)

v.)

Watson's Orchard Property Owners
Association, Inc., a South Carolina
Corporation, and Pelham Farm, LLC, a
South Carolina Corporation, Legacy One,
LLC, a South Carolina Corporation, SESP
LLC, a South Carolina Corporation, an
unknown Trustee of the Revocable Trust
Agreement Dated March 19, 1996
established by James B. Stephens as
amended, and unknown Jay Stephens and
Mike Stephens as Co-Personal
Representative of the Estate of James B.
Stephens,)

Defendants/CounterPlaintiffs.)

**DEFENDANTS' ANSWER
AND COUNTERCLAIM
(CounterDefendant Class Action)**

FILED CLERK OF COURT
GREENVILLE CO. S.C.
NOV 11 P 3:24
PAUL B. WICKENHART

Defendants answer the Amended Complaint (the "(1st Amended) Declaratory Judgment Complaint") as set forth below (each allegation not specifically admitted is denied).¹

1. Paragraph 1 is admitted upon information and belief.
2. Paragraph 2 is admitted.
3. Paragraph 3 is admitted.

¹ This is an amended answer as of right for Watson's Orchard Property Owners Association, Inc., which previously answered on October 12, 2009. It is an appearance and first answer on behalf of the other defendants, on behalf of whom the undersigned has hereby accepted service.

4. Paragraph 4 asserts a legal conclusion and does not require a response. Defendants assert, however, upon information and belief, that this matter is equitable and not subject to trial by jury and therefore should be transferred to the Master-in-Equity.

5. With respect to Paragraph 5, it is believed that the Hanolds own a lot and the Mitchells own a lot in the Watson's Orchard subdivision.

6. Paragraph 6 is admitted.

7. Paragraph 7 is admitted.

8. Paragraph 8 is admitted.

9. Paragraph 9 is admitted.

10. Paragraph 10 is denied.

11. Paragraph 11 is denied.

12. With respect to Paragraph 12, the separation of the Pelham Road Tract and the Haywood Road Tract is admitted. The remainder of the Paragraph is denied.

13. Paragraph 13 is admitted.

14. With respect to Paragraph 14, it is admitted that the Pelham Road Tract and the Haywood Road Tract were deeded to the Watson's Orchard Property Owners Association, Inc. (the "Corporation"), one of the defendants in this action. The deed speaks for itself. The remainder of the paragraph is denied.

15. Paragraph 15 is denied.

16. Paragraph 16 is denied.

17. Paragraph 17 is denied.

18. Paragraph 18 is denied.

19. Paragraph 19 is denied.

20. Defendants deny that plaintiffs are entitled to any of the relief requested in the prayer to the Amended Complaint or otherwise.

COUNTERCLAIM

21. Defendants, as counterplaintiffs, make the following allegations:

22. Counterplaintiff Watson's Orchard Property Owners Association, Inc. (the "Corporation"), is a South Carolina corporation based in Greenville, South Carolina.

23. Counterplaintiff Pelham Farm, LLC, is a South Carolina limited liability corporation based in Greenville, South Carolina.

24. Counterplaintiff Legacy One, LLC, is a South Carolina limited liability corporation based in Greenville, South Carolina.

25. Counterplaintiff SESP, LLC, is a South Carolina limited liability corporation based in Greenville, South Carolina.

26. Counterplaintiff Revocable Trust (the "Stephens Trust") is the trust established by James B. Stephens by agreement dated March 19, 1996, as subsequently amended. The co-trustees are James G. Stephens and Ralph D. Kellar.

27. Counterdefendants R.C. Frederick Hanold, III, Rose F. Hanold, Carol R. Mitchell, and George P. Mitchell, Jr., are owners of property in Watson's Orchard Subdivision as shown on plat recorded in the R.M.C. Office for Greenville County in Plat Book 000, Page 99, and the lot in Plat Book 4-C, Page 133.

28. The Corporation counterplaintiff was the originally owner of the property referenced as Exhibit A in the Declaration of Restrictions and Protective Covenants dated January 15, 1981 (the "Declaration"), which was recorded on January 18, 1981, in the RMC Office (now the Register of Deeds) for Greenville County in Deed Book 1140, at

Pages 961-969. (The "Declaration" is attached as Schedule 1 hereto and incorporated herein by reference.)

29. The Corporation presently owns the portion of that property not owned by the Stephens Entities (defined below). The portion that it owns is described in Exhibit A to Schedule 2 hereto (pages 10-11 of Schedule 2). This property will be referred to hereinafter as the "Corporation Property."

30. Counterplaintiffs Pelham Farm, LLC, Legacy One, LLC, SESP, LLC, and the Stephens Trust (together, the "Stephens Entities") together are the owners of the portion of the property defined in Exhibit A in Schedule 1 that is not owned by the Corporation. The portion that the Stephens Entities own is described in Exhibit B to Schedule 2 hereto (page 12 of Schedule 2). This property will hereinafter be referred to as the "Stephens Property" (it is referred to in Schedule 2 as the "Trustee/LLC Property"). The Stephens Entities own this property as successors in interest to James B. Stephens (now deceased) who purchased it from the Corporation.

31. The Declaration (copy in Schedule 1 hereto) sets forth the "covenants, conditions and restrictions" applicable to the Corporation Property and the Stephens Property. However, the Declaration provides on the first page a specifically defined method for changing those restrictions:

"...the covenants, conditions and restrictions hereinafter set forth shall run with the property described in Exhibit "A" and be binding upon all parties having any right, title or interest in the said described properties or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof and all owners of property in Watson's Orchard Subdivision as shown on plat recorded in the R.M.C. Office for Greenville County in Plat Book 000, Page 99, and the lot in Plat Book 4-C, Page 133, hereinafter referred to as 'Watson's Orchard Subdivision', until January 1, 2010 at which time said covenants, conditions, and restrictions shall be automatically extended for successive periods of ten

(10) years each unless, by vote of a majority of the then owners of the lots into which the property described above shall have been developed and in Watson's Orchard Subdivision, the within covenants, conditions and restrictions are changed or amended, in whole or in part."

(See Schedule 1 hereto, at 1, emphasis added.)

32. As per the Declaration, the "covenants, conditions and restrictions" in the Declaration (and thus applicable to the Corporation Property and the Stephens Property) "inure to the benefit of each owner thereof [i.e., to the Corporation and the Stephens Entities] and all owners of property in Watson's Orchard Subdivision." (*Id.*)

33. Further, the "covenants, conditions and restrictions [in the Declaration] shall remain in place until January 1, 2010 at which time said covenants, conditions, and restrictions shall be automatically extended for successive periods of ten (10) years each *unless, by vote of a majority of the then owners of the lots into which the property described above shall have been developed and in Watson's Orchard Subdivision, the within covenants, conditions and restrictions are changed or amended, in whole or in part.*" (*Id.*, emphasis added.)

34. Pursuant to the requirements of the Declaration for modification, the Corporation sought and obtained the "vote of a majority of the then owners of the lots into which the property described above shall have been developed and in Watson's Orchard Subdivision" (*id.*, emphasis added), to modify the Declaration by replacing it with the Amended and Restated Declaration of Restrictions and Protective Covenants (hereinafter, the "Amended Declaration" – copy attached hereto as Schedule 2 and incorporated by reference).

35. The Amended Declaration has been recorded in the Greenville County Register of Deeds Office. It sets forth the "covenants, conditions and restrictions" that

will be applicable to the Corporation Property and the Stephens Property as of January 1, 2010.

36. The counterdefendants R.C. Frederick Hanold, III, Rose F. Hanold, Carol R. Mitchell, and George P. Mitchell, Jr., have indicated their opposition to the use of the Corporation Property and the Stephens Property for any purpose "more intensive than the current uses within the Watson's Orchard Subdivision." (Amended Complaint, final prayer for relief.) They are hereby being sued as representatives of a class comprised of "the owners of property in Watson's Orchard Subdivision" (the "Class").

37. The Class is so numerous that joinder of all members is impracticable. Upon information and belief, there are more than fifty owners of property in Watson's Orchard Subdivision.

38. There are questions of law or fact common to the Class. The common questions include but are not limited to what "covenants, conditions and restrictions" are applicable to the Corporation Property and the Stephens Property, what rights Class members have under the Declaration, the interpretation and application of the Declaration, whether the "covenants, conditions, and restrictions" in the Declaration have been properly amended or changed, and whether the Amended Declaration shall be in effect as of January 1, 2010.

39. The claims and defenses of the counterdefendants are typical of the claims or defenses of the members of the Class.

40. The counterdefendants are adequate representatives of the Class and have competent counsel who will fairly and adequately protect the interests of the members of the Class.

41. The relief sought with regard to the Class is declaratory.

FIRST CAUSE OF ACTION
DECLARATORY JUDGMENT
(Counterdefendants against Counterplaintiffs As Class Representatives)

42. The paragraphs above and below are incorporated by reference.

43. The counterdefendants have disputed the changing of the "covenants, conditions and restrictions" in the Declaration (Schedule 1 hereto) to those in the Amended Declaration (Schedule 2 hereto) and the replacement of the Declaration with the Amended Declaration.

44. Counterplaintiffs respectfully request an order of this Court, pursuant to S.C. Code §15-53-20, declaring that Declaration has been lawfully changed to the Amended Declaration, and that, as of January 1, 2010, the Declaration shall be null and void and the Amended Declaration will be applicable to the Corporation Property and the Stephens Property.

SECOND CAUSE OF ACTION
Abuse of Process
(Counterplaintiffs against Counterdefendants Individually)

45. The paragraphs above and below are incorporated by reference.

46. The counterdefendants filed this action with the ulterior purpose of preventing the Corporation and the Stephens Entities from ever selling any of their property at issue.

47. Initiating this lawsuit constitutes a "willful" or overt act in the use of process that is improper because it is primarily aimed at this illegitimate collateral objective.

48. It is improper because the lawsuit is based on patently false

representations and implications (e.g., that the covenants and restrictions regarding the Corporation Property cannot be changed and that the Corporation's efforts to do so are wrongful).

49. For example, Amended Complaint ¶15.B. states: "That [the Corporation] has taken steps to eliminate restrictive covenants and market the lands in controversy . . . for sale as more intensive commercial use when the lands were granted by the developer as a buffer against such intense development."

50. Paragraph 16 of the Amended Complaint states that "The Plaintiffs would show that the Corporation . . . was established, and should exist, solely as a holding company to hold the Pelham Road Tract and Haywood Road Tract [the Corporation Property] as a fiduciary for the benefit of the Watson's Orchard Subdivision and not for the pecuniary interests of the current individual corporate shareholders."

51. The second "wherefore" states that "each current subdivision lot (owner) within the Watson's Orchard subdivision shall have [sic], now and forever into the future, be the sole owners of an undivided partial interest to the Pelham Road and Haywood Road Tracts [the Corporation Property] and that all shares of the [Corporation] shall permanently attached to the several subdivision lots and each lot's owner."

52. Further, the ultimate prayer for relief in the Amended Complaint asks the Court to "enjoin and restrain Watson's Orchard Property Owners Association, Inc. [the Corporation], from using the property for any uses which are more intensive than the current uses within the Watson's Orchard Subdivision"

53. The Counterdefendants knew (re Amended Complaint ¶15.B) that the lands were not granted to the Corporation by the developer "as a buffer against such

intense development” after 2009 since the Developer provided a specific method for amending or changing the restrictions on the properties as of January 1, 2010.

54. The Counterdefendants knew (re Amended Complaint ¶16) that the Corporation was not “established . . . solely as a holding company to hold the Pelham Road Tract and Haywood Road Tract [the Corporation Property] as a fiduciary for the benefit of the Watson’s Orchard Subdivision and not for the pecuniary interests of the current individual corporate shareholders.” Had that been the intent, the Corporation would have been set up in that form, but it specifically was not.

55. The Counterdefendants knew (re Amended Complaint’s second “wherefore”) that there is no basis whatsoever for the current lot owners within the Watson’s Orchard subdivision to be “the sole owners of an undivided partial interest to the Pelham Road and Haywood Road Tracts [the Corporation Property]” and no basis for changing the Corporation so that its shares “permanently attached to the several subdivision lots and each lot’s owner.” Had that been the intent, that is how it would have been set up.

56. The Counterdefendants knew (re the ultimate prayer for relief in the Amended Complaint) that there is no basis for enjoining or restraining the Corporation from using the property for any use more intensive than the current uses in the Watson’s Orchard Subdivision since the property is subject only to the restrictions in the Declaration and even those can be changed as of January 1, 2010, under the Declaration’s terms.

57. This abuse of process has injured the counterplaintiffs by forcing them to defend these abusive claims and to engage in this litigation and by preventing them from

selling the property at issue.

58. Indeed, the Corporation has received an offer to purchase a portion of its property at issue for more than \$2 million. For the sale to proceed, it was necessary for the restrictions on the property to be changed so that it was not limited to residential use but could be used for light commercial (e.g., low doctor's offices). By this specious lawsuit, counterdefendants have wrongfully prevented that from occurring.

59. The Corporation is entitled to recover actual damages including those relating to the loss of the contract valued in excess of \$2 million, the reduction in the value of its property, and the costs and expenses of this litigation.

60. The Stephens Entities are entitled to recover actual damages including those relating to the reduction in the value of their property, and the costs and expenses of this litigation.

61. Both counterdefendants are entitled to recover punitive damages because the actions of the counterdefendants were willful, wanton or taken with a reckless disregard of the counterplaintiffs' rights.

THIRD CAUSE OF ACTION

Frivolous Proceedings

(Counterplaintiffs against Counterdefendants Individually)

62. The paragraphs above and below are incorporated by reference.

63. This action constitutes a frivolous proceeding as that term is defined in S.C. Code §15-36-10.

64. Among other things, notwithstanding the obvious existence of the process described in the Declaration itself for amendment of the Declaration and changing the restrictions therein, the counterdefendants filed this action to preempt and prevent the

sale of any of the property at issue.

65. Moreover, as already noted, the counterdefendants effectively represent and imply in the Amended Complaint that the covenants and restrictions on the Corporation's property cannot be changed (and that the Corporation's efforts to do so are wrongful).

66. The Amended Complaint is frivolous because:

- a. a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;
- b. a reasonable attorney in the same circumstances would believe that his procurement, initiation, continuation, or defense of the civil suit was intended merely to harass or injure the other party; or
- c. a reasonable attorney in the same circumstances would believe that the case or defense was frivolous as not reasonably founded in fact or was interposed merely for delay, or was merely brought for a purpose other than securing proper discovery, joinder of proposed parties, or adjudication of the claim or defense upon which the proceedings are based.

67. By filing and prosecuting this frivolous lawsuit, the counterdefendants have injured the counterplaintiffs by forcing them to defend these frivolous claims and by preventing them from selling the property at issue.

68. The Counterplaintiffs are entitled to recover, upon motion at the

conclusion of the trial and after a verdict for or a verdict against damages has been rendered or a case has been dismissed by a directed verdict, summary judgment, or judgment notwithstanding the verdict, their attorney's fees and reasonable costs including but not be limited to: the time required of the prevailing party by the frivolous proceeding, and travel expenses, mileage, parking, costs of reports, and any additional reasonable consequential expenses resulting from the frivolous proceeding.

69. In addition, the counterplaintiffs are entitled to an injunction to deter future frivolous actions by the counterdefendants.

WHEREFORE, the counterplaintiffs pray for judgment as follows:

(A) On the Complaint – that plaintiffs' claims be dismissed with prejudice;

(B) On the Counterclaim, First Cause of Action: A declaratory judgment by this Court that the Declaration has been lawfully changed to the Amended Declaration, and that, as of January 1, 2010, the Declaration shall be null and void and the Amended Declaration will be applicable to the Corporation Property and the Stephens Property.

(C) On the Counterclaim, Second Cause of Action, Abuse of Process: for actual and punitive damages for the counterplaintiffs against the counterdefendants jointly and severally.

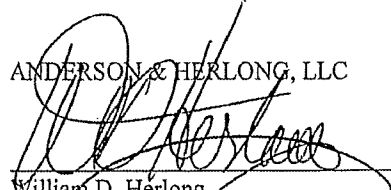
(D) On the Counterclaim, Third Cause of Action, Frivolous Proceedings: for costs and attorney's fees as provided in the statute.

(E) For recovery of all costs, attorneys' fees and expenses reasonably incurred in the prosecution of the instant action to the extent permitted by law;

(F) For such other and further relief as the Court deems just and proper.

This 11th day of November, 2009.

ANDERSON & HERLONG, LLC



William D. Herlong
SC Bar No. 14283
111 E. North Street [Zip 29601]
P.O. Box 2105
Greenville, SC 29602-2105
(864) 752-0011
william@ahlf.us

Attorneys for Defendants/Counterplaintiffs

Greenville, South Carolina
November 11, 2009

SCHEDULE 1

Copy of Declaration of Restrictions and Protective Covenants

FILED
STATE OF SOUTH CAROLINA GREENVILLE CO. S. O.

COUNTY OF GREENVILLE JAN 16 4 22 PM '81

DOONIE S. TANKERSLEY
R.M.C.

DECLARATION OF RESTRICTIONS
AND PROTECTIVE COVENANTS

FILED 140 PAGE 961

8 5

The undersigned, Lincoln of South Carolina, Inc., a South Carolina corporation, hereinafter known as "Declarant", the owner of the properties described in Exhibit "A" annexed hereto and made a part hereof by reference, deems it in the best interest of itself and future owners of said properties to subject said properties to the protective covenants, restrictions, conditions, servitudes and easements hereinafter set forth:

NOW, THEREFORE, Declarant hereby declares that all of the properties described in Exhibit "A" shall be held, sold and conveyed subject to the following easements, restrictive covenants and conditions, which are hereby imposed against said property for the purpose of protecting the value and desirability of said property and the covenants, conditions and restrictions hereinafter set forth shall run with the property described in Exhibit "A" and be binding upon all parties having any right, title or interest in the said described properties or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof and all owners of property in Watson's Orchard Subdivision as shown on plat recorded in the R.M.C. Office for Greenville County in Plat Book 000, Page 09, and the lot in Plat Book 1-C, Page 133, hereinafter referred to as "Watson's Orchard Subdivision" until January 1, 2010 at which time said covenants, conditions, and restrictions shall be automatically extended for successive periods of ten (10) years each unless, by vote of a majority of the then owners of the lots into which the property described above shall have been developed and in Watson's Orchard Subdivision, the within covenants, conditions and restrictions are changed or amended, in whole or in part. In the event such vote shall take place, such vote shall be cast by the legal title holder of each individual lot, provided, however, that only one vote shall be cast for each lot in the event legal title thereto shall be held jointly or otherwise.

LYC 1140 082

If the undersigned, its successors or assigns, or any property owner of any lot into which the property described above shall subsequently be cut should violate or attempt to violate any of the covenants, conditions, and restrictions herein contained, it shall be lawful for any person or persons owning any of the real estate subject to these restrictions or in Watson's Orchard Subdivision to prosecute any proceeding at law or in equity against the person or persons violating or attempting to violate same, to either prevent him or them from so doing, or to recover damages or dues for such violations.

Invalidation of any one of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

ARTICLE I

USES PERMITTED AND PROHIBITED

(1) All lots shall be used exclusively for residential purposes. No structure shall be erected, altered, placed or permitted to remain on any lot other than one detached single family residential dwelling not to exceed two and one-half stories in height and a garage attached or detached for private passenger automobiles and servants quarters, and which shall have been approved by the Architectural Committee for qualification of workmanship and materials, harmony of external design with existing structure and as to location with respect to topography and finished grade elevation.

(2) No trailer, basement, tent, shack, garage, barn or other out building erected upon any lot shall at any time be used as a residence either temporarily or permanently. No structure of a temporary nature shall be used as a residence and no house trailer shall be placed on any lot either temporarily or permanently.

(3) No obnoxious or offensive activity shall be carried on anywhere on the property subject to these covenants nor shall anything be done thereon which may be or become an annoyance, nuisance, or menace to the neighborhood. No lot or any part thereof shall be used for any business or commercial purpose.

(4) All fuel oil tanks or containers shall be covered or buried underground consistent with normal safety precautions.

(5) No animals shall be kept, maintained or quartered on any lot or tract in this subdivision except that usual household pets may be kept in reasonable numbers for the pleasure of the occupants.

(6) Garbage and trash cans, wood piles and clothes drying in yards must be so located that they will not be visible from the street.

(7) Property owners will be required to keep tall shrubbery or hedges trimmed to reasonable limits where air circulation or view from surrounding property may be adversely affected or where traffic hazards may be created.

(8) Provisions must be made by the property owners for adequate off-street parking of all vehicles.

(9) Particular care must be given to the design and location of carports or garages. Carports or garages must be located away from the principal street of the house so that the main view of the house from the street will not be directly into such a carport or garage.

(10) A five-foot easement is reserved over and across all side lot lines and eight-foot easement is reserved over and across all rear lot lines for drainage and utility installation and maintenance; provided that when more than one lot shall be used as a site for only one residence, the aforesaid five-foot easement shall apply only with respect to the exterior lines of such consolidated lot.

(11) Nothing herein contained shall be construed to prohibit the use of more than one lot or portions of one and more lots as a single residential building site, provided that said lot would otherwise meet the requirements as to size, frontage, set-back line and directional facing of said building as determined by the Architectural Committee.

ARTICLE II.

SET-BACKS, LOCATION AND SIZE OF IMPROVEMENTS AND OF BUILDING PLOTS

(1) No building shall be erected on any lot nearer to the front street line than 75 feet or nearer to the side street line than 50 feet. Any such building shall face toward the front line of the lot except that buildings to be constructed on corner

lots shall face in the direction designated by the Architectural Committee. No building or structure shall be located nearer to any interior side lot line than the distance represented by ten percent of the width of the lot (at the building set-back line) on which said building is to be located.

(2) Frontage and lot size restrictions are imposed as follows:

(1) The 14.79 acre tract of land fronting on Pelham Road described in Exhibit "A" shall have all lots facing Pelham Road with a minimum frontage of 200 feet, and a minimum lot size of 55,000 square feet.

(1) The approximate 8-acre tract of land lying between Haywood Road and Watson's Orchard Subdivision described in Exhibit "A" shall be developed in such manner so that the frontage of all lots shall face inward toward Watson's Orchard Subdivision. Each lot shall have a minimum area of 1.5 acres; and the property may not be subdivided in any manner to allow more than 4 lots. Access shall be to existing streets in Watson's Orchard Subdivision only. No direct access to Pelham or Haywood Roads shall be allowed; and no lot or structure situate thereon shall be designed to provide ingress from or egress directly to Pelham or Haywood Roads.

(3) No wall, fence, or hedge shall be erected across or along the front of any lot and nearer to the front lot line than the building set-back line having a height of more than three feet unless approved by the Architectural Committee. No corner lot shall have a wall, fence or hedge erected any closer to the street than the front building line of any adjacent lot unless approved by the Architectural Committee. Any such wall, fence, or hedge proposed to be erected or placed on any such lot whether as part of the architect's residence design or a later addition must receive the approval in writing of the Architectural Committee.

(4) No lot shall be recut so as to face in any direction other than the front line of the lot, nor shall it be recut so as to make any building site smaller than is provided for herein.

(5) No one-story, split-level or story-and-a-half residence shall be constructed containing less than 2,200 square feet of heated floor space exclusive of porches, garages, and breezeways. In computing the square footage of any

split-level or story-and-a-half residence or any residence containing a basement which is finished and heated, one-half credit shall be given for the area above or below the ground floor with a minimum of 2,000 square feet on the ground floor. No two-story residence shall be erected containing less than 1,400 square feet of heated floor space on the ground floor nor less than 100 square feet of heated floor space on the second floor exclusive of porches, garages and breezeways.

ARTICLE III

APPROVAL OF PLANS

(1) The Architectural Committee for this subdivision shall be composed of:

- (i) Three residents and owners in Watson's Orchard Subdivision.
- (ii) A competent architect licensed to practice in South Carolina who shall be selected by lot owners in Watson's Orchard Subdivision.
- (iii) A competent, experienced builder and contractor licensed by the State of South Carolina who shall be selected by lot owners in Watson's Orchard Subdivision.

In the event of a vacancy on the Architectural Committee or the failure or inability of any member to act, the vacancy shall be filled temporarily or permanently as may be necessary by appointment by lot owners in Watson's Orchard Subdivision. The appointment shall be within the categories set forth above. The members of the Architectural Committee shall be appointed for a term of one year, but may be reappointed for additional terms with no limit on the number of additional terms to which they can be reappointed. In all matters, a majority vote shall govern.

(2) No improvements shall be erected, placed, altered, or changed on any lot in this subdivision until and unless the building plans, specifications, and plot plan showing the proposed type of construction, exterior design, location of residence, walks, drives and fences have been approved in writing by the Architectural Committee as to conformity and harmony of external design and consistence of plan with existing residences on other lots in the subdivision and as to the location of the structure with respect to topography and finished ground elevation.

(3) In order to prevent duplication of buildings or improvements to be constructed in this subdivision, the Committee is vested with full authority to approve or disapprove plans for the construction of any building or improvement with its major features so similar to an existing building or improvements as to be considered a substantial duplication thereof in the discretion of the Committee. The Architectural Committee shall further have the right to refuse to approve any such plans, specifications, or plot plans. In making its decisions the Committee shall take into consideration the suitability of the proposed building or other improvement, the materials of which it is to be built, whether or not it is in harmony with the surroundings and what effect it will have on other residences already constructed, and what effect it will have on the outlook from adjacent or neighboring property.

(4) In the event that the Committee fails to approve or disapprove such plans within thirty (30) days after they have been submitted to it, or if no suit to enjoin the erection or alteration of such building or improvement has been commenced before such erection or alteration is substantially completed, approval of the Architectural Committee will be conclusively presumed and this covenant will be deemed to have been fully complied with. The term "building or improvement" shall be deemed to include the erection, placement or alteration of any wall, fence, driveway or parking area.

(5) Application for approval as required herein shall be made to the Committee at the principal residence of the then President of Watson's Orchard Subdivision, Inc., Watson's Orchard, Greenville, S. C., 29615; and at the time of making such application, the building plans, specifications, and plot plans shall be submitted in duplicate. One copy of such plans and specifications will be retained by the Committee, and the other copy will be returned to the applicant with approval or disapproval plainly noted thereon.

(6) No member of this committee shall be liable for any act or omission except willful misconduct or gross and inexcusable neglect.

(7) The Architectural Committee is authorized by a unanimous vote of all its members to approve or ratify in the construction or alteration of any building

minor violations of the set-back, location and size of improvements provisions of these Restrictions if, in the opinion of all the members of the Committee such shall be necessary to prevent undue hardship. The approval or ratification by the Committee in accordance with this paragraph shall be binding on all persons.

ARTICLE IV

MISCELLANEOUS

(1) No signs shall be permitted on any lots except that a single sign offering property for sale or for rent or security signs may be placed on any such lot providing such sign is not more than 24 inches wide and 18 inches high.

(2) All residences shall have a standard letter size metal mailbox as approved by the Postmaster General, which is to be erected by the owner at the height required by the Post Office Department. All boxes and posts shall be kept in a good state of repair at all times. Any deviation from this shall be approved by the Architectural Committee.

(3) No boat, mobile home, trailer, camper, or self-contained recreational vehicle of any kind shall be parked on any lot in the subdivision for a period of more than the time necessary to load or unload such vehicle and in no event shall such vehicle be allowed to remain on the lot more than 24 hours at any one time except that lot owners who may own such vehicles may park them so there is minimum visibility from the street.

(4) The removal of any tree which is in excess of six (6) inches in diameter (dbh) will require prior approval of the Architectural Committee.

IN WITNESS WHEREOF, the undersigned has executed this document under seal this 15th day of January, 1981.

In the presence of:

Alfred W. Grayson
Alfred W. Smith

LINCOLN OF SOUTH CAROLINA (SEAL)

BY: *B. W. Brice*
President & Secretary

CVL 140 PAGE 968

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

PROBATE

PERSONALLY appeared the undersigned witness and made oath that (s) he saw
the within named Lincoln of South Carolina, Inc. sign, seal and as its act and deed
deliver the within written Declaration of Restrictions and Protective Covenants and
that (s) he with the other witness subscribed above witnessed the execution thereof

SWORN to before me this 15th day of January, 1988

W. D. Smith

W. D. Smith
Notary Public for South Carolina
My Commission Expires 10/31/89

RECEIVED BY DEPT. 10/1/88

ALL that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Greenville, containing 14.79 acres, as is more fully shown on a plat entitled "Survey for Richard Watson", prepared by Carolina Surveying Company, dated June 27, 1980, revised August 10, 1980, revised August 27, 1980, revised September 3, 1980 and revised December 1, 1980, and having according to said plat, the following metes and bounds, to wit:

BEGINNING at a stake on the southern side of Pelham Road, at its intersection with Haywood Road and running thence along the southern side of Pelham Road, N. 84° 07' E. 138.1 feet to a stake; running thence N. 87° 55' E. 89.5 feet to a stake; running thence S. 85° 32' E. 100.6 feet to a stake; running thence S. 79° 11' E. 100.0 feet to a stake; running thence S. 72° 58' E. 99.8 feet to a stake; running thence S. 68° 57' E. 138.1 feet to a stake at the intersection of Pelham Road and a proposed road; running thence with the curvature of said intersection, the chord of which is S. 25° 48' E. 140.8 feet to a stake; running thence with the western side of said proposed road, S. 17° 40' W. 210.8 feet to a stake at the corner of a tract containing 22.15 acres; running thence with the line of said tract the following courses and distances to wit: N. 68° 57' W. 387.9 feet to a stake; N. 82° 20' W. 258.9 feet to a stake; S. 84° 07' W. 1,433.1 feet to a stake on the eastern side of Haywood Road; running thence with the eastern side of Haywood Road, N. 8° 06' W. 250.8 feet to a stake at the intersection of Haywood Road and Pelham Road; running thence with the curvature of said intersection, the chord of which is N. 40° 08' E. 71.0 feet to the point of beginning.

ALSO, ALL that certain piece, parcel or tract of land situate, lying and being in the County of Greenville, State of South Carolina, and being shown and designated as Tract A and plat recorded in the RMC Office for Greenville County in Plat Book C at Page 60; and having according to said plat, the following metes and bounds, to wit:

BEGINNING at an iron pin at Pelham Road at the corner of property now or formerly of Adams, and running with the line of the Adams property, N. 14° 35' E. 133.7 feet to an iron pin; thence S. 72° 12' E. 149 feet; thence S. 14° 35' W. 118.5 feet to Pelham Road; thence with the northern side of Pelham Road, S. 83° 50' W. 170.1 feet to the point of beginning.

LESS, HOWEVER, ALL that certain piece, parcel or lot of land situate, lying and being in Greenville Township near the City of Greenville, and having according to a plat recorded in Plat Book 5-C at Page 1, RMC Office for Greenville County, and shown on a survey by Dalton & Neves, Engineers, dated October, 1975, as property of the Grantor and having, according to said plat, the following metes and bounds, to wit:

BEGINNING at an iron pin on the north side of Pelham Road, formerly property of Nell Baker Adams, and running thence with Pelham Road, N. 84° 25' E. 75.15 feet to an iron pin; thence with intersection of said road and intersection of Haywood Road, N. 37° 45' E. 68.97 feet to an iron pin; thence with Haywood Road, N. 8° 18' W. 251.20 feet to an iron pin; thence with property of Nell Baker Adams, S. 14° 35' W. 250.4 feet to an old iron pin; thence S. 14° 35' W. 70.35 feet to the beginning.

ALSO, LESS, HOWEVER: Subject to that certain right-of-way easement granted to the South Carolina Highway Department covering approximately 2.28 acres of the above described property.

RECORDED: JAN 16 1981 at 4:22 P.M.

210649

SCHEDULE 2

Copy of Amended and Restated Declaration of Restrictions and Protective Covenants

STATE OF SOUTH CAROLINA) AMENDED AND RESTATED
) DECLARATION OF RESTRICTIONS
COUNTY OF GREENVILLE) AND PROTECTIVE COVENANTS

The undersigned, WATSON'S ORCHARD PROPERTY OWNERS ASSOCIATION, INC., a South Carolina corporation (the "Corporation"), JAMES G. STEPHENS AND RALPH D. KELLAR, AS CO-TRUSTEES OF THE REVOCABLE TRUST AGREEMENT DATED MARCH 19, 1996 ESTABLISHED BY JAMES B. STEPHENS AS AMENDED (the "Trustees") and PELHAM FARM, LLC, LEGACY ONE, LLC AND SESP, LLC, South Carolina limited liability companies (collectively "LLCs") hereby amend and restate the Declaration of Restrictions and Protective Covenants dated January 15, 1981, recorded January 18, 1981 in the RMC Office for Greenville County in Deed Book 1140, Pages 961 through 969 (the "Declaration") as hereinafter set forth.

BACKGROUND

The Declaration provides that it may be changed or amended under the following language:

"...the covenants, conditions and restrictions hereinafter set forth shall run with the property described in Exhibit "A" and be binding upon all parties having any right, title or interest in the said described properties or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof and all owners of property in Watson's Orchard Subdivision as shown on plat recorded in the R.M.C. Office for Greenville County in Plat Book 000, Page 99, and the lot in Plat Book 4-C, Page 133, hereinafter referred to as 'Watson's Orchard Subdivision', until January 1, 2010 at which time said covenants, conditions, and restrictions shall be automatically extended for successive periods of ten (10) years each unless, by vote of a majority of the then owners of the lots into which the property described above shall have been developed and in Watson's Orchard Subdivision, the within covenants, conditions and restrictions are changed or amended, in whole or in part."

More than a majority of the parties entitled to vote pursuant to the above language have voted to amend the Declaration as set out herein in this Amended and Restated Declaration of Restrictions and Protective Covenants.

To accomplish the execution of this Amended and Restated Declaration of Restrictions and Protective Covenants certain owners of lots in Watson's Orchard Subdivision have executed and delivered to the Corporation a Power coupled with an interest, which authorizes the Corporation to execute and deliver this document on their behalf.

The Corporation is the owner of the property described on Exhibit "A" annexed hereto and by this reference made a part hereof (the Corporation Property"). The Corporation Property consists of two (2) separate tracts, identified on Exhibit "A" as:

1. Pelham Road Tract consisting of the property conveyed to Corporation as 14.79 acres, LESS, and EXCEPT five (5) Lots which were conveyed and are now owned by Trustees. Further, LESS and EXCEPT property acquired by South Carolina Highway Department at the intersection of Pelham Road and Haywood Road. Said property is referred to herein as "Pelham Road Tract".
2. Haywood Road Tract consisting of Tract A conveyed to Corporation, LESS and EXCEPT property shown in Plat Book 5-O, Page 1, and land within the right-of-way easement granted to South Carolina Highway Department. Property is referred to as "Haywood Road Property".

The Trustees and LLCs are the owners of the property described in Exhibit "B" annexed hereto and by this reference made a part hereof (the "Trustee/LLC Property").

NOW, THEREFORE, Corporation, Trustees and LLCs hereby amend the Declaration as hereinafter provided.

1. The Declaration is hereby cancelled and terminated and the within Amended and Restated Declaration of Restrictions and Protective Covenants is hereby substituted in lieu thereof.
2. The Pelham Road Tract and the Trustee/LLC Property shall be held, sold and conveyed subject to the following restrictions, covenants and conditions, which shall run with the Pelham Road Tract and the Trustee/LLC Property and be binding upon all parties having any right, title or interest in said properties or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner of the Pelham Road Tract and Trustee/LLC Property and all owners of property in Watson's Orchard Subdivision as shown on plat recorded in the Office of the Register of Deeds for Greenville County in Plat Book 000, Page 99, and the lot in Plat Book 4-C, Page 133, hereinafter referred to as "Watson's Orchard Subdivision" until January 1, 2040 at which time said covenants, conditions, and restrictions shall be automatically extended for successive periods of ten (10) years each unless, by vote of a majority of the then owners of the lots into which the Pelham Road Tract and Trustee/LLC Property shall have been developed as lots approved by appropriate public authorities and in Watson's Orchard Subdivision, the within covenants, conditions and restrictions are changed or amended, in whole or in part. PROVIDED, HOWEVER, no change or amendment shall prevent the Pelham Road Tract and Trustee/LLC Property from being used as general and medical offices, nursing homes, assisted living or retirement centers, increase the building set back line from Pelham Road to more than fifty (50') feet, reduce the building height to less than two stories or

require a building height of more than two stories and prevent roofs from being gable or hip. In the event such vote shall take place, such vote shall be cast by the legal title holder of each individual lot, provided, however, that only one vote shall be cast for each lot in the event legal title thereto shall be held jointly or otherwise.

3. The Pelham Road Tract and Trustee/LLC Property shall be used only as general and medical offices, nursing homes, assisted living or retirement centers.
4. No building shall be located on said property nearer Pelham Road than fifty (50') feet.
5. No building shall be constructed on said property having a height of more than two (2) stories. All roofs shall be gable or hip.
6. Corporation shall undertake to convey and transfer title to the Haywood Road Tract to a trustee for a conservation easement.
7. By executing the within Amended and Restated Declaration of Restrictions and Protective Covenants, the undersigned James G. Stephens and Ralph D. Kellar as Co-Trustees and LLCs hereby vote to amend the Declaration as set out in the within Amended and Restated Declaration of Restrictions and Protective Covenants.

IN WITNESS WHEREOF, the undersigned have executed this document under seal this 2nd day of October, 2009.

IN THE PRESENCE OF:

WATSON'S ORCHARD PROPERTY
OWNERS ASSOCIATION, INC.,
on behalf of itself and on behalf of the
Subdivision Owners identified on
Exhibit "C" annexed hereto and
incorporated herein by reference.

Patricia H. Grayson Jr.
Secretary

By: Ralph D. Kellar
Its: PRESIDENT

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF GREENVILLE)

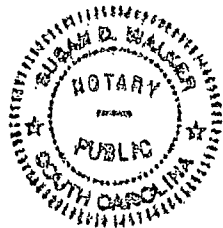
PERSONALLY appeared the undersigned witness and made oath that (s)he saw the within named RALPH H. ACKER, PRESIDENT of Watson's Orchard Property Owners Association Inc., on behalf of itself and on behalf of the Subdivision Owners, sign, seal and as its act and deed deliver the within Amended and Restated Declaration of Restrictions and Protective Covenants and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

SWORN to before me this 2nd
day of October, 2009.

Patrick H. Grayson

Susan D. Walser (L. S.)
Notary Public for South Carolina

My Commission Expires: 10/15/11



IN THE PRESENCE OF:

Quintin M. Jones
Jill - Scott

James G. Stephens
JAMES G. STEPHENS AS CO-TRUSTEE
OF THE REVOCABLE TRUST
AGREEMENT DATED MARCH 19,
1996 ESTABLISHED BY JAMES B.
STEPHENS AS AMENDED BY
AMENDED AND RESTATED
JAMES B. STEPHENS REVOCABLE
TRUST AGREEMENT DATED JULY 15,
2003

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF GREENVILLE)

PERSONALLY appeared the undersigned witness and made oath that (s)he saw the within named James G. Stephens, as Co-Trustee of the Revocable Trust Agreement Dated March 19, 1996 Established by James B. Stephens As Amended by Amended and Restated James B. Stephens Revocable Trust Agreement dated July 15, 2003 sign, seal and as its act and deed deliver the within Amended and Restated Declaration of Restrictions and Protective Covenants and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

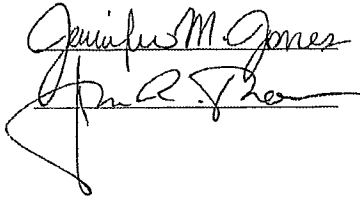
SWORN to before me this 2nd
day of October, 2009.

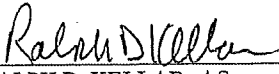
Quintin M. Jones
Notary Public for South Carolina

My Commission Expires: 8-6-2018

Jill - Scott

IN THE PRESENCE OF

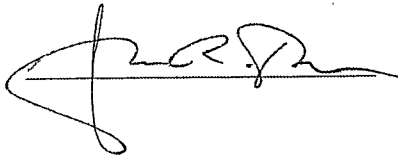



RALPH D. KELLAR, AS
CO-TRUSTEE OF THE REVOCABLE
TRUST AGREEMENT DATED
MARCH 19, 1996 ESTABLISHED BY
JAMES B. STEPHENS AS AMENDED
BY AMENDED AND RESTATED
JAMES B. STEPHENS REVOCABLE
TRUST AGREEMENT DATED JULY 15,
2003

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF GREENVILLE)

PERSONALLY appeared the undersigned witness and made oath that (s)he saw the within named Ralph D. Kellar, as Co-Trustee of the Revocable Trust Agreement Dated March 19, 1996 Established by James B. Stephens As Amended by Amended and Restated James B. Stephens Revocable Trust Agreement dated July 15, 2003 sign, seal and as its act and deed deliver the within Amended and Restated Declaration of Restrictions and Protective Covenants and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

SWORN to before me this 8th
day of October, 2009.




Notary Public for South Carolina

My Commission Expires: 3-6-2018

IN THE PRESENCE OF:

Jennifer M. Jones
Jen. Skott

PELHAM FARM, LLC, a South
Carolina limited liability company

By: James M. Stephens
James M. Stephens
Its: President

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

PROBATE

PERSONALLY appeared the undersigned witness and made oath that (s)he saw the within named James M. Stephens, President of Pelham Farm, LLC, a South Carolina limited liability company sign, seal and as its act and deed deliver the within Amended and Restated Declaration of Restrictions and Protective Covenants and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

SWORN to before me this 2nd
day of October, 2009.

Jen. Skott

Jennifer M. Jones S.)
Notary Public for South Carolina
EXP. 3-6-2018

IN THE PRESENCE OF:

Robert McElroy Jr
Robert McElroy Jr

LEGACY ONE, LLC, a South
Carolina limited liability company

By: *Judy S. Shaffer*
Judy S. Shaffer
Its: President

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared the undersigned witness and made oath that (s)he saw the within named Judy S. Shaffer, President of Legacy One, LLC, a South Carolina limited liability company sign, seal and as its act and deed deliver the within Amended and Restated Declaration of Restrictions and Protective Covenants and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

SWORN to before me this 5
day of Oct., 2009.

Robert McElroy Jr

Robert McElroy Jr (L. S.)
Notary Public for South Carolina

MY COMMISSION EXPIRES OCT. 22, 2011

IN THE PRESENCE OF:

Jennifer M. Jones
Jane Sutton

SESP, LLC, a South
Carolina limited liability company

By Sallie Stephens Phillips
Sallie Stephens Phillips
Its: President

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF GREENVILLE)

PERSONALLY appeared the undersigned witness and made oath that (s)he saw the within named Sallie Stephens Phillips, President of SESP, LLC, a South Carolina limited liability company sign, seal and as its act and deed deliver the within Amended and Restated Declaration of Restrictions and Protective Covenants and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

SWORN to before me this 2nd
day of October, 2009.

Jane Sutton

Jennifer M. Jones (L. S.)
Notary Public for South Carolina
Exp. 3-6-2018

EXHIBIT "A"
TO
AMENDED AND RESTATED
DECLARATION OF RESTRICTIONS
AND PROTECTIVE COVENANTS

1. Pelham Road Tract

ALL that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Greenville, containing 14.79 acres, as is more fully shown on a plat entitled "Survey for Richard Watson", prepared by Carolina Surveying Company, dated June 27, 1980, revised August 19, 1980, revised August 27, 1980, revised September 3, 1980, and revised December 1, 1980, and having according to said plat, the following metes and bounds, to-wit:

BEGINNING at a stake on the southern side of Pelham Road, at its intersection with Haywood Road and running thence along the southern side of Pelham Road, N. 84-07 E. 1,391.7 feet to a stake; running thence N. 87-55 E. 99.5 feet to a stake; running thence S. 85-33 E. 100.6 feet to a stake; running thence S. 79-11 E. 100.0 feet to a stake; running S. 72-58 E. 99.6 feet to a stake; running thence S. 68-57 E. 338.4 feet to a stake at the intersection of Pelham Road and a proposed road; running thence with the curvature of said intersection, the chord of which is S. 25-18 E. 43.8 feet to a stake; running thence with the western side of said proposed road, S. 17-20 W. 270.6 feet to a stake at the corner of a tract containing 22.15 acres; running thence with the line of said tract, the following courses and distances to-wit: N. 68-57 W. 387.9 feet to a stake; N. 82-20 W. 256.9 feet to a stake; S. 84-07 W. 1,433.1 feet to a stake on the eastern side of Haywood Road; running thence on the eastern side of Haywood Road, N. 8-06 W. 250.8 feet to a stake at the intersection of Haywood Road and Pelham Road, running thence with the curvature of said intersection, the chord of which is N. 40-06 E. 71.0 feet to the point of beginning.

