THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Thomas W. Cooper, Jr., Special Referee

Case No. 2006-CP-26-4440

UNPUBLISHED OPINION NO. 2012-UP-219 (FILED APRIL 4, 2012)

SUPREME COURT CASE TRACKING NO. 2012-212294

Dale Hill, Betty Hill, Carl Clemmons, Geraldine Clemmons, Individually, and on behalf of a Class of all others similarly situated ..... *Petitioners,*

v.

Deertrack Golf and Country Club, Inc., Deertrack Golf, Inc., Deerfield Plantation, Inc., the Estate of John Schaad, by and through Ann Schaad as Executrix, and Deertrack Investors, LLC ..... *Respondents.*

APPENDIX

David B. Miller, Esq., SCB # 10296
Robert S. Shelton, Esq., SCB # 68543
BELLAMY, RUTENBERG, COPELAND, EPPS, GRAVELY & BOWERS, P.A.
1000 29th Avenue North
Myrtle Beach, SC 29577
(843) 448-2400
Attorneys for Petitioners

Other Counsel of Record:
Henrietta U. Golding, Esq.
Amanda A. Bailey, Esq.
McNAIR LAW FIRM, P.A.
P.O. Box 336
2411 Oak Street, Suite 206
Myrtle Beach, SC 29578
(843) 444-1107
Attorneys for Respondent Deertrack Investors, LLC

Richard M. Smith, Esq.
Leigh Powers Boan, Esq.
McNAIR LAW FIRM, P.A.
P.O. Box 1469
Pawleys Island, SC 29585
Attorneys for Respondents Deertrack Golf and Country Club, Inc., Deertrack Golf, Inc., Deerfield Plantation, Inc., and the Estate of John Schaad, by and through Ann Schaad as Executrix

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THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Dale Hill, Betty Hill, Carl Clemmons, Geraldine Clemmons, Individually, and on behalf of a Class of all others similarly situated, — Appellants,

v.

Deertrack Golf and Country Club, Inc., Deertrack Golf, Inc., Deerfield Plantation, Inc., the Estate of John Schaad, by and through Ann Schaad as Executrix, and Deertrack Investors, LLC, — Respondents,

Deertrack Investors, LLC, — Third-Party Plaintiff,

v.

Plantation Resort of Myrtle Beach, Inc., and Plantation Resort Properties, Inc., — Third-Party Defendants.

Appeal From Horry County
Thomas W. Cooper, Jr., Circuit Court Judge

Unpublished Opinion No. 2012-UP-219
Heard January 4, 2012 – Filed April 4, 2012

AFFIRMED

David B. Miller and Robert S. Shelton, both of Myrtle Beach, for Appellants.

Amanda A. Bailey and Henrietta U. Golding, both of Myrtle Beach; Jerry Petus of Lake Wylie; and Richard Michael Smith of Georgetown, for Respondents.

PER CURIAM: Dale Hill[1] and other homeowners of lots 1 through 458 in Deerfield Plantation (Homeowners) filed this declaratory judgment action against Respondents[2] seeking an injunction[3] to prohibit Respondents from converting certain portions of a golf course and clubhouse, which are adjacent to Homeowners' lots, into residential homes. By order filed November 5, 2008, the trial court granted Respondents' motion for summary

[1] Dale Hill, Betty Hill, Carl Clemmons, and Geraldine Clemmons are class representatives, and the class was certified by order filed November 9, 2009.

[2] Deertrack Golf and Country Club, Inc., Deertrack Golf, Inc., Deerfield Plantation, Inc., the Estate of John Schaad, by and through Ann Schaad as Executrix, and Deertrack Investors, LLC.

[3] Homeowners also alleged negligent misrepresentation, fraud, violation of the South Carolina Unfair Trade Practices Act (UTPA), and civil conspiracy.

judgment, finding Homeowners had no rights to the property. The court also cancelled the lis pendens on the property. On reconsideration, the court set aside the November 5, 2008 order as to the issue of Homeowners' rights to the property, denied Respondents' motion for summary judgment, and dismissed by consent the claims for negligent misrepresentation, fraud, and violations of the UTPA. The declaratory judgment cause of action was severed from the remaining claims, and the matter was referred to the special referee. The referee found no restrictions on the property and cancelled the lis pendens. The referee also denied Homeowners' motion to reconsider. Homeowners appealed. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to Homeowners' argument the order cancelling the lis pendens was rescinded: Noisette v. Ismail, 304 S.C. 56, 58, 403 S.E.2d 122, 124 (1991) (requiring an issue to be both raised to and explicitly ruled on to preserve it for appellate review); Rhoad v. State, 372 S.C. 100, 108 n.3, 641 S.E.2d 35, 39 n.3 (Ct. App. 2007) (finding an order is not final until it is written and entered).

2. As to Homeowners' arguments regarding the existence of an easement and no effective disclaimer, we adopt the special referee's well-reasoned order: Grosshuesch v. Cramer, 367 S.C. 1, 6, 623 S.E.2d 833, 835 (2005) (adopting the reasoning set forth in the trial court's order as to some of the issues on appeal).

AFFIRMED.

SHORT, WILLIAMS, and GEATHERS, JJ. concur.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Thomas W. Cooper, Jr., Special Referee

Case No. 2006-CP-26-4440

Dale Hill, Betty Hill, Carl Clemmons, Geraldine Clemmons, Individually, and on behalf of a Class of all others similarly situated ..... *Appellants*,

vs.

Deertrack Golf and Country Club, Inc., Deertrack Golf, Inc., Deerfield Plantation, Inc., the Estate of John Schaad, by and through Ann Schaad as Executrix, and Deertrack Investors, LLC .. *Respondents*.

PETITION FOR REHEARING OF UNPUBLISHED OPINION No. 2012-UP-219 Heard January 4, 2012 – Filed April 4, 2012

Pursuant to Rule 221, SCACR, Appellants, Dale Hill, Betty Hill, Carl Clemmons, Geraldine Clemmons, Individually, and on behalf of a Class of all other similarly situated (hereinafter "Appellants"), hereby petition this Court for rehearing of its decision in Hill, Dale, et al. v. Deertrack Golf and Country Club, Inc., et al., 2012-UP-219 (April 4, 2012). This Petition for Rehearing should be granted as this Court has "overlooked or misapprehended" material points of law and/or fact.

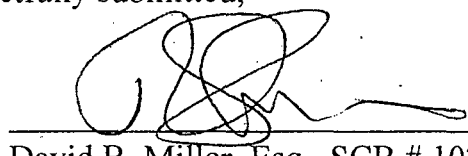
Rule 21, SCACR. As is more fully set forth in the accompanying Memorandum of Law in Support of Petition for Rehearing, incorporated herein, this standard is readily satisfied here.

Appellants respectfully request that this Court rehear and reconsider its Order filed herein April 4, 2012. In so requesting, Appellants appreciate and acknowledge this Court's attention to this important matter. Appellants are representative of 458 similarly situated lot owner residents of the golf community commonly known as Deerfield Plantation North. Moreover, these important issues concerning property owners' rights easily extend to similarly situated properties throughout the State of South Carolina.

Submitted herewith and incorporated herein is Appellant's Memorandum in Support of this Petition for Rehearing. Appellants seek rehearing and reconsideration as to (1) the establishment of an implied easement in favor of Appellants and (2) the status of Appellants properly filed Lis Pendens giving notice of Appellants' claim affecting interests in real property.

For the above reasons and those set forth more fully in the attached and incorporated Memorandum of Law in Support of Petition for Rehearing, this Court should grant this Petition for Rehearing, vacate its prior Opinion, and conduct rehearing proceedings.

Respectfully submitted,



David B. Miller, Esq., SCB # 10296
Robert S. Shelton, Esq., SCB # 68543
BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
1000 29th Avenue North
Myrtle Beach, South Carolina 29577
(843) 448-2400
Attorneys for Appellants

Myrtle Beach, South Carolina

April 18, 2012

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Thomas W. Cooper, Jr., Special Referee

Case No. 2006-CP-26-4440

Dale Hill, Betty Hill, Carl Clemmons, Geraldine Clemmons, Individually, and on behalf of a Class of all others similarly situated ..... *Appellants*,

vs.

Deertrack Golf and Country Club, Inc., Deertrack Golf, Inc., Deerfield Plantation, Inc., the Estate of John Schaad, by and through Ann Schaad as Executrix, and Deertrack Investors, LLC .. *Respondents*.

APPELLANTS' MEMORANDUM OF LAW IN SUPPORT OF PETITION FOR REHEARING

I. CASE SUMMARY

Appellants, Dale Hill, Betty Hill, Carl Clemmons, Geraldine Clemmons, Individually, and on behalf of a Class of all others similarly situated (hereinafter "Appellants"), seek rehearing of this Court's Unpublished Opinion No. 2012-UP-219 filed herein April 4, 2012. This case stems from the development, marketing, and sale of residential lots within the Deerfield Plantation North golf

community. The initial development, marketing, and sale of these properties occurred in the 1970's. The named Appellants, Dale Hill, Betty Hill, Carl Clemmons, and Geraldine Clemmons, are original purchasers and continuing residents of the Deerfield Plantation North golf community.

Central to the golf community is the golf course itself. Appellants seek to establish an implied easement restricting the golf course property to a use consistent therewith, commonly referred to as "open space." The original developers of Deerfield Plantation were Dr. and Mrs. V. F. Platt. Respondent Deertrack Investors, LLC (hereinafter "Respondent Deertrack Investors") is the successor in interest to the original developers of the golf course property and now seeks to discontinue its use and redevelop the subject property as a subdivision. If allowed to do so, Respondent Deertrack Investors will destroy the fundamental integrity of what was marketed and sold to Appellants.

Primarily, this case presents the important issue of homeowners' rights to the benefit and enjoyment of that which was sold; *i.e.*, a golf community and nature preserve. See "*In the beginning...*" (R. p. 374). It is critical in our society that legal recognition of these rights survive the passage of time, corporate formalities, successor ownership, and hidden disclaimers. Recognition of an implied easement is the most appropriate means of achieving that societal homeowner protection.

Secondarily, the portion of this Court's Order addressing the legal status of Appellants' properly filed lis pendens fails to appreciate and specifically recognize

the automatic stay provisions of Rule 241, SCACR, the procedural history concerning the lis pendens, and the written directive of the trial court rescinding its instruction to the Horry County Clerk of Court and requiring Respondent Deertrack Investors to post bond should it desire to lift the automatic stay.

II. APPELLANTS' ENTITLEMENT TO JUDICIAL RECOGNITION OF AN IMPLIED EASEMENT

This case requires a two-part analysis as to the existence of the implied easement:

(1) Whether the manner and method by which the subject properties were developed, marketed, and sold gave rise to an implied easement; and

(2) Whether the implied easement was "clearly" disclaimed.

A. Creation of the Implied Easement.

South Carolina recognizes many distinct implied easements affecting interests in real property. By definition, none of these are recorded express easements. Implied easements exist to correct inequities concerning various interests in real property. The persons or entities claiming the benefit of an implied easement bear the burden of establishing the requisites of the particular implied easement. As the various types of implied easements exist to correct various inequities, the particular elements required are unique to each. *Importantly, these elements are not portable.*

For example, the requisites for establishment of an implied easement by prescription have no bearing upon the requisites for establishment of an easement by necessity.

Implied easements recognized in South Carolina include:

Necessity: The party asserting the right of an easement by necessity must demonstrate: (1) unity of title[1]; (2) severance of title; and (3) necessity. Inlet Harbor v. South Carolina Dep't of Parks, Recreation, and Tourism, 377 S.C. 86, 659 S.E.2d 151 (2008).

Prescription: A prescriptive easement must be evidenced with: (1) twenty (20) years continuous use; (2) specific identity of the thing enjoyed; and (3) use which is adverse or under a claim of right. Boyd v. BellSouth Tel. Telegraph Co., Inc., 369 S.C. 410, 633 S.E.2d 136 (2006).

Prior Use: The elements of easements by prior use are: (1) unity of title; (2) severance of title; (3) prior use in existence at the time of unity of title; (4) prior use not temporary or casual; (5) prior use apparent or known to the parties; (6) prior

---

[1] Common to the various theories of implied easements is the necessity of unity of title. Dr. Platt prepared a plat evidencing a golf course community concept prior to conveyance of the residential portion of the tract to Deerfield Plantation, Inc. The deed into Deerfield Plantation, Inc. specifically referenced the individual golf holes, and Dr. Platt retained control over all properties, whether held in his name individually or in the name of his controlled entity. Law of other jurisdictions supports the position that the unity of title requirement is satisfied by demonstrating unity of control, coupled with a common scheme of development. What Constitutes Unity of Title or Ownership Sufficient for Creation of an Easement by Implication or Way of Necessity, 94 A.L.R.3d 502 (1979), as cited in Boyd v. BellSouth Tel. Telegraph Co., Inc., 359 S.C. 209, 215, 597 S.E.2d 161, 164 (Ct. App. 2004) (reversed in part on other grounds). The "*In the beginning...*" brochure alone makes clear the Platt's controlled the development of the Golf Course and the property owned by the Appellants, and sets forth a clear, common scheme of development. (R. pp. 374–389)

use was necessary and that there could be no other reasonable mode of enjoying the dominate tenement without prior use; and (7) the common grantor indicated an intent to continue the prior use after severance of title. Boyd v. BellSouth, 369 S.C. 410, 633 S.E.2d 136 (2006).

Implied Easement by Equitable Estoppel: The essential elements of equitable estoppel as related to the party estopped are: (1) conduct which amounts to a false representation or concealment; (2) intent or expectation that such conduct be acted upon; and (3) knowledge, actual or constructive, of the real facts.

As related to the party claiming the estoppel, the elements are: (1) lack of knowledge and means of obtaining knowledge of the truth; (2) reliance upon the conduct of the other party; and (3) detrimental action based thereon resulting in a prejudicial change in position.

Negative Reciprocal: Elements which ordinarily must be shown are: (1) a common grantor; (2) a designation of land subject to restrictions; (3) a general plan or scheme of restrictions; and (4) covenants running with the land in accordance with such plan or scheme. Gambrell v. Shriver, 312 S.C. 354, 440 S.E.2d 393 (Ct. App. 1994).

Blue Ridge: Where a conveyance is made by reference to a recorded plat on which streets, alleys, parks, and other open areas are shown, an easement therein is created in favor of the grantee. Such an easement is commonly referred to as a "Blue Ridge Easement." Such an easement is deemed a part of the property to which the

grantee is entitled and of which he cannot be divested except by due process of law. Blue Ridge Realty Co. v. Williamson, 247 S.C. 112, 145 S.E.2d 922 (1965)).

Some implied easements, although not express, maybe gleaned from documents of record. Others arise from conduct of the parties, whether at the time of conveyance or over a period of years.

This case requires judicial recognition of two types of implied easements. First, the manner and method by which the Deerfield Plantation North golf community was developed, marketed, and sold. Secondly, each and every one of Appellants' properties were originally conveyed by specific reference to a recorded plat, thereby incorporating all streets, roads, alleys, parks, open spaces, and the like, depicted thereon. The Golf Course is specifically identified and graphically shown on the plat.

1. Method and Manner of Development, Marketing, and Sale.

South Carolina cases have specifically recognized the significance of a Master Plan as part of implied easement analysis. Hamilton v. CCM, Inc., 274 S.C. 152, 263 S.E.2d 378 (1980); Butler v. Sea Pines Plantation Co., 282 S.C. 113, 317 S.E.2d 464 (Ct. App. 1984) These cases, however, are ultimately resolved on other grounds. As such, no South Carolina case specifically addresses the scenario presented here. Other jurisdictions, however, have had the opportunity to address virtually identical factual scenarios.

In Shalimar Ass'n v. D.O.C. Enterprises, Ltd., 142 Ariz. 36, 688 P.2d 682 (Ariz. Ct. App. 1984), the original land developers created a community consisting of a golf course and adjacent residential lots. A master plan was created depicting a golf course integral to the development and improvement of the property. The master plan was shown to potential buyers, who paid a higher price because of the golf course. Additionally, restrictions were recorded as to the residential lots, which specifically referenced the golf course. No restrictions were recorded against the golf course property itself. The golf course property itself was operated by a separate entity formed by the principals of the land developers. The golf course property was later sold to subsequent owners who, in turn, undertook to develop the golf course property into a subdivision. The subsequent owners of the golf course had actual knowledge of the homeowners' claims. *All of these facts exist in this case.*

The Arizona Court first resolved what it termed the "problem of terminology." Id. at 43, 688 P.2d at 689. The Court stated:

> We recognize that the rights we uphold here have been referred to by Courts as equitable easements, implied easements, equitable servitudes, implied equitable servitudes, implied grants, implied restrictive covenants, and rights arising by estoppel. The nomenclature used in the reported decisions is not consistent. Suffice it to say we are satisfied that "implied restrictive covenant" sufficiently describes what exists here.

The Court further considered and found that changes in economic conditions rendering continued operation of a golf course unprofitable is not sufficient to justify abrogation of the restrictive covenant.

In Skyline Woods Homeowners Ass'n Inc. et al. v. Broekemeier, 276 Neb. 792, 758 N.W.2d 376 (Neb. 2008), the original land developers owned an existing golf course through an entity called Skyline Golf Club, Ltd. The golf course was known as Skyline Woods. The principals of Skyline Golf Club, Ltd. thereafter undertook to develop the surrounding property into a residential area. In so doing, the advertising program promoted the proximity of the residential lots to Skyline Woods and referred to the golf course as the "center and the heart" of the residential development. Thereafter, the Skyline Woods golf course changed ownership numerous times, ultimately landing in the U.S. Bankruptcy Court.

The property was sold out of bankruptcy to Liberty Building Corporation which was owned by the Defendant, Broekmeier. Broekmeier discontinued operation of the golf course and allowed the condition of the golf course to significantly deteriorate. When Liberty undertook to develop the golf course property for other purposes, the surrounding homeowners brought suit to impose an implied easement restricting the use of the property to a golf course.

The Nebraska Court concluded that "[T]he record is replete with testimony supporting the existence of a common scheme of development establishing implied restrictive covenants." Id. at 809, 758 N.W.2d at 389. Although the corporate

ownership of the golf course and residential development were of different corporate entities, they enjoyed common ownership. The sale of the residential lots utilized advertisements centered around the golf course. As such, the Court affirmed the implied covenant requiring continued restriction of the subject property to a golf course.

In Ute Park Summer House Ass'n v. Maxwell Land Grant Co., 77 N.M. 730, 427 P.2d 249 (N.M. 1967) the original land developer prepared a master plan depicted on an unrecorded plat showing residential lots together with 27 acres of undeveloped property labeled "Golf Course." Although never recorded, copies of the master plan plat were distributed to prospective purchasers and used in connection with the sale of the lots. After all lots were sold, the land developer undertook to sell the golf course area for redevelopment. The golf course had never actually been constructed.

The New Mexico Court correctly observed:

> The rationale of the rule is that a grantor, who induces purchasers, by use of a plat, to believe that streets, squares, courts, parks, or other open areas shown on the plat will be kept open for their use and benefit, and the purchasers have acted upon such inducement, is required by common honesty to do that which he represented he would do. It is the use made of the plan in inducing the purchasers, which gives rise to the legally enforceable right in the individual purchasers, and such is not dependent upon a dedication to public use, or the filing or recording of the plat.

Shalimar, Skyline, and Ute Park amply demonstrate the proper legal framework for determining the existence of an implied easement in this case.

Similarly, in the present matter, the original developers of the golf course community, Dr. and Mrs. Platt, undertook a course of conduct designed to induce purchasers to believe Deerfield Plantation was being developed in such a manner as to accent and preserve the natural environment. Moreover, the advertising materials made clear golf was to be the center of life at Deerfield Plantation. In addition to mounting a large map on the wall of his pharmacy depicting the subdivision with golf course holes and fairways throughout, Dr. Platt commissioned the creation of a lengthy color brochure to market the golf course community.

Appellant Geraldine Clemmons testified that she was provided a copy of a this brochure, entitled "*In the beginning...,*" prior to purchasing her lot. (R. pp. 374–389; R. p. 167) She explained the brochure "stayed on my night table by my bed for a long, long time, and I just read it over and over." (R. p. 153) The property that would become Deerfield Plantation, the brochure explains, "has slumbered through the centuries." (R. p. 376) The brochure continues: "Now the time has come to carefully preserve this treasure in a way that will serve man, but in a way that will preserve its beauty." (R. p. 376) In this document, the developer explained: "Many homes and condominium apartments will look out over the fairways of the championship golf course, or upon the clear waters of Lake Vivian." (R. p. 379) Finally, the brochure described the family tradition at Deerfield Plantation:

> As Francis Platt brings the dream of Deerfield Plantation into a reality, he carries forth a family dream. A family tradition.

> He, and his father before him, resisted the headlong rush into real estate development that has so characterized the Grand Strand. They dreamed of something better for Deerfield. And they held onto their dream.
>
> Rather let the land continue to sleep, than desecrate it with a get-rich-quick development that would destroy the natural ecology and beauty.
>
> Now this dream of the Platt family is taking shape. And perhaps nowhere else on the Grand Strand will such care and devotion be lavished on the land.
>
> Deerfield Plantation is so much more than a new community. It is indeed a family tradition come to flower.

(R. p. 382) Mrs. Clemmons testified this brochure was "very important to me because this is what I was buying." (R. p. 154) Lastly, Mrs. Clemmons explained: "This talk of the golfing community, the southern way of life, a dream come true, and this is indeed what it was to me." (R. p. 155) The clear design of this marketing scheme was to induce purchasers to believe they were buying more than just a lot in a subdivision. They were led to believe they were purchasing a way of life in a golf course community.

2. Recorded Plat (Blue Ridge).

A second line of cases makes clear that where a recorded plat is present, the grant of rights in the features shown upon the plat is effective upon transfer. Generally, one who purchases property via a deed referencing a plat depicting the

developed area purchases therewith an easement in such amenities as are shown upon the plat. Blue Ridge, supra. In Epps, the court held that:

> "Generally, where property sold is described in the conveyance with reference to a plat or map on which streets, alleys, parks, and other open areas are shown, an easement therein is created in favor of the grantee. Such an easement is deemed a part of the property to which the grantee is entitled and of which he cannot be divested except by due process of law." 25 Am.Jur.2d, *Easements and Licenses*, Sec. 26, p. 438 (1966).

Epps at 388, 200 S.E.2d at 242. Thus, at the time of the sale, a *presumption* arose that the easement was part of the property and the purchaser was entitled to enforce the easement unless divested thereof "by due process of law."

In the present matter, the original developer of the subject properties recorded such a plat and the presumption arose that all purchasers of properties within Deerfield Plantation thereafter enjoyed an easement in all features shown upon the face of the plat. As our Supreme Court stated in Newington Plantation Estates Ass'n v. Newington Plantation Estates, 318 S.C. 362, 458 S.E.2d 36 (1995): "As between an owner who has conveyed lots according to a plat and the grantee, the dedication of a private easement is complete when the conveyance is made." Carolina Land Co., Inc. v. Bland, 265 S.C. 98, 217 S.E.2d 16 (1975).

The facts here demonstrate Dr. Platt created, marketed, and sold a golf course community concept for which the Appellants paid a premium price. Each deed referenced a recorded plat depicting the golf course, streets, and other features of the

golf community. By operation of law, this scheme of development gave rise to a presumption that an easement existed and created reasonable expectations on the part of all purchasers that the golf course amenity would remain in perpetuity such that they may realize the benefit of the lifestyle and investment intended. It is incumbent upon Respondent Deertrack Investors to rebut this presumption; yet, neither the trial court nor the Court of Appeals shifted the burden of proof to Respondent Deertrack Investors to rebut this presumption. In fact, neither the trial court nor the Appellate Court in the present matter appears to have considered at all the fact that there existed under South Carolina law a presumption that the easement existed at the time of purchase.

B. Disclaimer.

The standard required of Respondent Deertrack Investors in order to overcome the presumption of an implied easement is set forth in Briarcliffe Acres v. Briarcliffe Realty Company, Inc., 262 S.C. 599, 206 S.E.2d 886 (1974). In order to overcome the implied dedication, Respondent Deertrack Investors must demonstrate that "an intent clearly appears otherwise." Id. at 616, 206 S.E.2d 895. The facts of this case clearly demonstrate the opposite. Respondents' predecessor (Dr. Platt) exhausted efforts not to be clear.

As an initial matter, it should be noted that if Dr. Platt had intended to clearly disclaim an easement in the Golf Course property, he could have done so in Plat 54/124 (R. p. 432), the Clemmons' Purchase Agreement (R. pp. 422–426), the

Property Report, Restrictions, Privilege and Obligation Agreement (R. pp. 394–421), the Appellants' individual deeds (R. pp. 392–393; R. pp. 433–434), or by any number of other available means. A review of the relevant documents confirms Dr. Platt made no such clear reservation.

Respondent Deertrack Investors argues that clauses printed in subsections of five separate documents, when read together, create a disclaimer significant enough to permit the owner of the Golf Course not only to discontinue the operation of the Golf Course as a golf course, but to convert it to whatever use it desires. Further, Respondent Deertrack Investors argues this piece-meal disclaimer, though not set out or printed in bold lettering, provided sufficient notice to purchasers that the Golf Course could be redeveloped. These documents are Plat 54/124 (R. p. 432), the Property Report, the Restrictions, the Privilege and Obligation Agreement (R. pp. 394–421), and Appellants Clemmons' Purchase Agreement (R. pp. 422–426). Each requires separate analysis.

1. Plat 54/124.

As to Plat 54/124 (R. p. 432), the developer included the following disclaimer:

> It is hereby expressly declared that Deerfield Plantation, Inc. does not intend to dedicate and does not dedicate to the general public or any member thereof any easement, right of travel, right to use or other right with regard to the streets, roads, alleys, entrances, or other passages or ways and with regard to the lakes and parks shown upon his map, and that Deerfield Plantation, Inc. reserves unto itself, its successors and assigns all *streets, roads, alleys, entrances, or other passages or ways, and any and all*

> *lakes and parks* shown upon this map and all easements, rights of travel, right to use and any other rights over, upon, under or connected with the same.

Common sense dictates that charging a premium for an amenity while reserving the right to take away the amenity must be clearly and conspicuously stated and understood. The developer in this case printed a limited disclaimer on the face of Plat 54/124 and listed therein "streets, roads, alleys, entrances, or other passages or ways" and further listed "the lakes and parks shown upon this map" but carefully avoided mention of the very item shown upon the plat that permitted the developer to charge a premium price for the lots: the Golf Course itself. As explained by our Supreme Court, "[n]ormally, when one develops a subdivision and sells lots by reference to a plat, there is an implied dedication of the roads to the use of the lot owner and of the public unless an intent **clearly** appears otherwise." (Emphasis added.) Briarcliffe Acres, supra at 616, 206 S.E.2d at 895. None of the evidence before the Court in the present matter can be characterized as a "clear" or "explicit" reservation of any right to replace the Golf Course with houses, as Respondent Deertrack Investors desires.

2. The Purchase Agreement.

The Clemmons' Purchase Agreement reflects the Clemmons' paid $13,200.00 for Lot 365. (R. pp. 422–426) It is signed by both Dr. and Mrs. Platt, as were the Clemmons' and Hill's deeds (R. pp. 392–393; R. pp. 433–434), and references the

Restrictions as well as the Privilege and Obligation Agreement (R. pp. 394–421) in Paragraph 11 as follows:

> 11. The Purchaser(s) acknowledges receipt and retention of a copy of the Conditions, Reservations, Covenants, and Restrictions applicable to the Property recorded in Deed Book 481, Page 305, office of the Clerk of Court for Horry County, S.C., and does hereby ratify and affirm them. The Purchaser(s) agrees to abide by the terms of the said Conditions, Covenants, Reservations and Restrictions, and agrees to subject the Property sold hereby to the terms and provisions of the same and to any liens created by them, and agrees that he hereby immediately becomes and is a member of Deerfield Plantation Property Owners Association, Inc., a non-profit corporation. Purchaser(s) also acknowledges receipt and retention of copies of the Articles of Incorporation or Charter and By-Laws of Deerfield Plantation Property Owners Association, Inc., and of the Privilege and Obligation Agreement between the Seller and Deerfield Plantation Property Owners Association, Inc., and affirms and ratifies said Privilege and Obligation Agreement, said By-Laws and the acts of the officers and directors of Deerfield Plantation Property Owners Association, Inc. Purchaser(s) further agrees that he shall pay his share of all moneys due, pursuant to and in the amounts specified by such documents, agrees to be bound by all of the terms and conditions of such documents and that such terms and conditions are reasonable, fair and equitable, and agrees that there shall be impressed a lien upon the Property as therein described. The foregoing provisions of the Paragraph may be omitted from the Warranty Deed to be delivered

> hereunder at the option of the Seller, but shall nevertheless survive delivery of said deed.

However, the Purchase Agreement does not purport to waive the easement nor does it reserve any right to redevelop the Golf Course in the future. (R. pp. 422–426) Instead, this is the purported vehicle by which buried language in the Privilege and Obligation Agreement is bootstrapped into the Purchase Agreement to create what Respondent Deertrack Investors relies upon as a sufficient disclaimer.

The Order found the Hills signed the Purchase Agreement "individually and as Class Representatives." There existed no Class in 1972, as no lawsuit would be filed until 34 years later. Each instance in which the Order finds that any action was taken by Appellants Hill or Clemmons as Class representatives prior to the establishment of a class is clearly erroneous and should be set aside.

3. The Property Report.

The Property Report contains language that the "*developer* will have no obligation or commitment to *maintain* ... golf course for any period of time." (Emphasis added.) (R. p. 400, ¶ 9.b) The developer is Deerfield Plantation, Inc., which Respondent Deertrack Investors conceded was not the owner of the Golf Course at the time the Property Report was filed. Appellants have not alleged that the "developer" (Deerfield Plantation, Inc.) has any obligation in these regards. Further, the Appellants have not complained in this action the Golf Course has not been maintained. They have complained that Respondent Deertrack Investors now seeks

to build a subdivision within their existing subdivision, in contravention of the private easement rights they acquired with their respective residential lots. The same page of the Property Report contains the following statement:

> GOLF COURSE: 18 Hole Championship Course. COST TO BUYER FOR COMPLETION OR MAINTENANCE OF FACILITIES? NONE.

(R. p. 400, ¶ 9.b) Clearly, the word "maintain" was intended in this document and context to simply refer to the upkeep associated with the Golf Course operation.

Critical to the issue of disclaimer are the HUD required disclosures within the Property Report. The Property Report contains the following question and answer:

> **b. EXCEPT FOR THOSE PROPERTY RESERVATIONS WHICH LAND DEVELOPERS COMMONLY CONVEY OR DEDICATE TO LOCAL BODIES OR PUBLIC SERVICES TO THE LAND BEING DEVELOPED, WILL BUYER RECEIVE A DEED FREE OF EXCEPTIONS?**
>
> The deed will be subject to common subdivision conditions, Reservations, Covenants and Restrictions set out in the Declaration of Restrictions, Covenants, Conditions, and Reservations and public utility easements of record upon the property.

(R. p. 399, ¶ 8.b) As Mr. Hucks explained on re-direct, the Property Report does not mention anything about reserving the right to redevelop the Golf Course property at some later date in its response. (R. pp. 263–264) The Federally-required Property Report does not direct purchasers to the other documents; it asserts the deed will be subject only to "those property reservations which land developers commonly convey

or dedicate to local bodies or public services" and "subject to common subdivision conditions." This language confirms the clear understanding and intentions of both the developer and the purchasers.

4. The Covenants and Restrictions.

The Restrictions likewise contain no statement that would permit the developer to redevelop the Golf Course. In fact, the Restrictions contain language that makes clear the developer intended for the lot purchasers to accommodate the play of golf, reserving "[e]asements to permit the doing of every act necessary and proper in the playing of golf on the golf course...." This included permitting "the recovery of golf balls and tennis balls over and upon such lots." (R. p. 407, ¶ 11)

5. The Privilege and Obligation Agreement.

Respondent Deertrack Investors relied at trial most heavily upon the Privilege and Obligation Agreement which contains language in its Paragraph 8 that:

> The Developer agrees to make the abovesaid golf course, tennis courts, club house, and swimming pool facilities available to the owners of the property in Deerfield Plantation single family residential subdivision (reserving the right to make said facilities available to any other persons whomsoever in addition), subject, however, to the other provisions hereof, upon the filing of application for membership by the said property owners and upon approval of said application for membership by Deerfield Plantation, Inc., until such time as maximum membership as set by the Developer from time to time is reached. It is agreed that Deerfield Plantation, Inc. may reject application of any applicant, other than on grounds of race, color, or creed, without cause or reason and without being required to assign any

> cause or reason therefor, it being understood and agreed that the aforesaid facilities consisting of the aforesaid golf course, tennis courts, club house, and swimming pool, and any other incidential [*sic*] operations in connection therewith, are separate and distinct business operations of Deerfield Plantation, Inc., apart from Deerfield Plantation single family residential subdivision as aforesaid. It is further agreed that application for membership for the use of said facilities shall be made upon such form or forms and at such time or times as Deerfield Plantation, Inc. may direct. It is further understood and agreed that Deerfield Plantation, Inc. *reserves the right to discontinue the maintenance and/or operation of said golf course*, tennis courts, club house, and swimming pool, or any other incidential [*sic*] operations connected therewith, at such time a Deerfield Plantation, Inc., in the sole discretion of its Board of Directors, shall determine that the maintenance and operation of the aforesaid facilities, or any one of them, is not economically feasible or is not advisible [*sic*] for any other reason *and to use the property devoted thereto for other purposes.*

(Emphasis added.) (R. p. 414, ¶ 8) As has been stipulated by the parties, Deerfield Plantation, Inc. did not own the Golf Course, but was a lessee thereof. Mr. Hucks testified without objection a lessee can neither subdivide nor sell a lessor's land. Accordingly, the language in Paragraph 8 is not only intentionally inconspicuous, but also is wholly ineffective as a disclaimer of the easement upon the Golf Course.

Also, each representative Appellant who testified at trial made clear that nobody had explained any of this documentation to them at closing or indicated the Golf Course would ever be redeveloped. Appellant Carl Clemmons was clear on this point and testified as follows:

> Q: When you purchased your lot and built your house and Deerfield grew up, did you at any point understand that someone would have the right to come in and tear up the golf course and build houses?
>
> A: No. If I had, I would have never bought there.

(R. p. 206) Lastly, Mr. Hucks testified the market data did not support Respondent Deertrack Investors' position that the document effectively disclaimed the easement. According to Mr. Hucks, a reasonably informed purchaser would not pay a golf course frontage premium if the purchaser believed the golf course would be taken away at some point in the future. (R. p. 268) Market data confirmed this did not happen, and Mr. Hucks attributed no weight to these matters in his analysis.

Respondent Deertrack Investors maintains the above documents served as waiver of the implied easement. However, in addition to researching market data and determining the market did not reflect any notice of waiver was available to a reasonably informed purchaser, Mr. Hucks testified as to each document and found no clear statement that the owner of the Golf Course reserved the right to shut it down and redevelop it at a later date. (R. p. 268; R. pp. 261–269)

It is axiomatic that should a developer create value in a subdivision by constructing a golf course throughout the subdivision, yet desire to reserve the right to again extract that value from the property decades later by destroying the golf course for personal gain, *such a disclaimer must be clear and unambiguous.* Our Supreme Court has confirmed this is true when construing street dedications in

subdivisions. Briarcliffe Acres, supra at 616, 206 S.E.2d at 895. The same holds true when attempting to deprive purchasers of benefits gained through a personal easement. Carolina Land, supra. Courts in other jurisdictions have held that even easements by necessity must be "explicitly" disclaimed in order to defeat their creation. Pine Tree Lumber Co. v. McKinley, 83 Minn. 419, 420, 86 N.W. 414, 415 (Minn. 1901). The developer of the Golf Course was provided many opportunities to fairly and openly reserve the right to subdivide and redevelop the Golf Course should he have so desired. The Federally-required Property Report would have been the ideal document for such a waiver. Dr. Platt inserted no such statement. Had he done so, he would not have been able to sell his lots.

The grantor's conduct was calculated to give the impression that the facts were inconsistent with the position Respondent Deertrack Investors now takes; and, as such, Respondent Deertrack Investors is estopped from its intended development. Blue Ridge, supra.. Golf course community developers are paid a premium from the sale of lots. They then have the opportunity to earn profit from the operation of golf. *To allow developers to profit a third time from the same piece of property, at the expense of those who relied upon their representations to the contrary, would be inequitable and contrary to public policy.*

C. Lis Pendens.

This Court has overlooked and misapprehended Appellants' argument regarding the trial court's directive to the Clerk of Court for Horry County to cancel Appellants' properly filed lis pendens. In its Final Order, the trial court specifically ruled as follows:

> LASTLY, IT IS ORDERED, ADJUDGED, AND DECREED that Plaintiffs shall provide written notice of cancellation of the Notice of Lis Pendens filed in Horry County, 2007-LP-26-1931 to the Clerk of Court in Horry County within ten days of the date of this Order. In the event that Plaintiffs fail to provide written Notice of Cancellation of the Notice of Lis Pendens filed in Horry County, 2007-LP-26-1931 to the Clerk of Court of Horry County within ten days of the date of this Order, the Notice of Lis Pendens filed in Horry County, 2007-LP-26-1931 shall be cancelled of record by the Horry County Clerk of Court. The Cancellation must be made an endorsement to that affect on the margin of the record which refers to this Order and for which the Clerk is entitled to a fee of One Dollar ($1.00).

Thereafter, Judge Cooper conducted a conference with counsel for all parties during which it was demonstrated that an Appeal of his Order would automatically stay the portion of his Order directing cancellation of the lis pendens. Because his directive was within a time frame shorter than the time for perfection of an Appeal, he rescinded that portion of his Order directed to the Clerk of Court. That directive was memorialized in an email to all counsel of record (R. at p. 618).

Because Rule 241(a), SCACR stays Judge Cooper's Order, Respondent Deertrack Investors filed a Petition for Writ of Supersedeas; Lift of Stay and/or Bond

(R. p. 538) toward lifting the lis pendens. In his same email of September 3, 2010, Judge Cooper ruled upon Respondent Deertrack Investors' Motion as follows:

> The Lis Pendens will be lifted upon the following conditions:
>
> 1. 1. The Defendants' [*sic*] [Respondents herein] will post a bond upon sufficient sureties equal to the amount of any additional monies advanced from this date, which are secured by mortgage, liens, or other encumbrances against the subject property, plus interest anticipated during the pendency of the appeal. This is designed to allow the continued development of the property and to protect the Plaintiffs [Appellants herein] against possible loss resulting from a reversal of this Court's Order;
>
> 2. The Defendants shall not convey or assign any ownership rights to the property during the pendency of the appeal which would defeat the rights of the Plaintiffs to the property if the appellate process should determine that an easement does exist over the property as the Plaintiffs maintain.

Respondent Deertrack Investors herein has not undertaken to post a bond per Judge Cooper's directive. As such, Judge Cooper's original directive to the Horry County Clerk of Court remains stayed pending final disposition of this appeal.

Because Judge Cooper's recision of his directive to the Horry County Clerk of Court was not reduced to a formal Order, Appellants have properly included that issue in this Appeal. Judge Cooper specifically ruled upon the matter in his Order filed February 18, 2010 (R. p. 55) and Appellants have properly appealed from that specific finding. For an issue to be preserved for appeal, it must simply have been raised to

and ruled upon by the trial court. It is only when an argument has been raised to but *not* ruled upon by the trial court that a party must file a Rule 59(e), SCRCP, Motion in order to preserve the issue for appeal. Shirley's Ironworks, Inc. v. City of Union, 387 S.C. 389, 693 S.E.2d 1 (Ct. App. 2010).

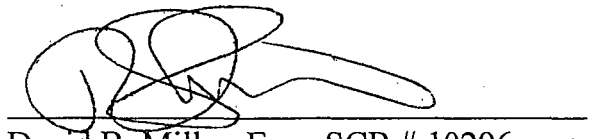
In Lebovitz v. Mudd, 289 S.C. 476, 347 S.E.2d 94 (1986), the South Carolina Supreme Court considered an identical directive from a trial court requiring a Clerk of Court to cancel a lis pendens. The Court there held that cancellation of the lis pendens was improper because the Order was appealable and the appeal stayed enforcement. As such, the Clerk of Court's cancellation of the lis pendens was determined to be void and the Notice of Lis Pendens remained effective during the pendency of the appeal.

Respondent Deertrack Investors fully recognizes that the lis pendens remains effective only until such time as this case becomes final. However, the directive of the trial court to the Horry County Clerk of Court is improper as a matter of law and should be overturned.

III. CONCLUSION

For the reasons set forth above, Appellants respectfully request rehearing of this matter.

Respectfully submitted,



David B. Miller, Esq., SCB # 10296
Robert S. Shelton, Esq., SCB # 68543
BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
1000 29th Avenue North
Myrtle Beach, SC 29577
(843) 448-2400
Attorneys for Appellants

Myrtle Beach, South Carolina

April 18, 2012.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Thomas W. Cooper, Jr., Special Referee

Case No.: 2006-CP-26-4440

Dale Hill, Betty Hill, Carl Clemmons, Geraldine Clemmons, Individually, and on behalf of a Class of all others similarly situated ..... Appellants,

vs.

Deertrack Golf and Country Club, Inc., Deertrack Golf, Inc., Deerfield Plantation, Inc., the Estate of John Schaad, by and through Ann Schaad as Executrix, and Deertrack Investors, LLC ..... Respondents.

RETURN TO PETITION FOR REHEARING OF RESPONDENT DEERTRACK INVESTORS, LLC

McNAIR LAW FIRM, P.A.
Henrietta U. Golding
Amanda A. Bailey
Post Office Box 336
2411 Oak Street, Suite 206
Myrtle Beach, SC 29578
(843) 444-1107
Attorneys for Respondent
Deertrack Investors, LLC

Appellants argue that the Court of Appeals overlooked and misapprehended their argument on appeal regarding: (1) the establishment of an implied easement in favor of Appellants, and (2) the status of the Lis Pendens.

STANDARD OF REVIEW

Although correctly citing the standard under Rule 221 of the South Carolina Appellate Court Rules for petitions for rehearing, Appellants have failed to identify any argument the Court overlooked or misapprehended. Rule 221, SCACR. "The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time." Kennedy v. South Carolina Retirement System, 345 S.C. 339, 549 S.E.2d 243 (2001) (citations omitted).

Appellants presented their arguments and evidence regarding the alleged existence of an easement over the Subject Property, which are now renewed in this Petition for Rehearing, at the trial level and again in their appellate briefs. The Special Referee made numerous unchallenged findings of fact, and ruled against Appellants on their arguments regarding the existence, or lack thereof, of an easement. The Court of Appeals, in a Rule 220 opinion, adopted the Special Referee's order, refusing to find the existence of an easement burdening the Subject Property. Therefore, Appellants have failed to identify any argument the Court overlooked or misapprehended; rather, Appellants' Petition for Rehearing merely seeks to have the case tried in the Court of Appeals a second time.

In addition to Appellants' failure to meet the standard for rehearing set forth in Rule 221, SCACR, Appellants' argument also fails to identify any errors of the Special Referee and/or the Court of Appeals sufficient to overcome the "any evidence" scope of review. See Slear v.

Hanna, 329 S.C. 407, 410, 496 S.E.2d 633, 635 (1998) ("The determination of the existence of an easement is a question of fact in a law action and subject to any evidence standard of review when tried by a judge without a jury.").

DISCUSSION

I. The Existence of an Easement

Appellant's urge this court to adopt new law and define a new type of easement by "method and manner of development, marketing and sale." Although South Carolina courts have never adopted the type of easement suggested by Appellants, our courts have been presented with the argument that representations and promotional literature in connection with a real estate purchase create implied easements under existing easement theories, and have rejected this argument in favor of the free use of land. See Hamilton v. CCM, Inc., 274 S.C. 152, 263 S.E.2d 378 (1980) (finding where there is no plain and obvious easement shown on a plat, the plat alone cannot create an easement and reversing the trial court's finding of an implied easement based on the "general impression" created by the developer's sales representative that the disputed property would be "open space"); Butler v. Sea Pines Plantation Co., 282 S.C. 113, 120, 317 S.E.2d 464, 468 (Ct. App. 1984) (finding that "because neither the public documents presented in evidence or the circumstances surrounding the conveyance give rise to a 'plain and unmistakable' implication, there can be no easement restricting the use of the disputed tract").

Notwithstanding, Appellants urge this court to follow case law from Arizona, Nebraska, and New Mexico and find easement by "method and manner of development, marketing and sale." However, even if this court were inclined to adopt a new type of easement created by the method and manner of development, marketing, and sale, the facts presented by Appellants do not warrant such adoption.

a. **Shalimar Ass'n v. D.O.C. Enterprises, Ltd., 142 Ariz. 36, 688 P.2d 682 (Ariz. Ct. App. 1984)**

The Arizona Court of Appeals decided the Shalimar case approximately twenty-eight years ago. Although Appellants rely on the Shalimar case to support their position that an easement was created in this case by the method and manner of development, marketing and sale, Appellants overlook critical factual distinctions.

In Shalimar, the Arizona Court of Appeals found a golf course subject to an implied restrictive covenant limiting the use of the property as a golf course until the year 2025. Shalimar Ass'n v. D.O.C. Enterprises, Ltd., 142 Ariz. 36, 46, 688 P.2d 682, 692 (Ariz. Ct. App. 1984). The court specifically found the developers had made representations to adjacent lot purchasers that the golf course would be maintained until the year 2000, with provision for an extension of 25 years. Id. at 38, 688 P.2d at 684. In addition, the court also found that the developer and all prior owners of the golf course believed that property was required to be used as a golf course and operated it as such. Id. at 39, 688 P.2d at 685. Based on these and other factual findings, the Shalimar court affirmed the trial court's finding that it was the clear intent of the developer and the lot purchasers that the golf course would exist as such until the year 2025. Id. at 46, 688 P.2d at 692.

Contrarily, in the present case, the trial judge specifically held that "Plaintiffs, individually and as Class representatives, never received anything in writing that the Subject Property would be forever operated as a golf course and/or clubhouse. In addition, no one ever represented to the Plaintiffs, individually and as class representatives, that the Subject Property would be forever operated as a golf course and/or clubhouse." (R. p. 65, ¶27). Further, the trial judge held that any indication that the developer had a "common scheme of development is

clearly and unambiguously limited and disclaimed in the recorded documents in Plaintiffs' chain of title...." (R. p. 76, ¶76).

b. Skyline Woods Homeowners Ass'n, Inc., et al. v. Broekemeier, 276 Neb. 792, 758 N.W. 2d 376 (Neb. 2008)

Appellants' reliance on the Skyline case for support is misplaced as the facts are easily distinguished from the Special Referee's findings. In Skyline, the Nebraska Supreme Court found that six documents, including a: 1) 1976 land contract, 2) 1981 declaration of protective covenants, 3) 1983 second amendment to declaration of protective covenants, 4) 1990 unrecorded purchase agreement, 5) 1990 memorandum of understanding, and 6) 1997 assignment of memorandum rights with the attached Memorandum of Understanding, created a restrictive covenant.

The restrictive covenant burdened the golf course property and required the owner to use the property only as a golf course or maintain the property "in the appropriate fashion as a golf course or an attractive lawn." Id. at 802, 758 N.W.2d 305. The documents relied upon by the court, when read together with the conduct and expectations of the developer and buyer, were found to create a covenant running with the land. Id. In Skyline, the developer and golf course owner sold the golf course pursuant to a purchase agreement containing the covenant that the buyer "shall maintain the golf course in a manner and condition equal to or better than the standard of course maintenance which Seller has applied in its operation of the course." Id. Developer testified that when "he sold [the golf course] to a buyer...that he was sure [the buyer] would maintain the golf course." Id. at 809, 758 N.W.2d at 390.

In contrast, in the present case, the trial judge found that "the expressed disclaimers and reservations contained in all of the initial documents make it clear that the developers did not intend such a dedication of the golf course property in perpetuity."

c. **Ute Park Summer House Ass'n v. Maxwell Land Grant, Co., 77 N.M. 730, 427 P.2d 249 (N.M. 1967).**

The New Mexico Supreme Court decided Ute Park approximately forty-five years ago. While the Ute Park case appears to be the most cited case for Plaintiffs' proposition, the facts are similarly distinguishable from the present case and Special Referee's finding. The developer in Ute Park sold cabin sites with reference to a plat with an area designated as a golf course. Id. at 732, 427 P.2d at 251. The sales representatives told the purchasers that a golf course, playground and/or a recreation area would be constructed in that area. Id. Shortly after the sales to the purchasers, however, the developer sold the golf course property. Id.

The Ute Park court found an implied easement could have been created in the golf course property stating:

> Wherein plats were prepared and used in making the sales, where the cabin sites were actually staked or marked upon the ground in accordance with the plats, and wherein representations were made to the purchasers that the 'golf course' area would be used as a golf course, a play ground, or a recreation area, an easement in favor of the individual purchasers may arise.

Id. at 737, 427 P.2d at 254. As a result, the Ute Park court reversed a grant of summary judgment in favor of the owners of the golf course property. Id. at 738, 427 P.2d at 254.

In the present case, the trial judge made specific findings of fact that do not support any implied easements, including that the developer, or anyone else for that matter, never made any representations that the Subject Property would be used as a golf course in perpetuity and that the developer expressly disclaimed any easements or rights in the Subject Property in the initial sales documents and plats. **(R. p. 55-86).**

d. **The trial judge found clear, express disclaimers.**

In addition to arguing that this court should create new law, the Appellants also use the Petition for Rehearing to argue, again, that the trial judge erred in making his findings of fact

related to the express disclaimers of any easements burdening the Subject Property in the initials sales documents and plats. However, Appellants' argument fails on rehearing, as it failed on appeal, because Appellants have presented no argument and/or error sufficient to overcome the "any evidence" standard of review.

II. The status of the Lis Pendens

Appellants assert that the Court of Appeals overlooked and/or misapprehended their argument that the trial judge erred in directing the cancellation of the Lis Pendens.

Appellants argue that because the Lis Pendens was cancelled in the order on appeal and addressed in Respondent's Petition for Writ of Supersedeas; Lift of Stay and/or Bond, that their issues were properly preserved for appeal. However, Appellants' motion for reconsideration did not raise any issue regarding the Lis Pendens. As a result, for the reasons in the Respondents' in their Final Brief, the issues are not preserved for appeal.

Appellants appear to misconstrue Respondent's Petition for Writ of Supersedeas; Lift of Stay and/or Bond as sufficient to raise the argument presented on appeal for issue preservation purposes. However, Appellants are not appealing for any order on Respondent's Petition for Writ of Supersedeas; Lift of Stay and/or Bond, nor was any order on Respondent's Petition for Writ of Supersedeas; Lift of Stay and/or Bond ever filed. Appellants concede that any e-mail or memoranda of the trial judge indicating a ruling on Respondent's Petition for Writ of Supersedeas; Lift of Stay and/or Bond was not reduced to writing and filed with the court.