LESS AND EXCEPT, five (5) lots conveyed by Watson's Orchard Property Owners Association, Inc. to Pelham Properties, Inc. by deed dated January 15, 1981, recorded in Deed Book 1141, Page 1.

FURTHER, LESS AND EXCEPT, any land conveyed to or acquired by South Carolina Highway Department or other public authority.

Derivation: See deed of Lincoln of South Carolina, Inc. to Watson's Orchard Property Owners Association, Inc. in Deed Book 1140, Page 997.

2. Haywood Road Property

ALL that certain piece, parcel or tract of land situate, lying and being in the County of Greenville, State of South Carolina, and being shown and designated as Tract A on plat recorded in the RMC Office for Greenville County in Plat Book C, at Page 60, and having according to said plat, the following metes and bounds, to-wit:

BEGINNING at an iron pin at Pelham Road at the corner of property now or formerly of Adams, and running with the line of the Adams property, N. 14-35 E. 1,337 feet to an iron pin; thence S. 72 E. 346 feet, thence S. 14-35 W. 1,185 feet to Pelham Road; thence with the northern side of Pelham Road, S. 83-50 W. 370 feet to the point of beginning.

LESS, HOWEVER: ALL that certain piece, parcel or lot of land situate, lying and being in Greenville Township near the City of Greenville, and having, according to a plat recorded in Plat Book 5-O, at Page 1, RMC Office for Greenville County, and shown on a survey by Dalton & Neves, Engineers, dated October, 1975, as property of Lincoln of South Carolina, Inc. and having, according to said plat, the following metes and bounds, to-wit:

BEGINNING at an iron pin on the north side of Pelham Road, formerly property of Nell Baker Adams, and running thence with Pelham Road, N. 84-25 E. 75-15 feet to an iron pin; thence with intersection of said road and intersection of Haywood Road, N. 37-45 E. 68.97 feet to an iron pin; thence with Haywood Road, N. 8-18 W. 251.20 feet to an iron pin; thence with property of Nell Baker Adams, S. 14-35 W. 250.4 feet to an old iron pin; thence S. 14-35 W. 70.35 feet to the beginning.

ALSO, LESS, HOWEVER: Subject to that certain right-of-way easement granted to the South Carolina Highway Department covering approximately 2.28 acres of the above described property.

Derivation: See deed of Lincoln of South Carolina, Inc. to Watson's Orchard Property Owners Association, Inc. in Deed Book 1140, Page 998.

EXHIBIT "B"
TO
AMENDED AND RESTATED
DECLARATION OF RESTRICTIONS
AND PROTECTIVE COVENANTS

Trustee/LLC Property

ALL that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Greenville, containing five (5) lots as is more fully shown on a plat entitled "Survey for Richard Watson", prepared by Carolina Surveying Company, dated June 27, 1980, revised August 19, 1980, revised August 27, 1980, revised September 3, 1980, and revised December 1, 2, and 3, 1980 and having according to said plat, the following metes and bounds, to-wit:

BEGINNING at a stake at the intersection of Pelham Road and a proposed road; running thence with the curvature of said intersection, the chord of which is S. 25-48 E. 43.8 feet to a stake; running thence with the western side of said proposed road, 17-20 W. 270.6 feet to a stake at the corner of a tract containing 22.15 acres, running thence with the line of said tract N. 68.57 W. 200 feet to a point; thence continuing N. 38-57 W. 180 feet to a point; thence continuing N. 68-57 W. 7.9 feet to point; running thence N. 82-28 W. 256.9 feet to a point; running thence S. 84-07 W. 55 feet to a point; thence continuing S. 84-07 W. 176.92 feet to a point; running thence N. 5-53 W. 300 feet to a point on the southern side of Pelham Road; running thence with the southern side of Pelham Road, N. 84-07 E. 200 feet to a point; thence continuing with the southern side of Pelham Road, N. 84-07 E. 31.9 feet to a point; thence continuing with the southern side of Pelham Road, the following courses and distances, to-wit: N. 87.55 E. 99.5 feet; S. 85-33 E. 68.6 feet to a point; S. 85-33 E. 32 feet to a point; S. 79-11 E. 100 feet to a point; S. 72-58 E. 68 feet to a point; S. 72-58 E. 31.8 feet to a point; S. 68-57 E. 168.4 feet to point; S. 98-57 E. 170 feet to the point of beginning.

Derivation: See deed of Watson's Orchard Property Owners Association, Inc. to Pelham Properties, Inc. in Deed Book 1141, Page 1 and subsequent deed to J. B. Stephens in Deed Book 1274, Page 237. See also deed of J. B. Stephens (same as James B. Stephens) to James B. Stephens as Trustee for Revocable Trust Agreement in Deed Book 2053, Page 157. J. B. Stephens, same as James B. Stephens, died November 8, 2008 in Greenville County. At his death, James G. Stephens and Ralph D. Kellar became successor Trustees. See deed to LLCs in Deed Book 2328, Page 1674.

EXHIBIT "C"
TO
AMENDED AND RESTATED
DECLARATION OF RESTRICTIONS
AND PROTECTIVE COVENANTS

SCHEDULE OF SUBDIVISION OWNERS
WHO VOTED FOR THE WITHIN
AMENDED AND RESTATED
DECLARATION OF RESTRICTIONS
AND PROTECTIVE COVENANTS

NAME SUBDIVISION LOT NO.

1. Lucy S. Tiller same as Lucy S. Muller	No. 3 and No. 11
2. James G. Stephens and Ralph D. Kellar, Successor Trustees for the James B. Stephens Revocable Trust Agreement dated March 19, 1996 as amended by Amended and Restated James B. Stephens Revocable Trust Agreement dated July 15, 2003	No. 4
3. Rachel P. McKaughan	No. 5
4. Ramon J. Ashy and Jana Ashy	No. 6
5. Erna R. Rash	No. 8
6. Mary F. Newell	No. 13
7. Joe G. Thomason and Dana L. Henry Thomason	No. 22
8. Cameron E. Smith and Joan B. Smith	No. 26
9. Charles E. Howard and Sharon F. Howard	No. 27
10. Meredith C. Vry	No. 30
11. Lisette M. Silva and Mary F. Colley	No. 33 and pt. 34
12. Ilona K. Alford and William G. Alford	No. pt. 34

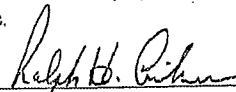
13. George T. McLeod and Martha T. McLeod	No. 36
14. Leonard R. Byrne and Virginia R. Byrne	No. 37
15. Anna W. Caughman, Sole Trustee of Martha Randolph Westrope Trust dated June 6, 1988 under Second Amendment dated October 3, 2001	No. 41
16. Sexton Griffith Builders, Inc.	No. 44
17. W. Frank Durham, Jr.	No. 47
18. Samuel P. Howard, Jr. and Jane H. Howard	No. 49 and pt. 48
19. Christine M. Howard	No. pt. 48
20. Manfred E. Kramer and Jane J. Kramer	No. 50
21. Mary J. Steele	No. 52

Total Subdivision Lots = 22

EXHIBIT "D"

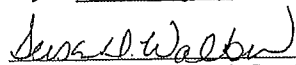
CERTIFICATION

The undersigned, RALPH H. AIKEN, hereby certifies that he is president of Watson's Orchard Property Owners Association, Inc. (the "Corporation"); that the Corporation desires to amend and change the Declaration of Restrictions and Protective Covenants recorded in the RMC Office (now Office of Registered of Deeds) for Greenville County, January 18, 1981 in Deed Book 1140, Pages 961- 969 (the "Declaration"); to accomplish said amendment and changes, the Corporation prepared a Vote document for each owner of a lot in Watson's Orchard Subdivision as defined in the Declaration; that the Corporation sent the Vote document to each Lot owner together with a proposed Agreement to Release Declaration of Restrictions and Protective Covenants ("Agreement") by certified mail; that attached to this Certification are copies of the certified mail notices; that the Corporation received the executed Vote document and Agreement from the twenty-two (22) Subdivision Owners identified on Exhibit "C" to Amended and Restated Declaration of Restrictions and Protective Covenants ("Amended and Restated Declaration"); that in addition the Corporation received the Vote document executed by James G. Stephens and Ralph D. Kellar as Co-Trustees of the Revocable Trust Agreement dated March 19, 1996 established by James B. Stephens as Amended and Restated by Amended and Restated James B. Stephens Revocable Trust Agreement dated July 15, 2003, Pelham Farm, LLC, Legacy One, LLC, and SESP, LLC the owners of the Trustee/LLC Property described in the Amended and Restated Declaration, which owners are entitled to five (5) votes; that the Corporation is the owner of the Pelham Road Tract and the Haywood Road Property described in the Amended and Restated Declaration; that the Corporation voted one (1) vote for the Pelham Road Tract and one (1) vote for the Haywood Road Property (six (6) votes for the Pelham Road Tract and four (4) votes for the Haywood Road Property if the Corporation is entitled to such votes). The votes total twenty-nine (29) out of fifty-four (54) (or forty-seven (47) out of sixty-two (62), if the Corporation is entitled to ten (10) votes), in either case, the votes received total more than a majority vote.

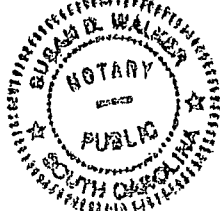


Ralph H. Aiken, President of
Watson's Orchard Property Owners
Association, Inc.

SWORN TO before me this 2nd
day of October, 2009.


Notary Public for South Carolina

My Commission Expires: 10/15/11



7009 0080 0000 3745 5664

CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$		Postmark Here
Certified Fee			
Return Receipt Fee (Endorsement Required)			
Restricted Delivery Fee (Endorsement Required)			
Total Postage & Fees	\$		

Sent To: Mary J. Steele
Street, Apt. No., or PO Box No.: 224 Highbourn Drive
City, State, ZIP+4: Greenville, SC 29615

7009 0080 0000 3745 5213

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$	\$2.38	0276	Postmark Here
Certified Fee		\$2.80	20	
Return Receipt Fee (Endorsement Required)		\$0.00		
Restricted Delivery Fee (Endorsement Required)		\$0.00		
Total Postage & Fees	\$	\$5.38	07/01/2009	

Sent To: Lisette M. Silva and Mary F. Colley
Street, Apt. No., or PO Box No.: 102 Graystone Road
City, State, ZIP+4: Greenville, SC 29615

7009 0080 0000 3745 5299

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$	\$2.38	0276	Postmark Here
Certified Fee		\$2.80	20	
Return Receipt Fee (Endorsement Required)		\$0.00		
Restricted Delivery Fee (Endorsement Required)		\$0.00		
Total Postage & Fees	\$	\$5.38	07/01/2009	

Sent To: Traci Segura
Street, Apt. No., or PO Box No.: 211 Highbourn Drive
City, State, ZIP+4: Greenville, SC 29615

7009 0080 0000 3745 5183

CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$	\$2.38	0276	Postmark Here
Certified Fee		\$2.80	20	
Return Receipt Fee (Endorsement Required)		\$0.00		
Restricted Delivery Fee (Endorsement Required)		\$0.00		
Total Postage & Fees	\$	\$5.38	07/01/2009	

Sent To: Ilona K. and William G. Alford
Street, Apt. No., or PO Box No.: 100 Graystone Road
City, State, ZIP+4: Greenville, SC 29615

7009 0080 0000 3745 5275

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$	\$2.38	0276	Postmark Here
Certified Fee		\$2.80	20	
Return Receipt Fee (Endorsement Required)		\$0.00		
Restricted Delivery Fee (Endorsement Required)		\$0.00		
Total Postage & Fees	\$	\$5.38	07/01/2009	

Sent To: Charles E. and Sharon F. Howard
Street, Apt. No., or PO Box No.: 213 Highbourn Drive
City, State, ZIP+4: Greenville, SC 29615

7009 0080 0000 3745 5305

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$	\$2.38	0276	Postmark Here
Certified Fee		\$2.80	20	
Return Receipt Fee (Endorsement Required)		\$0.00		
Restricted Delivery Fee (Endorsement Required)		\$0.00		
Total Postage & Fees	\$	\$5.38	07/01/2009	

Sent To: Scott P. and Kathleen H. Payne
Street, Apt. No., or PO Box No.: 205 Highbourn Drive
City, State, ZIP+4: Greenville, SC 29615

7009 0080 0000 3745 5589

CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

For delivery information visit us online at www.usps.com

OFFICIAL USE

Postage	\$ 2.58	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 5.38	

07/01/2009

Sent To: Nathan Scolari
Street, Apt. No., or PO Box No.: 101 Highbourne Drive
City, State, ZIP+4: Greenville, SC 29615

7009 0080 0000 3745 5596

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

For delivery information visit us online at www.usps.com

OFFICIAL USE

Postage	\$ 2.58	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 5.38	

07/01/2009

Sent To: Delores B. Mitchell
Street, Apt. No., or PO Box No.: 108 Graystone Road
City, State, ZIP+4: Greenville, SC 29615

7009 0080 0000 3745 5534

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

For delivery information visit us online at www.usps.com

OFFICIAL USE

Postage	\$ 2.58	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 5.38	

07/01/2009

Sent To: R. C. Fredrick Hanold, III and Rose F. Hanold
Street, Apt. No., or PO Box No.: 13 Darien Way
City, State, ZIP+4: Greenville, SC 29615

7009 0080 0000 3745 5312

CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

For delivery information visit us online at www.usps.com

OFFICIAL USE

Postage	\$ 2.58	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 45.38	

07/01/2009

Sent To: J. Lynn Shook
Street, Apt. No., or PO Box No.: 107 Highbourne Drive
City, State, ZIP+4: Greenville, SC 29615

7009 0080 0000 3745 5552

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

For delivery information visit us online at www.usps.com

OFFICIAL USE

Postage	\$ 2.58	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 45.38	

07/01/2009

Sent To: Merrill J. Gildersleeve
Street, Apt. No., or PO Box No.: 17 Darien Way
City, State, ZIP+4: Greenville, SC 29615

7009 0080 0000 3745 5428

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Postage	\$ 2.58	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 45.38	

07/01/2009

Sent To: George T. and Martha T. McLeod
Street, Apt. No., or PO Box No.: 21 Darien Way
City, State, ZIP+4: Greenville, SC 29615

7009 0080 0000 3745 5459

CERTIFIED MAIL RECEIPT
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Postage	\$ 2.38	0.276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 5.38	

Sent To: Martha Randolph Westrope
Street, Apt. No., or PO Box No.: 11 Darien Way
City, State, ZIP+4: Greenville, SC 29615

7009 0080 0000 3745 5442

CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$ 2.38	0.276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 5.38	

Sent To: David A. and Xiaoli Saliny
Street, Apt. No., or PO Box No.: 3 Darien Way
City, State, ZIP+4: Greenville, SC 29615

7009 0080 0000 3745 5688

U.S. Postal Service
CERTIFIED MAIL RECEIPT
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OFFICIAL USE

Postage	\$ 2.38	0.276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 5.38	

Sent To: Manfred E. and Jane J. Kramer
Street, Apt. No., or PO Box No.: 220 Highbourne Drive
City, State, ZIP+4: Greenville, SC 29615

7009 0080 0000 3745 5190

U.S. Postal Service
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OFFICIAL USE

Postage	\$ 2.38	0.276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 5.38	

Sent To: Anna Marie T. Azores and Kim O. Goco
Street, Apt. No., or PO Box No.: 15 Darien Way
City, State, ZIP+4: Greenville, SC 29615

7009 0080 0000 3745 5671

U.S. Postal Service
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OFFICIAL USE

Postage	\$ 2.38	0.276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 5.38	

Sent To: Richard A. and Patricia L. Herrman
Street, Apt. No., or PO Box No.: 10 Graystone Road
City, State, ZIP+4: Greenville, SC 29615

7009 0080 0000 3745 5657

U.S. Postal Service
CERTIFIED MAIL RECEIPT
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OFFICIAL USE

Postage	\$ 2.38	0.276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 5.38	

Sent To: Samuel P. Howard, Jr. and Jane H. Howard
Street, Apt. No., or PO Box No.: 214 Highbourne Drive
City, State, ZIP+4: Greenville, SC 29615

CERTIFIED MAIL RECEIPT
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OFFICIAL USE

Postage	\$2.38	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$5.38	07/01/2009

Sent To: Christine M. Howard
Street, Apt. No., or PO Box No.: 202 W. Stone Avenue
City, State, ZIP+4: Greenville, SC 29609

CERTIFIED MAIL RECEIPT
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OFFICIAL USE

Postage	\$2.38	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$5.38	07/01/2009

Sent To: George P. Mitchell, Jr. and Carol R. Mitchell
Street, Apt. No., or PO Box No.: 204 Highbourne Drive
City, State, ZIP+4: Greenville, SC 29615

U.S. Postal Service
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OFFICIAL USE

Postage	\$2.38	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$5.38	07/01/2009

Sent To: Sexton Griffith Builders, Inc.
Street, Apt. No., or PO Box No.: 123 Kiowa Lane
City, State, ZIP+4: Piedmont, SC 29673

U.S. Postal Service
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Postage	\$2.38	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$5.38	07/01/2009

Sent To: James J. Barrett, III and Kimberly A. Barrett
Street, Apt. No., or PO Box No.: 107 Graystone Road
City, State, ZIP+4: Greenville, SC 29615

U.S. Postal Service
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Postage	\$2.38	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$5.38	07/01/2009

Sent To: Cliff C. and Martha W. Jollie
Street, Apt. No., or PO Box No.: 5 Darien Way
City, State, ZIP+4: Greenville, SC 29615

U.S. Postal Service
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Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$5.38	07/01/2009

Sent To: Joel Wells Norwood and Lynn Norwood
Street, Apt. No., or PO Box No.: 105 Highbourne Drive
City, State, ZIP+4: Greenville, SC 29615

7009 0080 0000 3745 5336

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Postage	\$ 2.38	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 5.38	

07/01/2009

Sent To: Timothy M. and Elizabeth W. Conroy
 Street, Apt. No., or PO Box No.: 21 Highbourne Drive
 City, State, ZIP+4: Greenville, SC 29615

5336 3745 0000 0080 7009

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Postage	\$ 2.38	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 5.38	

07/01/2009

Sent To: Mary F. Newell
 Street, Apt. No., or PO Box No.: 4 Darien Way
 City, State, ZIP+4: Greenville, SC 29615

7009 0080 0000 3745 5335

U.S. Postal Service
CERTIFIED MAIL RECEIPT
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OFFICIAL USE

Postage	\$ 2.38	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 5.38	

07/01/2009

Sent To: Horst H. H. and Floride C. Eschenberry
 Street, Apt. No., or PO Box No.: 16 Darien Way
 City, State, ZIP+4: Greenville, SC 29615

5335 3745 0000 0080 7009

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OFFICIAL USE

Postage	\$ 2.38	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 5.38	

07/01/2009

Sent To: James Edwin Conrad
 Street, Apt. No., or PO Box No.: 1655 Oakwood Drive
 City, State, ZIP+4: Penn Valley, PA 19072

7009 0080 0000 3745 5374

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CERTIFIED MAIL RECEIPT
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OFFICIAL USE

Postage	\$ 2.38	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 5.38	

07/01/2009

Sent To: Kaye James Kallman
 Street, Apt. No., or PO Box No.: 9 Graystone Road
 City, State, ZIP+4: Greenville, SC 29615

5374 3745 0000 0080 7009

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CERTIFIED MAIL RECEIPT
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OFFICIAL USE

Postage	\$ 2.38	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 5.38	

07/01/2009

Sent To: Dean D. and Deborah P. Varner
 Street, Apt. No., or PO Box No.: 200 Highbourne Drive
 City, State, ZIP+4: Greenville, SC 29615

7009 0080 0000 3745 5503

CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

For delivery information visit us at www.usps.com

OFFICIAL USE

Postage	\$2.38	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$5.38	07/01/2009

Sent To: Ralph D. Kellar
c/o Elliott Davis
PO Box 6286
Greenville, SC 29606-6286

7009 0080 0000 3745 5510

CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

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OFFICIAL USE

Postage	\$2.38	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$5.38	07/01/2009

Sent To: Janet B. Yusi
609 Pelham Road
Greenville, SC 29615

7009 0080 0000 3745 5640

U.S. Postal Service
CERTIFIED MAIL RECEIPT
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OFFICIAL USE

Postage	\$2.38	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$5.38	07/01/2009

Sent To: N. Carter Poe, III
515 Pelham Road
Greenville, SC 29615

7009 0080 0000 3745 5209

U.S. Postal Service
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OFFICIAL USE

Postage	\$2.38	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$5.38	07/01/2009

Sent To: Penelope J. Galbraith
215 Highbourne Drive
Greenville, SC 29615

7009 0080 0000 3745 5619

U.S. Postal Service
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OFFICIAL USE

Postage	\$2.38	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$5.38	07/01/2009

Sent To: Cameron E. and Joan B. Smith
209 Highbourne Drive
Greenville, SC 29615

7009 0080 0000 3745 5265

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

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OFFICIAL USE

Postage	\$2.38	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$5.38	07/01/2009

Sent To: Joe G. Thomason and Dana L. Henry Thomason
103 Sweetbriar Drive
Greenville, SC 29615

7009 0080 0000 3745 5633

CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$2.38	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$5.38	07/01/2009

Sent To: Juan Hernandez and Janice M. Pelletier
Street, Apt. No., or PO Box No.: 203 Highbourne Drive
City, State, ZIP+4: Greenville, SC 29615

1985 5426 0000 0000 0000

CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$2.38	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$5.38	07/01/2009

Sent To: Rachel P. McKaughan
Street, Apt. No., or PO Box No.: 627 Pelham Road
City, State, ZIP+4: Greenville, SC 29615

7009 0080 0000 3745 5404

CERTIFIED MAIL RECEIPT
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OFFICIAL USE

Postage	\$2.38	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$5.38	07/01/2009

Sent To: McNally Reeves
Street, Apt. No., or PO Box No.: 602 Pelham Road
City, State, ZIP+4: Greenville, SC 29615

7009 0080 0000 3745 5465

CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$2.38	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$5.38	07/01/2009

Sent To: Caryl L. Clover and Uwe H. A. Diestel
Street, Apt. No., or PO Box No.: 6 Darien Way
City, State, ZIP+4: Greenville, SC 29615

7009 0080 0000 3745 5473

CERTIFIED MAIL RECEIPT
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OFFICIAL USE

Postage	\$2.38	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$5.38	07/01/2009

Sent To: Sue Lane Conrad
Street, Apt. No., or PO Box No.: 316 Sunset Drive
City, State, ZIP+4: Weems, VA 22576

7009 0080 0000 3745 5480

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OFFICIAL USE

Postage	\$2.38	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$5.38	07/01/2009

Sent To: Erma R. Rash
Street, Apt. No., or PO Box No.: 28 Darien Way
City, State, ZIP+4: Greenville, SC 29615

7009 0080 0000 3745 5497

CERTIFIED MAIL RECEIPT (Domestic Mail Only, No Insurance Coverage Provided)		
OFFICIAL USE		
Postage	\$2.58	0276
Certified Fee	\$2.30	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$5.38	07/01/2009
Sent To Ramon J. and Jana Ashy 655 Pelham Road Greenville, SC 29615		

7009 0080 0000 3745 5411

CERTIFIED MAIL RECEIPT (Domestic Mail Only, No Insurance Coverage Provided)		
OFFICIAL USE		
Postage	\$	
Certified Fee		
Return Receipt Fee (Endorsement Required)		Postmark Here
Restricted Delivery Fee (Endorsement Required)		W.F.D.
Total Postage & Fees	\$	
Sent To W. Frank Durham, Jr. 208 Highbourne Drive Greenville, SC 29615		

7009 0080 0000 3745 5206

U.S. Postal Service CERTIFIED MAIL RECEIPT (Domestic Mail Only, No Insurance Coverage Provided)		
OFFICIAL USE		
Postage	\$	
Certified Fee		
Return Receipt Fee (Endorsement Required)		Postmark Here
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	
Sent To Leonard R. and Virginia R. Byrne 19 Darien Way Greenville, SC 29615		

7009 0080 0000 3745 5398

Meredith C. Vry

7009 0080 0000 3745 5282

Lucy S. Tiller

H THE HERLONG LAW FIRM, LLC
531 S. Main Street., Suite 201 | P.O. Box 2003 | Greenville, S.C. | 29602-2003
t 864.382.3800 | f 864.752.0820

July 7, 2011

Dear Watson's Orchard Residents:

By now you have probably received a copy of the letter from the Watson's Orchard Property Owners Association, Inc. as to the need to amend the Association's answer to the lawsuit brought by the Hanolds and the Mitchells which mainly concerns restrictions to the deeds for the property across Pelham Road. In case you have not, a copy is attached for your convenience.

Behind the letter is a copy of the Summons and Defendants' Amended Answer, Counterclaim, And Third-Party Claim which is being officially served on you.

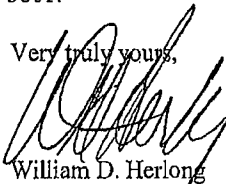
As the Association's letter explains, the amended answer adds you as a "third-party defendant." That means you are a defendant on the part of the lawsuit in which the Association asks the Court for a "declaratory judgment" as to whether the restrictions on the property at issue have been effectively amended (as described in the Amended Answer (paragraph 35) and as set forth in the Amended Declaration (Schedule 2 to the Amended Answer).

We apologize deeply for having to bring you into this. But, unfortunately, there has been no other choice since you, as a resident of the neighborhood, do have a legal interest in the restrictions on the property at issue. We did attempt to cover this issue through a class action in which you would have received official notice but would not have had your name in the action. But that was not approved by the court. As a result, as stated above, we have had to make you a defendant on the third-party claim for a declaratory judgment. This is necessary so that everyone who wants to have a say can, and the issue is resolved once and for all.

We would stress, as the Association's letter states, that the claim that involves you does not involve any request for money or anything other than a request for a declaratory judgment that the amended restrictions (in the Amended Declaration) were effectively adopted and are in place. And if the Association prevails it simply means that the new restrictions will be in effect, and the property could then be sold for development consistent with them (e.g., low density offices like doctor's offices).

While I cannot give you legal advice, if you wish to contact me, or have an attorney contact me on your behalf, please feel to do so. I will be happy to provide more information. My direct number is (864) 382-3801.

Very truly yours,


William D. Herlong

June 30, 2011

Dear Watson's Orchard Neighbors,

You are very likely aware that toward the end of 2009 the majority of the lot owners in Watson's Orchard, the James Stephens Estate and Watson's Orchard Property Owners Association (WOPOA) agreed to alter the Declarations and Deed Restrictions on our property on the south side of Pelham Road, from Haywood Road to Brendan Way, to allow it to be sold for medical and/or general office development (with certain stipulated restrictions). The new Declarations were, subsequently, registered with Greenville County.

Shortly thereafter, two couples, who are lot owners, filed a law suit seeking to have the courts render invalid the vote of the lot owners. Over the past year and a half, we have made every attempt possible to resolve the question out of court, including a court ordered mediation, but without success so far. Therefore, it appears now that the litigation will proceed to trial.

So that this matter may be laid to rest once and for all, we have been informed that we must involve the entire neighborhood in these proceedings. We attempted to accomplish this through a "class action" procedure where the plaintiffs would have been the representatives for everyone in the neighborhood. In that case, the final ruling on the matter would have been binding on everyone.

The plaintiffs, however, did not agree to this approach. As a result, we now have to amend our answer/counterclaim in the lawsuit to include a "friendly" claim against everyone in the neighborhood. The "claim" is for what the courts call a "declaratory judgment." That is just a legalistic way of saying that it is for a declaration as to whether the new Declarations were properly adopted and are in effect.

This claim does not involve any request for money or anything other than a simple request for the declaratory judgment. It is what the lawyers call a "third-party" claim. The owners in the neighborhood will be brought in as "third-party defendants" and only involved as to the declaratory judgment claim. (There is a counterclaim against the plaintiffs for abuse of process, but that will not involve the "third-party defendants.")

As a result, you will be receiving in a few days, or so, a copy of our "answer" in the case which has been amended to include you as a "third-party defendant." It will arrive in a fairly thick envelope, probably by registered mail.

Please do not be alarmed or upset. This is simply what the law requires us to do to make sure that the decision in this case is binding on everyone. It is the only way to make sure that everything is settled once and for all.

Once you receive the Amended Answer, you can certainly retain counsel and get involved if you like. But it is not necessary. The plaintiffs can be expected to represent the position against the new Declarations aggressively (they have done that so far). And we and the Stephens Estate will certainly represent the position in favor of the new

Declarations. If you wish to add your voice in any way, it is entirely your right. But it is also your right not to take an active role. Again, it is your decision completely.

In any event, please remember that if the court finds in our favor, it simply means that the new Declarations will be in effect. Hopefully, that will mean that we will be able finally to sell the WOPOA property for office development (development consistent with the new Declarations – low density offices).

If you have any question about any of this or the new Declarations, please feel free to contact one of your neighbors who is on the Board of Directors of WOPOA. They are John Vry, Frank Durham, and Lucy Mueller. Others available for questions are Len Byrne, Henry Sullivan and Ralph Aiken.

Sincerely,
Watson's Orchard Property Owners Association

John Vry, Vice President – 288-6262
Frank Durham, Vice President – 288-1542
Lucy Tiller, Treasurer – 288-4348
Len Byrne, Advisor – 288-2922
Henry Sullivan, Advisor – 864-224-9894
Ralph Aiken, President – 288-2263

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

COURT OF COMMON PLEAS
CASE NO. 2009-CP-23-7707

R.C. Frederick Hanold, III and Rose F.)
Hanold, and Carol R. Mitchell and George)
P. Mitchell, Jr.,)

Plaintiffs/CounterDefendants,)

v.)

Watson's Orchard Property Owners)
Association, Inc., a South Carolina)
Corporation, and Pelham Farm, LLC, a)
South Carolina Corporation, Legacy One,)
LLC, a South Carolina Corporation, SESP)
LLC, a South Carolina Corporation, an)
unknown Trustee of the Revocable Trust)
Agreement Dated March 19, 1996)
established by James B. Stephens as)
amended, and unknown Jay Stephens and)
Mike Stephens as Co-Personal)
Representative of the Estate of James B.)
Stephens,)

Defendants/CounterPlaintiffs.)

v.)

Property Owners in Watson's Orchard)
Subdivision:)
N. Carter Poe, III;)
McNally Reeves, as Trustee of the)
Residual Trust under item Five of the Last)
Will and Testament of Hattie L. Reeves)
dated February 9, 1998;)
Janet B. Yusi;)
Lucy S. Tiller;)
James G. Stephens;)
Rachel P. McKaughan;)
Ramon J. Ashy and Jana Ashy;)
Christopher D. Scalzo and)
Heather V. Scalzo;)
Erma R. Rash, as Trustee of the Erma R.)
Rash Revocable Trust dated February 12,)

2011 MAR -7 AM 10:12
FILED
CLERK OF COURT
GREENVILLE, SC
JAN 11 2011

SUMMONS
(DEFENDANTS' AMENDED
ANSWER, COUNTERCLAIM,
AND THIRD-PARTY CLAIM)

2010;)
James Edwin Conrad, as Trustee of the)
James Edwin Conrad Living Trust dated)
September 7, 2010;)
Sue Lane Conrad;)
Horst H. H. Eschenberg and Floride C.)
Eschenberg;)
Caryl L. Clover, as Trustee of the Caryl L.)
Clover Revocable Living Trust Agreement)
dated May 12, 1999;)
Mary F. Newell;)
Timothy M. Conroy and Elizabeth W.)
Conroy;)
Nathan Scolari;)
Joel Wells Norwood and Lynn Norwood;)
J. Lynn Shook;)
Juan Hernandez and Janice M. Pelletier;)
Scott P. Payne and Kathleen H. Payne;)
Joe G. Thomason and Dana L. Henry)
Thomason;)
Traci Segura;)
Cameron E. Smith and Joan B. Smith;)
Charles E. Howard and Sharon F.)
Howard;)
Penelope J. Galbraith;)
Meredith C. Vry;)
Delores B. Mitchell;)
Lisette M. Silva and Mary F. Colley;)
Ilona K. Alford and William G. Alford;)
George T. McLeod and Martha T.)
McLeod;)
Ronald S. Wilson and Robin E. Wilson;)
The Merrill J. Gildersleeve and Anore L.)
Novak Revocable Living Trust dated)
November 1, 1996;)
Anna Marie T. Azores and Kim O.)
Gococo;)
Ashley Westrope as Trustee of Martha)
Randolph Westrop Trust dated June 6,)
1988;)
Cliff C. Jollie and Martha W. Jollie;)
David A. Saliny and Xiaoli Saliny;)
Lecia S. Franklin;)
Dean D. Varner and Deborah P. Varner;)
W. Frank Durham, Jr.;)
Christine M. Howard;)

Samuel P. Howard, Jr. and Jane H.)
Howard;)
Manfred E. Kramer and Jane J. Kramer;)
Mary J. Steele;)
James J. Barrett, III and Kimberly A.)
Barrett;)
Richard A. Herman and Patricia L.)
Herrman,)

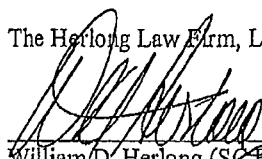
Third-Party Defendants.

TO THE THIRD-PARTY DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the First Cause Of Action Declaratory Judgment (Counterclaim and Third-Party Claim) in Defendants' Amended Answer, Counterclaim, And Third-Party Claim, a copy of which is attached to this Summons and is herewith served upon you. Your answer must be in writing and signed by you or by your attorney and must state your address or the address of your attorney if signed by your attorney. Your answer must be served upon the undersigned attorneys for the Plaintiff(s) within thirty (30) days after the service hereof, exclusive of the day of service at 531 S. Main St., Ste. 201, PO Box 2003, Greenville, SC 29602-2003.

YOU ARE HEREBY GIVEN NOTICE FURTHER that, if you fail to appear and defend and fail to answer the Third-Party Claim as required by this summons within thirty (30) days after the service hereof, judgment by default will be rendered against you for the relief demanded in the Third-Party Claim.

The Herlong Law Firm, LLC



William D. Herlong (SC Bar No. 14283)

531 S. Main St., Ste. 201

P.O. Box 2003

Greenville, SC 29602-2003

(864) 382-3800

William@HerlongLaw.com

July 7, 2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

COURT OF COMMON PLEAS
CASE NO. 2009-CP-23-7707

R.C. Frederick Hanold, III and Rose F.)
Hanold, and Carol R. Mitchell and George)
P. Mitchell, Jr.,)

Plaintiffs/CounterDefendants,)

v.)

Watson's Orchard Property Owners)
Association, Inc., a South Carolina)
Corporation, and Pelham Farm, LLC, a)
South Carolina Corporation, Legacy One,)
LLC, a South Carolina Corporation, SESP)
LLC, a South Carolina Corporation, an)
unknown Trustee of the Revocable Trust)
Agreement Dated March 19, 1996)
established by James B. Stephens as)
amended, and unknown Jay Stephens and)
Mike Stephens as Co-Personal)
Representative of the Estate of James B.)
Stephens,)

Defendants/CounterPlaintiffs.)

v.)

Property Owners in Watson's Orchard)
Subdivision:)
N. Carter Poe, III;)
McNally Reeves, as Trustee of the)
Residual Trust under item Five of the Last)
Will and Testament of Hattie L. Reeves)
dated February 9, 1998;)
Janet B. Yusi;)
Lucy S. Tiller;)
James G. Stephens;)
Rachel P. McKaughan;)
Ramon J. Ashy and Jana Ashy;)
Christopher D. Scalzo and)
Heather V. Scalzo;)
Erma R. Rash, as Trustee of the Erma R.)
Rash Revocable Trust dated February 12,)

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
JUN 27 2011

2011 JUN 27 A 11:55

**DEFENDANTS' AMENDED
ANSWER, COUNTERCLAIM,
AND THIRD-PARTY CLAIM**

2010;)
 James Edwin Conrad, as Trustee of the)
 James Edwin Conrad Living Trust dated)
 September 7, 2010;)
 Sue Lane Conrad;)
 Horst H. H. Eschenberg and Floride C.)
 Eschenberg;)
 Caryl L. Clover, as Trustee of the Caryl L.)
 Clover Revocable Living Trust Agreement)
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 Timothy M. Conroy and Elizabeth W.)
 Conroy;)
 Nathan Scolari;)
 Joel Wells Norwood and Lynn Norwood;)
 J. Lynn Shook;)
 Juan Hernandez and Janice M. Pelletier;)
 Scott P. Payne and Kathleen H. Payne;)
 Joe G. Thomason and Dana L. Henry)
 Thomason;)
 Traci Segura;)
 Cameron B. Smith and Joan B. Smith;)
 Charles E. Howard and Sharon F.)
 Howard;)
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 McLeod;)
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 Lecia S. Franklin;)
 Dean D. Varner and Deborah P. Varner;)
 W. Frank Durham, Jr.;)
 Christine M. Howard;)

Samuel P. Howard, Jr. and Jane H.	)
Howard;	)
Manfred E. Kramer and Jane J. Kramer;	)
Mary J. Steele;	)
James J. Barrett, III and Kimberly A.	)
Barrett;	)
Richard A. Herman and Patricia L.	)
Herrman,	)

Third-Party Defendants.

(A) Defendants file this Amended Answer and Counterclaim to answer the Amended Complaint (the "(1st Amended) Declaratory Judgment Complaint") as set forth below (each allegation not specifically admitted is denied).

(B) The amendment is pursuant to the Court's order denying certification of a defendant class on the counter-claim and allowing the addition of all property owners in Watson's Orchard subdivision as parties.

(C) The property owners are being added as third-party defendants strictly on the First Cause of Action of the Counterclaim (Third-Party Claim) which seeks a Declaratory Judgment that the restrictions on the property as issue was lawfully changed by a proper vote of the property owners.

(D) The addition of the property owners is so that all persons and entities with a legal interest in the properties at issue will be parties to the suit and the resolution will be applicable to all.

(E) There is no claim against the third-party defendants (the property owners in Watson's Orchard other than the Hanolds and the Mitchell's) other than the request for a Declaratory Judgment by the Court that the restrictions on the property at issue have been properly amended. The relief sought involving them is strictly "declaratory" and not monetary.

RESPONSE TO ALLEGATIONS OF AMENDED COMPLAINT

1. Paragraph 1 is admitted upon information and belief.

2. Paragraph 2 is admitted.

3. Paragraph 3 is admitted.

4. Paragraph 4 asserts a legal conclusion and does not require a response.

Defendants assert, however, upon information and belief, that this matter is equitable and not subject to trial by jury and therefore should be transferred to the Master-in-Equity.

5. With respect to Paragraph 5, it is believed that the Hanolds own a lot and the Mitchells own a lot in the Watson's Orchard subdivision.

6. Paragraph 6 is admitted.

7. Paragraph 7 is admitted.

8. Paragraph 8 is admitted.

9. Paragraph 9 is admitted.

10. Paragraph 10 is denied.

11. Paragraph 11 is denied.

12. With respect to Paragraph 12, the separation of the Pelham Road Tract and the Haywood Road Tract is admitted. The remainder of the Paragraph is denied.

13. Paragraph 13 is admitted.

14. With respect to Paragraph 14, it is admitted that the Pelham Road Tract and the Haywood Road Tract were deeded to the Watson's Orchard Property Owners Association, Inc. (the "Corporation"), one of the defendants in this action. The deed speaks for itself. The remainder of the paragraph is denied.

15. Paragraph 15 is denied.

16. Paragraph 16 is denied.
17. Paragraph 17 is denied.
18. Paragraph 18 is denied.
19. Paragraph 19 is denied.
20. Defendants deny that plaintiffs are entitled to any of the relief requested in the prayer to the Amended Complaint or otherwise.

COUNTERCLAIM / THIRD-PARTY CLAIM

21. Defendants, as counterplaintiffs and third-party plaintiffs, make the following allegations:

22. Counterplaintiff Watson's Orchard Property Owners Association, Inc. (the "Corporation"), is a South Carolina corporation based in Greenville, South Carolina.

23. Counterplaintiff Pelham Farm, LLC, is a South Carolina limited liability corporation based in Greenville, South Carolina.

24. Counterplaintiff Legacy One, LLC, is a South Carolina limited liability corporation based in Greenville, South Carolina.

25. Counterplaintiff SESP, LLC, is a South Carolina limited liability corporation based in Greenville, South Carolina.

26. Counterplaintiff Revocable Trust (the "Stephens Trust") is the trust established by James B. Stephens by agreement dated March 19, 1996, as subsequently amended. The co-trustees are James G. Stephens and Ralph D. Kellar.

27. Counterdefendants R.C. Frederick Hanold, III, Rose F. Hanold, Carol R. Mitchell, and George P. Mitchell, Jr., are owners of property in Watson's Orchard

Subdivision as shown on plat recorded in the R.M.C. Office for Greenville County in Plat Book 000, Page 99, and the lot in Plat Book 4-C, Page 133.

28. The third-party defendants are property owners in Watson's Orchard subdivision with a legal interest in the issues raised in this lawsuit.

29. The Corporation counterplaintiff was the originally owner of the property referenced as Exhibit A in the Declaration of Restrictions and Protective Covenants dated January 15, 1981 (the "Declaration"), which was recorded on January 18, 1981, in the RMC Office (now the Register of Deeds) for Greenville County in Deed Book 1140, at Pages 961-969. (The "Declaration" is attached as Schedule 1 hereto and incorporated herein by reference.)

30. The Corporation presently owns the portion of that property not owned by the Stephens Entities (defined below). The portion that it owns is described in Exhibit A to Schedule 2 hereto (pages 10-11 of Schedule 2). This property will be referred to hereinafter as the "Corporation Property."

31. Counterplaintiffs Pelham Farm, LLC, Legacy One, LLC, SESP, LLC, and the Stephens Trust (together, the "Stephens Entities") together are the owners of the portion of the property defined in Exhibit A in Schedule 1 that is not owned by the Corporation. The portion that the Stephens Entities own is described in Exhibit B to Schedule 2 hereto (page 12 of Schedule 2). This property will hereinafter be referred to as the "Stephens Property" (it is referred to in Schedule 2 as the "Trustee/LLC Property"). The Stephens Entities own this property as successors in interest to James B. Stephens (now deceased) who purchased it from the Corporation.

32. The Declaration (copy in Schedule 1 hereto) sets forth the “covenants, conditions and restrictions” applicable to the Corporation Property and the Stephens Property. However, the Declaration provides on the first page a specifically defined method for changing those restrictions:

“...the covenants, conditions and restrictions hereinafter set forth shall run with the property described in Exhibit “A” and be binding upon all parties having any right, title or interest in the said described properties or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof and all owners of property in Watson’s Orchard Subdivision as shown on plat recorded in the R.M.C. Office for Greenville County in Plat Book 000, Page 99, and the lot in Plat Book 4-C, Page 133, hereinafter referred to as ‘Watson’s Orchard Subdivision’, until January 1, 2010 at which time said covenants, conditions, and restrictions shall be automatically extended for successive periods of ten (10) years each unless, by vote of a majority of the then owners of the lots into which the property described above shall have been developed and in Watson’s Orchard Subdivision, the within covenants, conditions and restrictions are changed or amended, in whole or in part.”

(See Schedule 1 hereto, at 1, emphasis added.)

33. As per the Declaration, the “covenants, conditions and restrictions” in the Declaration (and thus applicable to the Corporation Property and the Stephens Property) “inure to the benefit of each owner thereof [i.e., to the Corporation and the Stephens Entities] and all owners of property in Watson’s Orchard Subdivision.” (*Id.*)

34. Further, the “covenants, conditions and restrictions [in the Declaration] shall remain in place until January 1, 2010 at which time said covenants, conditions, and restrictions shall be automatically extended for successive periods of ten (10) years each *unless, by vote of a majority of the then owners of the lots into which the property described above shall have been developed and in Watson’s Orchard Subdivision, the within covenants, conditions and restrictions are changed or amended, in whole or in part.*” (*Id.*, emphasis added.)

35. Pursuant to the requirements of the Declaration for modification, the Corporation sought and obtained the “*vote of a majority of the then owners of the lots into which the property described above shall have been developed and in Watson's Orchard Subdivision*” (*id.*, emphasis added), to modify the Declaration by replacing it with the Amended and Restated Declaration of Restrictions and Protective Covenants (hereinafter, the “Amended Declaration” – copy attached hereto as Schedule 2 and incorporated by reference).

36. The Amended Declaration has been recorded in the Greenville County Register of Deeds Office. It sets forth the “covenants, conditions and restrictions” that will be applicable to the Corporation Property and the Stephens Property as of January 1, 2010.

37. The counterdefendants R.C. Frederick Hanold, III, Rose F. Hanold, Carol R. Mitchell, and George P. Mitchell, Jr., have indicated their opposition to the use of the Corporation Property and the Stephens Property for any purpose “more intensive than the current uses within the Watson's Orchard Subdivision.” (Amended Complaint, final prayer for relief.)

FIRST CAUSE OF ACTION
DECLARATORY JUDGMENT
(Counterclaim and Third-Party Claim)

38. The paragraphs above and below are incorporated by reference.

39. The counterdefendants have disputed the changing of the “covenants, conditions and restrictions” in the Declaration (Schedule 1 hereto) to those in the Amended Declaration (Schedule 2 hereto) and the replacement of the Declaration with the Amended Declaration.

40. The third-party defendants have a legal interest in the properties at issue and the resolution of the issue raised by this action. They did not vote against the Amended Declaration, and many affirmatively voted in favor of it. (See Exhibit "C" to Amended and Restated Declaration of Restrictions and Protective Covenants [Exhibit "C" to Schedule 2 hereto].)

41. Counterplaintiffs respectfully request an order of this Court, pursuant to S.C. Code §15-53-20, declaring that Declaration has been lawfully changed to the Amended Declaration, and that, as of January 1, 2010, the Declaration shall be null and void and the Amended Declaration will be applicable to the Corporation Property and the Stephens Property.

SECOND CAUSE OF ACTION
Abuse of Process
(Against Counterdefendants ONLY)
[NOT INVOLVING THE THIRD PARTY DEFENDANTS]

42. The paragraphs above and below are incorporated by reference.

43. The counterdefendants filed this action with the ulterior purpose of preventing the Corporation and the Stephens Entities from ever selling any of their property at issue.

44. Initiating this lawsuit constitutes a "willful" or overt act in the use of process that is improper because it is primarily aimed at this illegitimate collateral objective.

45. It is improper because the lawsuit is based on patently false representations and implications (e.g., that the covenants and restrictions regarding the Corporation Property cannot be changed and that the Corporation's efforts to do so are wrongful).

46. For example, Amended Complaint ¶15.B. states: "That [the Corporation] has taken steps to eliminate restrictive covenants and market the lands in controversy . . . for sale as more intensive commercial use when the lands were granted by the developer as a buffer against such intense development."

47. Paragraph 16 of the Amended Complaint states that "The Plaintiffs would show that the Corporation . . . was established, and should exist, solely as a holding company to hold the Pelham Road Tract and Haywood Road Tract [the Corporation Property] as a fiduciary for the benefit of the Watson's Orchard Subdivision and not for the pecuniary interests of the current individual corporate shareholders."

48. The second "wherefore" states that "each current subdivision lot (owner) within the Watson's Orchard subdivision shall have [sic], now and forever into the future, be the sole owners of an undivided partial interest to the Pelham Road and Haywood Road Tracts [the Corporation Property] and that all shares of the [Corporation] shall permanently attached to the several subdivision lots and each lot's owner."

49. Further, the ultimate prayer for relief in the Amended Complaint asks the Court to "enjoin and restrain Watson's Orchard Property Owners Association, Inc. [the Corporation], from using the property for any uses which are more intensive than the current uses within the Watson's Orchard Subdivision"

50. The Counterdefendants knew (re Amended Complaint ¶15.B) that the lands were not granted to the Corporation by the developer "as a buffer against such intense development" after 2009 since the Developer provided a specific method for amending or changing the restrictions on the properties as of January 1, 2010.

51. The Counterdefendants knew (re Amended Complaint ¶16) that the

Corporation was not “established . . . solely as a holding company to hold the Pelham Road Tract and Haywood Road Tract [the Corporation Property] as a fiduciary for the benefit of the Watson’s Orchard Subdivision and not for the pecuniary interests of the current individual corporate shareholders.” Had that been the intent, the Corporation would have been set up in that form, but it specifically was not.

52. The Counterdefendants knew (re Amended Complaint’s second “wherefore”) that there is no basis whatsoever for the current lot owners within the Watson’s Orchard subdivision to be “the sole owners of an undivided partial interest to the Pelham Road and Haywood Road Tracts [the Corporation Property]” and no basis for changing the Corporation so that its shares “permanently attached to the several subdivision lots and each lot’s owner.” Had that been the intent, that is how it would have been set up.

53. The Counterdefendants knew (re the ultimate prayer for relief in the Amended Complaint) that there is no basis for enjoining or restraining the Corporation from using the property for any use more intensive than the current uses in the Watson’s Orchard Subdivision since the property is subject only to the restrictions in the Declaration and even those can be changed as of January 1, 2010, under the Declaration’s terms.

54. This abuse of process has injured the counterplaintiffs by forcing them to defend these abusive claims and to engage in this litigation and by preventing them from selling the property at issue.

55. Indeed, the Corporation has received an offer to purchase a portion of its property at issue for more than \$2 million. For the sale to proceed, it was necessary for

the restrictions on the property to be changed so that it was not limited to residential use but could be used for light commercial (e.g., law doctor's offices). By this specious lawsuit, counterdefendants have wrongfully prevented that from occurring.

56. The Corporation is entitled to recover from the counterdefendants actual damages including those relating to the loss of the contract valued in excess of \$2 million, the reduction in the value of its property, and the costs and expenses of this litigation.

57. The Stephens Entities are entitled to recover from the counterdefendants actual damages including those relating to the reduction in the value of their property, and the costs and expenses of this litigation.

58. Both counterplaintiffs are entitled to recover punitive damages because the actions of the counterdefendants were willful, wanton or taken with a reckless disregard of the counterplaintiffs' rights.

WHEREFORE, the counterplaintiffs pray for judgment as follows:

(A) On the Complaint -- that plaintiffs' claims be dismissed with prejudice;

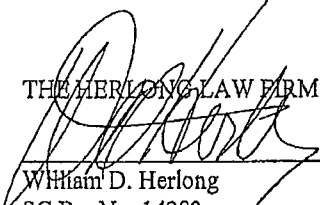
(B) On the Counterclaim / Third-Party Claim, First Cause of Action: A declaratory judgment by this Court that the Declaration has been lawfully changed to the Amended Declaration, and that, as of January 1, 2010, the Declaration shall be null and void and the Amended Declaration will be applicable to the Corporation Property and the Stephens Property.

(C) On the Counterclaim, Second Cause of Action, Abuse of Process: for actual and punitive damages for the counterplaintiffs against the counterdefendants jointly and severally.

(D) For recovery of all costs, attorneys' fees and expenses reasonably incurred in the prosecution of the instant action to the extent permitted by law;

(E) For such other and further relief as the Court deems just and proper.

This 27TH day of June 2011.


THE HERLONG LAW FIRM, LLC

William D. Herlong
SC Bar No. 14283
531 S. Main St., Ste. 201 [Zip 29601]
P.O. Box 2003
Greenville, SC 29602-2003
(864) 382-3800
william@herlonglaw.com

Attorneys for Defendants/Counterplaintiffs

Greenville, South Carolina
June 27, 2011

SCHEDULE 1

Copy of Declaration of Restrictions and Protective Covenants

FILED
STATE OF SOUTH CAROLINA GREENVILLE CO. S. O.
COUNTY OF GREENVILLE JAN 15 4 28 PM '81
DORRIS S. TANKERSEY
R.M.S.

DECLARATION OF RESTRICTIONS
AND PROTECTIVE COVENANTS

The undersigned, Lincoln of South Carolina, Inc., a South Carolina corporation, hereinafter known as "Declarant", the owner of the properties described in Exhibit A annexed hereto and made a part hereof by reference, deems it in the best interest of said properties to subject said properties to the protective covenants, restrictions, conditions, easements and easements set forth hereinafter.

NOW THEREFORE, Declarant hereby declares that all of the properties described in Exhibit A shall be held and conveyed subject to the covenants, restrictions, conditions and easements, hereinafter set forth, to be observed by the owners of said properties for the purposes of protecting the value and desirability of said properties and the covenants, restrictions and easements hereinafter set forth shall be binding upon the owners of said properties and their heirs, assigns and successors and shall inure to the benefit of each owner thereof and their heirs, assigns and successors.

Whereas, Property in Watson's Orchard Subdivision is shown on Plat Book 400 of the County of Greenville, South Carolina, and the same is referred to as "Watson's Orchard Subdivision" and

Whereas, the covenants, restrictions, conditions, and easements set forth hereinafter shall be automatically extended for successive periods of ten (10) years, each unless by vote of the majority of the then owners of the lots into which the property described above shall have been divided and in Watson's Orchard Subdivision, the within covenants, restrictions and restrictions are changed or amended, in whole or in part. In the event such vote shall take place, such vote shall be cast by the legal title holder of each individual lot, provided, however, that only one vote shall be cast for each lot in the event legal title thereto shall be held jointly or otherwise.

EX-1140 982

If the undersigned, its successors or assigns, or any property owner of any lot into which the property described above shall subsequently be cut should violate any of the covenants, conditions, and restrictions herein contained, it shall be lawful for any person or persons owning any of the real estate subject to these restrictions or in Wilson's Orchard Subdivision to prosecute any proceedings lawfully against the person or persons violating, or attempt to violate same, or to the extent of their own power to prevent from so doing, or to recover damages or fines to which they are entitled.

It is further agreed that any one of these covenants, conditions, or restrictions, if found by a court of competent jurisdiction to be in violation of any other provision of law, shall remain in full force and effect.

ARTICLE II

USE, PERMIT, AND OCCUPANCY

1. The property shall be used exclusively for residential purposes. No structure shall be erected, altered, placed or permitted to remain on any lot other than one detached single family residential dwelling not to exceed 4000 square feet in lot area and a garage attached or detached for private passenger automobiles and servants quarters and which shall have been approved by the Architectural Committee for evaluation of design and materials, harmony of exterior design with existing structures and its location with respect to topography and finished grade elevation.

(2) No trailer, padament, tent, shack, garage, barn or other building erected upon any lot shall at any time be used as a residence either temporarily or permanently. No structure of a temporary nature shall be used as a residence and no house trailer shall be placed on any lot either temporarily or permanently.

(3) No obnoxious or offensive activity shall be carried on anywhere on the property subject to these covenants nor shall anything be done thereon which may be or become an annoyance, nuisance, or menace to the neighborhood. No lot or any part thereof shall be used for any business or commercial purpose.

(4) All fuel oil tanks or containers shall be covered or buried underground consistent with normal safety precautions.

(6) No animals shall be kept, maintained or quartered on any lot or tract under this subdivision except that household pets may be kept in reasonable numbers on the pleasure of the occupants.

(7) Garbage and trash, including piles and clothes drying in yards must be so located that they will not be visible from the street.

(8) Property owners will be required to keep tall shrubs and trees trimmed to reasonable limits. Where a situation develops from such trimming that may be adversely affected by the height and location of trees, the owner shall be required to remove them.

(9) No vehicle must be parked on the property of a residential lot except in designated parking areas.

(10) Automobiles are subject to the design and construction standards of the city. Automobiles shall be located away from the sidewalk and shall not be in the main view of the street from the sidewalk or from the street. Automobiles shall not be parked in front of the garage.

(11) A five-foot easement is reserved overhead for all holders of lines and a five-foot easement is reserved overhead for all holders of lines and utility installation and maintenance provided that such easement shall not be used for a site or only one residence, the five-foot easement shall apply only with respect to the exterior lines of such consolidated lot.

(12) Nothing herein contained shall be construed to prohibit the use of more than one lot or portions of one and more lots as a single residential building, provided that said lot would otherwise meet the requirements for size, frontage, setback line and directional facing of said building as determined by the Architectural Committee.

ARTICLE II.

SET-BACKS, LOCATION AND SIZE OF IMPROVEMENTS AND OF BUILDING PLOTS

(1) No building shall be erected on any lot nearer to the front street line than 75 feet or nearer to the side street line than 50 feet. Any such building shall face toward the front line of the lot except that buildings to be constructed on corner

lots shall face in the direction designated by the Architectural Committee. No building or structure shall be located nearer to any interior side lot line than the distance represented by ten percent of the width of the lot (at the building set-back line) on which said building is to be located.

(2) Frontage and lot area restrictions are imposed as follows:

The 1.1 acre parcel fronting on Pelham Road, described in Exhibit "A" shall have a frontage on Pelham Road with a minimum frontage of 200 feet and a minimum lot area of 10,000 square feet.

This approximately 8-acre tract of land lying between Haywood Road and Pelham Road, described in Exhibit "A" shall be divided into lots of not less than 1.5 acres each. The frontage of each lot shall face inward toward Wilson's Orchard. Subdivisions shall be made in a manner to allow more than 4 lots. Access shall be provided to each lot by a private driveway or easement only. No direct access to Pelham or Haywood Roads shall be allowed, and no lot or structure situate thereon shall be designed to provide ingress from or egress directly to Pelham or Haywood Roads.

(3) No wall, fence, or hedge shall be erected across or along the front lot line of any lot nearer to the front lot line than the building set-back line, and a height of more than three feet unless approved by the Architectural Committee. No corner lot shall have a wall, fence or hedge erected any closer to the street than the front building line of any adjacent lot unless approved by the Architectural Committee. Any such wall, fence, or hedge proposed to be erected on any such lot whether as part of the architect's residence design or a later addition must receive the approval in writing of the Architectural Committee.

(4) No lot shall be recut so as to face in any direction other than the front line of the lot, nor shall it be recut so as to make any building site smaller than is provided for herein.

(5) No one-story, split-level or story-and-a-half residence shall be constructed containing less than 2,200 square feet of heated floor space exclusive of porches, garages, and breezeways. In computing the square footage of any

split-level or story-and-a-half residence or any residence containing a basement which is finished and heated, one-half credit shall be given for the area above or below the ground floor with a maximum of 2,000 square feet on the ground floor. No two-story residence shall be erected containing less than 1,400 square feet of heated floor space on the ground floor and less than 1,000 square feet of heated floor space on the second floor exclusive of porches, patios and breezeways.

ARTICLE III

APPROVAL OF PLANS

1. The Architectural Committee shall be composed of five members, residents and owners in the subdivision. The Architectural Committee shall be organized and its officers shall be elected by lot of the owners in the subdivision. The Architectural Committee shall be selected by lot of the owners in the subdivision.

2. The Architectural Committee shall be composed of five members, residents and owners in the subdivision. The Architectural Committee shall be organized and its officers shall be elected by lot of the owners in the subdivision.

3. In the event of a vacancy on the Architectural Committee, the vacancy shall be filled by the lot of the owners in the subdivision. The Architectural Committee shall be organized and its officers shall be elected by lot of the owners in the subdivision. The Architectural Committee shall be selected by lot of the owners in the subdivision.

4. No improvements shall be erected, placed, altered, or changed on any lot in the subdivision until and unless the building plans, specifications and plot plan showing the proposed type of construction, exterior design, location of residence, walks, drives and fences have been approved in writing by the Architectural Committee as to conformity and harmony of external design and consistence of plan with existing residences on other lots in the subdivision and as to the location of the structure with respect to topography and finished ground elevation.

(3) In order to prevent duplication of buildings or improvements to be constructed in this subdivision, the Committee is vested with full authority to approve or disapprove plans for the construction of any building or improvement within the subdivision, and to cause any building or improvements as to be considered a substantial duplication thereof in the discretion of the Committee. The Architectural Committee shall also have the right to refuse to approve any such plans, specifications, or plot plans. In making its decision, the Committee shall take into consideration the suitability of the proposed building or improvement in the materials of which it is to be built, whether or not it is in harmony with the surrounding landscape, and whether or not it will have an effect on the character and appearance of the subdivision. In the event that the Committee fails to approve or disapprove such plans within thirty (30) days after they have been submitted to it, the Committee shall be deemed to have approved such plans. Any alteration of such building or improvement shall be deemed to be a violation of such section or alteration if a substantial violation of the Architectural Committee will be conclusively presumed and this covenant shall be deemed to have been fully complied with. The term "building or improvement" shall be deemed to include the erection, placement, or alteration of any wall, fence, driveway, or parking area.

(4) Application for approval as required herein shall be made to the Committee at the principal residence of the then President of Watson's Orchard Subdivision, Inc., Watson's Orchard, Greenville, S. C., 29615, and at the time of making such application, the building plans, specifications, and plot plans shall be submitted in duplicate. One copy of such plans and specifications will be retained by the Committee, and the other copy will be returned to the applicant with approval or disapproval plainly noted thereon.

(5) No member of this committee shall be liable for any act or omission except willful misconduct or gross and inexcusable neglect.

(6) The Architectural Committee is authorized by a unanimous vote of all its members to approve or ratify in the construction or alteration of any building

the provisions of the set-back, location and size of improvements provisions of these restrictions to the opinion of all the members of the Committee such and as necessary to prevent undue hardship. The approval or ratification by the Committee in accordance with this paragraph shall be binding on all persons.

ARTICLE IV

MISCELLANEOUS

(1) No sign shall be permitted on any lot except that shall be placed on the property, on sale or lot rent or security sign may be placed on the property provided such sign is not more than six inches wide and is not more than six inches high.

(2) All residences shall have a standard letter size mailbox that is approved by the Postmaster General, which is to be stamped by the Post Office Department. All boxes and posts shall be kept in a good state of repair at all times. Any deviation from this shall be approved by the Architectural Committee.

(3) No motor vehicle, mobile home, trailer, camper, or other vehicle or structure shall be parked on any lot in the subdivision or upon any lot more than 100 feet necessary to load or unload such vehicle and in no case shall such vehicle be allowed to remain on the lot more than 24 hours at any one time except that lot owners who may own such vehicles may park them so there is minimum visibility from the street.

(4) The removal of any tree which is in excess of six (6) inches in diameter (DBH) will require prior approval of the Architectural Committee.

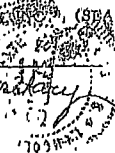
IN WITNESS WHEREOF, the undersigned has executed this document under seal this 15th day of January, 1981.

In the presence of:

Alfred O. Smith
Alfred O. Smith

LINCOLN OF SOUTH CAROLINA, INC., (S.C.A.L.)

BY: *B. W. Davis*
President & Secretary



PROBATE

COUNTY OF GREENVILLE

SONAR appeared in the signed wills and deeds both before and after the minimum age of legal competence. Under the relevant laws and codes of law, a will is valid within a year of Declaration of Incapacity and a deed is a covenant and a deed is a contract, and these substituted above witnesses the execution of a

SWORN to before me this 10th day of January 1981

Notary Public for South Carolina
My Commission Expires

SECRET

21644

SCHEDULE 2

Copy of Amended and Restated Declaration of Restrictions and Protective Covenants

STATE OF SOUTH CAROLINA) AMENDED AND RESTATED
) DECLARATION OF RESTRICTIONS
COUNTY OF GREENVILLE) AND PROTECTIVE COVENANTS

The undersigned, WATSON'S ORCHARD PROPERTY OWNERS ASSOCIATION, INC., a South Carolina corporation (the "Corporation"), JAMES G. STEPHENS AND RALPH D. KELLAR, AS CO-TRUSTEES OF THE REVOCABLE TRUST AGREEMENT DATED MARCH 19, 1996 ESTABLISHED BY JAMES B. STEPHENS AS AMENDED (the "Trustees") and PELHAM FARM, LLC, LEGACY ONE, LLC AND SESP, LLC, South Carolina limited liability companies (collectively "LLCs") hereby amend and restate the Declaration of Restrictions and Protective Covenants dated January 15, 1981, recorded January 18, 1981 in the RMC Office for Greenville County in Deed Book 1140, Pages 961 through 969 (the "Declaration") as hereinafter set forth.

BACKGROUND

The Declaration provides that it may be changed or amended under the following language:

"...the covenants, conditions and restrictions hereinafter set forth shall run with the property described in Exhibit "A" and be binding upon all parties having any right, title or interest in the said described properties or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof and all owners of property in Watson's Orchard Subdivision as shown on plat recorded in the R.M.C. Office for Greenville County in Plat Book 000, Page 99, and the lot in Plat Book 4-C, Page 133, hereinafter referred to as 'Watson's Orchard Subdivision', until January 1, 2010 at which time said covenants, conditions, and restrictions shall be automatically extended for successive periods of ten (10) years each unless, by vote of a majority of the then owners of the lots into which the property described above shall have been developed and in Watson's Orchard Subdivision, the within covenants, conditions and restrictions are changed or amended, in whole or in part."

More than a majority of the parties entitled to vote pursuant to the above language have voted to amend the Declaration as set out herein in this Amended and Restated Declaration of Restrictions and Protective Covenants.

To accomplish the execution of this Amended and Restated Declaration of Restrictions and Protective Covenants certain owners of lots in Watson's Orchard Subdivision have executed and delivered to the Corporation a Power coupled with an interest, which authorizes the Corporation to execute and deliver this document on their behalf.

The Corporation is the owner of the property described on Exhibit "A" annexed hereto and by this reference made a part hereof (the Corporation Property"). The Corporation Property consists of two (2) separate tracts, identified on Exhibit "A" as:

1. Pelham Road Tract consisting of the property conveyed to Corporation as 14.79 acres, LESS, and EXCEPT five (5) Lots which were conveyed and are now owned by Trustees. Further, LESS and EXCEPT property acquired by South Carolina Highway Department at the intersection of Pelham Road and Haywood Road. Said property is referred to herein as "Pelham Road Tract".
2. Haywood Road Tract consisting of Tract A conveyed to Corporation, LESS and EXCEPT property shown in Plat Book 5-O, Page 1, and land within the right-of-way easement granted to South Carolina Highway Department. Property is referred to as "Haywood Road Property".

The Trustees and LLCs are the owners of the property described in Exhibit "B" annexed hereto and by this reference made a part hereof (the "Trustee/LLC Property").

NOW, THEREFORE, Corporation, Trustees and LLCs hereby amend the Declaration as hereinafter provided.

1. The Declaration is hereby cancelled and terminated and the within Amended and Restated Declaration of Restrictions and Protective Covenants is hereby substituted in lieu thereof.
2. The Pelham Road Tract and the Trustee/LLC Property shall be held, sold and conveyed subject to the following restrictions, covenants and conditions, which shall run with the Pelham Road Tract and the Trustee/LLC Property and be binding upon all parties having any right, title or interest in said properties or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner of the Pelham Road Tract and Trustee/LLC Property and all owners of property in Watson's Orchard Subdivision as shown on plat recorded in the Office of the Register of Deeds for Greenville County in Plat Book 000, Page 99, and the lot in Plat Book 4-C, Page 133, hereinafter referred to as "Watson's Orchard Subdivision" until January 1, 2040 at which time said covenants, conditions, and restrictions shall be automatically extended for successive periods of ten (10) years each unless, by vote of a majority of the then owners of the lots into which the Pelham Road Tract and Trustee/LLC Property shall have been developed as lots approved by appropriate public authorities and in Watson's Orchard Subdivision, the within covenants, conditions and restrictions are changed or amended, in whole or in part. PROVIDED, HOWEVER, no change or amendment shall prevent the Pelham Road Tract and Trustee/LLC Property from being used as general and medical offices, nursing homes, assisted living or retirement centers, increase the building set back line from Pelham Road to more than fifty (50') feet, reduce the building height to less than two stories or

require a building height of more than two stories and prevent roofs from being gable or hip. In the event such vote shall take place, such vote shall be cast by the legal title holder of each individual lot, provided, however, that only one vote shall be cast for each lot in the event legal title thereto shall be held jointly or otherwise.

3. The Pelham Road Tract and Trustee/LLC Property shall be used only as general and medical offices, nursing homes, assisted living or retirement centers.
4. No building shall be located on said property nearer Pelham Road than fifty (50') feet.
5. No building shall be constructed on said property having a height of more than two (2) stories. All roofs shall be gable or hip.
6. Corporation shall undertake to convey and transfer title to the Haywood Road Tract to a trustee for a conservation easement.
7. By executing the within Amended and Restated Declaration of Restrictions and Protective Covenants, the undersigned James G. Stephens and Ralph D. Kellar as Co-Trustees and LLCs hereby vote to amend the Declaration as set out in the within Amended and Restated Declaration of Restrictions and Protective Covenants.

IN WITNESS WHEREOF, the undersigned have executed this document under seal this 2nd day of October, 2009.

IN THE PRESENCE OF:

WATSON'S ORCHARD PROPERTY
OWNERS ASSOCIATION, INC.,
on behalf of itself and on behalf of the
Subdivision Owners identified on
Exhibit "C" annexed hereto and
incorporated herein by reference.

Richard H. Grayson Jr.
James G. Stephens

By: Ralph D. Kellar
Its: PRESIDENT

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF GREENVILLE)

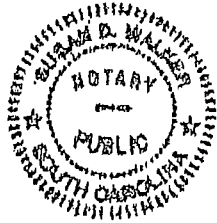
PERSONALLY appeared the undersigned witness and made oath that (s)he saw the within named RALPH H. ALLEN, PRESIDENT of Watson's Orchard Property Owners Association Inc., on behalf of itself and on behalf of the Subdivision Owners, sign, seal and as its act and deed deliver the within Amended and Restated Declaration of Restrictions and Protective Covenants and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

SWORN to before me this 2nd
day of October, 2009.

Patricia H. Hays

Susan D. Walker (L. S.)
Notary Public for South Carolina

My Commission Expires: 10/15/11



IN THE PRESENCE OF:

Quintin M. Jones
John - Sutt

James B. Stephens
JAMES G. STEPHENS AS CO-TRUSTEE
OF THE REVOCABLE TRUST
AGREEMENT DATED MARCH 19,
1996 ESTABLISHED BY JAMES B.
STEPHENS AS AMENDED BY
AMENDED AND RESTATED
JAMES B. STEPHENS REVOCABLE
TRUST AGREEMENT DATED JULY 15,
2003

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF GREENVILLE)

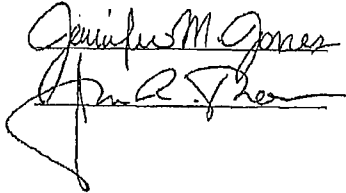
PERSONALLY appeared the undersigned witness and made oath that (s)he saw the within named James G. Stephens, as Co-Trustee of the Revocable Trust Agreement Dated March 19, 1996 Established by James B. Stephens As Amended by Amended and Restated James B. Stephens Revocable Trust Agreement dated July 15, 2003 sign, seal and as its act and deed deliver the within Amended and Restated Declaration of Restrictions and Protective Covenants and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

SWORN to before me this 2nd
day of October, 2009.

Quintin M. Jones
Notary Public for South Carolina

My Commission Expires: 8-6-2018

IN THE PRESENCE OF

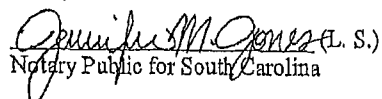

Jennifer M. Jones


RALPH D. KELLAR, AS
CO-TRUSTEE OF THE REVOCABLE
TRUST AGREEMENT DATED
MARCH 19, 1996 ESTABLISHED BY
JAMES B. STEPHENS AS AMENDED
BY AMENDED AND RESTATED
JAMES B. STEPHENS REVOCABLE
TRUST AGREEMENT DATED JULY 15,
2003

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF GREENVILLE)

PERSONALLY appeared the undersigned witness and made oath that (s)he saw the within named Ralph D. Kellar, as Co-Trustee of the Revocable Trust Agreement Dated March 19, 1996 Established by James B. Stephens As Amended by Amended and Restated James B. Stephens Revocable Trust Agreement dated July 15, 2003 sign, seal and as its act and deed deliver the within Amended and Restated Declaration of Restrictions and Protective Covenants and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

SWORN to before me this 8th
day of October, 2009.


Jennifer M. Jones (L. S.)
Notary Public for South Carolina

My Commission Expires: 3-6-2018

IN THE PRESENCE OF:

Quinn M. Jones
Jen. Skott

PELHAM FARM, LLC, a South
Carolina limited liability company

By: James M. Stephens
James M. Stephens
Its: President

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

PROBATE

PERSONALLY appeared the undersigned witness and made oath that (s)he saw the within named James M. Stephens, President of Pelham Farm, LLC, a South Carolina limited liability company sign, seal and as its act and deed deliver the within Amended and Restated Declaration of Restrictions and Protective Covenants and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

SWORN to before me this 2nd
day of October, 2009.

Quinn M. Jones S.)
Notary Public for South Carolina
EXP. 3-6-2018

IN THE PRESENCE OF:

Robert McElroy Jr
Robert McElroy Jr

LEGACY ONE, LLC, a South
Carolina limited liability company

By: Judy S. Shaffer
Judy S. Shaffer
Its: President

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared the undersigned witness and made oath that (s)he saw the within named Judy S. Shaffer, President of Legacy One, LLC, a South Carolina limited liability company sign, seal and as its act and deed deliver the within Amended and Restated Declaration of Restrictions and Protective Covenants and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

SWORN to before me this 5
day of Oct., 2009.
Robert McElroy Jr (L. S.)
Notary Public for South Carolina

Robert McElroy Jr

MY COMMISSION EXPIRES OCT. 22, 2011

IN THE PRESENCE OF:

Jennifer M. Jones
Jane Sutton

SESP, LLC, a South
Carolina limited liability company

By Sallie Stephens Phillips
Sallie Stephens Phillips
Its: President

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

PROBATE

PERSONALLY appeared the undersigned witness and made oath that (s)he saw the within named Sallie Stephens Phillips, President of SESP, LLC, a South Carolina limited liability company sign, seal and as its act and deed deliver the within Amended and Restated Declaration of Restrictions and Protective Covenants and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

SWORN to before me this 2nd
day of October, 2009.

Jennifer M. Jones (L. S.)
Notary Public for South Carolina
Exp. 3-6-2018

Jane Sutton

EXHIBIT "A"
TO
AMENDED AND RESTATED
DECLARATION OF RESTRICTIONS
AND PROTECTIVE COVENANTS

1. Pelham Road Tract

ALL that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Greenville, containing 14.79 acres, as is more fully shown on a plat entitled "Survey for Richard Watson", prepared by Carolina Surveying Company, dated June 27, 1980, revised August 19, 1980, revised August 27, 1980, revised September 3, 1980, and revised December 1, 1980, and having according to said plat, the following metes and bounds, to-wit:

BEGINNING at a stake on the southern side of Pelham Road, at its intersection with Haywood Road and running thence along the southern side of Pelham Road, N. 84-07 E. 1,391.7 feet to a stake; running thence N. 87-55 E. 99.5 feet to a stake; running thence S. 85-33 E. 100.6 feet to a stake; running thence S. 79-11 E. 100.0 feet to a stake; running S. 72-58 E. 99.6 feet to a stake; running thence S. 68-57 E. 338.4 feet to a stake at the intersection of Pelham Road and a proposed road; running thence with the curvature of said intersection, the chord of which is S. 25-18 E. 43.8 feet to a stake; running thence with the western side of said proposed road, S. 17-20 W. 270.6 feet to a stake at the corner of a tract containing 22.15 acres; running thence with the line of said tract, the following courses and distances to-wit: N. 68-57 W. 387.9 feet to a stake; N. 82-20 W. 256.9 feet to a stake; S. 84-07 W. 1,433.1 feet to a stake on the eastern side of Haywood Road; running thence on the eastern side of Haywood Road, N. 8-06 W. 250.8 feet to a stake at the intersection of Haywood Road and Pelham Road, running thence with the curvature of said intersection, the chord of which is N. 40-06 E. 71.0 feet to the point of beginning.

LESS AND EXCEPT, five (5) lots conveyed by Watson's Orchard Property Owners Association, Inc. to Pelham Properties, Inc. by deed dated January 15, 1981, recorded in Deed Book 1141, Page 1.

FURTHER, LESS AND EXCEPT, any land conveyed to or acquired by South Carolina Highway Department or other public authority.

Derivation: See deed of Lincoln of South Carolina, Inc. to Watson's Orchard Property Owners Association, Inc. in Deed Book 1140, Page 997.

2. Haywood Road Property

ALL that certain piece, parcel or tract of land situate, lying and being in the County of Greenville, State of South Carolina, and being shown and designated as Tract A on plat recorded in the RMC Office for Greenville County in Plat Book C, at Page 60, and having according to said plat, the following metes and bounds, to-wit:

BEGINNING at an iron pin at Pelham Road at the corner of property now or formerly of Adams, and running with the line of the Adams property, N. 14-35 E. 1,337 feet to an iron pin; thence S. 72 E. 346 feet, thence S. 14-35 W. 1,185 feet to Pelham Road; thence with the northern side of Pelham Road, S. 83-50 W. 370 feet to the point of beginning.

LESS, HOWEVER: ALL that certain piece, parcel or lot of land situate, lying and being in Greenville Township near the City of Greenville, and having, according to a plat recorded in Plat Book 5-O, at Page 1, RMC Office for Greenville County, and shown on a survey by Dalton & Neves, Engineers, dated October, 1975, as property of Lincoln of South Carolina, Inc. and having, according to said plat, the following metes and bounds, to-wit:

BEGINNING at an iron pin on the north side of Pelham Road, formerly property of Nell Baker Adams, and running thence with Pelham Road, N. 84-25 E. 75-15 feet to an iron pin; thence with intersection of said road and intersection of Haywood Road, N. 37-45 E. 68.97 feet to an iron pin; thence with Haywood Road, N. 8-18 W. 251.20 feet to an iron pin; thence with property of Nell Baker Adams, S. 14-35 W. 250.4 feet to an old iron pin; thence S. 14-35 W. 70.35 feet to the beginning.

ALSO, LESS, HOWEVER: Subject to that certain right-of-way easement granted to the South Carolina Highway Department covering approximately 2.28 acres of the above described property.

Derivation: See deed of Lincoln of South Carolina, Inc. to Watson's Orchard Property Owners Association, Inc. in Deed Book 1140, Page 998.

EXHIBIT "B"
TO
AMENDED AND RESTATED
DECLARATION OF RESTRICTIONS
AND PROTECTIVE COVENANTS

Trustee/LLC Property

ALL that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Greenville, containing five (5) lots as is more fully shown on a plat entitled "Survey for Richard Watson", prepared by Carolina Surveying Company, dated June 27, 1980, revised August 19, 1980, revised August 27, 1980, revised September 3, 1980, and revised December 1, 2, and 3, 1980 and having according to said plat, the following metes and bounds, to-wit:

BEGINNING at a stake at the intersection of Pelham Road and a proposed road; running thence with the curvature of said intersection, the chord of which is S. 25-48 E. 43.8 feet to a stake; running thence with the western side of said proposed road, 17-20 W. 270.6 feet to a stake at the corner of a tract containing 22.15 acres, running thence with the line of said tract N. 68.57 W. 200 feet to a point; thence continuing N. 38-57 W. 180 feet to a point; thence continuing N. 68-57 W. 7.9 feet to point; running thence N. 82-28 W. 256.9 feet to a point; running thence S. 84-07 W. 55 feet to a point; thence continuing S. 84-07 W. 176.92 feet to a point; running thence N. 5-53 W. 300 feet to a point on the southern side of Pelham Road; running thence with the southern side of Pelham Road, N. 84-07 E. 200 feet to a point; thence continuing with the southern side of Pelham Road, N. 84-07 E. 31.9 feet to a point; thence continuing with the southern side of Pelham Road, the following courses and distances, to-wit: N. 87.55 E. 99.5 feet; S. 85-33 E. 68.6 feet to a point; S. 85-33 E. 32 feet to a point; S. 79-11 E. 100 feet to a point; S. 72-58 E. 68 feet to a point; S. 72-58 E. 31.8 feet to a point; S. 68-57 E. 168.4 feet to point; S. 98-57 E. 170 feet to the point of beginning.

Derivation: See deed of Watson's Orchard Property Owners Association, Inc. to Pelham Properties, Inc. in Deed Book 1141, Page 1 and subsequent deed to J. B. Stephens in Deed Book 1274, Page 237. See also deed of J. B. Stephens (same as James B. Stephens) to James B. Stephens as Trustee for Revocable Trust Agreement in Deed Book 2053, Page 157. J. B. Stephens, same as James B. Stephens, died November 8, 2008 in Greenville County. At his death, James G. Stephens and Ralph D. Kellar became successor Trustees. See deed to LLCs in Deed Book 2328, Page 1674.

EXHIBIT "C"
TO
AMENDED AND RESTATED
DECLARATION OF RESTRICTIONS
AND PROTECTIVE COVENANTS

SCHEDULE OF SUBDIVISION OWNERS
WHO VOTED FOR THE WITHIN
AMENDED AND RESTATED
DECLARATION OF RESTRICTIONS
AND PROTECTIVE COVENANTS

<u>NAME</u>	<u>SUBDIVISION LOT NO.</u>
1. Lucy S. Tiller same as Lucy S. Muller	No. 3 and No. 11
2. James G. Stephens and Ralph D. Kellar, Successor Trustees for the James B. Stephens Revocable Trust Agreement dated March 19, 1996 as amended by Amended and Restated James B. Stephens Revocable Trust Agreement dated July 15, 2003	No. 4
3. Rachel P. McKaughan	No. 5
4. Ramon J. Ashy and Jana Ashy	No. 6
5. Erma R. Rash	No. 8
6. Mary F. Newell	No. 13
7. Joe G. Thomason and Dana L. Henry Thomason	No. 22
8. Cameron B. Smith and Joan B. Smith	No. 26
9. Charles E. Howard and Sharon F. Howard	No. 27
10. Meredith C. Vry	No. 30
11. Lisette M. Silva and Mary F. Colley	No. 33 and pt. 34
12. Ilona K. Alford and William G. Alford	No. pt. 34

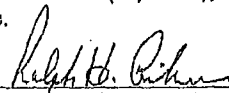
13. George T. McLeod and Martha T. McLeod	No. 36
14. Leonard R. Byrne and Virginia R. Byrne	No. 37
15. Anna W. Caughman, Sole Trustee of Martha Randolph Westrope Trust dated June 6, 1988 under Second Amendment dated October 3, 2001	No. 41
16. Sexton Griffith Builders, Inc.	No. 44
17. W. Frank Durham, Jr.	No. 47
18. Samuel P. Howard, Jr. and Jane H. Howard	No. 49 and pt. 48
19. Christine M. Howard	No. pt. 48
20. Manfred B. Kramer and Jane J. Kramer	No. 50
21. Mary J. Steele	No. 52

Total Subdivision Lots = 22

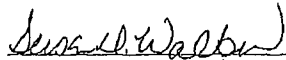
EXHIBIT "D"

CERTIFICATION

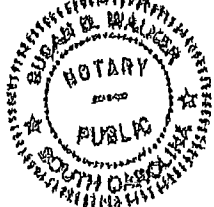
The undersigned, RALPH H. AIKEN, hereby certifies that he is president of Watson's Orchard Property Owners Association, Inc. (the "Corporation"); that the Corporation desires to amend and change the Declaration of Restrictions and Protective Covenants recorded in the RMC Office (now Office of Registered of Deeds) for Greenville County, January 18, 1981 in Deed Book 1140, Pages 961- 969 (the "Declaration"); to accomplish said amendment and changes, the Corporation prepared a Vote document for each owner of a lot in Watson's Orchard Subdivision as defined in the Declaration; that the Corporation sent the Vote document to each Lot owner together with a proposed Agreement to Release Declaration of Restrictions and Protective Covenants ("Agreement") by certified mail; that attached to this Certification are copies of the certified mail notices; that the Corporation received the executed Vote document and Agreement from the twenty-two (22) Subdivision Owners identified on Exhibit "C" to Amended and Restated Declaration of Restrictions and Protective Covenants ("Amended and Restated Declaration"); that in addition the Corporation received the Vote document executed by James G. Stephens and Ralph D. Kellar as Co-Trustees of the Revocable Trust Agreement dated March 19, 1996 established by James B. Stephens as Amended and Restated by Amended and Restated James B. Stephens Revocable Trust Agreement dated July 15, 2003, Pelham Farm, LLC, Legacy One, LLC, and SEBP, LLC the owners of the Trustee/LLC Property described in the Amended and Restated Declaration, which owners are entitled to five (5) votes; that the Corporation is the owner of the Pelham Road Tract and the Haywood Road Property described in the Amended and Restated Declaration; that the Corporation voted one (1) vote for the Pelham Road Tract and one (1) vote for the Haywood Road Property (six (6) votes for the Pelham Road Tract and four (4) votes for the Haywood Road Property if the Corporation is entitled to such votes). The votes total twenty-nine (29) out of fifty-four (54) (or forty-seven (47) out of sixty-two (62), if the Corporation is entitled to ten (10) votes), in either case, the votes received total more than a majority vote.


Ralph H. Aiken, President of
Watson's Orchard Property Owners
Association, Inc.

SWORN TO before me this 2nd
day of October, 2009.


Notary Public for South Carolina.