Therefore, the issue is not preserved for appeal based on the precedence set forth in the Court's 220 opinion, and the Appellants do not point to any issue that was overlooked or misapprehended by the Court of Appeals regarding the cancellation of the Lis Pendens.

CONCLUSION

Appellants have failed to raise any arguments overlooked and/or misconstrued by the Court on appeal. Rather, Appellants seek a second trial of this case on appeal. For the reasons set forth in Respondents' Final Brief, the 220 opinion of this Court, and argued herein, Appellants' Petition should be denied.

Respectfully submitted,

McNAIR LAW FIRM, P.A.
Henrietta U. Golding
Amanda A. Bailey
P.O. Box 336
Myrtle Beach, South Carolina 29578
Phone: 843-444-1107
Fax: 843-443-9137
Attorneys for Respondent
Deertrack Investors, LLC

Myrtle Beach, South Carolina
April 27, 2012

The South Carolina Court of Appeals

Dale Hill, Betty Hill, Carl Clemmons Geraldine Clemmons, Individually, and on behalf of a Class of all others similarly situated, Appellants,

v.

Deertrack Golf and Country Club, Inc., Deertrack Golf, Inc., Deerfield Plantation, Inc., the Estate of John Schaad, by and through Ann Schaad as Executrix, and Deertrack Investors, LLC., Respondents, Deertrack Investors, LLC, Third-Party Plaintiff,

v.

Plantation Resort of Myrtle Beach, Inc., and Plantation Resort Properties, Inc., Third-Party Defendants.

Appellate Case No. 2010-166609

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Paul G. Short, Jr. J.

H. B. Wilson J.

John D. Geathers J.

Columbia, South Carolina

cc: Henrietta U. Golding
David B. Miller
Richard Michael Smith
Amanda A. Bailey
Robert S. Shelton

FILED
25 May 2012

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Thomas W. Cooper, Jr., Special Referee

Case No. 2006-CP-26-4440

Dale Hill, Betty Hill, Carl Clemmons, Geraldine Clemmons, Individually, and on behalf of a Class of all others similarly situated ..... *Appellants*,

vs.

Deertrack Golf and Country Club, Inc., Deertrack Golf, Inc., Deerfield Plantation, Inc., the Estate of John Schaad, by and through Ann Schaad as Executrix, and Deertrack Investors, LLC .. *Respondents*.

RECORD ON APPEAL

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David B. Miller, Esq., SCB # 10296
Robert S. Shelton, Esq., SCB # 68543
BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
P.O. Box 357
Myrtle Beach, SC 29578
(843) 448-2400
Counsel for Appellants

Henrietta U. Golding, Esq.
Amanda Bailey, Esq.
McNair Law Firm, P.A.
P.O. Box 336
2411 Oak Street, Suite 206
Myrtle Beach, SC 29578
(843) 444-1107
Counsel for Respondent
Deertrack Investors, LLC

Richard M. Smith, Esq.
Leigh Powers Boan, Esq.
McNair Law Firm
P.O. Drawer 418
Georgetown, SC 29442
(843) 546-6102
Counsel for Respondents Deertrack Golf and Country Club, Inc., Deertrack Golf, Inc., Deerfield Plantation, Inc., and the Estate of John Schaad, by and through Ann Schaad as Executrix

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STATE OF SOUTH CAROLINA)
) THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
) Civil Action No.: 2006-CP-26-4440

Dale Hill, Betty Hill, Carl Clemmons Geraldine Clemmons, Individually, and on behalf of a Class of all others similarly Situated,

Plaintiffs,

v.

Deertrack Golf and Country Club, Inc. Deertrack Golf, Inc., Deerfield Plantation, Inc., the Estate of John Schaad, by and through Ann Schaad as Executrix, and Deertrack Investors, LLC.,

Defendants.

Deertrack Investors, LLC.,

Third-Party Plaintiff,

v.

Plantation Resort of Myrtle Beach, Inc., Plantation Resort Properties, Inc. and Deerfield Plantation Property Owners Association, Inc.,

Third-Party Defendants.

HORRY COUNTY
08 NOV -5 AM 9:48
ROBIN L. HUGGINS
CLERK OF COURT

COPY

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

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EPPS, GRAVELY & BOWERS, P.A.

This matter came before me on September 2, 2008, upon Defendant Deertrack Investors, LLC's Motion for Summary Judgment as to all of Plaintiffs' causes of action. Defendants Deertrack Golf and Country Club, Inc., Deertrack Golf, Inc., Deerfield Plantation, Inc., and the

Estate of John Schaad, by through Ann Schaad as Executrix joined in the motion. Present at the hearing were Henrietta U. Golding, and Amanda A. Bailey on behalf of Deertrack Investors, LLC; Richard Smith on behalf of the remaining Defendants; David Miller, and Robert Shelton on behalf of the Plaintiffs; Ed Lawson on behalf of Plantation Resort of Myrtle Beach, Inc. and Plantation Resort Properties, Inc.; and James Purvis on behalf of Deerfield Plantation Property Owners Association, Inc. At the beginning of the hearing, counsel for Plaintiffs consented, on the record, to dismiss the causes of action for Negligent Misrepresentation, Fraud, and Violation of the South Carolina Unfair Trade Practices Act against Deertrack Investors, LLC. As a result, Defendants' Motion for Summary Judgment proceeded with respect to the Plaintiffs' causes of action for Declaratory Judgment, Injunction, and Civil Conspiracy against Deertrack Investors, LLC, and Plaintiffs' causes of action for Declaratory Judgment, Injunction, Negligent Misrepresentation, Fraud, Violation of South Carolina Unfair Trade Practices Act, and Civil Conspiracy against the remaining Defendants. Upon consideration of the Complaint with attached exhibits, arguments of counsel, memoranda and documents presented by the parties at the hearing, affidavits and documents on record, and supplemental memoranda, I find as follows:

FACTUAL BACKGROUND

1. On September 9, 2006, Plaintiffs Betty and Dale Hill and Geraldine and Carl Clemmons, in their individual capacity and on behalf others similarly situated[1], commenced a lawsuit against Deertrack Golf and Country Club, Inc., Deertrack Golf, Inc., Deerfield Plantation, Inc. the Estate of John Schaad, and Deertrack Investors, LLC. Plaintiffs seek declaratory relief that certain real property, (consisting of 182.92 acres), upon which the Deertrack north golf course and clubhouse once operated (hereinafter referred to as the Subject Property) should be restricted in its use as a golf course and clubhouse by reason of equitable

[1] No class has been certified to date.

servitude, implied easements, negative reciprocal easements, and/or amenities, and seek to enjoin Deertrack Investors from developing the Subject Property. Subsequently a lis pendens against the Subject Property was filed by the Plaintiffs.

2. Plaintiffs also asserted causes of action against all Defendants for Negligent Misrepresentation, Fraud, Violation of the South Carolina Unfair Trade Practices Act, Civil Conspiracy, asserting that the Defendants' representations in 1973 induced the Plaintiffs to purchase real property at a premium price.

3. Defendants denied the material allegations. Defendant Deertrack Investors, LLC asserted counterclaims for Abuse of Process, Interference with Contractual Relations, including Prospective Contractual Relations, Civil Conspiracy and Violation of the South Carolina Unfair Trade Practices Act. Deertrack Investors, LLC also filed a third-party complaint against Deerfield Plantation Property Owners Association, Inc., Plantation Resort of Myrtle Beach, Inc., and Plantation Resort Properties, Inc. for Interference with Contractual Relations, Interference with Prospective Contractual Relations, Civil Conspiracy, Violation of the South Carolina Unfair Trade Practices Act.

4. Defendants move for summary judgment on the Plaintiffs' causes of action on the ground that no issues of material fact exist.

HISTORY OF PROPERTY DEVELOPMENT

5. Prior to 1972, V.F. Platt owned approximately 1883 acres in Surfside Beach, South Carolina. On October 13, 1972, V.F. Platt, Jr. deeded 547.76 acres of his property to Deerfield Plantation, Inc. (hereinafter referred to as "Deerfield Plantation Property"). This deed specifically excluded the Subject Property, being 182.92 acres.

6. Deerfield Plantation, Inc. developed the 547.76 acres into a residential subdivision

known as Deerfield Plantation.

7. The principals of Deerfield Plantation, Inc. (hereinafter referred to as the "Platt Entity) were V.F. Platt, Jr. and his wife Kate Platt.

8. On February 2, 1973, Plaintiffs Dale W. Hill and Betty J. Hill purchased one of the first lots from Deerfield Plantation, Inc. "designated as Lot #358 on that certain map of Deerfield Plantation property of Deerfield Plantation, Inc made by Moorman & Little, Inc., Engineers, dated November 14, 1972, and recorded in Plat Book 54, page 124, office of the Clerk of Court for Horry County, S.C. . .".

9. In April, 1973, Plaintiffs Carl L. Clemmons and Geraldine O. Clemmons purchased a lot from Deerfield Plantation, Inc. "designated as Lot #365 on that certain map of Deerfield Plantation property of Deerfield Plantation, Inc made by Moorman & Little, Inc., Engineers, dated November 14, 1972, and recorded in Plat Book 54, page 124, office of the Clerk of Court for Horry County, S.C....".

10. By 1975, Mr. Platt had constructed a golf course, clubhouse, tennis courts, and swimming pool on the Subject Property. The golf course was operated by Deerfield Plantation, Inc. by virtue of a ten year lease which was disclosed to Plaintiffs in a Property Report dated December 26, 1972.

11. Subsequently, on June 6, 1978, V.F. Platt, Jr. conveyed the 182.92 acres of the Subject Property to Caro Pines Realty, Inc. Around that same time, Deerfield Plantation, Inc. sold the remaining residential lots in Deerfield Plantation to Caro Pines Realty, Inc. Caro Pines Realty, Inc.'s principals were John Schaad, Louis Schaad, and Jimmy Schaad. Thereafter, Caro Pines Realty, Inc. changed its name to Deerfield Plantation, Inc. Despite the similarity in name, the Schaad Affidavit set forth that Caro Pines Realty, Inc. n/k/a Deerfield Plantation, Inc.

(hereinafter referred to as the "Schaad Entity") is a completely different entity from the Platt Entity and Plaintiffs conceded to the same on the record.

12. Plaintiffs also admit that they purchased their residential lots from the Platt Entity in 1973, and not from the Schaad Entity or Deertrack Investors, LLC.

13. The Subject Property was conveyed several times. On June 5, 1980, the Subject Property was sold to Deerfield Golf & Country Club, Inc. In 1993, Deertrack Golf & Country Club, Inc. merged into Deertrack Golf, Inc. Then on March 23, 2006, Deertrack Golf, Inc. sold the property to Deertrack Management, Inc. Deertrack Management, Inc. sold the property to Deertrack Investors, LLC on March 24, 2006. Deertrack Investors, LLC remains the owner of the Subject Property.

II. HISTORY OF DEERTRACK INVESTORS, LLC

14. Deertrack Investors, LLC filed Articles of Organization on March 16, 2006 with South Carolina Secretary of State. The members of Deertrack Investors, LLC are Jerrold ("Jerry") Pettus and McCray Smith. Deertrack Investors, LLC was formed for the purpose of acquiring the Subject Property for development.

15. Deertrack Investors, LLC contracted with Deertrack Management, Inc. to purchase the Subject Property for $8,000,000.00. The terms of the sale provided that $4,000,000.00 was paid at closing and the remaining $4,000,000.00 is payable pursuant to a Promissory Note and Second Mortgage, which required a $1,000.00 "Development Fee" paid to Deertrack Golf, Inc. for each lot subsequently subdivided and sold. The sale closed on March 24, 2006.

16. The recorded deed and mortgages reflect the purchase price and the Development Fee obligation. **(Complaint, Exhibits B and C.)**

III. RECENT PROPERTY DEVELOPMENT

17. At the time Deertrack Investors, LLC purchased the Subject Property, it was zoned by Horry County as residential "R-7". Deertrack Investors, LLC intended to develop the Subject Property according to the R-7 zoning as shown in its conceptual drawing. After the commencement of this lawsuit, several members of Deerfield Plantation Property Owners Association, Inc. petitioned Horry County to have the Subject Property rezoned to "R-3".

18. Horry County subsequently rezoned the Subject Property from R-7 to R-3, thereby precluding its development pursuant to its conceptual drawing, but allowing development according to R-3 zoning. **(Complaint, Exhibit A.)**

IV. ALLEGATIONS OF REGARDING USE OF PROPERTY

19. Notwithstanding the R-7 zoning in place at the time Deertrack Investors, LLC purchased the Subject Property, the terms of the sale to Deertrack Investors, LLC requiring payment of the purchase price pursuant to a Development Fee, and the subsequent change to R-3 zoning, Plaintiffs allege that Deertrack Investors, LLC should be enjoined from developing the Subject Property because its use is restricted for golf course and clubhouse purposes only.

20. Plaintiffs alleged that they hold an easement in the Subject Property as a result of the following:

a) Deed from Deertrack Golf, Inc. to Deertrack Management, Inc., recorded March 24, 2006, in Deed Book 3069, Page 425. **(Exhibit B to Complaint);**

b) Deed from Deertrack Management, Inc., recorded March 24, 2006, recorded in Deed Book 3069, Page 432 **(Exhibit C to Complaint);**

c) Mortgage and Security Agreement from Deertrack Management, Inc. to Deertrack Investors, LLC, recorded March 24, 2006, recorded in Mortgage Book 4462, Page 766, Mortgage **(Exhibit D to Complaint);**

d) Plat recorded November 14, 1972, in Plat Book 54, Page 124 **(Exhibit E to Complaint);**

e) Plat recorded December 16, 1988 in Plat Book 70, Page 27 **(Exhibit F to Complaint);**

f) Plat recorded July 9, 1980, in Plat Book 69, Page 2 **(Exhibit G to Complaint);**

g) "Vacationer's Guide Souvenir Copy", undated **(Exhibit H to Complaint);**

h) Hill Deed, recorded February 7, 1973, in Deed Book 485, Page 361 **(Exhibit I to Complaint);**

i) Clemmons Deed recorded April 4, 1973, in Deed Book 488, Page 824 **(Exhibit J to Complaint);**

j) Declaration and Establishment of Conditions, Reservations, Covenants, and Restrictions, recorded November 11, 1972, in Deed Book 1514, Page 156 **(Exhibit K to Complaint);**

k) "In the Beginning...", undated **(Exhibit L to Complaint);**

l) Statement that Deerfield Plantation, Inc.'s principals are V.F. Platt, Jr. and his wife Kate W. Platt and that the corporation is the developer of Deer Track Golf and Country Club, undated **(Exhibit M to Complaint);**

m) Property Report of Deerfield Plantation effective December 26, 1972 **(Exhibit N to Complaint);**

n) Representations by Deerfield Plantation, Inc. and its agents:

i. that homesites warranted premium pricing because of the North Course and Clubhouse.

ii. that the Hill's lot would have a pond or lake behind his house;

iii. that the Hill's lot would be on a golf course;

iv. that there would be certain amenities added to the subdivision, streetlights, paved roads, sewer system, TV station, clubhouse for

members only, and an Olympic size swimming pool;

v. that Deerfield Plantation was a planned golf course resort or golf community;

vi. that the Clemmons lot was a corner lot with a golf course behind it;

21. More particularly, Plaintiffs' allege that Deerfield Plantation, Inc. established a general scheme of development represented by: 1) **Exhibit B to the Complaint**, Deed from Deertrack Golf, Inc. to Deertrack Management, Inc., recorded March 24, 2006; 2) **Exhibit C to the Complaint,** Deed from Deertrack Management, Inc., recorded March 24, 2006; 3) **Exhibit D to the Complaint,** Mortgage from Deertrack Management, Inc. to Deertrack Investors, LLC, recorded March 24, 2006;[2] 4) **Exhibit K to Complaint,** Declaration and Establishment of Conditions, Reservations, Covenants, and Restrictions, recorded November 11, 1972; and 5) **Exhibit N to Complaint,** Property Report of Deerfield Plantation effective December 26, 1972.

22. Despite Plaintiffs' allegations, no document on public record expressly grants Plaintiffs any right to use nor any easement to the Subject Property. Additionally, no document on public record expressly restricts the use of the Subject Property to a golf course and clubhouse.

23. The language in the Hills' and Clemmons' deeds does not contain any reference to the Subject Property or otherwise grant any rights to the Hills' and Clemmons' to the same. **(Exhibits I and J to Complaint).**

[2] It is unclear in what manner the Plaintiffs contend that Exhibits B, C, and D to their Complaint support their position of a general scheme of development to include the golf course. Exhibits B, C, and D – the sale documents of the North Course and Clubhouse from Deertrack Golf, Inc. to Deertrack Management, Inc. and thereafter to Deertrack Investors, LLC – occurred well after the Plaintiffs' purchased their property, (at least 30 years), and contained provisions contemplating the development of the Property, specifically providing for payment of the purchase price pursuant to a "Development Fee." **(Complaint, Paras. 29 and 30, Exhibits B, C and D).**

24. Their deeds, however, expressly reference the plat recorded at Plat Book 54, page 124. **(Exhibit E to Complaint).** This plat depicts the Subject Property, and provides:

> It is hereby expressly declared that Deerfield Plantation, Inc. does not intend to dedicate and does not dedicate to the general public or any member thereof any easement, right of travel, right to use or other right with regard to the streets, roads, alleys, entrances, or other passages or ways and with regard to the lakes and parks shown upon this map, and that Deerfield Plantation, Inc. reserves unto itself, its successors and assigns, all streets, roads, alleys, entrances, or other passages or ways and any and all lakes and parks shown upon this map and all easements, rights of travel, right to use and any other rights over, upon, under or connected with the same.

25. The Declaration and Establishment of Conditions, Reservations, Covenants, and Restrictions, **(Exhibit K to Complaint),** provide Deerfield Plantation, Inc., as developer, an easement burdening lots 1-458 in Deerfield Plantation:

> ...to permit the doing of every act necessary and proper in the playing of golf on the golf course adjacent to the lots and the playing of tennis on the tennis courts adjacent to the lots which are subject to these restrictions are hereby granted and established. These acts shall include, but not limited to, the recovery of golf balls and tennis balls from such lots, the flight of golf balls and tennis balls over and upon such lots, the use of necessary and usual equipment upon such golf course and tennis courts, the usual and common noise level created by the paying of the game of golf or the game of tennis and with all the normal and usual activities associated with the operation of a country club or clubhouse. The Developer shall have the right to determine the manner and extent to which the rights under this easement shall be exercised, and in the event that some other person, corporation, or other entity shall hereafter operate said golf course, tennis courts, country club or clubhouse facility then the Developer shall have the right to prescribe in writing to such person, corporation or entity charged with the operation of the said golf course, tennis courts, country club or clubhouse facility the manner and extent to which the rights under this easement shall be exercised. **In addition the Developer may, in its sole discretion, limit or withdraw or prohibit certain of the acts authorized by this easement, and may limited the manner or place of doing all or certain of the acts authorized by this easement. Emphasis added (Exhibit K**

to Complaint).

26. Importantly, the said Declaration granted the Developer an easement over "the lots which are subject to these restrictions" – specifically lots 1-458 were burdened with this easement. Nothing in the Declaration granted the owners of lots 1-458 any easement to any property, including the Subject Property – property that is not subject to the Declarations. Further, the Declaration expressly provided that the Developer may withdraw or prohibit all acts authorized by the easement.

27. Lastly, the HUD Property Report of Deerfield Plantation, effective December 26, 1972, to whether Plaintiffs testified they saw prior to purchasing their lots, sets for a listing of proposed or partly completed facilities as follows:

> 9. b. CLUBHOUSE: Proposed, with 19th Hole Club Room, Meeting Rooms, Snack Bar, Pro Shop, Card Room, Patio Area
>
> SWIMMING POOL: Proposed, with patio and lounge furniture.
>
> GOLF COURSE: 18 Hole Championship Course. COST TO BUYER FOR COMPLETION OR MAINTENANCE OF FACILITIES? NONE.
>
> DEVELOPER ESTIMATES ABOVE ITEMS TO BE COMPLETED BY September, 1973, and gives its assurance of completion, and additionally requiring all contractors to provided completion bonds.
>
> Initiation dues, annual dues and fees, and other use or privilege charges shall be charged to buyers or lessees and adjusted from time to time, as determined by the developer from time to time.
>
> **The developer will have no obligation or commitment to maintain clubhouse, swimming pool, tennis courts or golf course for any period of time and no purchaser or lessee of property shall be automatically entitled to membership in or use of said facilities by virtue of acquiring an interest in real property in the development. Emphasis added (Exhibit N to Complaint).**

28. In addition, Paragraph 21 of the Property Report discloses, "Deerfield Plantation, Inc. does not own the golf course & facilities related thereto, but holds a leasehold from the owner, a major stock holder of Deerfield Plantation, Inc. for a period of ten (10) years." **(Exhibit N to Complaint).**

29. Importantly, the Property Report expressly disclaims any obligation to use the Subject Property as a golf course or any other obligations regarding the amenities. In fact, Plaintiffs testified that the other amenities – the pool and tennis courts- had previously been closed and redeveloped.

30. Notwithstanding, Plaintiffs' allege that they were promised their homes would be in a golf course community by the Platt Entity, by virtue of representations and brochures.

31. However, each Plaintiff testified that no one ever told them that the Subject Property would be a golf course forever or would be restricted in use as a golf course.

32. Rather, Plaintiff testified that the Platt Entity represented that a golf course would be built on the Subject Property in the future.

DISCUSSION

33. "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). "A motion for summary judgment shall be granted 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' " Rule 56(c), SCRCP.

34. In determining whether a genuine issue of fact exists, the evidence and all factual inferences drawn from it must be viewed in a light most favorable to the nonmoving party.

Sauner v. Pub. Serv. Auth. of South Carolina, 354 S.C. 397, 404, 581 S.E.2d 161, 165 (2003). It is not sufficient for one to create an inference that is not reasonable or an issue of fact that is not genuine. Evans v. Stewart, 370 S.C. 522, 526, 636 S.E.2d 632, 635 (Ct. App. 2006) (citing Durkin v. Hansen, 313 S.C. 343, 346, 437 S.E.2d 550, 552 (Ct.App.1993)). Although summary judgment is a drastic remedy which should be cautiously invoked, where a verdict is not reasonably possible under the facts presented, summary judgment is proper. Id.

35. The determination of the existence of an easement is a question of fact in a law action. Inlet Harbour v. South Carolina Dept. of Parks, Recreation and Tourism, 377 S.C. 86, 91, 659 S.E.2d 151, 153 (2008). The determination of the scope of an easement sounds in equity. Id.

36. The Uniform Declaratory Judgments Act "does not create substantive rights or duties." Felts v. Richland County, 299 S.C. 214, 216, 383 S.E.2d 261, 262-63 (Ct.App.1989). Rather, it authorizes an action to establish a party's entitlement to a pre-existing right. Harvey v. South Carolina Dept. of Corrections, 338 S.C. 500, 506, 527 S.E.2d 765, 768 (Ct. App. 2000).

37. The remedy of injunction is a drastic one and should be cautiously applied only when legal rights are unlawfully invaded or legal duties are willfully or wantonly neglected. LeFurgy v. Long Cove Club Owners Assoc., 313 S.C. 555, 558, 443 S.E.2d 557, 578 (Ct. App. 1994).

38. Plaintiffs assert that they have preexisting rights to the Subject Property by virtue of the doctrines of: A) equitable servitude, B) implied easement, C) negative reciprocal easement, and D) amenities, and seek an injunction to prevent the development of the Subject Property by Deertrack Investors, LLC.

A. Implied Easements

39. Covenants, expressed or implied, restricting the free use of land are not favored and must be strictly construed. Edwards v. Surratt, 228 S.C. 512, 90 S.E.2d 906 (1956). An easement restricting the use of property must be created in express terms or by plain and unmistakable implication. Bomar v. Echols, 270 S.C. 676, 244 S.E.2d 308 (1978); Shoney's, Inc. v. Cooke, 291 S.C. 307, 353 S.E.2d 300 (Ct. App. 1987).

40. Recent case law provides an in-depth analysis of implied easements in South Carolina. In Boyd v. Bellsouth Telephone Telegraph, Co., 369 S.C. 410, 633 S.E.2d 136 (2006), Boyd argued that she had an easement implied by prior use, implied by necessity, or by equitable estoppel with regard to a driveway passing over property owned by Bell South.

41. In Bell South, the Supreme Court began by discussing the similarities and distinctions between easements by prescription, by prior use and by necessity, stating that they "have different elements and are applicable to different factual scenarios." Id. at 420. A prescriptive easement must be evidenced with: (1) 20 years continuous use, (2) specific identity of the thing enjoyed, and (3) use which is adverse or under a claim of right. Id. at 419. An easement by necessity is proven by: (1) unity of title, (2) severance of title, and 3) necessity. Id. at 419-20. The elements of easements by prior use included: (1) unity of title, (2) severance of title, (3) prior use was in existence at the time of unity of title, (4) prior use was not merely temporary or casual, (5) prior use was apparent or known to the parties, (6) prior use was necessary in that there could be no other reasonable mode of enjoying the dominant tenement without prior use, and (7) the common grantor indicated an intent to continue the prior use after severance of title. Id. at 139. The court summarized as follows:

> A prescriptive easement is not implied by law but is established by the conduct of the dominant tenement owner; however easements

> by prior use and by necessity are implied by law. An easement by necessity does not require a preexisting use during unity of title where as an easement by prior use does impose this requirement. An easement implied by prior use will not be extinguished if the easement is no longer necessary, but an easement by necessity will be extinguished once the necessity ends.

Id. at 419-420 (citations omitted).

42. The Bell South court also clarified the essential elements for an implied easement by equitable estoppel, and affirmed the trial court's grant of summary judgment in favor of Bell South as to Boyd's claim for easement by estoppel because there was not an easement to use the driveway was a matter of public record. The court stated:

> The essential elements of equitable estoppel as related to the party estopped are: (1) conduct which amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intentional, or at least expectation, that such conduct shall be acted upon by the other party; and (3) knowledge, actual or constructive, of the real facts. As related to the party claiming the estoppel, they are: lack of knowledge and of the means of knowledge of the truth as to the facts in question (2) reliance upon the conduct of the party estopped; and (3) action based thereon of such a character as to change his position prejudicially.
>
> A properly recorded title normally precludes an equitable estoppel against assertion of that title due to the requirement that the party raising the estoppel be ignorant of the true state of title or reasonable means of discovering it. One with knowledge of the truth or the means by which with reasonable diligence he could acquire knowledge cannot claim to have been misled.

Id. at 422.

43. More recently, in Inlet Harbour v. South Carolina Dept. of Parks, Recreation and Tourism, 377 S.C. 86, 659 S.E.2d 151 (2008), the Supreme Court considered the scope of an easement over a private road implied in a deed from Inlet Harbour to the South Carolina Department of Parks, Recreation and Tourism by reference to a plat depicting the easement.

Although the existence of the implied easement was not the subject of the Inlet Harbour appeal, the Court provided a scholarly analysis in affirming the trial court's limitation of the scope of the implied easement to "environmental purposes associated with maintaining the navigability of Murrells Inlet."

44. "The creation of an implied easement generally requires that the facts and circumstances surrounding the conveyance, the property, the parties, or some other characteristic demonstrate that the objective intention of the parties was to create an easement." Inlet Harbour, 377 S.C. at 92, 659 S.E.2d at 154. Moreover, whatever easements are created by implication must be determined as of the time of the severance of the ownership of the tracts involved. Clemson Univ. v. First Provident Corp., 260 S.C. 640, 652, 197 S.E.2d 914, 920 (1973). The Inlet Harbour court clarified previous case law on implied easements, explaining that presumptions regarding the creation of implied easements have developed in certain circumstances, including: i) implied easement by reference, ii) implied easement of prior use; and, iii) implied easement of necessity. Id.

45. The presumption regarding the creation of an implied easement by reference is that when an owner conveys subdivided lots and references the plat in the deed, the owner grants the lot owners an easement over the streets appearing in the plat. Id., citing Blue Ridge Realty Co. v. Williamson, 247 S.C. 112, 145 S.E.2d 922 (1965). This rule is "nothing more than a presumption that when a grantor conveys property with reference to a plat showing streets or other ways of passage, the grantor intends to allow the grantee the use of the delineated streets and ways of passage." Id. at 93.

46. A presumption of an implied easement by prior use exists where the grantor used one portion of the property to serve another prior to the severance of the property. Id. at 92.

An easement implied by prior use is presumed to exist when there is: "(1) unity of title, (2) severance of title, (3) the prior use was in existence at the time of unity of title; (3) the prior use was not merely temporary or casual, (4) the prior use was apparent or known to the parties, (5) the prior use was necessary in that there could be no other reasonable mode of enjoying the dominant tenement without the prior use, and (6) the common grantor indicated an intent to continue the prior use after severance of title." Boyd v. Bellsouth Telephone Telegraph Co., 369 S.C. 410, 416, 633 S.E.2d 136, 139 (2006).

47. The presumption of implied easement by necessity arises when an easement is necessary to allow a grantee to have meaningful access to his land. Id. at 92. "The party asserting the right of an easement by necessity must demonstrate: (1) unity of title, (2) severance of title, and (3) necessity." Boyd, 369 S.C. at 418-19, 633 S.E.2d at 140-41.

48. The Inlet Harbour court explained that, while presumptions in these circumstances may exist, the intentions of the parties to the transaction are the overriding focus when examining and determining the existence of any implied easements. Id. The court's "guidepost must be what the parties intended, and the best evidence of the parties' intentions are the facts and circumstances surrounding the conveyance." Id. at 93. "The creation of an implied easement generally requires that the facts and circumstances surrounding the conveyance, the property, the parties, or some other characteristic demonstrate that the objective intention of the parties was to create an easement." Id. at 91. However, the court in Inlet Harbour cautioned that implied easements are not favored because "the implication of an easement in a conveyance goes against the general rule that a written instrument speaks for itself." Id. at 91-92.

49. Thus, after detailing the historical treatment of implied easements in South Carolina, the Inlet Harbour court focused its analysis regarding the scope of the easement over a private road implied in a deed from Inlet Harbour to the South Carolina Department of Parks, Recreation and Tourism to the facts and circumstances surrounding the sale of the dominant tract of property. The court upheld the decision of the trial court finding that the scope of the easement was limited to environmental purposes associated with maintaining the navigability of Murrells Inlet, and noted that the Department of Parks, Recreation and Tourism could have abated this limitation by negotiating and expressly providing for an unrestricted easement. Id. at 96.

50. Shortly after the Inlet Harbour decision, the Court of Appeals issued a decision in a similar case, Murrells Inlet Corp. v. Ward, Opinion No. 4384 (Ct. App. filed May 2, 2008). The Court of Appeals in the Murrells Inlet case addressed the issue of whether "a plat recorded when property is subdivided confers an easement to the subsequent grantees of the property to the extent the easement is delineated in the plat." Id. at 3. In 1990, Ward subdivided a parcel of land in Horry County into five tracts for the purpose of transferring portions to her children. At the time that Ward subdivided the property, she granted a fifty-foot right-of-way to the lots to allow ingress and egress from Highway 57, which was evidenced in a recorded plat. Ward argued, despite the fifty-foot right-of-way depicted in the plat, that she did not intend to grant a fifty-foot easement. The Murrells Inlet Corp., a subsequent owner of one of the subdivided tracts, argued that an implied easement was created at the time the property was subdivided by virtue of the recorded plat.

51. In undertaking an analysis set forth in Inlet Harbour, the Court of Appeals noted that notwithstanding any "intent" analysis, the deed and the recorded plat are controlling to a

determination of whether an implied easement is created by reference to a plat. In particular, the court held that "to allow Ward's intent to override the original grant of a fifty foot easement [contained in the plat] would result in a travesty of justice." Id.; see also Clemson University v. First Provident Corp. 260 S.C. 640, 652, 197 S.E.2d 914, 920 (1973) (stating that implied easements may not be created by the acts of the party claiming the implied easement). Moreover, the court noted that "by recording the easement on the plat, Ward evidenced an intention to grant that easement to any future lot owners in the subdivision." Id. at 5; Cf. Carolina Land Co. v. Bland, 265 S.C. 98, 107, 217 S.E.2d 16, 20 (1975) ("Law imputes to purchaser who proposes to acquire title to real estate notice of recitals contained in any properly recorded instrument in writing which forms line in chain of title to property proposed to be acquired.").

52. Balancing the presumptions set forth in prior case law, the analysis discussed in Inlet Harbour, and the explanation set forth in Murrells Inlet, the law regarding implied easements can be summarized into the following two points: (1) the intent of the parties at the time of the severance controls the existence and scope of an implied easement, (2) the best evidence of the intent of the parties to create an implied easement is the recorded documents.

53. Turning to the facts relating to the Hills and Clemmons purchase of their residential lots in Deerfield Plantation from Deerfield Plantation, Inc. in 1973, Plaintiffs have set forth no genuine issue of material fact as to whether the parties intended to create an implied easement to the Subject Property. Addressing the presumptions as to each of the implied easements separately, it is clear that neither the Hills nor the Clemmons are the holder of a prescriptive easement, easement by necessity, easement by prior use, easement by reference, or easement by estoppel over the Subject Property.

i. Prescriptive Easement

54. A prescriptive easement is presumed to be created if the dominant property uses the easement for (1) 20 years continuously; (2) with a specific identity of the thing enjoyed, and (3) adversely to the rights of the servient property holder. Id. at 419. Plaintiffs failed to produce any evidence to show the creation of a prescriptive easement for two reasons.

55. First, Plaintiffs have failed to identify the "thing enjoyed" to create an easement. The Plaintiffs acknowledge that they were not permitted to use the Subject Property without paying a fee. Further, Plaintiffs state that they were not permitted to maintain any portion of the Subject Property, and if they did so they did with permission. At most, what Plaintiffs enjoyed was a view. When asked what they want with the Subject Property, they state "green space", a golf course, or forest. However, Plaintiffs acknowledge that even when the property was used as a golf course, it was not "green space."

56. Second, Plaintiffs have presented no evidence that their use of the Subject Property was adverse in any manner to the owner of the North Course and Clubhouse. Plaintiffs used their "view" in a manner not at all adverse to the property owner, who leased it to the operator of the golf course.

57. As a result, Plaintiffs have failed to show any genuine issue of material fact with respect to whether a prescriptive easement exists over the Subject Property in favor of the Plaintiffs.

ii. Easement by Necessity

58. The intent of the parties is presumed to create an easement by necessity when there exists: (1) unity of title to the property severed, (2) severance of title, and (3) necessity for meaningful access to land.

59. Here, Plaintiffs are not alleging, and have presented no evidence, that their use of the Subject Property is necessary or that it is required to access their property. Moreover, as discussed in relation to an easement by prior use below, unity of title and severance of title does not exist with respect to Plaintiffs' residential lots and the Subject Property.

60. Thus, Plaintiffs have failed to show any evidence of the existence of an easement by necessity over the Subject Property.

iii. Easement by Prior Use

61. A presumption of an implied easement by prior use exists where the grantor used one portion of the property to serve another prior to the severance of the property and is presumed where there exists: (1) unity of title, (2) severance of title, (3) the prior use was in existence at the time of unity of title; (3) the prior use was not merely temporary or casual, (4) the prior use was apparent or known to the parties, (5) the prior use was necessary in that there could be no other reasonable mode of enjoying the dominant tenement without the prior use, and (6) the common grantor indicated an intent to continue the prior use after severance of title.

62. The Plaintiffs failed to offer any evidence of an easement by prior use for several reasons. First, Plaintiffs have presented no evidence that unity of title existed at the time of severance. Specifically, when Deerfield Plantation was developed and subdivided, the Deerfield Plantation Property was owned by Deerfield Plantation, Inc. At that same time, the Subject Property was owned by V.F. Platt, Jr., individually, and Plaintiffs conceded the same on the record. V.F. Platt, Jr. did not convey the Subject Property until 1978, six years after Plaintiffs purchased their lots, when it sold to Caro Pines Realty, Inc. Plaintiffs failed to present any evidence that they purchased their residential lots from any of the Defendants.

63. Second, Plaintiffs admit that the Subject Property was not used as a golf course

and clubhouse until after they purchased their lots in Deerfield Plantation.

64. Third, even if the Subject Property was used as a golf course prior to their purchase of their lots in Deerfield Plantation, Plaintiffs cannot show that the golf course was necessary for the enjoyment of their lots. See Boyd v. Bell South, 369 S.C. 410, 633 S.E.2d 136, 142 (2006). Plaintiffs only allege that if the Subject Property changed use, it may affect their property values.

65. Accordingly, Plaintiffs' have failed to set forth a genuine issue of material fact as to their claims of implied easement to the extent they allege one exists as a result of prior use.

iv. Easement by Reference

66. The rule regarding the creation of an easement by reference to a recorded document is "nothing more than a presumption that when a grantor conveys property with reference to a plat showing streets or other ways of passage, the grantor intends to allow the grantee the use of the delineated streets and ways of passage." Id. at 93.

67. Plaintiffs alleged that the depiction of the golf course and clubhouse on the Plat referenced in their deed, Plat Book 54, page 124, give Plaintiffs an easement by reference over the golf course and clubhouse.

68. However, Plaintiffs argument fails for four (4) reasons: (1) the Grantor of Plaintiffs' residential lots did not own the Subject Property; (2) Plaintiffs are not claiming an easement to any streets or ways of passage, (3) Plaintiffs acknowledge they could not use the Subject Property without paying a membership fee, and (4) the Plat referred in their deeds expressly disclaims any easement Plaintiffs allege they have in the Subject Property.

69. An easement by reference to a plat has only been found to exist in South Carolina when the plat is recorded by the same person/entity that grants the implied easement, in other

words, where there exists unity of title at the time of severance. Here, Plaintiffs admit there is no unity of title at the time of severance.

70. Additionally, in South Carolina an easement by reference to a plat has only been found to be created in streets and roads.

71. Plaintiffs testified that they were not permitted to use the Golf Course and Clubhouse Property without paying a fee.

72. In addition, the Plat referred to in Plaintiffs' deeds states on the face of the plat:

> It is hereby expressly declared that Deerfield Plantation, Inc. does not intend to dedicate and does not dedicate to the general public or any member thereof any easement, right of travel, right to use or other right with regard to the streets, roads, alleys, entrances, or other passages or ways and with regard to the lakes and parks shown upon this map, and that Deerfield Plantation, Inc. reserves unto itself, its successors and assigns, all streets, roads, alleys, entrances, or other passages or ways and any and all lakes and parks shown upon this map and all easements, rights of travel, right to use and any other rights over, upon, under or connected with the same.

73. Plaintiffs cite to a New Mexico case, Ute Park Summer Homes Assoc. v. Maxwell Land Grant Co., 77 N.M. 730, 727 P2d 249 (N.M.1967), in an attempt to extend the precedent in South Carolina regarding an easement by reference to golf courses. This Court declines to apply the Ute Park case as it is distinguishable from the present case on numerous grounds.

74. In Ute Park, the court held that an easement by reference can extend to a golf course because a golf course is the equivalent to a park. To the extent that the plat and golf course relied upon the Plaintiffs can be analogized to a park, as in Ute Park, the similarities end there.

75. In the present case, the Plat asserted by Plaintiffs, as relied upon in their affidavits and depositions, contains an express disclaimer of **any easement to any roads, streets or parks**

to Plaintiffs or any other third party. The Property Report relied upon by Plaintiffs also contains similar express disclaimers. Lastly, the Declarations fail to create any easement over the Subject Property, but rather burden the Plaintiffs' lot with an easement for golfers to, for example, recover their golf balls. Therefore, Plaintiffs' reliance on the Ute Park case to create a genuine issue of material fact is unpersuasive.

76. As a result, Plaintiffs have failed to allege any genuine issue of material fact to overcome the express disclaimer of easements by reference.

77. Moreover, Plaintiffs have failed to allege any genuine issue of material fact as to the existence of an implied easement over the Subject Property as a result of the reference to Plat 54, Page 124.

v. Easement by Estoppel

78. Additionally, Plaintiffs have failed to allege material facts as to the creation of an implied easement by estoppel over the Subject Property. See Boyd v. Bellsouth Telephone Telegraph, Co., 369 S.C. 410, 422, 633 S.E.2d 136 (2006) (The essential elements of equitable estoppel as related to the party estopped are: (1) conduct which amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intentional, or at least expectation, that such conduct shall be acted upon by the other party; and (3) knowledge, actual or constructive, of the real facts. As related to the party claiming the estoppel, the are: lack of knowledge and of the means of knowledge of the truth as to the facts in question (2) reliance upon the conduct of the party estopped; and (3) action based thereon of such a character as to change his position prejudicially.).

79. Plaintiffs testified that no party ever represented that the Subject Property would

be operated as a golf course forever.

80. Further, Plaintiffs testified that any representations regarding the Subject Property were not made with the intent to convey false information.

81. Finally, Plaintiffs had knowledge of and the means of knowledge of the lack of easement to and the express disclaimer of any easement to use the Subject Property.

82. The Plaintiffs' deeds did not grant any easement to the Subject Property, the Plat referred to in their deeds expressly disclaims any easement to the Subject Property, the Declarations expressly provide for a golf easement in favor of Deerfield Plantation, Inc. over Plaintiffs property and permits Deerfield Plantation, Inc. to withdraw all acts permitted by that easement, and the Property Report expressly states that Deerfield Plantation, Inc. has "no obligation or commitment to maintain clubhouse, swimming pool, tennis courts or golf course for any period of time and no purchaser or lessee of property shall be automatically entitled to membership in or use of said facilities by virtue of acquiring an interest in real property in the development." See id. ("A properly recorded title normally precludes an equitable estoppel against assertion of that title due to the requirement that the party raising the estoppel be ignorant of the true state of title or reasonable means of discovering it. One with knowledge of the truth or the means by which with reasonable diligence he could acquire knowledge cannot claim to have been misled.").

83. Plaintiffs rely upon the Mississippi case of PMZ Oil Co. v. Lucroy, 449 So.2d 201 (Miss.1984) to assert Defendants use of the Subject Property should be restricted. In PMZ, the Mississippi court addressed, on first impression, whether a developer was equitably estopped from constructing six condominiums on a lot within a subdivision where the plats for the subdivision illustrated single owners and the deeds to the other lots contained protective

covenants restricting the use to on single family resident.

84. The PMZ case is distinguishable for the present case in several manners, each fatal to Plaintiffs' argument. First, the PMZ case applied equitable estoppel where the developer sold property within a subdivision to all of the subdivisions owners. In other words, PMZ applied equitable estoppel where there was unity of title. The PMZ court noted that equity acted "in personam" and not "in rem". Therefore, the court applied equity to estop the developer from denying the covenants.

85. Here, Plaintiffs have failed to offer any evidence of unity of title, and thus this Court is precluded from using equity to restrict the use of the Subject Property. This Court is similarly restricted from applying equity to restrict the use of the Subject Property when the Defendants were neither the developer nor Plaintiffs' predecessor in the title.

86. Additionally, contrary to the PMZ case, where the deed expressly provided for restrictive covenants, the Plat and documents relied upon by Plaintiffs contain express disclaimers of any easement and/or restrictions in favor of Plaintiffs or any other third party.

87. As a result, Plaintiffs failed to establish any material fact as to the existence of an implied easement by estoppel, or any other implied easement and summary judgment in favor of Deertrack Investors, LLC is proper.

C. Negative Reciprocal Easement

88. In addition to the various presumptions regarding the implied easements discussed in the Boyd, Inlet Harbour, and Murrells Inlet cases, case law in South Carolina has developed regarding implied easements and/or implied restrictions by general plan, commonly referred to as a negative reciprocal easement. Plaintiffs also allege rights to the Subject Property by equitable servitude. Equitable servitudes are encumbrances indistinguishable from negative

easements. Butler v. Sea Pines Plantation Co., 282 S.C. 113, 116 n.2, 317 S.E.2d 464, 466 n.2 (Ct. App. 1984). As a result, Deertrack Investor's incorporates by reference the legal discussion hereinafter relating to negative reciprocal easements. Unlike other implied easements in which the easement is created by the servient property owner in favor of a dominant property owner at the time of severance, negative reciprocal easements are implied restrictions on subdivided property created by a common grantor in favor of, for, against, and between the grantees of subdivided land. The Court of Appeals described negative reciprocal easements as follows:

> Where they arise by implication and subdivided land is involved, the restrictions are said to create a reciprocal negative easement. Ordinarily, four elements must be established to show a reciprocal negative easement. There must be: (1) a common grantor, (2) a designation of land subject to restrictions, (3) a general plan or scheme of restrictions, and (4) covenants running with the land in accordance with such plan or scheme.
>
> In determining whether a reciprocal negative easement has been created, the court should consider not only the language of the deeds, but also the circumstances surrounding the origin of the covenants. Generally, the developer must establish the general scheme of development before any lots are sold. To establish a general scheme, it is not necessary for every lot to be restricted in exactly the same manner, but extensive omissions or variations tend to show no scheme existed and the restrictions are only personal contracts. All doubts regarding the creation of an implied reciprocal negative easement must be resolved in favor of the freedom of land from restriction.

Gambrell v. Schriver, 312 S.C. 354, 358, 440 S.E.2d 393, 395 (Ct. App. 1994) (citations omitted).

89. The reservation of the grantor to vary, waive, or obliterate restrictions, is generally an indication of a lack of general plan. See Am. Jur. 2d. Covenants §160.

90. The Plaintiffs alleged that the a general plan or scheme of development arises as a result of the Plaintiffs' deeds, the Plat referenced therein, the Declarations, the Property Report,

and the Developer's description of the Deerfield Plantation Property as a "golf community". However, Plaintiffs fail to assert a genuine issue of material fact as to the creation of a negative reciprocal easement restricting the use of the Subject Property to a golf course.

91. As an initial matter, Plaintiffs have presented no evidence that the subdivided land in Deerfield Plantation includes or ever included the golf course. The developer of Deerfield Plantation was Deerfield Plantation, Inc. and the development included lots 1-458, which did not include the golf course or clubhouse.

92. At the time residential lots were sold to Plaintiffs by Deerfield Plantation, Inc., the Subject Property was owned by V.F. Platt, Jr. Subsequently, Mr. Platt leased the Subject Property pursuant to a 10 year lease, to Deerfield Plantation, Inc.

93. Therefore, there is no genuine issue of material fact that the first element of a negative reciprocal easement is absent – a common grantor.

94. Furthermore, Plaintiffs' cannot point to any evidence that the Subject Property was intended to be subject to any restrictions of Deerfield Plantation. The restrictive covenants over the subdivided property applied only to the subdivided lots 1-458, and did not include any portions of the Subject Property. Other recorded documents expressly disclaim any right of Plaintiffs to the North Course and Clubhouse. Therefore, the Plaintiffs cannot show the remaining elements of a negative reciprocal easement because there is no evidence that the Subject Property was ever subject to any restrictions and is excluded from the Declarations restricting the Deerfield Plantation Property.

95. Plaintiffs have failed to establish a genuine issue of material fact as to the existence of a negative reciprocal easement over the Subject Property and therefore summary judgment should be granted in favor of Deertrack Investors, Inc.

D. Amenities

96. Plaintiffs also allege a right in the Subject Property as a result of a doctrine they entitle "amenities." A specific implied easement with respect to amenities has not been recognized in South Carolina.

97. Notwithstanding, in In re T 2 Green, LLC, 363 B.R. 753 (D.S.C. 2006), the bankruptcy court acknowledged that implied easements to amenities in a subdivision may arise under the same type of circumstances as other implied easements. However, the bankruptcy court cautioned that the use of property cannot be implicitly restricted by a plat or prior use if the clear language of other recorded documents prohibit the party asserting the claim from obtaining any proprietary right, title, or interest in the property. Id. at 768.

98. With respect to the Subject Property, the recorded documents expressly prohibit the Plaintiffs from claiming any right to the property. Again, the Plat referenced in Plaintiffs' deeds expressly disclaims any easement to the Subject Property, the Declarations expressly permits Deerfield Plantation, Inc. to withdraw all acts permitted by the golf easement it held over Plaintiffs' Property, and the Property Report expressly states that Deerfield Plantation, Inc. has "no obligation or commitment to maintain clubhouse, swimming pool, tennis courts or golf course for any period of time and no purchaser or lessee of property shall be automatically entitled to membership in or use of said facilities by virtue of acquiring an interest in real property in the development."

99. Thus, Plaintiffs have failed to establish any material facts as to the creation of any implied easement over the Subject Property as a result of amenities and summary judgment is proper.

100. As to the remaining claims for Civil Conspiracy against Deertrack Investors, LLC Plaintiffs have set forth no evidence that Deertrack Investors, LLC existed at the time Plaintiffs' purchased their lots in Deerfield in 1973. Rather the evidence is that Deertrack Investors, LLC was not created until March 2006. As a result, Plaintiffs have failed to allege any material facts as to the Civil Conspiracy claim against Deertrack Investors, LLC and summary judgment is proper.

101. As to common law claims for Negligent Misrepresentation, Fraud, Violation of the South Carolina Unfair Trade Practices Act and Civil Conspiracy, these claims likewise must fail as to the other Defendants because the representations extensively relied upon by the Plaintiffs were made at the time, were, according to the Plaintiffs, of their purchase. However, none of the other Defendants were owners or otherwise associated with the Subject Property or the representations. To the contrary, the other Corporate Defendants did not even have legal existence at that time. Consequentially these claims must fail as a matter of law, as well.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that Defendants are entitled to Summary Judgment as to all of Plaintiffs' claims. Defendants' Motion for Summary Judgment is GRANTED.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the lis pendens filed on the Subject Property in the Office of the Horry County Clerk of Court on November 30, 2007, in the above captioned action be cancelled and removed from the public records of Horry County, South Carolina.

IT IS SO ORDERED!

LARRY B. HYMAN
PRESIDING COMMON PLEAS JUDGE
FIFTEENTH JUDICIAL CIRCUIT

~~September~~ November 4, 2008
Conway, South Carolina

STATE OF SOUTH CAROLINA)	**IN THE COURT OF COMMON PLEAS**
)	**FIFTEENTH JUDICIAL CIRCUIT**
COUNTY OF HORRY)	**CIVIL ACTION NO. 06-CP-26-4440**
Dale Hill, Betty Hill, Carl Clemmons, and Geraldine Clemmons, individually, and on behalf of a class of all others similarly situated,)	
Plaintiffs,)	**Order Denying Defendants' Motion for Summary Judgment**
vs.)	
Deertrack Golf and Country Club, Inc., Deertrack Golf, Inc., Deerfield Plantation, Inc., the Estate of John Schaad, by and through Ann Schaad as Executrix, and Deertrack Investors, LLC)	
Defendants.)	
Deertrack Investors, LLC,)	
Third-Party Plaintiff,)	
vs.)	
Plantation Resort of Myrtle Beach, Inc. Plantation Resort Properties, Inc., and Deerfield Plantation Property Owners' Association, Inc.)	
Third-Party Defendants.)	