My Commission Expires: 10/15/11



4995 54E 0000 0800 6002

ET25 542E 0000 0800 6002

2009 0080 0000 3745 5299

7009 0080 0000 3745 57.83

5225 542E 0000 0800 6002

50E5 542E 0000 0800 6800

7009 0060 0000 3745 5585

CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$2.58	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$5.38	07/01/2009

Sent To: Nathan Scolari
Street, Apt. No. or PO Box No.: 101 Highbourne Drive
City, State, ZIP+4: Greenville, SC 29615

7009 0060 0000 3745 5596

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$2.58	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$5.38	07/01/2009

Sent To: Delores B. Mitchell
Street, Apt. No. or PO Box No.: 108 Graystone Road
City, State, ZIP+4: Greenville, SC 29615

7009 0060 0000 3745 5534

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$2.58	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$5.38	07/01/2009

Sent To: R. C. Fredrick Hanold, III and Rose F. Hanold
Street, Apt. No. or PO Box No.: 13 Darien Way
City, State, ZIP+4: Greenville, SC 29615

2125 5426 0000 3745 5532

CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$2.58	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$5.38	07/01/2009

Sent To: J. Lynn Shook
Street, Apt. No. or PO Box No.: 107 Highbourne Drive
City, State, ZIP+4: Greenville, SC 29615

2125 5426 0000 3745 5532

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$2.58	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$5.38	07/01/2009

Sent To: Merrill J. Gildersleeve
Street, Apt. No. or PO Box No.: 17 Darien Way
City, State, ZIP+4: Greenville, SC 29615

2125 5426 0000 3745 5428

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$2.58	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$5.38	07/01/2009

Sent To: George T. and Martha T. McLeod
Street, Apt. No. or PO Box No.: 21 Darien Way
City, State, ZIP+4: Greenville, SC 29615

5455 542E 0000 3745 5455

CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$ 2.38	0276
Certified Fee	\$2.00	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 45.28	07/01/2009

Sent To
 Street, Apt. No., or PO Box No. Martha Randolph Westrope
 City, State, ZIP+4 11 Darien Way
 Greenville, SC 29615

5455 542E 0000 3745 5455

CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$ 2.38	0276
Certified Fee	\$2.00	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 45.38	07/01/2009

Sent To
 Street, Apt. No., or PO Box No. David A. and Kinoli Saliny
 City, State, ZIP+4 3 Darien Way
 Greenville, SC 29615

5455 542E 0000 3745 5455

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$ 2.38	0276
Certified Fee	\$2.00	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 45.38	07/01/2009

Sent To
 Street, Apt. No., or PO Box No. Manfred B. and Jane J. Kramer
 City, State, ZIP+4 220 Highbourn Drive
 Greenville, SC 29615

5455 542E 0000 3745 5455

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$ 2.38	0276
Certified Fee	\$2.00	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 45.38	07/01/2009

Sent To
 Street, Apt. No., or PO Box No. Anna Marie T. Azores and Kim O. Goco
 City, State, ZIP+4 15 Darien Way
 Greenville, SC 29615

5455 542E 0000 3745 5455

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$ 2.38	0276
Certified Fee	\$2.00	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 45.38	07/01/2009

Sent To
 Street, Apt. No., or PO Box No. Richard A. and Patricia L. Herrman
 City, State, ZIP+4 10 Graystone Road
 Greenville, SC 29615

5455 542E 0000 3745 5455

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$ 2.38	0276
Certified Fee	\$2.00	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 45.38	07/01/2009

Sent To
 Street, Apt. No., or PO Box No. Samuel P. Howard, Jr. and Jane H. Howard
 City, State, ZIP+4 214 Highbourn Drive
 Greenville, SC 29615

CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$ 1.58	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Registered Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 45.38	07/01/2009

Sent To: Christine M. Howard
Street, Apt. No., or PO Box No.: 202 W. Stone Avenue
City, State, ZIP+4: Greenville, SC 29609

CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$ 2.58	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Registered Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 45.38	07/01/2009

Sent To: George P. Mitchell, Jr. and Carol R. Mitchell
Street, Apt. No., or PO Box No.: 204 Highbourne Drive
City, State, ZIP+4: Greenville, SC 29615

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$ 2.58	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Registered Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 45.38	07/01/2009

Sent To: Sexton Griffith Builders, Inc.
Street, Apt. No., or PO Box No.: 123 Kiowa Lane
City, State, ZIP+4: Piedmont, SC 29673

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$ 2.58	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Registered Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 45.38	07/01/2009

Sent To: James J. Barrett, III and Kimberly A. Barrett
Street, Apt. No., or PO Box No.: 107 Graystone Road
City, State, ZIP+4: Greenville, SC 29615

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$ 2.58	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Registered Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 45.38	07/01/2009

Sent To: Cliff C. and Martha W. Jollie
Street, Apt. No., or PO Box No.: 5 Darlen Way
City, State, ZIP+4: Greenville, SC 29615

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$ 2.58	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Registered Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 45.38	07/01/2009

Sent To: Joel Wells Norwood and Lynn Norwood
Street, Apt. No., or PO Box No.: 105 Highbourne Drive
City, State, ZIP+4: Greenville, SC 29615

7009 0080 0000 3745 5336

CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$2.38	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$5.38	07/01/2009

Sent To: Timothy M. and Elizabeth W. Conroy
Street, Apt. No., or PO Box No.: 21 Highbourne Drive
City, State, ZIP+4: Greenville, SC 29615

4365 542E 0000 0900 6002

CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$2.38	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$5.38	07/01/2009

Sent To: Mary F. Newell
Street, Apt. No., or PO Box No.: 4 Darien Way
City, State, ZIP+4: Greenville, SC 29615

7009 0080 0000 3745 5350

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$2.38	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$5.38	07/01/2009

Sent To: Horst H. H. and Floride C. Eschenberry
Street, Apt. No., or PO Box No.: 16 Darien Way
City, State, ZIP+4: Greenville, SC 29615

7965 542E 0000 0900 6002

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$2.38	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$5.38	07/01/2009

Sent To: James Edwin Conrad
Street, Apt. No., or PO Box No.: 1655 Oakwood Drive
City, State, ZIP+4: Penn Valley, PA 19072

7009 0080 0000 3745 5374

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$2.38	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$5.38	07/01/2009

Sent To: Kaye James Kallman
Street, Apt. No., or PO Box No.: 9 Graystone Road
City, State, ZIP+4: Greenville, SC 29615

5435 542E 0000 0900 6002

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$2.38	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$5.38	07/01/2009

Sent To: Dean D. and Deborah P. Varner
Street, Apt. No., or PO Box No.: 200 Highbourne Drive
City, State, ZIP+4: Greenville, SC 29615

5425 3745 5510

CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$2.58	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$5.38	07/01/2009

Sent To: Ralph D. Kellar
c/o Elliott Davis
PO Box 6286
Greenville, SC 29606-6286

5425 3745 5510

CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$2.58	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$5.38	07/01/2009

Sent To: Janet B. Yusi
609 Pelham Road
Greenville, SC 29615

5425 3745 5510

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$2.58	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$5.38	07/01/2009

Sent To: N. Carter Poe, III
515 Pelham Road
Greenville, SC 29615

5425 3745 5510

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$2.58	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$5.38	07/01/2009

Sent To: Penelope J. Galbraith
215 Highbourne Drive
Greenville, SC 29615

5425 3745 5510

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$2.58	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$5.38	07/01/2009

Sent To: Cameron E. and Joan B. Smith
209 Highbourne Drive
Greenville, SC 29615

5425 3745 5510

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$2.58	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$5.38	07/01/2009

Sent To: Joe G. Thomason and Dana L. Henry Thomason
103 Sweetbriar Drive
Greenville, SC 29615

7009 0080 0000 3745 5633

CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$ 17.50	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 15.38	

07/01/2009

Sent To: Juan Hernandez and Janice M. Pelletier
Street, Apt. No. or PO Box No.: 203 Highbourne Drive
City, State, ZIP: Greenville, SC 29615

1985 5255 0000 3745 5361

CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$ 17.50	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 15.38	

07/01/2009

Sent To: Rachel P. McKaughan
Street, Apt. No. or PO Box No.: 627 Pelham Road
City, State, ZIP: Greenville, SC 29615

7009 0080 0000 3745 5404

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$ 17.50	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 15.38	

07/01/2009

Sent To: McNally Reeves
Street, Apt. No. or PO Box No.: 602 Pelham Road
City, State, ZIP: Greenville, SC 29615

7009 0080 0000 3745 5466

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$ 17.50	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 15.38	

07/01/2009

Sent To: Caryl L. Clover and Uwe H. A. Diestel
Street, Apt. No. or PO Box No.: 6 Darien Way
City, State, ZIP: Greenville, SC 29615

7009 0080 0000 3745 5473

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$ 17.50	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 15.38	

07/01/2009

Sent To: Sue Lane Conrad
Street, Apt. No. or PO Box No.: 316 Sunset Drive
City, State, ZIP: Weems, VA 22576

0085 5460 0000 3745 5480

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$ 17.50	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 15.38	

07/01/2009

Sent To: Erma R. Rash
Street, Apt. No. or PO Box No.: 28 Darien Way
City, State, ZIP: Greenville, SC 29615

7009 0080 0000 3745 5497

CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$ 2.50	0276
Certified Fee	\$2.80	20
Return Receipt Fee (Endorsement Required)	\$0.00	Postmark Here
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 5.30	07/01/2009

Sent To
 Street, Apt. No.,
 or PO Box No. Ramon J. and Jana Ashy
 City, State, ZIP+4 655 Pelham Road
 Greenville, SC 29615

7009 0080 0000 3745 5411

CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$	
Certified Fee		
Return Receipt Fee (Endorsement Required)		Postmark Here
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To
 Street, Apt. No.,
 or PO Box No. W. Frank Durham, Jr.
 City, State, ZIP+4 208 Highbourne Drive
 Greenville, SC 29615

W.F.D.

7009 0080 0000 3745 5206

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

OFFICIAL USE

Postage	\$	
Certified Fee		
Return Receipt Fee (Endorsement Required)		Postmark Here
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To
 Street, Apt. No.,
 or PO Box No. Leonard R. and Virginia R. Byrne
 City, State, ZIP+4 19 Darien Way
 Greenville, SC 29615

7009 0080 0000 3745 5398

Meredith C. Vry

7009 0080 0000 3745 5282

Lucy S. Tiller

3-23-10

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	CASE NO.: 2009-CP-23-7007
R. C. Frederick Hanold, III, et al.,	)	MOTION AND ORDER INFORMATION
vs.	)	FORM AND COVERSHEET
Watson's Orchard Property Owners Association, Inc., et al.,	)	
Defendant.	)	

Plaintiff's Attorney: Randall S. Hiller, Bar No. 2513 Address: P. O. Box 1716 Phone: 864 232 0026 Fax 864 242 4692 E-mail: rsh@rshpa.org Other: _____	Defendant's Attorney: William D. Herlong, Bar No. 14283 Address: 531 S. Main St., Suite 201, Greenville, 29601 Phone: 864 382 3800 Fax 864 209 1152 E-mail: william@herlonglaw.com Other: 238 5111														
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)															
SECTION I: Hearing Information Nature of Motion: To Transfer to Non-Jury Docket Estimated Time Needed: 20 minutes Court Reporter Needed: ☒ YES / ☐ NO															
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. Signature of Attorney for ☐ Plaintiff / ☒ Defendant Date submitted: <u>3/23/12</u>															
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$ <u>25.00</u> ☐ EXEMPT: (check reason) <table style="width: 100%; margin-top: 5px;"> <tr> <td>☐ Rule to Show Cause in Child or Spousal Support</td> <td>☐ Domestic Abuse or Abuse and Neglect</td> </tr> <tr> <td>☐ Indigent Status</td> <td>☐ State Agency v. Indigent Party</td> </tr> <tr> <td>☐ Sexually Violent Predator Act</td> <td>☐ Post-Conviction Relief</td> </tr> <tr> <td>☐ Motion for Stay in Bankruptcy</td> <td>☐ Motion for Execution (Rule 69, SCRCP)</td> </tr> <tr> <td colspan="2">☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions</td> </tr> <tr> <td colspan="2">Name of Court Reporter: _____</td> </tr> <tr> <td colspan="2">☐ Other: _____</td> </tr> </table>		☐ Rule to Show Cause in Child or Spousal Support	☐ Domestic Abuse or Abuse and Neglect	☐ Indigent Status	☐ State Agency v. Indigent Party	☐ Sexually Violent Predator Act	☐ Post-Conviction Relief	☐ Motion for Stay in Bankruptcy	☐ Motion for Execution (Rule 69, SCRCP)	☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions		Name of Court Reporter: _____		☐ Other: _____	
☐ Rule to Show Cause in Child or Spousal Support	☐ Domestic Abuse or Abuse and Neglect														
☐ Indigent Status	☐ State Agency v. Indigent Party														
☐ Sexually Violent Predator Act	☐ Post-Conviction Relief														
☐ Motion for Stay in Bankruptcy	☐ Motion for Execution (Rule 69, SCRCP)														
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions															
Name of Court Reporter: _____															
☐ Other: _____															
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____														
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____															

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
R.C. Frederick Hanold, III, et al.,)
Plaintiffs/CounterDefendants,)
v.)
Watson's Orchard Property Owners)
Association, Inc., et al.,)
Defendants/CounterPlaintiffs,)
v.)
Property Owners in Watson's Orchard)
Subdivision: N. Carter Poe, III, et al.,)
Third-Party Defendants.)

COURT OF COMMON PLEAS
CASE NO. 2009-CP-23-7707

**DEFENDANTS' MOTION TO
TRANSFER TO NON-JURY
DOCKET**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
2012 MAR 23 A 10:04

This suit relates to certain property (the "Property") across Pelham Road from the Watson's Orchard subdivision which is near the intersection of Pelham and Haywood Roads in Greenville. The question is whether the changes to the restrictions and covenants ("R&Cs") for the Property were appropriately adopted as of January 1, 2010.

The R&Cs applicable prior to January 1, 2010 (the "1981 R&Cs"), are set forth a document known as "Declaration of Restrictions and Protective Covenants dated January 15, 1981" (the "1981 R&Cs"). (A copy is at Schedule 1 Defendants' Answer and Counterclaim.) The 1981 R&Cs, and the process to adopt them, were approved by Judge McGowan by order dated December 9, 1980. In general, the 1981 R&Cs restrict the property to residential development on lots in excess of 55,000 square feet.

The 1981 R&Cs specifically provided that they could be amended as of January 1, 2010 "by vote of a majority of the then owners of the lots into which the property

described above shall have been developed and in Watson's Orchard Subdivision." In the months prior to that date, defendant Watson's Orchard Property Owners Association, Inc. ("WOPOA"), obtained the necessary votes for amending the 1981 R&Cs. The amended R&Cs (the "2010 R&Cs") were then filed with the Greenville County Register of Deeds Office. Generally speaking, the Amended R&Cs allow low-density development such as two-story doctor's offices on the Property.

The plaintiffs have challenged the vote. The dispute centers on the language from the 1981 R&Cs quoted above. The specific issue is whether five lots owned by the Stephens defendants on the Property were entitled to vote. Even though these lots were recognized and their sale to Stephens specifically approved in Judge McGowan's 1980 Order, plaintiffs argue that the lots are not "lots into which the [P]roperty . . . shall have been developed." Plaintiffs specifically seek to "enjoin and restrain the Watson's Orchard Property Owners Association, Inc. from using the property for any uses which are more intensive than the current uses within the Watson's Orchard Subdivision." (1st Amended Declaratory Judgment Complaint at 6.)

The defendants seek a declaration that the Amended R&Cs have been lawfully adopted and are now in force.

ARGUMENT

An action to enforce restrictive covenants by injunction is in equity. *Cedar Cove Homeowners Ass'n, Inc. v. DiPietro*, 628 S.E.2d 284, 286 (S.C. App. 2006):

The character of an action as legal or equitable depends on the relief sought. Compare *O'Shea v. Lesser*, 308 S.C. 10, 14, 416 S.E.2d 629, 631 (1992) (holding an action for breach of restrictive covenants was at law, because relief sought was general damages for loss of view and invasion of privacy) and *Kneale v. Bonds*, 317 S.C. 262, 265, 452 S.E.2d 840, 841 (Ct. App. 1994) ("An action to enforce restrictive covenants by injunction is in equity."); see also S.C. *Dep't of Natural*

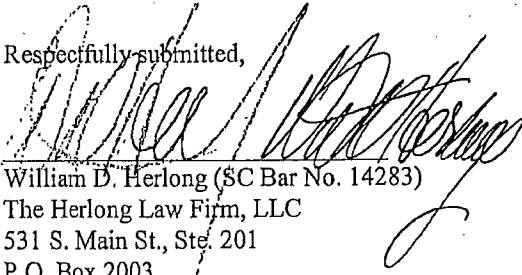
Res. v. Town of McClellanville, 345 S.C. 617, 622, 550 S.E.2d 299, 302 (2001) (holding an action to enforce restrictive covenants by injunction is an equitable action). Because the Association's action is one to enforce restrictive covenants by injunction, it is in equity, and we may find facts in accordance with our own view of the evidence. *Brenco v. S.C. Dep't of Transp.*, 363 S.C. 136, 142, 609 S.E.2d 531, 534 (Ct. App. 2005).

See also *Matsell v. Crowfield Plantation Community Services Ass'n, Inc.*, 710 S.E.2d 90, 93-94 (S.C. App. 2011) ("An action seeking an injunction to enforce restrictive covenants sounds in equity.").

As an action in equity, plaintiffs are not entitled to a jury trial. *Verenes v. Alvano*, 690 S.E.2d 771, 773 (S.C. 2010): "Generally, the relevant question in determining the right to trial by jury is whether an action is legal or equitable; there is no right to trial by jury for equitable actions." Citing *Lester v. Dawson*, 491 S.E.2d 240, 242 (S.C. 1997).

Accordingly, defendants request that this action be transferred to the non-jury docket.

Respectfully submitted,



William D. Herlong (SC Bar No. 14283)
The Herlong Law Firm, LLC
531 S. Main St., Ste. 201
P.O. Box 2003
Greenville, SC 29602-2003
(864) 382-3800
William@HerlongLaw.com

March 22, 2012

STATE OF SOUTH CAROLINA)

COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

2012 APR 27 PM 4:05

CASE NO. 2009-CP-23-7707

R.C. Frederick Hanold, III, et al.

FILED - CLERK OF COURT
GREENVILLE CO S.C.
PAUL B. WICK

Plaintiffs/CounterDefendants,

v.

**DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT AND
SUPPORTING MEMORANDUM**

Watson's Orchard Property Owners
Association, Inc., et al.,

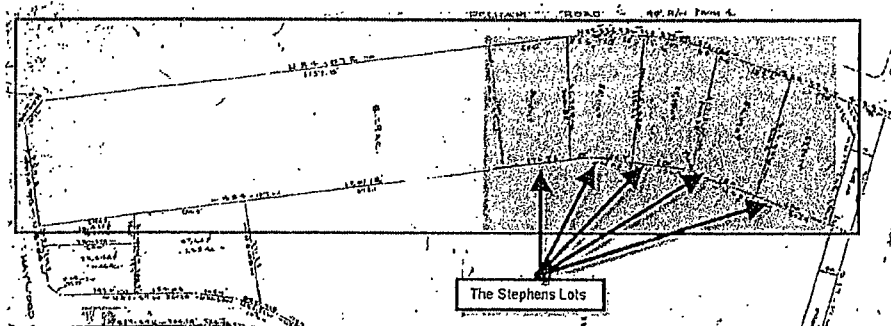
Defendants/CounterPlaintiffs,

v.

Property Owners in Watson's Orchard
Subdivision: N. Carter Poe, III, et al.,

Third-Party Defendants.

This suit relates to certain property (the "Property") across Pelham Road from Watson's Orchard subdivision in Greenville. The Property can be seen within the large box in the following excerpt from the December 3, 1980 Survey for Richard Watson.



(Exhibit A hereto.) The lots on the right side of the graphic belong to the Stephens Defendants and referred to herein as the "Stephens Lots." Whether they are in fact "lots" is the dispositive issue in this case. If they are "lots," Defendants prevail. If they are not,

Plaintiffs prevail. Because the Stephens Lots are clearly lots, and there is no genuine issue to the contrary, Defendants hereby move for summary judgment.

BACKGROUND FACTS

The overall question in this case is whether amended restrictions and covenants ("R&Cs") for the Property were successfully adopted as of January 1, 2010. Defendants seek a declaratory judgment that the amended R&Cs were successfully adopted and are now in force. Plaintiffs seek to enjoin the amended R&Cs.

The prior R&Cs (the "1981 R&Cs") date from 1981 and are set forth a document known as "Declaration of Restrictions and Protective Covenants" (SJ-2 [Notebook at D-11]¹.) In general, the 1981 R&Cs restrict the Property to residential development on lots in excess of 55,000 square feet.

The 1981 R&Cs specifically provided that they could be amended as of January 1, 2010, "*by vote of a majority of the then owners of the lots into which the property described above [the Property along with another strip along Haywood Road owned by defendant WOPOA] shall have been developed and in Watson's Orchard Subdivision.*" (SJ-2 [Notebook, p. D-11], emphasis added; see Affidavit of Patrick H. Grayson, Jr., ¶7.)

In the months prior to that date, defendant Watson's Orchard Property Owners Association, Inc. ("WOPOA"), sought to obtain a majority vote in favor of the proposed amended R&C. After obtaining twenty-nine of fifty-four possible votes and thus

¹ Exhibits to this Motion are designated by "SJ- " and can be found in the separately filed notebook entitled Documents In Support of Defendants' Motion for Summary Judgment ("Notebook"). The first document in the Notebook (after the table of contents) is the Affidavit of Janice Varat, which describes the documents. The pages of the Notebook have been numbered in the aggregate in the upper right-hand corner. For ease of reference, the page number references in the citations in the text above are to those aggregate page numbers.

satisfying the requirement of the 1981 R&Cs,² WOPOA filed the amended R&C (the “2010 R&Cs,” SJ-3 [Notebook at 21-44]) in the Greenville County Register of Deeds Office on November 9, 2009. (Grayson Aff. ¶¶10 & 12.) A slightly corrected version was filed on December 21, 2009. (SJ-4 [Notebook at D-46-57]; *see* Grayson Aff. ¶12.) Generally speaking, the 2010 R&Cs allow low-density development of the Property such as two-story doctors’ offices.

The determination of whether the 2010 R&Cs have been validly adopted turns on the language from the 1981 R&Cs quoted above and, as noted above, specifically on whether the five Stephens Lots are “lots into which the [P]roperty . . . shall have been developed.” In other words, are the Stephens Lots actually lots or not? If they are lots, the 2010 R&Cs received a majority vote and Defendants prevail. If they are not lots, the 2010 R&Cs received only twenty-five out of fifty votes and Plaintiffs prevail.

Defendants now move for summary judgment because there is no genuine issue as to whether the Stephens Lots are in fact lots. The evidence is overwhelming that they are in fact lots. Plaintiffs’ argue that the Lots are not lots because the plat was not approved by the Planning Commission. As will be shown below, this argument has no merit. Prior to reaching that point, however, it is appropriate to review the overwhelming evidence that the Stephens Lots are in fact lots.

² Twenty-two of forty-seven lots within Watson’s Orchard subdivision voted for the 2010 R&Cs. In addition, the Stephens Defendants voted their five lots within the Property in favor of the 2010 R&Cs. Finally, WOPOA voted its portion of the Property along with another tract that was entitled to vote in favor of the 2010 R&Cs. This meant that 29 of 54 possible votes were in favor of the 2010 R&Cs. To be on the safe side, WOPOA also cast votes on behalf of the “possible” lots within the two properties that it owned, which would provide a vote in favor of the 2010 R&Cs of 37 out of 62. If the Stephens lots are entitled to vote, it is immaterial whether WOPOA was entitled to those additional votes. (*See* Grayson Aff. ¶¶10-11.)

THE OVERWHELMING EVIDENCE
THAT THE STEPHENS LOTS ARE IN FACT LOTS

James Stephens, through Pelham Properties, Inc., made a formal, written offer on October 6, 1980, to purchase the five lots at issue "for a purchase price of Twenty One Thousand One Hundred and 00/100 (\$21,100) Dollars per lot." (SJ-5 [Notebook at D-59], emphasis added.) The lots are described in the offer as "five (5) lots as are more fully described in Exhibit 'A' annexed hereto." Exhibit A to the offer describes the property being purchased as:

All those certain pieces, parcels or lots of land, situate, lying and being in the State of South Carolina, County of Greenville, being identified as five (5) lots fronting on Pelham Road, to be more fully shown on a new survey, and being described in the aggregate according to a survey entitled "Survey for Richard Watson", dated June 27, 1980, revised August 19, 1908, and August 27, 1980, prepared by Carolina Surveying Company, with the following metes and bounds, to-wit:

(Notebook at D-60, emphasis added.)

The proposed purchase of the lots was in connection with the revision of the R&Cs in 1980. Attorney Patrick H. Grayson, Jr., represented an entity known as Lincoln of South Carolina, Inc. ("Lincoln"), in connection with its purchase of certain property from Richard F. Watson and the trustee for his wife's estate. A condition of the purchase was the termination of certain restrictive covenants imposed on the property of Richard Watson and his wife on or about 1961. The termination of these restrictions required the consent of all of the owners in Watson's Orchard subdivision. (Grayson Aff. ¶2.)

To accomplish the transaction, Lincoln agreed to convey a certain portion of the property it was acquiring to WOPOA which was to be formed for the then owners of lots in Watson's Orchard subdivision and, further, to impose new restrictions on the property Lincoln was acquiring. One of the lot owners in Watson's Orchard subdivision, James

Stephens, agreed to consent to the termination but wanted to purchase five lots in the property to be owned by WOPOA in lieu of becoming a shareholder in WOPOA. He made the offer quoted above through Wilkins Norwood to the Watson Orchard owners. (*Id.*)

Mr. Norwood wrote a memorandum to the property owners describing the offer and recommending acceptance. He wrote in pertinent part:

J. B. Stephens, a homeowner whose lot fronts on Pelham Road, does not want to participate in the corporation [WOPOA]. Instead, he is willing to buy the five lots most directly across from his home. He has made an offer to purchase five minimum lots (200 feet frontage and 55,000 sq. ft.) in front of his house for a purchase price of \$105,500.00 and give up his interest in the corporation. This is a price of \$21,100.00 per lot.

When you consider that the value of a share of stock in Watson's Orchard Property Owners Association, Inc. should be worth a minimum of \$7,000.00, the corporation will net around \$22,500.00 per lot.

If the lots were sold in the open market for \$25,000.00 through a realtor, only \$22,500.00 would be netted after commission. It is our opinion that this is a fair price for this purchase.

Therefore, your committee believes the offer is fair and recommends that it be accepted.

(SJ-6 [Notebook at D-62], emphasis added.) The offer was accepted. (Grayson Aff. ¶2; see also Notebook at D-170-193.)

On October 31, 1980, Mr. Grayson filed a quiet title action on behalf of Lincoln with all the lot owners named as defendants. (SJ-7 [Notebook at D-64-73].) On December 9, 1980, Judge Frank P. McGowan, Jr., issued a detailed order approving the 1981 R&Cs and the process by which they were adopted. (SJ-8 [Notebook at D-74-249].) As part of the process, and since it was essential to Mr. Stephens' consent, Judge

McGowan specifically recognized and approved the planned sale of the five lots to Pelham Properties by WOPOA. His order read in pertinent part:

. . . Based upon the entire record, I hereby make the following findings and conclusions, with resulting declarations and orders thereon: . . .

(18) That more than a majority of the defendants as charter member and pending stockholders in Watson's Orchard Property Owners Association, Inc., are willing to sell five (5) lots as described in the deed shown as Exhibit 14 [SJ-9 (Notebook at D-251)], for the consideration of One Hundred Five Thousand Five Hundred and 00/100 (\$105,500.00) Dollars, pursuant to the Offer shown as Exhibit 15 [the Stephens Offer above, SJ-5 (Notebook at D-58-59)], and that the President has authority to execute said deed within the usual and regular course of corporate business; that documentary deed stamps be paid from said consideration. . . .

IT IS FURTHER ORDERED that the officer of Watson's Orchard Property Owners Association, Inc. be authorized to execute and deliver a deed conveying good fee simple title to the property shown on Exhibit 14 [SJ-9 (Notebook at D-251)], upon receipt of the consideration of One Hundred Five Thousand Five Hundred and 00/100 (\$105,500.00) Dollars, less documentary deed stamps.

(SJ-8 [Notebook at D-80 & D-82], emphasis added.)

Upon receiving Judge McGowan's approval, the Property was transferred from Lincoln to WOPOA. (SJ-8 [Notebook at D-116].) Then, on January 15, 1981, the five lots were transferred from WOPOA to Pelham Properties [Mr. Stephens' entity]. (SJ-9 [Notebook at 250-52].) There can be no doubt that five lots were conveyed. The deed was conveyed to Mr. Stephens by his attorney on March 11, 1981, with a cover letter stating: "I am enclosing the deed to Pelham Properties, Inc. to the five lots along Pelham Road." (SJ-10 [Notebook at 254], emphasis added.) The deed itself expressly identifies the parcel of land being transferred as "containing five (5) lots" which are "more fully shown" on the "Survey for Richard Watson", prepared by Carolina Surveying Company, dated June 27, 1980, revised August 19, 1980, revised August 27,

1980, revised September 8, 1980, and revised December 1, 2, and 3, 1980 . . .” (SJ-9 [Notebook at 251].) That is the survey showing the five lots which is excerpted in the graphic on page one of this motion. After paragraph stating the “metes and bounds,” the deed again refers to the five lots, noting that there is a “sewer easement across the rear twenty-five (25’) feet of the above lots” (*Id.*) The deed was recorded in the Greenville County R.M.C. office (Deed Book 1141). (SJ-11 [Notebook at 260].) The RMC Index describes the transaction as for “5 lots Pelham Rd.” (*Id.*, emphasis added.)

The five lots were transferred on August 22, 1986, from Pelham Properties, Inc. to Mr. Stephens personally. This deed refers to the five lots in the same manner as the 1981 deed. (SJ-12 [Notebook at 262].) This deed was recorded in RMC Deed Book 1274, at page 237. The Index describes the transaction as for “5 Lots Cnr Pelham & Proposed Rd” (SJ-13 [Notebook at 264], emphasis added.)

Only July 15, 2003, Mr. Stephens transferred the lots and various other property to a revocable trust. (SJ-14 [Notebook at 266-70].) “Parcel Three” in that deed identifies the parcel as containing five lots. The description is the same as in the 1981 and 1986 deeds:

All the certain piece, parcel or tract of land situate, lying and being in the County of Greenville, State of South Carolina, containing five (5) lots as is more fully shown on a plat entitled “Survey for Richard Watson”, prepared by Carolina Surveying Company, dated June 27, 1980, revised August 19, 1980, revised August 27, 1980, revised September 8, 1980, and revised December 1, 2, and 3, 1980

(*Id.* [Notebook at D-266-67], emphasis added.) That deed was recorded in the RMC Office at Deed Book 2053 on page 157. (*Id.*)

On April 1, 2008, Mr. Stephens transferred the five lots from his revocable trust to Pelham Farm, LLC, Legacy One, LLC, and SESP LLC. (SJ-15 [Notebook at D-272-

74].) These entities are referred to in this litigation as the Stephens Defendants.³ The description of the parcel as “containing five lots” as more fully shown in the Survey for Richard Watson is the same as in the prior deeds. (*Id.* [Notebook at D-272], emphasis added.) This deed was filed in the Register of Deeds Office in Book 2320 at page 1674-76. The index again describes the five lots: “INT 5 LTS PELHAM ROAD.” (SJ-16 [Notebook at 276], emphasis added.)

DICSUSSION

As noted above, the evidence is overwhelming that the Stephens Lots are in fact lots. Indeed, they were explicitly recognized as such by a prior order of this Court. (SJ-8 [Notebook at D-80 & D-82].) Plaintiffs’ only argument to the contrary is that the plat referenced in the deeds was not submitted to the Planning Commission and approved as presumably required by the applicable regulations in 1981. A review of the applicable regulations shows that there is no merit to this contention.

The applicable regulations are the Greenville County Subdivision Regulations, as amended October 16, 1979, a copy of which is at Exhibit SJ-17 (Notebook at D-277-342). The first point to note from these regulations is the definition of “lot”:

Lot – A portion of a subdivision or other parcel of land having a minimum of twenty (20) feet frontage on a public street and intended for transfer of ownership or for building purposes.

(Notebook at D-286].) The Stephens Lots certain comply with that definition. Accordingly, even under the regulations they are in fact “lots.”

The second point is that, even if the regulations did require Planning Commission approval of the plat for the Stephens Lots, failure to do so did not void the sale or mean

³ The Stephens Defendants also include the other non-WOPOA defendants.

that they were not in fact lots. The language of the "Violations and Penalties" section makes that completely clear:

1.4 Violations and Penalties

The owner or agent of the owner of any land located within the jurisdiction of the Planning Commission as described herein who transfers or sells or agrees to sell such land by reference to or exhibition of or by other use of a plat of subdivision of such land before such plat has been approved by the Planning Commission and recorded in the office of the County Register of Mesne Conveyance shall forfeit and pay a penalty of one hundred dollars for each lot so transferred or sold or agreed or negotiated to be sold. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from such penalties. The county may enjoin such transfer or sale or agreement by action for injunction or may recover the penalty by civil action.

(Notebook at D-288-89, emphasis added.) Under this language, lots can be transferred other than by use of a plat approved by the Planning Commission. The consequence is simply that the transferor (WOPOA in this case) could be, if the County chose to enforce it, subject to a penalty of \$100 per lot so sold. However, unless the County moved to enjoin the sale before it happened, the sale was not void but was of full force and effect.

Accordingly, whether the plat showing the five Stephens Lots should have been approved by the Planning Commission simply has no bearing on whether the Lots are in fact lots. To the extent the regulations have any relevance at all it is simply because of the definition of "lot" which, as noted above, the Stephens Lots fully comply with.

In addition to the foregoing, the evidence also shows that it was the intention of the parties who agreed to the 1981 R&Cs for the Stephens Lots to be entitled to votes on amending the R&Cs. Mr. Grayson, the person who drafted the 1981 R&Cs is quite explicit on this point. His affidavit states:

It was the intent of the parties that the 1981 R&Cs could be amended as of January 1, 2010, by a majority vote, with each lot in Watson's Orchard and each lot in the land being deeded to WOPOA having one vote. As noted above, five

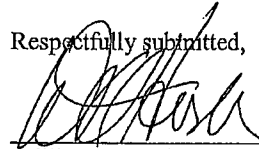
lots in the land being deeded to WOPOA (the "Stephens Lots") were going to be deeded to Pelham Properties, Inc. It was the intent of the parties the each of the Stephens Lots, and any other lots later created in the property that was being deeded to WOPOA, would have one vote.

(Grayson Affidavit, ¶8.) There is no evidence to the contrary. Accordingly, based on the intention of the parties, the 1981 R&Cs should be interpreted to authorize the Stephens Lots to vote on the amendment in 2010.⁴

CONCLUSION

For the foregoing reasons, Defendants respectfully request that their motion for summary judgment be granted and the Court declare that the 2010 R&Cs were validly adopted and are in full force and effect, and that the 1981 R&Cs are null and void.

Respectfully submitted,



William D. Herlong (SC Bar No. 14283)
The Herlong Law Firm, LLC
531 S. Main St., Ste. 201
P.O. Box 2003
Greenville, SC 29602-2003
(864) 382-3800
William@HerlongLaw.com

April 27, 2012

⁴ Restrictive covenants are contractual in nature, so that the paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document. *South Carolina Dept. of Natural Resources v. Town of McClellanville*, 345 S.C. 617, 550 S.E.2d 299 (2001).

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
R.C. Frederick Hanold, III and Rose)
F. Hanold, and Carol R. Mitchell and)
George P. Mitchell, Jr.,)

Plaintiffs/Counter)
Defendants)

v.)

Watson's Orchard Property Owners)
Association, Inc., a SC Corporation)
And Pelham Farm, LLC, a SC)
Corporation, Legacy One, LLC, a)
SC Corporation, SESP, LLC, a)
SC Corporation, an unknown Trustee)
Of the Revocable Trust Agreement)
Dated March 19, 1996 established)
By James B. Stephens as amended)
And unknown Jay Stephens and)
Mike Stephens as Co-Personal)
Representative of the Estate of James)
B. Stephens,)

Defendants/Counter)
Plaintiffs)

v.)

Property Owners in Watson's)
Orchard Subdivision:)
N. Carter Poe, III, McNally Reeves)
As Trustee of the Residual Trust)
Under item Five of the Last Will and)
Testament of Hattie L. Reeves dated)
February 9, 1998; Janet B. Yusi,)
Lucy S. Tiller, James G. Stephens)
Rachel P. McKaughen, Ramon J. and)
Jana Ashy, Christopher D. and)
Heather V. Scalzo, Erma R. Rash, as)
Trustee of the Erma R. Rash)
Revocable Trust dated February 12,)
2010, James Edwin Conrad, as)
Trustee of the James Edwin Conrad)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
C.A. NO.: 2009-CP-23-7707

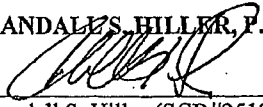
**PLAINTIFFS MOTION FOR
SUMMARY JUDGMENT**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
JUL 8, 2012
2012 JUN -8 P 1:27
PAUL B. WICKENSHER

Living Trust dated September 7,)
 2010, Sue Lane Conrad, Horst H.H.)
 Eschenberg and Floride C.)
 Eschenberg, Caryl L. Clover, as)
 Trustee of the Caryl L. Clover)
 Revocable Living Trust Agreement)
 Dated May 12, 1999, Mary F. Newell)
 Timothy and Elizabeth W. Conroy)
 Nathan Scolari, Joel Wells Norwood)
 And Lynn Norwood, J. Lynn Shook)
 Juan Hernandez and Janice Pellitier,)
 Scott P. Payne and Kathleen H.)
 Payne, Joc G. Thomason and Dana)
 Henry Thomason, Traci Segura,)
 Cameron E. Smith and Joan B. Smith)
 Charles E. and Sharon F. Howard,)
 Penelope J. Galbraith, Meredith C.)
 Vry, Delores B. Mitchell, Lisette)
 M. Silva and Mary F. Colley,)
 Ilona K. Alford and William G.)
 Alford, George T. McLeod and)
 Martha T. McLeod, Ronald S.)
 Wilson, and Robin E. Wilson, The)
 Merrill J. Gildersleeve and Anore)
 L. Novak Revocable Living Trust)
 Dated November 1, 1996, Anna)
 Marie T. Azores and Kim O. Gococo)
 Ashley Westrope as Trustee of)
 Martha Randolph Westrop Trust)
 Dated June 6, 1988, Cliff C. Jollie)
 And Martha W. Jollie, David A.)
 Saliny and Xiaoli Saliny, Lecia S.)
 Franklin, Dean D. Varner and)
 Deborah P. Varner, W. Frank)
 Durham, Jr., Christine M. Howard,)
 Samuel P. Howard, Jr. and Jane H.)
 Howard, Manfred E. Kramer and)
 Jane J. Kramer, Mary Steele, James)
 J. Barrett, III and Kimberly A.)
 Barrett, Richard Herman and Patricia)
 L. Herman,)
)
 Third Party)
 Defendants)
)

Please take notice that the undersigned attorney for the Plaintiffs, Randall S. Hiller, Esquire, will, as soon as this matter may be heard, move for an order of this Court granting Plaintiffs summary judgment, pursuant to Rule 56 of the *South Carolina Rules of Civil Procedure*, on the grounds that Plaintiffs are entitled to judgment as a matter of law based upon the memoranda, discovery documents, affidavits and deposition testimony to be filed hereafter.

RANDALL S. HILLER, P.A.


Randall S. Hiller (SCB#2513)
850 Wade Hampton Blvd.
Greenville, SC 29609
864-232-0026
864-242-4692 Fax

Greenville, South Carolina

June 7, 2012

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	CASE NO. 2009-CP-23-7707
COUNTY OF GREENVILLE	)	
R.C. Frederick Hanold, III, et al.,	)	
	)	
v.	)	DEFENDANTS'
	)	POST-TRIAL BRIEF
Watson's Orchard Property Owners	)	
Association, Inc., et al.,	)	

The trial of this matter, held on September 4-5, 2012, presented one issue: were the five lots purchased by James Stephens from defendant WOPOA in 1981 (the "Stephens Lots") actually lots. Plaintiffs have not met their burden of showing that they were not, and therefore judgment should be rendered for the Defendants.

This question arises because of an amendment to restrictive covenants ("R&Cs") for the property across the road from Watson's Orchard subdivision (the "Property"). (Def. Ex. 1 at D-6-8.) Pursuant to the restrictions in place from 1981 (the "1981 R&Cs"), the Property was limited to single-family residential development on lots in excess of 55,000 square feet. (*Id.* at D-14.) The 1981 R&Cs, however, provided that they could be amended as of January 1, 2010, "*by vote of a majority of the then owners of the lots into which the property described above [the Property along with another strip along Haywood Road owned by defendant WOPOA] shall have been developed and in Watson's Orchard Subdivision.*" (*Id.* at D-11, emphasis added.)

In the months prior to January 1, 2010, defendant WOPOA obtained a majority vote in favor of the proposed amended R&C¹ which were then filed in the Greenville County Register of Deeds Office. (*Id.* at D-21-44, slightly corrected version at D-46-57.) The amended R&Cs allow low-density development of the Property such as two-story doctors' offices. (*See Id.* at D-23.)

¹ Twenty-two of forty-seven lots within Watson's Orchard subdivision voted for the 2010 R&Cs. In addition, the Stephens Defendants voted their five lots within the Property in favor of the 2010 R&Cs. Finally, WOPOA voted its portion of the Property along with another tract that was entitled to vote in favor of the 2010 R&Cs. This meant that 29 of 54 possible votes were in favor of the 2010 R&Cs.

The Plaintiffs contend that the vote was invalid because the Stephens Lots are not in fact “developed lots.” Plaintiffs misread the language of the 1981 R&Cs. The language does not require that the Stephens Lots be “developed lots” (or any determination as to what a “developed lot” is). To quote the language precisely, it requires that they be “lots into which the property described above shall have been developed.” In other words, that they simply be “lots.” This is even more clear when one looks at the second page of the restrictions which provides that the restrictions can be enforced against “any property owner of any lot *into which the property described above shall subsequently be cut.*” (*Id.* at D-12, emphasis added.) Plainly, the requirement is simply “lots into which the property . . . [has] been developed [or ‘cut’].”

To the extent there is any doubt about this question, the “settled rule” in South Carolina is that “restrictions as to the use of real estate be strictly constructed and all doubts be resolved in favor of free use of the property” *South Carolina Dept. of Natural Resources v. Town of McClellanville*, 345 S.C. 617, 622, 550 S.E.2d 299, 302 (2001), citing *Taylor v. Lindsey*, 332 S.C. 1, 4-5, 498 S.E.2d 862, 863-64 (1998). Further, “where the language of the restrictions is equally capable of two or more different constructions that construction will be adopted which least restricts the use of the property.” *Id.* This settled rule requires the plain (and correct) interpretation that the Stephens Lots need simply be lots in order to be entitled to vote on the amendments to the R&Cs.

Plaintiffs did not meet their burden at trial of demonstrating that the Stephens Lots are not lots. In fact, the evidence at trial was overwhelming that the Stephens Lots are in fact lots. Accordingly, judgment should be entered for the Defendants.

I. EVIDENCE THAT THE STEPHENS LOTS ARE IN FACT LOTS

The evidence at trial demonstrated that the Stephens Lots are in fact lots. Plaintiffs introduced no evidence to the contrary.

1. **THE STEPHENS OFFER (1980)**. James Stephens, through Pelham Properties, Inc., made a formal, written offer on October 6, 1980, to purchase the five lots at issue "for a purchase price of Twenty One Thousand One Hundred and 00/100 (\$21,100) Dollars per lot." (Def. Ex. 1 at D-59], emphasis added.) The lots are described in the offer as "five (5) lots as are more fully described in Exhibit 'A' annexed hereto." Exhibit A to the offer describes the property being purchased as:

All those certain pieces, parcels or lots of land, situate, lying and being in the State of South Carolina, County of Greenville, being identified as five (5) lots fronting on Pelham Road, to be more fully shown on a new survey, and being described in the aggregate according to a survey entitled "Survey for Richard Watson", dated June 27, 1980, revised August 19, 1908, and August 27, 1980, prepared by Carolina Surveying Company, with the following metes and bounds, to-wit:

(*Id.* at D-60, emphasis added.)

2. **THE ACCEPTANCE (1980)**. Mr. Wilkins Norwood wrote a memorandum to the property owners describing the offer and recommending acceptance. He wrote in pertinent part:

J. B. Stephens, a homeowner whose lot fronts on Pelham Road, does not want to participate in the corporation [WOPOA]. Instead, he is willing to buy the five lots most directly across from his home. He has made an offer to purchase five minimum lots (200 feet frontage and 55,000 sq. ft.) in front of his house for a purchase price of \$105,500.00 and give up his interest in the corporation. This is a price of \$21,100.00 per lot.

When you consider that the value of a share of stock in Watson's Orchard Property Owners Association, Inc. should be worth a minimum of \$7,000.00, the corporation will net around \$22,500.00 per lot.

If the lots were sold in the open market for \$25,000.00 through a realtor, only \$22,500.00 would be netted after commission. It is our opinion that this is a fair price for this purchase.

Therefore, your committee believes the offer is fair and recommends that it be accepted.

(Def. Ex. 1 at D-62, emphasis added.) The offer was accepted. (*Id.* at D-170-193.)

3. **COURT APPROVAL OF THE SALE OF THE FIVE LOTS TO STEPHENS (1980)**. On December 9, 1980, Judge Frank P. McGowan, Jr., issued a detailed order (*id.* at D-75-249) in the declaratory judgment action brought by Mr. Patrick Grayson (*id.* at D-64-73) regarding the adoption of the 1981 R&Cs and the process by which they were adopted. Since, as Mr. Grayson testified, it was one of the pre-conditions to the adoption of the 1981 R&Cs, Judge McGowan specifically considered and approved the planned sale of the five lots to Pelham Properties by WOPOA. His order read in pertinent part:

. . . Based upon the entire record, I hereby make the following findings and conclusions, with resulting declarations and orders thereon: . . .

(18) That more than a majority of the defendants as charter member and pending stockholders in Watson's Orchard Property Owners Association, Inc., are willing to sell five (5) lots as described in the deed shown as Exhibit 14 [Def. Ex. 1 at D-251)], for the consideration of

One Hundred Five Thousand Five Hundred and 00/100 (\$105,500.00) Dollars, pursuant to the Offer shown as Exhibit 15 [*Id.* at D-58-59]], and that the President has authority to execute said deed within the usual and regular course of corporate business; that documentary deed stamps be paid from said consideration. . . .

IT IS FURTHER ORDERED that the officer of Watson's Orchard Property Owners Association, Inc. be authorized to execute and deliver a deed conveying good fee simple title to the property shown on Exhibit 14 [*Id.* at D-251]], upon receipt of the consideration of One Hundred Five Thousand Five Hundred and 00/100 (\$105,500.00) Dollars, less documentary deed stamps.

(*Id.* at D-80 & D-82, emphasis added.)

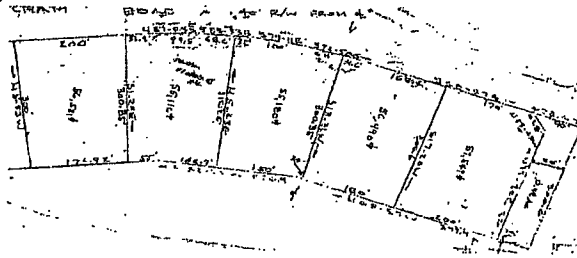
4. **THE FIRST DEED (1981).** Upon receiving Judge McGowan's approval, the property along Pelham Road was transferred from Lincoln to WOPOA. (*Id.* at D-116.) Then, on January 15, 1981, **five lots** out of that property were transferred from WOPOA to Pelham Properties [Mr. Stephens' entity]. (*Id.* at 251-52.) The deed describes the conveyance as:

All the certain piece, parcel or tract of land situate, lying and being in the County of Greenville, State of South Carolina, **containing five (5) lots** as is more fully shown on a plat entitled "Survey for Richard Watson", prepared by Carolina Surveying Company, dated June 27, 1980, revised August 19, 1980, revised August 27, 1980, revised September 8, 1980, and revised December 1, 2, and 3, 1980

Subject however, to a sewer easement across the read twenty-five (25') feet **of the above lots** for the purpose of installation and maintenance of a sewer line . . .

(*Id.* at D-251, emphasis added).

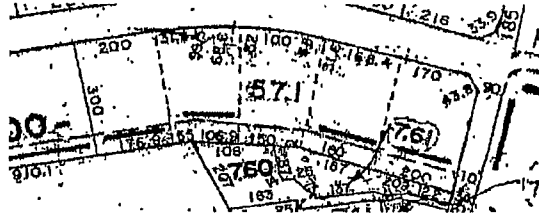
5. **THE PLAT (1980).** The plat referenced in the First Deed (Def. Ex. 2 – the "Plat") unambiguously specifies the five lots. The following excerpt from blow-up of the lots shows them plainly:



(Def. Ex. 2 at D-6.) As a matter of common law, the reference in the deed to the Plat incorporates the Plat into the deed.² It does not matter that the plat is unrecorded.³

² See *Klapman v. Hook*, 32 S.E.2d 882, 883 (S.C. 1945) ("Where, as was done in this case, a deed describes the land as a certain tract or parcel as shown on a certain plat, the plat becomes part of the deed."); *Chicago Title Ins. Co. v. Investguard, Ltd.*, 449 S.E.2d 681, 683 (Ga. App. 1994) ("[W]here a deed to land refers to a map or plat as a part of the description of the land conveyed, such map or plat will ordinarily be considered as incorporated in the deed itself.")

6. THE TAX MAP (CURRENT). The tax map also shows the five lots and confirms that the plan was submitted to the governmental authorities:



(Def. Ex. 5 (also Def. Ex. 3).) The dimensions on the tax map (e.g., across the top, 200, 31.9, 99.5, 68.6, 32, 100, 68, 31.6, 168.4, 170, and 43.8, and across the bottom, 176.9, 55, 106.9, 150, 180, and 200) are identical to those in the Plat. The Plat, as Mr. Shouse testified, had to have been submitted to the tax authority for this information to have been known to them.

7. THE TITLE OPINION OF THE WYCHE LAW FIRM (1981). The Wyche Law Firm issued a title opinion to Mr. Stephens that he (through his entity Pelham Properties, Inc.) had purchased five lots and had good title to them. The opinion letter (Def. Ex. 6, and Def. Ex. 1 at D-254) expressly describes the deed as being for “five lots along Pelham Road.” Mr. Kehl confirmed at trial that Mr. Stephens had purchased five lots and that his title opinion had

³ The principle is implicit in two South Carolina cases: *Sims v. Tyler*, 276 S.C. 640, 281 S.E.2d 229 (1981) (reversing decision in favor of appellee who had purchased a lot pursuant to an unrecorded plat because the grantor had previously conveyed the property to appellant and finding, contrary to the grantor's testimony, no mistake; the fact that the later conveyance was pursuant to an unrecorded plat was not a factor in the decision), and *Cook v. Eller*, 298 S.C. 395, 280 S.E.2d 853 (App. 1989) (individual who claimed ownership of property pursuant to a deed referencing an unrecorded plat could prevail over a challenger if person who sold the property to the challenger did not himself have good title).

The principle is expressly addressed in several cases from other jurisdictions. E.g., *Chicago Title Ins. Co. v. Investguard, Ltd.*, 449 S.E.2d 681, 683 (Ga. App. 1994) (“the description of the property indicated on the unrecorded plat prepared by Byron Farmer thus became part of the deed to secure debt Jennings executed in favor of Miller. We agree with the trial court that this incorporated plat established an easement across the second tract of land.”); *Department of Transp. v. Ladson Investments*, 282 S.E.2d 171 (Ga. App. 1981) (holding that undisputed evidence demanded finding that express dedication had been made by transfer of property to condemnee with reference to plat showing 70-foot right-of-way, notwithstanding that plat was unrecorded); *Reed v. Reese*, 374 A.2d 665, 669 (Pa. 1977) (plat need not be recorded to be incorporated by reference: “We expressed no requirement that the plan be recorded and we indicated that recordation was not necessary by ruling incorporation by reference makes the plot plan part of the deed.”); *Oak Park Cemetery v. Donaldson*, 148 S.W.2d 994, 997 (Tex. Civ. App. 1940) (“From the issues submitted to the jury it appears that the case was tried on the theory that the sale of burial lots by the owner of a cemetery, with reference to an unrecorded plat of such cemetery, to purchasers who rely on such plat, will effect a dedication of the drives, parks, etc., shown on said plat, as well as the lots and blocks shown thereon. This principle is well established, of course, as applied to the sale of lots with reference to the plat of a townsite or addition to a city by the owner.”); cf. *Nagel v. Dean*, 101 N.W. 954, 955 (Minn. 1904) (“In the absence of statutory regulation, it is clear, where a party conveys urban property in accordance with descriptions contained in an unrecorded plat, that the effect is to dedicate streets and alleys therein described to the public use.”); *Bennett v. Seibert*, 35 N.E. 35, 37 (Ind. App. 1893) (“The mere act of surveying lands into lots, streets, and squares by the owner will not of itself amount to a dedication; yet a sale of lots with reference to such plat, map, or plan, whether recorded or not, will amount to an immediate and irrevocable dedication of such streets, etc., so far as the owner is concerned”).

been regarding five lots. Mr. Kehl's file also repeatedly referenced the transaction as being for five lots. (E.g., Def. Ex. 7 at WO003150, -3154, -3156, -3179 & -3182.)

8. **1981 REFERENCE IN THE RMC OFFICE.** The deed was recorded in the Greenville County R.M.C. office. (Def. Ex. 1 at D-260.) The RMC Index describes the transaction as for "5 lots Pelham Rd." (*Id.*, emphasis added.)

9. **THE SECOND DEED (1986).** The five lots were transferred on August 22, 1986, from Pelham Properties, Inc. to Mr. Stephens personally. This deed refers to the five lots in the same manner as the 1981 deed. (*Id.* at 262.)

10. **1986 REFERENCE IN THE RMC OFFICE.** This deed was recorded in RMC Deed Book 1274, at page 237. The Index describes the transaction as for "5 Lots Cnr Pelham & Proposed Rd . . ." (*Id.* at D-264, emphasis added.)

11. **THE STEPHENS 1988 AFFIDAVIT.** In 1988, in an affidavit submitted in connection with seeking a \$500,000 loan for which the property was to be collateral, Mr. Stephens described the property as "5 lots, Pelham Road." (Def. Ex. 7 at WO003160.) (His son Mike Stephens testified that the signature on the affidavit was his father's.)

12. **1988 LOAN ON FIVE LOTS.** Mr. Stephens received the \$500,000 loan from South Carolina National Bank in 1988. The loan documents describe the property as "containing five (5) lots as is more fully described in [the Plat]." (Def. Ex. 7 at WO003164.) The loan documents and the mortgage were conveyed to Mr. Stephens by his attorney's paralegal by letter dated March 16, 1988. The "RE" line for the letter is "Loan on 5 lots, Pelham Road from SCN." (Def. Ex. 7 at WO003161.)

13. **THE 1988 MORTGAGE.** The mortgage for the \$500,000 loan in favor of South Carolina National Bank was recorded on March 16, 1988. The property subject to the mortgage is described as "containing five (5) lots as is more fully shown on [the Plat]," as in the 1981 and the 1986 deeds. (Def. Ex. 8.)

14. **THE THIRD DEED (2003).** On July 15, 2003, Mr. Stephens transferred the lots and various other property to a revocable trust. (Def. Ex. 1 at D-266-70.) "Parcel Three" in that deed identifies the parcel as containing five lots. The description is the same as in the 1981 and 1986 deeds.

15. **THE FOURTH DEED (2008).** On April 1, 2008, Mr. Stephens transferred a one percent interest in the five lots from his revocable trust to Pelham Farm, LLC, Legacy One, LLC, and SESP LLC. (*Id.* at D-272-74.) These entities are referred to in this litigation as the Stephens Defendants. The description of the parcel as "containing five lots" as more fully shown in the Survey for Richard Watson is the same as in the prior deeds. (*Id.* at D-272], emphasis added.)

16. **THE 2008 REFERENCE IN THE RMC OFFICE.** This deed was filed in the Register of Deeds Office in Book 2320 at page 1674-76. The index again describes the five lots: "INT 5 LTS PELHAM ROAD." (*Id.* at D-276, emphasis added.)

17. **TESTIMONY OF PATRICK GRAYSON.** Mr. Grayson, who was involved in the adoption of the revised R&Cs in 1981 and the court proceeding before Judge McGowan,

testified that Mr. Stephens had insisted on the purchase of the five lots in order to consent to the revision of the R&Cs in 1981 and that the transfer of those lots was a pre-condition to the whole arrangement in 1981. (This is also shown in the letter of Wilkins Norwood, item 2 above.) He further testified that Judge McGowan, as shown in his order (*Id.* at D-74-249), had approved the transfer of the five lots which had then taken place. Mr. Grayson was also the person who had drafted the revised 1981 R&Cs. He testified that the intention behind the key language was that the Stephens' lots would each have a vote on the revision of the R&Cs.

18. **TESTIMONY OF COLEMAN SHOUSE.** Coleman Shouse, the former director of planning of the Planning Committee and a residential developer, testified that in his opinion the five lots were in fact lots. He also testified that the fact that the Plat had not been recorded had no bearing on whether the lots were in fact lots. He testified that recording of the relevant portion of the Plat (showing the five lots) as a summary plat was simply an administrative procedure, and that approval by the Planning Commission was not required.

19. **TESTIMONY OF WILLIAM KEHL OF THE WYCHE FIRM.** Mr. Kehl, as already noted, testified that Mr. Stephens had bought five lots. He also testified that he had provided a title opinion to that effect.

20. **TESTIMONY OF MICHAEL STEPHENS.** Michael Stephens, as noted above, is the son of James Stephens. He testified that he had seen the Plat in the 1980s, that he had understood then that his father had purchased the five lots shown on the Plat, that he was familiar with the Plat showing the five lots, and that his father had offered him one of the lots to build his home on.

21. **TESTIMONY OF LARRY ESTRIDGE.** Mr. Estridge, a leading real estate attorney in Greenville, testified that in his opinion Mr. Stephens had purchased five lots and was entitled to a vote for each in connection with the amendment of the R&Cs.

22. **TESTIMONY OF CLAIRE MANNING.** Mrs. Manning testified by deposition *de bene esse*. She is an attorney in Columbia, South Carolina and Vice President and State Manager for Chicago Title Insurance Company ("CTP"). She also has taught real estate law at the law school. She and her office were consulted by Mr. Grayson in connection with the efforts in 2008-09 to amend the R&Cs. Her office concluded that the Stephens lots were in fact lots and entitled to votes in connection with the effort to amend the R&Cs. As a result, Chicago Title had agreed to issue gave a commitment to issue title insurance if a majority vote was obtained for the amended R&C's with the Stephens lots having one vote each, since in they felt then that the amended R&C's would have been validly adopted and would be in full force and effect. (Manning Dep. at 20:21-21:6.) Mrs. Manning's testimony may be especially significant because it is from an entity that concluded the Stephens Lots were in fact lots and was willing to accept responsibility (via title insurance) for that conclusion.

As the foregoing list shows, the evidence at trial that the Stephens Lots were in fact lots was simply overwhelming.

II. PLAINTIFFS' ARGUMENT HAS NO BASIS

In the face of the evidence that the Stephens Lots were and are in fact lots, the Plaintiffs relied entirely on the fact that the Plat referenced in the deeds had not been recorded. However, Mr. Estridge and Mrs. Manning testified that transferring lots without recording the referenced plat as was done here was completely common and not at all unusual in the 1980s. To the best of counsel's recollection, Mr. Estridge testified that it "happened all the time." Mrs. Manning indicated that this is still the practice in Charleston. (Manning Dep. 35:7-13.) Both of them testified that the recording or non-recording of the Plat was immaterial to whether the Stephens Lots were in fact lots. Mr. Shouse's testimony was similar.

Plaintiffs' only witness, John Owings of the Planning Commission simply confirmed that they had been unable to find a recording of the Plat.⁴ He did not take a position on whether the lots were in fact lots. Moreover, he agreed that under the relevant ordinance (Greenville County Subdivision Regulations, as amended October 16, 1979, Def. Ex. 1 at D-278-342), the failure to record the Plat did not void the sale or mean that the lots were not lots. At most, the County could arguably have sued to enjoin the sale, but it did not, or it could have assessed a penalty of \$100 for each lot, but it did not.⁵ Indeed, Mr. Owings testified that the County has never attempted to enjoin a sale and has never assessed a penalty. Mr. Owings further agreed that the portion of the Plat showing the Stephens Lots could have been recorded as a summary plat, as

⁴ It is possible that a summary plat was in fact recorded but has been lost. As is obvious from the lot lines on the Tax map (and as Mrs. Manning testified (Dep. 18:11-15) and Mr. Shouse or Mr. Estridge also testified, to the best of counsel's recollection), it appears that a document (the Plat or a summary plat) had to be presented to the tax office since otherwise they would not have had the information necessary to draw the lots on the Tax map. (See item 5 in text above.)

⁵ The relevant section is 1.4 which states: "The owner or agent of the owner of any land located within the jurisdiction of the Planning Commission as described herein *who transfers or sells or agrees to sell such land by reference to or exhibition of or by other use of a plat of subdivision of such land before such plat has been approved by the Planning Commission and recorded in the office of the County Register of Mesne Conveyance shall forfeit and pay a penalty of one hundred dollars for each lot so transferred or sold or agreed or negotiated to be sold.* The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from such penalties. *The county may enjoin such transfer or sale or agreement by action for injunction or may recover the penalty by civil action.*" (Def. Ex. 1 at D-288-89, emphasis added.)

Mr. Shouse also testified. He also agreed with Mr. Shouse that a summary plat **DID NOT REQUIRE APPROVAL OF THE PLANNING COMMISSION** and that recording one was simply an administrative process.⁶ **Hence, there was nothing nefarious about WOPOA not recording a summary plat (no skirting Planning Commission review).**

The County did not enjoin the Mr. Stephen's purchase of the five Stephens Lots, and the purchase did in fact take place. As referenced above, several subsequent transfers took place. Title to the lots was certified by counsel in 1981. An affidavit was signed by Stephens attesting to the lots in 1988. A loan using the five lots as collateral was obtained in 1988. A mortgage for that loan referencing the five lots was recorded that same year. And Chicago Title gave a title insurance commitment predicated on the existence of the five lots in 2009..

The argument that the Stephens Lots are not lots because the Plat was not recorded simply has no merit.⁷ It is nothing more than a ruse (a grasp at a technicality) by a small group of homeowners (two couples!) to prevent the development of land according to its restrictions and covenants. As noted above, a plat referenced in a deed, whether recorded or not, is incorporated by reference. *See supra* notes 2 and 3.⁸ There is literally no law to the contrary and no law which says that a transfer of lots pursuant to an unrecorded plat is void. Plaintiffs have pointed to S.C. Code § 30-5-240 but it actually undermines their argument. The statute does say that a person

⁶ The ordinance does define "lot": "Lot – A portion of a subdivision or other parcel of land having a minimum of twenty (20) feet frontage on a public street and intended for transfer of ownership or for building purposes." (Def. Ex. 1 at D-286.) The Stephens Lots unquestionably meet this definition.

⁷ Jim Stephens certainly intended to buy and thought he had bought five lots. *See* his Offer (item 1 in list above) and his Affidavit (item 11 in list above); *see also* the Wilkins Norwood memo (item 2 above).

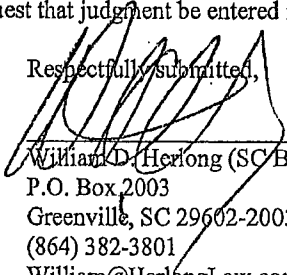
⁸ Plaintiffs have argued that S.C. Code §30-5-250 requires a plat to be recorded for it to be incorporated by reference. That is a misreading of the statute. The statute provides that a recorded plat can be incorporated by reference. It does not provide that an un-recorded plat cannot be incorporated by reference. Indeed, under the common law, as detailed in notes 2 and 3 above, an unrecorded plat can be incorporated by reference. If Plaintiffs' argument concerning §30-5-250 were correct, both of the South Carolina decisions referenced in note 3 above (*Sims v. Tyler*, 276 S.C. 640, 281 S.E.2d 229 (1981), and *Cook v. Eller*, 298 S.C. 395, 280 S.E.2d 853 (App. 1989)) would have been dramatically simpler. In both cases, the persons with the unrecorded plats would have immediately lost for that reason. But in both decisions, the Supreme Court and the Court of Appeals (and the trial courts) accepted conveyances based on unrecorded plats.

subdividing land according to a plat "shall file a plat or blueprint." However, if he fails to do that he merely becomes "liable to the purchaser or to any subsequent grantee of the land, or of any portion thereof, in such sum as shall be found necessary to procure and record such plat." In other words, the statute makes explicit that the sale is not void but is in fact valid. The owner is simply liable for the cost of procuring and recording the plat later.⁹ Finally, the concept of "record notice" is simply not applicable here since it applies to a dispute between persons over whose claim of title is superior. It does not mean that a plat has to be recorded to be operative. *See, e.g., Cook v. Eller*, 298 S.C. 395, 280 S.E.2d 853 (App. 1989) (deed based on unrecorded plat could prevail if other party's grantor had not been a bona fide purchaser).

CONCLUSION

Plaintiffs have failed to meet their burden of showing that the Stephens Lots were not lots under the 1981 R&Cs and thus not entitled to votes on the amendment to the R&Cs. Accordingly, Defendants respectfully request that judgment be entered in their favor.

Respectfully submitted,


William D. Herlong (SC Bar No. 14283)
P.O. Box 2003
Greenville, SC 29602-2003
(864) 382-3801
William@HerlongLaw.com

September 14, 2012

⁹ This also shows why Plaintiffs' argument regarding public policy is off-base. The county ordinance and the state statute both make explicitly clear, as shown in the text, that the transfer of a lot without a recorded plat is effective. If such a transfer were void as against public policy, the ordinance and the statute would need to say so clearly; further, there would be no need for the remedy provisions in the ordinance and statute; finally, there would be no ability of the public authorities to exercise discretion on whether to stop a sale as the County ordinance explicitly allows (the County "may" enjoin).

Further, if a transfer without a recorded plat were against public policy then, as already noted, the Supreme Court in *Sims v. Tyler*, 276 S.C. 640, 281 S.E.2d 229 (1981), would not have needed to engage in any analysis at all to determine who should prevail in that title dispute. The party with the deed referencing an unrecorded plat would have lost for that simple reason. Summary judgment would have been appropriate. There would have been no need for a full-blown trial on the issue of whether the grantor made a mistake in the earlier (recorded) deed conveying the property to the appellant. And the trial court could not possibly have found in favor of the person with the unrecorded plat, as it did.

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
C.A. NO.: 2009-CP-23-7707

R.C. Frederick Hanold, III and Rose)
F. Hanold, and Carol R. Mitchell and)
George P. Mitchell, Jr.,)

Plaintiffs/Counter)
Defendants)

v.)

PLAINTIFF'S POST TRIAL BRIEF

Watson's Orchard Property Owners)
Association, Inc., a SC Corporation)
And Pelham Farm, LLC, a SC)
Corporation, Legacy One, LLC, a)
SC Corporation, SESP, LLC, a)
SC Corporation, an unknown Trustee)
Of the Revocable Trust Agreement)
Dated March 19, 1996 established)
By James B. Stephens as amended)
And unknown Jay Stephens and)
Mike Stephens as Co-Personal)
Representative of the Estate of James)
B. Stephens,)

Defendants/Counter)
Plaintiffs)

v.)

Property Owners in Watson's)
Orchard Subdivision, et al)

Third Party)
Defendants)

This is an action for interpretation of the Declaration of Restrictions and Protective Covenants filed in the ROD Office for Greenville County affecting two parcels of land containing, respectively, 14.7 acres abutting Pelham Road and the parcel described as tract A abutting Haywood Road.

Plaintiffs' position is simple and concise, the Defendants lacked a majority vote as required under the Covenants.

The Covenants are somewhat unique in that in order to amend or modify the Covenants the vote is required of the owners of the lots of an adjoining subdivision which is not subject to the Covenants in addition to the owner of the lots of the property which is subject to the Covenants. The language to that effect, and which is ultimately determinative of the issue presented, is found in the second paragraph:

“....and shall inure to the benefit of each owner thereof and all owners of property in Watson Orchard Subdivision as shown on Plat recorded in the RMC Office for Greenville County in Plat Book 000, Page 99, and the lot in Plat Book 4-C Page 133, hereinafter referred to as “Watson's Orchard Subdivision”, until January 1, 2010 at which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each unless, by vote of a majority of the then owners of the lots into which the property described above shall have been developed and in Watson's Orchard Subdivision, (Emphasis added)

“The main guide in contract interpretation is to ascertain and give legal effect to the intentions of the parties as expressed in the language of the contract” Gilbert v. Miller, 586 S.C.2nd 861 (Ct. App. 2003). “If a contract's language is clear and capable of legal construction, this Court's function is to interpret its lawful meaning and the intent of the parties as found in the agreement” *id at 30-31* 586 S.C.2nd at 864. “A clear and explicit contract must be construed according to the terms the parties have used, with the terms to be taken and understood in their plain, ordinary and popular sense” *id*, 586 S.C.2nd at 864. “Under the parol evidence rule, extrinsic evidence is inadmissible to vary or contradict the terms of a contract” Penton v. J.F. Cleckley & Co., 486 S.C.2nd 742 (1997).

“Words of restrictive covenant will be given the common, ordinary meaning attributed to them at the time of their execution” Taylor v. Lindsey, 332 S.C. 1, 498 S.C.2nd 862 (1998).

“Restrictive covenants are contractual in nature, so that the paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document” (emphasis added) Taylor v. Lindsey (infra).

When “the language imposing restrictions upon use of property is unambiguous, the restrictions will be enforced according to their obvious meaning”, Shipyard Property Owners Association v. Mangiaracina, 307 S.C. 299, 414 S.C.2nd 705 (Ct.App. 1992). It is the Plaintiffs’ contention that the 1981 covenants and restrictions, interpreted from the four corners of the document, is unambiguous and when read in their plain, ordinary and popular meaning invalidate the votes cast by the defendants in this action..

The covenants themselves, other than the provision allowing enforcement and voting by property not subject to the covenants, were not atypical of residential covenants and restrictions utilized in that time frame. They restrict the property to single family residential use, prohibit certain nuisance and noxious activities, establish an architectural committee for control of the type and character of homes to be built thereon, regulate mailboxes and establish certain minimum lot sizes and building sizes that the property may be developed.

Subsequent to the imposition of the covenants by Lincoln of South Carolina, Inc., it conveyed the premises burdened by the restrictive covenants to Watson’s Orchard Property Owner’s Association, Inc., a corporation formed for the purpose stated in its articles of incorporation to “...engage in the business of selling and developing approximately 22.12 acres of residential real estate...” (emphasis added). Immediately after acquiring title, the property association conveyed a tract of land to the predecessor in title of the non-homeowners association defendants. At the time of the attempt to remove the covenants from the premises the evidence reflects that the property now consists of three tracts of land with three separate and

distinct tax map identification numbers and that none of the tracts have ever applied for, been approved for or recorded a subdivision plat, nor have any homes been constructed thereon.

Within the “four corners” of the document at issue there is no definition of the term “lot” or the term “developed”, nor is one necessary. Each has a plain ordinary meaning and must be reviewed, taken and understood in their plain, ordinary and popular sense.

The inclusion of clear and unambiguous language in the paragraph establishing the criteria for amendment which states “...by vote of a majority of the then owners of the lots into which the property described above shall have been developed and in Watson’s Orchard Subdivision...” means expressly that, “lots” that “have been developed” and is dispositive of this issue. To construe it in any other way would be to eliminate the language from the covenants entirely. If it meant the tracts were to have 15 votes then it would have said that. If it meant the tracts were to have the number of votes that it could be developed into, then it would have said that. If it was not mandatory that the lots have actually been developed it would have said “may” rather than shall. It did neither, instead it specifically inserted language that under any other interpretation would be superfluous, unnecessary and inapposite to what it does say. No machinations are needed to read it to say in order to vote the “lot” shall have been “developed”.

The plain, ordinary and popular sense use of these same words are contained within numerous cases, statutes and ordinances in effect at the time of its creation.

“Lot” is defined by the Greenville County Subdivision Ordinance that was in effect at the time of the creation of the covenants as “A portion of a subdivision or other parcel of land having a minimum of 20 feet frontage on, or approved access to, a public street and intended for transfer of ownership or for building purposes” (emphasis added). Although the word “developed” is not specifically defined in the Subdivision Ordinance, the plain and ordinary use of the term in

relation to real property is expressed within the very definition giving rise to the ordinance itself. "Subdivision-means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose, whether immediate or future, of sale, legacy, or building development." Black's Law Dictionary defines "lot" as "a share; one of several parcels into which property is divided" and it defines "develop" "to bring, or attempt to bring, to a state of fruition; continue the work in hand, as in operating under an oil and gas lease, in a manner that would discover oil, if it existed, and promote its production". The plain and ordinary use of the phrase "develop" is also contained in numerous statutes but perhaps most clearly used in it's ordinary sense by the following:

SECTION 12-43-224. Assessment of undeveloped acreage subdivided into lots. Notwithstanding the requirement that real property is required by law to be appraised at fair market value for ad valorem tax purposes, when undeveloped acreage is surveyed into subdivision lots and the conditional or final plat is recorded with the appropriate county official, the county assessor shall appraise each lot as an individual property and then discount his gross actual market value estimate of the developer's lot holdings under the following conditions:

Of course, the plain ordinary meaning of develop in the context of real estate needs no definition by statute, ordinance or case law. That common knowledge is expressed exactly as 99.99% of everyday people understand it in the section set forth above.

The uncontradicted evidence is that nothing, not one thing, has been done in the thirty years the Defendants have owned these properties to change their character. No subdivision plats have been prepared, no subdivision plats have been presented to the Greenville County Planning Commission, no improvements of roads, sewers, water or electricity have been installed, no building permits have been issued or buildings constructed, to the contrary the property has laid untouched the entire existence of these covenants and restrictions. These Defendants, who have

reaped the benefit for thirty years of paying less real property taxes on undeveloped tracts of land, now wish this court to anoint their property as "developed lots" just long enough for them to be able to vote not to have to use them as lots. To accept that contention by the Defendants, the court would have to construe the intent of the covenants as being to exist for a period of thirty years and then simply expire. Such an interpretation would essentially ignore every single word contained within the covenants.

South Carolina law requires the recordation of a plat whenever property is subdivided for the purpose of sale or offering of sale, Section 30-5-240 South Carolina Code of Laws, and the Greenville County Subdivision Ordinance prohibits the subdividing or offering for sale of property unless a subdivision plat is approved by the Greenville County Planning Commission and recorded. The ordinance and statute were in existence at the time of the creation of the covenants. In order for any "lot" to have been "developed" compliance with those laws was necessary, essential and obviously contemplated. No such compliance ever occurred. There is not now, nor has there ever been, a subdivision plat submitted to or approved by the Greenville County Planning Commission or any subdivision plat ever recorded.

Further evidence of the intent of the parties is contained within the document itself. The paragraph immediately following the paragraph defining a majority for the purposes of amendment defines persons entitled to enforce the covenants and states, "if the undersigned, its successors or assigns, or any property owner of any lot into which the property described above shall subsequently be cut should violate or attempt to violate..." (emphasis added). Article I, subparagraph (11) states "nothing herein contained shall be construed to prohibit the use of more than one lot or portions of one and more lots as a single residential building site, provided that said lot would otherwise meet the requirements as to size, frontage, set back line and directional

facing of said building as determined by the architectural committee". Article II, subparagraph (2) sets forth the frontage and lot size restrictions that the tracts may be minimally developed into.

The Declarant was not a party to this litigation. The only intent to be garnered in the construction of the agreement is that of the Declarant from the agreement itself absent an ambiguity. No action performed by the Defendants or the Plaintiffs prior, or subsequent, to the recording of the declaration has any relevance to the interpretation of the document.

Defendants' entire case, in a nutshell, relies upon the phrase, "containing 5 lots" in a deed from the defendant, Watson's Orchard Property Owners Association, Inc. to the other defendants. This deed, if admissible at all, is relevant only to the issue as to whether the Stephen's property had been "developed" into "lots".

While the deed does state that it is conveying property "containing five lots" the legal description of the deed is a metes and bounds boundary description of a tract containing approximately 6.5 acres. It does not and could not "create" 5 lots, that would have required an approved and recorded subdivision plat. What it does mean, giving the word "containing" its plain ordinary meaning (to hold or contain within its volume or area), is that the tract conveyed contained a sufficient volume of land to allow it to be developed into 5 lots under the existing covenants and restrictions. The effect of the transfer was no greater than that which occurred when the property association acquired title to its tract. There were now two tracts of land rather than one, each of which could be developed into lots but never were. (It was lawful in 1981 to subdivide a tract into parcels of at least 5 acres without approval of the Planning Commission). Defendants' "expert" witnesses were anything but. To a person they avoided the word developed and rather than opine on the "plain, ordinary and popular meaning of the phrase,

obfuscated, convoluted and unsupported “opinions” that somehow that was an acceptable subdivision under the terms of the Covenants. Having heard the testimony I am still unclear on what basis they arrived at their conclusions but am certain it was not by giving the terms their plain, ordinary and popular meaning. The probable reason our courts do not allow a grantor to testify to what he “meant” to say was demonstrated by the testimony of the drafter of the Covenants. To testify that the word used should be given the definition of a word that was not used is completely adverse to the criteria for construing a document. Testimony that good title could be conveyed based solely on reference to an unrecorded plat is even more ludicrous. See Section 30-5-250 (S.C. Code of Laws.) That would be especially true in the case at hand as it was uncontroverted that the plat referenced in the deed could never be recorded.

Likewise, reliance upon repetitions of an incorrect statement can’t ever make the original statement correct. If I tell someone I have a cat when I actually have a dog, no matter how many people they repeat it to or how many times it gets written down, I still have a dog.

A final impediment to the Defendants’ reliance upon the single phrase contained within the prefatory portion of the deed description is that allowing the deed to constitute a subdivision would constitute the enforcement of an illegal contract. “The authorities from the earliest time to the present unanimously hold that no court will lend its assistance in any way towards carrying out the terms of an illegal contract. In case any action is brought which it is necessary to prove the illegal contract in order to maintain the action, courts will not enforce it, nor will they enforce any alleged rights directly springing from such contract”, Jackson v. Bi-Lo Stores, Inc., 437 S.C.2nd 168 (Ct. App. 1993). “The general rule, well established in South Carolina, is that courts will not enforce a contract when the subject matter of the contract or an act required for performance violates public policy as expressed in constitutional provisions, statutory law, or

judicial decision”, Beach Co. v. Twillman, Ltd., 566 S.C.2nd 863 (Ct. App. 2002). It is a well-settled principle of contract law that “a contract to do an act which is prohibited by statute, or which is contrary to public policy, is void, and cannot be enforced in a court of justice.” McConnell v. Kitchens, 20 S.C. 430, 43738 (1884); *see also* Pendarvis v. Berry, 214 S.C. 363, 369, 52 S.E.2d 705, 707 (1949) *See also* Cent. States Health & Life Co. of Omaha v. Miracle Hills Ltd. P’ship, 456 N.W.2d 474 (Neb. 1990) (holding that when a lease restricts the use of a premises to a single purpose that is prohibited by zoning regulations, that lease is unenforceable and relieves the parties of all obligations thereunder). As such, the parties must be left as the court found them. *See* 17A C.J.S *Contracts* § 362 (2011) (“As a general rule, both at law and in equity, a court will not aid either party to an illegal contract... but leaves the parties where it finds them.”). Atlantic Coast Builders v Lewis, Opinion 27044 (2012). (“Men may enter into any agreements they please and, as between themselves, may either respect or disregard them. When, however, they are submitted to the courts for adjudication, they must be tested and governed by the law.”) Pendarvis v. Berry, 52 S.C.2nd 705 (1949).(quoting Gilliland v. Phillips, 1 S.C. 152 (1869).

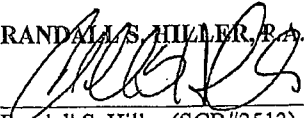
Defendants’ alleged “subdivision” of the tract into “lots” by virtue of a deed is undeniably violative of public policy and statutory law and therefore cannot be a basis, under any circumstances, for its claim of five votes.

The covenants clearly and unambiguously impose a condition precedent on the subject property which must be complied with before that property is entitled to a vote. The condition is that only those “lots which shall have been developed” are entitled to vote. No lots have been developed under any possible interpretation of the plain ordinary meaning of that phrase nor as

required by both state and county law and Plaintiffs are entitled to a declaration that the votes cast by the owners of those properties are invalid as a matter of law.

Respectfully Submitted,

RANDALL S. HILLER, P.A.



Randall S. Hiller (SCB#2513)

850 Wade Hampton Blvd.

Greenville, SC 29609

864-232-0026

864-242-4692 Fax

Attorney for Plaintiffs

Greenville, South Carolina
September 14, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2009-CP-23-7707

R.C. Frederick Hanold, III and Rose F. Hanold, and Carol R. Mitchell and George P. Mitchell, Jr., plaintiffs/counter-defendants below, ... Primary Respondents,

v.

Watson's Orchard Property Owners Association, Inc., a South Carolina Corporation, and Pelham Farm, LLC, a South Carolina Corporation, Legacy One, LLC, a South Carolina Corporation, SESP LLC, a South Carolina Corporation, an unknown Trustee of the Revocable Trust Agreement Dated March 19, 1996 established by James B. Stephens as amended, and unknown Jay Stephens and Mike Stephens as Co-Personal Representative of the Estate of James B. Stephens, defendants/counterplaintiffs below, of whom all but Watson's Orchard Property Owners Association, Inc., are the Appellants,

v.

Property Owners in Watson's Orchard Subdivision: N. Carter Poe, III; McNally Reeves, as Trustee of the Residual Trust under item Five of the Last Will and Testament of Hattie L. Reeves dated February 9, 1998; Janet B. Yusi; Lucy S. Tiller; James G. Stephens; Rachel P. McKaughan; Ramon J. Ashy and Jana Ashy; Christopher D. Scalzo and Heather V. Scalzo; Erma R. Rash, as Trustee of the Erma R. Rash Revocable Trust dated February 12, 2010; James Edwin Conrad, as Trustee of the James Edwin Conrad Living Trust dated September 7, 2010; Sue Lane Conrad; Horst H. H. Eschenberg and Floride C. Eschenberg; Caryl L. Clover, as Trustee of the Caryl L. Clover Revocable Living Trust Agreement dated May 12, 1999; Mary F. Newell; Timothy M. Conroy and Elizabeth W. Conroy; Nathan Scolari; Joel Wells Norwood and Lynn Norwood; J. Lynn Shook; Juan Hernandez and Janice M. Pelletier; Scott P. Payne and Kathleen H. Payne; Joe G. Thomason and Dana L. Henry Thomason; Traci Segura; Cameron E. Smith and Joan B. Smith; Charles E. Howard and Sharon F. Howard; Penelope J. Galbraith; Meredith C. Vry; Delores B. Mitchell; Lisette M. Silva and Mary F. Colley; Ilona K. Alford and William G. Alford; George T. McLeod and Martha T. McLeod; Ronald S. Wilson and Robin E. Wilson; The Merrill J. Gildersleeve and Anore L. Novak Revocable Living Trust dated November 1, 1996; Anna Marie T. Azores and Kim O. Gococo; Ashley Westrope as Trustee of Martha Randolph Westrop Trust dated June 6, 1988; Cliff C.

Jollie and Martha W. Jollie; David A. Saliny and Xiaoli Saliny; Lecia S. Franklin; Dean D. Varner and Deborah P. Varner; W. Frank Durham, Jr.; Christine M. Howard; Samuel P. Howard, Jr. and Jane H. Howard; Manfred E. Kramer and Jane J. Kramer; Mary J. Steele; James J. Barrett, III and Kimberly A. Barrett; Richard A. Herman and Patricia L. Herrman, third-party defendants, ... Respondents-in-default-below.

NOTICE OF APPEAL

Defendant/counter-plaintiffs Pelham Farm, LLC, a South Carolina Corporation, Legacy One, LLC, a South Carolina Corporation, SESP LLC, a South Carolina Corporation, an unknown Trustee of the Revocable Trust Agreement Dated March 19, 1996 established by James B. Stephens as amended, and unknown Jay Stephens and Mike Stephens as Co-Personal Representative of the Estate of James B. Stephens, appeal the judgment of the Honorable Edward W. Miller, dated October 12, 2012, and confirmed by denial of their motion for reconsideration on January 28, 2013. Appellants received written notice of the denial of the motion for reconsideration on January 29, 2013. (Copies enclosed.)

Dated: February 25, 2013



William D. Herlong
The Herlong Law Firm, LLC
531 S. Main St., Ste. 201
P.O. Box 2003
Greenville, SC 29602-2003
(864) 382-3801
William@HerlongLaw.com
Attorney for Appellants

Other counsel of record:
Randall S. Hiller
P.O. Box 1716
Greenville, SC 29602
(864) 232-0026

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2009-CP-23-7707

R.C. Frederick Hanold, III and Rose F. Hanold, and Carol R. Mitchell and George P. Mitchell, Jr., plaintiffs/counter-defendants below, ... Primary Respondents,

v.

Watson's Orchard Property Owners Association, Inc., a South Carolina Corporation, and Pelham Farm, LLC, a South Carolina Corporation, Legacy One, LLC, a South Carolina Corporation, SESP LLC, a South Carolina Corporation, an unknown Trustee of the Revocable Trust Agreement Dated March 19, 1996 established by James B. Stephens as amended, and unknown Jay Stephens and Mike Stephens as Co-Personal Representative of the Estate of James B. Stephens, defendants/counterplaintiffs below, of whom all but Watson's Orchard Property Owners Association, Inc., are the Appellants,

v.

Property Owners in Watson's Orchard Subdivision: N. Carter Poe, III; McNally Reeves, as Trustee of the Residual Trust under item Five of the Last Will and Testament of Hattie L. Reeves dated February 9, 1998; Janet B. Yusi; Lucy S. Tiller; James G. Stephens; Rachel P. McKaughan; Ramon J. Ashy and Jana Ashy; Christopher D. Scalzo and Heather V. Scalzo; Erma R. Rash, as Trustee of the Erma R. Rash Revocable Trust dated February 12, 2010; James Edwin Conrad, as Trustee of the James Edwin Conrad Living Trust dated September 7, 2010; Sue Lane Conrad; Horst H. H. Eschenberg and Floride C. Eschenberg; Caryl L. Clover, as Trustee of the Caryl L. Clover Revocable Living Trust Agreement dated May 12, 1999; Mary F. Newell; Timothy M. Conroy and Elizabeth W. Conroy; Nathan Scolari; Joel Wells Norwood and Lynn Norwood; J. Lynn Shook; Juan Hernandez and Janice M. Pelletier; Scott P. Payne and Kathleen H. Payne; Joe G. Thomason and Dana L. Henry Thomason; Traci Segura; Cameron E. Smith and Joan B. Smith; Charles E. Howard and Sharon F. Howard; Penelope J. Galbraith; Meredith C. Vry; Delores B. Mitchell; Lisette M. Silva and Mary F. Colley; Ilona K. Alford and William G. Alford; George T. McLeod and Martha T. McLeod; Ronald S. Wilson and Robin E. Wilson; The Merrill J. Gildersleeve and Anore L. Novak Revocable Living Trust dated November 1, 1996; Anna Marie T. Azores and Kim O. Gococo; Ashley Westrope as Trustee of Martha Randolph Westrop Trust dated June 6, 1988; Cliff C.

Jollie and Martha W. Jollie; David A. Saliny and Xiaoli Saliny; Lecia S. Franklin; Dean D. Varner and Deborah P. Varner; W. Frank Durham, Jr.; Christine M. Howard; Samuel P. Howard, Jr. and Jane H. Howard; Manfred E. Kramer and Jane J. Kramer; Mary J. Steele; James J. Barrett, III and Kimberly A. Barrett; Richard A. Herman and Patricia L. Herrman, third-party defendants below, ... Respondents-in-default-below.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Primary Respondents by depositing a copy of it in the United States Mail, postage prepaid, on this date, addressed to their attorney of record, Randall S. Hiller, P.O. Box 1716, Greenville, SC 29602, and on the Respondents-in-default-below and were not represented by counsel, by depositing a copy of it in the United States Mail, postage prepaid, on this date, addressed as indicated in the following list:

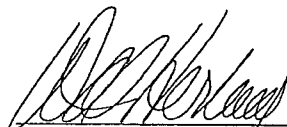
N. Carter Poe, III 515 Pelham Road Greenville, SC 29615
McNally Reeves, as Trustee of the Residual Trust under item Five of the Last Will and Testament of Hattie L. Reeves dated February 9, 1998 602 Pelham Road Greenville, SC 29615
Janet B. Yusi 609 Pelham Road Greenville, SC 29615
Lucy S. Tiller 615 Pelham Road Greenville, SC 29615
James G. Stephens 621 Pelham Road Greenville, SC 29615
Rachel P. McKaughan 627 Pelham Road Greenville, SC 29615
Ramon J. Ashy and Jana Ashy 655 Pelham Road Greenville, SC 29615
Erma R. Rash, As Trustee of the Erma R. Rash Revocable Trust dated February 12, 2010 28 Darien Way Greenville, SC 29615

Christopher D. Scalzo and Heather V. Scalzo 9 Graystone Road Greenville, SC 29615
James Edwin Conrad, as Trustee of the James Edwin Conrad Living Trust dated September 7, 2010 20 Darien Way Greenville, SC 29615
Sue Lane Conrad 316 Sunset Drive Weems, VA 22576
Horst H. H. Eschenberg and Floride C. Eschenberg 16 Darien Way Greenville, SC 29615
Caryl L. Clover, as Trustee of the Caryl L. Clover Revocable Living Trust Agreement dated May 12, 1999 6 Darien Way Greenville, SC 29615
Mary F. Newell 4 Darien Way Greenville, SC 29615
Timothy M. Conroy and Elizabeth W. Conroy 21 Highbourne Drive Greenville, SC 29615
Nathan Scolari 101 Highbourne Drive Greenville, SC 29615
Joel Wells Norwood and Lynn Norwood 105 Highbourne Drive Greenville, SC 29615
J. Lynn Shook 107 Highbourne Drive Greenville, SC 29615
Juan Hernandez and Janice M. Pelletier 203 Highbourne Drive Greenville, SC 29615
Scott P. Payne and Kathleen H. Payne 205 Highbourne Drive Greenville, SC 29615
Joe G. Thomason and Dana L. Henry Thomason 103 Sweetbriar Drive Greenville, SC 29615

Traci Segura 211 Highbourne Drive Greenville, SC 29615
Cameron E. Smith and Joan B. Smith 209 Highbourne Drive Greenville, SC 29615
Charles E. Howard and Sharon F. Howard 213 Highbourne Drive Greenville, SC 29615
Penelope J. Galbraith 215 Highbourne Drive Greenville, SC 29615
Meredith C. Vry 310 Highbourne Drive Greenville, SC 29615
Delores B. Mitchell 108 Graystone Road Greenville, SC 29615
Lisette M. Silva and Mary F. Colley 102 Graystone Road Greenville, SC 29615
Ilona K. Alford and William G. Alford 100 Graystone Road Greenville, SC 29615
George T. McLeod and Martha T. McLeod 21 Darien Way Greenville, SC 29615
Ronald S. Wilson and Robin E. Wilson 19 Darien Way Greenville, SC 29615
The Merrill J. Gildersleeve and Anore L. Novak Revocable Living Trust dated November 1, 1996 17 Darien Way Greenville, SC 29615
Anna Marie T. Azores and Kim O. Gococo 15 Darien Way Greenville, SC 29615
Ashley Westrope as Trustee of Martha Randolph Westrop Trust dated June 6, 1988 11 Darien Way Greenville, SC 29615
Cliff C. Jollie and Martha W. Jollie 5 Darien Way Greenville, SC 29615

David A. Saliny and Xiaoli Saliny 3 Darien Way Greenville, SC 29615
Lecia S. Franklin 100 Highbourne Drive Greenville, SC 29615
Dean D. Varner and Deborah P. Varner 200 Highbourne Drive Greenville, SC 29615
W. Frank Durham, Jr. 208 Highbourne Drive Greenville, SC 29615
Christine M. Howard 202 W. Stone Avenue Greenville, SC 29609
Samuel P. Howard, Jr. and Jane H. Howard 214 Highbourne Drive Greenville, SC 29615
Manfred E. Kramer and Jane J. Kramer 220 Highbourne Drive Greenville, SC 29615
Mary J. Steele 224 Highbourne Drive Greenville, SC 29615
James J. Barrett, III and Kimberly A. Barrett 107 Graystone Road Greenville, SC 29615
Richard A. Herman and Patricia L. Herrman 10 Graystone Road Greenville, SC 29615

Dated: February 25, 2013



William D. Herlong
The Herlong Law Firm, LLC
531 S. Main St., Ste. 201
P.O. Box 2003
Greenville, SC 29602-2003
(864) 382-3801
William@HerlongLaw.com
Attorney for Appellants

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
C.A. NO.: 2009-CP-23-7707

R.C. Frederick Hanold, III and Rose)
F. Hanold, and Carol R. Mitchell and)
George P. Mitchell, Jr.,)

Plaintiffs/Counter
Defendants)

v.)