FILED
HORRY COUNTY
2009 FEB 23 PM 1:04
MELANIE HUGGINS
CLERK OF COURT

This matter was originally heard September 2, 2008 upon motion of Defendant Deertrack Investors, LLC's Motion for Summary Judgment. Defendants Deertrack Golf and

Country Club, Inc., Deertrack Golf, Inc., Deerfield Plantation, Inc., and the Estate of John Schaad by and through Anne Schaad as Executrix joined in the motion. Following the initial hearing, this Court entered its Order Granting Defendants' Motion for Summary Judgment (hereinafter the "Prior Order") filed herein November 5, 2008. Plaintiffs timely filed for reconsideration on November 14, 2008 pursuant to Rule 59(e), SCRCP.

The reconsideration hearing was held December 16, 2008. All parties were present and/or represented by Counsel. Attorney David B. Miller presented oral argument on behalf of the Plaintiffs, attorney Amanda A. Bailey presented oral argument on behalf of the Defendant Deertrack Investors, LLC, and attorney Richard Smith presented oral argument on behalf of the remaining Defendants.

Upon further examination of this Court's Prior Order, the Court is of the opinion it misinterpreted various important factual and legal conclusions. Further, the Court is mindful that the specific issues raised have yet to be addressed by the Appellate Courts of this State. The issues specifically before the Court are likely to be the subject of future litigation. As such, and for the reasons more specifically set forth herein, this Court's Prior Order is set aside and this Order Denying Defendants' Motion for Summary is substituted in its stead.

At the beginning of the initial hearing, counsel for Plaintiffs consented on the record to dismiss the causes of action for negligent misrepresentation, fraud, and violation of the South Carolina Unfair Trade Practices Act against Defendant Deertrack Investors, LLC. Counsel for Plaintiffs continue that prior consent and, as such, the causes of action for

negligent misrepresentation, fraud, and violation of the South Carolina Unfair Trade Practices Act are dismissed as against the Defendant Deertrack Investors, LLC.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). In determining whether any triable issue of fact exists so as to preclude summary judgment, the evidence and all inferences reasonably drawn therefrom must be viewed in the light most favorable to the non-moving party. Strother v. Lexington County Recreation Comm'n, 332 S.C. 54, 504 S.E.2d 117 (1998); Pye v. Aycock, 325 S.C. 426, 480 S.E.2d 455 (Ct. App. 1997). If triable issues exist, those issues must go to the jury for consideration. Rothrock v. Copeland, 305 S.C. 402, 409 S.E.2d 366 (1991); Joubert v. South Carolina Dep't of Soc. Servs., 341 S.C. 176, 534 S.E.2d 1 (Ct. App. 2000). The record evidence before the Court is voluminous and therefore this Order is limited to those facts and the applicable law which dictate that summary judgment is inappropriate in this matter. As required, the facts and inferences reasonably drawn therefrom are set forth in the light most favorable to the non-moving party.

The real properties at issue initially consisted of a 1,883 +/- acre tract owned by Dr. V. F. Platt, Jr.. Dr. Platt undertook to develop the property into a golf course community to be known as Deerfield Plantation. In doing so, Dr. Platt prepared a Master Plan depicting an 18-hole golf course, together with interspersed residential lots, lakes, ponds, clubhouse,

13

and related facilities. Plaintiffs testified this Master Plan was prominently displayed in Dr. Platt's place of business, a local pharmacy, toward generating interest and marketing the golf course community.

Dr. Platt thereafter separated the 1,883 +/- acres into two tracts; one consisting of the golf course and related facilities (the "Subject Property") and the other consisting of acreage comprising the residential lots. The Subject Property consists of 182.92 acres which remained titled in the name of V. F. Platt, Jr. The residential acreage was conveyed into Deerfield Plantation, Inc., an entity formed and controlled by Dr. Platt. The Deed into Deerfield Plantation, Inc. makes specific reference to the residential property as being bounded by the various specifically identified golf holes, all in keeping with the golf course community Master Plan.

Dr. Platt thereafter undertook to build the golf course while marketing and selling residential lots through Deerfield Plantation, Inc. Notably, golf course frontage lots were sold at a premium price, while non-golf course frontage lots were sold at a price higher than comparable lots not situate in a golf course community.

The Deeds conveying the various lots described the properties by reference to that certain plat recorded in the Records of Horry County in Plat Book 54 at Page 124. That plat shows the various residential lots and further specifically depicts the various golf holes which make up the Subject Property. Inclusion of the golf course in the plat and referencing the plat in the various purchaser Deeds is significant in several respects. First, the plat is

incorporated into the Deeds by operation of law. Blue Ridge Realty Co. v. Williamson, 247 S.C. 112, 145 S.E.2d 933 (1965). Secondly, the plat is consistent with the golf community Master Plan and expectations of the Plaintiffs.

Defendants rely upon a Dedication Reservation printed on the plat and specifically addressed in the Court's Prior Order. That Reservation provides:

> It is hereby expressly declared that Deerfield Plantation, Inc. does not intend to dedicate and does not dedicate to the general public or any member thereof any easement, right of travel, right of use, or other right *with regard to the streets, roads, alleys, entrances, or other passages or ways and with regard to the lakes and parks shown upon this map*, and that Deerfield Plantation, Inc. reserves unto itself, its successors and assigns, all streets, roads, alleys, entrances, or other passages or ways and any and all lakes and parks shown upon this map and all easements, rights of travel, rights to use, and any other rights over, upon, under or connected with the same. (emphasis added)

In its Prior Order, this Court viewed the above Reservation as expressly disclaiming *any* easement rights to the Subject Property. Upon further examination, however, the Court notes that the Reservation fails to include the words "golf course" within the scope of the Reservation. As such, when viewing the scope of the Reservation in the light most favorable to the non-moving Plaintiffs, the Court cannot conclude that the plat disclaimer bars Plaintiffs' claims.

Dr. Platt, through Deerfield Plantation, Inc., also undertook to record a Declaration and Establishment of Conditions, Reservations, Covenants and Restrictions upon the residential lots. The Declaration subjects the lots to rights of golfers to retrieve their golf balls, etc. and for the golf course operator to do those things ordinarily associated with the

maintenance and operation of a golf course. Importantly, the Declaration provides that the "developer," being Deerfield Plantation, Inc. and its successors, may dictate to the golf course the scope and manner in which these rights may be exercised. Again, this Court's Prior Order views the Declaration as indicating a lack of a general plan. Upon reconsideration, however, this Court must view the Declaration as further evidence supporting the intention for the Subject Property and residential lots to co-exist.

Dr. Platt, through Deerfield Plantation, Inc., also undertook to file and distribute a HUD Property Report which includes various amenities/facilities to the residential property. In particular, the HUD Property Report lists the golf course and describes it as an 18-hole Championship Course. The pertinent provisions of the HUD Property Report are as follows:

> 9. b. CLUBHOUSE: Proposed, with 19th Hole Club Room, Meeting Rooms, Snack Bar, Pro Shop, Card Room, Patio Area
>
> SWIMMING POOL: Proposed, with patio and lounge furniture.
>
> GOLF COURSE: 18 Hole Championship Course. COST TO BUYER FOR COMPLETION OR MAINTENANCE OF FACILITIES? NONE.
>
> DEVELOPER ESTIMATES ABOVE ITEMS TO BE COMPLETED BY September, 1973, and gives its assurance of completion, and additionally requiring all contractors to provided completion bonds.
>
> Initiation dues, annual dues and fees, and other use or privilege charges shall be charged to buyers or lessees and adjusted from time to time, as determined by the developer from time to time.
>
> **The developer will have no obligation or commitment to maintain clubhouse, swimming pool, tennis courts or golf**

> **course for any period of time and no purchaser or lessee of property shall be automatically entitled to membership in or use of said facilities by virtue of acquiring an interest in real property in the development.** (emphasis added)

This Court's Prior Order interprets the emphasized language as allowing the owner of the Subject Property to discontinue the operation of the Subject Property as a golf course and to convert it to whatever use it desires. First, the language states that the "developer will have no obligation or commitment to maintain ... golf course for any period of time". The developer is Deerfield Plantation, Inc., not the owner of the Subject Property. Plaintiffs do not allege that the "developer" (Deerfield Plantation, Inc.) has any obligation in these regards. The developer was not then and is not now the owner of the Subject Property. Secondly, this Court's Prior Order interprets the word "maintain" in a light most favorable to the moving party, not the non-moving party. The meaning and effect of the language of the HUD Property Report is disputed and this Court is constrained to interpret it in a light most favorable to the non-moving party.

South Carolina recognizes various types of implied easements. Plaintiffs here have alleged equitable servitude, implied easement, negative reciprocal easement, and amenities. Elements common to implied easements include:

- Conduct by the seller calculated to give the impression that the facts are inconsistent with the position now taken.
- Intention or expectation that the buyers will rely and act upon the conduct of the sellers.

Boyd v. Bell South, 369 S.C. 410, 633 S.E.2d 136, 142 (2006).

- Facts and circumstances which demonstrate an intent to create an easement.

Inlet Harbour v. South Carolina Dept. of Parks, Recreation, and Tourism, 377 S.C. 86, 659 S.E. 2d 151 (2008).

- Reference to the plat and/or deed whereby the buyer acquires every easement privilege and advantage shown upon the plat.

Blue Ridge Realty Co. v. Williamson, 247 S.C. 112, 145 S.E.2d 933 (1965).

- A general plan or scheme of development.

Butler v. Sea Pines Plantation Co., 282 S.C. 113, 317 S.E.2d 464 (Ct. App. 1984).

The facts here demonstrate each of these elements. Dr. Platt created, marketed, and sold a golf course community concept for which the Plaintiffs paid a premium price. This scheme of development creates reasonable expectations on the part of the purchasers that the golf course amenity would remain in perpetuity such that they may realize the benefit of the lifestyle and investment intended. Further, as previously discussed, there exists no evidence whereby the Plaintiffs were advised that such was not the case. To the contrary, the plats by which Plaintiffs acquired their property specifically include the golf course. This Court cannot say at the summary judgment phase that Plaintiffs are not entitled to proceed to trial.

Implied easements, by definition, are not expressed or memorialized in documents of record, but rather must be gleaned from facts and circumstances surrounding the matter.

Subsequent purchasers of potentially burdened lands therefore have only indirect record notice of such a burden. Here, for example, the public records are inclusive of the plats which show the lots and golf course with amenities. The HUD Property Report and Restrictions are also of record. Moreover, and particular to this case, there is evidence that Defendant Deertrack Investors, LLC had actual knowledge of Plaintiffs' claims at the time they purchased the Subject Property.

Common to the various theories of implied easements is the necessity of unity of title. This Court has expressed particular concern as to this necessity and concluded in the Prior Order that the lack of exact unity precluded Plaintiffs' claims. Again, further examination of the facts and law require a different result.

There is sufficient evidence in the record indicating that Dr. Platt prepared a Master Plan evidencing a golf course community concept prior to conveyance of the residential tract into Deerfield Plantation, Inc. Plaintiffs have demonstrated that the Deed into Deerfield Plantation, Inc. makes specific reference to the specific golf holes and that Dr. Platt retained control over all properties, whether held in his name individually or in the name of his controlled entity. This precise circumstance has not been specifically addressed by the Appellate Courts of South Carolina. As such, it is preferred that a full record be developed at trial rather than ruling upon a dispositive motion. Evans v. State, 344 S.C. 60, 68, 543 S.E.2d 547, 551 (2001); Tyler v. Macks Stores of South Carolina, Inc., 275 S.C. 456, 459, 272 S.E.2d 633, 634 (1980). Plaintiffs have cited to law supporting the position that the unity of title

requirement is satisfied by demonstrating unity of control, coupled with a common scheme of development. What Constitutes Unity of Title or Ownership Sufficient for Creation of an Easement by Implication or Way of Necessity, 94 A.L.R.3d 502 (1979), as cited in Boyd v. BellSouth Telephone Telegraph Co. Inc., 359 S.C. 209, 215, 597 S.E.2d 161, 164 (Ct. App. 2004) (reversed in part on other grounds).

For the reasons set forth above, this Court cannot conclude at summary judgment that Plaintiffs are not entitled to proceed upon their claims. As such, it is

HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1) Plaintiffs' claims for negligent misrepresentation, fraud, and violation of the South Carolina Unfair Trade Practices Act as against the Defendant Deertrack Investors, LLC are dismissed by consent.

2) Defendants' Motion for Summary Judgment is denied as to Plaintiffs' remaining causes of action.

IT IS SO ORDERED.

Dated: 2-20-09

The Honorable Larry B. Hyman
Presiding Judge, Fifteenth Judicial Court

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	Civil Action No.: 2006-CP-26-4440

Dale Hill, Betty Hill, Carl Clemmons Geraldine Clemmons, Individually, and on behalf of a Class of all others similarly Situated,

Plaintiffs,

v.

Deertrack Golf and Country Club, Inc. Deertrack Golf, Inc., Deerfield Plantation, Inc., the Estate of John Schaad, by and through Ann Schaad as Executrix, and Deertrack Investors, LLC.,

Defendants.

Deertrack Investors, LLC.,

Third-Party Plaintiff,

v.

Plantation Resort of Myrtle Beach, Inc. and Plantation Resort Properties, Inc. and Deerfield Plantation Property Owners' Association, Inc.

Third-Party Defendants.

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HORRY COUNTY
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MELANIE HUGGINS
CLERK OF COURT

CONSENT MOTION AND ORDER FOR SEVERANCE, REFERENCE AND STAY

This matter is before the Court on the Parties' Consent Motion to Sever the Plaintiffs' First Cause of Action for Declaratory Judgment, to Refer the First Cause of Action for Declaratory Judgment to the Special Referee, and to Stay all remaining causes of action,

counterclaims, and third-party claims pending resolution of the First Cause of Action for Declaratory Judgment by the Special Referee.

Accordingly, pursuant to Rule 42 of the South Carolina Rules of Civil Procedure, and in the furtherance of convenience and judicial economy, Plaintiffs' First Cause of Action for Declaratory Judgment is hereby severed, and a trial of Plaintiffs' First Cause of Action for Declaratory Judgment shall be separate from all remaining causes of action, counterclaims, and third-party claims.

Further, pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, the First Cause of Action for Declaratory Judgment shall be referred with finality to The Honorable Thomas W. Cooper, Jr., Retired Circuit Judge, as Special Referee, to make findings of facts and conclusions of law, and with authority to dispose of any and all issues and enter a final judgment on the First Cause of Action for Declaratory Judgment. The final hearing on the First Cause of Action for Declaratory Judgment shall occur within 90 days of the date of this Order or, with the Parties' consent, as soon thereafter as possible, to be determined by Judge Cooper.

Finally, because the determination of the Plaintiffs' First Cause of Action for Declaratory Judgment will likely have a direct and substantial effect on the outcome of all remaining causes of action, counterclaims, and third-party claims, and in the furtherance of convenience and judicial economy, all of Plaintiffs' remaining causes of action, counterclaims, and third-party claims are stayed pending a final order from the Special Referee on Plaintiffs' First Cause of Action for Declaratory Judgment and shall be restored to the active roster upon issuance of the said order.

IT IS SO ORDERED.

(signatures on following pages)

Steven H. John
Chief Administrative Judge
Fifteenth Judicial Circuit

8/24, 2009
Conway, South Carolina

(signatures on following page)

WE CONSENT:

David B. Miller, Esq.
Robert S. Shelton, Esq.
Bellamy Law Firm
P.O. Box 357
Myrtle Beach, SC 29578-0357
Counsel for Plaintiffs

Richard M. Smith, Esq.
Leigh Powers Boan, Esq.
McNair Law Firm, P.A.
P.O. Drawer 418
Georgetown, SC 29442
Counsel for Deertrack Golf, Inc. and the Estate of John Schaad, by and through Ann S. Schaad as Personal Representative

Amanda A. Bailey S.C. Bar#71085
Henrietta Golding S.C. Bar#2173
P.O. Box 336
Myrtle Beach, South Carolina 29578
Phone: 843-444-1107
Fax: 843-443-9137
Counsel for the Deertrack Investors, LLC

L. James Purvis, Jr., Esquire
Law Offices of David DuRant
P.O. Box 14722
Surfside Beach, SC 29587
Counsel for Deerfield Plantation Property Owners Association, Inc.

William E. Lawson, Esquire
D. Michael Freeman, II, Esquire
Turner, Padget, Graham & Laney, P.A.
P.O. Box 2116
Myrtle Beach, SC 29578
Counsel for Plantation Resort of Myrtle Beach, Inc. and Plantation Resort Properties, Inc.

STATE OF SOUTH CAROLINA)	**IN THE COURT OF COMMON PLEAS**
)	**FIFTEENTH JUDICIAL CIRCUIT**
COUNTY OF HORRY)	**CIVIL ACTION NO. 06-CP-26-4440**
Dale Hill, Betty Hill, Carl Clemmons, and Geraldine Clemmons, individually, and on behalf of a class of all others similarly situated,)	
Plaintiffs,)	
vs.)	**ORDER CERTIFYING CLASS**
Deertrack Golf and Country Club, Inc., Deertrack Golf, Inc., Deerfield Plantation, Inc., the Estate of John Schaad, by and through Ann Schaad as Executrix, and Deertrack Investors, LLC)	
Defendants.)	
Deertrack Investors, LLC,)	
Third-Party Plaintiff,)	
vs.)	
Plantation Resort of Myrtle Beach, Inc., Plantation Resort Properties, Inc., and Deerfield Plantation Property Owners Association, Inc.)	
Third-Party Defendants.)	

HORRY COUNTY
09 NOV 10 AM 8:55
MELANIE ROGERS-WARD
CLERK OF COURT

This matter was filed in Horry County on September 8, 2006 by Plaintiffs on behalf of a class of all others similarly situated. On July 7, 2008, the Plaintiffs moved pursuant to Rule 23(a) of the *South Carolina Rules of Civil Procedure* for an Order determining this matter shall be maintained as a class action and defining a class.

This matter involves the Deerfield Plantation Phase I subdivision in the Surfside Beach area of Horry County, South Carolina. Specifically, this matter deals with Deertrack Investors, LLC's purchase of real property formerly operated as the Toski Links North Course and Deer Track Golf Resort Clubhouse adjacent to Deerfield Plantation Phase I. Plaintiffs filed the present action on September 7, 2006, Plaintiffs became aware the new owners of that property, Defendant Deertrack Investors, LLC, intended to develop it as a residential subdivision. Physically adjacent to the Toski Links North Course and Deer Track Golf Resort Clubhouse are single family residential lots numbered 1 through 458 on the plat recorded in the Office of the Register of Deeds for Horry County, South Carolina, in Plat Book 54 at Page 124. Plaintiffs seek to certify the current owners of the 458 lots as the class.

REQUIREMENTS FOR CLASS CERTIFICATION

SCRCP Rule 23 sets forth five requirements for class certification:

1. The class is so numerous that joinder of all members is impracticable;

2. There are questions of law or fact common to the class;

3. The claims or defenses of the representative parties are typical of the claims or defenses of the class;

4. Representative parties will fairly and adequately protect the interest of the class; and

5. In cases in which the relief primarily sought is not injunctive or declaratory with respect to the class as a whole, the amount in controversy exceeds $100 for each member of the class.

Also, the drafters of Rule 23, South Carolina Rules of Civil Procedure (SCRCP) intentionally omitted from our state rule the additional requirements found in Federal Rule 23(B), Federal Rules of Civil Procedure (FRCP). By omitting the additional requirements, Rule 23, SCRCP, endorses a more expansive view of class action availability than its federal counterpart. *Littlefield v. South Carolina Forestry Comm,* 337 S.C. 348, 354–355, 523 S.E.2d 781 (1999).

(1) Numerosity.

This matter involves 458 individual lots and their respective potential rights in the adjacent Toski Links North Course and Deer Track Golf Resort Clubhouse. It would be impracticable to join each individual current property owner in one action. As such, I FIND the numerosity requirement has been met.

(2) Questions of Law and Fact Common to the Class.

In this matter, the issues of law and fact are common throughout the entire Plaintiffs class and include, *inter alia*: a determiantion of whether the Subject Property is affected by equitable servitudes, implied easements, and/or negative reciprocal easements favoring the Plaintiffs.

As such, I FIND there exist questions of law and fact common to the Class.

(3) The Claims of the Plaintiff Are Typical of the Class.

Each member of the class purchased a lot or lots in Deerfield since the date the original plat was filed. As such, Plaintiffs claims arise from the same event or practice or

course of conduct that gives rise to the claims of other class members, and are based on the same legal theory. Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* § 3.13 (3d ed. 1992); *Central Wesleyan College v. W. R. Grace & Co.*, 143 F.R.D. 628, 637 (D.S.C. 1992) (citing *Newberg*), affd, 6 F.3d 177 (4th Cir. 1993); *Roger v. Electronic Data Sys. Corp.*, 160 F.R.D. 532, 538 (E.D.N.C. 1995).

Moreover, each class member currently owns real property within Deerfield Plantation Phase I. A ruling upon Plaintiffs First Cause of Action, for Declaratory Judgment, as to the existence of any alleged easements in the real property formeraly known as the Toski Links North Course and Deer Track Golf Resort Clubhouse restricting the use of those properties to one allegedly consistent with the stated use shown on the plat, will have an effect upon the property interest of each class member. Accordingly, I FIND Plaintiffs claims to be typical of the class.

(4) The Plaintiffs Will Fairly and Adequately Protect the Interests of the Class.

Finally, Rule 23(a)(4) of the *South Carolina Rules of Civil Procedure* also requires that the representative parties will fairly and adequately protect the interests of the class. This requires: (1) that the class representatives and their counsel will competently and vigorously prosecute the action; and (2) that the interests of the class representatives are not adverse to those of the class member. *Waller v. Seabrook Island Property Owners Association*, 300 S.C. 465, 468, 388 S.E.2d 799, 801 (1990).

The Plaintiffs are current residents of Deerfield Plantation Phase I who have each been deposed in this matter and have subjected themselves to lengthy discovery requests of the Defendants. They serve as representative plaintiffs in an effort to preserve their alleged property interests as well as those alleged of others similarly situated. As to Plaintiffs First Cause of Action, for Declaratory Judgment, the Plaintiffs alleged property interest, if proved, would be identical to that of each class member.

It appears that the Plaintiffs are working in earnest to protect the alleged interests of each of the 458 current property owners and have no conflict of interest with other class members. Rule 23 requires Plaintiffs counsel demonstrate they will fairly and adequately represent the entire class. This vigorous prosecution prong of the adequacy of representation test is presumed in the absence of proof to the contrary. *Newberg*, supra, 3.24. Lastly, the Deerfield Plantation Property Owners Association has agreed to pay Plaintiffs costs and legal fees in this matter. Accordingly, I FIND Plaintiffs are able to maintain the financial obligations concomitant with the prosecution of this action.

(5) Amount in Controversy.

Lastly, Rule 23(a) requires the amount in controversy for each class member to exceed one hundred dollars. However, the First Cause of Action in this matter is declaratory in nature and resolution thereof will determine the central issues as to the claims of all class members. Accordingly, I FIND the amount in controversy requirement has been satisfied.

CONCLUSION

Based on the foregoing, I HEREBY ORDER the certification of the following class in this action: The current owners of the residential lots numbered 1 through 458 on the Plat recorded in the Office of the Register of Deeds for Horry County, South Carolina, in Plat Book 54 at Page 124.

IT IS SO ORDERED.

s/Thomas W. Cooper

Thomas W. Cooper, Jr.

January, South Carolina

November 2, 2009.

STATE OF SOUTH CAROLINA)) COUNTY OF HORRY)	THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT Civil Action No.: 2006-CP-26-4440
Dale Hill, Betty Hill, Carl Clemmons Geraldine Clemmons, Individually, and on behalf of a Class of all others similarly Situated, Plaintiffs, v. Deertrack Golf and Country Club, Inc. Deertrack Golf, Inc., Deerfield Plantation, Inc., the Estate of John Schaad, by and through Ann Schaad as Executrix, and Deertrack Investors, LLC., Defendants.	FINAL ORDER AS TO PLAINTIFFS' FIRST CAUSE OF ACTION
Deertrack Investors, LLC., Third-Party Plaintiff, v. Plantation Resort of Myrtle Beach, Inc., and Plantation Resort Properties, Inc. Third-Party Defendants.	

HORRY COUNTY
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CLERK OF COURT

This matter came before me on November 9, 2009 for a final merits hearing of Plaintiffs' First Cause of Action for Declaratory Judgment. By Order dated November 2, 2009, a Class was certified with respect to Plaintiffs' First Cause of Action, which members are the current owners

of the single family residential lots numbered 1 through 458 as shown on the plat recorded in the Office of the Register of Deeds for Horry County, South Carolina, in Plat Book 54 at Page 124.

Pursuant to an Order issued by the Honorable Steven H. John on August 24, 2009, the undersigned was appointed as Special Referee, to make findings of facts and conclusions of law, with the authority to dispose of all issues and enter a final judgment on the Plaintiffs' First Cause of Action.

Plaintiffs' First Cause of Action seeks as Declaratory Judgment for the following:

a) That Deerfield Plantation, Inc. established an equitable servitudes/implied easements/negative reciprocal easements on behalf of Plaintiffs in the [Subject Property] adjacent to the Plaintiffs' residences;

b) That the [Subject Property] were amenities to the respective homesites Plaintiffs purchased;

c) That the equitable servitudes/implied easements/negative reciprocal easements/amenities so established require the land which Defendant Deertrack Investors, LLC owns be restricted to use as a golf course; and

d) That the equitable servitudes/implied easements/negative reciprocal easements/amenities so established cannot be unilaterally extinguished by Defendants.

For the reasons set forth herein, Plaintiffs' First Cause of Action for a Declaratory Judgment is denied.

FINDINGS OF FACTS

1. Prior to 1972, V.F. Platt, Jr. owned approximately 1,883 acres in Surfside Beach, South Carolina.

2. Deerfield Plantation, Inc. was a South Carolina corporation in existence on October 13, 1972. V.F. Platt, Jr. was the President and Kate W. Platt was the Secretary (hereinafter referred to as the "Deerfield Plantation I").

3. Deerfield Plantation I, V.F. Platt, Jr., and Kate Platt are not parties to this lawsuit.

4. On October 13, 1972, V.F. Platt, Jr. deeded 547.76 acres to Deerfield Plantation I (hereinafter referred to as "Deerfield Plantation Property"). The Deed was recorded in Deed Book 478, Page 654. Not part of this conveyance and specifically excluded in the Deed was approximately 182.92 acres, identified as Parcels A, B, C, D, and E comprising the real property later known as the Deer Track Golf Course and Clubhouse (this excluded property is hereinafter referred to as the "Subject Property").

5. Deerfield Plantation I developed the Deerfield Plantation Property into a residential subdivision known as Deerfield Plantation.

6. Deerfield Plantation I recorded a plat of the Deerfield Plantation Property on November 14, 1972 at Plat Book 54, Page 124 in the Horry County Register of Deeds. This Plat depicted lots 1-458 within the Deerfield Plantation Property. The plat shows golf course fairways, labeled 1 through 18, and a body of water labeled "Vivian Lake". The November 14, 1972 Plat did not depict any other bodies of water, nor any clubhouse, tennis courts, or pool.

7. The November 14, 1972 Plat provides:

> It is hereby expressly declared that Deerfield Plantation, Inc. does not intend to dedicate and does not dedicate to the general public or any member thereof any easement, right of travel, right to use or other right with regard to the streets, roads, alleys, entrances, or other passages or ways and with regard to the lakes and parks shown upon this map, and that Deerfield Plantation, Inc. reserves unto itself, its successors and assigns, all streets, roads, alleys, entrances, or other passages or ways and any and all lakes and parks shown upon this map and all easements, rights of travel, right to use and any other rights over, upon, under or connected with the same.

8. Plaintiffs, individually and as class representatives, had actual and constructive notice of the November 14, 1972 Plat before closing on their respective Deerfield lot.

9. Deerfield Plantation I filed, in the Horry County records, a Declaration and Establishment of Conditions, Reservations, Covenants and Restrictions for Deerfield Plantation Single Family

Residential Subdivision Horry County, South Carolina on November 29, 1972 at Book 481, Page 305, covering lots 1 through 458 as shown on the November 14, 1972 (hereinafter Declarations).

Pertinent portions of the Declarations provide:

> 11. Easements to permit the doing of every act necessary and proper in the playing of golf on the golf course adjacent to the lots and the playing of tennis on the tennis courts adjacent to the lots which are subject to these restrictions are hereby granted and established. These acts shall include, but not limited to, the recovery of golf balls and tennis balls from such lots, the flight of golf balls and tennis balls over and upon such lots, the use of necessary and usual equipment upon such golf course and tennis courts, the usual and common noise level created by the paying of the game of golf or the game of tennis and with all the normal and usual activities associated with the operation of a country club or clubhouse. The Developer shall have the right to determine the manner and extent to which the rights under this easement shall be exercised, and in the event that some other person, corporation, or other entity shall hereafter operate said golf course, tennis courts, country club or clubhouse facility then the Developer shall have the right to prescribe in writing to such person, corporation or entity charged with the operation of the said golf course, tennis courts, country club or clubhouse facility the manner and extent to which the rights under this easement shall be exercised. *In addition the Developer may, in its sole discretion, limit or withdraw or prohibit certain of the acts authorized by this easement, and may limited the manner or place of doing all or certain of the acts authorized by this easement.*
>
> ***
>
> 23. The Developer hereby expressly states its *intent not to dedicate or convey to the general public or any member thereof any easement, right of travel, right to use or other right with regard to the streets, roads, alleys, entrances, or other passages or ways and with regard to the lakes and parks shown upon the above referred to map of this subdivision* (except such private easement as is stated in the Deed to each property owner purchasing or acquiring title to one of the herein described lots) and the *Developer hereby reserves unto itself, its successors and assigns, all streets , roads, alleys, entrances, or other passages or ways, any and all lakes and parks, all easements* and rights in connection therewith for any purpose, matter or thing set forth in paragraph 14 herein, rights of travel, right to use and any other right over, upon, under or connected with the same, as shown upon the above

> referred to map (except such private easements as is stated in the Deed to each property owner purchasing or acquiring title to one of the herein described lots). (Emphasis provided.)

10. Plaintiffs, individually and as representatives of a class, received a copy of and had actual and constructive notice of the Declarations prior to closing on their respective lots.

11. A property owners association named Deerfield Plantation Property Owners Association, Inc. was organized and, according to the Declarations, each property owner in Deerfield Plantation is a member of the Association.

12. Simultaneous with the filing of the Declarations, Deerfield Plantation I entered into a Privilege and Obligation Agreement with Deerfield Plantation Property Owners Association, Inc. dated November 29, 1972, the terms of which were deemed to extend to and include the successors and assigns of the parties. The applicable portions of the Privilege and Obligation Agreement provide:

> 2. *The Developer has leased certain lands in, around, and near the property comprising the abovesaid Deerfield Plantation single family residential subdivision, said lease being for a period of ten (10) years, for the purpose of constructing thereupon an eighteen hole golf course.* The Developer agrees to construct an eighteen hole golf course upon the property leased for such purposes, substantially as shown upon that certain map made by Moorman & Little, Inc., dated November 14, 1972, and recorded in Plat Book 54, page 124, office of the Clerk of Court for Horry County, S.C., according to plans and specifications as determined by J. Porter Gibson, Golf Course Architect and Land Planner, Charlotte, North Carolina, within a reasonable time.
>
> 3. The Developer further agrees to construct within the bounds of the property shown and described upon the above referred to map, three lighted tennis courts, within a reasonable time period.
>
> 4. The Developer also agrees to construct within a reasonable time, a clubhouse for use in connection with the golf course and tennis courts abovesaid, including an area for a professional golf shop, a snack bar, meeting room, and such other incidental accommodations as the Developer shall deem expedient.

5. The Developer also agrees to contract, within a reasonable time, a swimming pool, within the property boundaries of the Developer as shown upon the above referred to map.

***

8. The Developer agrees to make the abovesaid golf course, tennis courts, club house, and swimming pool facilities available to the owners of the property in Deerfield Plantation single family residential subdivision (reserving the right to make said facilities available to any other persons whomsoever in addition), subject, however, to the other provisions hereof, upon the filing of application for membership by the said property owners and upon approval of said application for membership by Deerfield Plantation, Inc., until such time as maximum membership as set by the Developer from time to time is reached. It is agreed that Deerfield Plantation, Inc. may reject the application of any applicant, other than on grounds of race, color, or creed, without cause or reason and without being required to assign any cause or reason therefore, *it being understood and agreed that the aforesaid facilities consisting of the aforesaid golf course, tennis courts, club house, and swimming pool, and any other incidential [sic] operation in connection therewith, are separate and distinct business operations of Deerfield Plantation, Inc, apart from Deerfield Plantation single family residential subdivision as aforesaid.* It is further agreed that application for membership for the use of said facilities shall be made upon such form or forms and at such time or times as Deerfield Plantation Inc. may direct. *It is further understood and agreed that Deerfield Plantation, Inc. reserves the right to discontinue the maintenance and/or operation of said golf course, tennis courts, club house, and swimming pool, or any other incidential [sic] operations connected therewith, at such time as Deerfield Plantation, Inc, in its sole discretion of its Board of Directors, shall determine that the maintenance and operation of the aforesaid facilities, or any one of them is not economically feasible or is not advisable for any other reason and to use the property devoted thereto for other purposes.* (Emphasis provided.)

13. Plaintiffs, individually and as representatives of the Class, received a copy of and had actual notice of the Privilege and Obligation Agreement before closing on their respective lots.

14. Effective December 26, 1972, Deerfield Plantation I filed a Property Report with the U.S. Department of Housing and Urban Development. The significant portions of the Property Report provide:

> **9.b. IF FACILITIES ARE PROPOSED OR PARTLY COMPLETED, STATE PROMISED COMPLETION DATE, PROVISIONS TO ASSURE COMPLETION, AND ALL ESTIMATED COSTS OR ASSESSMENTS TO BUYER OR LESSEE. IF THERE ARE NO PROVISIOSN TO ASSURE COMPLETION, SO STATE.**
>
> CLUBHOUSE: Proposed, with 19th Hole Club Room, Meeting Rooms, Snack Bar, Pro Shop, Card Room, Patio Area.
>
> SWIMMING POOL: Proposed, with patio and lounge furniture.
>
> GOLF COURSE. 18 Hole Championship Course. COST TO BUYER FOR COMPLETION OR MAINTENANCE OF FACILITIES? NONE
>
> DEVELOPER ESTIMATES ABOVE ITEMS TO BE COMPLETED BY September, 1973, and gives its assurance of completion, and additionally requiring all contractors to provide completion bonds.
>
> Initiation dues, annual dues and fees, and other use or privilege charges shall be charged to buyers or lessees and adjusted from time to time, as determined by the developer from time to time.
>
> The developer will have no obligation or commitment to maintain clubhouse, swimming pool, tennis courts or golf course for any period of time and no purchaser or lessee of property shall be automatically entitled to membership in or use of said facilities by virtue of acquiring an interest in real property in the development.
>
> ***
>
> **22. DOES DEVELOPER OWN GOLF COURSE PROPERTY & FACILITIES REFERRED TO HEREIN?**
>
> *No, Developer, [Deerfield Plantation I] does not own the golf course & facilities related thereto, but holds a leasehold from the owner, a major stock holder of Deerfield Plantation, Inc. for a period of ten (10) years.* (Emphasis provided.)

15. Plaintiffs, individually and as class representatives, received a copy and had actual notice of the Privilege and Obligation Agreement before closing on their property.

16. Plaintiffs, individually and as class representatives, executed a form Purchase Agreement for their purchase of a Deerfield Lot. The form Purchase Agreement contains the following relevant provisions:

> 11. *The Purchaser(s) acknowledges receipt and retention of a copy of the conditions, Reservations, Covenants, and Restrictions applicable to the Property recorded in Deed Book 481, Page 305, office of the Clerk of Court for Horry County, S.C., and does hereby ratify and affirm them.* The Purchaser(s) agrees to abide by the terms of the said Conditions, Covenants, Reservations and Restrictions, and agrees to subject the Property sold hereby to the terms and provisions of the same and to any liens created by them, and agrees that he hereby immediately becomes and is a member of Deerfield Plantation Property Owners Association, Inc., a non-profit corporation. *Purchaser(s) also acknowledges receipt and retention of copies of the Articles of Incorporation or Charter and By-Laws of Deerfield Plantation Property Owners Association, Inc., and of the Privilege and Obligation Agreement between Seller and Deerfield Plantation Property Owners Association, Inc., and affirms and ratifies said Privilege and Obligation Agreement*, said By-Laws and the acts of the officers and directors of Deerfield Plantation property Owners Association, Inc. upon the Property as therein described. *The foregoing provisions of the Paragraph may be omitted from the Warranty Deed to be delivered hereunder at the option of the Seller, but shall nevertheless survive delivery of said deed.* (Emphasis Added.)
>
> ***
>
> 15. This agreement is declared and agreed to be a contract executed and delivered within the State of South Carolina and shall be construed according to the laws of the State of South Carolina. *It is agreed and declared that this agreement together with any exhibits attached thereto constitutes the entire agreement between the parties hereto and that no warranties, representations, promises, statements or inducements have been made by the Seller or any agent of the Seller other than is contained herein in writing or other than is set forth in writing the documents mentioned herein which the Purchaser has acknowledged receipt of or endorsed hereon in writing and signed by the Seller through an officer of the Seller.* (Emphasis Added.)

***

> 21. Purchaser(s) *acknowledges that he has read and understands this agreement* and that he has received and retained a copy thereof. (Emphasis Added.)
>
> 22. Purchaser(s) *acknowledges that he has received a copy of the Property Report* prepared pursuant to the rules and regulations of the Department of Housing and Urban Development prior to the signing of this agreement. (Emphasis Added.)

17. The Plaintiffs Betty J. Hill, Geraldine Clemmons and Carl Clemmons were witnesses in this action. Each could read and write without any apparent difficulties. Ms. Hill testified that she read the Property Report, the Privilege and Obligation Agreement and the Declarations.

18. On February 2, 1973, Plaintiff Class Representatives Dale W. Hill and Betty J. Hill purchased a lot from Deerfield Plantation I "designated as Lot #358 on that certain map of Deerfield Plantation property of Deerfield Plantation, Inc made by Moorman & Little, Inc., Engineers, dated November 14, 1972, and recorded in Plat Book 54, page 124, office of the Clerk of Court for Horry County, S.C. . .". The Hill's deed is recorded in the Horry County Register of Deeds, Deed Book 485, Page 361 .

19. On February 7, 1973, Plaintiff Class Representatives Geraldine and Carl Clemmons executed the form Purchase Agreement with Deerfield Plantation I for Lot 365 in Deerfield Plantation. On April 4, 1973, Plaintiffs Carl L. Clemmons and Geraldine O. Clemmons closed on a lot "designated as Lot #365 on that certain map of Deerfield Plantation property of Deerfield Plantation, Inc made by Moorman & Little, Inc., Engineers, dated November 14, 1972, and recorded in Plat Book 54, page 124, office of the Clerk of Court for Horry County, S.C...." The Clemmons' deed is recorded in deed Book 488, Page 824.

20. Plaintiffs, individually and as class representatives, paid a premium price for their lots because of their proximity to a golf course.

21. The Plaintiffs' deeds do not contain any express easement related to the Subject Property. In fact, no deed or other recorded document was presented which contained any express easement to the Subject Property.

22. Plaintiff Class Representative Geraldine Clemmons testified that she received a brochure entitled "In the Beginning...", kept it at her bedside for a long time and read it over and over. Ms. Clemmons testified she believed, but was not 100% sure, that she received the brochure prior to purchasing the Deerfield Lot. The "In the Beginning..." brochure talked of the golfing community and southern way of life. The brochure also contains a map of Deerfield Plantation, similar to the plat recorded on November 14, 1972 at Plat Book 54, Page 124, but depicted additional lakes, multi-family residential units, and an area labeled Club House and Parking Area. Ms. Clemmons testified that she and her husband decided to purchase Lot 365 based upon their expectations established by the "In the Beginning..." brochure. However she also testified that her friendship with Mr. and Mrs. Hill was a factor in purchasing a lot.

23. The map in the "In the Beginning..." brochure contained the same language as on the plat recorded on November 14, 1972 at Plat Book 54, Page 124, stating:

> It is hereby expressly declared that *Deerfield Plantation, Inc. does not intend to dedicate and does not dedicate to the general public or any member thereof any easement, right of travel, right to use or other right with regard to the streets, roads, alleys, entrances, or other passages or ways and with regard to the lakes and parks shown upon this map, and that Deerfield Plantation, Inc. reserves unto itself, its successors and assigns, all streets, roads, alleys, entrances, or other passages or ways* and any and all lakes and parks shown upon this map and all easements, rights of travel, right to use and any other rights over, upon, under or connected with the same. *(Emphasis supplied.)*

24. Plaintiff Class Representative Betty Hill testified that she and her husband decided to purchase Lot 358 based upon a map that appeared on the wall of a pharmacy operated by V.F. Platt, Jr., which was similar to the plat recorded on November 14, 1972 at Plat Book 54, Page

124. There was no evidence presented that Ms. Hill received the "In the Beginning..." brochure. The Hills' purchase of Lot 358 meets all of their expectations - a home in a golfing community and a lake behind their home.

25. Although also touted in the "In the Beginning..." brochure, the Plaintiffs are not claiming any type of property interest in the pool or tennis courts, which were closed several years ago.

26. Plaintiffs seek to claim easement rights in the Subject Property as a golf course and clubhouse.

27. Plaintiffs, individually and as Class representatives, never received anything in writing that the Subject Property would be forever operated as a golf course and/or clubhouse. In addition, no one ever represented to the Plaintiffs, individually and as class representatives, that the Subject Property would be forever operated as a golf course and/or clubhouse.

28. On June 20, 1978, the remaining unsold lots in the Deerfield Plantation Property owned by Deerfield Plantation I were sold to Caro Pines Realty, Inc. This deed is recorded in Deed Book 614 Page 112. It does not contain any express easement to the Subject Property.

29. Caro Pines Realty, Inc. was a South Carolina corporation formed on May 5, 1978 by John H. Schaad, Louis E. Schaad, Sr. and James Schaad, and it subsequently changed its name to Deerfield Plantation, Inc. (hereinafter referred to as the "Deerfield Plantation II")

30. Despite similar names, the Deerfield Plantation I Corporation and the Deerfield Plantation II Corporation have always been separate and distinct entities, with separate and distinct shareholders, officers, and directors.

31. None of the deeds from Deerfield Plantation I and/or Deerfield Plantation II in Plaintiffs' chain of title, individually or as class representatives, contain any express easement related to the Subject Property.

32. The Subject Property was also transferred on several occasions. First, the Subject Property was conveyed on June 6, 1978 by V.F. Platt, Jr. to Deerfield Plantation II. This deed is recorded in Deed Book 612, Page 792. The Deed does not contain any express easement or restriction in use of the Subject Property to a golf course, open space, or park. Second, the Subject Property was conveyed on June 5, 1980 from Deerfield Plantation II to Deerfield Golf & Country Club, Inc., recorded in Deed Book 701, page 751. The Deed does not contain any express easement or restriction in use of the Subject Property to a golf course, open space, or park. Deerfield Golf & Country Club, Inc. later merged with Deertrack Golf, Inc., which conveyed the Subject Property on March 24, 2006 to Deertrack Management, Inc., was recorded in Deed Book 3069, Page 425. This Deed does not contain any express easement or restriction in use of the Subject Property to a golf course, open space, or park.

33. Deertrack Management, Inc. conveyed the Subject Property on March 24, 2006 to the current owners Deertrack Investors, LLC, and this deed is recorded in Deed Book 3069, Page 431. This Deed does not contain any express easement or restriction in use of the Subject Property to a golf course, open space, or park.

34. Plaintiffs testified that as a result of the Deerfield Plantation general scheme of development, they have an implied easement, the scope of which would prevent the current owner, Deertrack Investors, LLC, from developing the Subject Property and restrict the use of the Subject Property to a golf course, park, or open space.

CONCLUSIONS OF LAW

35. The Uniform Declaratory Judgments Act "does not create substantive rights or duties." Felts v. Richland County, 299 S.C. 214, 216, 383 S.E.2d 261, 262-63 (Ct.App.1989). Rather, it

authorizes an action to establish a party's entitlement to a pre-existing right. Harvey v. South Carolina Dept. of Corrections, 338 S.C. 500, 506, 527 S.E.2d 765, 768 (Ct. App. 2000).

36. Plaintiffs contend that they have preexisting rights to the Subject Property by virtue of the doctrines of: A) equitable servitude, B) implied easement, C) negative reciprocal easement, and D) amenities.

37. Equitable servitudes are encumbrances indistinguishable from negative easements. Butler v. Sea Pines Plantation Co., 282 S.C. 113, 116 n.2, 317 S.E.2d 464, 466 n.2 (Ct. App. 1984).

38. Covenants, expressed or implied, restricting the free use of land are not favored and must be strictly construed. Edwards v. Surratt, 228 S.C. 512, 90 S.E.2d 906, 919 (1956).

39. An easement restricting the use of property must be created in express terms or by plain and unmistakable implication. See Santoro v. Schulthess, 384 S.C. 250, 273-274, 681 S.E.2d 897, 909 (Ct. App. 2009), citing S.C. Dept. of Natural Resources v. The Town of McClellanville, 345 S.C. 617, 622, 550 S.E.2d 299, 302 (2001); Bomar v. Echols, 270 S.C. 676, 680, 244 S.E.2d 308, 310 (1978); Shoney's, Inc. v. Cooke, 291 S.C. 307, 313, 353 S.E.2d 300, 304 (Ct. App. 1987).

40. Recent case law provides an in-depth analysis of implied easements in South Carolina. In Boyd v. Bellsouth Telephone Telegraph, Co., 369 S.C. 410, 633 S.E.2d 136 (2006), Boyd argued that she had an easement implied by prior use, implied by necessity, or by equitable estoppel with regard to a driveway passing over property owned by Bell South.

41. In Bell South, the Supreme Court began by discussing the similarities and distinctions between easements by prescription, by prior use and by necessity, stating that they "have different elements and are applicable to different factual scenarios." Id. at 420, 633 S.E.2d at

141. A prescriptive easement must be evidenced with: (1) 20 years continuous use, (2) specific identity of the thing enjoyed, and (3) use which is adverse or under a claim of right. Id. at 419, 633 S.E.2d at 141. An easement by necessity is proven by: (1) unity of title, (2) severance of title, and (3) necessity. Id. at 419-20, 633 S.E.2d at 141. The elements of easements by prior use included: (1) unity of title, (2) severance of title, (3) prior use was in existence at the time of unity of title, (4) prior use was not merely temporary or casual, (5) prior use was apparent or known to the parties, (6) prior use was necessary in that there could be no other reasonable mode of enjoying the dominant tenement without prior use, and (7) the common grantor indicated an intent to continue the prior use after severance of title. Id. at 417, 633 S.E. 2d at 139.

42. The Court summarized as follows:

> A prescriptive easement is not implied by law but is established by the conduct of the dominant tenement owner; however easements by prior use and by necessity are implied by law. An easement by necessity does not require a preexisting use during unity of title where as an easement by prior use does impose this requirement. An easement implied by prior use will not be extinguished if the easement is no longer necessary, but an easement by necessity will be extinguished once the necessity ends.

Id. at 419-420, 633 S.E.2d at 141 (citations omitted).

43. The Bell South Court also clarified the essential elements for an implied easement by equitable estoppel, and affirmed the trial court's grant of summary judgment in favor of Bell South as to Boyd's claim for easement by estoppel because there was not an easement to use the driveway as a matter of public record. Id. at 423, 633 S.E.2d at 143.

44. The Court stated:

> The essential elements of equitable estoppel as related to the party estopped are: (1) conduct which amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intentional, or at least expectation, that such conduct

> shall be acted upon by the other party; and (3) knowledge, actual or constructive, of the real facts. As related to the party claiming the estoppel, they are: (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question (2) reliance upon the conduct of the party estopped; and (3) action based thereon of such a character as to change his position prejudicially.

Id. at 422, 633 S.E.2d at 142.

45. A properly recorded title normally precludes an equitable estoppel against assertion of that title due to the requirement that the party raising the estoppel be ignorant of the true state of title or reasonable means of discovering it. One with knowledge of the truth or the means by which with reasonable diligence he could acquire knowledge cannot claim to have been misled. Id.

46. More recently, in Inlet Harbour v. South Carolina Dept. of Parks, Recreation and Tourism, 377 S.C. 86, 659 S.E.2d 151 (2008), the Supreme Court considered the scope of an easement over a private road implied in a deed from Inlet Harbour to the South Carolina Department of Parks, Recreation and Tourism by reference to a plat depicting the easement.

47. Although the existence of the implied easement was not the subject of the Inlet Harbour appeal, the Court provided a scholarly analysis in affirming the trial court's limitation of the scope of the implied easement to "environmental purposes associated with maintaining the navigability of Murrells Inlet." Id. at 97, 659 S.E.2d at 157.

48. "The creation of an implied easement generally requires that the facts and circumstances surrounding the conveyance, the property, the parties, or some other characteristic demonstrate that the objective intention of the parties was to create an easement." Id. at 92, 659 S.E.2d at 154.

49. Moreover, whatever easements are created by implication must be determined as of the time of the severance of the ownership of the tracts involved. Clemson Univ. v. First Provident Corp., 260 S.C. 640, 652, 197 S.E.2d 914, 920 (1973).

50. The Inlet Harbour Court clarified previous case law on implied easements, explaining that presumptions regarding the creation of implied easements have developed in certain circumstances, including: i) implied easement by reference, ii) implied easement of prior use; and, iii) implied easement of necessity. Inlet Harbour, 377 S.C. at 92, 659 S.E.2d at 154.

51. The presumption regarding the creation of an implied easement by reference is that when an owner conveys subdivided lots and references the plat in the deed, the owner grants the lot owners an easement over the streets appearing in the plat. Id., citing Blue Ridge Realty Co. v. Williamson, 247 S.C. 112, 145 S.E.2d 922 (1965).

52. This rule is "nothing more than a presumption that when a grantor conveys property with reference to a plat showing streets or other ways of passage, the grantor intends to allow the grantee the use of the delineated streets and ways of passage." Id. at 93, 659 S.E.2d at 154.

53. A presumption of an implied easement by prior use exists where the grantor used one portion of the property to serve another prior to the severance of the property. Id. at 92, 659 S.E.2d at 154.

54. An implied easement of prior use is presumed when there is: "(1) unity of title, (2) severance of title, (3) the prior use was in existence at the time of unity of title; (3) the prior use was not merely temporary or casual, (4) the prior use was apparent or known to the parties, (5) the prior use was necessary in that there could be no other reasonable mode of enjoying the dominant tenement without the prior use, and (6) the common grantor indicated an intent to

continue the prior use after severance of title." Bellsouth Telephone Telegraph Co., 369 S.C. at 416, 633 S.E.2d at 139.

55. In comparison, the presumption of implied easement by necessity arises when an easement is necessary to allow a grantee to have meaningful access to his land. Inlet Harbour, 377 S.C. at 92, 659 S.E.2d at 154 (2008). "The party asserting the right of an easement by necessity must demonstrate: (1) unity of title, (2) severance of title, and (3) necessity." Bellsouth Telephone Telegraph Co., 369 S.C. at 418-19, 633 S.E.2d at 140-41.