ORDER

Watson's Orchard Property Owners)
Association, Inc., a SC Corporation)
And Pelham Farm, LLC, a SC)
Corporation, Legacy One, LLC, a)
SC Corporation, SESP, LLC, a)
SC Corporation, an unknown Trustee)
Of the Revocable Trust Agreement)
Dated March 19, 1996 established)
By James B. Stephens as amended)
And unknown Jay Stephens and)
Mike Stephens as Co-Personal)
Representative of the Estate of James)
B. Stephens,)

Defendants/Counter)
Plaintiffs)

v.)

Property Owners in Watson's)
Orchard Subdivision, et al)

Third Party)
Defendants)

FILED
2012 OCT 19 PM 2:58
CLERK OF COURT
JAMES B. STEPHENS

This declaratory judgment action was tried before me on September 4 and 5, 2012. Randall S. Hiller, Esq. represented the Plaintiffs and William B. Herlong, Esq. represented the Defendants. The Third Party Defendants, comprising all of the remaining title holders of lots in Watson's Orchard Subdivision did not answer the third party complaint.

H/

Plaintiffs seek a declaration that the agreement to release Declaration of Restrictions and Protective Covenants filed of record by the Defendants in the Greenville County ROD Office on November 9, 2009 in Deed Book 2364 at Page 2445 and as amended on December 21, 2009 in Deed Book 2366 at Page 1183 are invalid. The Plaintiff contends the number of votes calculated by the Defendants violated the provisions of the original covenants and restrictions which results in a failure to obtain sufficient votes to authorize the release. I agree.

The historical background of the factual circumstances leading to the recordation of the covenants and restrictions which are the subject of this action are not in dispute. In the 1960s Richard Watson and his wife began to develop their substantial landholdings, which up until that time had been an Orchard. The property stretched from what is now Interstate 385 up to and across Pelham Road. Restrictions were placed on the entire property owned by Mr. Watson requiring the properties use as single family residential. Subsequently, a subdivision plat was recorded creating 47 lots in what is known as Watson's Orchard Subdivision. These lots were developed into upscale homes.

In late 1979 it became apparent to Mr. Watson that the restricted property south of Pelham Road would realize a greater value if developed commercially. As a result he entered into negotiations with the owners of the subdivided lots in Watson's Orchard for the purpose of obtaining a release of the restrictions as to residential use for substantially all the property he owned south of Pelham Road.

Those negotiations ultimately resulted in all but J.B. Stephens agreeing to execute a release of the restrictions in exchange for the transfer of a buffer zone consisting of approximately 22 acres which was to be developed and sold as single family residential lots. The buffer zone was to be subject to previously approved covenants and restrictions which were very similar to the covenants already in place on the Watson's Orchard Subdivision. The property was to be owned by a corporation, the Defendant Watson's Orchard Property Owners Association, Inc., a for-profit South Carolina corporation (WOPOA), which was tasked with the responsibility of developing and selling the subject parcels. The stock in the corporation was granted to the then owners of the 46 remaining lots in Watson's Orchard who would ultimately realize the financial benefits when the property was sold. While Mr. Stephens did not participate in the creation of the

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corporation or receive any stock in the corporation his cooperation was gained by allowing his purchase from the corporation of approximately 6 acres directly across Pelham Road from his home which contained sufficient property to allow it to be subdivided into 5 residential lots.

At the conclusion of the negotiations a friendly suit was initiated by Watson's company to confirm the transaction and quiet title to the premises being released from the covenants and restrictions.

Lincoln of South Carolina, Inc., as Declarant, then imposed the Covenants and Restrictions which are the subject of this action upon the 22 acres and thereafter conveyed the property to the Defendant, Watson's Orchard Property Owners Association, Inc.. The Defendant, Watson's Orchard Property Owners Association, Inc., then conveyed the approximately 6 acre tract of land to J.B. Stephens (Stephens tract), whose successors are also Defendants in this action.

Although the restrictive covenants only apply to the 2 tracts of land initially conveyed to Watson's Orchard Homeowners Association the covenants may not be amended without a majority vote of the current property owners of Watson's Orchard Subdivision.

Public records reflect that the property which is the subject of the covenants and restrictions has since 1981 consisted of 3 tracts of land for property tax purposes and there has never been a plat filed for record of any of the subject property.

Both parties acknowledged at trial that if, as Plaintiff contends, the votes attributed to the WOPOA tracts and Stephens tract were not valid then the amended declarations as filed were equally invalid for lack of a majority. The Defendants' contend that the Defendants' properties qualified for multiple votes under the language contained therein. For the many reasons set forth hereinbelow the Court concludes that it does not.

~~South Carolina has been a record notice state since at least 1839. Title 30 of the~~
South Carolina Code of Laws is entirely devoted to public records and recordation of documents with Chapter 7 thereof specifically stating that recordation is essential to validity. This state maintains facilities in every County solely for the purpose of the recordation of documents affecting real estate.

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Both sides agree that the language contained within the covenants that must be interpreted and applied by this Court is as follows:

“...by vote of a majority of the then owners of the lots into which the property described above shall have been developed and in Watson’s Orchard Subdivision...”

I find this language unambiguous. “The main guide in contract interpretation is to ascertain and give legal effect to the intentions of the parties as expressed in the language of the contract” Gilbert v. Miller, 586 S.C.2nd 861 (Ct. App. 2003). “If a contract’s language is clear and capable of legal construction, this Court’s function is to interpret its lawful meaning and the intent of the parties as found in the agreement” *id* at 30-31 586 S.C.2nd at 864. “A clear and explicit contract must be construed according to the terms the parties have used, with the terms to be taken and understood in their plain, ordinary and popular sense” *id*, 586 S.C.2nd at 864. “Under the parol evidence rule, extrinsic evidence is inadmissible to vary or contradict the terms of a contract” Penton v. J.F. Cleckley & Co., 486 S.C.2nd 742 (1997).

“Words of restrictive covenant will be given the common, ordinary meaning attributed to them at the time of their execution” Taylor v. Lindsey, 332 S.C. 1, 498 S.C.2nd 862 (1998). “Restrictive covenants are contractual in nature, so that the paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document” (emphasis added) Taylor v. Lindsey (*infra*).

When “the language imposing restrictions upon use of property is unambiguous, the restrictions will be enforced according to their obvious meaning”, Shipyard Property Owners Association v. Mangiaracina, 307 S.C. 299, 414 S.C.2nd 705 (Ct.App. 1992).

It is the Plaintiffs’ contention that the 1981 covenants and restrictions, interpreted from the four corners of the document, is unambiguous and thus no further evidence is admissible regarding the parties’ intent and they should be, and can be, enforced according to their obvious meaning.

The covenants themselves, other than the provision allowing enforcement and voting by property not subject to the covenants, were not atypical of residential covenants and restrictions utilized in that time frame. They restrict the property to single family residential use, prohibit certain nuisance and noxious activities, establish an architectural

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committee for control of the type and character of homes to be built thereon, regulate mailboxes and establish certain minimum lot sizes and building sizes that the property may be developed.

Subsequent to the imposition of the covenants by Lincoln of South Carolina, Inc., it conveyed the premises burdened by the restrictive covenants to Watson's Orchard Property Owner's Association, Inc., a corporation formed for the purpose stated in its articles of incorporation to "...engage in the business of selling and developing approximately 22.12 acres of residential real estate..." (emphasis added). Immediately after acquiring title, the property association conveyed a tract of land to the predecessor in title of the other Defendants. At the time of the attempt to remove the covenants from the premises the public records would reflect that neither of the tracts have ever applied for, been approved for or recorded a subdivision plat, nor have any homes been constructed thereon.

Applying these standards and giving the words "lot" and "developed" the plain, ordinary meaning which would have been attributed to them at the time of their execution means exactly what it says, lots that have been developed. To construe it in any other way would essentially eliminate the language from the covenants entirely. It is not permissible for this Court, in the face of clear and unambiguous language, to attempt to ascertain whether the Declarant of the document might have intended it to say something other than what it does. In order to read this language in the manner proposed by the Defendant it would be necessary to insert additional language into the covenants. That is not the Court's province. It does not say might be developed, it does not say may be developed, it does not say could be developed. It says that the lots into which the property shall have been developed will have a vote.

Because I have found the original covenants and restrictions unambiguous I have not relied upon or considered the additional evidence submitted other than as set forth below, however were it necessary to do so I would find that such evidence supports the interpretation I have applied to the covenants.

Having determined that the language within the covenants are clear and unambiguous and having given them their plain and ordinary meaning the only issue

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remaining is whether the subject premises have been developed into lots as contemplated by the covenants.

The Plaintiffs' position, supported by the testimony of the administrator of the Greenville County Planning Commission, is that absolutely nothing has been done to the subject property subsequent to the recording of the covenants that could or would constitute its development into lots. The testimony was uncontradicted that there existed at the time of the recordation of the covenants a subdivision ordinance in Greenville County and such subdivision ordinance has remained in place, with some amendments, throughout the existence of the covenants. It is uncontradicted that in order to subdivide or offer for sale, in compliance with the Ordinance, the five lots the Defendant contends have been developed would require the submission to the planning commission of a plat meeting the requirements of the ordinance, stamped as recordable and then the recording of the plat. The evidence is also uncontradicted that no such application was made, no plat was ever submitted, no approval was ever granted and no plat was ever recorded. Finally, it was also uncontradicted that the subject property had a single tax map number and, as of the date of the attempted cancellation of the restrictive covenants, the property could not be legally sold as Five (5) individual lots.

In addition to the Greenville County Subdivision Ordinance, Section 30-5-240 of our recordation statute specifically requires the recordation of a plat whenever property is subdivided for the purpose of sale or offering of sale and Section 30-5-230 authorizes reference in recorded documents to recorded plats in lieu of the necessity of a metes and bounds description of the property.

Defendant's arguments to the contrary are essentially threefold. Primarily, the Defendant relies upon the prefatory language contained within the deed from WOPOA which states "containing five (5) lots" and then references a plat which was never recorded (and per the testimony of the planning commission could never be recorded). The actual description contained within the deed is a metes and bounds description of the boundary of the entire tract. The Defendant also relies on various documents contained within the 1980 lawsuit and the repetition of the "five lots" referenced in various attorneys' files and indexes. Finally, the Defendant contends that the aforementioned

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language in the deed constituted a subdivision for the purposes of creating additional votes pursuant to the covenants without regard to its otherwise illegality as a subdivision.

Despite the fact that the character of the property owned by the Defendants has not changed in thirty years, no subdivision plat has ever been prepared or recorded and the claimed lots within the property could not be legally be sold, the Defendant wishes this Court to award it votes for lots that do not and cannot legally exist only long enough for the Defendants to vote that the lots will never exist.

These arguments are unpersuasive. The documents and the deed relied upon by the Defendants are transactions between the Defendants. The Declarant of the Covenants and Restrictions was not a party to the conveyance and the Covenants were recorded in advance of the deed. The intent of the parties to the conveyance has no relevancy whatsoever to the intent of the Declarant of the Covenants. Even were that not the case, I find no evidence whatsoever that any attempt or effort was made to develop this property in the context that I have determined the covenants require. To the contrary, the only evidence of the intent of the Grantee for the Stephens tract was the testimony of his personal attorney that he had no intention of preparing or filing a subdivision plat because he purchased the property as a buffer for his existing residence.

As stated previously, South Carolina is a record state. Everyone is presumed to know the law. Six acres of property having a single tax map number for thirty consecutive years does not and can not qualify under the clear language of the covenants as having been developed into five lots. Whether it could have, should have, or whether someone somewhere intended that it be does not equate to actually doing it as the law in the State of South Carolina requires it to be done. It is plain and obvious under the language of the covenants that these properties were intended to be subdivided into lots, sold and to have houses sitting upon them long before the date for renewal of the covenants arrived. It is equally plain and obvious that doing nothing that the law required to develop and sell the property could not qualify as developing lots in the context of the covenants. To construe "lots which shall have been developed" to mean anything other than the lots being developed in accordance with local and state law would require both a complete disregard of all of the above enumerated factors to be considered in interpreting covenants and abandoning all common sense. Simply drawing lines on a piece of paper

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or referring to their property as lots is obviously not what the covenants intended "shall have been developed" to mean.

Defendant's testimony from the former and current directors of the Greenville County Planning Commission implying that it was not uncommon to violate the statute or that no one had been prosecuted for violating the statute is irrelevant. This Court will not "find" that a subdivision occurred in violation of state and county law under any circumstances. "The authorities from the earliest time to the present unanimously hold that no court will lend its assistance in any way towards carrying out the terms of an illegal contract. In case any action is brought which it is necessary to prove the illegal contract in order to maintain the action, courts will not enforce it, nor will they enforce any alleged rights directly springing from such contract", Jackson v. Bi-Lo Stores, Inc., 437 S.C.2nd 168 (Ct. App. 1993). "The general rule, well established in South Carolina, is that courts will not enforce a contract when the subject matter of the contract or an act required for performance violates public policy as expressed in constitutional provisions, statutory law, or judicial decision", Beach Co. v. Twillman, Ltd., 566 S.C.2nd 863 (Ct. App. 2002). It is a well-settled principle of contract law that "a contract to do an act which is prohibited by statute, or which is contrary to public policy, is void, and cannot be enforced in a court of justice." McConnell v. Kitchens, 20 S.C. 430, 43738 (1884); see also Pendarvis v. Berry, 214 S.C. 363, 369, 52 S.E.2d 705, 707 (1949) ("Men may enter into any agreements they please and, as between themselves, may either respect or disregard them. When, however, they are submitted to the courts for adjudication, they must be tested and governed by the law.") (quoting Gilliland v. Phillips, 1 S.C. 152 (1869)).

Even were this Court not prohibited in aiding in the avoidance of the law, it is the Court's conclusion that the deed and unrecorded survey do not, nor did they, constitute a subdivision of the property under state or local law nor did they constitute the development of the property into lots under the plain language of the covenants.

During the course of the trial the Defendants proffered purported expert testimony, over the objection of the Plaintiff, which ultimately was decidedly unhelpful. After careful review the Court is of the opinion that the Plaintiffs' objection to this testimony and evidence was well founded. The testimony of the experts amounted to

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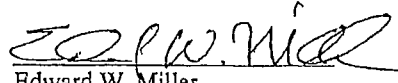
nothing more than an expression of their opinion as to how the covenants and restrictions should be interpreted and how the subsequent treatment of the property should be applied to that interpretation. The opinions themselves displayed, at times, a lack of complete knowledge of the circumstances as well as a complete lack of any citation to authority to support the opinions. Ultimately the experts opined only on the very issue that it is the sole responsibility of this Court to determine, the construction and application of the facts and law. I have not relied on any of those opinions in making my rulings in this matter.

Based upon the forgoing I make the following findings of fact:

1. That the subject matter and the parties are within the jurisdiction of and properly before this Court.
2. That the covenants and restrictions recorded in Deed Book 1140 at Page 961 applies and restricts the property which is the subject of this action.
3. That the covenants and restrictions are unambiguous.
4. That the covenants and restrictions unambiguously provide a vote for the purpose of amending the covenants only to lots which shall have been developed.
5. That the property owned by the Defendant, Watson's Orchard Property Association, Inc. and the property presently owned by the Defendants, Pelham Farm, LLC, Legacy One, LLC, SESP, LLC, an unknown trustee of the revocable trust agreement dated March 19, 1996 established by James B. Stephens as amended, and J. Stephens and Mike Stephens as co-personal representatives of the estate of James B. Stephens, has not been developed into lots for the purpose of being entitled to vote to amend or modify the restrictive covenants.
6. That the agreement to release declarations and restrictions and protective covenants recorded in Deed Book 2364 at Page 2445 on November 9, 2009 and as amended by recording in Deed Book 2366 at Page 1183 on December 21, 2009 in the ROD Office for Greenville County are void and of no force and effect.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, That the agreement to release declarations and restrictions and protective covenants recorded in Deed Book 2364 at Page 2445 on November 9, 2009 and as amended by recording in Deed Book 2366 at Page 1183 on December 21, 2009 in the ROD Office for Greenville County are void and of no force and effect.

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Edward W. Miller
Circuit Court Judge, 13th Circuit

Dated: 10/19/12

Greenville, South Carolina

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF GREENVILLE

CASE NO: 2009CP2307707

IN THE COURT OF COMMON PLEAS

R C Frederick Hanold III vs. Watsons Orchard Property Owners Association Inc

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b); SCRPC; ☐ Rule 41(a);
SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this 19th day of October, 2012.

Court Reporter:

PRESIDING JUDGE - G Edward Welmaker

This judgment was entered on the 19th day of October, 2012, and a copy mailed first class this 19th day of October, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

Stephen Fulton Shaw 27 S. Main St. Travelers
Rest, SC 29690
Randall Scott Hiller 850-B Wade Hampton Blvd.
Greenville, SC 29609

William D. Herlong 531 S. Main St., Ste. 201 [Zip
29601] PO Box 2003 Greenville, SC 296022003
Register of Deeds County Square

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER

JUDGMENT IN A CIVIL CASE

CASE NO: 2009-CP-23-7707

2013 JAN 28 P 3:59

R.C. Frederick Hanold, III and Rose F. Hanold, and Carol R. Mitchell and George P. Mitchell, Jr. v. Watson's Orchard Property Owners Association, Inc.

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

IT IS ORDERED AND ADJUDGED:

☐ See attached order;

☒ Statement of Judgment by the Court:

Defendant's Motion for Reconsideration is Denied.

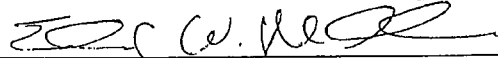
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FEB 26 2013

Dated at Greenville, South Carolina, this 16th day of January, 2013.

SC Court of Appeals

Court Reporter:


PRESIDING JUDGE - EDWARD W. MILLER

This judgment was entered on the 1/28/13, and a copy mailed first class this 1/28/13, to attorneys of record or to parties (when appearing pro se) as follows:

William D. Herlong P.O. Box 2003 531 S. Main St., Ste. 201
Greenville, SC 29602

Randall S. Hiller P.O. Box 1716 Greenville, SC 29602

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2009-CP-23-7707

R.C. Frederick Hanold, III and Rose F. Hanold, and Carol R. Mitchell and George P. Mitchell, Jr., ... Respondents,

v.

Watson's Orchard Property Owners Association, Inc., a South Carolina Corporation, and Pelham Farm, LLC, a South Carolina Corporation, Legacy One, LLC, a South Carolina Corporation, SESP LLC, a South Carolina Corporation, an unknown Trustee of the Revocable Trust Agreement Dated March 19, 1996 established by James B. Stephens as amended, and unknown Jay Stephens and Mike Stephens as Co-Personal Representative of the Estate of James B. Stephens, ... Defendants,

Of whom Pelham Farm, LLC, a South Carolina Corporation, Legacy One, LLC, a South Carolina Corporation, an unknown Trustee of the Revocable Trust Agreement Dated March 19, 1996 established by James B. Stephens as amended, and unknown Jay Stephens and Mike Stephens as co-Personal Representative of the Estate of James B. Stephens, are the Appellants.

v.

Property Owners in Watson's Orchard Subdivision: N. Carter Poe, III; McNally Reeves, as Trustee of the Residual Trust under item Five of the Last Will and Testament of Hattie L. Reeves dated February 9, 1998; Janet B. Yusi; Lucy S. Tillér; James G. Stephens; Rachel P. McKaughan; Ramon J. Ashy and Jana Ashy; Christopher D. Scalzo and Heather V. Scalzo; Erma R. Rash, as Trustee of the Erma R. Rash Revocable Trust dated February 12, 2010; James Edwin Conrad, as Trustee of the James Edwin Conrad Living Trust dated September 7, 2010; Sue Lane Conrad; Horst H. H. Eschenberg and Floride C. Eschenberg; Caryl L. Clover, as Trustee of the Caryl L. Clover Revocable Living Trust Agreement dated May 12, 1999; Mary F. Newell; Timothy M. Conroy and Elizabeth W. Conroy; Nathan Scolari; Joel Wells Norwood and Lynn Norwood; J. Lynn Shook; Juan Hernandez and Janice M. Pelletier; Scott P. Payne and Kathleen H. Payne; Joe G. Thomason and Dana L. Henry Thomason; Traci Segura; Cameron E. Smith and Joan B. Smith; Charles E. Howard and Sharon F. Howard; Penelope J. Galbraith; Meredith C.

Vry; Delores B. Mitchell; Lisette M. Silva and Mary F. Colley; Ilona K. Alford and William G. Alford; George T. McLeod and Martha T. McLeod; Ronald S. Wilson and Robin E. Wilson; The Merrill J. Gildersleeve and Anore L. Novak Revocable Living Trust dated November 1, 1996; Anna Marie T. Azores and Kim O. Gococo; Ashley Westrope as Trustee of Martha Randolph Westrop Trust dated June 6, 1988; Cliff C. Jollie and Martha W. Jollie; David A. Saliny and Xiaoli Saliny; Lecia S. Franklin; Dean D. Varner and Deborah P. Varner; W. Frank Durham, Jr.; Christine M. Howard; Samuel P. Howard, Jr. and Jane H. Howard; Manfred E. Kramer and Jane J. Kramer; Mary J. Steele; James J. Barrett, III and Kimberly A. Barrett; Richard A. Herman and Patricia L. Herrman, ... Respondents.

AMENDED NOTICE OF APPEAL
(caption conformed to direction of Court)

Defendant/counter-plaintiffs Pelham Farm, LLC, a South Carolina Corporation, Legacy One, LLC, a South Carolina Corporation, SESP LLC, a South Carolina Corporation, an unknown Trustee of the Revocable Trust Agreement Dated March 19, 1996 established by James B. Stephens as amended, and unknown Jay Stephens and Mike Stephens as Co-Personal Representative of the Estate of James B. Stephens, appeal the judgment of the Honorable Edward W. Miller, dated October 12, 2012, and confirmed by denial of their motion for reconsideration on January 28, 2013. Appellants received written notice of the denial of the motion for reconsideration on January 29, 2013. (Copies enclosed.)

Dated: April 1, 2013



William D. Herlong
The Herlong Law Firm, LLC
531 S. Main St., Ste. 201
P.O. Box 2003
Greenville, SC 29602-2003
(864) 382-3801
William@HerlongLaw.com
Attorney for Appellants

Other counsel of record:
Randall S. Hiller
P.O. Box 1716
Greenville, SC 29602
(864) 232-0026

DIRECT EXAMINATION BY MR. HERLONG

Claire T. Maxnug

Harold, et al. vs. Watson's Orchard Property Owners Association, Inc., et al.

8/13/2012

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1 I've gone one here but -- okay.

2 Q. All right. Exhibit No. 2; is that a copy of the
3 affidavit you have submitted in this case?

4 A. Yes, it is.

5 Q. All right. Do you adopt what you said in your
6 affidavit as your testimony today?

7 A. I do.

8 Q. Okay. And I just want to go through it with you a
9 little bit.

10 A. Okay.

11 Q. The first part of it is obviously your background. So
12 you can read it if you want to or not; just whatever
13 you want to do. But let me just ask you generally
14 speaking, what is your occupation? Where do you work?

15 A. I'm a lawyer. I work for Chicago Title Insurance
16 Company. For 16 years I was Underwriting Counsel, and
17 the last four years I've been State Manager of this
18 office.

19 Q. Okay. And what does Chicago Title do?

20 A. We are a title insurance company which means we issue
21 title insurance in connection with real estate
22 transactions in South Carolina.

23 Q. Okay. And you're one of the attorneys --

24 A. I am.

25 Q. -- that works on the staff for the company?

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DIRECT EXAMINATION BY MR. HERLONG

Claire T. Manning

Hinckley, et al. vs. Watson's Orchard Property Owners Association, Inc., et al.

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1 A. Yes.
2 Q. All right. And what kind of law or what sort of issues
3 do you deal with in your capacity as an attorney?
4 A. I'm a real estate lawyer and always have been since I
5 graduated from law school in '81. And generally what
6 we do here is deal with real estate title concerns that
7 lawyers raise as they search titles and do closings.
8 Q. All right. Do you consult with lawyers around the
9 State on these kind of issues?
10 A. We do every -- everyday.
11 Q. All right. Just give me a little -- I think it says
12 you graduated from the University of South Carolina Law
13 School in '81.
14 A. Correct.
15 Q. Just tell me about that.
16 A. Yes, I went to undergraduate and law school at
17 Carolina.
18 Q. Okay. And you practiced law, I think, for a little
19 while in --
20 A. For eleven years, I represented real estate
21 developers in a firm here in Columbia.
22 Q. Okay. And then after that, you joined Chicago Title?
23 A. Correct.
24 Q. So you've been with Chicago since 1992?
25 A. In October it will be 20 years, yes.

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<http://www.southernreporting.net>

1 these now, did these substantiate your conclusion?

2 A. Right. It looks like an offer that Mr. Stephens made
3 to purchase the five lots back in 1980. And so it's
4 just another indication that the buyer of those five
5 lots considered that they were lots when he bought
6 them.

7 Q. Okay. All right. Turn to, turn to page -- I'm sorry,
8 Paragraphs 18 and 19 of your affidavit. If you would
9 just read those two into the record?

10 A. Paragraph 18, "To summarize, it was our conclusion in
11 2008 and 2009 that the Stephens lots were lots into
12 which the property had been developed, and that each
13 was entitled to a vote on the amendments -- on the
14 amendment of the R&C."

15 Q. All right. Hold on one second. Does that correctly
16 state your conclusion in 2008 and '09?

17 A. It does.

18 Q. And do you still feel that way?

19 A. I do.

20 Q. All right. And read Paragraph 19.

21 A. 19. "Based upon -- based on that opinion, we, Chicago
22 Title, gave our commitment to issue title insurance if
23 a majority vote was obtained for the amended R&C's with
24 the Stephens lots having one vote each, since in that
25 case, we believed as a factual matter and as a matter

1 of real estate law that the amended R&C's would then
2 have been validly adopted and would be in full force
3 and effect."

4 Q. And does that correctly state your opinion 2008 and
5 '09?

6 A. It did. It does.

7 Q. And you still feel that way?

8 A. I do.

9 Q. All right.

10 MR. HERLONG: That's all the questions I have.

11 Answer any questions Mr. Hiller may have.

12 CROSS EXAMINATION BY

13 MR. HILLER:

14 Q. Obviously, I represent the Plaintiffs in this action.
15 And you just -- of course, I've had your affidavit.
16 You just testified that you reviewed the plat,
17 the McGowan Order, and the deeds that were put into
18 evidence during the course of your deposition. You
19 affidavit says you also have reviewed the R&C's.

20 A. Correct.

21 Q. And you did, in fact, review those?

22 A. We did.

23 Q. And, and the -- now, were you aware of have you ever
24 been made aware that Mr. Watson did not own the
25 property when that survey that's been entered as

CROSS EXAMINATION BY MR. HILLER

Claire T. Manning

Hanold, et al. vs. Watson's Orchard Property Owners Association, Inc., et al.

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1 applies to referencing plats and deeds and requires
2 that they be recorded?

3 A. I don't know the number off the top of my head. But,
4 yes, I know there is a Statute like that.

5 Q. The fact that this plat was not recorded in accordance
6 with the Statute wouldn't change your opinion?

7 A. No. And, you know, I see what goes in every county in
8 this State. And it never ceases to amaze me that most
9 plats in Charleston County don't get recorded. The
10 lawyers just refer to the plats, but they don't record
11 them. Don't know why. It's just custom there. So,
12 no, I don't think that that means that it's not good
13 property.

14 Q. When you testified that Chicago Title would be able to
15 -- would be willing to issue a title insurance policy,
16 was that without any exceptions?

17 A. No. We didn't deal with the other exceptions. I mean,
18 we didn't search the title. We don't know what all the
19 exceptions would have been. But we meant without
20 exception to this issue, we would have issued a policy.
21 I mean, we would have taken exception to the new
22 restrictions as they were amended and then whatever the
23 other exceptions would have been.

24 Q. Does Chicago Title typically issue title insurance
25 policies insuring against commercial versus residential

1 A. Whether some way or the other those lots got created, I
2 can't testify to how that may or may not have happened but to
3 follow procedure would be to record a summary plat creating
4 the five lots.

5 Q. Okay.

6 A. Now could they have existed some other way, did someone
7 record them by deed one plat at a time, somehow circumvent our
8 regulations, I can't testify to that, I can't tell you that it
9 did or didn't happen.

10 Q. Okay. Mr. Owings, we we talked some about the
11 regulations themselves and in your deposition and let me show
12 you the county has never made, has never sued to enjoin a sale
13 of property based on whether or not the sale complied with the
14 Planning Commission or what do you call, what do you call the
15 regulation, what are they called?

16 A. The Greenville County Subdivision Regulations were the
17 title at the time, they're now ---

18 Q. Um-hum.

19 A. --- called the Land Developer Regulations.

20 Q. Okay, well when I say regulations, that's what I'm
21 talkin' about, okay?

22 A. Yes.

23 Q. The county has never sued or brought an action to enjoin
24 a sale that didn't comply with the land use regulations,
25 right?

1 A. Not to my knowledge.

2 Q. And under the regulations you have the right to do that,
3 isn't ---

4 A. That ---

5 Q. --- that correct?

6 A. --- that is correct.

7 Q. Alright, and under the regulations you also have a right
8 to charge a hundred dollars for every lot that's transferred
9 without complying with the land use regulations, right?

10 A. That is correct.

11 Q. But the county has never ever charged anybody a hundred
12 dollars for transferring lots without complying with the
13 subdivision regulations, is that right?

14 A. Not to my knowledge.

15 Q. Alright, and the county has never ever taken the position
16 that a transfer of property that didn't comply with those
17 regulations in some way, shape or form was not in fact a
18 transfer, has it?

19 A. Not to my knowledge..

20 Q. And you testified in your deposition that today if
21 something came across your desk and it wasn't quite in
22 compliance with the regulations you would call the surveyor or
23 somebody and say, you know, fix it up, right?

24 A. That's correct.

25 Q. That's the way you would handle it.

1 A. --- the -- placing those lots on a summary plat format
2 has to have, you know, certain information on the plat
3 accompanied by the letters from the public utilities, highway
4 department, things like that, it would be a recordable plat if
5 if it was on the right format with the correct accompanying
6 letters.

7 Q. Okay, and there's no reason why that could not have been
8 done in 1981, correct?

9 A. I don't know of any reason that plat could not have been
10 done, all all I've been able to say is we have no record that
11 it was done..

12 Q. And if it is recorded as a summary plat like that, it
13 doesn't go to the Planning Commission, does it, it just ---

14 A. That's correct, ---

15 Q. --- gets stamped approved.

16 A. --- it's it's stamped approved. Upon receipt of the plat
17 with the accompanying letters it's stamped and the the
18 developer, property owners, someone can take the plat and
19 record it.

20 Q. It's a purely administrative act isn't it, Mr. Owings?

21 A. It's an administrative act that's correct.

22 Q. In in your deposition -- well one quick thing. I think
23 the question of you earlier was whether this transfer in 1981
24 that the deed is referencing we just talked about was illegal
25 or unlawful or so and your answers with respect to that when

1 Q. Fair enough. Your testimony about this not having been
2 recorded, this meaning Defendants' Exhibit 2 the plat, Richard
3 Watson deed December 3rd 1980 plat, not having gone through
4 the Planning Commission process, right, ---

5 A. That's correct.

6 Q. --- if it were a summary plat which it could easily be
7 turned into, correct, ---

8 A. That's correct.

9 MR. HILLER: Well, Your Honor, that ---

10 Q. --- were a summary ---

11 MR. HILLER: --- I don't know if this is goin' over
12 anything I I redirected, ---

13 THE COURT: Well it's alright, it's ---

14 MR. HERLONG: And you al ---

15 MR. HILLER: --- asked and answered already as well.

16 Q. If it were a summary plat, that doesn't have to go
17 through Planning Commission approval, right?

18 A. That is correct.

19 Q. Alright, and you already told me that it -- that was an
20 administrative process, correct?

21 A. That is correct.

22 Q. What Mr. Hiller is asking you about the whole process of
23 recording is basically a technicality isn't it, Mr. Owings?

24 A. I don't -- technicality has a lot of ---

25 Q. Okay, that's ---

1 A. --- maybe ---

2 Q. --- fair. It's an administrative process.

3 A. It's it -- yes, it is an administrative process.

4 Q. And with respect to let's look at the ordinance which is
5 the last document in this notebook, Your Honor, it's behind
6 Tab 17, it's Exhibit SJ17 in Defendants' Exhibit 1.

7 Mr. Owings, with respect to the ordinance itself and I I -- do
8 you recognize this document Exhibit SJ17?

9 A. I do.

10 THE COURT: What what page is it?

11 MR. HERLONG: Uh, 2, D277, ---

12 THE COURT: Okay.

13 MR. HERLONG: --- it's all the way at the back, Your
14 Honor.

15 THE COURT: Okay.

16 MR. HILLER: I actually have no objection to that subject
17 to my complaint.

18 THE COURT: Alright.

19 (Laughter.)

20 BY MR. HERLONG:

21 Q. Then turn to page 5 of the ordinance which is D288, see
22 the bottom of the page violations and penalties?

23 A. Yes, sir, I do.

24 Q. "The owner, the owner or agent of the owner of any land
25 located within the jurisdiction of the Planning Commission as

JOHN H. OWINGS, JR. - EXAMINATION BY THE COURT

1 a recorded plat.

2 Q. Okay, and but it's not necessary for them to get your
3 approval if they're taking a 20-acre tract and cutting it into
4 two pieces of property, ---

5 A. That's ---

6 Q. --- right?

7 A. --- correct.

8 Q. Nothing, nothing happened there that triggered it was --
9 it's undeveloped, wasn't being developed, correct?

10 A. That's -- your your assumption's correct.

11 Q. Alright. Alright, and with respect to the the deed
12 that's been referenced, uh, the sale of the property here
13 while it says containing five lots there is -- South Carolina
14 is a record notice state you're aware a that?

15 A. No, I'm not.

16 Q. Oh, okay. Alright, there's someone who was searching the
17 records would look at this and go, Well it's got five lots and
18 where would they go to find the five lots, it's not recorded
19 anywhere, is that right?

20 A. They would either come to our office, well probly ROD
21 first ---

22 Q. Right.

23 A. --- if they couldn't find one. Every final and summary
24 plat since 1967 is on record in our office, every, every
25 single plat.

JOHN H. OWINGS, JR. - REDIRECT EXAMINATION BY MR. HILLER

1 Q. Okay, so nowhere in the public domain is there a recorded
2 plat, this plat recorded or anything that shows that 6-acre
3 tract cut into five pieces, is that ---

4 A. Not not to my knowledge.

5 Q. Alright, thank you.

6 THE COURT: Anything else of this witness?

7 MR. HERLONG: Well, Your Honor, if I could just ---

8 MR. HILLER: Let me go first.

9 THE COURT: Yeah, you got anything?

10 MR. HILLER: Yeah, I mean, just based on what you asked
11 him.

12 REDIRECT EXAMINATION BY MR. HILLER:

13 Q. I I I -- Mr. Owings, it's true that once a property is
14 subdivided appropriately and even inappropriately a new tax
15 map number's issued, correct?

16 A. That is correct.

17 Q. And that's one a your tip-offs as well, is it not?

18 A. That is correct.

19 Q. Alright, so if I have came as 001 and it's 10 acres and
20 all of a sudden becomes a 10 -- 1.01 and a 1.02 and a 1.03,
21 you know I'm sub -- subdividin' the property?

22 A. That is correct.

23 Q. Alright, and and if ---

24 THE COURT: Well he knows you're sellin' lots, he
25 doesn't ---

PATRICK GRAYSON, JR. - DIRECT EXAMINATION BY MR. HERLONG

1 PATRICK H. GRAYSON, JR.,
2 having been first duly sworn, testified as follows:

3 THE COURT: Alright, thank you very much. C'mon around
4 have a seat, state your full name.

5 THE WITNESS: My full name is Patrick H. Grayson, Jr.

6 MR. HERLONG: Please the Court.

7 THE COURT: Yeah, please go ahead.

8 DIRECT EXAMINATION BY MR. HERLONG:

9 Q. Mr. Grayson, tell me what your occupation is, what do ya
10 do?

11 A. I'm an attorney.

12 Q. How long you been practicin' law?

13 A. Since 1958.

14 Q. 1958. What kinda law predominantly?

15 A. Real estate, banking.

16 Q. And you you've been involved in hundreds, thousands of
17 real state transactions over the years?

18 A. Well I don't know about thousands, uh, I've been involved
19 over a a period of time on a regular basis.

20 Q. Okay, and you're currently retired or semi-retired or
21 what's what's the status?

22 A. Well I quit working on Friday's.

23 (Laughter.)

24 Q. Okay. And who do you work with today?

25 A. I primarily work with a a fund and, uh, different

1 investors, Dan Bruce is probably the primary one.

2 Q. Is that RealtiCorp.?

3 A. Uh, yes.

4 Q. Okay, and are you on staff, sir, to provide legal advice
5 and so forth to them?

6 A. I'm not on staff, I'm an independent. I have a
7 letterhead with just my name.

8 Q. Okay. Back in 1980, '81 time frame were you involved
9 with the transactions that we've been talkin' about this
10 mornin' the creation of WOPOA and Lincoln transferring that
11 property ---

12 A. Uh, ---

13 Q. --- and so forth?

14 A. --- yes.

15 Q. What was your role?

16 A. I represented a company known as, uh, Lincoln Lincoln of
17 South Carolina that entered into an option contract with
18 Richard Watson, Jr. and, uh, his wife, first wife had died so
19 it was the trust for her estate. The Watson's collectively
20 those two had owned out on Pelham Road a very, very large
21 tract of land that at one time had had a peach orchard and my
22 client wanted to buy the land to the south of Pelham Road
23 bounded by Haywood Road and also I-385.

24 Q. Where those shopping centers are right now, those,
25 uh, ---

1 A. That's correct.

2 Q. Okay. Well tell me what was, what were the issues and
3 what did you have to do to resolve?

4 A. It was a fairly complicated transaction. When Richard
5 Watson and his first wife decided that they wanted a
6 subdivision, they put certain real estate restrictions on
7 record ---

8 Q. You're talkin' about Watson's Orchard?

9 A. Watson's Orchard but the restrictions covered, uh, land
10 on both sides of Pelham Road, was about 232 acres and then the
11 Watsons developed, sold off, developed is a word word we'll
12 get to later I guess, they recorded, they being the Watsons,
13 recorded a subdivision plat that they call Watson's Orchard
14 subdivision and that was to the north of Pelham Road.

15 Q. Okay, and and what and they were try -- and did those
16 folks have what do you call it negative easements or what what
17 over the property that between there and 385?

18 A. That was the interpretation that the 1961 restrictions
19 covered 232 acres which would have included the I think
20 approximately 85 acres on the southern side of Pelham
21 Road ---

22 Q. Okay.

23 A. --- and those restrictions would be deemed negative
24 easements on that land restricting it to, uh, residential
25 use.

1 Q. Okay. And in the process of what ya'll were doing in
2 nin -- was it 1980 I guess, 1980, what did you have to do? I
3 I take it the objective was to release some of those negative
4 ease -- some of those restrictions on the property ---

5 A. Well the ov -- the the overall intent of the client I
6 represented was ---

7 MR. HILLER: Well, I mean, ---

8 A. --- about ---

9 MR. HILLER: --- Your Honor, Your Honor, I'm gonna object
10 to him testifyin' what the intent of his client was, I have a
11 number of grounds for that.

12 THE COURT: Okay.

13 MR. HILLER: Well the first is I'll be happy to hand up
14 the case *Church vs. Moody* makes it irrelevant, immaterial for
15 even the grantor once he's executed a deed or in this case a
16 declaration to testify what his intent was. Um, ---

17 THE COURT: I I believe the case says what you tell me.

18 MR. HILLER: Okay, so so and it it would be inadmissible
19 for the the signatory on any of the documents come in and
20 testify as what the intent of the agreement was is to be
21 derived from the agreement, uh, secondly, a course Mr. Grayson
22 was was not a party to the transaction other than as a
23 preparer of documents and he can't testify what ---

24 THE COURT: He doesn't, he can't read the other man's
25 mind.

1 MR. HILLER: Right, ---

2 THE COURT: Okay.

3 MR. HILLER: --- so so I I don't have any problem with
4 him givin' some background of what goes on but when he tries
5 to declare what or or state what the intent is then and the
6 final argument would be, uh, uh, but that's purely for the
7 Court to determine, that that no testimony or evidence, expert
8 or otherwise, is admissible in that regard, I also have a case
9 on that.

10 THE COURT: Okay.

11 MR. HERLONG: Well, Your Honor, he was, he was counsel
12 involved in the transaction, he not only knows what the intent
13 was, he was the person who was carrying it out so he had
14 instructions and and he was the one involved in in executing
15 what the plan was.

16 THE COURT: I think he can testify to what he was
17 instructed to do and what he did and I don't think there's a
18 problem with that.

19 MR. HERLONG: Okay.

20 THE COURT: Alright.

21 MR. HERLONG: As as far as the bigger, the bigger issue,
22 you know, that we're gonna get to the, you know, what the
23 meaning of these words are in this document, Mr. Grayson's the
24 one who drafted it so ---

25 MR. HILLER: Well I'm I gonna object to that ---

1 (Cell phone rings.)

2 MR HILLER: --- case of *Dawkins vs. Fields* which is 2003
3 Supreme Court case specifically prohibits ---

4 THE COURT: Ya have to turn off your cell phone, if not
5 we have to confiscate it. Okay, go ahead.

6 MR. HILLER: --- specifically prohibits that expert
7 testimony or any testimony related to the legal a a
8 determination's to be made by the Court, be happy to hand that
9 case up as well.

10 THE COURT: No, I -- no, no, you don't have to, you don't
11 have to.

12 MR. HERLONG: Do you wanna hear on that right now, Your
13 Honor? You wanna hear on that right now that issue?

14 THE COURT: Sure, I'd be happy to hear about it.

15 MR. HERLONG: Well I, I mean, I I know where, I I'm
16 familiar with that case, right now he's not testifying as an
17 expert, uh, and it's ri -- strictly factual information right
18 now.

19 THE COURT: Right, so he can just testify to what he was
20 instructed to do, what he did and ---

21 MR. HILLER: Yeah, I I don't have any problem ---

22 THE COURT: As far as the interpretation of the document,
23 that is for the Court to ---

24 MR. HILLER: Right, and his his -- but I I take the
25 position that if he tries to testify as to what words mean

PATRICK GRAYSON, JR. - DIRECT EXAMINATION BY MR. HERLONG

1 within the document, that imposes upon the the the Court's
2 province and and at that point he would in fact be attempting
3 to testify as to either the intent of the declarant or give a
4 legal, I mean, a an expert opinion on what the document or
5 what the words say 'cuz we got the documents, they're in
6 evidence, they say what they say and it's your job to
7 interpret those documents, not Mr. Grayson's.

8 THE COURT: Okay. Alright, go ahead.

9 BY MR. HERLONG:

10 Q. Mr. Grayson, we were, uh, I think I was asking you what
11 the general, what the general purpose was, what you were
12 tryin' to do.

13 A. My client Lincoln wanted to buy the 85 acres more or less
14 land bounded by I-385, Haywood Road and, uh, Pelham Road.

15 Q. And and and was the point to make it so that that that
16 property could be developed: shopping center and so forth?

17 A. Well the again, the purpose the client informed me was
18 to ---

19 MR. HILLER: Um, ---

20 A. --- be able to ---

21 MR. HILLER: --- I object to that as hearsay.

22 THE COURT: That's hearsay.

23 A. Alright. Uh, ---

24 Q. What were your instructions, Mr. Grayson?

25 A. My instructions were to prepare certain contract

1 documents, option to purchase the land, further obtain title
2 insurance for a closing, to prepare restrictive covenants in
3 two parts, one part would be on a parcel of land on Pelham
4 Road, it was thought to be about 15 acres, when it was
5 surveyed it surveyed out at 14.7 more or less, and to further
6 restrict certain property on Haywood Road containing about 6
7 acres, to draft restrictive covenants on the remaining 85
8 acres for commercial and multi-family use and to handle a
9 closing in which the client I represented could buy the land
10 and sell off pieces.