56. The Inlet Harbour Court explained that, while presumptions in these circumstances may exist, the intentions of the parties to the transaction are the overriding focus when examining and determining the existence of any implied easements. Inlet Harbour, 377 S.C. at 92, 659 S.E.2d at 154.

57. The court's "guidepost must be what the parties intended, and the best evidence of the parties' intentions are the facts and circumstances surrounding the conveyance." Id. at 93, 659 S.E.2d at 154.

58. "The creation of an implied easement generally requires that the facts and circumstances surrounding the conveyance, the property, the parties, or some other characteristic demonstrate that the objective intention of the parties was to create an easement." Id. at 92, 659 S.E.2d at 154.

59. However, the Court in Inlet Harbour cautioned that implied easements are not favored because "the implication of an easement in a conveyance goes against the general rule that a written instrument speaks for itself." Id. at 91-92, 659 S.E.2d at 154.

60. Thus, after detailing the historical treatment of implied easements in South Carolina, the Inlet Harbour Court focused its analysis regarding the scope of the easement over a private road

implied in a deed from Inlet Harbour to the South Carolina Department of Parks, Recreation and Tourism to the facts and circumstances surrounding the sale of the dominant tract of property. The Court upheld the decision of the trial court finding that the scope of the easement was limited to environmental purposes associated with maintaining the navigability of Murrells Inlet, and noted that the Department of Parks, Recreation and Tourism could have abated this limitation by negotiating and expressly providing for an unrestricted easement. Id. at 96, 659 S.E.2d at 156.

61. Shortly after the Inlet Harbour decision, the Court of Appeals issued a decision in a similar case, Murrells Inlet Corp. v. Ward, 378 S.C. 225, 662 S.E.2d 452 (Ct. App. 2008).

62. The Court of Appeals in the Murrells Inlet case addressed the issue of whether "a plat recorded when property is subdivided confers an easement to the subsequent grantees of the property to the extent the easement is delineated in the plat." Id. at 231, 235, 662 S.E.2d at 454, 457 (noting that the existence of an easement was not an issue in this case, only the extent and scope of the easement).

63. In 1990, Ward subdivided a parcel of land in Horry County into five tracts for the purpose of transferring portions to her children. At the time that Ward subdivided the property, she granted a fifty-foot right-of-way to the lots to allow ingress and egress from Highway 57, which was evidenced in a recorded plat. Ward argued, despite the fifty-foot right-of-way depicted in the plat, that she did not intend to grant a fifty-foot easement. The Murrells Inlet Corp., a subsequent owner of one of the subdivided tracts, argued that an implied easement was created at the time the property was subdivided by virtue of the recorded plat depicting the fifty-foot right-of-way. Id. at 229-30, 662 S.E.2d at 453-54.

64. In undertaking the analysis set forth in Inlet Harbour, the Court of Appeals noted in the Murrells Inlet case that notwithstanding any "intent" analysis, the deed and the recorded plat are controlling to a determination of whether an implied easement is created by reference to a plat. Id. at 236, 662 S.E.2d at 457.

65. In particular, the court held that "to allow Ward's intent to override the original grant of a fifty foot easement [contained in the plat] would result in a travesty of justice." Id.; see also Clemson University v. First Provident Corp., 260 S.C. 640, 652, 197 S.E.2d 914, 920 (1973) (stating that implied easements may not be created by the acts of the party claiming the implied easement).

66. Moreover, the Murrells Inlet court noted that "by recording the easement on the plat, Ward evidenced an intention to grant that easement to any future lot owners in the subdivision." Id.; Cf. Carolina Land Co. v. Bland, 265 S.C. 98, 107, 217 S.E.2d 16, 20 (1975) ("Law imputes to purchaser who proposes to acquire title to real estate notice of recitals contained in any properly recorded instrument in writing which forms a line in chain of title to property proposed to be acquired.")

67. Balancing the presumptions set forth in prior case law, the analysis discussed in Inlet Harbour, and the explanation set forth in Murrells Inlet, the law regarding implied easements can be summarized into the following two points: (1) the intent of the parties at the time of the severance controls the existence and scope of an implied easement, (2) the best evidence of the intent of the parties to create an implied easement is the recorded documents.

68. Turning to the facts relating to the Plaintiffs', individually and as class representatives, purchase of their lots from Deerfield Plantation I, and addressing the presumptions as to each of the implied easements separately herein, Plaintiffs are not the holder of any implied easement,

prescriptive easement, easement by necessity, easement by prior use, easement by reference, easement by estoppel, or easement in amenities over the Subject Property.

69. Plaintiffs cannot show the creation of a prescriptive easement for two reasons. See Bellsouth Telephone Telegraph Co., 369 S.C. at 416, 633 S.E.2d at 139 (A prescriptive easement is presumed to be created if the dominant property uses the easement for (1) 20 years continuously; (2) with a specific identity of the thing enjoyed, and (3) adversely to the rights of the servient property holder.) First, Plaintiffs cannot identify the "thing enjoyed" to create an easement. The Plaintiffs acknowledge that they were not permitted to use the Subject Property without paying a fee. At most, what Plaintiffs enjoyed in the Subject Property was a view of a golf course, park, and/or open space. However, South Carolina has long held that easements in a view, breezes, light, or air are not recognized in this state. See O'Shea v. Lesser, 308 S.C. 10, 18, 416 S.E.2d 629, 633 (1992), Hill v. The Beach Co., 279 S.C. 313, 315, 306 S.E.2d 604, 605 (1983); Schroeder v. O'Neill, 179 S.C. 310, 184 S.E. 679 (1936); Bailey v. Gray, 53 S.C. 503, 515-517, 31 S.E. 354 (1898). Second, Plaintiffs cannot show that their use of the Subject Property was adverse in any manner to the owner of the Subject Property. Plaintiffs used their "view" in a manner not at all adverse to the property owner, V.F. Platt, Jr., who leased it to the operator of the golf course, Deerfield Plantation, I pursuant to a ten (10) year lease. As a result, Plaintiffs failed to set forth sufficient existence that a prescriptive easement exists over the Subject Property in favor of the Plaintiffs by "plain and unmistakable implication". See, e.g. Santoro v. Schulthess, 384 SC 250, 273-74, 681 S.E.2d 897, 890 (Ct. App. 2009).

70. Moreover, Plaintiffs' allegation that their use of the Subject Property as a part of their golf community does not rise to an allegation that there is no other reasonable mode of enjoying

their property nor have they alleged that their use of the Subject Property is necessary or that it is required to access their property.

71. The presumption of implied easement by necessity arises when an easement is necessary to allow a grantee to have meaningful access to his land. Inlet Harbour, 377 S.C. at 92, 659 S.E.2d at 154 (2008). "The party asserting the right of an easement by necessity must demonstrate: (1) unity of title, (2) severance of title, and (3) necessity." Bellsouth Telephone Telegraph Co., 369 S.C. at 418-19, 633 S.E.2d at 140-41.

72. A presumption of an implied easement by prior use exists where the grantor used one portion of the property to serve another prior to the severance of the property and is presumed where there exists: (1) unity of title, (2) severance of title, (3) the prior use was in existence at the time of unity of title; (3) the prior use was not merely temporary or casual, (4) the prior use was apparent or known to the parties, (5) the prior use was necessary in that there could be no other reasonable mode of enjoying the dominant tenement without the prior use, and (6) the common grantor indicated an intent to continue the prior use after severance of title. Bellsouth Telephone Telegraph Co., 369 S.C. at 416, 633 S.E.2d at 139.

73. Thus, Plaintiffs have no rights in the Subject Property by virtue of any implied easement by any necessity.

74. Notwithstanding, even if Plaintiffs alleged an easement in the Subject Property by necessity or prior use, Plaintiffs failed to set forth sufficient evidence of an easement by necessity or prior use over the Subject Property in favor of the Plaintiffs by plain and unmistakable implication.

75. First, Plaintiffs cannot demonstrate that unity of title existed at the time of severance. Here, unity of title did not exist at the time of the severance. Specifically, when Deerfield

Plantation was developed and subdivided, the Deerfield Plantation Property was owned by Deerfield Plantation I. At that same time, the Subject Property was owned by V.F. Platt, Jr., individually. V.F. Platt, Jr. did not transfer the Subject Property until 1978, when it sold to Deerfield Plantation II. Although Plaintiffs assert that the law in other jurisdictions supports their position that the unity of title requirement is satisfied by demonstrating unity of control, coupled with a common scheme of development, that is not the case in South Carolina. Rather, in South Carolina unity of title must be demonstrated by "absolute ownership:" Kennedy v. Bedenbaugh, 352 S.C. 56, 61, 572 S.E.2d 452, 455 (2002) ("For unity of title to exist there must have been an absolute ownership of both tracts of land.")

76. As to any common scheme of development, any indication that V.F. Platt, Jr. and Deerfield Plantation I had a common scheme of development is clearly and unambiguously limited and disclaimed in the recorded documents in Plaintiffs' chain of title, including the Plat recorded at Book 54, Page 124 referred to in Plaintiffs' deeds, and the Declarations. Also the Plaintiffs received, prior to purchase, the Property Report, and the Privilege and Obligations Agreement.

77. Second, Plaintiffs testified that the Subject Property was not used as a golf course and clubhouse until after they purchased their lots in Deerfield Plantation.

78. Third, even if the Subject Property was used as a golf course prior to their purchase of the lots in Deerfield Plantation, Plaintiffs cannot show that the golf course was necessary for the use or enjoyment of their lots under any standard. There was no evidence that any change in use of the Subject Property would limit Plaintiffs' access to or use of their residential lot. The only implication was that any change in use may change Plaintiffs' view or any premium they could charge in resale. This does not raise to the level of any necessity. See Bellsouth Telephone

Telegraph Co., 369 S.C. at 419-20, 633 S.E.2d at 142; O'Shea, 308 S.C. at 18, 416 S.E.2d at 633 (setting forth established law that no easement rights can be created in a view).

79. Therefore, Plaintiffs have failed to set forth sufficient evidence of an easement by necessity or prior use over the Subject Property in favor of the Plaintiffs by plain and unmistakable implication.

80. Plaintiffs' focus on the creation of an implied easement rests on the plat recorded on November 14, 1972 at Plat Book 54, Page 124. The rule regarding the creation of an easement by reference to a recorded document is "nothing more than a presumption that when a grantor conveys property with reference to a plat showing streets or other ways of passage, the grantor intends to allow the grantee the use of the delineated streets and ways of passage." Inlet Harbour, 377 S.C. at 92, 659 S.E.2d at 154. Plaintiffs alleged that the depiction of the golf course and clubhouse on the Plat gave Plaintiffs an easement by reference to the golf course and clubhouse. However, Plaintiffs argument fails for three (3) reasons: (1) Plaintiffs are not claiming an easement to any streets or ways of passage, (2) Plaintiffs acknowledge they could not use the Subject Property without paying a fee, and (3) the Plat referred in their deed expressly disclaims any easement Plaintiffs allege they have in the Subject Property, as does the Declarations, Property Report, and Privilege and Obligation Agreement. Plaintiffs testified that they were not permitted to use the Golf Course and Clubhouse Property without paying a fee. In addition, the Plat referred to in Plaintiffs' deeds states on the face of the plat:

> It is hereby expressly declared that Deerfield Plantation, Inc. does not intend to dedicate and does not dedicate to the general public or any member thereof any easement, right of travel, right to use or other right with regard to the streets, roads, alleys, entrances, or other passages or ways and with regard to the lakes and parks shown upon this map, and that Deerfield Plantation, Inc. reserves unto itself, its successors and assigns, all streets, roads, alleys, entrances, or other passages or ways and any and all lakes and

> parks shown upon this map and all easements, rights of travel, right to use and any other rights over, upon, under or connected with the same.

Plaintiffs' attempt to distinguish this disclaimer by limiting its application to disclaiming any intent to dedicate the Subject Property for public use is not persuasive. The cases cited to by the Plaintiffs compare a dedication of streets or roads for public use to a private dedication as between the grantor and grantee. See e.g., Newington Plantation Estates Ass'n v. Newington Plantation Estates, 318 S.C. 362, 365, 458 S.E.2d 36, 38 (1995) ("Absent evidence of the seller's intent to the contrary, a conveyance of land that reference a map depicting streets conveyance to the purchasers as a matter of law a private easement by implication with respect to those streets, whether or not there is a dedication to public use.")

81. Regardless of any disclaimer of any public dedication, the disclaimer on the face of the plat also disclaims and reserves unto itself any private easement, and is of itself "evidence of the seller's intent" not to convey a private easement with respect to the streets, roads, alleys, entrances, or other passages or ways and any and all lakes and parks shown on the Plat. See id.; Taylor v. Lindsey 332 S.C. 1, 4, 498 S.E.2d 862, 864 (1998) ("The court may not limit a restriction in a deed, nor, on the other hand, will a restriction be enlarged or extended by construction or implication beyond the clear meaning of its terms even to accomplish what it may be thought the parties would have desired had a situation which later developed been foreseen by them at the time when the restriction was written.")

82. As a result, Plaintiffs cannot overcome the express disclaimer of any easements by reference and cannot show the existence of an implied easement over the Subject Property by plain and unmistakable implication as a result of any reference to Plat 54, Page 124.

83. Additionally, the facts do not support the creation of an implied easement by estoppel over the Subject Property by plain and unmistakable implication.

84. The essential elements of equitable estoppel as related to the party estopped are: (1) conduct which amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intentional, or at least expectation, that such conduct shall be acted upon by the other party; and (3) knowledge, actual or constructive, of the real facts. As related to the party claiming the estoppel, they are: (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question (2) reliance upon the conduct of the party estopped; and (3) action based thereon of such a character as to change his position prejudicially. See Bellsouth Telephone Telegraph Co., 369 S.C. at 422, 633 S.E.2d at 143.

85. Plaintiffs assert that as a result of the brochure "In the Beginning..." and the map contained therein, they believed they were buying property in a golf course community. However, no one ever represented to the Plaintiffs that the Subject Property would be operated as a golf course forever. Plaintiffs acknowledge that the developer of the Deerfield Plantation Property was only a lessee of the Subject Property for ten (10) years.

86. Plaintiffs had knowledge of the lack of rights to and the express disclaimer of any easement to use the Subject Property because:

(1) the Plaintiffs' deeds did not grant them any easement to the Subject Property;

(2) the Plat recorded at Book 54, Page 124 referred to in their deed expressly disclaims any easement to the Subject Property;

(3) the Declarations expressly provide for a golf easement in favor of Deerfield Plantation, Inc. over Plaintiffs property and permits Deerfield Plantation I to withdraw all acts permitted by that easement;

(4) the Declarations expressly disclaim any easement to the Subject Property;

(5) the Property Report expressly states that Deerfield Plantation I is a lessee of the Subject Property and has "no obligation or commitment to maintain clubhouse, swimming pool, tennis courts or golf course for any period of time and no purchaser or lessee of property shall be automatically entitled to membership in or use of said facilities by virtue of acquiring an interest in real property in the development," and

(6) the Privilege and Obligations Agreement that Plaintiffs ratified and affirmed prior to closing provides that Deerfield Plantation I "reserves the right to discontinue the maintenance and/or operation of said golf course, tennis courts, club house, and swimming pool, or any other incidental operations connected therewith, at such time as Deerfield Plantation [I], in the sole discretion of its Board of Directors, shall determine that the maintenance and operation of the aforesaid facilitates, or any one of them, is not economically feasible or is not advisible [sic] for any other reason and to use the property devoted thereto for other purposes." See id. ("A properly recorded title normally precludes an equitable estoppel against assertion of that title due to the requirement that the party raising the estoppel be ignorant of the true state of title or reasonable means of discovering it. One with knowledge of the truth or the means by which

with reasonable diligence he could acquire knowledge cannot claim to have been misled.").

87. As a result, Plaintiffs cannot demonstrate the existence of an implied easement by estoppel, or any other implied easement by plain and unmistakable implication.

88. In addition to the various presumptions regarding the implied easements discussed in the Boyd, Inlet Harbour, and Murrells Inlet cases, case law in South Carolina has developed regarding implied easements and/or implied restrictions by general plan, commonly referred to as a negative reciprocal easement.

89. Unlike other implied easements in which the easement is created by the servient property owner in favor of a dominant property owner at the time of severance, negative reciprocal easements are implied restrictions on subdivided property created by a common grantor in favor of, for, against, and between the grantees of subdivided land. The Court of Appeals described negative reciprocal easements as follows:

> Where they arise by implication and subdivided land is involved, the restrictions are said to create a reciprocal negative easement. Ordinarily, four elements must be established to show a reciprocal negative easement. There must be: (1) a common grantor, (2) a designation of land subject to restrictions, (3) a general plan or scheme of restrictions, and (4) covenants running with the land in accordance with such plan or scheme.

Gambrell v. Schriver, 312 S.C. 354, 358, 440 S.E.2d 393, 395 (Ct. App. 1994) (citations omitted). In determining whether a reciprocal negative easement has been created, the court should consider not only the language of the deeds, but also the circumstances surrounding the origin of the covenants. Id. Generally, the developer must establish the general scheme of development before any lots are sold. Id. To establish a general scheme, it is not necessary for every lot to be restricted in exactly the same manner, but extensive omissions or variations tend to show no scheme existed and the restrictions are only personal contracts. Id. All doubts

regarding the creation of an implied reciprocal negative easement must be resolved in favor of the freedom of land from restriction. Id.

90. The reservation of the grantor to vary, waive, or obliterate restrictions, is generally an indication of a lack of general plan. See Am. Jur. 2d. Covenants §160.

91. The Plaintiffs allege that the a general plan or scheme of development arose as a result of the Plaintiffs' deeds, the Plat referenced therein, the Declarations, the Property Report, the Developer's description of the Deerfield Plantation Property as a "golf community", and the brochure "In the Beginning..."

92. However, Plaintiffs cannot demonstrate the creation of a negative reciprocal easement restricting the use of the Subject Property to a golf course and clubhouse by plain and unmistakable implication.

93. As an initial matter, Plaintiffs cannot show that the subdivided land in Deerfield Plantation includes the golf course. The developer of Deerfield Plantation was Deerfield Plantation I and the development included lots 1-458, and did not include the golf course or clubhouse. At the time the residential lots were sold to Plaintiffs by Deerfield Plantation I, the golf course was owned by V.F. Platt, Jr. and leased pursuant to a ten (10) year lease to Deerfield Plantation I. Therefore, the first element of a negative reciprocal easement is absent – a common grantor.

94. Furthermore, Plaintiffs' cannot point to any evidence that the Subject Property was intended to be subject to any restrictions of Deerfield Plantation. The restrictive covenants over the subdivided property applied only to the subdivided lots 1-458, and do not include the golf course or clubhouse.

95. Importantly, the other recorded documents related to Plaintiffs' property, the Property Report, the Purchase Agreement, and the Privilege and Obligation Agreement expressly disclaim any rights of Plaintiffs to the Subject Property.

96. Therefore, the Plaintiffs cannot show the remaining elements of a negative reciprocal easement because the Subject Property was never subject to any restrictions and is specifically excluded from the Declarations restricting the Deerfield Plantation Property. Plaintiffs' evidence does not rise to a plain and unmistakable implication of existence of a negative reciprocal easement over the Subject Property,

97. Plaintiffs also allege a right in the Subject Property as a result of a doctrine they entitle "amenities."

98. A specific implied easement with respect to amenities has not been recognized in South Carolina. Notwithstanding, in In re T 2 Green, LLC, 363 B.R. 753 (D.S.C. 2006), the bankruptcy court acknowledged that implied easements to amenities in a subdivision may arise under the same type of circumstances as other implied easements.

99. However, the court cautioned that the use of property cannot be implicitly restricted by a plat or prior use if the clear language of other recorded documents prohibits the party asserting the claim from obtaining any proprietary right, title, or interest in the property. Id. at 768.

100. With respect to the Subject Property, the recorded documents expressly prohibit the Plaintiffs from claiming any right to the property. Again, the Plat referenced in Plaintiffs' deeds expressly disclaims any easement to the Subject Property, the Declarations expressly permits Deerfield Plantation I to withdraw all acts permitted by the any easement it held over Plaintiffs' Property, and the Property Report expressly states that Deerfield Plantation I has "no obligation or commitment to maintain clubhouse, swimming pool, tennis courts or golf course for any

period of time and no purchaser or lessee of property shall be automatically entitled to membership in or use of said facilities by virtue of acquiring an interest in real property in the development." In addition, the Privilege and Obligation Agreement expressly disclaims any rights and was affirmed and ratified by Plaintiffs.

101. The cases cited by the Plaintiffs (Boyd v. BellSouth Telephone, 369 S.C. 410, 633 S.E. 2nd 136, and McAllister v. Smiley, 301 S.C. 10, 389 S.E. 2nd 857) expressed the reluctance of the law to grant an implied easement of any nature when a contrary intent is expressed or implied by the facts and circumstances surrounding the transaction. While all of the parties, including the Defendants' predecessors in title, may have wished that the golf course could have continued to be profitable in perpetuity n order to maintain the appearance of the development in its original forms, there is no expressed or implied intention of the Defendants or their predecessors in title which gives rise to an easement or dedication of the sort sought by the Plaintiffs. Moreover, the expressed disclaimers and reservations contained in all of the initial documents make it clear that the developers did not intend such a dedication of the golf course property in perpetuity.

102. When the continued operation of the golf course became financially unfeasible (as stipulated by the parties) it became necessary to discontinue its use.

103. As a result, Plaintiffs evidence does not give rise to the existence of an implied easement in amenities by plain and unmistakable implication.

104. In conclusion, Plaintiffs have failed to meet the burden necessary to declare any pre-existing rights in the Subject Property by plain unmistakable implication.

THEREFORE IT IS ORDERED, ADJUDGED, AND DECREED that Plaintiffs First Cause of Action for a Declaratory Judgment that Deerfield Plantation, Inc. established an

equitable servitudes/implied easements/negative reciprocal easements on behalf of Plaintiffs in the [Subject Property] adjacent to the Plaintiffs' residences is DENIED.

IT IS ALSO ORDRED, ADJUDGED, AND DECREED that Plaintiffs First Cause of Action for a Declaratory Judgment that the Subject Property was an amenity to the respective homesites Plaintiffs purchased is DENIED.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiffs First Cause of Action for a Declaratory Judgment that any equitable servitudes/implied easements/negative reciprocal easements/amenities so established require the land which Deertrack Investors, LLC operates as the North Course and Clubhouse be restricted to such use is DENIED.

IN ADDITION, IT IS ORDERED, ADJUDGED, AND DECREED that Plaintiffs First Cause of Action for a Declaratory Judgment that any equitable servitudes/implied easements/negative reciprocal easements/amenities so established cannot be unilaterally extinguished by Defendants is DENIED.

LASTLY, IT IS ORDERED, ADJUDGED, AND DECREED that Plaintiffs shall provide written notice of cancellation of the Notice of Lis Pendens filed in Horry County, 2007-LP-26-1931 to the clerk of court of in Horry County within ten (10) days of the date of this Order. In the event that Plaintiffs fail to provide written notice of cancellation of the Notice of Lis Pendens filed in Horry County, 2007-LP-26-1931 to the clerk of court of in Horry County within ten (10) days of the date of this Order, the Notice of Lis Pendens filed in Horry County, 2007-LP-26-1931 shall be cancelled of record by the Horry County Clerk of Court. The cancellation must be made by an endorsement to that effect on the margin of the record which refers to this Order and for which the clerk is entitled to a fee of one ($1.00) dollar.

IT IS SO ORDERED.

s/ Thomas W. Cooper Jr.
The Honorable Thomas W. Cooper, Jr.
Special Referee

February 5, 2010
Manning, South Carolina

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	Civil Action Number: 2006-CP-26-4440
Dale Hill, Betty Hill, Carl Clemmons, Geraldine Clemmons, Individually, and on behalf of a Class of all others similarly situated,)	
Plaintiffs,)	
vs.)	
Deertrack Golf and Country Club, Inc., Deertrack Golf, Inc., Deerfield Plantation, Inc., the Estate of John Schaad, by and through Ann Schaad as Executrix, and Deertrack Investors, LLC,)	
Defendants.)	ORDER DENYING PLAINTIFFS' MOTION TO ALTER OR AMEND JUDGMENT UNDER RULE 59 (e)
Deertrack Investors, LLC,)	
Third-Party Plaintiff,)	
vs.)	
Plantation Resort of Myrtle Beach, Inc., And Plantation Resort Properties, Inc.,)	
Third-Party Defendants.)	

FILED
COUNTY
2010 JUN 22 PM 12:56
ELANIE HUGGINS-WARD
CLERK OF COURT

This matter came before the me as Special Referee, on March 22, 2010 upon Plaintiffs' Motion to Alter or Amend the February 5, 2010 Final Order as to Plaintiffs' First Cause of

Action. After considering the arguments submitted by counsel, Plaintiffs have set forth no issue or fact overlooked, and have not set forth any error of law sufficient to alter or amend the Final Order. As a result, the Motion to Alter or Amend is denied.

As to the specific grounds set out in the Plaintiffs' Motion, the Court finds as follows:

As to the grounds set out in I. a. and b. stating that an easement arose because of the manner in which Deerfield Plantation was planned, developed, marketed, and sold, this Court reaffirms the findings entered in its Order on February 17, 2010.

As to the grounds set out in II. a., b., c., d., and e., this Court reaffirms its findings entered in its Order on February 17, 2010.

As to the grounds set out in II. f., this Court did not base any of its conclusions on the fact that the Privilege and Obligation Agreement was a recorded document, but reaffirms that it was affirmed and ratified by the Defendants in this case and, as such, they were bound by it.

As to the grounds set out in II g., this Court reaffirms its findings in paragraph 51 of its Order. When read in conjunction with the surrounding paragraphs (paragraphs 50, 52, and 53), this Court believes that to be a correct statement of law.

As to the grounds set out in III. a. stating that the Plaintiffs did not allege any easement by prescription or necessity, this Court points out that the FIRST CAUSE OF ACTION seeks a declaratory judgment as to the imposition of equitable servitudes/implied easements/negative reciprocal easements/amenities. Therefore, this Court feels that it was necessary to address the law as to prescriptive easements and easements by necessity in response to those general allegations.

The Motion to Alter or Amend is therefore denied.

IT IS SO ORDERED.

The Honorable Thomas W. Cooper, Jr.
Special Referee

June 21, 2010

000090

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY) CIVIL ACTION COVER SHEET

) 2006 CP - 26 - 4440

Dale Hill, Betty Hill, Carl Clemmons, and Geraldine Clemmons individually and in their representative capacity for others similarly situated,

Plaintiffs

vs.

Deertrack Golf and Country Club, Inc., Deertrack Golf, Inc., Deerfield Plantation, Inc., the Estate of John Schaad, and Deertrack Investors, LLC

Defendants

HORRY COUNTY
06 SEP -8 PM 4:14
MELANIE HUGGINS
CLERK OF COURT

(Please Print)		SC Bar #:	68543
Submitted By:	Robert S. Shelton, Esq.	Telephone #:	(843) 448-2400
Address:	Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, P.A.	Fax #:	(843) 448-3022
	P.O. Box 356	Other:	(843) 915-7163 - direct
	Myrtle Beach, SC 29578	E-mail:	rshelton@bellamylaw.com

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

DOCKETING INFORMATION (*Check all that apply*)
**If Action is Judgment/Settlement doe not complete*

☒ **JURY TRIAL** demanded in complaint. ☐ **NON-JURY TRIAL** demanded in complaint.

☐ This case is subject to **ARBITRATION** pursuant to the Circuit Court Alternative Dispute Resolution Rules

☐ This case is subject to **MEDIATION** pursuant to the Circuit Court Alternative Dispute Resolution Rules.

☐ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199) _____

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)
- ☐ Other (299) _____

Torts - Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Other (399) _____

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

Inmate Petitions
- ☐ PCR (500)
- ☐ Sexual Predator (510)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599) _____

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Penden (750)
- ☐ Other (799)

Administrative Law/Relief
- ☐ Reinstate Driver's License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture (840)
- ☐ Other (899) _____

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Administrative Law Judge (980)
- ☐ Public Service Commission (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999) _____

Special/Complex/Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Pharmaceuticals (630)
- ☒ Unfair Trade Practices (640)
- ☐ Other (699) _____

Submitting Party Signature: _____ **Date:** 9-8-06

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

000091

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	CIVIL ACTION NO.: 06-CP-26-4440
Dale Hill, Betty Hill, Carl Clemmons, and Geraldine Clemmons, individually, and on behalf of a class of all others similarly situated,)	
Plaintiffs,)	
vs.)	**SUMMONS**
Deertrack Golf and Country Club, Inc., Deertrack Golf, Inc., Deerfield Plantation, Inc., the Estate of John Schaad, and Deertrack Investors, LLC)	
Defendants.)	

HORRY COUNTY
06 SEP -8 PM 4:14
MELANIE HUGGINS
CLERK OF COURT

TO: THE DEFENDANTS NAMED ABOVE

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Complaint on the subscribers at their office at 1000 29th Avenue North, Myrtle Beach, South Carolina 29577, and to file your answer with the Clerk of Court for Horry County, all within thirty (30) days after the service hereof; exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for judgment by default for the relief demanded in the Complaint and a judgment will be rendered against you.

BELLAMY, RUTENBERG, COPELAND, EPPS, GRAVELY & BOWERS, P.A.
Post Office Box 357
Myrtle Beach, South Carolina 29578-0357
(843) 448-2400
Attorneys for Plaintiffs

David R. Miller
Robert S. Shelton

Myrtle Beach, South Carolina
September 8, 2006.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	CIVIL ACTION NO.: 06-CP-26-4440
Dale Hill, Betty Hill, Carl Clemmons, and Geraldine Clemmons, individually, and on behalf of a class of all others similarly situated,)	
Plaintiffs,)	
vs.)	**COMPLAINT** *(Jury Trial Demanded)*
Deertrack Golf and Country Club, Inc., Deertrack Golf, Inc., Deerfield Plantation, Inc., the Estate of John Schaad, by and through Ann Schaad as Executrix, and Deertrack Investors, LLC,)	
Defendants.)	

HORRY COUNTY
06 SEP -8 PM 4:14
MELANIE HUGGINS
CLERK OF COURT

TO: THE DEFENDANTS NAMED ABOVE:

Plaintiffs Dale Hill, Betty Hill, Carl Clemmons, and Geraldine Clemmons, individually, and on behalf of a class of all others similarly situated, complaining of Defendants Deertrack Golf and Country Club, Inc., Deertrack Golf, Inc., Deerfield Plantation, Inc., the Estate of John Schaad, by and through Ann Schaad as Executrix, and Deertrack Investors, LLC, would respectfully show and allege unto this Honorable Court as follows:

1. The Plaintiffs own real property within Horry County, South Carolina, which property is the subject of this action; Defendants Deertrack Golf and Country Club, Inc., Deertrack Golf, Inc., and Deerfield Plantation, Inc. are corporations organized and

existing pursuant to the laws of the State of South Carolina, and transact business within Horry County; Defendant Estate of John Schaad, by and through Ann Schaad who was named Executrix July 5, 2006, is a probate action pending in the Knox County, Tennessee Chancery & Probate Court, Probate Division, filed following John Schaad's death on May 17, 2006 to administer the distribution of the assets of John Schaad who was a resident of the state of Tennessee and transacted business within Horry County, South Carolina; Defendant Deertrack Investors, LLC, is a South Carolina limited liability company; and, this Honorable Court has jurisdiction over the parties and subject matter of this Complaint.

CLASS ALLEGATIONS

2. The putative class consists of all persons whose property values may be affected should the Toski Links North Course ("North Course") and Deer Track Golf Resort Clubhouse ("Clubhouse") be converted to residential homes and includes, at the very least, every property owner in Deerfield Plantation, Phase I.

3. The putative class is so numerous that joinder whether otherwise required or permitted, is impracticable.

4. The exact number of class members is not ascertainable with certainty as yet, insofar as properties within the class may change in ownership prior to class certification and no determination has yet been made as to whether the value of each individual parcel of property owned by the potential class members will be affected in the event the North Course and Clubhouse are redeveloped, nor whether persons or entities

owning property outside Deerfield Plantation, Phase I, may suffer damages or have standing to bring any such complaint within this Honorable Court.

5. There are questions of law or fact common to the members of the class which predominate over any questions affecting only individual members and which make class certification appropriate in this instance, including:

a. Whether Defendants established a clear scheme of development of the golf course-centered Deerfield Plantation subdivision.

b. Whether Defendants sold the property currently serving as the North Course and Clubhouse subsequent to establishing a general scheme of development.

c. Whether Plaintiffs were drawn to Deerfield Plantation by the golf course-centered community development plan Defendants established and, in reliance thereupon, purchased their respective homesites.

d. Whether Defendants established equitable servitudes/implied easements/negative reciprocal easements favoring Plaintiffs in the land currently operated as the North Course and Clubhouse.

e. Whether the North Course and Clubhouse are amenities to the respective homesites Plaintiffs purchased.

f. Whether the equitable servitudes/implied easements/negative reciprocal easements/amenities so established require the North Course and Clubhouse lands be restricted to such use.

g. Whether the equitable servitudes/implied easements/negative reciprocal easements/amenities so established can be unilaterally extinguished by Defendants.

h. Whether the conceptual plan, attached hereto and incorporated herein by reference as **Exhibit A**, constitutes an anticipatory breach of the equitable servitudes/implied easements/negative reciprocal easements/amenities favoring Plaintiffs' properties.

i. Whether language contained within: (1) the deed to Defendant Deertrack Management, Inc., attached hereto and incorporated herein by reference as **Exhibit B**, and recorded in the Office of the Register of Deeds for Horry County, South Carolina, in Deed Book 3069, at Page 0425; (2) the deed to Defendant Deertrack Investors, LLC, attached hereto and incorporated herein by reference as **Exhibit C** and recorded in the Office of the Register of Deeds for Horry County, South Carolina, in Deed Book 3069, at Page 0431; and/or (3) the Mortgage and Security Agreement between Defendant Deertrack Investors, LLC and Defendant Deertrack Management, Inc., attached hereto and incorporated herein by reference as **Exhibit D** and recorded in the Office of the Register of Deeds for Horry County, South Carolina, in Mortgage Book 4462, at Page 0766, constitute an anticipatory breach of the equitable servitudes/implied easements/ negative reciprocal easements/amenities favoring Plaintiffs' properties. Specifically, the deeds state, *inter alia*, as follows:

4. In the event any portion of the property described herein is divided, subdivided, or resubdivided into two (2) or more lots, tracts or parcels of land in the future, Deertrack Golf, Inc. shall be entitled to the sum of One Thousand Dollars ($1,000) (the "Subdivision Fee") for each new lot, tract or parcel created by said division, subdivision or resubdivision. The Subdivision Fee shall be due within fifteen (15) days after the date of the recording of the final, bonded subdivision plat and shall be the responsibility of the Grantee; provided that if the Grantee did not perform the division, subdivision or resubdivision, the Grantee and the party performing the same shall be jointly responsible for the payment of the Subdivision Fee. Upon receipt of the Subdivision Fee, Deertrack Golf, Inc. agrees to execute any documents reasonably requested by the owner of a lot, tract or parcel to evidence that the Subdivision Fee has been paid; provided, that Deertrack Golf, Inc. shall not be responsible for the costs of preparing and/or recording same.

5. In the event any portion of the property described herein is improved with a single-family house, a condominium unit, an apartment, an office, a manufactured home, a retail store, a warehouse, or other similar structure (each a "Unit") in the future, Deertrack Golf, Inc. shall be entitled to the sum of One Thousand Dollars ($1,000) U.S. ("Development Fee") for each Unit constructed; provided, that if the Unit is located on a new lot, tract or parcel which has been created and for which a Subdivision Fee has previously been paid, a credit shall be given for the Subdivision Fee so paid – it being the intention of the parties that if a new lot is created and a single-family home is erected thereon that only a $1,000 Subdivision Fee shall be paid, but if a multi-family structure, apartment or similar structure is constructed on a newly created lot, tract or parcel, that the party constructing the same shall pay $1,000 for each new Unit constructed less the $1,000 Subdivision Fee which was previously paid when the lot upon which the multi-family structure is built was created. The Development Fee shall be the joint responsibility of the Grantee and the party constructing the Unit and shall be due within 15 days after a Certificate of Occupancy for the Unit is issued. Upon receipt of its payment of the Development Fee, Deertrack Golf, Inc. agrees that it will execute any documents reasonably requested by the owner of any Unit to evidence that the

Development Fee has been paid; provided, that Deertrack Golf, Inc. shall not be responsible for the costs of preparing and/or recording the same.

j. Whether Defendants and their agents have acted in concert to induce Plaintiffs to purchase their properties based upon representations that their homesites warranted premium pricing because of the presence of the North Course and Clubhouse.

k. Whether Plaintiffs had the right to and in fact did rely upon the representations of Defendants and their officers and agents in purchasing their homesites.

l. Whether Defendants have conspired to cause Plaintiffs special injury by inducing Plaintiffs to purchase property which Defendants now seek to devalue.

m. To the extent Defendant Deertrack Investors, LLC succeeds in its desired redevelopment of the North Course and Clubhouse, whether the representations made to Plaintiffs in order to induce them to purchase their respective homesites were materially false and misleading.

n. Whether Defendants owed a duty of care to Plaintiffs to convey only truthful information regarding the value of their homesites.

o. To the extent Defendant Deertrack Investors, LLC succeeds in its desired redevelopment of the golf course, whether all Defendants have breached their duty of care to Plaintiffs.

p. Whether Plaintiffs justifiably relied upon the representations made by Defendants, their officers, and agents as truthful.

q. Whether Defendants made intentional, material misrepresentations to Plaintiffs, intending to induce them into purchasing residential homesites.

r. Whether Plaintiffs were unaware of the falsity of the Defendants' representations prior to the discovery of the earlier stated language contained within Exhibits A, B and C.

s. Whether Defendants' actions, as set forth in this Complaint, are an unfair method of competition and an unfair deceptive practice in the conduct of real estate transactions.

t. Whether Defendants' actions adversely affect the public interest, as they involved several similar intentionally fraudulent actions regarding contracts for the sale of real property to the general public.

u. Whether Defendants' actions adversely impact the public interest by inflicting damages on innocent parties, such as Plaintiffs, who purchased homesites at values inflated by Defendants' misrepresentations.

v. Whether Defendants knew or should have known their actions would violate the South Carolina Unfair Trade Practices Act.

w. Whether Plaintiffs have suffered actual, consequential, and incidental damages as a natural and proximate result of Defendants' willful and knowingly deceptive actions; and the proper measure of damages.

x. Whether Defendants' conduct was fraudulent.

y. Whether Defendants' conduct renders them liable to Plaintiffs for punitive damages.

6. The claims asserted by Plaintiffs Dale and Betty Hill, ("Plaintiffs Hill") and Carl and Geraldine Clemmons ("Plaintiffs Clemmons") are typical of the claims of the members of the Class.

7. Plaintiffs Hill and Clemmons will fairly and adequately protect the interest of the members of the Class and have retained attorneys experienced in handling complex litigation as their counsel.

8. A class action is superior to other available methods for the fair and efficient adjudication of this controversy for at least the following reasons:

a. it is economically impracticable for most members of the Class to prosecute an individual action;

b. when Defendants' liability has been adjudicated, claims of all the members of the Class can be determined by the Court; and

c. litigation of separate actions by individual Class members would create a risk of inconsistent or varying adjudications with respect to the individual Class members, which would substantially impair or impede the ability of other Class members to protect their interests.

9. Class certification is also appropriate because Defendants have acted on grounds generally applicable to the Class, making equitable and/or injunctive relief with respect to Plaintiffs Hill and Clemmons, and the members of the Class, appropriate.

COURSE OF EVENTS

10. Defendant Deerfield Plantation, Inc. recorded a plat dated November 14, 1972 and depicting property of Deerfield Plantation, Inc. in Surfside Beach, South Carolina in Plat Book 54, at Page 124. This plat, attached hereto and incorporated herein by reference as **Exhibit E** identifies the rendering on its face as "property of Deerfield Plantation, Inc." and clearly depicts the numbered holes of the North Course between and surrounding the numbered residential lots.

11. Defendant Deerfield Plantation, Inc. recorded a plat depicting Phase I of the Deerfield Plantation subdivision in Surfside Beach, South Carolina in Plat Book 70, at Page 27. This plat, attached hereto and incorporated herein by reference as **Exhibit F** identifies the rendering on its face as "Phase I Golf Course Property of Deerfield Plantation, Inc." and clearly depicts the numbered holes of the North Course between and surrounding the numbered residential lots.

12. Deerfield Plantation, Inc., on July 9, 1980, recorded a plat in Plat Book 69, at Page 2, depicting the "clubhouse area" of the Deerfield Plantation subdivision, which plat also clearly depicts several of the delineated residential lots. This plat is attached hereto and incorporated herein by reference as **Exhibit G**.

13. On February 2, 1973, Defendant Deerfield Plantation, Inc. executed a deed to Lot 358 to Plaintiffs Dale and Betty Hill. Plaintiffs Hill purchased the first homesite at Deerfield Plantation. The brochure distributed by Deerfield Plantation, *"Vacationer's Guide Souvenir Copy,"* attached hereto and incorporated herein as **Exhibit H,** contains a photograph of Plaintiff Hills' home. This lot, located at 1680 Crooked Pine Drive, is more specifically described as follows:

> All and singular that certain piece, parcel or lot of land situate, lying and being in Socastee Township, Horry County, S.C., and being designated as Lot #358 on that certain map of Deerfield Plantation, property of Deerfield Plantation, Inc., made by Moorman & Little, Inc., Engineers, dated November 14, 1972, and recorded in Plat Book 54, at page 124, office of the Clerk of Court for Horry County, SC, which said map and the record thereof is hereby incorporated herein and made a part of by reference.

This deed was signed by V. F. Platt, Jr. as President of Deerfield Plantation, Inc., and Kate W. Platt as Secretary. This deed, recorded in Deed Book 485, at Page 361, is attached hereto and incorporated herein by reference as **Exhibit I**.

14. On February 7, 1973, Defendant Deerfield Plantation, Inc. executed a deed to Lot 365 to Plaintiffs Carl and Geraldine Clemmons. This lot, located at 1620 Crooked Pine Drive, is more specifically described as follows:

> All and singular that certain piece, parcel or lot of land situate, lying and being in Socastee Township, Horry County, S.C., and being designated as Lot #365 on that certain map of Deerfield Plantation, property of Deerfield Plantation, Inc., made by Moorman & Little, Inc., Engineers, dated November 14, 1972, and recorded in Plat Book 54, at page 124, office of the Clerk of Court for Horry County, SC, which

> said map and the record thereof is hereby incorporated herein and made a part of by reference.

This deed was signed by V. F. Platt, Jr. as President of Deerfield Plantation, Inc., and Kate W. Platt as Secretary. This deed, recorded in Deed Book 488, at Page 824, is attached hereto and incorporated herein by reference as **Exhibit J.**

15. Each of Plaintiffs' original lot deeds stated the purchases were subject to the Declaration and Establishment of Conditions, Reservations, Covenants, and Restrictions recorded in Deed Book 481, at Page 305, and later and recorded in Deed Book 1514, at Page 156, which Declaration is attached hereto and incorporated herein by reference as **Exhibit K.** The only reference to the golf course in this document is Paragraph Eleven, which states as follows:

> Easements to permit the doing of every act necessary and proper in the playing of golf on the golf course adjacent to the lots and the playing of tennis on tennis courts adjacent to the lots which are subject to these restrictions are hereby granted and established. These acts shall include, but not be limited to, the recovery of golf balls and tennis balls from such lots, the flight of golf balls and tennis balls over and upon such lots, the use of necessary and usual equipment upon such golf course and tennis courts, the usual and common noise level created by the playing of the game of golf, together with all the other common and usual activity associated with the game of golf or the game of tennis and with all the normal and usual activities associated with the operation of a country club or clubhouse. The Developer shall have the right to determine the manner and extent to which the rights under this easement shall be exercised, and in the event that some other person, corporation, or other entity shall hereafter operate said golf course, tennis courts, country club or clubhouse facility then the Developer shall have the right to prescribe in writing to such person, corporation, or entity charged with the operation

> of the said golf course, tennis courts, country club or clubhouse facility the manner and extent to which the rights under this easement shall be exercised. In addition the Developer may, in its sole discretion, limit or withdraw or prohibit certian [*sic*] of the acts authorized by this easement, and it may limit the manner or place of doing all or certain of the acts authorized by this easement.

16. Each Plaintiff or their predecessor in interest was shown Exhibit K and provided a copy of the full color brochure entitled "*In the beginning...*," attached hereto and incorporated herein as **Exhibit L**.

17. The brochure attached hereto as Exhibit L prominently proclaims the goal of the developer in employing "master land planners and architects" to create a "total community." The text continues, in promoting "a tradition of the good life," by stating:

> Deerfield Plantation is a living example of the grace and dignity of southern living...a tradition that has not faded during the rush and bustle of the 20th Century.
>
> Coastal South Carolina has a history rich in the living of the good life, and here at Deerfield we are upholding that tradition...with all of the most modern marvels of architecture and planning.
>
> The area is renowned for its lovely homes and magnificent settings. Deerfield Plantation is no exception.
>
> Picture, if you will, streets winding beneath magnificent trees. Arranged in quiet seclusion are beautiful homes. There are no ugly overhead wires...here everything is underground. Electricity, telephone and television lines. Even the unobtrusive street lamps blend into their surroundings and have no overhead wires.
>
> Many homes and condominium apartments will look out over the fairways of the championship golf course, or upon the clear waters of Lake Vivian.
>
> All details such as 24-hour security service, water and sewage, waste disposal, and street paving have been arranged to minimize your concern with day-to-day problems.

> Nowhere else on the Grand Strand is there such a grand concept.

18. The brochure attached as Exhibit L, also goes on to tout the golf facilities then envisioned as "a sporting tradition," and concludes by explaining the role of all involved, including Defendant Deerfield Plantations's role as "the developer of Deer Track Golf & Country Club." This statement is attached hereto and incorporated herein by reference as **Exhibit M**.

19. Defendant Deerfield Plantation, Inc. and its agents represented to Plaintiffs and/or their predecessors in interest their homesites warranted premium pricing because of the presence of the North Course and Clubhouse.

20. Relying on the representations of Defendant Deerfield Plantation, Inc., Plaintiffs each paid a premium for their lots.

21. Defendant Deertrack Golf, Inc. has sold the North Course and Clubhouse to Defendant Deertrack Investors, LLC, and Defendant Deertrack Investors, LLC, upon information and belief, intends to close the North Course and Clubhouse and redevelop those properties as residences.

FIRST CAUSE OF ACTION

Declaratory Judgment
Equitable Servitudes / Implied Easements /
Negative Reciprocal Easements / Amenities

22. Each and every allegation set forth in this Complaint is realleged and incorporated into this cause of action as if it was repeated verbatim herein.

23. The North Course and Clubhouse were each part of the same property at the time Exhibits B, C, and D were rendered and the whole parcel was owned by Defendant Deerfield Plantation, Inc.

24. Defendant Deerfield Plantation, Inc. established the Declaration and Establishment of Conditions, Reservations, Covenants, and Restrictions recorded in Deed Book 481, at Page 305, and later amended and recorded in Deed Book 1514, at Page 156.

25. The Declaration and Establishment of Conditions, Reservations, Covenants, and Restrictions recorded in Deed Book 481, at Page 305, and later amended and recorded in Deed Book 1514, at Page 156 designates the land subject thereto as:

> Lots of land numbered 1 through 458, as shown as delineated upon that certain map made by Moorman & Little, Inc., dated November 14, 1972, and recorded in Plat Book 54, page 124, office of the Clerk of Court for Horry County, S.C.; reserving, however, unto the Developer, its successors and assigns the right to relieve and remove lots 434 through 458, inclusive, from the effect of this declaration and to reclassify the same so as to put or cause the same to be put to a different use other than herein specified as the Developer may see fit at any time prior to the selling of any one of said lots 434 through 458.

26. The first paragraph of the Declaration and Establishment of Conditions, Reservations, Covenants, and Restrictions recorded in Deed Book 481, at Page 305, and later amended and recorded in Deed Book 1514, at Page 156, contains the following language:

> Deerfield Plantation, Inc., a South Carolina Corporation, being the owner of all of the following described premises situate within Horry County, South Carolina, to wit:
>
> has established a general plan for the improvement and development of such premises, and does hereby establish the covenants, conditions, reservations, and restrictions upon which and subject to which all lots and portions of such lots shall be improved or sold or conveyed by it as owner thereof. Each and every one of these covenants, conditions, reservations, and restrictions is and all are for the benefit of each owner of land in the abovementioned development or subdivision, or any interest therein, and shall inure to and pass with each and every parcel of such subdivision, and shall bind the respective successors in any interest of the present owner thereof. These covenants, conditions, reservations and restrictions are and each thereof is imposed upon such lots, all of which are to be construed as restrictive covenants running with the title to such lots and with each and every parcel thereof, to wit:

27. On or about November 30, 1972, Defendant Deerfield Plantation, Inc. generated a Property Report which was filed with the Office of Interstate Land Sales Registration. The registration of this subdivision became effective on December 26, 1972. A copy of the Property Report is attached hereto and incorporated herein by reference as **Exhibit N**.

28. Page 7 of Exhibit N lists the recreational facilities within the Deerfield Plantation subdivision, and specifically references the Clubhouse and Golf Course.

29. Defendant Deerfield Plantation, Inc., in filing the documents identified herein as Exhibits B, C, D, K, and N, established a clear scheme of development of the golf course-centered Deerfield Plantation subdivision.

30. Defendant Deerfield Plantation, Inc. sold the property currently serving as the North Course and Clubhouse subsequent to establishing the general scheme of development represented by Exhibits B, C, D, K, and N.

31. Plaintiffs were drawn to Deerfield Plantation by the golf course-centered community development plan Defendant Deerfield Plantation, Inc. established and, in reliance thereupon, purchased their respective homesites.

32. Plaintiffs therefore invoke the equitable jurisdiction of this Court and the provisions of the Uniform Declaratory Judgment Act, Sections 15-53-10 through 15-53-140 of the *South Carolina Code of Laws*, 1976 as amended, and ask the Court to inquire into this matter and to enter a declaratory judgment pursuant to Sections 15-53-20 and 15-53-30 of the *South Carolina Code of Laws*, 1976, as amended, finding the following:

a. That Defendant Deerfield Plantation, Inc. established an equitable servitudes/implied easements/negative reciprocal easements on behalf of Plaintiffs in the North Course and Clubhouse adjacent to the Plaintiffs' residences.

b. That the North Course and Clubhouse were amenities to the respective homesites Plaintiffs purchased.

c. That the equitable servitudes/implied easements/negative reciprocal easements/amenities so established require the land which Deertrack Investors, LLC operates as the North Course and Clubhouse be restricted to such use.

d. That the equitable servitudes/implied easements/negative reciprocal easements/amenities so established cannot be unilaterally extinguished by Defendants.

SECOND CAUSE OF ACTION
Injunction

33. Each and every allegation set forth in this Complaint is realleged and incorporated into this cause of action as if it was repeated verbatim herein.

34. Plaintiffs are informed and believe Defendant Deertrack Golf, Inc. has sold the North Course and Clubhouse properties to Defendant Deertrack Investors, LLC for the purpose of developing the property.

35. Plaintiffs are further informed and believe Deertrack Investors has agreed to pay Defendant according to the schedule set forth in their deed for any subdivision of lots within the North Course and Clubhouse areas as well as the sale of any single family homes thereupon.

36. The agreement to pay Defendant for the successful subdivision and development of the North Course and Clubhouse constitutes an anticipatory breach of the equitable servitudes/implied easements/negative reciprocal easements/amenities favoring Plaintiffs' properties.

37. Wherefore, Plaintiffs are informed and believe they are entitled to an Order of this Court permanently enjoining Defendant Deertrack Golf, Inc., its successors, heirs,

or assigns, from redeveloping the North Course and Clubhouse as described in the deed to Defendant Deertrack Investors, LLC.

THIRD CAUSE OF ACTION

Civil Conspiracy

38. Each and every allegation set forth in this Complaint is realleged and incorporated into this cause of action as if it was repeated verbatim herein.

39. Each of the Plaintiffs' or their respective predecessors in interest purchased their property from Defendant Deerfield Plantation, Inc.

40. Each of Plaintiffs' original lot deeds was executed by an officer of Defendant Deerfield Plantation, Inc., in which John Schaad held a significant financial interest.

41. Plaintiffs are informed and believe John Schaad also possessed a financial interest in Defendant Deertrack Golf, Inc.

42. Plaintiffs are informed and believe other persons possess interests in both Defendant Deerfield Plantation, Inc. and Defendant Deertrack Golf, Inc.

43. Defendants and their agents have acted in concert to induce Plaintiffs to purchase their properties based upon representations that their homesites warranted premium pricing because of the presence of the North Course and Clubhouse.

44. Plaintiffs had the right to and in fact did rely upon the representations of Defendant Deerfield Plantation, Inc. and its officers and agents in purchasing their homesites.

45. Defendant Deertrack Investors, LLC now intends to develop the North Course and Clubhouse as residential homes.

46. The value of Plaintiffs' residences would be significantly diminished by the redevelopment of the North Course and Clubhouse into residential units.

47. Defendants have conspired to cause Plaintiffs special injury by inducing Plaintiffs to purchase property which Defendants now seek to devalue.

48. Plaintiffs are informed and believe they are entitled to a Judgment against Defendants for such amounts as their respective residences may be determined to have diminished in value as a result of Defendants' civil conspiracy against Plaintiffs; for an award of punitive damages; for the costs and fees associated with this action; and for such other and further relief as this Honorable Court deems just and proper.

FOURTH CAUSE OF ACTION
Negligent Misrepresentation

49. Each and every allegation set forth in this Complaint is realleged and incorporated into this cause of action as if it was repeated verbatim herein.

50. Defendant Deerfield Plantation, Inc. and its agents represented through documents such as Exhibits B, C, D, K, and N, promotional materials, and verbal representations that the homesites Plaintiffs purchased were of premium value because of their proximity to the North Course and Clubhouse.

51. Defendant Deertrack Investors, LLC now intends to develop the North Course and Clubhouse as residential homes.

52. To the extent Defendant Deertrack Investors, LLC succeeds in its desire to redevelop the North Course and Clubhouse, the representations made to Plaintiffs in order to induce them to purchase their respective homesites were materially false and misleading.

53. As the developer of Deerfield Plantation, Defendant Deerfield Plantation, Inc. owed a duty of care to Plaintiffs to convey only truthful information regarding their homesites and the North Course and Clubhouse.

54. To the extent Defendant Deertrack Investors, LLC succeeds in its desire to redevelop the North Course and Clubhouse, Defendant Deerfield Plantation, Inc. has breached its duty of care to Plaintiffs.

55. Plaintiffs justifiably relied upon the representations made by Defendant Deerfield Plantation, Inc. and its officers and agents.

56. To the extent Defendant Deertrack Investors, LLC succeeds in its desire to redevelop the North Course and Clubhouse, Plaintiffs have suffered a pecuniary loss in the devaluation of their residences.

57. Plaintiffs are informed and believe they are entitled to a Judgment against Defendants for such amounts as their respective residences may be determined to have diminished in value as a result of Defendants' negligent misrepresentations; for an award of punitive damages; for the costs and fees associated with this action; and for such other and further relief as this Honorable Court deems just and proper.

FIFTH CAUSE OF ACTION
Fraud

58. Each and every allegation set forth in this Complaint is realleged and incorporated into this cause of action as if it was repeated verbatim herein.

59. Defendant Deerfield Plantation, Inc. and its agents represented through documents such as Exhibits B, C, D, K, and N, promotional materials, and verbal representations that the homesites Plaintiffs purchased were of premium value because of their proximity to the North Course and Clubhouse.

60. Defendant Deertrack Investors, LLC now intends to develop the North Course and Clubhouse as residential homes.

61. Defendants have acted in concert since prior to the respective homesite sales to Plaintiffs and have jointly created marketing materials and campaigns designed to induce potential customers to purchase homesites within Deerfield Plantation and to promote the golf courses therein.

62. Defendants made intentional, material misrepresentations to Plaintiffs, intending to induce them into purchasing residential homesites.

63. Plaintiffs were unaware of the falsity of Defendants' representations prior to the discovery of the language in the deed to Defendant Deertrack Investors, LLC.

64. Plaintiffs justifiably relied upon Defendants' representations as truthful.

65. Plaintiffs have suffered a pecuniary loss as a result of Defendants' fraudulent acts inducing Plaintiffs to purchase their residential homesites.

66. Plaintiffs are informed and believe they are entitled to a Judgment against Defendants for such amounts as their respective residences may be determined to have diminished in value as a result of Defendants' fraudulent acts; for an award of punitive damages; for the costs and fees associated with this action; and for such other and further relief as this Honorable Court deems just and proper.

SIXTH CAUSE OF ACTION

South Carolina Unfair Trade Practices Act

67. Each and every allegation set forth in this Complaint is realleged and incorporated into this cause of action as if it was repeated verbatim herein.

68. Defendants' actions, as set forth in this Complaint, are an unfair method of competition and unfair deceptive practice in the conduct of real estate transactions.

69. Defendants' actions adversely affect the public interest, as they involved several similar intentionally fraudulent actions regarding contracts for the sale of real property to the general public.

70. Defendants' actions adversely impact the public interest in the South Carolina real estate market by artificially altering property values and thereby adding speculation and uncertainty into real estate transactions, real estate development, and the local economy.

71. Defendants' actions adversely impact the public interest by inflicting damages on innocent parties such as Plaintiffs who purchased homesites at values inflated by Defendants' misrepresentations.

72. Defendants knew or should have known their actions would violate the South Carolina Unfair Trade Practices Act.

73. Plaintiffs have suffered actual, consequential, and incidental damages as a natural and proximate result of Defendants' willful and knowingly deceptive actions.

74. Plaintiffs believe they are entitled to an award of treble damages against Defendants for their knowing and willful actions.

75. Plaintiffs demand a trial by jury for each actionable matter plead herein which so qualifies.

WHEREFORE, Plaintiffs, having complained of Defendants, pray for an award of: declaratory judgment; injunction; actual, incidental, and consequential damages; attorney fees; punitive, and other exemplary damages in an amount to be determined by the trier of fact; treble damages; and such other and further relief as this Honorable Court may deem just and proper.

Respectfully submitted,

BELLAMY, RUTENBERG, COPELAND, EPPS, GRAVELY & BOWERS, P.A.
Post Office Box 357
Myrtle Beach, South Carolina 29578
(843) 448-2400
Attorneys for Plaintiffs

David B. Miller
Robert S. Shelton

Myrtle Beach, South Carolina

September 8, 2006.

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	Civil Action No.: 2006-CP-26-4440
Dale Hill, Betty Hill, Carl Clemmons Geraldine Clemmons, Individually, and on behalf of a Class of all others similarly Situated, Plaintiffs, v. Deertrack Golf and Country Club, Inc. Deertrack Golf, Inc., Deerfield Plantation, Inc., the Estate of John Schaad, by and through Ann Schaad as Executrix, and Deertrack Investors, LLC., Defendants.	)	**DEFENDANT DEERTRACK INVESTORS, LLC'S AMENDED ANSWER AND THIRD-PARTY COMPLAINT**
Deertrack Investors, LLC., Third-Party Plaintiff, v. Plantation Resort of Myrtle Beach, Inc., Plantation Resort Properties, Inc. and Deerfield Plantation Property Owners Association, Inc. Third-Party Defendants.	)	

HORRY COUNTY
07 OCT 10 PM 1:09
MELANIE HUGGINS
CLERK OF COURT

The Defendant, Deertrack Investors, LLC., hereby amends their Answer and Third-Party Complaint, would respectfully show and allege unto this Honorable Court as follows:

FIRST DEFENSE

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

2. Answering paragraph 1, Deertrack Investors, LLC admits that Deertrack Investors, LLC is a South Carolina limited liability company. The answering Defendant is without information and belief to admit or deny the remaining allegations contained in paragraph 1.

3. The allegations contained in paragraphs 2, 3, 4, 5, 6, 7, 8 and 9 are denied and strict proof demanded thereof.

4. Answering paragraph 10, the answering Defendant craves reference to Exhibit E of Plaintiffs' Complaint, the terms of which speak for themselves.

5. Answering paragraph 11, the answering Defendant craves reference to Exhibit F of Plaintiffs' Complaint, the terms of which speak for themselves.

6. Answering paragraph 12, the answering Defendant craves reference to Exhibit G of Plaintiffs' Complaint, the terms of which speak for themselves.

7. Answering paragraph 13, the answering Defendant craves reference to Exhibit H and Exhibit I of Plaintiffs' Complaint, the terms of which speak for themselves.

8. Answering paragraph 14, the answering Defendant craves reference to Exhibit J of Plaintiffs' Complaint, the terms of which speak for themselves.

9. Answering paragraph 15. The answering Defendant craves reference to Exhibit K of Plaintiffs' Complaint, the terms of which speak for themselves.

10. The allegations contained in paragraph 16 are denied and strict proof is demanded thereof.

11. The answering Defendant denies the allegations contained in paragraphs 17, 18, 19 and 20 and strict proof is demanded thereof.

12. Answering paragraph 21, the answering Defendant admits that on March 23, 2006, Deetrack Investors, LLC purchased the property which was known as the North Course and Golf Club.

13. To the extent paragraph 22 requires a response, the allegations contained in paragraph 22 are denied and strict proof is demanded thereof.

14. The allegations in paragraph 23 are denied and strict proof is demanded thereof.

15. Answering paragraphs 24, 25 and 26, the answering Defendant craves reference to the Declarations and Establishment of Conditions, Reservations, Covenants and Restrictions recorded in Deed Book 481 at Page 305 and later amended and recorded in Deed Book 1514 at Page 156.

16. The answering Defendant is without information and belief to admit or deny the allegations contained in paragraphs 27 and 28.

17. The allegations of paragraphs 29, 30, 31 and 32 are denied and strict proof is demanded thereof.

18. To the extent paragraph 33 requires a response, the allegations are denied and strict proof is demanded thereof.

19. Answering paragraph 34, the answering Defendant admits that on March 23, 2006, Deertrack Investors, LLC purchased the property which was known as the North Course and Clubhouse.

20. Answering paragraph 35, the answering Defendant craves reference to the Deed referenced therein, Exhibit B of Plaintiffs' Complaint, the terms of which speak for themselves.

21. The allegations contained in paragraphs 36 and 37 are denied and strict proof is demanded thereof.

22. To the extent paragraph 38 requires a response, the allegations are denied and strict proof is demanded thereof.

23. The answering Defendant lacks sufficient information and belief to admit or deny the allegations contained in paragraphs 39, 40, 41 and 42.

24. The allegations contained in paragraphs 43 and 44 are denied and strict proof is demanded thereof.

25. Answering the allegations of paragraph 45, the answering Defendant admits that on March 23, 2006, Deertrack Investors, LLC purchased the property which was known as the North Course and Clubhouse.

26. The allegations contained in paragraphs 46, 47 and 48 are denied and strict proof is demanded thereof.

27. To the extent paragraph 49 requires a response, the allegations contained in paragraph 49 are denied and strict proof is demanded thereof.

28. The allegations contained in paragraph 50 are denied and strict proof is demanded thereof.

29. Answering paragraph 51, the answering Defendant admits that on March 23, 2006, Deertrack Investors, LLC purchased the property which was known as the North Course and Clubhouse.

30. The allegations contained in paragraphs 52, 53, 54, 55, 56 and 57 are denied and strict proof is demanded thereof.

31. To the extent paragraph 58 requires a response, the allegations contained in paragraph 58 are denied and strict proof is demanded thereof.

32. The allegations contained in paragraph 59 are denied and strict proof is demanded thereof.

33. Answering paragraph 60, the answering Defendant admits that on March 23, 2006, Deertrack Investors, LLC purchased the property which was known as the North Course and Clubhouse.

34. The allegations contained in paragraphs 61, 62, 63, 64, 65 and 66 are denied and strict proof is demanded thereof.

35. To the extent that paragraph 67 requires a response, the allegations contained in paragraph 67 are denied and strict proof is demanded thereof.

36. The allegations contained in paragraphs 68, 69, 70, 71, 72, 73, 74 and 75 are denied and strict proof is demanded thereof.

SECOND DEFENSE

37. The above allegations are incorporated herein by reference and made a part and parcel hereof.

38. Plaintiffs fail to allege sufficient facts to constitute a cause of action, and therefore the Complaint should be dismissed pursuant to Rule 12(b)(6) of South Carolina Rules of Civil Procedure.

THIRD DEFENSE

39. The above allegations are incorporated herein by reference and made a part and parcel hereof.

40. Defendant Deertrack Investors, LLC asserts the statute of limitations as a complete and affirmative defense.

FOURTH DEFENSE

41. Defendant Deertrack Investors, LLC asserts the doctrines of waiver, estoppel, and laches as complete and affirmative defenses.

FIFTH DEFENSE

42. The above allegations are incorporated herein by reference and made a part and parcel hereof.

43. Defendant, Deertrack Investors, LLC raises the doctrine of unclean hands as a complete and affirmative defense.

SIXTH DEFENSE

44. The above allegations are incorporated herein by reference and made a part and parcel hereof.

45. The Defendant, Deertrack Investors, LLC asserts the statute of frauds as a complete and affirmative defense.

THIRD-PARTY COMPLAINT OF PLAINTIFF DEERTRACK INVESTORS, LLC vs. PLANTATION RESORT OF MYRTLE BEACH, INC., PLANTATION RESORT PROPERTIES, INC. AND DEERFIELD PLANTATION PROPERTY OWNERS ASSOCIATION, INC.

SEVENTH DEFENSE AND FIRST THIRD-PARTY CLAIM BY DEFENDANT DEERTRACK INVESTORS, LLC
(Interference With Contractual Relations, Deerfield Plantation Property Owners Association, Inc.)

46. The above allegations are incorporated herein by reference and made a part and parcel hereof.

47. Upon information and belief, the Third-Party Defendant Deerfield Plantation Property Owners Association, Inc., hereinafter referred to as the "Association" is a South Carolina non-profit corporation with its principal offices located in Horry County, South Carolina.

48. On March 23, 2006, Defendant and Third-Party Plaintiff Deertrack Investors, LLC purchased real property as reflected in the Deed of Real Estate recorded in the Deed Book 3069, Page 425 in the Horry County Register of Deeds, with the intent of immediately commencing development of the property.

49. Upon information and belief, the Association has made financial contributions to Plaintiff's and/or Plaintiff's counsel to initiate the lawsuit herein for the specific purpose of delaying and/or abating the development of Deertrack Investors, LLC's property.

50. Further, upon information and belief, agents of the Association have publicly campaigned, following Deertrack Investor LLC's purchase of the real property, to rezone the property from R-7 zoning to R-3 zoning with the specific intent of depriving Deertrack Investor LLC's benefit of its bargain in its contract for the purchase of the property.

51. Upon information and belief, Third-Party Defendant Association has undertaken financial contributions, campaigning and lobbying efforts with the intent of delaying and/or abating the development of the North Course and Clubhouse by Deertrack Investors, LLC's, in contravention with Deertrack Investors, LLC's benefit of the bargain in purchasing the property, and in order to acquire the property for its own benefit, and/or in order for a "local entity" to acquire the property at a substantially lower value and develop it in accordance with the Association's desires.

52. Upon information and belief, Third-Party Defendant Association and/or its agents have intentionally interfered with Deertrack Investors, LLC's right to develop, market, and sell its property, as well as Defendant Deertrack Investors, LLC's relationship with the general public.

53. Third-Party Defendant Association had knowledge of the purchase of the property by Deertrack Investors, LLC on March 23, 2006 and of Defendant and Third-Party

Plaintiff Deertrack Investors, LLC's intent to immediately commence development of the North Course and Clubhouse property.

54. Despite Third-Party Defendant Association's knowledge of the purchase by Deertrack Investors, LLC and corresponding intent to develop, Third-Party Defendant Association has interfered with the purchase, development, marketing and sales of the property upon which the North Course and Clubhouse are located.

55. As a direct and proximate result of Third-Party Defendant Association's actions in intentionally interfering with the existing and potential contractual relations of Defendant and Third-Party Plaintiff Deertrack Investors, LLC, Deertrack Investors, LLC's relationship with the general public, lessors, operators, managers of the North Course and/or Deertrack Investors, LLC's sellers, mortgagors and creditors, including Deertrack Management, Inc. and other existing and potential contractual relationships have been damaged.

56. Third-Party Defendant Association's actions in intentionally interfering the existing and potential contractual relations of Deertrack Investors, LLC is without justification.

57. Third-Party Defendant Association's acts were done willfully, wantonly and with reckless disregard to the Defendant and Third-Party Plaintiff Deertrack Investors, LLC's rights.

58. As a direct and proximate result of Third-Party Defendant Association's intentional interference with existing and potential contractual relations of Deertrack Investors, LLC, Deertrack Investors, LLC has been damaged.

59. The Defendant and Third-Party Plaintiff Deertrack Investors, LLC is entitled to a judgment against the Association for actual damage, together with legal interests thereon, and punitive damages.

EIGHTH DEFENSE AND SECOND THIRD-PARTY CLAIM
(Intent and Interference with Existing Contractual Relations, Plantation Resorts of Myrtle Beach, Inc. and Plantation Resort Properties, Inc.)

60. The above allegations are incorporated herein by reference and made a part and parcel hereof.

61. Upon information and belief, the Third-Party Defendant Plantation Resort of Myrtle Beach, Inc. is a South Carolina corporation with its principal offices located in Surfside Beach, South Carolina.

62. Upon information and belief, the Third-Party Defendant Plantation Resort Properties, Inc. is a South Carolina corporation with its principal offices located in Surfside Beach, South Carolina.

63. Upon information and belief, Plantation Resort of Myrtle Beach, Inc. and/or Plantation Resort Properties, Inc. are involved in the operation, maintenance and selling of timeshare rentals and vacation rentals within the Plantation Vacation and Golf Resort, located inside the Deerfield Plantation and adjacent to the North Course and/or South Course of the Deer Track Golf Courses.

64. On March 23, 2006, Defendant and Third-Party Plaintiff Deertrack Investors, LLC purchased real property as reflected in the Deed of Real Estate recorded in the Deed Book 3069, Page 425 in the Horry County Registers of Deeds, with the intent of immediately commencing development of the property.

65. Upon information and belief, agents of Third-Party Defendants Plantation Resort of Myrtle Beach, Inc. and/or Plantation Resort Properties, Inc. have made financial contributions to Plaintiffs and/or Plaintiffs' Class to initiate the lawsuit herein for the specific purpose of delaying and/or abating development of Deertrack Investors, LLC's property.

66. Upon information and belief, Plantation Resort of Myrtle Beach, Inc. and/or Plantation Resort Properties, Inc. intend to the delay and/or abate development of the North Course and Clubhouse by Deertrack Investors, LLC in order to acquire the asset for its own development and expansion of its timeshare and vacation rentals.

67. Upon information and belief, Third-Party Defendants Plantation Resort of Myrtle Beach, Inc. and/or Plantation Resort Properties, Inc. have initiated and funded the lawsuit herein for the purpose of furthering and benefiting their existing timeshare and/or vacation rentals business operations.

68. Upon information and belief, Plantation Resort of Myrtle Beach, Inc. and/or Plantation Resort Properties, Inc., by and through its authorized agents or representatives, represented to members of Deerfield Plantation Property Owners Association, Inc. that they would receive a greater benefit if the North Course and Clubhouse were owned by "local" entity, as opposed to Deertrack Investors, LLC.

69. Third-Party Defendants Plantation Resort of Myrtle Beach, Inc. and/or Plantation Resort Properties, Inc. had knowledge of the purchase of the property by Deertrack Investors, LLC on March 23, 2006, and of Defendant and Third-Party Plaintiffs' Deertrack Investors, LLC's intent to immediately commence development of the North Course and Clubhouse.

70. Despite Third-Party Defendants Plantation Resort of Myrtle Beach, Inc. and/or Plantation Resort Properties, Inc.'s knowledge of the purchase by Deertrack Investors, LLC and corresponding intent to develop, Third-Party Defendants Plantation Resort of Myrtle Beach, Inc. and/or Plantation Resort Properties, Inc. have interfered with the purchase and development of the property upon which the North Course and Clubhouse were located by causing, initiating, and funding the lawsuit herein in an effort to delay and/or abate development of the North

Course and Clubhouse by Deertrack Investors, LLC and to profit from the delay by intending to acquire the property known as the North Course and Clubhouse for its own business activities.

71. Third Party Defendants' actions in causing, initiating and funding the lawsuit have interfered with Defendant and Third-Party Plaintiffs Deertrack Investors, LLC's relationship with Deerfield Plantation, Phase I homeowners, the lessors, operators, managers of the North Course, and/or Deertrack Investors, LLC's sellers, mortgagors, and creditors, including Deertrack Management, Inc.

72. Third-Party Defendants Plantation Resort of Myrtle Beach, Inc. and/or Plantation Resort Properties, Inc. acts in interfering with the purchase and development of the North Course and Clubhouse and interfering with Defendant Deertrack Investors, LLC's relationship with Deerfield Plantation, Phase I homeowners, the lessors, operators, managers of the North Course, and/or Deertrack Investors, LLC's sellers, mortgagors, and creditors, including Deertrack Management, Inc. are without justification.

73. Third-Party Defendants Plantation Resort of Myrtle Beach, Inc. and/or Plantation Resort Properties, Inc. acts were done willfully, wantonly and with reckless disregard to Defendant and Third-Party Plaintiffs Deertrack Investors, LLC's rights.

74. As a direct and proximate result of Third-Party Defendants Plantation Resort of Myrtle Beach, Inc. and/or Plantation Resort Properties, Inc.'s intentional interference, the Defendant and Third-Party Plaintiff Deertrack Investors, LLC has been damaged.

75. The Defendant and Third-Party Plaintiff Deertrack Investors, LLC is entitled to a judgment against Plantation Resort of Myrtle Beach, Inc. and/or Plantation Resort Properties, Inc. for actual damages, together with legal interest thereon, and punitive damages.

NINTH DEFENSE AND THIRD THIRD-PARTY CLAIM
BY DEFENDANT DEERTRACK INVESTORS, LLC
(Interference With Potential Contractual Relations, Plantation Resorts of Myrtle Beach, Inc. and Plantation Resort Properties, Inc.)

76. The above allegations are incorporated herein by reference and made a part and parcel hereof.

77. Upon information and belief, Third-Party Defendants Plantation Resort of Myrtle Beach, Inc. and/or Plantation Resort Properties, Inc. had knowledge that Defendant and Third-Party Plaintiff Deertrack Investors, LLC purchased the North Course and Clubhouse on March 23, 2006 with the intent to develop, market, and sell the property located therein.

78. Third-Party Defendants Plantation Resort of Myrtle Beach, Inc. and/or Plantation Resort Properties, Inc. have intentionally interfered with Defendant and Third-Party Plaintiff Deertrack Investors, LLC's potential contracts with Third-Party purchasers and Deertrack Investors, LLC's development of the North Course and Clubhouse.

79. Third-Party Defendants Plantation Resort of Myrtle Beach, Inc. and/or Plantation Resort Properties, Inc.'s interferences were for improper purposes and/or by improper methods.

80. Third-Party Defendants Plantation Resort of Myrtle Beach, Inc. and/or Plantation Resort Properties, Inc.'s acts and interferences with Defendant and Third-Party Plaintiff Deertrack Investors, LLC's potential contracts were done willfully, wantonly and with reckless disregard of Deertrack Investors, LLC's rights.

81. As a direct and proximate result of Third-Party Defendants Plantation Resort of Myrtle Beach, Inc. and/or Plantation Resort Properties, Inc.'s intentional interference with Defendant and Third-Party Plaintiff Deertrack Investors, LLC's potential contracts, Deertrack Investors, LLC have been damaged.

82. The Defendant and Third-Party Plaintiff Deertrack Investors, LLC is entitled to a judgment against Third-Party Defendants Plantation Resort of Myrtle Beach, Inc. and/or

Plantation Resort Properties, Inc. for actual damages, together with legal interest thereon, and punitive damages.

TENTH DEFENSE AND FOURTH THIRD-PARTY CLAIM BY DEFENDANT DEERTRACK INVESTORS, LLC
(South Carolina Unfair Trade Practices)

83. The above allegations are incorporated herein by reference and made a part and parcel hereof.

84. The Third-Party Defendants, Plantation Resort of Myrtle Beach, Inc. and/or Plantation Resort Properties, Inc. are actively engaged in a business similar in nature and in competition with the development business of Defendant and Third-Party Plaintiff Deertrack Investors, LLC.

85. Upon information and belief, the Third-Party Defendants Plantation Resort of Myrtle Beach, Inc. and/or Plantation Resort Properties, Inc.'s actions, as set forth above, are an unfair method of competition and unfair or deceptive acts or practices in violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-15-10, *et seq.*

86. The conduct of Third-Party Defendants, Plantation Resort of Myrtle Beach, Inc. and/or Plantation Resort Properties, Inc. is capable of repetition and has an impact on the public interest.

87. As a proximate result of the Third-Party Defendants Plantation Resort of Myrtle Beach, Inc. and/or Plantation Resort Properties, Inc. violation the of the South Carolina Unfair Trade Practices Act, Defendant and Third-Party Plaintiff Deertrack Investors, LLC has suffered economic damages, including but not limited to loss of contracts for the sale of real property and loss of business opportunity. Therefore, Defendant and Third-Party Plaintiff, Deertrack Investors, LLC is entitled to a judgment for actual damages, together with legal interest thereon, treble damages, as well as attorneys fees and costs.

ELEVENTH DEFENSE AND FIFTH THIRD-PARTY CLAIM BY DEFENDANT, DEERTRACK INVESTORS, LLC
(Civil Conspiracy, Plantation Resort of Myrtle Beach, Inc., Plantation Resort Properties, Inc. and Deerfield Plantation Property Owners Association, Inc.)

88. The above allegations are incorporated herein by reference and made a part and parcel hereof.

89. Upon information and belief, Third-Party Defendants, conspired, schemed and planned for the purpose of injuring the Defendant and Third-Party Plaintiff Deertrack Investors, LLC, specifically to induce a decline public opinion of Deertrack Investors, LLC and delay the development of the North Course and the Clubhouse.

90. Upon information and belief, Third-Party Defendants, conspired for the purpose of injuring the Defendant, Deertrack Investors, LLC, specifically by inhibiting or preventing the development of the property purchased by Deertrack Investors, LLC on March 23, 2006, in favor of the acquisition and development of the North Course and Clubhouse by third parties, including but not limited to, Third-Party Defendants Plantation Resort of Myrtle Beach, Inc. and/or Plantation Resort Properties, Inc.

91. Upon information and belief, the Third-Party Defendants, conspired for the purpose of injuring the Defendant, Deertrack Investors, LLC specifically by campaigning and lobbying to rezone the property from R-7 to R-3 in direct contravention with Deertrack Investors, LLC's benefit of the bargain in purchasing the property on March 23, 2006, of which Third-Party Defendants had actual and construction knowledge thereof.

92. The Defendant Deertrack Investors, LLC has suffered special damages as a result of the Third-Party Defendants' conspiracy including the decline in public opinion, the delay in the development of the North Course and Clubhouse, and lost profits.

93. The Defendant Deertrack Investors, LLC is entitled to a judgment against the Third-Party Defendants for special damages, together with legal interest thereon, and punitive damages.

WHEREFORE, the Defendant Deertrack Investors, LLC having fully answered the Complaint, pray for the following:

A. An Order of the Court dismissing Plaintiffs' Complaint with prejudice;

B. On Deertrack Investors, LLC's First Third-Party Complaint, for an award of actual damages, together with legal interest thereon, and punitive damages against Third-Party Defendant Assocation;

C. On Deertrack Investors, LLC's Second Third-Party Complaint, for an award of actual damages, together with legal interest thereon, and punitive damages against Defendants Plantation Resort of Myrtle Beach, Inc. and Plantation Resort Properties, Inc.;

D. On Deertrack Investors, LLC's Third Third-Party Complaint, for an award of actual damages, together with legal interest thereon, and punitive damages against Defendants Plantation Resort of Myrtle Beach, Inc. and Plantation Resort Properties, Inc.;

E. On Deertrack Investors, LLC's Fourth Third-Party Complaint, for an award of actual damages, together with legal interest thereon, treble damages, attorneys fees and costs against Defendants Plantation Resort of Myrtle Beach, Inc. and Plantation Resort Properties, Inc.; and

F. On Deertrck Investors, LLC's Fifth Third-Party Complaint, for an award of special damages, together with legal interest thereon, and punitive damages against all Third-Party Defendants.

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McNAIR LAW FIRM, P.A.

Henrietta U. Golding, SC Bar #2173
Amanda A. Bailey, SC Bar No. 71085
Post Office Box 336
2411 Oak Street, Suite 206
Myrtle Beach, South Carolina 29578
(843) 444-1107

Attorneys for the Defendant/Third-Party Plaintiff, Deertrack Investors, LLC

Myrtle Beach, South Carolina
October 10, 2007

THE COURT: FOLKS, I APPRECIATE Y'ALL MAKING THESE ARRANGEMENTS, AND IT WAS NOT AN EASY JOB TO GET A COURTROOM IN HORRY COUNTY TODAY, THERE'S A CAPITAL CASE GOING ON UPSTAIRS AND A HOMICIDE BY CHILD ABUSE CASE GOING ON UP THERE WHICH HAS ATTRACTED A LOT OF ATTENTION FROM EVERYWHERE, AND SO I'M GLAD THAT YOU ALL WERE ABLE TO GET THIS DONE.

I HAVE READ THE MATERIALS THAT HAVE BEEN SENT TO ME SINCE WE MET LAST, AND I DID NOT COPY ALL OF THE EXHIBITS, MR. SHELTON, BECAUSE SOME OF THOSE EXHIBITS WERE ATTACHED TO YOUR MOTION FOR CLASS CERTIFICATION SO I RECOGNIZE THAT SOME OF THEM WERE AND SOME OF THEM WERE

NOT, BUT I DID NOT RECOPY ALL OF THOSE, BUT I DO HAVE EVERYTHING THAT YOU ALL HAVE SENT ME SINCE THAT TIME.

AND AT THIS JUNCTURE I'M READY TO PROCEED. DO THE PARTIES WISH TO WAIVE OPENING STATEMENTS OR DO YOU WISH TO MAKE THEM?

MR. SHELTON: WE DISCUSSED THAT, YOUR HONOR, AND WE'VE AGREED TO WAIVE OPENING STATEMENTS.

THE COURT: ALL RIGHT, VERY GOOD. MR. SHELTON, YOU CAN PROCEED.

MR. SHELTON: THANK YOU, YOUR HONOR.

MS. GOLDING: ARE WE GOING TO SET FORTH THE PRE-TRIAL STIPULATIONS AND THE EXHIBITS? YOUR HONOR, WE HAVE MADE SEVERAL PRE-TRIAL STIPULATIONS AND HERE'S A COPY.

THE COURT: GOOD.

MS. GOLDING: I DIDN'T KNOW IF YOU WANTED TO MARK THAT AS A COURT

EXHIBIT.

THE COURT: LET'S DO THAT. THANK YOU.

COURT'S EXHIBITS 1

MARKED FOR IDENTIFICATION AND ADMITTED INTO EVIDENCE

MS. GOLDING: YOUR HONOR, THIS IS A COPY OF OUR PRE-TRIAL ---

THE COURT: GOOD, THANK YOU.

MR. MILLER: ALSO, YOUR HONOR, WE HAVE BEEN MEETING IN THE LAST WEEK TO IDENTIFY DOCUMENTARY EVIDENCE THAT COULD BE PRE-ADMITTED.

THE COURT: ALL RIGHT.

MR. MILLER: AND ORDINARILY WHEN I DO THAT I USE THE FORMAT OF HAVING EACH READ IN FOR THE BENEFIT OF THE COURT REPORTER WHAT THEY ARE AND THE EXHIBIT NUMBERS SO THAT HER LIST WILL BE THERE AS WE COME UP IN TRIAL AND JUST HAND THEM UP AS PRE-ADMITTED, IF THAT'S THE WAY YOU'D LIKE TO DO IT.

THE COURT: THAT'S FINE.

MR. MILLER: HOWEVER YOU WANT TO DO IT?
THE COURT: IF THEY HAVE BEEN PRE-ADMITTED, THEN THAT'S ALL WE NEED TO DO. THEY ARE IN EVIDENCE AS SOON AS YOU ALL OFFER THEM IN THAT REGARD.
MR. MILLER: OKAY.
THE COURT: ALL RIGHT, MR. SHELTON.
MR. SHELTON: YOUR HONOR, IF IT'S OKAY WITH YOU, I'M GOING TO GO AHEAD AND TELL YOU THE FEW THAT THE PLAINTIFFS HAVE ALREADY PRE-ADMITTED SO THAT IT'S CLEAR IN THE RECORD.
THE COURT: OKAY.
MR. SHELTON: WE'VE ADMITTED A DEED FROM DEED BOOK 488, AT PAGE 824 WHICH WAS A DEED FROM DEERFIELD PLANTATION INCORPORATED TO THE PLAINTIFFS, CARL AND JERRY CLEMMONS, FOR THEIR LOT AS PLAINTIFF'S EXHIBIT 3. WE PRE-ADMITTED A DOCUMENT

WE'RE REFERRING TO AS A SINGLE FAMILY RESIDENTIAL PROPERTY REPORT AS PLAINTIFF'S EXHIBIT 4. WE PRE-ADMITTED THE CONTRACT OF SALE FOR THE LOT THAT THE CLEMMONS PURCHASED FROM DEERFIELD PLANTATION INCORPORATED AS PLAINTIFF'S EXHIBIT 5. WE PRE-ADMITTED THE PLAT THAT'S ON THE EASEL BEFORE YOUR HONOR THAT IS RECORDED IN HORRY COUNTY PLAT BOOK 54, AT PAGE 124 AS PLAINTIFF'S EXHIBIT 6. AND WE HAVE PRE-ADMITTED THE DEED FOUND AT DEED BOOK 485, PAGE 361 TRANSFERRING THE LOT THAT THE HILLS PURCHASED FROM DEERFIELD PLANTATION INCORPORATED AS PLAINTIFF'S EXHIBIT 7. AND THOSE ARE OFFERED IN EVIDENCE.

THE COURT: IN EVIDENCE, I ASSUME,

WITHOUT OBJECTION?

MR. SHELTON: YES, YOUR HONOR.

THE COURT: THANK YOU.

MS. BAILEY: YOUR HONOR, THE DEFENDANTS DEERTRACK INVESTORS LLC HAVE PRE-MARKED AND ADMITTED EXHIBIT 1 WHICH IS A CHART, AND ATTACHED TO THAT IS EXHIBIT 1A, OCTOBER 13, 1972 DEED RECORDED IN BOOK 478, PAGE 654; 1B, A NOVEMBER 14TH, 1972 PLAT RECORDED IN BOOK 54, 124; 1C IS THE DECLARATIONS RECORDED IN BOOK 1514, PAGE 154; 1D IS THE DEERFIELD PLANTATION PROPERTY REPORT; 1E IS THE FEBRUARY 2ND, 1973 DEED RECORDED IN BOOK 485, PAGE 361; 1F IS THE APRIL 4, 1973 DEED RECORDED IN BOOK 488, PAGE 824; 1G IS THE JUNE 20TH, 1978 DEED RECORDED IN BOOK 614, PAGE 112; 1H IS THE JUNE 6TH,

1978 DEED RECORDED IN BOOK 612, PAGE 792; 1I IS THE JUNE 5TH, 1980 DEED RECORDED IN BOOK 701, PAGE 751; 1J IS THE MARCH 24TH, 2006 AFFIDAVIT OF MERGER RECORDED IN BOOK 3069, PAGE 424; 1K IS THE MARCH 24TH, 2006 SPECIAL WARRANTY DEED RECORDED IN BOOK 3069, PAGE 425; 1L IS THE MARCH 26TH, 2006 DEED RECORDED IN BOOK 3069, PAGE 431. DEFENDANTS EXHIBIT NUMBER 2 IS A MARCH 24TH, 2006 MORTGAGE AND SECURITY AGREEMENT RECORDED IN BOOK 4462, PAGE 766.

THE COURT: GIVE ME THAT NUMBER AGAIN, PLEASE?

MS. BAILEY: BOOK 4462, PAGE 766.

THE COURT: THANK YOU.

MS. BAILEY: DEFENDANT DEERTRACK INVESTORS LLC EXHIBIT NUMBER 3 IS A CONCEPTUAL PLAN OF DEERTRACK

INVESTORS. YOUR HONOR, THOSE ARE THE PRE-ADMITTED AND PRE-MARKED EXHIBITS FOR DEFENDANT DEERTRACK INVESTORS.

THE COURT: THANK YOU, MS. BAILEY.

MR. SHELTON: AND YOUR HONOR, IF IT WOULD PLEASE THE COURT, I WOULD LIKE TO INTRODUCE THE PEOPLE WHO ARE SEATED WITH US TODAY.

THE COURT: ALL RIGHT.

MR. SHELTON: I AM SEATED WITH MY PARTNER, DAVID MILLER; AND BEHIND ME ARE THE NAMED PLAINTIFFS, CARL AND JERRY CLEMMONS AND BETTY AND DALE HILL.

THE COURT: ALL RIGHT.

MR. SHELTON: AND SEATED BEHIND THEM ARE VARIOUS INTERESTED PROPERTY OWNERS FROM DEERFIELD PLANTATION.

THE COURT: OKAY. I HAVE MET MR. AND MS. CLEMMONS AND MR. AND

MR. SHELTON: THANK YOU.

THE COURT: ALL RIGHT, MR. SHELTON?

MR. SHELTON: THANK YOU, YOUR HONOR. I'D LIKE TO CALL THE PLAINTIFF, GERALDINE CLEMMONS, TO THE STAND.

THE COURT: MS. CLEMMONS, COME FORWARD PLEASE, MA'AM AND BE SWORN. IF YOU'LL COME RIGHT AROUND HERE.

MS. CLEMMONS: (COMPLIES WITH REQUEST.)

GERALDINE CLEMMONS, HAVING BEEN CALLED TO THE STAND AND DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. SHELTON:

Q: Good morning, Ms. Clemmons?

A: Good morning.

Q: Ms. Clemmons, will you tell us where you live?

A: I live at 1620 Crooked Pine Drive in Deerfield Plantation.

Q: How long have you lived there, Ms. Clemmons?

A: I've lived there 36 years, close to it; 34 years, I'm sorry.

Q: Where did you live prior to that?

A: I lived on 1800 North Oak in Myrtle Beach.

Q: How long did you live there?
A: I lived there about 13 years.
Q: How did you come to move from Oak Street to Deerfield Plantation?
A: I -- Betty Hill, of course, I've told you before is a very good friend, and Betty had been looking at this big tract of land that was going to be developed into a golfing community, and she had talked with the owners and had presented ---
MS. GOLDING: YOUR HONOR, I'M GOING TO OBJECT IF SHE'S GOING TO OFFER ANY EVIDENCE OR ANY TESTIMONY RELATING TO MS. HILL'S CONVERSATIONS WITH ANY THIRD PARTIES. I THINK THAT WOULD BE VIOLATING THE HEARSAY RULE.
THE COURT: IT WOULD, AND I'LL SUSTAIN THAT. I'M ASSUME THAT YOU'RE NOT GOING TO INQUIRE OF HER AS TO EXACTLY WHAT SOMEONE ELSE MAY HAVE TOLD MS. HILL IN THAT REGARD?
MR. SHELTON: NO, NO, YOUR HONOR.
THE COURT: THANK YOU.

Q: Now, you were speaking to Ms. Hill?
A: Right.
Q: Did Ms. Hill tell you that she was interested?
MR. SHELTON: I DON'T MEAN TO LEAD THE WITNESS.
THE COURT: THAT'S FINE, THAT'S NOT HEARSAY.
Q: Had Ms. Hill indicated an interest in Deerfield Plantation, the community?
A: Yes, she had.
Q: What happened next in your interest of the community?
A: Well, we got interested also, and it sounded like a development that I would want to live in and this was going to be our permanent home, and so we just went, started out of town one day and we stopped at the little sales office they had at the front entrance to Deerfield and picked up some brochures and looked at those.
Q: I don't mean to interrupt you, but let me hand you what has been identified as Plaintiff's Exhibit 1 that's been marked for identification. Are you familiar with that document?
A: I am very familiar with this document.
Q: When was the first time you saw that document?

A: This is one of the documents that we got when we visited the sales office that day.
Q: Let me show you what has been marked for identification as Plaintiff's Exhibit 2. Are you familiar with that document?
A: Yes.
Q: What is that document?
A: That is the planned community showing the golf course and where the homes were to be built.
Q: When was the first time you saw that document?
A: I think I saw this that same day, but I also know that it is in this booklet in the beginning.
Q: Okay.
A: It's not a color copy in this copy that we have here though.
MR. SHELTON: YOUR HONOR, I WOULD OFFER THESE TWO DOCUMENTS INTO EVIDENCE AT THIS TIME.
THE COURT: MS. GOLDING?
MS. GOLDING: YES, SIR, I WOULD LIKE TO MAKE AN OBJECTION. MAY I SEE BOTH OF THOSE DOCUMENTS PLEASE?
MS. CLEMMONS: (COMPLIES WITH REQUEST.)
MS. GOLDING: THANK YOU, MA'AM. YOUR

HONOR, WITH RESPECT TO EXHIBIT NUMBER 1, FIRST OF ALL, I HAVE CONCERNS AS TO THIS DOCUMENT BEING THE COMPLETE DOCUMENT. THE DOCUMENT, EXHIBIT NUMBER 1, THAT WAS UTILIZED DURING THE COURSE OF THE DEPOSITION CONTAINED SOME ADDITIONAL PAGES, AND THIS MORNING I ASKED IF THE ORIGINAL WAS HERE, AND I DON'T HAVE THE ORIGINAL HERE.

WITH RESPECT, ALSO EXHIBIT NUMBER 1 VIOLATES THE PAROLE EVIDENCE RULE, THE STATUTE OF FRAUDS AND IS ALSO HEARSAY. PRIMARILY WITH RESPECT TO HEARSAY, I ASSUME THAT THEY'RE GOING TO CONTEND THAT THIS WAS PUBLISHED BY DEERFIELD PLANTATION, INC. WHICH IS DEERFIELD PLANTATION NUMBER

ONE. THAT ENTITY IS NOT A PARTY TO THIS LAWSUIT, YOUR HONOR; AND THEREFORE, ANYTHING THAT THEY HAVE DONE WOULD NOT BE ADMISSIBLE IN THIS AS WELL.

FURTHERMORE, ANYTHING WITH RESPECT TO EXHIBIT NUMBER 1, YOU HONOR, THEY WERE REPLACED WITH RESPECT TO THE DECLARATIONS AND RECORDED DOCUMENTS, AND EXHIBIT NUMBER 1 CANNOT BE UTILIZED TO VARY OR IN ANY WAY CHANGE THE TERMS OF THE RECORDED DOCUMENTS AS BEING VIOLATIVE OF THE PAROLE, AS BEING VIOLATIVE OF THE STATUTE OF FRAUD, YOUR HONOR. OF COURSE, THAT WOULD BE OUR THIRD PRIMARY BASIS.

THE COURT: ALL RIGHT.

MS. GOLDING: THE SAME WOULD BE TRUE FOR EXHIBIT NUMBER 2, YOUR

HONOR. THE WITNESS JUST TESTIFIED THAT THIS WAS PART OF EXHIBIT NUMBER 1. HOWEVER, EXHIBIT NUMBER 1 DOES NOT CONTAIN IT, SO THAT'S ANOTHER REASON. I DO NOT BELIEVE THAT THE BROCHURE IN THE BEGINNING THAT IS BEING PRESENTED TO THE COURT IS ACTUALLY THE BROCHURE THAT WAS UTILIZED DURING THE COURSE OF THE DISCOVERY.

AND WITH RESPECT TO EXHIBIT NUMBER 1 AGAIN, YOUR HONOR, THIS IS HEARSAY. IT APPARENTLY WAS PRINTED BY DEERFIELD PLANTATION NUMBER ONE, WHICH IS NOT A PARTY TO THE LAWSUIT; AND ADDITIONALLY, IT WOULD BE VIOLATIVE OF THE PAROLE EVIDENCE RULE AND THE STATUE OF FRAUD, YOUR HONOR.

THE COURT: ALL RIGHT, MR. SHELTON?

MR. SHELTON: YOUR HONOR, JUST TO CLARIFY A COUPLE OF THE POINTS MS. GOLDING MADE. THE FIRST BEING THAT MS. GOLDING THOUGHT THAT AT THE DEPOSITION THERE WERE ADDITIONAL PAGES TO EXHIBIT 1. THERE WERE NOT ADDITIONAL PAGES TO EXHIBIT 1. EXHIBIT 1 WAS IN OUR COMPLAINT IN ITS ENTIRETY AS EXHIBIT L. MS. GOLDING, AT THE DEPOSITION, ALSO EXAMINED ON THE BASIS OF EXHIBIT H TO THE INITIAL COMPLAINT, WHICH IS A DOCUMENT CALLED "ALONG THE COAST," AND WHICH WAS PUBLISHED SOME TIME LATER AS IT SHOWS ON THE SECOND PAGE OF THAT DOCUMENT, THE HOUSE THAT WOULD HAVE EVENTUALLY BEEN BUILT BY THE PLAINTIFFS HILL. THAT

WAS NOT A PART OF THE DOCUMENT THAT IS EXHIBIT 1.

SECONDLY, MS. GOLDING STATED THAT EXHIBIT 2 IS NOT INCLUDED IN EXHIBIT 1; BUT IF YOUR HONOR WILL TURN TO THE PAGE WHERE DR. PLATT IS EXPLAINING THE FAMILY TRADITION, HE'S CLEARLY STANDING NEXT TO THAT VERY MAP. THIS IS HALF OF THAT PAGE.

THE COURT: OKAY.

MR. SHELTON: SO IT IS CONTAINED WITHIN IT. AS TO ITS ADMISSIBILITY, YOUR HONOR, THIS IS GOING TO THE COMMON SCHEME OR PLAN OF DEVELOPMENT THAT THE PLAINTIFFS PURCHASED INTO. THIS IS WHAT -- AND MATERIALS LIKE IT, THE RECORDED DOCUMENTS THAT EVIDENCES IT, SUCH AS THE PRE-ADMITTED RECORDED PLAT

THAT IS AT 54, AT 124 AND WAS THE SAME PLAT THAT WAS REFERENCED UNTIL THE VERY LAST LOT WAS SOLD BY THE SUCCESSOR CORPORATION, WHICH MS. GOLDING REFERS TO AS THE SECOND DEERFIELD PLANTATION. 54 AT 124 IS MORE OF THE SAME COMMON SCHEME OR PLAN OF DEVELOPMENT EVIDENCE. EXHIBIT 1 AND 2 MERELY GO TO SHOW WHAT THE PLAINTIFFS BELIEVED WHEN THEY WERE PURCHASING THEIR LOTS INSIDE DEERFIELD PLANTATION.

THE COURT: HOW DO YOU DEAL WITH THE STATUTE OF FRAUDS OBJECTION; THAT THE RECORDED DOCUMENTS CANNOT BE ALTERED OR AS AN ADDITIONAL HEARSAY OBJECTION AS WELL, THAT THE RECORDED DOCUMENTS CAN'T BE

ALTERED BY THESE DOCUMENTS AND THE FACT THAT, AS YOU SAY, THAT THEY WERE NOT GIVEN BY A PARTY TO THIS ACTION?

MR. SHELTON: YOUR HONOR, I BELIEVE THAT THIS IS CONSISTENT WITH THE RECORDED DOCUMENTS. IT'S NOT ALTERING THE RECORDED DOCUMENT.

THE COURT: ALL RIGHT.

MR. SHELTON: SECONDLY, ALL OF THE CASE LAW ON THESE ISSUES LOOKS TO THE MARKETING MATERIALS AND TRYING TO ASCERTAIN WHAT THE COMMON PLAN OR SCHEME OF DEVELOPMENT WAS. MARKETING MATERIALS ARE PART OF THE METHOD OF EXERCISING THE COMMON PLAN AND SCHEME. AND IN THE TESTIMONY OF HAROLD PEARCE WHO AT ONE POINT WAS THE PRESIDENT OF DEERFIELD PLANTATION INCORPORATED IN

TESTIMONY EXCERPTS THAT MS. GOLDING HAS SUBMITTED TO THE COURT -- HAS SUBMITTED TO ME, I DON'T KNOW IF HE'S SUBMITTED THEM TO THE COURT.

MS. GOLDING: WE HAVEN'T PRESENTED OUR CASE YET, YOUR HONOR.

THE COURT: NO, I HAVEN'T SEEN IT. ALL RIGHT, GO AHEAD.

MR. SHELTON: MR. PEARCE CLEARLY ILLUSTRATED THAT THEY DID INDEED MARKET THE PROPERTY IN THIS SAME WAY ONCE THEY TOOK OVER. THESE ARE DOCUMENTS GIVEN TO THEM INDUCING THEM TO PURCHASE THEIR LOTS.

MS. GOLDING: YOUR HONOR, THE DOCUMENTATION IS NOT SIMILAR IN ONE VERY IMPORTANT FACTOR. THIS PLAT, WHICH IS RECORDED, CONTAINS A DISCLAIMER OF NO DEDICATION. THE

DECLARATION OF RESTRICTIONS ALSO REFERENCES THAT DISCLAIMER OF NO DEDICATION. THE PROPERTY REPORT, WHICH IS ALREADY SUBMITTED TO THE COURT, SETS FORTH IN THE PROPERTY REPORT THAT THERE IS NO GUARANTEE AS TO THE USE OR MAINTENANCE OR OPERATION OF THE GOLF COURSE, THE POOLS OR THE COMMUNITY HOUSE. SO THOSE IN AND OF ITSELF, YOUR HONOR, ARE SET FORTH THAT THESE DOCUMENTS, EXHIBITS 1 AND 2 ARE TRYING TO VARY WHAT IS ALREADY IN EVIDENCE, YOUR HONOR.