11 Q. Okay. And in the process of doing that did you, your
12 client, did ya'll obtain the consents of all the folks in
13 Watson's Orchard?

14 A. The Watson's Orchard Subdivision was a plat recorded in
15 public records containing 46 acres.

16 Q. Forty-six lots?

17 A. Forty-six lots, that's correct, and in the title
18 examination it was found that there was another piece of land
19 that Richard Watson and his wife had sold off contained about
20 1.6 acres sold to a lady as I recall named Irma Rash and in
21 concluding who had rights under those restrictions, I
22 conferred with a title company and the the conclusion was that
23 those lots, 46 lots plus the Irma Rash piece that we
24 identified as the Watson's Orchard Subdivision collectively,
25 had negative easement rights on the land on the southern side

PATRICK GRAYSON, JR. - DIRECT EXAMINATION BY MR. HERLONG

1 of Pelham Road and those restrictions in those negative
2 easements would not allow commercial or multi-family use, as a
3 result before the -- their closing, those restrictions were --
4 have had to have been released. The client I represented did
5 negotiations with various people in the Watson's Orchard
6 subdivision, one of 'em was Wilkins Norwood who lived there,
7 another was Carter Poe who lived there, another was Lou, L.W.
8 Brummer who lived there, they were the primary parties
9 representing or holding themselves out as representing the
10 subdivision owners. The agreement that was rel -- reached was
11 that the owners would be conveyed a two tracts of land, one
12 was the 14.7 acres, the other was the 8 acres, they would be
13 given \$50,000 and that group in Watson's Orchard concluded
14 that they ---

15 MR. HILLER: I I ---

16 A. --- uh, ---

17 MR. HILLER: --- I I I I I ---

18 A. --- that the Watson's ---

19 THE COURT: Wait a minute, wait, wait, wait.

20 A. Okay.

21 MR. HILLER: I object to him tellin', sayin' what the
22 group concluded to.

23 THE COURT: Alright, you can't ---

24 THE WITNESS: Alright.

25 THE COURT: --- can't speculate.

1 BY MR. HERLONG:

2 Q. Just tell me what they, what they did.

3 A. That group formed a corporation called Watson's Orchard
4 Property Association, Inc., Charlie Howard who's a practicing
5 attorney formed that corporation. The strips of land were
6 conveyed by my client after it acquired title to that
7 corporation. As part a that transaction as I think I stated
8 earlier on, I prepared two sets of restrictions, one was for
9 land that these parties Wilkins Norwood, Carter Poe referred
10 to as buffer strips, a buffer zone rather, I use that term as
11 a defined term in the document that I prepared from a
12 definition standpoint, uh, uppcase the first letter and put
13 it in quotes to define it as a defined term so I didn't have
14 to repeat the 14 acres every time or or the
15 6 acres every time, those restrictions were recorded. 'Cuz
16 the transaction was rather complicated, the title company
17 requested that we have a a an action that we deemed a
18 declaratory judgment action to declare that conditions and an
19 agreement called an agreement, I forgot the exact title of
20 that agreement, um, agreement to release restrictions had
21 certain conditions precedent. I prepared a summons and
22 complaint which is in the public records, uh, conducted a
23 hearing before Judge Frank McGowan, Jr. and the judge issued a
24 an order which is in the public records. Following the Order
25 the, uh, a a document called "Release of Restrictions" was

1 executed by all of the owners in the Watson's Orchard
2 Subdivision one hundred percent, that was done in two separate
3 release documents, one of the documents had the name of James
4 Stephens and his wife Ann on on that one release by itself,
5 the other release document was executed by all of the owners
6 and was taken to the courthouse for recording and was recorded
7 in the public records of Greenville County to release the
8 negative easements that the Watson's Orchard owners had, that
9 was -- that's the essence of the transaction.

10 Q. That the 1981 transaction?

11 A. 1981, yes.

12 Q. Let me, uh, before we change any position let's look at
13 this the notebook Defendants' Exhibit 1. The Exhibit SJ2,
14 page D11, page D11, Mr. Grayson, it's right here (indicating),
15 I'll find it for ya. Yeah, right here (indicating), page
16 number's right there (indicating). Can you identify that as
17 the restrictions and covenants that ya'll put in place in 1981
18 as a result of the process you just described?

19 A. This is the restriction that covers the 14.7 acres and
20 also the 8 acres, it's signed by Lincoln of South Carolina as
21 the declarant, the title is "Declaration of Restrictions and
22 Protective Covenants", I did prepare that document.

23 Q. And is this the document that is, uh, that's base -- that
24 the -- is being amended as a result of what happened and or
25 we're attempting to amend as a result of what happened in 2009

1 and '10?

2 A. That is correct.

3 Q. Alright. Toward the bottom of the first page of this
4 document is that where it talks about the restrictions will be
5 in place until January 1, 2010 at which time said covenants,
6 conditions and restrictions shall automatically, be
7 automatically extended for a successive 10-year period, 10
8 years each unless by a vote of a majority of the then owners
9 of the lots into which the property described above shall have
10 been developed and in Watson's Orchard?

11 A. Uh, yes.

12 Q. Okay. And did you draft that language, Mr. ---

13 A. Uh, ---

14 Q. --- Grayson?

15 A. --- yes, yes, I did.

16 Q. Alright. Is a, is "lot" a defined term in this
17 document?

18 A. Lot is not a defined term.

19 Q. Is "developed into" a defined term in the document?

20 A. It is not.

21 Q. What was your intent ---

22 MR. HILLER: I I'm gonna object ---

23 Q. --- on drafting this document with respect to those
24 terms?

25 MR. HILLER: Well I object to that, Your Honor, that's

PATRICK GRAYSON, JR. - DIRECT EXAMINATION BY MR. HERLONG

1 directly violative of the cases I cite. He's not a party in
2 the transaction, he's a scrivener.

3 MR. HERLONG: He drafted the document, Your Honor.

4 THE COURT: So how is his intent relevant?

5 MR. HERLONG: He's the person who drafted the document.

6 I mean, ---

7 THE COURT: Yeah, ---

8 MR. HERLONG: --- he did what ---

9 THE COURT: --- what his intent is is not relevant, he
10 just -- he's ---

11 MR. HILLER: Doin' what he's told.

12 THE COURT: Yeah.

13 MR. HERLONG: Well his intent is to do what he's told and
14 that is clearly relevant.

15 MR. HILLER: Well, Your Honor, ---

16 MR. HERLONG: His intent ---

17 MR. HILLER: --- I'll be happy to hand ---

18 MR. HERLONG: --- with respect to ---

19 MR. HILLER: --- those cases up ---

20 THE COURT: No, ---

21 MR. HILLER: --- it's to be derived from the document ---

22 THE COURT: Right.

23 MR. HERLONG: That's if it's ---

24 MR. HILLER: and not ---

25 MR. HERLONG: --- unambiguous.

1 MR. HILLER: --- not any subsequent declaration even by
2 the declarant, let alone somebody who was just workin' for the
3 declarant.

4 THE COURT: Yeah.

5 MR. HERLONG: Well, Your Honor, that is not correct. If
6 there's any question about the ish -- about what those do --
7 those words mean then Mr. Hiller's whole case calls into
8 question what the term "developed into". The the language
9 there is "developed into lots".

10 MR. HILLER: No, "it shall be developed", ---

11 MR. HERLONG: No.

12 MR. HILLER: --- "shall have been developed into lots"
13 but ---

14 MR. HERLONG: Into which, "lots into which the property
15 shall have been developed", "lots into which the property
16 shall have ---

17 MR. HILLER: Right, ---

18 MR. HERLONG: --- been developed".

19 MR. HILLER: --- and that's what the Court's gotta
20 decide ---

21 THE COURT: Right.

22 MR. HILLER: --- but it's not Mr. Grayson's, I mean, I'm
23 arguin' it it it it's one way, Mr. Herlong's arguin' 'em,
24 that's argument, okay, and Mr. Mr. Grayson's in no better
25 position than we are and that's exactly what, ---

1 MR. HERLONG: He's the pers ---

2 MR. HILLER: --- that's exactly why the Supreme Court
3 said in *Dawkins vs. Fields*, that it's inadmissible, ---

4 MR. HERLONG: *Daw* ---

5 MR. HILLER: --- that that that you can't submit an
6 argument that's just nothin' more than a legal argument,
7 that's all Mr. Grayson's capable testifyin'.

8 MR. HERLONG: That is absolutely not correct. *Dawkins*
9 *vs. Field*, Your Honor, is strictly a case about an expert
10 being able to testify to legal issues. In that case or a
11 subsequent case, the name which I don't remember off the top a
12 my head, that involved Professor Freeman, following case
13 involved Professor Freeman, the Court, the Court of Appeals in
14 the following case said the judge makes the decision as to
15 whether a fiduciary duty exists, the legal issue, and the
16 Professor Fee -- Freeman was entitled to testify, the judge
17 having decided that the fiduciary duty existed, Professor
18 Freeman was entitled to testify whether that duty had been
19 violated, a factual question. Mr. Grayson, and that's a,
20 that's an expert question, I am not asking this question as an
21 expert, I'm asking him as the human being who put pen to paper
22 and drafted this document what was his intent with ---

23 THE COURT: Well ---

24 MR. HERLONG: --- respect to ---

25 THE COURT: --- here here ---

1 MR. HERLONG: --- those words.

2 THE COURT: --- here's the the problem you got you're --
3 it's a, it's a -- where's the ambiguity that requires parole
4 evidence 'cuz that's exactly what you're talkin' about, isn't
5 it?

6 MR. HERLONG: Well if there, if -- the question is is
7 there an ambiguity and that's for Your Honor to decide. I I
8 think that that frankly, I think the language is clear that
9 property into which -- "lots into which the property is
10 developed", that talks about the creation of lots, that's not
11 ambiguous but Mr. Hiller has a completely different
12 interpretation of it so that's that's sort of the definition
13 of an ambiguity.

14 MR. HILLER: No, no, I I don't have ---

15 THE COURT: Well ---

16 MR. HILLER: --- a different interpretation of it.

17 THE COURT: --- that's alright.

18 MR. HILLER: Uh, ---

19 MR. HILLER: Subject to your, I'm gonna let him -- go go
20 ahead and testify, Mr. Grayson, go ahead, subject to your
21 objection.

22 BY MR. HERLONG:

23 Q. Mr. Grayson, what was your intent with respect to the
24 language and I'll just read it, "By a vote of a majority of
25 the then owners of the lots into which the property described

1 above shall have been developed and in Watson's Orchard," what
2 was your intent with respect to that?

3 A. To come into existence. Develop would mean to come into
4 existence, to be created.

5 Q. At the time that, at the time, uh, well let me move
6 forward. The, uh, turn to Exhibit or SJ7 in your notebook
7 which is Tab 7 in the notebook.

8 A. Alright, I have Tab 7, ---

9 Q. Is that a copy ---

10 A. --- complaint?

11 Q. Yes. Is that a copy of the complaint in the declaratory
12 judgment action you referenced a few moments ago?

13 A. Yes.

14 Q. Turn to page of 8 of it which is page D69 in the
15 notebook. Paragraph Roman 14 there, second from the top,
16 "That plaintiff is informed and believes that more than a
17 majority of the defendants listed in Paragraph 2 as
18 stockholders in Watson's Orchard Property Owner's Association,
19 Inc. are willing for said corporation to sell five minimum
20 lots 200 feet frontage and fi -- 55,000 square feet for one
21 hundred five thousand five hundred and no one-hundredths
22 dollars, said lot being part of the buffer zone on Pelham
23 Road...", etc. is that a reference to the Stephens'
24 lots, ---

25 A. Uh, ---

1 Q. --- Mr. Grayson?

2 A. --- it -- well let me, let me make sure I'm looking at
3 the right document. I'm looking at Tab 7 page, uh, ---

4 Q. Page, uh, ---

5 A. --- page 8 which is over where?

6 Q. Right here (indicating), ---

7 A. Okay, page ---

8 Q. --- page D89, it's Roman 14 if you need to read that.

9 A. Page page 6.

10 Q. Question is just was that a reference to the Stephens'
11 lots there in in, uh, ---

12 A. Yes.

13 Q. Okay. The next tab in the notebook S -- Exhibit SJ8, you
14 recognize that as a copy of Judge McGowan's Order in that
15 action?

16 MR. HILLER: Your Honor, of course my standing objection
17 these documents are not in evidence, correct?

18 MR. HERLONG: Well ---

19 THE COURT: Uh, ---

20 MR. HERLONG: --- I move the admission of the complaint
21 and the reason ---

22 MR. HILLER: Oh, I mean, I ---

23 THE COURT: What's your objection ---

24 MR. HILLER: They ---

25 THE COURT: --- to this?

1 MR. HILLER: --- that they predate the declaration.

2 THE COURT: Okay.

3 MR. HILLER: I mean, they predate the covenants. Our our
4 our -- my position is of course, of course again they're
5 they're extrinsic parol evidence but that they predate
6 declaration and therefore, you know, it's it's classic reasons
7 for the par -- parol evidence rule is is obviously things go
8 on before a document is created but once a document's created
9 you aren't allowed to, none a that's relevant anymore that
10 subsequent to the document it is possible that there could be
11 extrinsic evidence that wouldn't be parol that would show some
12 kinda change in position of the respective parties but but all
13 all of this, all of this, Judge McGowan's Order, the lawsuit,
14 all of that in my opinion, it be my position is not only
15 violated the parol evidence rule, it's improper extrinsic
16 evidence but it's irrelevant to any determination of what the
17 covenants say because it was done prior to the covenants,
18 prior to the covenants being prepared and prior to the
19 covenants being recorded and and and that's the issue in this
20 case, covenants and whether these lots been developed, what
21 went on prior to that has nothin' to do with it.

22 MR. HERLONG: The issue is not whether these ---

23 THE COURT: Okay, go ---

24 MR. HERLONG: --- lots have been ---

25 THE COURT: --- ahead, ---

1 MR. HERLONG: --- developed ---

2 THE COURT: --- ask -- shu -- I know where you're goin'
3 but ---

4 BY MR. HERLONG:

5 Q. Alright. Mr. Grayson, turn to page D80 of the
6 notebook, ---

7 A. Alright.

8 Q. --- this is Paragraph 18 of Judge McGowan's Order, do you
9 see that in the middle of the page?

10 A. Uh, yes.

11 Q. That more than a majority of the defendants as charter
12 members and pending stockholders in Watson's Orchard Property
13 Owners Association, Inc. are willing to sell five lots as
14 described in the deed shown in Exhibit 14, do ya see that, ---

15 A. Yes.

16 Q. --- for consideration of one hundred five thousand
17 dollars (\$105,000) pursuant to an off -- the offer in Exhibit
18 15, do ya see that?

19 A. Yes.

20 Q. Now Exhibit 14 to Judge McGowan's Order, let's see that
21 is page, uh, turn to page D161 in the book, actually a better
22 copy is D164, do you see that, Mr. Grayson?

23 A. D161?

24 Q. 164.

25 A. 164. Yes.

1 Q. A deed from Watson's Orchard to Pelham Properties, "All
2 that certain piece, parcel or tract of land situate, lying and
3 being in the State of South Carolina, County of Greenville,
4 containing five lots as more fully shown on the plat entitled
5 'Survey for Richard Watson,'" and so forth, see all that?

6 A. Yes.

7 Q. Did you prepare this deed?

8 A. I prepared that deed, yes.

9 Q. Alright. And does this deed as you prepared it convey
10 five lots from Watson's Orchard Property Owners Association to
11 Pelham Properties?

12 A. Yes.

13 Q. Alright. You heard the testimony of Mr. Owings earlier
14 about the the referenced plat not being, not being recorded,
15 what was, what was the reason for that or or or can you
16 explain how this deed conveys five lots in light of what
17 Mr. Owings said.

18 A. This deed conveys five lots as a metes and bounds legal
19 description. There are three classic ways of conveying
20 property in this country, uh, one does not apply in the
21 eastern United States, that's a government survey, they have
22 'em out West. In those instances you deed according to a
23 government survey which is known survey, uh, lines. This deed
24 was prepared as a metes and bounds survey, it was not done
25 under the subdivision regulations of Greenville County, it was

1 done as a metes and bounds survey which has been a custom in
2 real estate practice for hundreds of years. It was a metes
3 and bounds survey and not a subdivision ---

4 Q. With respect ---

5 A. --- prepared, it was not based on a recorded subdivision
6 plat.

7 Q. With respect to the delineation of the specific lines of
8 those five reference lots, would you look to the survey that's
9 referenced in here, the Richard Watson survey of December 3?

10 A. Is it in the book?

11 Q. No, no, no, I'm just sayin' would you, is that how you
12 would know where the specifics ---

13 A. Yes, yes, ---

14 Q. --- crosslines are?

15 A. --- that that's the, uh, survey that was used, well the
16 the top part is the survey that was used, ---

17 Q. Defendants' Exhibit 2?

18 A. --- uh, for the legal description in this deed that we've
19 just talked about.

20 Q. Okay. Alright. In turning back, before you do that,
21 turn to Defendants' Exhibit, I'm sorry, Exhibit 15 to Judge
22 McGowan's Order which is a couple a pages farther in, D166.

23 A. Alright.

24 MR. HERLONG: Your Honor, the copy of this notebook that
25 you have does not have the two pages that are a whole lot

PATRICK GRAYSON, JR. - DIRECT EXAMINATION BY MR. HERLONG

1 easier to read for these -- this section right here
2 (indicating), maybe I should just mark it as another exhibit.

3 (Whereupon, a discussion was held off the record.)

4 (D166 and D167 marked Defendants' Exhibit No. 4 for
5 identification.)

6 BY MR. HERLONG:

7 Q. Mr. Grayson, Defendants' Exhibit 4 is that a better copy
8 of D166 and D16 ---

9 A. Ye ---

10 Q. --- 7?

11 A. --- yes, yes it is.

12 MR. HERLONG: Okay. Your Honor, I'll hand this up to you
13 'cuz the 'cuz the notebook's almost impossible to read. Do
14 you see -- you might wanna look at those.

15 BY MR. HERLONG:

16 Q. The offer, Exhibit ---

17 THE COURT: There you go.

18 Q. --- 15 ---

19 THE COURT: Can you see it?

20 Q. That's got ---

21 THE WITNESS: I've got a better copy.

22 THE COURT: Okay.

23 Q. Can you read to me, Mr. Grayson, the offer that is
24 Exhibit 15 to Judge McGowan's Order?

25 A. It's at the top it says, "Exhibit B, State of South

1 Carolina, County of Greenville offer the undersigned Pelham
2 Properties, Inc. hereby offers to purchase from Watson's
3 Orchard Homeowner's Association, Inc. five lots as are more
4 fully described in Exhibit A annexed hereto and made a part
5 hereof by reference and known as the property for a purchase
6 price of twenty-one thousand one hundred dollars (\$21,100) per
7 lot, said property will be free and clear of all liens and
8 encumbrances except for utility easements consisting of
9 electricity, telephone, water, sewer and the restrictive and
10 protective covenants set out in the agreement to release the
11 restrictions applicable to the buffer strip ---

12 Q. The agreement to release ---

13 A. --- dated October 6, 1980, signed by, uh, uh, James
14 Stephens ---

15 Q. --- the agree ---

16 A. --- president of Pelham Properties, Inc.

17 Q. --- the agreement to release restrictions applicable to
18 buffer strip is that the document we were talkin' about a few
19 minutes ago that you drafted and which was presented to Judge
20 McGowan for approval?

21 A. Yes.

22 Q. The next page, Mr. Grayson, which is apparently Exhibit A
23 to the auth -- offer we were just reading, would you read the
24 the first paragraph, please.

25 A. "All those certain pieces, parcels or lots of land

1 situlying [sic], being in the State of South Carolina, County
2 of Greenville, being identified as five lots fronting on
3 Pelham Road, more fully shown on a new survey and described in
4 the aggregate according to a survey entitled "Survey for
5 Richard Watson", dated June 27, 1980, revised August 19, 1980
6 and August 27, 1980, prepared by Carolina Surveying Company
7 with the following metes and bounds to
8 wit ---

9 Q. That's that's enough, Mr. Grayson. Turn to the next
10 exhibit, Exhibit 16, Exhibit 16 of Judge McGowan's Order, do
11 you recognize that as a memorandum or a letter from Wilkins
12 Norwood to the Watson's Orchard Property Owners October 14,
13 1980 dated?

14 A. That was an exhibit to the, uh, Order and it is signed by
15 Wilkins Norwood dated October 14, 1980 and it's addressed to
16 Watson's Orchard Property Owners and the subject is "Releasing
17 of Restrictions".

18 Q. Would you read the first paragraph into the record,
19 please.

20 A. "It appears that at long last we, the lot owners in
21 Watson's Orchard, have agreed to release the restrictions on
22 the Watson property and to go forward with the formation of
23 Watson's Orchard Property Owners Association, Inc. and other
24 steps in the agreement to release."

25 Q. Uh, keep going.

PATRICK GRAYSON, JR. - DIRECT EXAMINATION BY MR. HERLONG

1 A. "J.B. Stephens, a homeowner whose lot fronts on Pelham
2 Road, does not want to participate in the corporation, instead
3 he is willing to buy the five lots most directly across from
4 his home. He's made an offer to purchase five minimum lots
5 200 feet frontage, 55 thousand square feet in front of his
6 house for the purchase price of a hundred and five thousand
7 five hundred (105,500) and give up his interest in the
8 corporation, this is a price of twenty-one thousand one
9 hundred dollars (\$21,100) per lot."

10 Q. Keep goin' a little more ---

11 A. "When you consider that the value of a share of stock in
12 the Watson's Orchard Property Owners Association, Inc. should
13 be worth a minimum of seven thousand dollars (\$7,000), the
14 corporation will net around twenty-two thousand five hundred
15 (22,500) per lot. If the lots were sold in the open market
16 for twenty-five thousand dollars (\$25,000) through a realtor,
17 only twenty-two thousand five hundred (22,500) would be netted
18 after commission. It is our opinion that this is a fair price
19 for this purchase, therefore your committee believes the offer
20 is fair and recommends that it be accepted."

21 Q. Now this was presented to Judge McGowan in connection
22 with the property.

23 A. That was introduced at the hearing before Judge
24 McGowan.

25 Q. Turning back to his Order, Mr. Grayson, page D80 in the

1 big notebook, Paragraph 18 there in the middle, I think you
2 already read that where he recognized that, "More than a
3 majority of defendants as charter members and pending
4 stockholders in Watson's Orchard Property Owners Association
5 are willing to sell five lots as described in the deed shown
6 as Exhibit 14 for a hundred and five thousand five hundred
7 dollars (\$105,500), correct?

8 A. Yes.

9 Q. Turn to page D82 the last page of Judge McGowan's Order,
10 would you -- and the next to the last paragraph I'll just read
11 it, "It is further ordered that the officer of Watson's
12 Orchard Property Owners Association, Inc. be authorized to
13 execute and deliver a deed conveying good fee simple title to
14 the property shown on Exhibit 14 upon receipt of the
15 consideration of one hundred five thousand five hundred
16 dollars (\$105,500) less documentary deed stamps." Did -- is
17 that the part of the order, Mr. Grayson, that authorized WOPOA
18 to sell the five lots to Mr. Stephens?

19 A. It, uh, yes.

20 Q. Okay. Page D259 Exhibit SJ11 in the notebook,
21 Mr. Grayson, ---

22 A. Alright.

23 Q. --- you recognize this as a grantee index from Greenville
24 County?

25 A. Is that ---

1 MR. HILLER: I I I ---

2 UNIDENTIFIED WOMAN: Okay.

3 THE COURT: I'm sorry, I didn't hear.

4 MR. HILLER: He ask -- he wants to ask Mr. Grayson about
5 a grantee index. I can't imagine that Mr. Grayson has seen
6 the original or knows of of the document ---

7 THE COURT: Well let's find out. Let him ask and see ---

8 MR. HILLER: Alright.

9 THE COURT: --- if there's sumtin'. Go ahead.

10 BY MR. HERLONG:

11 Q. Mr. Grayson, looking at this, is this -- ha -- are you
12 familiar with a grantee index in the property office.

13 A. Uh, I am familiar with grantee indexes in the courthouse,
14 yes.

15 Q. And have you seen this one before?

16 A. Uh, I may have, I, uh, not sure I've even seen it in the
17 original 'cuz, uh, I've used paralegals who would have looked
18 at these and not indeed myself.

19 Q. Fourth line from the bottom references a transfer June
20 16, 1981 grantee being Pelham and then the grantor is Watson's
21 Orchard Property Owners, do ya see that?

22 A. I see that.

23 Q. Do you see the description on the right side?

24 A. Says, "Five lots Pelham Road".

25 Q. Back to to the restrictions that you drafted,

1 Mr. Grayson, which were Exhibit SJ2, page D11, was it, was it
2 your intention in connection with the drafting of the deed and
3 the restrictions all of which, I believe all of which occurred
4 about the same time, is that correct?

5 MR. HILLER: I I object, I object ---

6 THE COURT: Same objection?

7 MR. HILLER: Yes, sir.

8 THE COURT: Alright. Go ahead answer it.

9 Q. Was it your intention that the Stephens' lots would be,
10 would qualify under that language "lots into which the
11 property described above shall have been developed" ---

12 A. Yes.

13 Q. --- and your intention that they would have a vote with
14 respect to the amendment of these re ---

15 A. Yes.

16 Q. --- restrictions and covenants? Mr. Grayson, take me
17 forward, look at Exhibit SJ12 in the notebook, SJ12 it's page
18 D262.

19 A. Okay.

20 Q. Can you identify this document, Mr. Grayson?

21 A. I have seen this in the re -- the records, I did not
22 prepare this deed.

23 Q. Is this a deed from Pelham Properties to J.B. Stephens?

24 A. It is.

25 Q. Looks like it's dated August 22, 1986?

1 A. Yes.

2 Q. Is it conveying those same five lots from Pelham
3 Properties to Mr. Stephens individually?

4 A. Has the same legal description as in the deed into Pelham
5 Properties, Inc., yes.

6 Q. Does it say, "All that certain piece, parcel, tract of
7 land situate, lying, being in the County of Greenville, State
8 of South Carolina, containing five lots," ---

9 A. Yes.

10 Q. --- and so forth? Turn to page D264, Exhibit SJ13 in in
11 the notebook. You see in the middle of the page there,
12 Mr. Grayson, on the left side August 25, 1986 Stephens JB
13 grantor Pelham Properties, Inc., over to the right description
14 says five lots, corner of Pelham and proposed ---

15 A. Yes.

16 Q. Okay. Turn to SJ14 the next exhibit in the notebook
17 D266.

18 A. Alright.

19 Q. Is this a deed, Mr. Grayson, from Mr. Stephens
20 individually to a revo -- a trust, revocable trust of his?

21 A. Yes.

22 Q. Alright. Looks like it is dated, uh, the last page July
23 15, 2003?

24 A. Uh, yes.

25 Q. On the bottom of the first page it refers to Parcel 3, do

1 ya see that?

2 A. Yes.

3 Q. "All that certain piece, parcel, tract of land situate,
4 lying and being in Greenville County, State of South Carolina
5 containing five lots as more fully shown on the plat entitled
6 "Survey for which -- Richard Watson, prepared for Carolina
7 Surveying Company, dated June 27, 1980, revised August 19,
8 1980, revised August 27, 1980, revised September 3, 1980 and
9 revised December 1, 2 and 3, 1980, see that?

10 A. Yes.

11 Q. Are these the same five lots where now Mr. Stephens is,
12 Stephens is ---

13 A. Same ---

14 Q. --- the ---

15 A. --- same legal description as in the earlier deeds.

16 Q. Okay. Turn to SJ15, page D272, do you recognize this,
17 Mr. Grayson, as a deed from Mr. Stephens as trustee of his
18 revocable trust to Pelham Farm, LLC, Legacy One, LLC, SCSP,
19 LLC?

20 A. Yes.

21 Q. And is he here transferring those same five lots once
22 again?

23 A. It has the same legal description.

24 Q. Okay. And that is what, August 15, April 2008?

25 A. Yes.

PATRICK GRAYSON, JR. - DIRECT EXAMINATION BY MR. HERLONG

1 Q. Turn to Exhibit SJ16, page D276, do you see the line on
2 the bottom of the grantor index, grantor/grantee index, you
3 see that, Mr. Grayson?

4 A. Yes.

5 Q. You see the line on the bottom of that one?

6 A. Yes, uh, bottom line says, "Interest five lots Pelham
7 Road".

8 Q. Okay, alright. Alright, Mr. Grayson -- Your Honor, we
9 would move to the admission of all those documents, I'm sure
10 Mr. ---

11 THE COURT: Well I don't don't -- you don't know what his
12 intent is.

13 MR. HERLONG: I would move for the admission of those
14 documents.

15 MR. HILLER: Obviously my blanket objection applies and
16 and and and my objection with regards to whether Mr. Stephens'
17 family or his companies or anything else coulda possibly ever,
18 whatever they did with the property other than found a
19 subdivision plat and tryin' to develop it, could not possibly
20 have any legal relevance or significance on the interpretation
21 of covenants were filed twenty-eight years earlier, uh, it it
22 it's just completely irrelevant they -- that what he has done
23 or hasn't done with the property subsequent to his acquisition
24 of title is irrelevant, of course these indexes are are
25 nothing more than a convenience for the clerk at the ROD

1 Q. That's already in. I wanted to call your attention to
2 the Order, I'm sorry not the Order, the offer from
3 Mr. Stephens or Pelham Properties I think which was his his
4 company to WOPOA, actually it's written to Watson's Orchards
5 Homeowners Association, Inc., that we talked about on your
6 direct examination, you remember talking about this, ---

7 A. Yes.

8 Q. --- which is page D167 the attachment? The attachment I
9 think I asked you to read from. Doesn't the attachment
10 specifically reference, look at page D167, does not the
11 attachment the first paragraph specifically reference the
12 Richard Watson survey of December 3rd?

13 A. Yes.

14 Q. Did you say earlier ---

15 A. Wait, wait a minute. What what was the date a that?

16 Q. Um, oh, it references the survey as of August 27, ---

17 A. As of August ---

18 Q. --- 1980.

19 A. --- 27, 1980.

20 Q. And it says a more fully, to be more fully shown on a new
21 survey, see that in the first paragraph?

22 A. Yes.

23 Q. Mr. Grayson, I I think I recall you said on your in
24 response to Mr. Hiller that one a the conditions for the
25 release of the covenants in 1981 was the transfer of the five

1 lots to Mr. Stephens?

2 A. That was correct.

3 Q. And explain to me how that came to be a condition, best
4 you can recall.

5 A. I I think he signed the release on the condition that he
6 could buy the lots and, uh, he had that ---

7 MR. HILLER: Well I ---

8 A. --- deed ---

9 MR. HILLER: --- I I object as with Grayson's qualified
10 answer was I think and I don't think he's established or I
11 think the testimony's actually established that he never had
12 any involvement with it.

13 THE COURT: Can't speculate ---

14 MR. HILLER: I mean, he he had a conversation with ---

15 THE COURT: Okay, cannot speculate. Alright.

16 BY MR. HERLONG:

17 Q. Mr. Grayson, did, uh, and if you wanna refer to
18 Mr. Wilkins Norwood's memo for this you might need to but, uh,
19 did Mr. Stephens refuse to participate in WOPOA to become a
20 shareholder in WOPOA?

21 MR. HILLER: Your Honor, ---

22 THE COURT: I think that's asked and answered. He's not
23 in ---

24 MR. HILLER: That ---

25 THE COURT: --- there, he he's -- that's all been

BILL KEHL - DIRECT EXAMINATION BY MR. HERLONG

1 (Whereupon, the witness came forward.)

2 (Whereupon, a discussion was held off the record.)

3 BILL KEHL, having been
4 first duly sworn, testifies as follows:

5 THE COURT: Alright, thank you very much, please be
6 seated.

7 MR. HERLONG: You mark this one, please.

8 COURT REPORTER: Um-hum.

9 (Letter dated March 11, 1981 marked Defendants' Exhibit
10 No. 6 for identification.)

11 DIRECT EXAMINATION BY MR. HERLONG:

12 Q. Mr. Kehl, will you state your name for the record,
13 please.

14 A. Bill Kehl.

15 Q. Where do you work, Mr. Kehl?

16 A. I'm an attorney with the Wyches Law Firm.

17 Q. And what do ya do?

18 A. I do, uh, corporate and business work and in prior years
19 I did real estate work.

20 Q. Okay, well I I wanna ask you, show you Defendants'
21 Exhibit No. 6, can you identify that? Just a letter on top
22 of.

23 A. Yes, this is a letter that I sent to Jim Stephens on
24 March 11th 1981 providing him with an opinion that he had good
25 title, uh, to the property which he had just bought.

BILL KEHL - DIRECT EXAMINATION BY MR. HERLONG

1 Q. You reference the pro -- to the five lots along Pelham
2 Road, is that correct?

3 A. Yes.

4 Q. Were you providing him with a title opinion that he had
5 good title to the five lots along Pelham Road?

6 A. Yes.

7 Q. Alright. Uh, I notice in -- well just read the first
8 sentence then just for the record.

9 A. "I'm enclosing the deed to Pelham Properties, Inc. to the
10 five lots along Pelham Road. The deed has been recorded in
11 the office of the RMC for Greenville County in Deed Book 1141
12 At page 1, ---

13 Q. Okay.

14 A. --- also enclosed is the easement which you and I
15 discussed on the telephone."

16 Q. Okay, and the deed is that attached to the letter?

17 A. Yes.

18 Q. And just read if you would first paragraph of the, of
19 the, uh, insert,

20 A. The first paragraph of the description?

21 Q. Yes.

22 A. "All that certain piece, parcel or tract of land situate,
23 lying and being in the State of South Carolina, County of
24 Greenville, containing five lots as is more fully shown on
25 plat entitled "Survey for Richard Watson", prepared by

BILL KEHL - DIRECT EXAMINATION BY MR. HERLONG

1 Carolina Surveying Company dated June 27, 1980, revised August
2 19, 1980, revised August 27, 1980, revised September 3rd 1980
3 and revised December 1st, 2nd and 3rd 1980 and having
4 according to said plat the following metes and bounds to wit."

5 Q. That's fine. Uh, alright. And do you reco -- you probly
6 don't but, uh, by any chance recognize the plat that's been
7 marked as Defendants' Exhibit 2 Richard Watson revi -- revised
8 December 3rd 1980, do you recognize that with the, with the
9 lots up at the top?

10 A. I I believe I do although I haven't looked at it in
11 thirty years.

12 Q. Alright. Do you, uh, one of the issues that's come up
13 here is that the plat was not recorded, you, uh, you indicated
14 in your letter that Mr., uh, Mr. Stephens had good title to
15 the five lots, you didn't reference the plat not being
16 recorded, any particular reason?

17 A. No, um, Jim was acquiring a piece a property that was,
18 uh, described by metes and bounds, uh, I understand that if
19 Jim wanted to convey one or more of those lots separately he
20 un -- at least by today's standards would have to have
21 recorded the plat but it was not considered necessary by me at
22 that time.

23 Q. Were -- are today's standards different than what they
24 were in 1980?

25 A. I frankly don't recall.

BILL KEHL - DIRECT EXAMINATION BY MR. HERLONG

1 Q. Yeah, okay, alright. Uh, let me show you these other
2 documents, Mr. Kehl. If you would mark next exhibit.

3 (Documents/title notes marked Defendants' Exhibit No. 7
4 for identification.)

5 Q. Defendants' Exhibit 7, Mr. Kehl, are these documents from
6 your files Wyche?

7 A. I presume they are. I recognize the first page as being
8 title notes from my firm, uh, and I assume that these are the
9 documents that I provided for you when you reviewed my file.

10 Q. I'll represent to you that they are. Mr. Kehl, the first
11 page it looks like a copy of a side of a file what I would
12 assume is the file number and then Davis Electrical
13 Consultants, loan from SCN Bank five lots Pelham Road, is that
14 correct?

15 A. Yes.

16 Q. Did you handle a transaction where he, Mr. Stephens or
17 Pelham Properties, obtained a loan from SCN on those five
18 lots?

19 A. Yes.

20 Q. Alright. The next page can you tell me what the next
21 page is.

22 A. The next page is a page of, um, title notes that came
23 from, uh, the Wyches Law Firm from the person who examined the
24 title. It appears, it appears to represent only, uh, the
25 transaction from Pelham Properties to J.B. Stephens.

1 Q. Okay, and the description from the deed is that five lots
2 Pelham Road per see attached?

3 A. You're referring to the deed that's attached to ---

4 Q. No, ---

5 A. --- those notes?

6 Q. --- before that on the, on the page that's W0003154 the
7 bottom left corner ---

8 A. Yes.

9 Q. --- the description from the deed which is copied there
10 it says five lots Pelham Road see attached.

11 A. That's what it says.

12 Q. Okay, and then the atta -- the following document would
13 that be the deed from Pelham Property to J.B. Stephens?

14 A. Yes.

15 Q. And that appears to be the deed that was being referenced
16 in the prior page?

17 A. Yes.

18 Q. Alright, and that deed I'll I'll I'll read the first
19 part, "All that certain piece, parcel or tract of land
20 situate, lying and being in the County of Greenville, State of
21 South Carolina, containing five lots as more fully shown on
22 the plat entitled "Survey for Richard Watson", prepared by
23 Carolina Surveying Company, dated June 27, 1980, revised
24 August 19, 1980, revised August 27, 1980, revised September 3,
25 1980 and revised December 1, 2 and 3, 1980," did I read that

1 correctly, Mr. Kehl?

2 A. Yes, it has a certain fa -- familiarity, does it not?

3 Q. Yeah, and that's, without going back word-for-word that
4 appears to be the same as what what we read a moment ago from
5 the very first deed?

6 A. Yes.

7 Q. The next page, the one that's got 3157 on the bottom left
8 corner is another, uh, another work paper regarding a deed, is
9 that correct?

10 A. Yes.

11 Q. This looks like the original transfer of Watson's Orchard
12 Property Owners Association to Pelham Properties, Inc. in
13 1981?

14 A. Yes, it appears to be that.

15 Q. Okay. And attached to it or following it is the deed
16 from Watson's Orchard to Pelham Properties, Inc. in 1981 that
17 we were looking at a little while ago, would you agree with
18 that?

19 A. I'm sorry, you'll have to give me the identification of
20 that.

21 Q. At the following page fi -- 5157.

22 A. 5157?

23 Q. Yeah, 5157, the first page after the, uh, the abstract
24 page we were lookin' at so -- I'm sorry, 3157.

25 A. Yes, I see the document number now.

BILL KEHL - DIRECT EXAMINATION BY MR. HERLONG

1 Q. Okay, and going back to the prior page, Mr. Kehl, the,
2 uh, the description that your paralegal took from the deed in
3 that case was five lots Pelham Road, see attached deed for a
4 description, that correct?

5 A. That's correct.

6 Q. And again we already looked at this deed, the 1981 deed,
7 from WOPOA to to Pelham Properties. Now look at the next
8 document which page Number 3159 Chicago and Title -- Chicago
9 Title Insurance Company, can you tell me what this is,
10 Mr. Kehl?

11 A. This is a, um, affidavit, uh, from Jim Stephens to the
12 title insurance company, uh, on which, uh, at least in part
13 their title insurance policy was based.

14 Q. Okay, and does the, uh, it -- on the second page of it
15 the description does it say, "The real estate improvements
16 referred to herein are situated at five lots Pelham Road of
17 Greenville, State of South Carolina and are described as 1600
18 block Pelham Road," is that correct, top a that page, "The
19 real estate and improvements referred to herein are situated
20 five lots Pelham Road, ---

21 A. Yes, I see that.

22 Q. Okay. And the signature there in the middle you probly
23 don't recognize Mr. Stephens's signature but do you understand
24 that to be his signature?

25 A. I believe it to be.

1 Q. Okay. The next page, uh, like a March 16, 1988 letter
2 from you from Trudy Tapp, whom I assume was working with you,
3 to J.B. Stephens, correct?

4 A. Yes, Trudy Tapp was a real estate paralegal for us at
5 that time.

6 Q. Okay, the re: line there is, "Loan on five lots Pelham
7 Road from SCN", is that correct?

8 A. That's correct.

9 Q. Alright, and if you turn over to the next page 3162 on
10 the control number bottom left corner, tell me what that is.

11 A. That is a portion of the, uh, title insurance policy,
12 it's Schedule A.

13 Q. Okay. And the the name of the insured is S -- SCN, state
14 is J.B. Stephens, mortgage is for five hundred thousand
15 dollars (\$500,000), correct?

16 A. Yes.

17 Q. And the land referred to is see attached Schedule A
18 and, uh, ---

19 A. I see that as document 3164.

20 Q. I'm sorry. Thank thank you for correcting me there, I
21 was getting confused myself. And would you read the the first
22 paragraph in Schedule A which is the the do -- the property
23 that's being mortgaged.

24 A. It's the familiar language, "All that certain piece,
25 parcel or tract of land situate, lying and being in the County

BILL KEHL - DIRECT EXAMINATION BY MR. HERLONG

1 of Greenville, State of South Carolina, containing five lots
2 as is more fully shown on a plat entitled "Survey for Richard
3 Watson", prepared by Carolina Surveying Company, dated June
4 27, 1980, revised August 19, 1980, revised August 27, 1980,
5 revised September 3rd 1980, and revised December 1, 2 and 3
6 1980 and having according to said plat the following metes and
7 bounds to wit."

8 Q. That's fine. The, uh, the following -- let's see, the
9 following page 1, uh, 3165 I believe it is says "Mortgage" at
10 the top, you see that, ---

11 A. Yes.

12 Q. --- Mr. Kehl? Is this the final mortgage that was done?

13 A. This is a mortgage that was done March 16, 1988.

14 Q. Okay. And again it's, uh, mortgagor is J.B. Stephens and
15 the rate of the amount is five hundred thousand dollars
16 (\$500,000)?

17 A. Correct.

18 Q. Description of the property is that same language, "All
19 that certain piece, parcel, tract of land situated, lying and
20 being in the County of Greenville, State of South Carolina,
21 containing five lots as more fully shown," and if Your Honor
22 will allow me I'll stop.

23 THE COURT: Yeah, just just the same language.

24 MR. HERLONG: Same language.

25 THE COURT: Okay.

1 Q. Okay, and behind page 3179 of the package of documents,
2 Mr. Kehl, this looks like an internal, uh, ledger for the law
3 firm, that be right?

4 A. It, uh, it is a document from the Wyches law firm, I'm
5 not quite sure the purpose for it.

6 Q. Okay, it looks like something to do with billing down at
7 the bottom.

8 A. Could be.

9 Q. Right in the middle does it say, "Mortgage loan from SCN
10 Bank dash five lots on Pelham Road"?

11 A. Yes.

12 Q. Okay. At the top it says, "Wyche, Burgess, Freeman,
13 Parham, PA case ledger".

14 A. Correct.

15 Q. Okay. The very last page of the document, Mr. Kehl, is
16 another file folder printout or copy, looks like that perhaps
17 a a file number or matter number then "Davis Electrical
18 Constructor's, Inc. mortgage loan from SCN Bank five lots on
19 Pelham Road"?

20 A. That's correct.

21 Q. Okay. Mr. Kehl, uh, ---

22 (Mortgage marked Defendants' Exhibit No. 8 for
23 identification.)

24 Q. --- Mr. Kehl, Defendants' Exhibit 8 I believe is just a
25 filed copy of the mortgage you were just looking at, if you

BILL KEHL - CROSS-EXAMINATION BY MR. HILLER

1 could just identify it for me.

2 A. Yes, it's the same document but that shows the recording
3 date of ---

4 Q. That's a mortgage for five hundred thousand dollars
5 (\$500,000) on the same five lots?

6 A. Correct.

7 Q. Thank you, that's all the questions I have, Your Honor.

8 THE COURT: Cross?

9 CROSS-EXAMINATION BY MR. HILLER:

10 Q. Good morning, Mr. Kehl.

11 A. Good morning, sir.

12 Q. You would agree with me, would you not, that the
13 descriptions that are contained within your file are the exact
14 same descriptions each and every time?

15 A. Yes.

16 Q. And that you did not prepare the initial deed.

17 A. What do you mean by the initial?

18 Q. The initial deed from Watson Owners Property Owners
19 Association, Inc. to Pelham Properties, Inc.

20 A. That is, that is correct.

21 Q. Alright, so you received the deed, you gave Mr. Stephens
22 a title opinion and then from that point forward you just
23 duplicated the language in the deed in all the transactions
24 that occurred thereafter.

25 A. Obviously that's the case.

1 A. --- and and that the staff still functions pretty much
2 the same but they they just have a different boss but the
3 ru -- the sub sub regs they've evolved over time, they they
4 were different when I got here than they are now because there
5 are more rules and regulations that have to be dealt with and
6 there's there's federal rules and state rules and regional
7 rules, there's all kinds a rules that weren't here in 1969.

8 Q. With respect to, you're you're familiar with the plat
9 that's at issue in this case, Defendants' Exhibit 2, are you
10 not?

11 A. Yes.

12 Q. There was some testimony from Mr. Owings yesterday about
13 a summary plat, you tell us what a summary plat is.

14 A. A a summary plat is a a a special animal in the
15 legislation that created the ability to control the division
16 of of land or subdivide land. Summary plat essentially is a
17 final plat of property that has frontage on a public road and
18 has utilities and it does not have to be, it it is not treated
19 as a development activity as if it were a subdivision. If it
20 were a subdivision, it would have a new road, it would have
21 utility needs and that requires a different process. A
22 summary plat is is approved administratively when the
23 applicant shows that the land has access to a public road and
24 has water and sewer. Now that in 1969 through late 70's,
25 maybe even early 80's, the, uh, the, uh, test for whether it

1 had utilities was a pretty simple statement and the fact that
2 it had access to a highway it was, it was obvious, you just
3 looked on the, on the highway map and if it was public it was,
4 that was the only test. If you do it today, there are many
5 more things you have to prove along with the application for
6 the summary plat but a summary plat remains a final plat that
7 is not required to be reviewed by the Planning Commission or
8 approved by the Planning Commission, it it is to be approved
9 by an administrator, in this case the director of the planning
10 staff or the Planning Commission staff or his or her designee.

11 Q. Well if you think of what we've do this like section
12 right here (indicating), this could be a pl -- uh, this could
13 be a summary plat?

14 A. Yes, sir.

15 Q. So just cutting off that (indicating) strip along ---

16 A. Yes.

17 Q. --- Haywood Road?

18 A. You you put it on, at at that time you put it on a 22 by
19 27-inch mylar with the title block and, uh, the certifications
20 that the road's public and you got water and sewer and it
21 meets the zoning requirements and and you go record it.

22 Q. Did it meet those certification points in 1980?

23 A. The zoning, yes, ---

24 MR. HILLER: I'll, uh, ---

25 A. --- yes.

1 MR. HILLER: How how how did this witness know that? I
2 I, uh, he he just testified that it would had to prove a
3 number of things and couldn't possibly know the answer to
4 whether it had utility service, whether it had sewer, whether
5 it had water, whether it had curb cuts.

6 THE COURT: Well he's made that statement, you can ---

7 MR. HILLER: Alright.

8 THE COURT: --- clear it up on cross.

9 BY MR. HERLONG:

10 Q. Why don't you go ahead and explain how you know what you
11 just testified to, Mr. Mr. Shouse.

12 A. Well I know those lots are are bigger than than 20,000
13 square feet which was the minimum zoning would permit. Uh, if
14 it had public water, uh, the the minimum would be 25,000 feet,
15 if it did not have public water the minimum be 37.5 and I
16 think all those lots are 55,000 feet so they meet the zoning
17 ordinance and that would be the first te -- the test are the
18 lots the proper size to meet zoning and that and zoning was
19 then put on that property in May of '70. The, uh, the highway
20 is clearly a public road and, uh, and I don't, I don't recall
21 when the water was extended out Pelham Road but, uh, I'm
22 reasonably sure there was water available but if even if water
23 weren't available the lots are big enough to, uh, meet the
24 requirements of zoning ordinance that that existed at that
25 time.

1 Q. Okay. So you think it would have satisfied the
2 requirements for a summary plat at that time?

3 A. Absolutely.

4 Q. Okay. Uh, and just to be clear, a summary plat that's an
5 administrative function?

6 A. Yes.

7 Q. The the the staff just checks off that it has those
8 things and ---

9 A. Yes.

10 Q. --- then stamps it.

11 A. Yes.

12 Q. Doesn't have to go through the Planning Commission to get
13 approval as a subdivision.

14 A. Does not.

15 Q. Okay. In your career, Mr. Shouse, of both with Planning
16 Commission and and in your career in private development, have
17 you been involved in the creation or development or the
18 approval of the creation of development of lots, residential
19 lots?

20 A. Yes, sir.

21 Q. How many? thousands?

22 A. Couple thousand.

23 Q. Alright. Have you looked at the issue of whether these
24 properties, these what we're referring to as the Stephens'
25 lots are in fact lots?

JAMES COLEMAN SHOUSE - DIRECT EXAMINATION BY MR. HERLONG

1 A. Well by deed they are and by by that plat they are.

2 Q. Okay. Um, is it your opinion that they are lots?

3 MR. HILLER: Uh, I I I I object to that testimony on the
4 grounds that ---

5 THE COURT: Hadn't been qualified as an expert.

6 MR. HILLER: No, sir, ---

7 THE COURT: Okay.

8 MR. HILLER: --- and even if he was, I I think it goes
9 back to the issues that we talked about before and that's for
10 the Court to determine.

11 MR. HERLONG: Your Honor, ---

12 THE COURT: Okay.

13 MR. HERLONG: --- Your Honor, I I would move for the
14 admission of Mr. Shouse as an expert based on his his
15 experience in in lot development and his experience with the
16 Planning Commission.

17 THE COURT: Expert in what?

18 MR. HERLONG: In residential real estate lots, the
19 development, creation of residential real estate lots.

20 THE COURT: Wanna voir dire him on that?

21 MR. HERLONG: What he's asking him is the legal question,
22 Your Honor. Um, you know, he's already testified what was
23 necessary to meet the county standards to subdivide lots, now
24 he wants to testify as what the deed says and and and that's a
25 legal question and he's certainly not qualified to, uh, uh,

JAMES COLEMAN SHOUSE - VOIR DIRE EXAMINATION BY MR. HILLER

1 uh, give that opinion nor would would that opinion be
2 appropriate for the reasons that that we objected to and
3 discussed yesterday. Uh, I I -- he's certainly qualified as a
4 developer but well yeah, I'll I'll voir -- I'll -- let me voir
5 dire.

6 THE COURT: Yeah, go ahead.

7 VOIR DIRE EXAMINATION BY MR. HILLER:

8 Q. Mr. Shouse, in order to sell a lot as you defined it,
9 would it not be necessary to record a subdivision plat?

10 A. No, sir.

11 Q. Okay. You, when you developed your lots, did you record
12 subdivision plats?

13 A. Yes, sir.

14 Q. You submitted 'em to the Planning Commission and had 'em
15 approved and then you recorded the plats?

16 A. Yes, sir.

17 Q. You actually testified earlier that that and that even
18 though the summary plat was administrative process you would
19 go record it after you got it, correct?

20 A. No.

21 Q. The summary plat.

22 A. Yeah, a summary plat has -- is recorda -- recordable,
23 yes.

24 Q. And and that completes the process, does it not?

25 A. If you choose to do it, yes.

JAMES COLEMAN SHOUSE - VOIR DIRE EXAMINATION BY MR. HILLER

1 Q. Right, but if you don't choose to do it you haven't
2 created the lots.

3 A. Uh, if you -- no, you've created the lot, you just have
4 not recorded it.

5 Q. If if if you own 6 acres and you wanna subdivide it into
6 five pieces of property to be sold, would it be necessary for
7 you to have a ---

8 THE COURT: Well, Mr. Hiller, you're kinda getting
9 beyond ---

10 MR. HILLER: Oh, ---

11 THE COURT: --- *voir dire*.

12 MR. HILLER: --- alright.

13 THE COURT: I mean, ---

14 MR. HILLER: Alright.

15 THE COURT: --- is he an expert in this, that's what
16 we're talkin' about.

17 MR. HILLER: And and what is -- what was specifically
18 they wanna qual -- as a real estate developer?

19 THE COURT: As a residential real estate ---

20 MR. HERLONG: Developer in ---

21 THE COURT: --- developer.

22 MR. HERLONG: --- in the creation of lots.

23 THE COURT: Well that that ---

24 MR. HILLER: I don't think he can testify. I don't think
25 he's an expert in creation of lots.

JAMES COLEMAN SHOUSE - VOIR DIRE EXAMINATION BY MR. HILLER

1 THE COURT: Yeah, I mean, I don't know if he's a surveyor
2 or what he does. I, you know, you -- that's what I'm gettin'
3 at but but he -- I think it's just as a residential real
4 estate developer, expert in residential real estate
5 development, is that right?

6 MR. HERLONG: That will do, Your Honor.

7 THE COURT: Okay, ask him about that. You ever been
8 qualified as an expert before in court?

9 THE WITNESS: No, sir.

10 THE COURT: Okay.

11 (Laughter.)

12 THE COURT: Gonna do me proud, Mr. Shouse.

13 (Laughter.)

14 THE COURT: I mean, with respect to his experience and
15 all that.

16 MR. HILLER: I have no i ---

17 THE COURT: It doesn't change ---

18 MR. HILLER: I I don't even know what that phrase means,
19 Your Honor. I I don't know how to *voir dire* somebody and and
20 and and what relevance even if he was qualified ---

21 THE COURT: Well that's a separate, that's a separate
22 question. I mean, so...

23 MR. HILLER: Well let's just ---

24 THE COURT: You you ---

25 MR. HILLER: --- let him ask him questions.

1 THE COURT: --- describe, how how many developments do
2 you think that you've been involved in, Mr. Shouse?

3 THE WITNESS: Twenty, twenty-five.

4 THE COURT: Okay. And in that capacity you've you've had
5 to do what?

6 THE WITNESS: Well I've I've identified land, I've bought
7 land, I've supervised engineering and desig -- actually done
8 the layout, I've supervised engineering, I've supervised the
9 construction, I've sold lots and I built houses.

10 THE COURT: Okay, and you've, uh, prior experience as
11 executive director of the Greenville County Planning
12 Commission was that part of, uh, did that come into play in
13 your, um, uh, role as a real estate developer?

14 THE WITNESS: Well I ---

15 THE COURT: I mean, the knowledge you gained from that.

16 THE WITNESS: --- I have a Master's in Urban
17 Planning, ---

18 THE COURT: Okay.

19 THE WITNESS: --- uh, and I used the knowledge I gained
20 workin' on that side of the equation to and when I went into
21 private business.

22 THE COURT: Okay, I'm gonna, I'm gonna qualify him as an
23 expert in residential real es -- real estate development
24 under, what, is it Rule 701 or 2, 2?

25 MR. HERLONG: Yeah, 2 ---

JAMES COLEMAN SHOUSE - DIRECT EXAMINATION BY MR. HERLONG

1 THE COURT: Two.

2 MR. HERLONG: I think, Your Honor.

3 THE COURT: Alright.

4 DIRECT EXAMINATION BY MR. HERLONG:

5 Q. Uh, Mr. Shouse, having looked at all of this and is it
6 your opinion that these Stephens' lots are in fact lots?

7 MR. HILLER: Well I I I object to that, Your Honor.

8 THE COURT: Well he, now he's askin' him if they're lots
9 but that that doesn't go to the final legal question, okay?

10 Q. Is that your opinion, Mr. Shouse?

11 A. Yes.

12 Q. And explain to me the basis for that opinion.

13 A. Well again they were deeded out as lots ---

14 Q. Okay.

15 A. --- and and and, uh, I mean, I I don't really have any
16 other basis other than that they were deeded as lots.

17 Q. Okay. Do you, uh, there's been a lotta talk about how
18 there's not a plat, that a plat was not recorded, have you
19 examined any of the other properties in the area with respect
20 to that question and reached any kinda conclusion?

21 A. Yes, sir. I I was involved, uh, uh, where Haywood Plaza
22 is, I actually built that for the owner and, uh, in the, in
23 the process of of building that center I had, I spent
24 appreciable amount a time on the Watson property so I'm
25 familiar with a a good number of those transactions.

1 this (indicating) line connects to it.

2 Q. The crossline?

3 A. Yeah.

4 Q. If they were simply doing exterior dimensions, would they
5 not use 397.9 to get to the next turn?

6 A. Correct.

7 Q. Alright, okay, so that's an interior 200. "Thence
8 continuing north 86-57 west 180 feet to a point."

9 A. And that's interior along this (indicating) same bearing
10 in distance.

11 Q. Okay, and again that goes up to the cross point on
12 the ---

13 A. To again a lot line.

14 Q. Okay, a lot line. "Thence continuing 7.9 feet to a
15 point."

16 A. That's that little angle right there (indicating) which
17 is the break in the, in the bearing on this (indicating)
18 line ---

19 Q. Okay, so ---

20 A. --- changes ---

21 Q. --- 200 and 180 and 7.9 are all on one line.

22 A. Right.

23 Q. Okay, that the call for those things there would be no
24 reason to do those calls unless you were designating internal
25 lots.

- 1 A. None whatsoever.
- 2 Q. Okay. Let's see, "Running thence 256 feet to a point."
- 3 A. Okay, or that or that's this this (indicating) exterior
- 4 of this (indicating) perimeter line (uh) bearing forward to
- 5 this (indicating) point.
- 6 Q. Okay.
- 7 A. Those are bearing changes.
- 8 Q. So they did not ---
- 9 A. So they missed this (indicating) one.
- 10 Q. --- they didn't go stop for that crossline.
- 11 A. Right.
- 12 Q. Okay. "Running thence 55 feet to a point."
- 13 A. Which is on this this (indicating) bearing and distance.
- 14 This bearing is 84.7 ---
- 15 Q. So they went 55 feet and that was ---
- 16 A. Fifty-five feet and created a point.
- 17 Q. Okay, that was to the next lot line.
- 18 A. Yes.
- 19 Q. Alright, and then running a hundred and seventy-six point
- 20 nine two feet to a point.
- 21 A. Which is on the same bearing but it's a, it's a -- the
- 22 property line.
- 23 Q. There have been no point, Mr. Shouse, to do this 55 and a
- 24 hundred and ---
- 25 A. No.

JAMES COLEMAN SHOUSE - REDIRECT EXAMINATION BY MR. HERLONG

1 Q. --- seventy-six separately if they had not intended to
2 designate that cross point?

3 A. Absolutely not.

4 Q. Okay. "Running thence 300 feet to a point on the
5 southern side of Pelham Road," so that's the the end of
6 the ---

7 A. That separates those two.

8 Q. --- lot, okay. "Running thence with the southern side of
9 Pelham Road 200 feet to a point."

10 A. Here (indicating).

11 Q. So that's the top of this (indicating) lot?

12 A. Yes.

13 Q. No point to stop there is there unless ---

14 A. The bearing doesn't change.

15 Q. Okay, there's no point to stop there unless it's
16 designating a lot, correct?

17 A. Correct.

18 Q. "Thence continuing with the southern side of Pelham Road
19 31.9 feet to a point."

20 A. You have a bearing change there (indicating).

21 Q. Okay, so that changes direction to 31.9 ---

22 A. And that's an interior dimension here.

23 Q. Okay. "Thence continuing with the southern side of
24 Pelham Road the following course and distance to wit 99.5
25 feet."

1 A. Bearing distance, uh, bearing change.

2 Q. Okay, so that's a shift in direction right there
3 (indicating). Then 68.6 feet ---

4 A. To a, to a point but no bearing change.

5 Q. So there'd a been no point to stop there unless they were
6 designating that cross ---

7 A. Right.

8 Q. --- line. Okay. And then 32 feet to a point.

9 A. Bearing change.

10 Q. Okay. Uh, and then a hundred feet to a point.

11 A. Bearing change again right here (indicating).

12 Q. Alright. And then 68 feet to a point, um, right there
13 (indicating)?

14 A. That's, yeah, that's, uh, to a a imaginary point, bearing
15 change is over here (indicating).

16 Q. Okay, so again no point to have the 68 feet unless you
17 were stopping ---

18 A. Right.

19 Q. --- for a crossline.

20 A. Right.

21 Q. And then a hundred, uh, I'm sorry, a hundred and seventy
22 feet to the point at the beginning.

23 A. This says a hundred and sixty-four. Oh, a hundred and
24 seventy here (indicating), you dropped, you missed a hundred.

25 Q. Did I miss a hundred and sixty-one?

1 A. Yeah.

2 Q. Now let me go go back and get it hundred before.

3 A. 168.4 on the same, on the ---

4 Q. Wait a minute, I ---

5 A. --- 68 side.

6 Q. Thirty-one point -- what was that ---

7 A. Six.

8 Q. Next one's 6.68?

9 A. 168 4.

10 Q. Sixty-eight point six feet to a point and then 32 feet to
11 a point.

12 A. That's not here.

13 Q. That, is that the on right there (indicating)?

14 A. Um-hum. You got thirty-one six, I don't know where this
15 dropped but then the last call is 170 to the point
16 beginnin'.

17 Q. What have I done wrong here, 31.6 ---

18 A. Which is right there (indicating).

19 Q. Thirty-one point six and then a hundred and
20 sixty-eight.

21 A. Point ---

22 Q. A hundred sixty-eight point four to ---

23 A. Right.

24 Q. --- a point. Again, no point in stopping at that ---

25 A. Its bearing, bearing is constant.

JAMES COLEMAN SHOUSE - RECROSS-EXAMINATION BY MR. HILLER

1 Q. That's an internal dimension ---

2 A. Yeah.

3 Q. --- to that crossline, correct?

4 A. There's a hundred and seventy to the closing point.

5 Q. Okay. So, Mr. Shouse, is it fair to say that with I
6 think one exception the calls all do stop at the crosslines?

7 A. Yes.

8 Q. Does that get to -- does that give you any, uh, does that
9 strengthen your position or does it have any impact at all on
10 your your position that these are in fact ---

11 A. It just, ---

12 Q. --- lots as designated by the deed?

13 A. --- it it just affirms that they were in t -- they are
14 lots, they were intended to be lots, they are lots.

15 Q. And anybody who's tracing those metes and bounds from the
16 public record would see those stop points?

17 A. Sure.

18 Q. Okay. Alright, that's all the questions I have.

19 RECROSS-EXAMINATION BY MR. HILLER:

20 Q. Mr. Shouse, why in the world would anybody do it that
21 way?

22 A. Got me.

23 Q. You got the other lines, don't ya?

24 A. Uh-huh.

25 Q. You're gonna go figure out that these calls may not be in

JAMES M. STEPHENS - DIRECT EXAMINATION BY MR. HERLONG

1 a deposition so I and I think that we might be buttin' up
2 against 2:30, I don't know if we have to take lunch.

3 THE COURT: Well we'll just -- let's just go ahead and
4 call your witness, let's go.

5 MR. HERLONG: Your Honor, I next call Mike Stephens.

6 (Whereupon, the witness came forward.)

7 THE BAILIFF: Left hand ---

8 THE COURT: Left hand, yeah.

9 JAMES M. STEPHENS, having
10 been first duly sworn, testified as follows:

11 THE COURT: Alright, thank you, sir. Come on around have
12 a seat, please state your name for the record.

13 THE WITNESS: Uh, my name is James M. Stephens.

14 THE COURT: Okay.

15 DIRECT EXAMINATION BY MR. HERLONG:

16 Q. Mr. Stephens, are you the son of the Mr. Stephens that
17 we've been talkin' about in this trial?

18 A. Yes.

19 Q. Okay. Just real quickly ask you this, uh, we talked
20 about Exhibit, I don't know what exhibit it was, Exhibit 7
21 earlier today, documents that Mr. Kehl was talking about,
22 on -- in the middle of that there's a affidavit relating to
23 the title insurance policy, uh, that it relating to the five
24 lots, it appears your dad had si -- your dad signed, is that
25 (indicating) your dad's signature?

1 A. Definitely.

2 Q. Okay. Same question about the offer that is in the
3 record, uh, it's SJ5 in in Defendants' Exhibit No. 1 page D58,
4 is that your dad's signature?

5 A. Yes.

6 Q. Okay. There's actually another, just just for the record
7 there's another copy of that offer I think D167 in the same
8 notebook. Mr. Stephens, tell me what ya know about these five
9 lots, your dad's purchase of the five lots.

10 A. Uh, I was livin' in Louisiana and, uh, ---

11 MR. HILLER: Well, Your ---

12 A. --- the first ---

13 MR. HILLER: --- Honor, Your Honor, I don't think that's
14 a proper question without laying some foundation or basis as
15 to how he has personal knowledge, it may or may not be
16 hearsay.

17 THE COURT: Well let's, I mean, -- okay, we'll keep,
18 we'll be attentive to that. Go ahead, yes, sir.

19 A. Well, I was livin' in Baton Rouge at the time, I'd
20 started a branch office of our company and my father and I
21 talked on a regular basis ---

22 MR. HILLER: Well then then ---

23 A. --- about his ---

24 MR. HILLER: --- then I would object to all of his
25 testimony as hearsay.

JAMES M. STEPHENS - DIRECT EXAMINATION BY MR. HERLONG

1 BY MR. HERLONG:

2 Q. Tell tell us about when you moved back to South Carolina.

3 A. When I moved back to South Carolina, he ---

4 MR. HILLER: I object to ---

5 THE COURT: Well wait a minute.

6 MR. HILLER: He's -- alright.

7 THE COURT: He just said he moved back to South Carolina,
8 he's gonna testify to what he observed, ---

9 MR. HILLER: No, he said he ---

10 THE COURT: --- is that what you -- where you're goin',
11 Mr. Stephens?

12 THE WITNESS: No, what I'm gettin' to is the fact that my
13 dad offered me one a those lots.

14 MR. HILLER: And I object to that as hearsay.

15 THE WITNESS: It's not hearsay, it's a fact.

16 THE COURT: Well -- okay.

17 THE WITNESS: Well ---

18 THE COURT: Alright, I'm gonna, I'm gonna, I'm the fact
19 finder too so I'm gonna, I can sift through it, Mr. Hiller.
20 Go ahead.

21 BY MR. HERLONG:

22 Q. Mr. Stephens, did you understand that you had an
23 opportunity to buy one of those lots?

24 A. We never discussed a price, he offered me, he said, Mike
25 would you like to have one of my lots ---

1 MR. HILLER: I I ---

2 THE COURT: Now that's that's goin' a little -- ya
3 can't ---

4 Q. Just just tell me what you understood ---

5 MR. HILLER: Well ---

6 THE COURT: Well he can -- what his state a mind was is
7 fine.

8 Q. Was it your understanding that you had the opportunity to
9 buy one of those lots if ---

10 A. Yes.

11 Q. --- you want to? Okay. And did you, did you review the
12 plat at any time?

13 A. I I saw the plat.

14 Q. When did you first see the plat the best your -- is ---

15 A. Approximately that point in time.

16 Q. Alright. Did your dad show you the five lots?

17 A. Yeah.

18 Q. Okay. And did you consider whether to purchase one a
19 those five lots from your dad?

20 A. I did consider it.

21 Q. Ultimately I take it you did not purchase one a the lots.

22 A. That's correct.

23 Q. Okay, bought somethin' on the other side a town?

24 A. Yes.

25 Q. Okay.

LARRY ESTRIDGE - DIRECT EXAMINATION BY MR. HERLONG

1 MR. HERLONG: That's all the questions I have of
2 Mr. Stephens, Your Honor.

3 MR. HILLER: I have no questions.

4 THE COURT: Alright. Thank you, sir, you can step
5 down.

6 MR. HERLONG: Your Honor, we call Larry Estridge.

7 THE COURT: Okay.

8 (Whereupon, the witness came forward.)

9 THE BAILIFF: Left hand on the Bible, sir.

10 THE WITNESS: Yes.

11 THE BAILIFF: --- face the judge.

12 LARRY ESTRIDGE, having been first
13 duly sworn, testified as follows:

14 THE COURT: Alright, thank you, sir, please have a seat,
15 state your name for the record.

16 THE WITNESS: Larry Estridge.

17 THE COURT: Okay. Would you spell that for the court
18 reporter so she ---

19 THE WITNESS: E-S-T-R-I-D-G-E.

20 THE COURT: Okay.

21 DIRECT EXAMINATION BY MR. HERLONG:

22 Q. Mr. Estridge, would you tell us what you do.

23 A. An attorney.

24 Q. And where do you work?

25 A. I'm with Womble, Carlyle, Sandridge & Rice in

1 Greenville.

2 Q. How long you been practicin' law?

3 A. Uh, if you count the Army, forty and a half years.

4 Q. How long you practice law in Greenville?

5 A. In Greenville 40 years, ---

6 Q. Forty ---

7 A. --- actually 41 1/2 year, one year in the Army.

8 Q. And describe for me the nature of your practice generally
9 speaking.

10 A. Most of my practice is real estate, certainly for the
11 last thirteen years after I joined Womble, Carlyle it's been
12 almost exclusively some aspect of real estate.

13 Q. And tell me what kind of work your real estate work
14 typically involves.

15 A. Uh, involves representing buyers, sellers, lessors,
16 lessees, mortgagors, mortgagees, uh, sometimes I I get
17 involved in land use, regulation, zoning, incentives that are
18 attached to real estate, related to real estate and disputes
19 among people arising from real estate.

20 Q. What kinda training do you have for your real estate work
21 other than your experience?

22 A. Well I did have some real estate courses in law school,
23 beyond that the training has been on the job.

24 Q. Okay. You teach, you teach seminars yourself?

25 A. I do not. I have, I have taught a couple of CLEs on

1 leasing.

2 Q. Okay. And in the course of your career, I don't know,
3 can you put a number on how many real estate transactions
4 you've been involved in?

5 A. Many hundreds, maybe thousands.

6 Q. Okay.

7 MR. HERLONG: Your Honor, we would offer Mr. Estridge as
8 an expert in the area of real state transactions and real
9 estate law.

10 MR. HILLER: Your Honor, I thought we established this
11 yesterday that that no expert testimony is allowed or
12 admiss -- Mr. Herlong claimed they were fact witnesses
13 yesterday but but I I I I I I I I would submit that he's going
14 to attempt to elicit expert testimony from him that is an
15 interpretation of the agreement is sole province of the Court,
16 it's nothing more than another ar -- attorney arguin' the same
17 thing that Mr. Herlong and I are more than capable of arguin'
18 and that it is expressly prohibited by the cases that I
19 pointed out yesterday.

20 MR. HERLONG: Your Honor, case that I've mentioned
21 yesterday that I didn't have on the top a my tongue *Vortech*.
22 The case that Mr. Hiller mentioned the *Dawkins*, that the one?

23 MR. HILLER: Yes.

24 MR. HERLONG: *Dawkins. Dawkins ---*

25 MR. HILLER: *Dawkins the the ---*

MOTIONS AND MATTERS

1 MR. HERLONG: --- was a case where Professor Freeman
2 wrote an affidavit in opposition to the motion for summary
3 judgment and it was basically a brief and they submitted it
4 and the trial court said that's not okay, Court of Appeals
5 said it was, Supreme Court said it was not but he --
6 notwithstanding that there's parts of it were probly okay but
7 in 2008 South Carolina Court of Appeals revisited the issue in
8 light of the *Dawkins* case and you look, uh, the relevant
9 portion, Your Honor, starts on really bottom of page 13
10 because and again it was Professor Freeman and the the
11 defendant there, I believe it was the defendant, was arguing
12 he should not have been allowed to testify while the facts ---

13 THE COURT: Bottom of page what?

14 MR. HERLONG: --- not, she should not have been allowed
15 to testify.

16 THE COURT: What page are you referring to?

17 MR. HERLONG: Page, bottom of page 9, ---

18 THE COURT: Okay.

19 MR. HERLONG: Page number's at the top.

20 THE COURT: Yeah, alright.

21 MR. HERLONG: And the, uh, the relevant issue there was
22 that there was a claim that these these people had breached
23 their fiduciary duties and then there was an aiding and
24 abetting claim and associated with that and Professor Freeman
25 was gonna testify on the issue of the fiduciary duties and the

MOTIONS AND MATTERS

1 Court does a good discussion at the top, "If scientific,
2 technical or other specialized knowledge will assist the trier
3 of fact to understand the evidence or determine a fact and
4 issue a witness qualify as an expert by knowledge, skill,
5 experience, training, education may testify thereto in the
6 form of opinion or otherwise," that's coming straight outta
7 702, "When an expert is, when an expert testimony is based
8 upon facts sufficient to form the basis for an opinion, the
9 trier of fact determines its probative value," and then it
10 goes on and they relied on *Dawkins* in that case but the Court
11 of Appeals distinguished it said, "However, the Supreme Court
12 note that an opinion is not objectionable simply because it
13 embraces an an ultimate issue to be decided by the trier of
14 fact, the Supreme Court also found the affidavit, meaning
15 Professor Freeman's, contained some helpful factual
16 information such as Professor Freeman's on the va -- opinion
17 on the value of the stock and selling it for significantly
18 less and the value being improper, ---

19 THE COURT: Wait, I can read it, ---

20 MR. HERLONG: Okay.

21 THE COURT: --- you don't have to read it to me.

22 MR. HERLONG: Okay, I'll just let you do that, Your
23 Honor, and be quite for a minute.

24 THE COURT: Mr. Hiller, anything you wanna ---

25 MR. HILLER: Well, yes, Your Honor, I mean, and and

MOTIONS AND MATTERS

1 number one is is Court of Appeals obviously can't overrule the
2 Supreme Court. They distinguished this and they distinguished
3 it from specifically from the standpoint of saying that he did
4 not make improper legal conclusions but simply opined
5 regarding acts where committed and that is completely
6 different than the issues that are, I mean, than what what the
7 Supreme Court did specifically state in the *Dawkins* case and
8 that is over and over again that ---

9 THE COURT: Well we'll just have to be attentive that
10 Mr. Estridge does not make improper legal conclusions.

11 MR. HILLER: Well then what can he testify to? He ---

12 THE COURT: I don't know.

13 MR. HILLER: --- he's not, he wasn't a party or had
14 anything to do with any of these transactions.

15 THE COURT: Okay, well we'll find out just you have to be
16 on on your toes.

17 MR. HILLER: I will be.

18 MR. HERLONG: Your Honor, just to to clarify that
19 point ---

20 THE COURT: Figuratively speaking.

21 (Laughter.)

22 MR. HERLONG: --- factual issue in this case it's a mixed
23 fact of law but its first and factual issue is were these lots
24 lots ---

25 THE COURT: Okay, ---

LARRY ESTRIDGE - DIRECT EXAMINATION BY MR. HERLONG

1 MR. HERLONG: --- and, uh, ---

2 THE COURT: --- alright, just go ahead, I'm gonna, I'm
3 gonna ---

4 MR. HERLONG: Okay. Alright, Mr. Estri ---

5 THE COURT: We we qualified Coleman Shouse as an expert
6 and I think he regretted that decision later but I'll be happy
7 to -- what and you're gonna ---

8 MR. HERLONG: Area ---

9 THE COURT: --- expert ---

10 MR. HERLONG: --- real estate law, real estate
11 transactions.

12 THE COURT: Okay, alright.

13 BY MR. HERLONG:

14 Q. Mr. Estridge, have you reviewed the materials in
15 connection with these these five lots and the the plaintiffs'
16 allegation in this case and the defendants' counter-
17 allegations?

18 A. I've reviewed a number of materials, I've looked at a
19 series of deeds starting with the deed to I think it was
20 Pelham Properties and then the subsequent deeds to
21 Mr. Stephens and then to a revocable trust and then I think
22 you -- of a -- an undivided one percent interest to three LLC.
23 I reviewed those deeds, I reviewed the survey that is referred
24 to in those deeds, I reviewed a a document referred to as the
25 Stephens', uh, offer or the offer to purchase five lots, I

LARRY ESTRIDGE - DIRECT EXAMINATION BY MR. HERLONG

1 reviewed a letter that went out from Mr. Wilkins Norwood to
2 certain property owners, I I reviewed a number of affidavits
3 that were submitted previously in this case including that of
4 Mr. Mr. Shouse and I have probably reviewed some other
5 materials but those are the, those the ones that are are most
6 important to what I've been asked to consider here.

7 Q. Before I ask you your opinion let me back up and ask you
8 about the general practice, real estate practice and how
9 documen -- how plats are recorded and when they're not
10 recorded.

11 A. Well plats, uh, well the the recording requirements for
12 surveys and plats varies from jurisdiction to jurisdiction.
13 In Greenville County the specifications for actual recording a
14 plat for the pertinent periods here are largely set forth in
15 recording statutes which is a matter of state law and, um, and
16 planning and in subdivision regulations which are more a
17 matter of county law and those vary according to the the year
18 in which the plat is actually presented for recording.

19 Q. Okay. In terms of of the practice, do people, let's just
20 talk about today, do people sell property and not record
21 plats?

22 A. That it is a fairly common practice for people to sell
23 and to otherwise transfer property with reference to a plat
24 which is not recorded for a variety of reasons.

25 Q. And and was that the case in 1981 or ---

1 A. That was certainly was the case in 1981. Uh, it is, it
2 is very common for instance among transactions among related
3 parties such as a a family company or family partnerships or
4 family LLCs or family trusts, etc. when the purpose of the
5 transaction is -- has to do with what the grantor and the
6 grantee wish to accomplish from the transaction. It's also
7 very common among related companies, Company A and Company B,
8 for whatever reason may wish to transfer and to receive one or
9 more or a variety of properties and they elect based on their
10 negotiations and their own due diligence and their own
11 purposes to make re -- to make that conveyance and record a
12 deed that refers to a plat that they both have and they both
13 understand that this is the plat referred to but that for
14 whatever reason they choose not to file it in the public
15 records at least and not at that time, ---

16 Q. Okay.

17 A. --- that's a, has been and still is a common practice.

18 Q. Have you been involved in transactions like ---

19 A. I have been ---

20 Q. --- those?

21 A. --- involved in a number of transactions that involved
22 creating and presenting for recording a deed that describes
23 the property by reference to a plat that has not been recorded
24 plat.

25 Q. Okay. That, in your experience that is not an uncommon

1 practice?

2 A. It isn't. It is not an uncommon practice.

3 Q. Okay. With respect to these these, uh, Stephens' lots,
4 you were telling me the materials you had reviewed have you
5 reached an opinion as to whether these, uh, I guess the
6 language is in the, uh, ---

7 A. Shall have been developed ---

8 MR. HILLER: I'm on my toes now, ---

9 THE COURT: Alright.

10 MR. HILLER: --- Your Honor.

11 Q. --- into which the property ---

12 THE COURT: Okay.

13 MR. HILLER: I I I object to that as being a legal
14 opinion and has no factual or other basis. He's expressing an
15 opinion, uh, on the ultimate question that you have to decide
16 and that this, uh, that testimony falls squarely under the
17 provision of *Dawkins vs. Fields*.

18 THE COURT: Well show me -- you got the case?

19 MR. HILLER: Yes, sir.

20 THE COURT: Show it to me, let me read what you're
21 showin'.

22 (Whereupon, counsel handed the document to the Court.)

23 MR. HILLER: Your Your Honor, the the pertinent portion
24 begins at the bottom of the second page where it says, "In
25 general expert testimony on issues of law is inadmissible,"

1 and then it goes on to say, "Federal rules of e --", cites
2 with authority commenting that, "Federal Rule of Evidence 702,
3 702 and 704 prohibit experts from offering opinion about legal
4 issues that will determine the outcome of a case," and and of
5 course then it goes on, talks about how they prohibit it in
6 PCR actions an an an attorney comin' in and sayin' somebody,
7 uh, did not represent someone with the appropriate standard of
8 care, completely prohibited any testimony in that regard and
9 then they applied it to the facts of that particular case
10 prohibiting that expert and what he's in -- intending to do is
11 give you a legal opinion and and and neither the case
12 Mr. Herlong handed up has anything that changes that which is
13 prohibited by *Dawkins*.

14 MR. HERLONG: Your Honor, I I I disagree with that
15 characterization. The question of whether they are lots
16 developed into lots is a factual question first and foremost.
17 You will have a legal decision whether or not that satisfies
18 the requirement of the, of the restrictive covenants but it is
19 first and foremost a factual question to the extent it
20 encompasses the ultimate issue. You know, 704 explicitly,
21 Rule 704 explicitly says that is okay and even apart from that
22 what the *Dawkins* case is very cle -- not *Dawkins*, the *Vortex*
23 case is very clear that once the judge had made the decision
24 that a fiduciary duty applied there, that was the decision for
25 the judge, for the Court to make then Professor Freeman was

LARRY ESTRIDGE - DIRECT EXAMINATION BY MR. HERLONG

1 entitled to testify whether it had been violated. Under
2 Mr. Hiller's reasoning, Mr. -- Professor Freeman wouldn't a
3 been able to testify at all because those, as he would put,
4 those are legal issues but here the analogy if you can put it
5 an analogy to the ca -- this case is once you've made the
6 decision that real estate law and contract law and so forth
7 applies to this issue, Mr. Estridge can testify with respect
8 to those as to a factual conclusion, ha -- what does that mean
9 with respect to this particular set of lots.

10 MR. HILLER: But that's not what he asked him. I mean,
11 if he's gonna ask him and and I did not get on my toes
12 when he was asked about common practice and recordin' deeds
13 or whatever and that might have some relation from an expert
14 standpoint to a factual determination or a legal decision that
15 you have to make but he, what he asked him was specifically
16 what his opinion was which is the sole province of the Court
17 as to the issue of whether this created those lots. He wants
18 to talk about ways it mighta been then I assume you're gonna
19 let him although, you know, I'm I'm object to all his
20 testimony but but but based on your earlier ruling I'm
21 limiting it to when he's expressing an opinion as to a legal
22 conclusion which is exactly what Mr. Herlong just asked him to
23 do.

24 THE COURT: Ask your question again.

25 BY MR. HERLONG:

LARRY ESTRIDGE - DIRECT EXAMINATION BY MR. HERLONG

1 Q. Mr. Estridge, in your opinion the Stephens' lots were --
2 was was this property represented by the Stephens' lots, was
3 it developed into lots?

4 A. Yes ---

5 MR. HILLER: I ---

6 A. --- and I can expand?

7 THE COURT: Well wait a minute.

8 A. Yeah.

9 MR. HILLER: Well that that and that that's exactly what
10 *Dawkins* prohibits.

11 MR. HERLONG: That is not ---

12 MR. HILLER: That that ---

13 MR. HERLONG: --- what *Dawkins* prohibits.

14 MR. HILLER: --- that that is the legal question that
15 you're gonna have to answer.

16 MR. HERLONG: *Dawkins* prohibits a a expert witness, and
17 I've been here with Professor Freeman as as you may have seen,
18 an expert witness opines on what the relevant standards are:
19 who has the burden of proof, what is the law that applies
20 here, is there a fiduciary duty at all? *Dawkins* preve --
21 prevents an expert from coming in here and being a law
22 professor talking about the general rules of law, it
23 specifically does not prevent an expert taking those rules of
24 law and applying 'em to a factual ---

25 MR. HILLER: Here here ---

LARRY ESTRIDGE - DIRECT EXAMINATION BY MR. HERLONG

1 MR. HERLONG: --- question.

2 MR. HILLER: --- here here's a quote from *Dawkins*, "The
3 expert offered no factual evidence. He proffered his opinion,
4 assuming certain facts, trials coun -- counsel's actions fell
5 below acceptable legal standard of competence. The testimony
6 was not designed to assist the PCR court to understand certain
7 facts, but, rather, was legal argument why the PCR -- C -- PCR
8 court should should rule..." This witness has no facts to
9 offer, none whatsoever. He only has a an opinion assuming
10 certain facts, that's all he has, that's exactly what the
11 Court said was not admissible. He hasn't offered any facts,
12 he can't offer any facts.

13 MR. HERLONG: Your Honor, he's an expert witness. Expert
14 witnesses, he has offered some facts, but expert witnesses
15 testify based on the facts and information they learn from the
16 record and from others in the kinds of things they can rely
17 on, one of those things is the law, what is the law. Expert
18 witnesses are entitled to testify about that all the time,
19 that's what experts do, that's a complete ---

20 MR. HILLER: Objection.

21 MR. HERLONG: --- misreading of ---

22 THE COURT: Well ---

23 MR. HERLONG: --- *Dawkins*.

24 THE COURT: --- subject to your objection I'm gonna allow
25 him to to to answer the question.

1 BY MR. HERLONG:

2 Q. Mr. Estridge, you said you had an opinion, tell us what
3 it is and explain it.

4 A. Yes, in my opinion those five lots were developed. When
5 the steps that are in the record had been taken, we had an
6 owner of property being the Watson's Orchard Property Owners
7 Association which owned the dirt, it chose to have a survey
8 prepared drawing lot lines, meaning creating points that would
9 become boundaries of five lots, it then either solicited or
10 other -- otherwise came into contact with a perspective buyer
11 of those five lots, that buyer they agreed to a price and they
12 agreed to a price on a per lot basis, my recollection is it
13 was twenty-one thousand five hundred dollars (\$21,500) per
14 lot, they then between them had a -- then there was a letter I
15 believe to other people in the, in the subdivision across the
16 street that would have to approve that sale and in that letter
17 it was described as five lots with a purchase price of
18 twenty-one thousand five hundred dollars (\$21,500) per lot.
19 They then had one or more attorneys involved, don't know
20 exactly who drew the deed, but it was a deed drawn by an
21 attorney for one of them, maybe both of them, which described
22 the the transaction as a conveyance from one party to a second
23 party of five lots as shown in a survey. The buyer by paying
24 consideration and accepting the deed and recording the deed
25 trusted that the survey he had in his hand was the same as the

1 survey the sar -- seller's talkin' about, it's identified and
2 we do that all the time, you can identify surveys by who
3 prepared it, its date, survey number, etc. to make sure you're
4 looking at the same survey and paid consideration and recorded
5 the deed, those lots were developed when that process was
6 completed.

7 Q. Okay.

8 A. Obviously, in order to go further and improve or build
9 upon those lots, the present owner or any future owner would
10 have to take some additional steps and go through some of the
11 processes that you've been hearing about and talking about to
12 get building permits. The the the principle enforcement
13 mechanism for the whole subdivision regulation and subdivision
14 and the Planning Commission staff, etc. is to make sure that
15 before grading and building permits can be pulled and
16 construction can begin that certain requirements have been
17 complied with but the development of the lots it's it's a very
18 common practice for for land to be divided into lots by
19 identifying the points of dimension in the lots, that it
20 continues to be raw land until and unless somebody chooses to
21 build improvements on it.

22 Q. Okay. In terms of the Stephens like Mr. Mike Stephens
23 testified a few minutes ago that his dad, did have the
24 opportunity to purchase a lot from his dad, would his dad have
25 been able to sell him a lot?

LARRY ESTRIDGE - CROSS-EXAMINATION BY MR. HILLER

1 Q. Alright, now are you aware that this property is subject
2 to covenants and restrictions?

3 A. Yes. .

4 Q. Did you review those?

5 A. I did and I I I reviewed covenants and restrictions, uh,
6 not A to Z but I reviewed them for certain purposes.

7 Q. Okay, do those covenants specify minimum lot sizes?

8 A. At what time and which set?

9 Q. The set that we're talkin' about, this property -- well
10 let me ask ya this: What -- do you know who put the covenants
11 and restrictions on the property?

12 A. Well there were, uh, my recollection just from history is
13 that there were some covenants placed on there in the 60s I
14 believe and then pursuant to an Order of Judge McGowan those
15 covenants were changed on or about 1980 or so.

16 Q. Okay. Do you know -- so your your opinion is that these
17 are lots under the covenants, is that what your opinion was?

18 A. That was not my opinion.

19 Q. Okay, so your your opinion is they -- you you are not
20 sayin' that these have been created lots under the covenants,
21 under whatever the covenant's requirements are.

22 A. My opinion is that these were lots developed by the time
23 the deed was recorded.

24 Q. By and between the grantor and the grantee.

25 A. Before the deed was recorded the lots referred to in the

1 deed had been developed, that's my opinion.

2 Q. You agree with me, do you not, that the metes and bounds
3 description contained in the deed from Watson Orchards
4 Property Owners Association, Inc. to Pelham Properties, Inc.
5 is a metes and bounds boundary description?

6 A. It's a description of ---

7 MR. HERLONG: Object to the form.

8 A. --- the outside ---

9 MR. HERLONG: Your Your Honor, I think that misstates the
10 testimony that we went through pretty laboriously early.

11 MR. HILLER: I do not believe in this ---

12 THE COURT: Well ---

13 MR. HILLER: --- cross-examination.

14 THE COURT: --- go ahead. Go ahead.

15 BY MR. HILLER:

16 Q. Mi -- Mi -- Mr. Estridge, you would agree with me, would
17 you not, that this is a boundary survey of a single piece of
18 land?

19 A. No.

20 Q. Okay. Did you plot the metes and bounds?

21 A. It is a boundary survey of an area which surrounds what
22 is also shown on the survey, i.e., five lots.

23 Q. There is no survey, mis -- mis -- Mr. Estridge, there is
24 no survey. What what I'm talkin' about is the deed, it's
25 what's recorded at the courthouse, it shows no, it has no