MR. SHELTON: YOUR HONOR, EXHIBIT 2, AND I WOULD ASK MS. GOLDING TO TAKE A CLOSER EXAMINATION, DOES INDEED HAVE THE DISCLAIMER ON IT. IT IS ON THE FACE OF -- I'M SORRY, EXHIBIT 2, YES. IT'S ON

THE FACE OF EXHIBIT 2 AS OFFERED BEFORE THE COURT.

MS. GOLDING: THEN I'LL WITHDRAW. I DIDN'T SEE THAT IN THE DOCUMENT, EXHIBIT 2. WITH THE PREMISE THAT IT DOES NOT HAVE THE DISCLAIMER, YOUR HONOR, I WOULD WITHDRAW THAT.

MR. SHELTON: IT'S CONSISTENT WITH THE RECORDED DOCUMENT. IT DOESN'T ALTER THE RECORDED DOCUMENT. ALL WE ARE OFFERING THIS TO SHOW IS THAT THE PLAINTIFF, WHO IS ON THE WITNESS STAND, WAS IN POSSESSION OF MATERIALS EVIDENCING WHAT SHE WAS ABOUT TO DECIDE WHETHER OR NOT TO PURCHASE, YOUR HONOR.

THE COURT: RIGHT. I WILL ALLOW THAT INTO EVIDENCE OVER OBJECTION OF DEFENSE COUNSEL. THE DOCUMENT

SEEMS TO BE COMPLETE IN THE FIRST INSTANCE, IT CONTAINS THE DISCLAIMERS WHICH I UNDERSTAND ARE CRITICAL TO THE DEFENSE OF THIS PARTICULAR CASE; AND IN ADDITION AS TO THE HEARSAY, THE FACT THAT THE ISSUING PARTIES WERE NOT PARTIES TO THIS LAWSUIT IT IS BEING OFFERED TO SHOW THE PLAINTIFF'S RELIANCE ON IT AND THE PLAINTIFF'S ACTION RATHER THAN THE TRUTH OF THE MATTER ASSERTED. SO AS FAR AS THAT'S CONCERNED I'LL ALLOW IT ON, OKAY?

MR. SHELTON: THANK YOU, YOUR HONOR.

MR. SHELTON CONTINUES:

Q: Ms. Clemmons, when you received Exhibit 1 and 2 what did you do with them?

A: Oh, this stayed on my night table by my bed for a long, long time, and I just read it over and over.

THE COURT: WHICH ONE IS THAT, MS.

CLEMMONS?

A: "In the beginning. . . ."

MR. SHELTON: EXHIBIT 1, YOUR HONOR.

THE COURT: THANK YOU.

A: This was very important to me because this is what I was buying.

Q: Did that seem to support the image you had in your mind of what Betty Hill had told you Deerfield was going to be?

MS. GOLDING: YOUR HONOR, I WANT TO MAKE AN OBJECTION TO THE QUESTION. NUMBER ONE, HE'S LEADING, AND ALSO HE IS SOLICITING HIS QUESTIONS BASED UPON HEARSAY, YOUR HONOR.

THE COURT: HE CAN CERTAINLY ASK WHETHER OR NOT THAT CONFIRMS WHAT SHE'S BEEN TOLD EARLIER, WHATEVER IT WAS; AND AT THIS JUNCTURE I DON'T KNOW WHAT IT WAS, AND SO IT'S ONCE AGAIN SHOWING HER RELIANCE ON THE STATEMENT AND NOT OFFERED

FOR THE TRUTH OF THE MATTER THAT WAS GIVEN TO HER BY MS. HILL.

Q: Ms. Hill, is here in the court room with us today; is she not?

A: Yes, she is.

Q: You told us a moment ago that she had told you about this golf course community and you got excited?

MS. GOLDING: YOUR HONOR, I'M GOING TO MAKE AN OBJECTION TO THE ATTORNEY LEADING THE WITNESS.

THE COURT: I'LL SUSTAIN THE OBJECTION AS TO THE LAST QUESTION, IT WAS LEADING.

Q: When you reviewed the document that is Exhibit 1, "In the beginning . . .," ---

A: Uh-huh (affirmative response).

Q: --- did that illustrate to you any particular type of community?

A: It definitely did. This talk of the golfing community, the southern way of life, a dream come true, and this is indeed what it was to me.

Q: How did you eventually come to decide to purchase

then?
A: Well, upon the materials that I had received, the brochures, everything I had seen and studied and followed up on, it was exactly what I wanted. As I said, this was to be our, our home. We were not planning to build another one.
Q: Who chose the lot you would live on?
A: Who chose the lot?
Q: Yes, ma'am.
A: My husband and I.
Q: How much did your lot cost?
A: 13,200.
Q: Where were you living at that time?
A: At that time we had, Sloan Realty Company had shown an interest in leasing our property on Oak Street as an office, and we were operating a motel, and so we leased our home and moved into the motel, and that was the Clementine Motel at 700 Chester Street in Myrtle Beach.
Q: When you decided to purchase your lot within Deerfield Plantation Incorporated, did you consider the cost of the lot to be more than normal?
A: We definitely did. We talked about it and read our brochures. We thought there is no way we

could ever afford this, but as we checked into it and did further study we found that we possibly could and we did.

Q: When you decided to purchase your lot, let me show you a document that has been already admitted into evidence as Plaintiff's Exhibit 5. Do you recognize that document?

A: Yes, I think I ---

Q: What does that appear to be?

A: Pardon me?

Q: What document is that?

A: This one is the purchase agreement.

Q: Where did you go to sign that agreement? Did you sign that agreement?

A: Yes.

Q: Do you recall where you were when you signed it?

A: Not really.

Q: Okay.

A: I don't recall the exact office.

Q: I'm going to hand you two more documents that have already been admitted. These are Plaintiff's Exhibits 3 and 4. What is Plaintiff's Exhibit 3?

A: Okay, this is our deed to the property.

Q: Is that the lot that you bought in Deerfield

Plantation?
A: Yes.
Q: Do you recall where you were when you signed that deed? I'm sorry, when you received that deed.
A: I'm sure it was in Mr. Singleton's office.
Q: Which Mr. Singleton are you referring to?
A: To Grant Singleton's.
Q: What purpose would you go to his office?
A: He was the attorney that was ---
Q: That was performing a closing of the property?
A: Uh-huh (affirmative response), yes.
Q: Did you bring an attorney with you?
A: No, we didn't, didn't think we needed one.
Q: Look at the next document I handed you, if you would please. What did you understand that document to be?
A: This was ---
MS. GOLDING: IS THAT EXHIBIT NUMBER 4?
MR. SHELTON: I'M SORRY, IT'S EXHIBIT NUMBER 4.
A: This was the covenants and restrictions.
Q: Do you recall having received that document?
A: You know, I don't recall receiving it. I don't recall signing anything like this; but it was possibly given to us at, at closing. I'm not

sure.
Q: Do you recall when your closing was?
A: I'm not positive of the date, but it was in February.
Q: Of what year?
A: '73.
Q: When did you eventually move into your house in Deerfield Plantation?
A: In -- the day before Thanksgiving in 1975.
Q: Did Deerfield Plantation end up being what you had expected it to be?
A: It did. It met everything, all the brochures we had been given, it met all those qualifications.
Q: Were you satisfied with your purchase?
A: I was very happy with it for 30 odd years.
Q: With regard to living in Deerfield Plantation, do you understand whether you are permitted to do anything to stop golfers from coming onto your property to get their golf balls or anything of that sort?
A: Oh, no, we couldn't stop them. It was part of the golfing community. We understood that when we bought the property.
Q: Whose responsibility would it be if a window ever got broke by a golf ball?

A: Well, everybody took care of their own if it got broken, so I'm not sure really whose responsibility it was.
Q: Were you allowed to put up fences or any clotheslines or anything of that nature in your backyard?
A: No, no. That was one thing I really liked about the area; that we could not have those things.
Q: Was there any distinction between where your yard ended and the golf course began as you looked out your backyard?
A: None whatsoever.
Q: How far would you say you would have to look out your backyard before you would see another house?
A: Wow, in feet?
Q: As best as you can.
A: It's quite a distance. You could, you could see the roof-top, but there's a mound there too that would prevent that, but it's quite a distance. We're at one corner, and the house next to me is on the next corner, so it's like a block.
Q: Ms. Clemmons, if you would, please answer whatever questions Ms. Golding or Ms. Bailey may have for you.
THE COURT: MS. GOLDING?

MS. GOLDING: THANK YOU, YOUR HONOR.

CROSS EXAMINATION

BY MS. GOLDING:

Q: Good morning, Ms. Clemmons.

A: Good morning.

Q: Now, if the truth be known, Ms. Clemmons, the primary reason that you and your husband purchased a lot in Deerfield is because you and your husband were very good friends with the Hills; is that correct?

A: That is not the reason we purchased.

Q: The primary reason?

A: The primary ---

Q: They primary reason.

A: They are the ones that told us about the property, got us interested in it.

Q: Let me ask you one more time. Is it not a fact that the primary reason you and your husband purchased a lot in Deerfield is because the Hills were going to be living in Deerfield?

A: No. That is not the primary reason.

MS. GOLDING: THE ORIGINAL DEPOSITION, YOUR HONOR, WAS ALREADY SUBMITTED TO THE COURT WHEN JUDGE HYMAN INITIALLY HEARD

RIGHT-HAND CORNER, GENERALLY, AND TO A LINE NUMBER ALONG THE LEFT MARGIN TO REFER TO.

MS. CLEMMONS: OKAY.

MS. GOLDING CONTINUES:

Q: I'll ask you to turn to page nine in your deposition.

MS. GOLDING: AND JUST FOR THE COURT'S EDIFICATION, YOUR HONOR, MS. CLEMMONS' DEPOSITION WAS TAKEN ON FEBRUARY 18TH, 2008.

THE COURT: THANK YOU.

Q: Page nine, have you received page nine?

A: Yes.

Q: I'm going to ask you to look at line 11.

A: Okay.

Q: Well, let's start -- I'm going to ask you to start with line two. I'm going to read the question, and then I want you to read the answer, okay?

A: Okay.

Q: Question: "How did it come about that you had an interest in buying a lot in Deerfield

Plantation?"

A: "Well, as you've already heard today, Betty and I have always been not only cousins but very best of friends, and when they had investigated the area and kept telling me how wonderful it was and on the golf course and 'let's get in on the ground floor,' so that's really where my interest was sparked."

Q: Question: "So it would be fair to state that the primary reason that you had an interest in Deerfield was because Betty Hill would be moving there?" Read your answer.

A: "Really."

Q: Are you going to take the position today that you incorrectly answered that question?

A: She is the one that ---

Q: My question is, are you taking the position ---

MR. SHELTON: YOUR HONOR, ---

Q: --- today that you incorrectly ---

MR. SHELTON: --- SHE NEEDS TO LET THE WITNESS ---

Q: --- answered the deposition?

MR. SHELTON: --- FULLY RESPOND.

THE COURT: WAIT JUST A SECOND, WAIT JUST ONE SECOND. I'M NOT

SURE THAT THE ANSWER WAS RESPONSIVE, BUT I'LL ALLOW HER TO RESTATE THE QUESTION AND MS. CLEMMONS CAN EXPLAIN HER ANSWER AFTER SHE GIVES IT TO HER.

MR. SHELTON: THANK YOU, YOUR HONOR.

Q: Ms. Clemmons, I'm asking you a question, and your obligation is to answer that question. But once you answer the question, you can explain.

A: Okay.

Q: But you do you have that obligation to answer the question first. So my question is, Ms. Clemmons, are you today taking the position that your answer in your deposition was incorrect?

A: I am not saying it was incorrect.

Q: Okay.

THE COURT: YOU CAN EXPLAIN THAT IF YOU WOULD LIKE TO, MS. CLEMMONS, IF YOU NEED TO.

A: My interest in the property was inspired from Betty Hill. That is not the only reason that I bought there. They are very, very good friends, and we love being in their neighborhood; but what really sparked my interest was all of the sales

material that we had gotten said it was the exact community that we had dreamed about and wanted to live in.

Q: With respect to the sales information, you're referring to Plaintiff's Exhibits 1 and 2; is that correct?

A: That is the brochure, yes, 1 and 2.

Q: Now, isn't it a fact that you do not recall if you received that brochure before or after you purchased your lot?

A: I am almost positive that we got that brochure the first time we visited the sales office which was before we purchased the lot.

Q: I want to ask you to go to your deposition again, and I want you to turn to page 10, and I'm going to show you also in your deposition what was marked as Exhibit Number 42. I'm handing you a document.

MS. GOLDING: I'D LIKE TO GO AHEAD AND GET THIS MARKED AS AN EXHIBIT. THIS WILL BE DEFENDANT'S EXHIBIT NUMBER 4.

DEFENDANT'S EXHIBIT NUMBER 4
MARKED FOR IDENTIFICATION

Q: I'm handing you a document that I've marked as Defendant's Exhibit Number 4, and this was Exhibit 42 in your deposition.
A: Uh-huh (affirmative response).
MS. GOLDING: I WOULD LIKE TO INTRODUCE DEFENDANT'S EXHIBIT NUMBER 4.
MR. SHELTON: I WOULD LIKE TO HAVE THE OPPORTUNITY TO LOOK AT IT, IF IT'S OKAY WITH YOU.
THE COURT: THAT'S FINE.
MR. SHELTON: YOUR HONOR, MS. GOLDING HAS TAKEN PLAINTIFF'S -- I WOULD OBJECT TO THIS BEING PERMITTED INTO EVIDENCE, YOUR HONOR, BECAUSE MS. GOLDING HAS TAKEN A DOCUMENT THAT YOUR HONOR HAS ALREADY RULED APPEARS COMPLETE AND IT'S IN EVIDENCE AS PLAINTIFF'S EXHIBIT 1 AND SHE HAS STAPLED TO IT A MUCH LATER DOCUMENT THAT HAS A PICTURE OF THE HILLS' HOUSE SHOWN

CERTAINLY IT'S ENTITLED TO BE ADMITTED.

DEFENDANT'S EXHIBIT NUMBER 4

ADMITTED INTO EVIDENCE

Q: Ms. Clemmons, I'm giving you what's marked as Defendant's Exhibit Number 4, which was your Deposition Exhibit 42. Now on page 10 of your deposition I asked you a question on line eight. I said, "So you believe that you received Exhibit 42 before you bought Lot 365?" And what was your answer?

A: "To the best of my memory we did."

Q: So you are not sure when you received Exhibit 42, are you?

A: I can't say 100 percent sure, but I'm 99 percent sure.

Q: Now you indicated earlier that you and your husband signed a purchase agreement; is that correct?

A: Yes.

Q: And that purchase agreement is marked as Plaintiff's Exhibit Number 5. Can I ask you to take a look at Exhibit Number 5?

MS. GOLDING: EXCUSE ME, YOUR HONOR, I'M GOING TO SEE IF WE CAN

SUBSTITUTE TO GET A LARGER COPY OF EXHIBIT 5 SINCE THE PLAINTIFFS HAVE REDUCED THE ACTUAL SIZE OF THE DOCUMENT.

THE COURT: OKAY.

MS. GOLDING: I WOULD ASK THAT WE SUBSTITUTE THE ORIGINAL SIZE.

THE COURT: ANY OBJECTION?

MR. SHELTON: NO OBJECTION, YOUR HONOR.

THE COURT: SAME THING, JUST A LARGER COPY?

MS. GOLDING: YES, SIR.

THE COURT: ALL RIGHT. I WILL NEVER DENY THE ADMISSIBILITY OF A LARGER PRINT ADDITION OF ANYTHING UNLESS IT'S NOT ACCURATE.

MS. GOLDING: WOULD THE COURT LIKE ME TO HAVE IT MARKED AS ANOTHER EXHIBIT?

THE COURT: I THINK SINCE IT'S THE SAME THING, WE CAN JUST MARK IT AS AN "A" OR A "B" TO THE

OTHER.

MS. GOLDING: OKAY. PLAINTIFF'S EXHIBIT 5B.

PLAINTIFF'S EXHIBIT NUMBER 5B
ADMITTED INTO EVIDENCE

Q: Let me give you what's marked as Plaintiff's Exhibit 5B, which is identical to Plaintiff's Exhibit 5. Now, you testified on direct examination that Exhibit 5 is the purchase agreement that you and your husband signed; is that correct?

A: That's correct.

Q: And your signature is on the second page of Exhibit Number 5; is that correct?

A: Yes, ma'am.

Q: Now, on the first page of Exhibit Number 5 it states at the top that you and your husband put down a down payment of $2,640 at the time you signed this purchase agreement; is that correct?

A: To the best of my memory, yes. That's what it says.

Q: Turn to the second page, please, and I'll ask you to look at paragraph 11 of the second page.

A: Yes, ma'am.

Q: Paragraph 11 of the second page starts out you

acknowledging that you received a copy of the conditions, reservations, covenants and restrictions applicable to the property recorded in Deed Book 481, Page 305; is that correct?

A: Well, I must have.

Q: I mean that's what it states; is that correct?

A: That's what it says, right.

Q: Then further on in paragraph 11, and I'll show you where I have mine highlighted, this (indicating).

A: Okay, what does it start with "Purchaser" underneath?

Q: It states, and I'm going to read this for the court, "Purchasers also acknowledge receipt and retention of copies of the articles of incorporation or charter and bylaws of Deerfield Plantation Property Owners Association, Inc. and of the privileges and obligation agreement between the seller and Deerfield Plantation Owners Association, Inc.;" is that correct?

A: Yes, ma'am.

Q: Did you maintain a copy of the privileges and obligation agreement?

A: I'm not sure. What does that look like?

Q: Let me refer you now to Plaintiff's Exhibit

Number 4?
A: Okay.
Q: Take a look at Plaintiff's Exhibit Number 4. Now, Plaintiff's Exhibit Number 4 is a package; is that correct?
A: I would call it that.
Q: A package that you and your husband received when you signed the contract of sale; is that not correct?
A: We possibly did receive this at closing, but I don't think I have signed anything like this.
Q: Well, when you signed the purchase agreement, Exhibit Number 5, ---
A: Uh-huh (affirmative response).
Q: --- you obtained a copy of this purchase agreement, did you not?
A: Yeah.
Q: Where is that copy you obtained today?
A: It's in my file.
Q: Where; at your home?
A: It's in our lockbox.
Q: At your lockbox, and the Exhibit Number 5 that you and your husband signed, it was in this legal size form; is that correct?
A: Yes, ma'am.

Q: So it wasn't in the condensed form, in the shortened version as the original exhibit that your attorney has offered into court today, was it?
A: No, ma'am.
Q: And this original sized purchase agreement that you signed, when your deposition was taken you had not provided this document to anyone, had you?
A: I don't remember.
Q: Well, this document, Exhibit Number 5, the purchase agreement, that's an important document, don't you agree?
A: I do agree.
Q: And Exhibit Number 5, the purchase agreement, has attached to it a copy of the deed; is that correct?
A: Yes, ma'am.
Q: Now with respect going to the Exhibit Number 4 that you have in front of you, the single family residential property package, ---
A: Uh-huh (affirmative response).
Q: --- the first item in this Exhibit Number 4 is a property report; is that correct?
A: Yes, ma'am.

Q: And in this property report I want you to turn to page number 7?
A: Page 7, okay. All right.
Q: Have you got page 7?
A: I do.
Q: And page 7, in bold print, has "B, If facilities are proposed or partly completed, state promised completion date, provisions to assure completion, and all estimated costs or assessments to buyer or lessee." Is that correct?
A: Yes, ma'am.
Q: And in that "B" I want you to read out loud to The Court the very last paragraph under "B."
A: The last one under "B"?
Q: Yes, ma'am.
A: "The developer will have no obligation or commitment to maintain clubhouse, swimming pool, tennis courts or golf course for any period of time and no purchaser or lessee of property shall be automatically entitled to membership in or use of said facilities by virtue of acquiring an interest in real property in the development."
Q: Did you have this by your bedside reading it along with the brochure that you said you had?
A: No, ma'am.

Q: Let's turn to page 11 in Exhibit Number 4 and read item number 22 to The Court. Number 22 starts "Does developer own golf course property and facilities to referred herein?"
A: "No, Developer, Deerfield Plantation, Inc. does not own the golf course and facilities related thereto, but holds a leasehold from the owner, a major stockholder of Deerfield Plantation, Inc. for a period of 10 years."
Q: When you and your husband signed the purchase agreement, the seller of the property was Deerfield Plantation, Inc.; is that correct? The seller of your lot was Deerfield Plantation, Inc.?
A: Yes. We were doing business with the Platts, so the Platts was Deerfield Plantation, Inc.
Q: Well, Ms. Clemmons, if truth be known, you didn't meet the Platts till after you moved into your house; is that right?
A: I did say that.
Q: In your deposition that's what you testified?
A: I did.
Q: Isn't that right?
A: I did testify to that.
Q: So as a legal matter under your purchase

agreement, the owner of your lot that you bought your lot from was Deerfield Plantation, Inc.; is that correct?

A: That's what it says, right.

Q: I'm sorry?

A: Yes, that's what it says.

Q: And in fact, that's the grantor under your deed, Deerfield Plantation, Inc.?

A: Uh-huh (affirmative response).

Q: Is that correct?

A: Yes.

Q: And Deerfield Plantation, Inc., the grantor under your deed and the seller on this purchase agreement, never owned the property on which the gold course is constructed, did it?

MR. SHELTON: YOUR HONOR, ---

A: I can't answer ---

MR. SHELTON: --- I WOULD OBJECT TO ---

THE COURT: EXCUSE ME, JUST ONE MINUTE, MS. CLEMMONS. I'M SORRY; THERE'S AN OBJECTION. YES, SIR, MR. SHELTON?

MR. SHELTON: I WOULD OBJECT TO THE EXTENT THAT THAT SEEKS A LEGAL CONCLUSION AND THAT

IT IS CONTRARY TO A STIPULATION IN THE RECORD THAT DEERFIELD PLANTATION, INC., ANOTHER ENTITY, DID OWN BOTH THE GOLF COURSE AND THE LOT.

MS. GOLDING: I'M REFERRING TO THE PURCHASER, YOUR HONOR, IN THIS PURCHASE AGREEMENT, AND THE GRANTOR IN HER DEED ---

THE COURT: RIGHT.

MS. GOLDING: --- WAS NEVER THE OWNER.

THE COURT: RIGHT. HOW DO YOU MAKE THAT DISTINCTION, MR. SHELTON?

MR. SHELTON: MS. GOLDING HAS REFERRED TO THEM AS DEERFIELD PLANTATION, INC. ONE AND DEERFIELD PLANTATION, INC. TWO. MY ONLY CONCERN IS THAT TO SAY THAT DEERFIELD PLANTATION, INC., AS THE QUESTION STATED, HAD NEVER OWNED BOTH THE GOLF COURSE

AND THE LOTS WOULD BE CONTRARY TO A STIPULATION ALREADY IN THE RECORD; BUT IT WOULD ALSO, IN MY OPINION, SEEK A LEGAL CONCLUSION OF A LAY WITNESS.

THE COURT: OKAY, WHETHER THEY SPRANG FROM A COMMON GRANTOR IS ANOTHER MATTER WHICH WOULD CERTAINLY BE OUT OF THE PURVIEW OF THIS WITNESS, I WOULD ASSUME. BUT NOW THE WITNESS DOES HAVE THE RIGHT TO LOOK AT HER DEED AND TO DETERMINE WHETHER OR NOT THE GRANTOR ON THE DEED IS THE SAME AS THE OWNER OF THE GOLF COURSE IF THE PROPERTY REPORT GIVES ANY GUIDANCE IN THAT REGARD. AND PARAGRAPH NUMBER 22 SEEMS TO SAY THAT DEERFIELD PLANTATION, INC. DOES NOT OWN THE GOLF COURSE AND THE

FACILITIES, BUT ---

MR. SHELTON: IT DOESN'T SAY THEY NEVER DID.

THE COURT: THAT'S RIGHT, AND I AGREE, AND I THINK THE "NEVER" PART IS BEYOND HER KNOWLEDGE, AND I'LL SUSTAIN THAT PART OF THE OBJECTION.

MR. SHELTON: THANK YOU.

MS. GOLDING: YOUR HONOR, I DO HAVE A RIGHT -- IF SHE SAYS SHE DOESN'T KNOW, I THINK THAT'S IMPORTANT.

THE COURT: RIGHT.

MS. GOLDING: AND I DO HAVE A RIGHT -- YOU KNOW, IF SHE DOESN'T KNOW WHO OWNED THE GOLF COURSE, I NEED TO HAVE THAT ESTABLISHED IN THE RECORD.

THE COURT: AT THE TIME OF THE PURCHASE, I AGREE.

MS. GOLDING: YES.

THE COURT: AND I THINK YOU'VE GOT A RIGHT TO PURSUE THAT.

MS. GOLDING: YES, THANK YOU, YOUR HONOR.

THE COURT: ALL RIGHT.
MS. GOLDING CONTINUES:
Q: Now, Ms. Clemmons, one more time. The corporation that you bought the lot from, the Deerfield Plantation that's in your deed as the grantor and that's the seller under your purchase agreement, ---
A: Uh-huh (affirmative response).
Q: --- was not the owner of the golf course at the time you bought your lot; is that not correct?
A: You're asking me if Deerfield Plantation owned the golf course as well as the lots; is that your question?
Q: I'm asking you, is it not a fact that the grantor under your deed and the seller in the purchase agreement was not the owner of the golf course when you purchased your lot in 1973?
A: How am I supposed to know that? I don't know.
Q: If you don't know, then you don't know.
A: I don't know. I took for granted that it belonged to Kate and Francis Platt.
Q: Okay.
A: I had a lot of confidence and trust in them.
Q: As a practical matter, nobody has ever told you that this golf course property could ever or

would ever be used forever and ever as a golf course; isn't that a fact?

A: Nobody ever told me that, but everything I had from the sales office indicated that it would remain a golf course.

Q: Show me one piece of writing, one document that says that property, that golf course property, will remain forever as a golf course?

A: I don't have anything in writing that says it will remain forever, but all indications ---

Q: Now go back to Plaintiff's Exhibit Number 4, and now I want to ask you to look at, turn to page 15 in Exhibit Number 4. Are you at page 15?

A: I am.

Q: Now, page 15 at the top says "Declaration and Establishment of Conditions, Reservations, Covenants and Restrictions for Deerfield Plantation Single Family Residential Subdivision." Is that correct?

A: Yes, ma'am.

Q: And at the very beginning it says, "Deerfield Plantation, Inc., a South Carolina corporation, being the owner of all of the following described premises," and then it has lots of land numbered one through 458; is that correct?

A: Uh-huh (affirmative response).
Q: Is that a yes?
A: Yes, ma'am.
Q: In fact, in that property description nowhere is it described "the golf course property," is it?
MR. SHELTON: YOUR HONOR, TO THE EXTENT THAT SEEKS SOME TITLE EXPERTISE OR LEGAL CONCLUSION, I WOULD OBJECT.
THE COURT: RIGHT. I'LL SUSTAIN THE OBJECTION UNLESS MS. CLEMMONS IS ABLE TO LOOK AT THAT AND UNDERSTAND IT. IF IT DOESN'T CONTAIN IT, THEN IT DOESN'T CONTAIN IT, AND I'LL BE ABLE TO DETERMINE THAT. AND I'M LOOKING -- I WANT TO MAKE SURE THAT I'VE GOT THE SAME DOCUMENT, MS. GOLDING. IS THAT DOCUMENT DATED OR SEEMS TO BE RECORDED NOVEMBER THE 29TH, 1972?
MS. GOLDING: YOUR HONOR, I'M REFERRING TO, IT'S A SINGLE FAMILY

you to turn to page 20, and on page 20 in paragraph 33 it says "The term 'Developer' wherever used herein shall mean Deerfield Plantation, Inc." Did I read that correctly?

A: Yes, ma'am.

Q: And at no time have you ever seen a document that says the developer of this subdivision was any other entity other than Deerfield Plantation, Inc.?

A: I don't know that.

Q: Can you point to one document that says that the developer is someone else or another entity other than Deerfield Plantation, Inc.?

A: No, ma'am.

Q: Next in Plaintiff's Exhibit Number 4, page 21, and page 21 is privilege and obligation agreement, the first page; is that correct?

A: Yes.

Q: And then page 22 is the privilege and obligation agreement; is that correct?

A: 23?

Q: 23, excuse me, starts the privilege and obligation agreement; is that correct?

A: Yes.

Q: And that privilege and obligation agreement goes

through page 25; is that correct?
A: Yes, ma'am.
Q: Now going back to the purchase agreement, Plaintiff's Exhibit Number 5 and paragraph 11, the portion that we read out, the second says "Purchasers also acknowledge receipt and retention of copies of the articles of incorporation or charter any bylaws of Deerfield Plantation Property Owners Association and of the privilege and obligation agreement between the seller and Deerfield Plantation Owners Association, Inc."?
A: I -- Yes.
Q: So your purchase agreement ---
A: Wait just a minute, Ms. Golding, please.
Q: Certainly.
A: I did not follow you then. Where were you reading that from?
Q: I'll give you my highlighted version.
A: Good, I've lost my place.
Q: The purchase agreement, Exhibit Number 5B.
A: Okay, that's what I have.
Q: And in this purchase agreement, which you and your husband signed, you agreed that you received a copy of the privilege and obligation agreement,

which starts on page 23 of Plaintiff's Exhibit Number 4; is that correct?

A: Would you restate that, please, for me?

Q: Yes, ma'am. I'm going to the purchaser agreement, ---

A: Uh-huh (affirmative response).

Q: --- which is Plaintiff's Exhibit 5B.

A: Uh-huh (affirmative response).

Q: In Plaintiff's Exhibit 5B, paragraph 11, ---

A: Uh-huh (affirmative response).

Q: --- you and your husband, by signing this exhibit, by signing the purchase agreement, agreed that you and your husband received the privilege and obligation agreement, which is in Exhibit 4; is that correct?

A: I agreed to it, but I still don't know when I received it.

Q: I'm sorry?

A: I agreed in this in writing that I did, but I don't know for sure when I received that. I do not remember.

Q: Now, Ms. Clemmons, nobody prevented you from having a lawyer to assist you when you bought your lot at Deerfield; is that correct?

A: No.

Q: So it was the choice of you and your husband, that was on your own free will, not to have a lawyer represent you in the purchase of the lot at Deerfield; is that correct?

A: Ms. Golding, we didn't feel we needed one at that time, you know?

Q: My question -- again, you must answer my question, and then you can explain. It was your choice, your personal choice of you and your husband, not to have an attorney present and assist you at the closing?

A: It was our choice not to have.

THE COURT: AND YOU CAN EXPLAIN THAT ANSWER, MS. CLEMMONS, IF YOU NEED TO.

A: Well, we just trusted people, I mean this was back in 1972 when we felt that you could, well could almost make a deal with a handshake and everything didn't have to be in writing. We didn't feel -- we trusted these people. We didn't feel we needed an attorney.

Q: Now, also in Exhibit Number 4 under paragraph 11 you also affirm and ratify ---

A: Hold on just a moment, please, Ms. Golding.

Q: Okay.

A: I'm not as adept to turning these pages as you are.

THE COURT: WELL, SHE KNOWS WHERE SHE'S GOING, MS. CLEMMONS, AND YOU DON'T.

MS. CLEMMONS: THAT'S RIGHT. I'M A LITTLE BIT OLDER TOO. I HATE TO ADMIT IT.

THE COURT: WELL, I CAN IDENTIFY WITH THAT. WHICH PARAGRAPH 11 ARE YOU REFERRING TO, MS. GOLDING?

MS. GOLDING: PARAGRAPH 11.

THE COURT: ON PAGE 25?

MS. GOLDING: NO, I'M SORRY; THIS IS IN EXHIBIT NUMBER 4. THIS IS THE PURCHASE AGREEMENT, YOUR HONOR.

THE COURT: OKAY. OKAY, I'VE GOT PLAINTIFF'S 4 AS THE SINGLE FAMILY PROPERTY REPORT, I'M SORRY. I MIS-MARKED.

MS. GOLDING: AM I CORRECT?

MS. BAILEY: 4 IS THE PACKAGE.

MS. GOLDING: NUMBER 4 IS THE PACKAGE,

YOU'RE CORRECT.

MS. BAILEY: 5 IS THE PURCHASE AGREEMENT.

MS. GOLDING: I APOLOGIZE.

THE COURT: SO WE'RE BACK TO 5 THEN?

MS. GOLDING: YES.

THE COURT: ALL RIGHT, THANK YOU.

MS. GOLDING: I APOLOGIZE FOR THAT.

Q: It's my fault, Ms. Clemmons. Going back to Exhibit Number 5, the purchase agreement ---

A: Uh-huh (affirmative response).

Q: --- and in Exhibit Number 11, in Exhibit Number 11 it states that you affirm and ratify said privilege and obligation agreement; is that not correct?

A: Where are you reading that from? Is that right here?

Q: Yes. Do you see that?

A: Yes, ma'am.

Q: Now go back to Exhibit Number 4, that package that you and your husband received, and I want you to go to page 24. Have you got page 24?

A: Yes, ma'am.

Q: I'm going to give you my highlighted version of paragraph eight. Paragraph eight, do you see

where it says "It is agreed that Deerfield Plantation may reject the application of any applicant, other than on grounds of race, color or creed, without cause or reason and without being required to assign any cause or reason therefor, it being understood and agreed that the aforesaid facilities consisting of the golf course, tennis courts, clubhouse and swimming pool, and any other incidental operations in connection therewith, are separate and distinct business operations of Deerfield Plantation, Inc., apart from Deerfield Plantation single family residential subdivision as aforesaid." Did I read that correctly?

A: Yes, ma'am, as far as I can tell.

Q: Now, starting with the very last sentence in paragraph eight, it reads "It is further understood and agreed that Deerfield Plantation, Inc. reserves the right to discontinue the maintenance and/or operation of said golf course, tennis courts, clubhouse and swimming pool, or any other incidental operations connected therewith, at such time as Deerfield Plantation, Inc., in the sole discretion of its Board of Directors shall determine that the maintenance

and operation of the aforesaid facilities, or any of them, is not economically feasible or is not advisable for any other reason and to use the property devoted thereto for other purposes."
Did I read that correctly?
A: You did read it correctly.
Q: Now, you will agree that the tennis courts that were close to the clubhouse at the Deerfield Plantation on the property were closed many years ago; is that correct?
A: They were.
Q: And you will agree that the swimming pool that was also part of that amenities package was closed many years ago; is that correct?
A: Yes.
Q: And you'll also agree that the clubhouse, the use of the clubhouse was strictly limited by the lessees of the clubhouse?
A: Was strictly limited?
Q: Yes, ma'am. I mean you could not go into the clubhouse and say "I want to reserve this room." You didn't have a right to do that, did you?
A: I probably could have done that, to reserve a room.
Q: Did you do it?

A: No. I went in and purchased things from the shop.
Q: From the pro shop; is that right?
A: Yes, ma'am.
Q: Now, you didn't become a member of the golf course, did you?
A: No, I did not.
Q: And you knew that to play on the golf course you had to pay; is that correct?
A: Yes.
Q: You knew you didn't have a right just say "This is my golf course," did you?
A: Yes.
Q: And you knew that you didn't own the golf course or have an ownership interest in the golf course, did you?
MR. SHELTON: YOUR HONOR, TO THE EXTENT THAT THAT SEEKS A LEGAL CONCLUSION I WOULD OBJECT.
THE COURT: TO THE EXTENT THAT IT REFERS TO A LEGAL OWNERSHIP AS SUCH I WILL ALLOW HER TO ANSWER THE QUESTION. WE'RE TALKING ABOUT WHETHER THERE ARE CERTAIN IMPLIED RIGHTS

OR OTHER RIGHTS THAT AROSE FROM THE CIRCUMSTANCES, BUT TO THE EXTENT THAT IT REFERS TO A LEGAL OWNERSHIP IN IT, IT'S AN APPROPRIATE QUESTION, AND I'LL ALLOW HER TO ANSWER IT.

MR. SHELTON: THANK YOU.

A: I did not have legal ownership in the golf course.

Q: Now, with respect to the tennis courts, the closing of the tennis courts, you never sued anybody about closing of the tennis courts, did you?

A: I did not. It didn't matter. I wasn't that interested in that.

Q: And with respect to the swimming pool, you never sued anybody for closing the swimming pool, did you?

A: No, I did not.

Q: Now the documents, this purchase agreement, Exhibit Number 5B, you still have that in your lockbox, don't you?

A: Yes, ma'am.

Q: And Plaintiff's Exhibit Number 4, this package of

documents, you still have that in your lockbox too; is that right?

A: No, ma'am.

Q: You don't know where that is?

A: I don't know if I have that. I don't think I do.

Q: Now my understanding is that you're good friends with Blaine Liljenquist; is that correct?

A: He is a friend, yes.

Q: And you've been friends with Blaine Liljenquist for what; well over 20-plus years?

A: Yes, ma'am.

Q: And Blaine Liljenquist, you're members of the same church; is that correct?

A: Yes, ma'am.

Q: And that's the same church as the Hills; y'all go to the same church?

A: Yes, we do.

Q: And you've had family members working in Blaine Liljenquist's companies; is that correct?

A: Yes, ma'am.

Q: And Blaine Liljenquist is the one that started Plantation Resort, the timeshare; is that correct?

MR. SHELTON: YOUR HONOR, THIS IS NOT RELEVANT TO THE INQUIRY OF

MY ATTORNEY.

THE COURT: OKAY, WE'LL HOLD ON FOR JUST A SECOND.

MR. SHELTON: AND YOUR HONOR, WILL WE BE GIVEN AN OPPORTUNITY TO OFFER A RESPONSIVE PROFFER UPON RECEIVING IT?

THE COURT: SURELY, IF YOU NEED TO.

MR. SHELTON: THANK YOU.

MS. GOLDING: JUST ONE OTHER QUESTION, YOUR HONOR.

THE COURT: OKAY.

MS. GOLDING CONTINUES:

Q: Ms. Clemmons, is it not a fact that you have not received anything in writing showing that you have any type of easement rights in the golf course property?

A: I have nothing in writing.

Q: Thank you.

THE COURT: THANK YOU. ALL RIGHT, MR. SHELTON, YOU WERE ASKING ME A QUESTION WHILE MS. GOLDING WAS CONFERRING WITH COUNSEL, AND THAT WAS WHETHER OR NOT YOU ALL

WOULD BE ALLOWED TO OFFER COUNTER PROFFERS TO THOSE SUBMITTED BY THE DEFENSE IN THIS CASE, AND THE ANSWER IS YES.

MR. SHELTON: THANK YOU, YOUR HONOR.

THE COURT: SINCE THEY ARE PROFFERS I'M NOT OBLIGATED TO READ THEM, BUT THEY WILL BE A PART OF THE RECORD. MR. SHELTON, RE-DIRECT?

RE-DIRECT EXAMINATION

BY MR. SHELTON:

Q: Ms. Clemmons, a moment ago Ms. Golding took you or had you walk through this document that is entitled Single Family Residential Report, did she not?

A: Yes, uh-huh (affirmative response), yes.

Q: And you had that in your possession you said, but do you know where you got that?

MS. GOLDING: YOUR HONOR, I'M GOING TO MAKE AN OBJECTION. HE'S LEADING THE WITNESS, AND ALSO THIS IS NOT NEW MATTER THAT I BROUGHT UP. THIS

EXHIBIT NUMBER 4, THIS PACKAGE, WAS THE PLAINTIFF'S EXHIBIT SO IT'S NOT NEW MATTER.

THE COURT: ALL RIGHT, BUT IT MAY BE IN RESPONSE TO SOMETHING THAT YOU RAISED IN CROSS, WHICH OF COURSE HE'S ENTITLED TO GO INTO BY WAY OF RESPONSE. GO AHEAD.

Q: Do you recall your closing on your lot?

A: Vaguely.

Q: Where was that closing?

A: It was at Grant Singleton's office.

Q: Did anybody at your closing walk you through Exhibit 4 like Ms. Golding has today?

A: Absolutely not.

MS. GOLDING: YOUR HONOR, I'M GOING TO MAKE AN OBJECTION ---

THE COURT: EXCUSE ME, JUST A SECOND.

MS. GOLDING: I'M GOING TO MAKE AN OBJECTION; THAT'S SOLICITING HEARSAY.

THE COURT: I THINK, ONCE AGAIN, THE QUESTION IS DESIGNED I

THINK MORE TO ILLICIT WHAT THIS WITNESS WAS TOLD, NOT THE TRUTH OF IT, BUT WHAT SHE WAS TOLD. IT'S NOT BEING OFFERED FOR THE TRUTH OF ANY OF THOSE THINGS, AND SO I'LL ALLOW THAT QUESTION AND ANSWER.

MR. SHELTON: THANK YOU, YOUR HONOR.

Q: Was any of this explained to you at your closing?

A: No, it was not.

Q: Having purchased your lot, when you were leaving your closing and gone through the exercise of all the closing documents and signatures, when you were driving away, had anything, anybody had said or done or shown you or had you sign or initial or any part of it, led you to think that at any point in the future someone could come in there and tear up the golf course and build houses right behind you?

A: It never crossed my mind.

MS. GOLDING: YOUR HONOR, I'M GOING TO MAKE AN OBJECTION TO THE QUESTION.

THE COURT: RIGHT.

MS. GOLDING: I'M GOING TO MAKE AN OBJECTION TO THE QUESTION.

THE COURT: RIGHT. IT CALLS FOR SORT OF A NEGATIVE HEARSAY AS I UNDERSTAND THE QUESTION. I THINK SHE'S MADE THAT PLAIN, QUITE FRANKLY, ALREADY; THAT SHE HADN'T READ THAT AND DIDN'T READ THE DOCUMENTS. NOW, AS TO WHETHER SHE WAS OBLIGATED TO READ THEM IS ANOTHER MATTER FOR ANOTHER DAY OR FOR AT LEAST ANOTHER PORTION OF THIS CASE; BUT I THINK IMPLICIT IN EVERYTHING SHE SAID IS THE FACT THAT SHE ANSWERED A FEW MOMENTS AGO ON DIRECT EXAMINATION THAT THIS HAD MET ALL OF THEIR EXPECTATIONS AND ALL OF THEIR HOPES AND DREAMS ABOUT THIS PROPERTY, AND I'M NOT SURE SHE GAVE A

CLOSING DATE ON THAT BUT IT WAS IMPLIED IN HER ANSWER UNTIL JUST RECENTLY NOTHING HAD HAPPENED TO CHANGE THEIR MIND ABOUT WHETHER THEY HAD MADE A GOOD CHOICE BACK IN 1973, PAYING $13,200 FOR A LOT IN THE BEACH AREA. THAT TAKES YOU BACK A WAYS, DOESN'T IT? I'LL SUSTAIN THE OBJECTION. I DON'T THINK THAT IT'S NECESSARY, AND FRANKLY IT OPENS UP A VAST ARRAY OF NEGATIVE HEARSAY TYPE THINGS.

MR. SHELTON CONTINUES:

Q: One, last thing, Ms. Clemmons, throughout your entire experience of purchasing your lot at Deerfield Plantation, were you ever of the impression or belief that if you purchased that lot, someone could someday come in and shut down the golf course and build houses?

A: No, ---

MS. GOLDING: YOUR HONOR, I'M GOING TO

MAKE AN OBJECTION.

A: --- definitely not.

MS. GOLDING: I'M GOING TO MAKE AN OBJECTION. THE IMPRESSION OR BELIEF IS JUST NOT RELEVANT. THE QUESTION IS ENTIRELY IMPROPER.

THE COURT: WELL, I THINK -- OF COURSE HER ANSWERS ARE DIRECTED ON HER WHOLE EXPERIENCE OF ---

MR. SHELTON: I WILL WITHDRAW THAT.

THE COURT: OKAY.

Q: Let me just ask you this then. At any point during that whole time frame, not solely at the closing table but the whole time frame of you shopping for the lot, looking at the lot, looking at everything you've described, did anybody ever go through those documents and explain them to you?

A: They did not, they have not.

Q: Thank you, Ms. Clemmons.

THE COURT: THANK YOU. MS. GOLDING, ANY BRIEF FOLLOW-UP ON THAT.

MS. GOLDING: YES, JUST TO CLARIFY.

RE-CROSS EXAMINATION

BY MS. GOLDING:

Q: It's a fact that neither you nor your husband looked at the lot before you purchased the lot?

A: Is it a fact that we, ---

THE COURT: THAT'S, THAT'S OUTSIDE ---

A: --- we did look at it?

THE COURT: EXCUSE ME, EXCUSE ME. THAT'S OUTSIDE OF RE-DIRECT.

MS. GOLDING: NO, ON HIS QUESTION HE SAID "GOING THROUGH THE WHOLE PROCESS, LOOKING AT THE LOT."

MR. SHELTON: I WAS REFERRING TO THE LOT ON THE PLAT IN FRONT OF HER ---

MS. GOLDING: OKAY.

MR. SHELTON: --- WHICH SHE JUST USED WHEN WAS TESTIFYING.

THE COURT: THAT'S RIGHT. YEAH, I'LL SUSTAIN THAT OBJECTION.

Q: Ms. Clemmons, you're capable of reading a document; is that correct?

A: Yes, ma'am, I hope so.

Q: And you're an educated lady, are you not?
A: I hope so.
Q: You are or aren't?
A: I am.
Q: And nobody prevented you from reading the purchase agreement nor that package which is Exhibit Number 4? Were you prevented from reading any of those documents?
A: Nobody prevented me from reading them; but I really think if I got this document, it was given to me at closing time, and there's no way you could seat and go through this whole document.
MS. GOLDING: NO FURTHER QUESTIONS, YOUR HONOR.
THE COURT: THANK YOU. MR. SHELTON, SHE'S YOUR WITNESS. YOU GET THE LAST WORD.
MR. SHELTON: I HAVE NO FURTHER QUESTIONS, YOUR HONOR.
THE COURT: THANK YOU. WELL, THAT'S PROBABLY THE GOOD LAST WORD THAT SHE WAS LOOKING FOR. MS. CLEMMONS, YOU CAN STEP DOWN PLEASE, MA'AM.
MS. CLEMMONS: THANK YOU.

RETURN THAT TO THEM. MR. SHELTON, YOU CAN CALL YOUR NEXT WITNESS.

MR. SHELTON: THANK YOU, YOUR HONOR. I CALL MR. CARL CLEMMONS TO THE STAND.

THE COURT: MR. CLEMMONS, COME FORWARD, PLEASE, SIR, AND BE SWORN.

CARL CLEMMONS, HAVING BEEN CALLED TO THE STAND AND DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. SHELTON:

Q: Good morning, Mr. Clemmons.

A: Good morning.

Q: Mr. Clemmons, where do you reside?

A: 1620 Crooked Pine Drive.

Q: Are you related to any of the other plaintiffs in this matter?

A: Yes, I am.

Q: Who is that?

A: To my wife.

Q: Is that Geraldine Clemmons?

A: Yes.

Q: How long have you lived at that address?

A: Since November of 1975.

Q: Do you recall where you lived prior to that?
A: Yes, I do.
Q: Where was that?
A: 1800 North Oak Street, Myrtle Beach.
Q: How did you come to live on Crooked Pine Drive?
A: Well, it's quite a story. My home on Oak Street became commercial. They widened Oak Street and, when they built the Myrtle Square Mall. When they did that it put the highway right in my bedroom almost. So we had a realtor who was interested in leasing our home for an office. At that time my wife and I were -- had leased a motel and were running it along with my work at the post office.
Q: How did you come to find out about Deerfield Plantation?
A: I really found out from my wife.
Q: Let me hand you a document that has been marked as Exhibit Number 1 and ask you if you've seen that document before?
A: I've seen it, yes.
Q: Were you here in this court room while your wife was testifying?
A: Yes, I was.
Q: Do you agree with her explanation of how you came

to get that?
A: Yes, I do.
Q: Do you remember when that was, chronologically?
A: When we received this?
Q: Yes, sir.
A: You know, 34 years is a long time back.
Q: Yes, sir, I understand.
A: I have a little bit of CRS, can't remember syndrome. But as far as I know we received it when we stopped as we were going out of town, and this was possibly in '72, '73, somewhere in there.
Q: Did that brochure and its contents seem consistent with what you and your wife were discussing about what you anticipated would be at Deerfield Plantation?
A: Yes, it does.
Q: How did you select the individual lot that you purchased?
A: Well, I looked -- the map that I looked at had an elevation line on it showing the crests of the lay of the land. We wanted a corner lot, and we wanted one that was well drained so I chose it because, that location because the lot itself being a corner lot and the land being close to

the crest for the drainage.
Q: Do you recall whether that map showed the golf course property?
A: Yes, it did.
Q: At that point in time when you were trying to determine whether or not to purchase at Deerfield Plantation, had you ever seen a map that showed only the residential lots without a golf course?
A: No.
Q: How much did your lot cost?
A: 13, two.
Q: $13,200?
A: Uh-huh (affirmative response).
Q: Was that a bargain for you at that time?
A: No, seemed kind of steep to me. That was one of my hang-ups on it.
Q: Do you recall closing your loan on that lot?
A: Closing the loan?
Q: Do you remember when you went to the closing to purchase that lot?
A: Not, not offhand, I don't.
Q: Do you remember where you went to close the lot, whose office?
A: I thought it was Grant Singleton's office.
Q: Okay.

A: That's what I've always thought anyhow.
Q: Okay, and over time did the purchase you had made come to live up to your expectations of what Deerfield Plantation was going to be?
A: Oh, yes. We, we love our, love our home, we love the surroundings. I enjoyed chatting with the golfers who would stop in my backyard and talk with me when they'd come up to get their balls out of my yard. It was just a pleasant place to live.
Q: Did you hear when Ms. Golding was going through the property report and the various documents with your wife a few moments ago?
A: Yes, I did.
Q: Do you understand what any of that means as you sit here today?
A: Not really.
Q: When you purchased your lot and built your house and Deerfield grew up, did you at any point understand that someone would have the right to come in and tear up the golf course and build houses?
A: No. If I had, I would have never bought there.
Q: You say you've enjoyed talking with golfers in the backyard. Are you allowed to keep them out

of your yard?
A: No. I enjoyed having them come up there.
Q: Very good. Give me just one moment if you would. Let's take a look at your deed, which we've earlier admitted as Exhibit Number 3. Are you familiar with that document?
A: Yes.
Q: Give me one moment. Is this the plat that is referenced in your deed?
A: Yes, it is.
Q: And this is the plat that is Exhibit 6 that is already pre-admitted in the record?
A: Yes.
Q: Mr. Clemmons, if you would, please answer any questions that Ms. Golding or Ms. Bailey have for you.
THE COURT: MS. GOLDING, CROSS EXAMINE.
MS. GOLDING: THANK YOU, YOUR HONOR.

CROSS EXAMINATION

BY MS. GOLDING:
Q: Mr. Clemmons, one of the reasons for buying your lot in Deerfield was because the Hills were buying a lot; is that correct?
A: No, not mine.
Q: Okay. Let's go turn to page 28 of your

deposition.

THE COURT: MR. CLEMMONS, THAT'S A DEPOSITION THAT YOU GAVE SOMETIME -- LAST YEAR I TAKE IT, MS. GOLDING?

MS. GOLDING: YES, SIR.

THE COURT: -- AND MS. GOLDING IS GOING TO REFER YOU TO A PAGE NUMBER, THE PAGES ARE IN THE UPPER RIGHT-HAND CORNER, ---

MR. CLEMMONS: ALL RIGHT.

THE COURT: --- AND TO A LINE NUMBER, THE LINE NUMBERS RUN DOWN THE LEFT-HAND MARGIN.

Q: Would you please go to page 28.

A: (Complies with request.)

Q: And go to line 15.

A: Uh-huh (affirmative response).

Q: I will ask the question, and then you will state your answer which is one line 18. Question: "Was it a factor in you purchasing a lot in Deerfield because the Hills also purchased a lot in Deerfield?" Read your answer.

A: Let me explain my answer.

THE COURT: NO, SIR.
Q: Please read your answer.
THE COURT: YOU HAVE TO READ IT FIRST.
A: My answer was "That was part of it."
THE COURT: AND YOU'VE GOT A RIGHT TO EXPLAIN IT BEYOND THAT AS LONG AS YOU ANSWER THE QUESTION FIRST, MR. CLEMMONS.
A: They were friends, still are my closest friends; but I didn't purchase just because they purchased. I purchased it because I wanted what was there.
Q: Now before you purchased a lot at Deerfield you didn't go out there and look at the lot, did you?
A: No, because you couldn't get into it. It wasn't developed yet.
Q: And in fact, Exhibit Number 2, Plaintiff's Exhibit Number 2, the map that was referred to, Number 2, you testified on the record that elevation was a factor; but Exhibit Number 2 doesn't have any elevation lines, does it?
A: No, and I don't know where I got that at, but I remember that was one of the factors, and I can't explain it, but I knew that I was buying right at

the crest. Whether I was told that or whether it was a elevation line drawn there or not, I can't explain that, but I knew that.

Q: Now, with respect to the purchase agreement, which is Exhibit Number 5, do you have Exhibit Number 5 in front of you, the purchase agreement?

A: Yes.

Q: Let's get the big one.

A: Okay.

Q: Exhibit Number 5, you still have your purchase agreement in your safety deposit box or somewhere; is that correct?

A: It's somewhere, yes.

Q: And it's just like Exhibit 5B, is it not?

A: 5B?

Q: The document you have in your hand?

A: This is 5B?

Q: Yes.

A: As far as I know.

Q: And Exhibit 5B bears your signature, does it not?

A: Yes, ma'am.

Q: And it also bears your wife's signature; is that correct?

A: Yes, ma'am.

THE COURT: MR. CLEMMONS, DID YOU

ANSWER THE QUESTION ABOUT WHETHER IT BORE YOUR WIFE'S SIGNATURE AS WELL OR NOT? YOU MAY HAVE ANSWERED THAT QUESTION, BUT I DIDN'T HEAR YOUR ANSWER IT.

A: Yes.

Q: And Exhibit 5B, this is the only contract you and your wife signed to buy your lot, Lot 365; is that correct?

A: As far as I know.

Q: When you signed Exhibit 5B, this purchase agreement, you put a down payment of $2,640 down; is that right?

A: Yes, ma'am.

Q: And when you signed Exhibit 5B you got a copy of it; is that right?

A: Ms. Golding, I don't remember.

Q: But you got a copy of it, and that copy you still have today; is that not right?

A: Yes, uh-huh (affirmative response).

Q: And nobody prevented you or your wife from getting a lawyer to help you read this purchase agreement, did they?

A: You know, Ms. Golding, I don't remember even

anybody mentioning another lawyer.
Q: And nobody prevented you or your wife from having a lawyer at your closing; is that right?
A: They didn't tell us we needed one either.
Q: But it was your own choice not to have one; is that correct?
A: Well, I really didn't know I had a choice.
Q: You can read and write, can you not?
A: Well, I'm in bad shape if I don't.
Q: Well, it's important in this lawsuit. That's not funny.
A: Yes.
Q: It is a real fact that you can read and write?
A: Yes, ma'am.
Q: And nobody stopped you from reading your purchase agreement that you and your wife signed, Exhibit 5B, did they?
A: Not that I know of.
Q: Nobody stopped you from reading Exhibit 4, this property package that you've got?
A: I don't remember that, ma'am.
Q: Did anybody prevent you from reading any documents that you got at the closing?
A: No, ma'am, but I ---
Q: And in fact, Mr. Clemmons, it's a fact that

nobody has ever told you that that golf course property would be there forever as soon a golf course; is that correct?

A: They never told me it wouldn't either.

Q: And you don't have anything in writing that says you've got an easement in that golf course property, do you?

A: Other than the amenities that was promised to us whenever we moved there; everything that we received pointed to. If it didn't have the golf course, we wouldn't have a golf community.

Q: And the amenities, you're talking about the swimming pool, the ---

A: I'm talking about the golf course. The swimming pool and the tennis courts didn't mean nothing to me.

Q: Just the golf course, right?

A: Just the golf course.

THE COURT: ARE YOU THROUGH?

MS. GOLDING: I AM, THANK YOU.

THE COURT: MR. SHELTON, RE-DIRECT?

RE-DIRECT EXAMINATION

BY MR. SHELTON:

Q: Mr. Clemmons, was Deerfield Plantation ever a tennis court community in your mind?

A: I beg your pardon?
Q: Was Deerfield Plantation ever to be a tennis court community?
A: No.
Q: Was it ever to be a swimming pool community?
A: I didn't understand it to be if it was.
Q: Did anybody ever tell you that it was not going to stay a golf community?
A: No.
Q: Regarding that plat that you were talking about with Ms. Golding that had a, you testified a crest line of some sort, does your property actually serve as the drainage crest? Does the water really drain the way you understood it would?
A: Oh, we have good drainage where we are.
Q: Whether it was a map or someone telling you that, was it accurate?
A: Yes. In my, in my -- on my lot in my area we do not have a water problem.
Q: I have nothing further, Mr. Clemmons.
MS. GOLDING: NOTHING FURTHER, YOUR HONOR.
THE COURT: THANK YOU. MR. CLEMMONS, YOU CAN STEP DOWN.

APPRECIATE THAT. I KNOW IT'S EXTRA TIME FOR YOU, BUT IT'S THE BEST USE OF THE COURT'S TIME.

MR. LAWSON: THANK YOU, YOUR HONOR.

THE COURT: MR. LAWSON, THANK YOU. ALL RIGHT, MR. SHELTON?

MR. SHELTON: THANK YOU, YOUR HONOR. I CALL MS. BETTY HILL TO THE STAND.

THE COURT: MS. HILL, COME FORWARD PLEASE, MA'AM, AND BE SWORN.

BETTY HILL, HAVING BEEN CALLED TO THE STAND AND DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. SHELTON:

Q: Good morning, Ms. Hill.

A: Good morning.

Q: Ms. Hill, where do you reside?

A: 1680 Crooked Pine Drive in Deerfield.

Q: How long have you lived there?

A: Since 1973.

Q: Where did you live prior to that?

A: We lived exactly, directly across the street on

the corner of 13th and Popular in Surfside.
Q: How long had you lived there?
A: About six years.
Q: Did you purchase a house that was already there on Popular?
A: No, we built one.
Q: So your house was six years old?
A: Yes.
Q: How did you come to move across -- are you talking about King Highway when you say ---
A: Kings Highway, we just moved straight across.
Q: How did you come to move across Kings Highway into Deerfield? How did you come to move into Deerfield?
A: Well, we heard about the golf community that was coming to Surfside, and we really got excited about that, and I was in Dr. Platt's drugstore, and he had a map on the wall.
Q: Is that the same Dr. Platt who developed Deerfield Plantation?
A: Yes, sir.
MS. GOLDING: YOUR HONOR, I'M GOING TO MOVE TO STRIKE THAT QUESTION AND THE ANSWER BECAUSE THAT'S CONTRARY TO

THE EVIDENCE PRESENTED IN THAT ONLY THE DEVELOPER OF DEERFIELD PLANTATION WAS DEERFIELD PLANTATION, INC. AND SO THAT QUESTION AND ANSWER VIOLATES THE PAROLE EVIDENCE RULE, VIOLATES THE STATUE OF FRAUDS AND ALSO HEARSAY. AND IN THAT RESPECT, YOUR HONOR, I WANT TO JUMP AHEAD, IS THAT WE WILL OBJECT TO ANY TESTIMONY WITH RESPECT TO DR. PLATT'S REPRESENTATIONS OR ANYTHING OF THAT NATURE.

THE COURT: ALL RIGHT, MR. SHELTON, DO YOU WANT TO ADDRESS THAT?

MR. SHELTON: NO, YOUR HONOR, I WILL WITHDRAW IT AND RESTATE. I WAS JUST TRYING TO IDENTIFY FOR THE COURT'S PURPOSE THAT THIS WAS THE SAME V.F. PLATT THAT WE'VE ALL BEEN TALKING ABOUT.

MR. SHELTON CONTINUES:

Q: Did V.F. Platt own any real estate in the Surfside area?
A: Yes, he did.
MS. GOLDING: YOUR HONOR, I WANT TO MAKE AN OBJECTION. UNLESS SHE HAS ABSOLUTE PERSONAL KNOWLEDGE THAT HE OWNED ANY TYPE OF REAL ESTATE, I THINK THAT THAT WOULD NOT BE A PROPER QUESTION.
THE COURT: WELL ---
MS. HILL: I DID HAVE KNOWLEDGE.
THE COURT: --- IT'S, REALLY IT'S NOT IN DISPUTE, BUT IF SHE SAYS SHE HAS PERSONAL KNOWLEDGE, I'LL ALLOW HER TO GO INTO IT.
MS. GOLDING: BUT IF THE PERSONAL KNOWLEDGE IS BASED ON HEARSAY, YOUR HONOR, THEN THAT WOULD NOT BE PROPER.
THE COURT: AND I DON'T KNOW WHAT THE SCOPE OF IT IS RIGHT NOW SO WE'LL HAVE TO FIND OUT.
MR. SHELTON: I WON'T GO FURTHER INTO IT.

Q: Did you know Dr. Platt and his wife personally?
A: Yes, I did.
Q: How frequently would you go to their store?
A: Well, I would go if I needed lipstick or nail polish, if I needed a prescription. They were about the nicest people I've ever seen. I really did enjoy their company.
Q: Do you recall about what time in history the map appeared on the wall in the drugstore?
A: Well, it would have had to have been 1972.
Q: Why is that?
A: Well, I actually found a copy of a map from 1972 that looks exactly like that.
Q: Well, I'm just asking your memory. When you were the drugstore -- were you in the drugstore before there was ever a map on the wall?
A: That I cannot -- I only remember the times from starting with the map, but I probably was a customer there. I'm sure I must have been because they were the only drugstore that I recall being in that area, and Dr. Platt was a very personable kind of person.
Q: You can't tell me what he told you.
A: Oh, no. I'm just telling you he was like that. And so it made me want to go there; and during I

guess that process and also it was in the newspaper about the ---

Q: In looking at that plat on the wall, did it look similar to the ---

A: Very similar to that except that the one on the wall ---

Q: That's Exhibit 6 that you're looking at?

A: Uh-huh (affirmative response).

Q: What's the distinction in your recollection?

A: Well, the way I recall it is that the one ---

MS. GOLDING: YOUR HONOR, I WANT TO MAKE AN OBJECTION TO ANY TYPE OF TESTIMONY RELATING TO A DOCUMENT ON THE WALL SOMEWHERE. THAT IS CLEARLY HEARSAY, YOUR HONOR.

THE COURT: I THINK SHE'S COMPARING IT TO A DOCUMENT WHICH IS IN EVIDENCE HERE AS I CAN SEE; AND OBVIOUSLY IF THERE ARE MATERIAL DISTINCTIONS, THEN ITS RELEVANCE WOULD BE SOMEWHAT REMOTE. BUT IF IT'S SIMILAR TO THE ONE THAT'S ON THE EASEL, WHICH

IS IN EVIDENCE, THEN I THINK IT WOULD BE RELEVANT SO I'LL ALLOW YOU TO EXPLORE THAT. GO AHEAD.

Q: What was ---

A: Sir, it was very much like that. It was in pencil. It was the very beginning map. And when I would go into the drugstore we would always look at the map. And I can't remember if you asked me how I first found out about it or ---

Q: How did you finally decide to purchase in there and select a lot?

A: Well, we loved our home in Surfside, and we were getting ready to build onto that house. We already had had any architect come over, Jimmy Walker with Jerdon Construction Company; and we were discussing the fact that we were going to build, enlarge the house. And about that same time is when we heard about Dr. Platt's project and the golfing community. And so I guess it was at that time that I became more familiar with it from going into the drugstore. And having known him, I guess just, you know, the fact that it was being advertised as a golfing community.

Q: Did you go look at your lot before you selected

which one you wanted?
A: We couldn't because the land wasn't ready. But the plat, the map on the wall -- my main thing was I was so in love with nature, and I wanted to have a little pond or a lake behind my house. And of course, I was absolutely thrilled with the idea of going to be able to buy a lot on the golf course, and so I told Dr. Platt ---
Q: Tell me about the cost of the lot on the golf course, the one that you chose in Deerfield Plantation. Do you recall how much that was?
A: It was $14,000, and 36 years that was a lot of money.
Q: Did it have a pond in the backyard?
A: Yes, sir, and it was clearly shown on the map.
Q: On the map at the drugstore?
A: At the drugstore and on all the maps -- I don't know if it's on all of them, but most of them that I've seen it was on there and definitely ---
Q: How much did you pay for your lot across King's Highway?
A: The lot that we had in Surfside we had paid $3400 for it, and we had a nice house on a corner lot, but we had only paid 3400. Of course, back then that seemed a lot too. But when we made the

decision to move across the street, that was really a big step for us. The $14,000 was really a lot of money, and I would never have left a nice brick home that I had in Surfside to go across the street, directly across the street, if I wasn't going to get something that I really, really wanted, which was the fact that I was going to get to live in a golfing community and have that lake behind my house because I love birds and have always been a fan of the shorebirds, and so I was looking forward to that.

Q: When did you first visit your lot?

A: Well, in 1972 when we first started looking at it we couldn't get in there. And I can't remember the exact date that we went to see it, but the way that we got to go in there was on a Land Rover. And they took us in as far as they could, then we had to get out of that Jeep type vehicle, and we walked the rest of the way to, to see our lot.

Q: Was it staked out?

A: As I recall there probably was, I think there was like the little ties that were on a pole, post there, and they showed us that this was our lot and that this was going to be the little pond

behind the house.
Q: Do you remember your closing on the lot?
A: Yes, I do.
Q: Where did you go for that?
A: To Grant Singleton's office.
Q: When you had your closing on the lot or during any of the time during that time frame, did anybody explain Exhibit 4 that we've been talking about this morning; did anybody explain this documentation to you?
A: No, sir.
Q: Are you restricted from doing anything at your house that would interfere with the play of golf?
A: Yes. We could not interfere with anything because that -- we were in a golfing community, and the golf was the everything.
Q: If this had been advertised and platted as a tennis court community, would you have purchased your lot?
A: No, sir. That would not have interested me.
Q: What about a swimming pool community?
A: Not at all, we bought a golfing community.
Q: If you take the golf course away from that, can it ---
A: We have no community, no golfing community. We

just have another area with houses.
Q: Like you had across Kings Highway?
A: Like I had across Kings Highway.
Q: Tell me this, when the golf course was operating and you'd walk outside your backyard, how far was it before you'd see another roof top?
A: It's a long way. I mean, all the way across the golf course and several hundred, probably two or three, maybe a couple hundred feet; I'm not sure, but there's no one close to use when we go out our back door except on the sides.
Q: Did you ever maintain any portion of the golf course yourself?
A: We kept everything up all the way up to the golf course, you know, just to make it look nice.
Q: What did you do out there?
A: We mowed it, we raked it, we planted flowers on it. Kate and Francis both, in the beginning, that was something that, you know, we told them that if they didn't mind, we'd like to keep that up.
MS. GOLDING: YOUR HONOR, I'D LIKE TO OBJECT TO ---
THE COURT: SHE'S TALKING ABOUT WHAT SHE TOLD SOMEBODY ELSE.

YOU CAN GO AHEAD, MS. HILL, AND ANSWER THAT QUESTION. YOU SAID IF THEY DIDN'T MIND, YOU WERE GOING TO DO SOMETHING.

A: Well, there was, you know, an area between our property line and the golf course, and so they just told us that we could put flowers.

Q: No, you can't ---

THE COURT: YOU TOLD THEM WHAT YOU WERE GOING ---

A: We asked them if we could plant flowers or shrubs or whatever, and they said yes.

Q: Did you plant flowers?

A: And I did and they are still there.

Q: How many years have you maintained flowers and shrubs out there?

A: 36.

Q: Since you moved in your house?

A: Uh-huh (affirmative response), 36 years.

Q: Well, you had to build your house now; when did your house get completed?

A: '73.

Q: You purchased your lot in '73, and your house was completed the same year?

A: Yes, sir. We bought it, the lot was completed in February, and we moved in on December the 10th, just before my son's 10th birthday.
Q: Now, did Deerfield Plantation come to develop in the manner that you expected it to?
A: Absolutely. I loved it. It was beautiful. I could not have asked for more.
Q: Do you have any personal knowledge of what happened to the property that used to be the pool?
A: They filled it in, and then they put a -- they played golf on it; they had a golfing school where the pool was, the driving range.
Q: Give me one moment. Ms. Hill, let me ask you about this Exhibit 4, the Single Family Residential Report. Do you recall receiving that?
A: I have it. I know I received it. I can't remember when, but I am assuming that I got it with our deeds.
Q: Did anybody ever go through it with you and explain it to you?
A: Not that I recall.
Q: Do you understand what that report from start to finish says as you sit here today?

A: Not everything.
Q: Please answer any questions Ms. Golding may have for you.
A: Thank you.
THE COURT: MS. GOLDING, YOU CAN CROSS EXAMINE.
MS. GOLDING: THANK YOU, YOUR HONOR.

CROSS EXAMINATION

BY MS. GOLDING:

Q: Ms. Hill, you are an educated lady; is that correct?
A: Yes, ma'am.
Q: And you know how to read; is that correct?
A: Uh-huh (affirmative response).
Q: I'm sorry?
A: Yes, ma'am.
Q: And you read the declarations before you even bought the lot; is that correct?
A: Is that this paper?
Q: No, the declarations applicable to the property containing the restrictions?
A: I'm not sure.
Q: Do you recall testifying in your deposition that you had read the declarations before you bought the lot?

A: I do recall that I said that I probably did.
Q: And also you and your husband signed a contract for the purchase of this lot; is that correct?
A: Yes.
Q: And that contract is identical in form to Plaintiff's Exhibit 5B; is that not correct?
A: Yes, ma'am.
Q: Where is that contract that you signed; where is a copy of that contract?
A: In my lockbox.
MS. GOLDING: YOUR HONOR, TODAY, EVEN THOUGH THIS CASE HAS BEEN GOING ON FOR ALMOST THREE YEARS AND WE ASKED FOR THESE DOCUMENTS, WE HAVE NEVER RECEIVED A COPY OF THAT CONTRACT. IN FACT LAST WEEK WAS THE FIRST TIME WE EVER RECEIVED EXHIBIT NUMBER 4.
THE COURT: ALL RIGHT. DO YOU HAVE A COPY OF IT THAT YOU CAN RELY ON, MS. GOLDING?
MR. SHELTON: YOUR HONOR, ---
MS. GOLDING: NO, I NEVER RECEIVED IT.

GOLDING, I SUPPOSE YOU CAN USE, TO THE EXTENT YOU NEED TO, 5B TO QUESTION HER ABOUT HER RECOLLECTION, IF THAT'S OKAY.

MS. GOLDING CONTINUES:

Q: Now, Ms. Hill, it's a known fact that you read every document that you receive; is that correct?

A: I try to.

Q: Well, I mean you testified in your deposition that you do; ---

A: Yes, ma'am, I did.

Q: --- is that not correct? And so ---

A: I read them, but I may not always understand them.

Q: So when you and your husband signed the contract, which is identical in form to 5B, you read that contract, did you not?

A: Yes, ma'am, I'm sure I did.

Q: And in addition to reading the contract you also read, in its entirety, Plaintiff's Exhibit Number 4, the property report?

A: Yes, ma'am.

Q: And this property report, Exhibit Number 4, you and your husband had that in a lockbox for many,

many years; is that correct?
A: Yes, ma'am.
Q: And the property report, the package, Exhibit Number 4, you read on page seven that the developer had no obligation or commitment to maintain the golf course, did you not?
A: Did I read that?
Q: Yes, ma'am. It's stated in the property report that the developer has no obligation to maintain the golf course for any period of time?
A: Ma'am, I'm sure that I read the document. A lot of times I'm scanning documents. I may scan a book. I did not pick up on that. The last thing that I would ever have thought of is that the golf course would be closed. That would have never entered my mind.
Q: Now, with respect to the closing nobody stopped you from having an attorney present at the closing, ---
A: No, ma'am.
Q: --- did they? That was your own choice; is that correct?
A: Nobody told us we needed to.
Q: Now, Ms. Hill, you're not a golfer, are you?
A: No, ma'am.

Q: And you've never been a member of this golf course that was on this golf course property?
A: No, ma'am.
Q: And you're not insisting that the court require a golf course be on the property that's in dispute here, are you?
A: I would like for it to be.
Q: But you're not insisting on that, are you?
A: I would like an open space. I don't want houses crowded up behind me, as the plans are being shown.
Q: My question is, is it not a fact that you're not insisting that this property that used to be the Deertrack Golf Course, you're not insisting that it be continued to be maintained as a golf course?
A: Ms. Golding, I would like for it to be.
Q: That's not my question. You are not insisting on it being maintained as a golf course?
A: I'm insisting that it not have houses built behind me.
Q: Let's go to page 15 of your deposition.
MS. GOLDING: DO YOU HAVE HER DEPOSITION?
MS. HILLS: AND I REMEMBER WHAT I SAID.
Q: Isn't it a fact you said you were not insisting

that this property be used as a golf course?
A: I'm not insisting on that. I want it to be open. I want to be able to see trees and grass and birds and lakes and not just rows and rows of houses built on lots that are smaller than what I have now.
Q: Isn't it a fact that the reason is what you really don't want is you don't track houses, condos ---
A: I do not.
Q: --- and timeshare?
A: I do not.
Q: But you don't have a problem if it's park; isn't that correct?
A: I wouldn't have a problem with that.
Q: But the real reason is you just don't want tract homes, condos and timeshare? That's what you testified in your deposition; isn't that correct?
A: I did testify to that, and that would include pretty much any homes that would be built right up in my backyard.
MS. GOLDING: NO FURTHER QUESTIONS, YOUR HONOR.
THE COURT: MR. SHELTON, RE-DIRECT.

RE-DIRECT EXAMINATION

BY MR. SHELTON:

Q: Ms. Hill, if the golf course was to go away and homes would be built there, would Deerfield Plantation be what you thought you bought in 1973?

A: It wouldn't even resemble; there would be nothing. Right now everything is growing up around us, it looks like a dump, and who knows what would happen with what has been going on with other developments. It's an absolute disaster, a tragedy. It's terrible what we have been put through.

Q: Throughout this entire course of events have you ever been left with the impression that anybody had the right to come and tear up the golf course?

MS. GOLDING: YOUR HONOR, I'M GOING TO MAKE AN OBJECTION TO THAT QUESTION.

THE COURT: IT WOULD REQUIRE SOME LEVEL OF HEARSAY, I SUPPOSE, TO ANSWER THAT. I'M NOT SURE THAT IT IS WITHIN THE SCOPE OF CROSS-EXAMINATION EITHER, MR. SHELTON.

MR. SHELTON: I UNDERSTAND.
Q: Thank you, Ms. Hill, I have no further questions.
MS. GOLDING: NOTHING FURTHER.
THE COURT: THANK YOU. MS. HILL, YOU CAN STEP DOWN.
MR. MILLER: THANK YOU, YOUR HONOR; I CALL MR. E.F. HUCKS.
THE COURT: MR. HUCKS, COME FORWARD, PLEASE AND BE SWORN.

EDWARD F. HUCKS, HAVING BEEN CALLED TO THE STAND AND DULY SWORN, TESTIFIED AS FOLLOWS:

EXAMINATION

BY MR. MILLER:

Q: Mr. Hucks, good afternoon. You know me, I'm David Miller. If you would, please tell Judge Cooper what it is you do for a living?
A: I'm a real estate appraiser, and I have a company called E.F. Hucks and Associates, and I also have another company E.F. Hucks Consulting.
Q: Without going in too much detail, would you explain to Judge Cooper your background, education and experience and licensure, as relates to those professions?
A: I will. I finished Francis Marion College with a degree in business administration. While I was

at Francis Marion I took the real estate broker's license and obtained by real estate brokerage license while I was still in college.

Immediately following college I went back and worked in Bishopville, South Carolina and started doing appraisals and also real estate brokerage. After four years there I started taking -- well, before -- after six months there I started taking real estate appraisal classes. At that time, which is the early 80s, there was no state licensing, and so you, to become an appraiser the route was to go through organizations that have been teaching classes since the 1930s through the Appraisal Institute, the American Society of Farm Managers and Rural Appraiser and through the Society of Real Estate. And over those first four or five years I took probably six or eight classes.

I moved to the Beach in 1984 and started working for a residential appraiser right in Surfside at -- the office building actually borders Deerfield, and then I went to work for a bank for five and half years. Took various classes, went onto obtain my MAI designation in 1991.

In 1992 or three, the State of South Carolina started licensing. I was, more or less, grandfathered into the certified general certification through the appraisal board and opened my own company in 1991. Today I have seven appraisers, two support people. We have offices in Pawleys Island and in Myrtle Beach. We appraise Georgetown County, Horry County and Brunswick County.

To date, since I moved in 1984, I've been responsible for approximately 30,000 appraisals at the Beach. Today my office is about 90 percent commercial, 10 percent doing individual houses and condominiums, and we do about six or 700 appraisals a year.

Q: Were those percentages different over the many years?

A: They were. When I moved in 1984 I started -- I was doing house appraisals. I probably did three or 400 myself each year. I've done dozens, if not hundreds, of appraisals in Deerfield and other golf course communities along the Grand Strand.

Q: Did you tell us that you have a brokerage license?

A: I do. I do. I've been in -- I got that, like I mentioned, while I was in college; and I've been involved in numerous real estate brokerage transactions. I don't put signs up and down the street to advertise that, but I do find myself in the position of knowing people willing to buy and knowing people willing to sell. And I've, from 2004 till now, I've probably brokered 150 million dollars worth of transactions.

Q: You've got a company called E.F. Hucks and Associates; is that correct?

A: That's the appraisal business.

Q: Are you the owner of that company?

A: I am.

Q: And that is the entity through which your appraisal business is conducted?

A: That's right.

Q: And if I understand it correctly, you also have a company called E.F. Hucks Consulting?

A: That's right.

Q: Do you own that?

A: I'm a partial owner in it.

Q: You and others?

A: My son and I.

Q: So that I understand the distinction in the two

companies, I understand that E.F. Hucks and Associates is the appraisal arm.

A: That's right.

Q: Tell me what E.F. Hucks Consulting does.

A: I started in the '90s tracking all the real estate transactions in detail in Horry and Georgetown County, and every month I compile reports that show the number of home sales, the number of condo sales, the number of lot sales. And over this 15 plus or minus years, with that data you can learn and I use it in my appraisal reports and also sell reports to various banks. I've actually got a subscription, a newsletter that I publish every quarter, and I have banks that rely upon those consulting reports to follow the activity of the market.

Q: Does the word "consulting" mean what I understand it to mean in the common ---

A: It does, and what that does with type data it leads me to be a go-to-guy for real estate data for developers thinking about doing various projects. So they don't, they don't come in and say "Hey, I want you to appraise this dream that I have." They say "I would like for you to consult with me, and are we off base with trying

to do this or what is the data and what is your opinion as to how the market would react with your knowledge of the market and the data that you have from the early stages of development," and so we do a lot of that.

Q: Is it true that all of this history you just explained to us is within the Greater Grand Strand area?

A: That's correct.

Q: And is it true that that history, from either company, would be inclusive of residential lots?

A: Yes.

Q: Tracts or acreage?

A: Yes.

Q: How about commercial property?

A: Commercial properties, hotels, motels, shopping centers.

Q: How about golf courses?

A: Golf courses, we've appraised golf courses.

Q: How about property, the lots within golf course communities?

A: Yes.

Q: Have you ever been qualified as an expert in a South Carolina courtroom before?

A: Sure.

Q: How many times?
A: Dozens.
MR. MILLER: YOUR HONOR, I WOULD OFFER MR. HUCKS AS AN EXPERT IN THE FIELDS OF APPRAISAL AND PLANNED COMMUNITY CONSULTING
THE COURT: MS. GOLDING?
MS. GOLDING: I NEED TO ASK SOME QUESTIONS.

VOIR DIRE EXAMINATION

BY MS. GOLDING:

Q: Mr. Hucks, is it not a fact that since 2006, 2007 you have been a convicted felon?
A: 2007. I pled guilty to charges of tax evasion.
Q: And that's a felon; is that correct?
A: Yes, ma'am. It had no impact on my licenses, and I still maintain all my licenses.
Q: Well, you were suspended as an MIA, were you not?
A: I get that back in February.
Q: But you don't have it yet, do you?
A: I've still for the knowledge. I don't have the designation.
THE COURT: ALL RIGHT, THANK YOU.
MR. MILLER: I'LL STILL OFFER MR. HUCKS

AS AN EXPERT IN THE AREA OF APPRAISALS.

THE COURT: ANYTHING FURTHER.

MS. GOLDING: THE ONLY OTHER THING, YOUR HONOR, IS IT'S MY UNDERSTANDING THE ISSUE BEFORE THE COURT IS AS TO THE EXISTENCE OF ANY TYPE OF EASEMENTS. I DON'T SEE THAT THERE IS ANY TYPE OF RELEVANCE TO MR. HUCKS' TESTIMONY WITH RESPECT TO THE ISSUE BEFORE THE COURT. THANK YOU, YOUR HONOR.

THE COURT: I UNDERSTAND, THANK YOU. SUBJECT TO THAT OBJECTION I WILL ALLOW YOU TO GO FORWARD. I THINK THAT THE FOLKS HAVE TESTIFIED AT THIS JUNCTURE THAT THEY PAID MORE VALUE FOR IT BECAUSE IT WAS ON THE GOLF COURSE, AND I TAKE IT THAT THAT'S THE AREA THAT YOU'RE GOING TO EXPLORE.

MR. MILLER: (INDICATES AFFIRMATIVELY.)

THE COURT: SO I'LL ALLOW YOU TO DO THAT.

MR. MILLER: THANK YOU, YOUR HONOR.

CONTINUATION OF DIRECT EXAMINATION

BY MR. MILLER:

Q: Mr. Hucks, you have been engaged to provide expert testimony in this case. Will you explain to us what your assignment is?

A: Well, the assignment was to go back in time into the 1970s and to research the market, which I did, to a certain "if there was a premium paid for properties located inside of not only Deerfield but other golf course planned communities along the Grand Strand; and if there was a premium paid, how much was that premium."

Q: I understand that if I were to get in a car and go drive around the Grand Strand right now, I could find more golf course communities than I care to find. Was that the case in 1972 through let's say '80, while this project was being marketed and sold?

A: No, it was -- number one, you had no zoning in the county, and so the typical development was either "A," close to the Beach or "B," just a

street that maybe the government had put in, municipalities, with a few developer oriented developments but, but very few master planned golf course communities. You had the Dunes Club up on the north end of Myrtle Beach. You had Quail Creek over here near Conway, and then you had a couple down on the south end. But Deerfield came along in a largely undeveloped area of the Grand Strand, at least to the west, and they, they master planned this community centered around two 18-hole golf courses that became a very popular location for permanent residents at the time. As both of these Plaintiffs testified, they moved from other unplanned communities or at least not as detailed a plan into this, and that trend has continued; but there was a mentality at that time and has since been true in the market, that you have security, you have certainty inside of these neighborhoods.

Q: What's the significance of your comment about zoning to that last comment you just made?

A: Well, going back, and again, I enjoy doing stuff like this, to go back in time and have to look retrospectively. Many of the properties that

sold back at that time significant changes have occurred. One of the comparables I looked at there's been office buildings built right beside them, a car wash right down the street. Just you had no zoning until 1987 in the county, and so people that took the risk of going outside of master planned communities many times ended up with incompatible uses around them and ultimately value deterioration.

Q: In tackling this assignment, what did you do?

A: Well ---

Q: And let me say this. I know you did a lot so if you could overview for Judge Cooper how you went about tackling this assignment?

A: Well, first thing is you don't pick up the newspaper and find sales that occurred 30 years ago. You have to come over here to the courthouse so I have a residential associate that has worked with me for years, Beth Helms, and Beth took upon herself the tedious chore of coming over here and researching deeds. Bellamy Law Firm had supplied me with access to all the deeds of the purchasers of Deerfield which was one part of the equation. You could see what was going on within Deerfield, but what we wanted to

do to accomplish the scope of this assignment was to see well, what were other things selling for at the time, and how did those transactions compare to what was going on in Deerfield.

Q: Were you able to find any? And I'm going to use this Plaintiff's Exhibit Number 6 as a reference. You understand what this ---

A: I do.

Q: Were you find able to find at that time subdivision communities as opposed to just a lot here or there; subdivision communities that were similar but for the planned golf community concept, was there anything like that going on at that time?

A: Well, they were, they were limited but the -- in the late '70s Dr. Platt actually, and I can only say Dr. Platt, some of his previously held land, because I do know the history of the ownership of Dr. Platt's land since my father was raised here in Conway and he used to come down here and deer hunt on this same land that now is Deerfield Plantation and all the way up to Caropines. That was a neighbor developed that didn't have the golf course, and it was a development that was popular at the time.

Q: And that becomes then your historic comparable?
A: Yes.
Q: Having been through that process, have you reached conclusions as to whether premiums were paid that you attribute to the fact that these lots are within a planned golf course community?
A: Yes, and, and we -- the first thing was to, the challenge of trying to find -- I never have, in my appraisal process, tried to pick the high or pick the low. I tried to get a good sampling of data that had occurred, and I found that lots in Deerfield on the golf course were selling for approximately $20,000, and the ones in non-golf course communities were selling for $11,500. And so we were able to do what we call a matched pair analysis; and actually for the benefit of The Court, was going to try to look up the definition of that to have, but I actually found they use that in the medical profession too, matched pairs. And the way that works is you have property number one that has a certain amount of features and then you have property number two, and you try to isolate it down to "Well, what is the one factor that would be different between them," or the two but literally down to one. And

in this case my analysis brought it on down home to find that the golf course community was the premium that not only applied to the golf course lots but the lake lots and the interior lots within Deerfield Plantation and other neighborhoods too; but I focused on into Deerfield just to see what that premium was.

Q: Do you know that there are 458 lots that make up the class in this lawsuit, do you not?

A: Yes, sir.

Q: And you've looked at the maps and you know what those 458 lots are; is that correct?

A: I assume they are shown on that map.

Q: They are. I want to make sure I got your last comment correct. Is it your testimony then that premiums were paid for each of those?

A: Yes, sir.

Q: Be they on the golf course?

A: Yes, sir.

Q: Be they on the lakefront?

A: Yes, sir.

Q: Or be they interior lots nether on the golf course or on the lakefront?

A: Yes, sir.

Q: The whole community?

A: Right.
Q: How much?
A: 17 percent on the interior lots, which amounted to approximately $2,000. The golf course lots sold for 57 percent more, which translated into about $7,000 more; and the lake lots sold for about $2,000 more than the interior lots within the neighborhood, which implies about a $4,000 premium to them.
Q: Okay, very good. Thank you, Mr. Hucks. That's all I've got.
THE COURT: MS. GOLDING?

CROSS EXAMINATION

BY MS. GOLDING:
Q: Mr. Hucks, we have introduced into this Plaintiff's Exhibit Number 4, which is a packet of material and information that contains the property report; that first page, starting with page one, is the property report. And you're familiar with property reports, are you not?
A: Yes, ma'am.
Q: And the property reports, they are sometimes called HUDs, are they not?
A: Yes, ma'am.
Q: And those property reports are mandated by the US

Department of Housing and Urban Development; is that correct?
A: Yes, ma'am.
Q: And the significance of the property reports is that they should advise the prospective property owners of issues relating to the property; is that correct?
A: Yes, ma'am.
Q: And therefore these property reports are significant documents; is that correct?
A: Yes, ma'am.
Q: When were you hired, again in this lawsuit?
A: I think it was 2008.
Q: In 2008. From 2008 when you were hired till I took your deposition in July of 2009, you were never provided this property report, were you?
A: That's correct.
Q: And in fact, you never read the property report, did you?
A: Up until my deposition, no, ma'am.
Q: In this property report you will agree that it has disclosures that there's no guarantee as to how long this golf course can be in existence; isn't that correct?
A: Well, one thing I wanted to add before you went

to that.
Q: No. If you could answer the question, then you can explain.
A: Okay.
Q: Is it not correct that in this property report there's a disclosure that there's no guarantee as to how long this golf course property will be used and maintain as a golf course?
A: There's some reference to that.
Q: You can go ahead and explain.
A: The hundreds of appraisals that I've done in the neighborhood I never was furnished with a property report, and there are many lenders that relied upon market data that showed that premiums were being paid by purchasers in there based upon what was evidence. This map here, I've used it in hundreds of appraisals as an exhibit that was meaningful.
Q: Well, Mr. Hucks, let's be fair to The Court now. The developer of the property doesn't go out and hand property reports to appraisers, do they? That's not part of ---
A: They do on new developments.
Q: Not back in the '80s; that wasn't a practice and procedure, was it?

A: No, ma'am.
Q: And you're not here today saying that this developer didn't give these property reports to prospective purchasers, are you?
A: I have no idea.
Q: And in fact, I don't think you've ever owned any property in Deerfield Plantation?
A: No, ma'am.
Q: So since you didn't have an interest or contract for any lots in Deerfield Plantation, as a practical matter you never expected to get a copy of the property report, did you, any time you did an appraisal; is that correct?
A: Thank you, yes, ma'am.
Q: Now, with regard to the purchase agreement that was introduced as Exhibit 5B, you never did see that purchase agreement before I took your deposition in July of 2009, did you?
A: No, ma'am.
Q: And with regard to this document called a privilege and obligation agreement, you never did see that document privilege and obligation agreement, did you?
A: No, ma'am. All I did was measure the market for the premium being paid.

Q: And this privilege and obligation agreement, you heard testimony that there are specific disclaimers in here saying that the developer didn't have to maintain that property as a golf course; is that correct?
A: There's a lot of stuff hidden in that document.
Q: Well, when you say "hidden," show me how it's hidden? These words that you say are hidden in Exhibit Number 4, tell this Court how you think those words are hidden.
A: The HUD agreements that I see now have it in bold letters.
Q: I'm asking you about Exhibit Number 4. Where are the words ---
MR. MILLER: YOUR HONOR, HE'S TRYING TO ANSWER THE QUESTION.
THE COURT: I THINK HE MADE HIS ANSWER. HE SAID "THE CURRENT AGREEMENTS HAVE BOLD LETTERS FOR THESE TYPES OF DISCLAIMERS."
MR. MILLER: I DIDN'T THINK HE WAS FINISHED.
THE COURT: WAS THAT A COMPLETE ANSWER, MR. HUCKS, AS TO THAT?

MR. HUCKS: WELL, I WOULD LIKE TO GO A LITTLE FURTHER IF I COULD.

THE COURT: WELL, AS LONG AS IT'S RESPONSIVE YOU CAN -- SHE'S ASKING YOU A SPECIFIC QUESTION THOUGH ABOUT THAT PARTICULAR DOCUMENT. SHE WANTS TO KNOW HOW DO YOU CLAIM THAT THOSE WORDS ARE HIDDEN WITHIN THAT DOCUMENT THAT SHE'S SHOWING YOU. YOU CAN EXPLAIN THAT AFTER YOU ANSWER THAT QUESTION IF YOU'D LIKE.

MR. HUCKS: I'LL LET HER REPHRASE THE QUESTION.

Q: No, no. My question is, Mr. Hucks, you just said that the words were hidden in the HUD property report and the privilege and obligation agreement. I want you to tell The Court how those words of disclaimer are hidden.

A: Well, I mean there's bold writing. I would say that's not very hidden. When you get into this fine print, the, the market that I measure and that I see, if there is going to be a significant

change in value, it needs to be disclosed, and that is what I -- most people don't try to pull that kind of stuff. They don't say "We're going to take away your ditches or your access to the water or your streets or your anything." They, they give what they sell.

Q: My question is how are the words hidden in Exhibit Number 4?

A: Well, let me just say they are not obvious.

Q: Okay, thank you. Now, you also said you used a comparable, and I think one of the comparables you used is the Dunes Club; is that correct?

A: No, ma'am. I looked at that community.

Q: But on direct examination you said you had comparables or communities that had golf courses in them that have premiums; is that correct?

A: Yes, ma'am.

Q: These communities that have the golf course around, you don't have any knowledge as to whether any of those lot owners or homeowners surrounding those golf courses have any type of easements, do you?

A: On other neighborhoods that I looked at?

Q: Yes, sir.

A: Well, they still enjoy the same benefits they've

had for 30 or 40 years.
Q: My question was is there any type of written easement between the lot owners and the golf course owners in the communities that you looked at?
A: I'm not aware.
Q: So you have no knowledge as to all the other communities you looked at as to the relationship between the owners of the residential property and the golf course owners, do you?
A: Well, I have market data that supports that people pay more inside of those neighborhoods.
Q: That's not my question, Mr. Hucks. You have no knowledge as to what type of agreements such as easements exist between the lot owners in the residential subdivision and the golf course owner?
A: Okay, I'd agree with that.
Q: No further questions.
THE COURT: THANK YOU. MR. MILLER, RE-DIRECT.
MR. MILLER: THANK YOU, YOUR HONOR.

RE-DIRECT EXAMINATION

BY MR. MILLER:
Q: Mr. Hucks, when you were looking at value --

which is what appraisers do; is that fair?
A: Yes.
Q: Is the basis or the assumption underlying that, that a reasonably informed seller is selling to a reasonably informed purchaser?
A: Yes, sir. When you, when you see a pattern of activity over the years and it, and it follows, it's not, it's not a once-in-a-lifetime occurrence. It's a, it's a fact; it's a pattern that's occurred.
Q: Is it true, and you tell me, whether the terms and conditions of a particular transaction can impact the value or the price in that transaction?
A: Sure.
Q: So when you tell me that a reasonably informed purchaser is your model, as I understand it, the appraisers' model, tell me what you're describing as a "reasonably informed purchaser."
A: Well, one that doesn't act under undue circumstances. They, they didn't just fly in and fly back out. We've had a number of those kinds of transactions that occurred down here that set some bench mark of price that we may never see again; but when you get a pattern of sales

activity taking place, those are bona fide sales that represent market value.

Q: If you'll bear with me one second. You have in front of you what I believe is marked as Plaintiff's Exhibit Number 1?

A: That's right.

Q: Is that something you looked at before?

A: I have.

Q: And you were here today during the testimony of the Clemmonses and Ms. Hill?

A: Yes, sir.

Q: And you heard them say that that's something they looked at in the course of their buying decision?

A: Yes, sir.

Q: Is that part of the analysis of a ---

MS. GOLDING: I WANT TO MAKE AN OBJECTION, YOUR HONOR. THE HILLS NEVER TESTIFIED THAT THEY LOOKED AT THE BROCHURES. IN FACT, MS. HILLS SPECIFICALLY DID NOT TESTIFY THAT SHE LOOKED AT THE BROCHURE BEFORE PURCHASING THE PROPERTY.

THE COURT: MR. MILLER, CAN YOU

STRAIGHTEN ME OUT ON THAT FACTUAL ISSUE.

MR. MILLER: IF YOU'LL LET ME TALK TO MR. SHELTON, I CAN.

THE COURT: SURE, YOU CAN DO THAT.

MR. MILLER: CAN I REPHRASE THAT?

THE COURT: YES.

Q: Did you hear Ms. Clemmons testify that she's ---

A: I heard one of the ladies, yes, sir.

Q: Is that part of the reasonably informed purchaser?

A: I think a lot of money is spent all the time in generating brochures. And that's, that's part of the feel-good process that takes place in the buying and selling the real estate.

Q: Well, if you're asked to look at a transaction and there are terms and conditions that affect value, do you assign value to those terms and conditions?

A: You'd have to narrow that down a little bit. Financing terms?

Q: Well, let me try maybe more pertinent. If I am selling a piece of property, let's say, on a golf course and I am reserving the right, I'm going to charge you a premium for it as you have

testified, and I'm going to reserve the right the day after you close to dig it up and turn it into something else. Would that be a condition that would affect value?

A: I think so. We'd call that maybe a leasehold interest. The first thing you'd need is to know "what's the expiration of it."

Q: Let me hand you what has been marked as Exhibit 5B. This is the purchase agreement between Clemmons and the seller. Have you had the opportunity to review that document?

A: Yes.

Q: Looking up at the top of it, it says that the transaction is by and between Deerfield Plantation, Inc., the seller, and in this case the Clemmonses as the purchaser, correct?

A: Yes.

Q: And the first few paragraphs, I think one through four, they're written all the way across the top of the page and then the formatting changes; is that right?

A: I see that.

Q: Do you see anything in paragraphs one through four that even address the issue of "We reserve the right to change the use of the golf course"?

MS. GOLDING: YOUR HONOR, I DON'T KNOW WHERE HE'S GOING, BUT THIS WITNESS IS, YOU KNOW -- IF HE'S TRYING TO INTERPRET THE DOCUMENT, THE DOCUMENT SPEAKS FOR ITSELF; AND THEREFORE, I WOULD ---

MR. MILLER: THAT'S NOT AT ALL THAT I'M TRYING TO DO.

MS. GOLDING: WELL, HE CAN'T DO THAT. IT'S VIOLATIVE OF THE PAROLE EVIDENCE RULE, YOUR HONOR.

MR. MILLER: I'M NOT ASKING HIM TO DO IT. I'M ASKING HIM IF THAT IS THERE; THAT'S IT.

THE COURT: ALL RIGHT, WELL HE CAN ANSWER THAT.

Q: Do you see, in paragraphs one through four, anything that addresses a reservation of the right to change the use of the golf course?

A: No, sir.

Q: Have you looked through -- you have to turn the pages to go sequentially; it goes five, six, seven and then over to the next page eight, nine,

10, 11 on the left, and then you go back to the first page and it continues there. Have you had an opportunity to review those provisions?

A: I've glanced at them.

Q: Can you tell me whether there's any language even in that different format, differently formatted language, that says "I reserve the right to change the use of the golf course," the seller Deerfield Plantation, Inc. reserves the right to change the use of the golf course?

A: I don't see it.

Q: Did you hear Ms. Golding referencing certain provisions of this document when she was asking questions of some of the plaintiffs?

A: Yes, sir.

Q: And did you understand the part in paragraph 11, which is on the second page, where the contract of sale references other documents?

A: I see that.

Q: One of which is called a privileges and obligation agreement. Do you see that?

A: Yes.

Q: I'm going to hand you what has been marked Plaintiff's Exhibit Number 4, which we're calling the single family residential property package

and ask you have you had a chance to look at that document?
A: I've glanced at it also.
Q: When I say "that document," it's actually four documents, is it not?
A: It is.
Q: And when Ms. Golding was asking you about HUD regulations and requirements for distribution of certain information to purchasers, the one that's required is the property report, correct?
A: I'll say yes.
Q: And in the property report, which is the first of the four documents and I'll go by the page numbers that are on the bottom, look at the top of page three, item number one, does that define for us who the developer is?
A: Deerfield Plantation, Inc.
Q: And turn then to page six and look at number 8B and read, if you would -- go ahead and read it out loud. What is the question that the developer is responding to there? You can read it out loud if you would, 8B on page six.
A: "Except for those property reservations which land developers commonly convey or dedicate to local bodies or public services to the land being

developed, will buyer receive a deed free of exceptions."

Q: Look at the answer to that and tell me if you see words in the answer that say that the developer reserves the right to change the use of the golf course?

A: "The deed will be subject to common subdivision conditions." I don't see anything that says anything about the golf course.

Q: All right, turn the page again, to page seven, and I'm looking at 9B. Do you see that?

A: Yeah.

Q: That one says "If facilities are proposed or partly completed, state promised completion date, provisions to assure completion, and all estimated costs or assessments to buyer or lessee. If there are no provisions to assure completion, so state." And then it says "golf course," part the way down. Do you see that?

A: (Indicates affirmatively.)

Q: And in big bold letters beside golf course, what does it say?

A: "Cost to buyer for completion or maintenance of facility, none."

Q: And then at the bottom, you see the last

paragraph of section nine, the one Ms. Golding had read earlier, do you see that one?
A: Right.
Q: And it reads, does it not, "The developer will have no obligation or commitment to maintain clubhouse, swimming pool, tennis courts or golf course," et cetera. Do you see that?
A: I do.
Q: Did the developer own the golf course, the developer being Deerfield Plantation, Inc.?
A: I'm not sure.
Q: Do you know whether Dr. Platt had conveyed the residential lots only into Deerfield Plantation, Inc., yet reserved title to the golf course?
A: I've seen records that show that he owned the golf course individually.
Q: And let me tell you that we stipulated documents into the record today that would bear that out.
A: Okay. So he owned the golf course ---
Q: Individually.
A: --- individually.
Q: So when I'm reading at page seven and it says "The developer has no obligation to maintain," you understand the developer didn't own the golf course?

MS. GOLDING: YOUR HONOR, ACCORDING TO THAT DOCUMENT THE DEVELOPER LEASED THE GOLF COURSE.

A: I understand.

Q: And in paragraph 22, for Ms. Golding's benefit, it explains there that in fact they do; does it not? And I'll read it. "Does developer own golf course property and facilities referred to herein?" And the answer, you tell me if this is correct, "No, Developer, Deerfield Plantation, Inc., does not own the golf course and facilities related thereto, but holds a leasehold from the owner," et cetera, "for a period of 10 years."

A: Yes.

Q: And you've just read language that says they don't have to maintain it during that 10-year period; is that right?

A: That's correct.

Q: Okay. If you'll turn the page, then there's a declaration, and it is six pages. Can you tell me whether in that declaration it states the developer or anybody else can change the use of the golf course to some other use? Do you remember seeing that in there?

A: Well, if it is, it's hidden in there because it's

not in bold letters.

Q: How about in the next document, privilege and obligation agreement; that's one, two, three pages long, and Ms. Golding -- if you'll remember that paragraph eight, the very last clause right there, talks about that the developer, Deerfield Plantation, Inc., and I'll paraphrase this, for any reason can use the property devoted thereto for other purposes. Have you seen that at the bottom of paragraph eight?

A: I do.

Q: Well, given your qualification as an appraiser and a consultant in real estate development, can a lessee subdivide and sale the lessor's land?

A: No, not without a modification to some agreements breaking the lease.

Q: A lessee can't sign the deed conveying the fee title to the lessor's land, can he?

A: No.

Q: Did you conclude, in answering the question that was proposed to you today, was a premium paid, that was a question that was posed to you, did you concluded or can you now conclude whether this arrangement of having a contract referencing other documents that contain the language we've

looked at, would have a value impact on the transaction or not?

A: I think in theory you wouldn't have a golf course frontage premium if the buyers thought that the golf course would never be there.

Q: And so I'm clear on my question. I'm looking at a reasonably informed buyer, somebody who was given this set of documents. Would you conclude in your opinion that this set of documents and these particulars we've pointed out, would have had a value impact on the transaction?

A: I don't think the records show that it was a negative impact.

Q: And then lastly, have you looked at the deed; this one is to the Clemmonses?

A: I have not.

Q: Take a minute and look at the deed and tell me if you can find anywhere in there that it specifically makes a reservation to change the use of the golf course?

A: It, it just references declarations and conditions in Deed Book 48, at 305.

Q: It doesn't reference a privileges and obligations agreement, does it?

A: I don't see it.

Q: Or a property report for that matter?
A: I don't see it.
Q: Thank you, Mr. Hucks; that's all I have.
THE COURT: MS. GOLDING, FOLLOW-UP ON THIS POINT?
MS. GOLDING: NOTHING FURTHER, YOUR HONOR.
THE COURT: THANK YOU, MR. HUCKS. YOU CAN STEP DOWN.
MR. MILLER: YOUR HONOR, LET ME MAKE SURE I DON'T HAVE THE EXHIBITS UP HERE WITH ME.
THE COURT: OKAY.
MR. MILLER: I DO NOT.
THE COURT: ALL RIGHT. WELL, IT'S A FORTUITOUS TIME TO STOP FOR THE MORNING AND SINCE WE'RE IN THE AFTERNOON. TELL ME HOW WE'RE DOING ON THE SCHEDULE SO I'LL KNOW WHAT SORT OF LUXURY WE MIGHT HAVE FOR A LUNCH HOUR. CAN YOU GIVE ME AN IDEA?
MR. MILLER: WE'RE FINISHED SOONER THAN WE THOUGHT.

***** OFF THE RECORD *****

(ON THE RECORD.)

THE COURT: ALL RIGHT. FOLKS, WHAT'S THE VERDICT?

MR. MILLER: WE'VE REACHED AN AGREEMENT ON THAT, YOUR HONOR.

THE COURT: OKAY, GOOD.

MR. MILLER: I THINK WE COULD JUST READ IT IN OR WE CAN MARK MS. GOLDING'S HANDWRITING; IT SEEMS LEGIBLE.

MS. GOLDING: WE'VE STIPULATED, YOUR HONOR, THAT THE DEERTRACK GOLF RESORT LLC OPERATION OF THE GOLF COURSE, FROM AT LEAST 2003 FORWARD, WAS NOT ECONOMICALLY FEASIBLE.

THE COURT: ALL RIGHT.

MR. MILLER: FOR YOUR HONOR'S INFORMATION, THAT'S A LESSEE OPERATOR.

THE COURT: RIGHT. WHAT'S THE NAME OF THE ENTITY AGAIN?

MS. GOLDING: IT WAS DEERTRACK GOLF RESORT LLC.

THE COURT: OKAY.

MS. GOLDING: AND THAT WAS -- THE GOLF COURSE WAS BEING LEASED FROM DEERFIELD PLANTATION TWO.

THE COURT: RIGHT. THANK YOU. YOU ALL HAVE OUTLINED FOR ME PRETTY WELL THE TRACK OF THE OWNERSHIP OF THE PROPERTY, AND I HAD A CHART AT ONE TIME BUT I DON'T HAVE IT IN FRONT OF ME, TO KEEP THAT STRAIGHT, BUT I UNDERSTAND THE STIPULATION.

OKAY, SO FOLKS I WOULD SUGGEST, I'LL BE GLAD TO HEAR FINAL CLOSING ARGUMENTS OR I WOULD SUGGEST THAT THEY BE ENCOMPASSED PERHAPS WITHIN YOUR PROPOSED ORDERS IN SOME FASHION. YOU ALL TELL ME HOW YOU WANT TO PROCEED ABOUT THAT. I'LL START WITH THE PLAINTIFF, FIRST

THE COURT: All right, folks. I've got a copy of Mr. Miller's motion in front and I've got my Order and the transcript and the documents that Mr. Miller has passed up.

Madam Reporter, this is a Plaintiff's Motion to Alter or Amend an order of this court under Rule 59(e) under the Rules of Civil Procedure. 10:39AM

Mr. Miller?

MR. MILLER: Thank you, Your Honor. 10:39AM

Your Honor, I want to begin by first commenting that as you -- or if you undertake to read the many cases in South Carolina that deal with implied easements --

THE COURT: Right. 10:39AM

MR. MILLER: -- that there is an inconsistency of the names that are used to identify different types.

THE COURT: Right.

MR. MILLER: And there are varying analyses that go with different types, but there are also common threads that guide the Court. And the beginning of the Court's Order, I think, does a fair job of outlining those common threads that do go with it. 10:40AM 10:40AM

What I want to do is, to the extent necessary, clarify exactly what it is we're seeking and which analysis we believe is the correct one to be applied.

Your Honor, I'm going to hand you and Ms. Bailey a chain of cases. 10:40AM

THE COURT: Okay.

(Tendered documents.)

MR. MILLER: And there are, I believe, just four cases in there. And if you will note, I have highlighted the pertinent portions that I am going to reference as we go through. 10:40AM

THE COURT: Okay.

MR. MILLER: You'll recall, Your Honor, that the thrust of the Plaintiff's case here is that the manner/method by which this property was developed and sold to them created an implied easement which would prohibit the use of the subject property as defined in the Order, which is the golf course -- 10:41AM 10:41AM

THE COURT: Right.

MR. MILLER: -- for any use inconsistent therewith; in other words, open 10:41AM

space.

THE COURT: Right.

MR. MILLER: And you find the term "open space" in some of the cases as you go through. 10:41AM

The Order cites to the case that is on top of the stack I just handed you which is *Gambrell versus Schriver*. And it recites from that case four factors which ordinarily must be shown in order to establish a 10:42AM negative reciprocal easement.

THE COURT: Right.

MR. MILLER: And the Order accurately sets forth those four factors.

That case, Your Honor, and the next 10:42AM couple that I'm going to talk about are situations where an owner of acreage undertook to piecemeal, carve out a lot here and a lot there and to individually deed those lots out to purchasers, and in doing 10:42AM so put some deed restrictions in each deed.

THE COURT: Right.

MR. MILLER: And the deed restrictions in each deed vary slightly as time went by and the seller, for whatever reason, chose 10:42AM

to carve out, sell a lot here, sell a lot there.

The cases that deal with that situation -- this is one of them -- utilized this analysis. 10:42AM

THE COURT: Right.

MR. MILLER: And the argument is that, well, if you carved out a couple of them, then, in turn, the remainder would be reciprocally burdened. 10:43AM

And the court in these first few cases found there's got to be something more than that. If an owner just goes in and cuts out a lot and sells it to you and puts restrictions on it, there's nothing to say 10:43AM that they have therefore somehow burdened the rest of their property without more.

And the language of these cases as you go through will support what I am talking about. If you turn to Page 4 of the 10:43AM *Gambrell* opinion --

THE COURT: Okay.

MR. MILLER: -- it recites just that: "In the various grants of the lots, there must have been included some restriction for 10:43AM

the benefit of the land retained, evidencing a scheme or intent that the entire tract shall be similarly treated, so that once the plan has been effectively put into operation, the burden placed upon the land conveyed is by operation of law reciprocally placed upon the land retained." 10:44AM

So there's got to be something more. That case cites to two other cases in support of its legal analysis, being the *Bomar* case and the *Edwards versus Surratt* case. 10:44AM

THE COURT: Right.

MR. MILLER: Each of those is the same fact scenario, where an owner of acreage simply undertook, very obviously, to cut out a lot and sell it to somebody and to put a restriction on the lot. 10:44AM

The *Bomar* case at Page 3 reads that, "In determining whether reciprocal negative easements have been created, resort should be had not only to the language of the deeds, 'but the circumstances surrounding the origin of covenants should also be considered'"; so that the Court's review is 10:44AM

broadened to take a look more at the totality of the circumstances and not restricted to the document itself.

And they conclude on the last page of that Order that there was "no master plat ever made... and no general restrictions ever recorded." And, therefore, again, that would not amount to the creation of an easement. 10:45AM

Similarly, in the *Edwards versus Surratt* case -- and that one will be cited in a bit -- if you go to Page 5 of 9, this Court takes a broader look at the negative reciprocal easement; and, in fact, at one point, it calls it a negative equitable easement. And you see those terms vary. 10:45AM 10:45AM

THE COURT: Right.

MR. MILLER: This was in 1956.

But if you go to Page 5 of that case, after a review of how these principles apply, the Court notes that "one of the controlling principles in the above decisions is that where a common grantor opens a tract of land to be sold in lots and blocks, and before any lots are sold, 10:45AM 10:46AM

inaugurates a general scheme of improvement for the entire tract intended to enhance the value of each lot, and each lot, subsequently sold by such grantor, is made subject to such scheme of improvement, there is created and annexed to the entire tract what is termed a negative equitable easement, in which the various purchasers of lots have an interest, and between whom there exists a mutuality of covenant and consideration." 10:46AM 10:46AM

On Page 7 of that case, you can glean some additional guidance in how to approach this case that we are here, from the language here. 10:46AM

Beginning at the bottom left, it recites effectively what I've already said, that in the absence of a general plan or scheme, you're not going to overcome this burden. 10:47AM

And then at Headnote 9, "In order to establish a reciprocal negative easement" -- now they're using a different term, same case -- "by implication from an express easement on the land of the grantee, there 10:47AM

must be proof of a scheme or general plan of restrictions, originating from a common owner, and a restriction placed upon a single lot does not establish such a plan."

Neither of those cases cite the four factors as they are set out in *Gambrell*. 10:47AM

THE COURT: Right.

MR. MILLER: And I would again point out to Your Honor that the analyses of whether an implied easement arises is case specific or fact specific, so that the situation in these cases which gave rise to the language cited in your Order, the four factors, is a different scenario as is repeatedly pointed out. This is where there is no general plan or scheme of development. 10:47AM 10:48AM

THE COURT: Right.

MR. MILLER: The next case is *McDonald's*, and it's cited in the *Surratt* and *Bomar* case. 10:48AM

THE COURT: Right.

MR. MILLER: And this does have a recorded plat showing a general scheme. Okay? So this is a different --

THE COURT: Right. 10:48AM

MR. MILLER: -- animal, even though it is in the same chain of cases, which is interesting.

The problem here was that the plat that got recorded was improper in many respects. 10:48AM
Nobody signed it, for one thing. Nobody notarized it. There was no probate. There was nothing. It shouldn't have been recorded, but it got recorded. And the deeds got recorded making reference to it. 10:48AM

And the property owner sought to overcome what I now call a Blue Ridge type scenario by reference to the plat saying that the plat was improper, and the Court said no. 10:49AM

We are looking at these implied easements. We are not looking at the technicalities here. We are looking really at expectation, interest, manner and method by which things are done. And they 10:49AM
conclude, as you get to Page 5 of that case, very similar language, if not identical to that which I've already recited, where if you "open up a tract of land to be sold... and inaugurate a general scheme of 10:49AM

improvements... intended to enhance the value," et cetera, the same language that was recited in another one of those cases.

So that what we begin to see here is that the language in the Order, in Your Honor's Order -- 10:49AM

THE COURT: Right.

MR. MILLER: -- that sets out the four elements, that analysis is the correct analysis if you have general acreage out of which a grantor cuts individual parcels piecemeal and sells them off without more. 10:49AM

THE COURT: Right.

MR. MILLER: Bear with me one second.

THE COURT: Okay. 10:50AM

(Off the record.)

MR. MILLER: All right. Now, Your Honor, I've handed up a second line of cases that is related, beginning with the *Epps versus Freeman*. That is, I believe, my partner Claude Epps. I know it's Skeets Bellamy who was arguing it. I recognize some of the style. 10:50AM

THE COURT: And Judge James Hugh McFadden, who heard this case years ago, was 10:50AM

the predecessor to the seat that I held at one time as the Circuit Judge in Manning.

MR. MILLER: And then Justice Brailsford wrote the opinion.

Interesting case, if you take a look at it. This is property over by Mr. Withers Swash, over by the beach.

And this case is continuing in the line of where there is a master plan and plat recorded, okay? And my partners tried to overcome the implied easements that were created when that master plat and plan got put in place and the lot sold. And they were not able to do so. 10:51AM

If you will turn to Page 7 of that Opinion -- and this is where these two stacks of cases I've handed up tie together. 10:51AM

THE COURT: Okay.

MR. MILLER: It cites, "The inclusion of the area within the bounds of the subdivision readily distinguishes this case from *Edwards versus Surratt*." 10:51AM

If you'll remember, *Edwards versus Surratt* is the case from which the four factors are gleaned. 10:52AM

THE COURT: Right.

MR. MILLER: And what the Court is telling us here, Justice Brailsford is telling us here, is that that's the wrong analysis, when there is, in fact, a plat recorded. 10:52AM

And he goes on on the next page, Page 8, to again restate the principles that we believe are the correct analysis here; that when it's "described in the conveyance, streets" -- let me drop back and read this again. I'm reading from Page 8. 10:52AM

THE COURT: Okay.

MR. MILLER: "Generally, where property sold is described in the conveyance with reference to a plat or map on which streets, alleys, parks, and other open areas are shown, such easement therein is created in favor of the grantee." 10:52AM

And that's exactly what happened in this case. There were open areas that were bordering the waterfront, valuable properties. 10:53AM

THE COURT: Right.

MR. MILLER: And the Court said, no, 10:53AM

you showed them as open areas in this plat and you conveyed these lots, and that's what it's going to stay; it's going to stay open areas.

THE COURT: Right. 10:53AM

MR. MILLER: The case behind that, *Carolina Land Company* cites their favor to *Epps* and again states that "the streets, alley, parks and other open spaces are what can become burdened when a conveyance is 10:53AM made by reference to a plat."

THE COURT: Right.

MR. MILLER: That's at Page 6 of that case.

THE COURT: Right. 10:53AM

MR. MILLER: And then lastly, I have the *McAllister* case here, if you look at Page 2 of that, this is interesting, because it again says that when you got the plat, the analysis is as is set out here. 10:53AM

And if you'll note up on the top right, it cites back to *Epps* and also to *Blue Ridge*. And the reason I point that out is that "Blue Ridge" is the word that I use as to identify the type of easement -- it's 10:54AM

like Q-tip or Band-Aid; I use the word "Blue Ridge" -- and I know a lot of people do -- as the type of easement that's conveyed when property is sold by reference to a plat.

But it's come, I believe, to be understood, and I think incorrectly, that that only applies to streets. And the Order that you issued makes that same finding, that that just applies to streets and that the State of South Carolina has not, in fact, gone further with that. 10:54AM 10:54AM

THE COURT: Right.

MR. MILLER: These cases, obviously, are contrary to that. Parks, open spaces and other types of things shown in order to enhance the value of the lots are also burdened. 10:54AM

THE COURT: Right.

MR. MILLER: So that --

THE COURT: Go ahead; I'm listening. 10:55AM

MR. MILLER: I'm --

THE COURT: You're fine.

(Off-the-record conference.)

MR. MILLER: So that, Your Honor, what I believe these cases do is perhaps help 10:55AM

clarify what the correct analysis is, is that you set up a master plan and a plat, in this case, to enhance the value you've conveyed by reference to it so that it's not the one, two, three, four analysis that's set out in the *Gambrell* -- 10:55AM

THE COURT: Right, *Gambrell*.

MR. MILLER: -- case. That's the wrong analysis. That's when you just don't do any of those things, you set it up piecemeal, and you've got to go find more. 10:55AM

THE COURT: Right.

MR. MILLER: The correct analysis is you look to see did the grantor establish a master plan, establish a plat, use it to enhance the value of the property sold -- 10:56AM

THE COURT: Right.

MR. MILLER: -- et cetera. And we believe that there is no doubt that in this case that happened. 10:56AM

THE COURT: Right.

MR. MILLER: And the way I look at this is -- because I'm one of those pigeonhole guys -- is two steps: One, did the manner and method in which the property was 10:56AM

originally developed and sold give rise to an implied easement, absent any disclaimers?

THE COURT: Right.

MR. MILLER: I think the Court needs to make a threshold finding to set the disclaimers aside and let's just look at the way it got done. 10:56AM

And if the answer to that is yes, then the Court would go to the disclaimers and see whether they were effective under the South Carolina law. 10:56AM

THE COURT: Right.

MR. MILLER: That's the way I've got it.

THE COURT: That's good. And you were getting to the second step, which was a primary step in my knowledge. I don't necessarily disagree with Step 1 that you've raised. But in my findings, I was impressed obviously by the various documentation which appeared to have disclaimers about the limitations on time in which that property could be held as a golf course and things of that nature which similarly seem to put folks on notice. 10:57AM 10:57AM

I realize, of course, one of the grounds for your motion is that you don't feel that there was any expressed disclaimers as such.

But the cases that you've just cited me to, which are still good law, the points that they hold, did any of them deal with disclaimers or express reservations in one sort or another? 10:57AM

MR. MILLER: I believe there is referenced words "unless effectively disclaimed." 10:57AM

THE COURT: Right.

MR. MILLER: I believe those words do appear in there. And I'm not here today saying that that can't be effectively disclaimed. 10:58AM

THE COURT: Right.

MR. MILLER: We draw these documents in my office all the time. 10:58AM

THE COURT: Right.

MR. MILLER: And we are very mindful of making sure that we believe they have been effectively disclaimed.

So those cases did not have as an issue 10:58AM

whether there was an effective disclaimer.

THE COURT: Right.

MR. MILLER: And I do not contend that they can't be effectively disclaimed. Certainly, they can. They are implied easements, and certainly they can be effectively disclaimed. 10:58AM

But as I read Your Honor's Order, I don't read it to say that absent disclaimers, there was -- the manner and method in which the property was developed, marketed and sold would have given rise to the implied easement. 10:58AM

THE COURT: Right.

MR. MILLER: And I believe, clearly, that it does. 10:58AM

THE COURT: Right. The Order also does refer to the expressed disclaimers, I think, throughout it.

MR. MILLER: Yes, sir. And I'm getting there. 10:59AM

THE COURT: Okay, good.

MR. MILLER: I'm not going to go all the way back through this, but I'll tell you, if you look just briefly, Your Honor, 10:59AM

at Plaintiff's Exhibit 1, and if I could help you with that.

THE COURT: Okay.

MR. MILLER: Your Honor, what we are looking to, in establishing absent disclaimers, the manner, method in which it was sold did, in fact, give rise under South Carolina law are the "In the Beginning" brochure that's in front of you -- and I know you well enough to know you've taken time to look at that. 10:59AM 10:59AM

THE COURT: Uh-huh.

MR. MILLER: And the language that is in it, it is clear that they are selling this golf community concept. 11:00AM

THE COURT: Right.

MR. MILLER: Beside me, I have the plat that is the recorded plat. The testimony is that that's what was on the wall, or something substantially similar -- that's been almost 40 years, and those folks were doing their best to remember -- 11:00AM

THE COURT: Right.

MR. MILLER: -- and also the master plan that was put out. That's part of the 11:00AM

"In the Beginning."

THE COURT: Right.

MR. MILLER: The deeds make reference to the plat. And we just believe that absent an effective reservation, that the Court should make a finding that absent a reservation, they got it in there. 11:00AM

THE COURT: Right.

MR. MILLER: There's an issue of unity of title that I think you would need to consider in that decision, in fairness. 11:00AM

THE COURT: Yes.

MR. MILLER: That is an issue in this case and one in which the parties disagree about. I agree, you have got to show unity of title in order to get an implied easement. You can't burden the neighbor's land, obviously. 11:00AM

THE COURT: Right.

MR. MILLER: But that, if you will recall, we have cited to -- I don't know if I produced to you a copy of the articles. There's a South Carolina case that makes reference to an ALR article that says in New York, Illinois, various other jurisdictions, 11:01AM 11:01AM

that when the grantor has got --

THE COURT: Control.

MR. MILLER: -- control --

THE COURT: Right, I'm familiar with it.

11:01AM

MR. MILLER: -- and they set it up like this, that counts in terms of the implied easements. Similar to the case I mentioned earlier, the fact that that plat wasn't recorded just right. It isn't going to do it.

11:01AM

The way you set this thing up and did it, technicalities aside, created the expectation that value was paid.

THE COURT: Right.

MR. MILLER: And, of course, in this case, there's no contest that the value was paid.

THE COURT: Right.

MR. MILLER: I think -- I'm confident that that's another contested point, that they paid additional -- in fact, I think your Order even said so.

11:01AM

THE COURT: I think that they paid -- I recall that they paid 12, 13, $14,000, I

11:02AM

think, for a lot they paid $3,000 for somewhere else here in --

MR. MILLER: And the Order finds that the unity of title issue in South Carolina recites to a case there -- 11:02AM

THE COURT: Right.

MR. MILLER: -- requires -- let me get the words right. I'm not sure if the word is "absolute unity" or something to that effect. 11:02AM

The case that's cited for that principle is *Kennedy versus Bedenball*. And that's an easement by necessity case, okay? That is not the type of easement that we are talking about here. 11:02AM

THE COURT: Right.

MR. MILLER: And that makes sense in the line of cases for necessity.

THE COURT: Right.

MR. MILLER: The facts there were that 11:02AM a grantor had some property in his name alone and had some property as a co-tenant. And the Court said, no, when you are talking about necessity, you've got to go back to the common tract by definition. It's a 11:03AM

little bit different situation. And because it's got to go to the common tract by the definition, in a necessity easement case, they make that finding.

The cases that I have referred to -- and they are outside the South Carolina jurisdiction -- are not necessity cases. They're talking about -- well, I think one of them may be -- but they are also talking about these implied easements created expectation because -- with a unilateral control by the same individual over all the properties. 11:03AM 11:03AM

THE COURT: Right.

MR. MILLER: I'm going to go to the disclaimers now. 11:03AM

THE COURT: Okay.

MR. MILLER: I have looked long and hard for cases directly on point about what would it take to give rise to be an effective disclaimer in this precise scenario. And I can't find one in South Carolina. 11:03AM

THE COURT: Right.

MR. MILLER: We've got cases, of 11:04AM

course, with the UCC, the implied warranties, unlike this is an implied easement. And that's statutory; I understand that. And the standards are very high in terms of what is required for a disclaimer to be effective. 11:04AM

THE COURT: Right.

MR. MILLER: There's lines of cases in the employment law arena and the handbook that you give out to your employees that talk about what is an effective disclaimer. And the bar is not as high there as it is in the UCC. But it does require an analysis by the Court to determine is that effective? Is the nature of it such that a person of reasonable prudence and understanding could, in fact, understand it? 11:04AM 11:04AM

THE COURT: I think most of those UCC cases, though, don't they come after this particular marketing scheme, or did you find some before? 11:05AM

MR. MILLER: The UCC cases?

THE COURT: That's right.

MR. MILLER: I don't think we even adopted the UCC at that time. 11:05AM

THE COURT: Well, that's -- especially the handbook cases, because I tried to draw that analysis myself when I was working on this. And it occurred to me, although I didn't get a precise date, that the Springs cases and all those cases, I think, came up after this was done in the early-1970s. I believe I think I'm right on that date, but I'm not sure. 11:05AM

MR. MILLER: You usually are. 11:05AM

THE COURT: But I was trying to apply that analysis to try to find out whether or not there was some requirement that, you know, the bold print across the top of the page and that sort of thing was required under these scenarios. I couldn't satisfy myself that it was. 11:05AM

MR. MILLER: Nor could I, okay? For example, an arbitration clause printed in all caps at the top of the page and underlined, or else it doesn't count, I don't find anything like that. And the UCC requirements that it be in a different type of print, those are statutory. And I'm not here arguing that that's required, either. 11:05AM 11:06AM

THE COURT: Right.

MR. MILLER: I'm just trying to draw from what we do have.

THE COURT: I understand.

MR. MILLER: And the other line I found was in the insurance arena. And there was some caselaw there that talks about a lower standard again, which is that a person of reasonable prudence and ordinary understanding could understand it. 11:06AM

THE COURT: Right.

MR. MILLER: And that's what I believe this state would do; that in order to, with one hand, say "Here's your golf course community, and I'm going to charge you a premium to sit out there on the golf course and enjoy that"; and with the other hand say, "I reserve the right to take that away at any time," that that would have to be done in such a fashion that a person of reasonable prudence and ordinary understanding would, in fact, understand it so they could make a decision of "do I want to pay" -- I believe the testimony is somewhere in the range of 12,000 extra, 11:06AM 11:07AM 11:07AM

3,000 versus 15,000 -- "and take the risk that that might occur to me."

So when I'm going through the reservations that come in various places in this case -- 11:07AM

THE COURT: Agree.

MR. MILLER: -- you can go through and find them, I would ask the Court to remember that, yes, the Plaintiffs did candidly testify, "Nobody ever told me the words, 'It will be there forever'." 11:07AM

THE COURT: Right.

MR. MILLER: I would ask the Court to be mindful that they also testified, "Nobody ever told me otherwise, either." 11:07AM

THE COURT: Right.

MR. MILLER: They would have had to have gleaned it from these documents themselves in order to gain that understanding. 11:08AM

THE COURT: Right.

MR. MILLER: I think they also testified, Your Honor, that nobody went through and set out the pertinent portions as we have here and said, "When you look at 11:08AM

these documents, this leads to this, leads to this, leads to this."

THE COURT: Right.

MR. MILLER: So as I go through them -- and I'll do it hopefully in a way that we can get through it -- 11:08AM

THE COURT: Okay.

MR. MILLER: -- without having to read all these documents.

But the disclaimers are found in, I believe, four, perhaps five documents. The language in two of them is verbatim, so I don't want to cover it twice. 11:08AM

But the language in the plat that's recorded in the record, which is on the easel here in front of you, and is the substantially similar document on the wall at Dr. Platt's pharmacy, has got some reservation language in it. 11:08AM

THE COURT: Uh-huh. 11:09AM

MR. MILLER: And it says, "It is hereby expressly declared that Deerfield Plantation does not intend to dedicate to the general public, or any member thereof, any easement right of travel, right to use or otherwise 11:09AM

with regard to the streets, road, alleys, entrances or other passages or ways, and with regard to the lakes and parks shown upon this map."

The word "golf course" does not appear in that. The entity making the reservation is Deerfield Plantation, which does not own the golf course. 11:09AM

THE COURT: Right.

MR. MILLER: And it says that it's not -- it's disclaiming public rights into the streets because it's a private community, which makes sense. 11:09AM

THE COURT: Right.

MR. MILLER: And we, of course, are here asserting private easement rights. And that is an important matter that the caselaw that deals with public versus private in terms of dedications, et cetera, is very clear, two completely different analyses. 11:10AM So when I look at that plat and I look at the language that the Court used in the Order, which says that the disclaimers are all clear and unambiguous, I have to take issue with that. I don't know how you can 11:10AM

find that these are clear and unambiguous.

That language is the same as is recited in the Declaration of Restrictions.

So then, Your Honor, I'm going to move to the next one, which is the property report. And that is Plaintiff's Exhibit 4. I should say it's part of Plaintiff's Exhibit 4, and you're going to have to turn some pages to find these or listen to me recite them. But this is the one where the property report speaks to amenities. 11:10AM 11:11AM

THE COURT: Right.

MR. MILLER: And at Page 7 of that property report is that recited language in the Order. And it says at Section B, "If facilities are proposed or partly completed, provide the following information." 11:11AM

And the golf course is listed as a "facility proposed."

THE COURT: Right. 11:11AM

MR. MILLER: Okay? And it says, "Golf course: 18-hole championship golf course. Cost to buyer for completion or maintenance: None." So the word "maintenance" appears at the bottom. 11:12AM

It says, "The developer" -- which, again, is Deerfield Plantation, and not the -- Dr. Platt, who owns the golf course --

THE COURT: Right.

MR. MILLER: -- "will have no obligation or commitment to maintain clubhouse, swimming pool, tennis courts, golf course for any period of time; and no purchaser or lessee shall be automatically entitled to membership." 11:12AM

And let's look at that. First off, what does the word "maintain" mean? Well, it's used in this same clause as "cost of maintaining the golf course," which is an expensive thing to do. 11:12AM

THE COURT: Right.

MR. MILLER: And then it says the developer, who we all know had a leasehold interest on it, had no obligation to maintain it. The developer could have 11:12AM stopped the lease, surrendered the lease, et cetera. So that doesn't relieve the property from what's going on here. And the word "maintain," I believe, has to be read as it's used otherwise in the same clause, 11:13AM

which is the cost of maintaining the golf course.

What it doesn't say is -- in clear and unambiguous language is -- "you acknowledge that even though you're paying a premium for this golf course, we reserve the right to dig it up and turn it into a tract home development at some later date of our choosing." If that's what they wanted to do, they should have said it certainly in this document. 11:13AM 11:13AM

If you turn back one page, there's a beautiful opportunity to do so, Section 8B, where it asks for property reservations which are unusual. And they didn't do it there, either. 11:13AM

So that even going to this property report, which does have the word "golf course" in it, unlike the plat, unlike the restrictions -- 11:14AM

THE COURT: Right.

MR. MILLER: -- to say that that's clear and unambiguous, I can't get there. In fact, to say that somebody, without ever being told anything more, would be 11:14AM

expected/required to read, glean and understand from this that what might happen in their neighborhood is what's happening today, I think is an unreasonable expectation. 11:14AM

THE COURT: Right.

MR. MILLER: Now, Your Honor, I'm going to go to the next one because they keep coming up. And this one, you have to look at two documents together. This is the 11:14AM privileges and obligations agreement.

THE COURT: Right.

MR. MILLER: Which I tell you if there is a reservation that is better than the other one, this one is better than the other 11:14AM ones.

THE COURT: Right.

MR. MILLER: What is most concerning to me about the privileges and obligation agreement is the vehicle and the choice of 11:14AM location -- and now we call it font; we used to call it print size. And I think the Court needs to take a look at that.

Plaintiff's Exhibit Number 5 is the contract. And it's got the primary 11:15AM

provisions at the top in one size print. And then at the bottom, it begins a much smaller print, and it goes from Paragraphs 5 through 24.

No where in that contract, again, does it have a plain, clear statement of this reservation. That is no reservation at all. What there is, at Paragraph 11, in the middle of it -- and I've got mine highlighted, but I don't know that yours is because I didn't know if I was supposed to highlight in that book. 11:15AM 11:15AM

THE COURT: I'm looking at what you're talking about.

MR. MILLER: -- reference to another document that is an agreement between Deerfield Plantation, who doesn't own the golf course -- 11:16AM

THE COURT: Right.

MR. MILLER: -- and the homeowners' association. And then so you've got to go to that document, which is part of Exhibit 4, and find the language at Paragraph 8 that says, "Deerfield Plantation, Inc., the lessee of the golf course, could discontinue 11:16AM 11:16AM

the maintenance and operation, if it's not economically feasible, and to use the property devoted thereto for other purposes."

THE COURT: Right. 11:16AM

MR. MILLER: That's what it says.

Now, how you can expect a reasonably informed, educated, intelligent purchaser to go through that process and glean that, I don't know. 11:17AM

THE COURT: Right.

MR. MILLER: And I'd ask you to recall the testimony of Mr. Hucks in that regard. His appraisal approach, as it must be under the USPAP, is to deal with a reasonably 11:17AM informed purchaser and a reasonably informed seller in order to come up with valuation.

And he went back and did a tremendous amount of historical work on the Grand Strand and determined that, one, had such a 11:17AM disclaimer been conspicuous, it would have been reflected in the lot valuation, but it was not.

And his research confirmed that there was no adjustment to the value because of 11:17AM

the right hand saying "I reserve the right to dig it up tomorrow and turn it into tract homes; please pay me a premium."

And so the only testimony in the record from an expert witness is that after having reviewed this mechanism of disclaimers, that it did not have any effect on the valuations of the property project-wide. So that when the Court goes to look at whether a reasonably informed purchaser should have or could have understood what the Order says to be clear and unambiguous, I don't think there's any way to get there. 11:18AM 11:18AM

These disclaimers could have been put in the contract, not necessarily at the top in big language, but it's not. There's reference to another document. 11:18AM

THE COURT: Right.

MR. MILLER: They could have put it on the plat, which is one of the primary places where we like to put them, some nice, clear language that says so, et cetera. 11:18AM

THE COURT: Right.

MR. MILLER: The "In the Beginning" brochure, of course, doesn't contain any 11:19AM

type of reservation whatsoever. The prime piece of marketing literature contains absolutely no reservations. It could have, but it doesn't.

So, Your Honor, we believe that the Court has got to establish some standard. And you don't have a whole lot of guidance to help you here. I've done my best to help you find it. I know you're familiar with looking at those other analogous areas of law. 11:19AM 11:19AM

But I think the lowest standard that the Court could adopt would be the tried and true: Could a person with reasonable prudence be reasonably expected to really understand that? And I think here the answer here is no. 11:19AM

And so that when we are looking at the correct analysis under the caselaw for both what I call the Blue Ridge, which extends to more than streets as we've seen, and for a negative reciprocal, which is when you set up this master plan and enhance value that you're bond by it, that the Court's analysis may reach a different result here. 11:20AM 11:20AM

Certainly to the extent that the Order makes findings such as clear and unambiguous, I just don't know how those can be.

THE COURT: Right, I understand.

MR. MILLER: The third issue raised in my reconsideration motion is as to various particulars of the Order. 11:20AM

THE COURT: Right.

MR. MILLER: Do you have one? Do you have an Order? 11:20AM

THE COURT: I do have the Order.

MR. MILLER: Amanda, I assume you have one.

MS. BAILEY: Yes.

MR. MILLER: And, Your Honor, it's interesting to me, as I go through this Order, and I jump to Page 14 -- 11:20AM

THE COURT: Okay.

MR. MILLER: -- which is the legal analysis of the case -- 11:21AM

THE COURT: Right.

MR. MILLER: -- that it begins at Paragraph -- I think it's supposed to be 41, it says 141. I just noticed that for the first time -- Paragraph 41, with a 11:21AM

recitation of the law.

THE COURT: That actually just is, coincidentally, is a page number from the preceding page. It really is Paragraph 41, properly stated on the preceding page. It catches your eye like that, but it really is the page on the preceding page, or case. Do you see what I am talking about? 11:21AM

MR. MILLER: I do.

THE COURT: All right, go ahead. 11:21AM

MR. MILLER: -- that it there goes into an analysis of prescriptive easements --

THE COURT: Right.

MR. MILLER: -- and goes -- continuing through Paragraph 42, talking about prescriptive easements. 11:22AM

And then at Page 16, Paragraph 53, the Order speaks to implied easements by prior use. And that discussion continues into the next page. 11:22AM

At Page 19, there's a conclusion at Paragraph 67 from the *Inlet Harbor* and *Murrells Inlet* cases, both of which were a scope of an easement case, not the creation of an easement case. And I think that's 11:22AM

important.

And it concludes at Number 2, that the best evidence of the intended parties is the recorded documents. I believe that's somewhat at odds with the caselaw that I've recited earlier, which says you've got to go outside of that. 11:23AM

THE COURT: Right.

MR. MILLER: It clearly states that you've got to go outside of that and look at those other matters. 11:23AM

Page 20, the next page, Paragraph 69, Paragraph 70, 71, 72, in fact, continuing into Page 22, is a discussion of prescriptive easements and then continues to talk about easement by necessity. And then ultimately concluded at Paragraph 79, on Page 23 that we have failed to set forth evidence of an easement by necessity nor prior use over the subject property." 11:23AM 11:24AM

THE COURT: Right.

MR. MILLER: We are not alleging that there was an easement by prior use, and we are not alleging an easement by necessity.

THE COURT: Right. 11:24AM

MR. MILLER: So, of course, what happened here is as you read through this, the factors that are pointed out as a scope of an easement cases -- incidentally, we are talking about easements in general -- tends to show an analysis that's contrary to the correct analysis that I've recited earlier this morning. 11:24AM

And I don't know why we use those many pages to find things that we didn't allege, but there is a tremendous amount of energy and paper devoted to it in this Order. 11:24AM

THE COURT: And it was. And, of course, you know, in reviewing the Proposed Orders as they were sent to me, that occurred to me. 11:24AM

And it also occurred to me, as you've pointed out already, that in these cases, various types of easements are called so many different things in different settings -- even the implied easements, especially -- that I think the proposal sought just to address all of those that anybody could try to stretch the fabric of these facts to cover that type of easement. 11:24AM 11:25AM

But it does, of course, focus on the type of easement which is alleged in this particular case as well.

Although I grant you that some of that is perhaps beyond the merits of your pleadings, certainly. 11:25AM

MR. MILLER: And, Your Honor, in fairness to the drafter, to the extent you want to make sure that whatever future claims there may be are foreclosed, that's probably true. 11:25AM

THE COURT: Right.

MR. MILLER: Also, again, a lot of the recitations in those cases are fair statements of the general analysis of the Court to take in looking at implied easements. 11:25AM

THE COURT: You're right, the analysis is correct as to those particular types of easements. But, granted, it goes, as you have said, beyond some of the narrow scope of what you were seeking. 11:26AM

I don't want to interrupt you because you're moving nicely along, but one of the points that I wanted to raise, when we were 11:26AM

talking about the fact that the contract itself and some of these other documents did not appropriately contain the disclaimer, the control cases of other jurisdictions aside, should a disclaimer, in a development of this sort, be required to say anything other than the fact that we don't own this golf course and we don't know what will happen to it and you're on notice -- that's an extremely narrow assessment of things, but I'm trying to try to gauge, in the absence of some clear direction of the law which you said doesn't exist in this case, what a developer/owner would be required to do to disclaim possible uses of other property that that developer/owner does not itself own, other than to put the purchaser on notice that it doesn't own it and it doesn't control it. 11:26AM 11:26AM 11:27AM

Although it did say in one of these documents that there was a ten-year lease obviously to control that property, and it was not owned by the developer; it was owned by someone else, and it was subject to a ten-year lease. 11:27AM 11:27AM

What would you suggest beyond that a developer/owner should say, or should have said in 1971?

MR. MILLER: I can tell you what we did do fairly recently out at the World Tour Golf Course, which is owned by Signature Golf, who was the entity -- the gentleman's name is Mel Graham; in fact, he's Billy Graham's nephew. They're a client of mine. And another client of mine bought an adjoining tract to put some condominiums on. They had no relationship between the parties, but they were immediately adjoined. And the condominium tract would enjoy, for some period of time, at least today, a view out over the golf course. 11:27AM 11:28AM 11:28AM

THE COURT: Right.

MR. MILLER: And so we did create language there, because I think that's specifically a situation you're asking about. No relationship between the two. 11:28AM

THE COURT: Right.

MR. MILLER: That said exactly that --

THE COURT: Right.

MR. MILLER: -- "we don't own that golf 11:28AM

course and we have no interest whatsoever in that golf course, and as such, can make no warranties, representations, et cetera, as regards to the continuing operation as a golf course, could not be turned into any other lawful use," et cetera. 11:28AM

I tried to be clear and specific. And we wrote that language -- I'll do my best to be accurate on this -- in the contracts, on the plats and in the marketing brochures. 11:29AM Remember, I worked with my partner Edwin Hinds on that project. And he had come over and asked me about that situation.

THE COURT: Do you mind telling me if your advice on that case was based on your knowledge about this case? 11:29AM

MR. MILLER: This was prior to my taking on this case.

THE COURT: All right.

MR. MILLER: That would have been maybe five years ago. 11:29AM

THE COURT: You told me that before.

MR. MILLER: It was before this came along.

THE COURT: Okay. 11:29AM

MR. MILLER: It was a situation that came up. That's how we did it.

THE COURT: Right.

MR. MILLER: And had there been some language like that, I don't think we'd be here, quite frankly. But with the disclaimer language that is here, without reciting the whole thing, again, I don't think survives the analysis of a reasonably informed purchaser. 11:29AM 11:30AM

They could have just told them verbally, or they could have told them in some of the primary documents in language that says what they wanted to say but doesn't. 11:30AM

THE COURT: Right.

MR. MILLER: So that as I then go through the Order --

THE COURT: I'm following you.

MR. MILLER: I'm trying to think how to do this. 11:30AM

THE COURT: I'm just highlighting the points as you go.

MR. MILLER: Well, if I point out every highlight that I've got in this one -- 11:30AM

THE COURT: I won't get embarrassed.

MR. MILLER: -- it's going to take a while.

I'll drop back then, to Page 24, Paragraph 82, where it reads that "Plaintiffs cannot overcome the expressed disclaimer of any easements by reference." And I don't find an expressed disclaimer of any easements by reference. 11:30AM

Now, the words, "by reference" are often used to describe what I call a Blue Ridge easement. 11:31AM

THE COURT: Right.

MR. MILLER: And I think that's pretty well accepted, that those terms are referring to the same thing. 11:31AM

THE COURT: Right.

MR. MILLER: At the next page, Page 25, Paragraph 86, Section 2, I believe it erroneously states that the plat recorded at Book 54, Page 24, expressly disclaims any easement to the subject property. The subject property being a golf course, the words "golf course" appearing no where in that plat. 11:31AM 11:31AM

THE COURT: Right.

MR. MILLER: Similarly, on the next page, Subparagraph 4, the declarations language, again, is void of any reference to a golf course, yet this finds that it expressly disclaims any easement to the subject property, which is the golf course. 11:32AM

Then, Your Honor, Page 27 at Paragraph 89, this is where the Court begins the analysis of the negative reciprocal easement. 11:32AM

THE COURT: Right.

MR. MILLER: And, of course, I believe that the factors that are stated there, and the *Gambrell* cite that is there, is the wrong analysis. So that if I go forward from there -- and I'm going to say this a little bit broadly -- the Order makes various findings relative to these factors, which I believe to be the inappropriate factors, so that it would go, without saying, that as you go through the findings such as, there's no set of restrictions on the subject property. 11:32AM

I think that's, one, the wrong 11:33AM

analysis; and two, I think it misstates what even the *Gambrell* factors are. But that's the type of things that pop up in the pages following that.

And then, Your Honor, it continues to the end from there. 11:33AM

THE COURT: Right.

MR. MILLER: I've been less than exactly precise about tailoring the Order, because I'm not sure how you would do that. 11:33AM Obviously, what I am here primarily to seek is if that if you reevaluate this thing under these factors that I've enumerated --

THE COURT: Right.

MR. MILLER: -- and that even should 11:33AM Your Honor continue to find that my clients do no prevail, I think we'd all like to have a good, clear statement on appeal as to the analysis in more of a -- absent the restrictions, did that create it? If not, 11:34AM why not? So we can get it structured up and take it up, because I believe there are novel issues in this case.

Thank you for your time and patience.

THE COURT: Thank you, Mr. Miller. 11:34AM

All right. Ms. Bailey?

MS. BAILEY: Thank you, Judge.

Mr. Miller has told you -- presented to you today what he describes as a novel issue. There is no novel issue in this case. Whether or not an implied easement exists is well established in the law in South Carolina. And he's set up caselaw that has gone back to 1947. 11:34AM

And the standard of review and the elements for implied easements have been analyzed over and over again and have been developed and tailored and addressed in South Carolina. There is no novel issue in this case. 11:34AM 11:35AM

And before I go into the argument, in particular, and Your Honor raised it, about findings of fact regarding -- findings of fact and conclusions of law regarding prescriptive easements and easements by prior use, Your Honor, the pleadings themselves simply allege that there was an implied easement. 11:35AM

THE COURT: Right.

MS. BAILEY: So findings of fact 11:35AM

regarding all implied easements, I think, is appropriate in this case, and especially considering what both you and Mr. Miller raised regarding some of the terminology regarding specific implied easements being used interchangeably. And so I think it is appropriate. 11:35AM

And, Your Honor, if I may approach, I prepared a Proposed Order.

(Tendered document.) 11:35AM

THE COURT: Right.

MS. BAILEY: The law in South Carolina is clear regarding implied easements. It's also clear what the standard of review is related to implied easements. And I think what Mr. Miller is arguing as a novel issue is not really a novel issue. 11:36AM

What he's arguing and what he's asking this Court to do is turn well-established law in South Carolina on its head in order to be applied for his purposes in this case. And I'll tell you why. 11:36AM

Covenants, expressed or implied, restricting the free use of land are not favored and must be strictly construed; 11:36AM

well-established law in the State of South Carolina.

An easement restricting the use of land must be established by plain and unmistakable language; again, 11:36AM
well-established law in the State of South Carolina.

The creation of an implied easement must be created -- excuse me -- must be created both by that plain and unmistakable 11:37AM
language and must be created under a higher standard of review than what he's saying.

Mr. Miller is arguing to you that an implied easement, in order to be ineffective, must be effectively explained. 11:37AM
Well, that's just the opposite of what the law is in South Carolina.

In order to create an implied easement, it must be done so by plain and unmistakable language. And even -- 11:37AM

THE COURT: But then does that make it an implied easement, or does it not become an expressed easement if it's plain and unmistakable language that creates it?

MS. BAILEY: Plain and unmistakable 11:37AM

implication.

THE COURT: Okay.

MS. BAILEY: Either/or. It's expressed if there's language contained in it, or by implication if it's plain and unmistakable. 11:37AM There's no argument in this case there's no expressed easement. Whether this easement was created is simply by implication.

THE COURT: Exactly.

MS. BAILEY: And I think the new 11:38AM argument Mr. Miller is making today, which has not been presented before, is that the elements of a negative reciprocal easement and an easement by reference should be morphed in some way in order to create an 11:38AM implied easement in these circumstances.

Well, that's not the law in South Carolina, and that's not a novel issue. That just plain doesn't exist.

But a negative reciprocal easement -- 11:38AM they do not meet the elements of a negative reciprocal easement. They also do not meet the elements of an easement by necessity.

So even if the you morphed those two together, there's no easement created. And 11:38AM

I'll touch base on the negative reciprocal easement first. And I think what's important about that is those easements need to be reciprocal. And in this case, there's nothing reciprocal about it. 11:38AM

And he pointed to the *Gambrell* case. And in the *Gambrell* case, the very last language -- the language that was highlighted, the very last sentence talked about "a mutuality of covenant and consideration." 11:39AM

And I think in this case, applying the elements in *Gambrell*, it's clear there's no mutuality of consideration; there's no reciprocal easement. If that were the case, the same easements that applied to the lots would also apply to the subject property. 11:39AM

There's no easements on the subject property to then apply to the lots. So there's no mutuality; there's no reciprocality. So that just does -- that's not the intent of a negative reciprocal easement. 11:39AM

The easement by reference to a plat, Mr. Miller, again, is arguing that that can 11:39AM

only -- the streets, alleyways, parks and open spaces contained on a plat -- what their argument in essence is, is that if it's referenced on a plat, you automatically have an implied easement unless you effectively disclaim it. 11:39AM

THE COURT: Right.

MR. MILLER: Again, that's not the law in South Carolina. And there is a case cited, too, about disclaimers. And 11:40AM Mr. Miller said that implied easements by reference to a plat are created as proof of an effective disclaimer. That's not the law. The law is absent evidence of the seller's intent to the contrary. 11:40AM

And I think what this Order does, and I think what wall of the documents presented -- the plat, the declarations, the agreement, the purchase agreement, the property report and the documents 11:40AM incorporated by reference in the purchase agreement -- all those clearly evidence contrary intentions by the seller, effective disclaimer or not, clear evidence of the seller's contrary intent not to convey any 11:40AM

interest in the subject property to the property owners in the Deerfield Plantation property, Lots 1 through 428.

So I think what their argument is asking this Court to do is change well-established law in South Carolina, create a whole different standard of review, hold a different standard of created implied easements and lower the burden to establish an implied easement. And that's just not the case. And I think that's clear based on the law that's cited in this brief and, in fact, based on the law that they've cited to this Court today. 11:41AM 11:41AM

Your Honor, I beg the Court's indulgence. 11:41AM

THE COURT: Okay.

MS. BAILEY: And Your Honor asked the question as to whether a disclaimer should be required to say anything other than "we don't own the golf course." 11:42AM

I don't even think a disclaimer is required. In this case, you just have -- if there is a plat which references property -- streets, alleyways, parks, open spaces -- if 11:42AM

that plat makes that reference, if there's some evidence of the seller's intent not to provide an easement to that -- those referenced properties, that's all that's required. And in this case, there's substantial evidence and substantial evidence based on the documents that were presented. 11:42AM

Each of those documents does expressly provide that these Plaintiffs do not have an interest in the property. And I think that the language, the language -- and I won't say expressly in terms of quotes -- but the language that each of those documents used creates an expressed disclaimer. It tells those Plaintiffs, tell those property owners they do not have an interest in the property because the land's only held by lease; the land's only held by lease for ten years. 11:42AM 11:42AM

The Plaintiffs got what they bargained for. They got that golf course to have run for ten years. That was what they bargained for; that's what they got; and that's what was contained in the language. That's it. 11:43AM

The map over there does disclaim 11:43AM

easements in that property, both to the public and members of the public. So it expressly disclaims any easements to the subject property.

The property report identifies that there's no obligation to do anything related to that property. And I can just -- the developer can just discontinue maintaining and discontinue doing anything related to that subject property, and that they only hold it by leasehold for ten years, that's the same language and similar language in the declarations as well. And I think very clearly in the agreement and the documents referenced in the purchase agreement expressly disclaim any interest in that subject property. So I think the findings of fact related to express disclaimers are accurate. 11:43AM 11:43AM 11:44AM

I think also the findings related to expressed disclaimer are not controlling in this Order. In looking at the paragraphs that they point out in their Rule 59(e) motion, starting on Page 25, Paragraph 86 --

THE COURT: Right. 11:44AM 11:44AM

MS. BAILEY: -- the reasons that those findings related to express disclaimers are not controlling is because the standard of finding an implied easement or finding the lack of an implied easement is simply evidence of the seller's intent to the contrary. 11:44AM

And so these documents and the documents that were referenced in this Order show the seller's intent contrary to conveying an implied easement. 11:45AM

And, Your Honor, I'd also touch base that I don't think -- I don't think it's raised in this post-trial motion, but the finding related to no common grantor, I think you have to -- I think you have -- in order to undertake this analysis -- and I think this was what was done at trial; I think this was also what was done in this Order -- is you have to determine when the easement arose. And the time of the severance is when the easement would have arisen. 11:45AM 11:45AM

The time of the severance was when the developer conveyed property to these 11:45AM

property owners. That's the only time an easement could have been created. And there was no common ownership in this case.

The law in South Carolina, whether it be an easement by necessity or an implied easement by any other fashion, states there must be absolute ownership between the dominant tenement and the subservient tenement for there to be a common grantor. 11:45AM

So I think the elements of an easement by necessity require a common grantor, just like easement by reference require a common grantor. I don't think it makes any difference what implied easement you are referring to in those circumstances. 11:46AM

So, Your Honor, I don't think the issues raised by the Plaintiffs warrant any changes to this -- the Order, certainly do not require any changes in the findings of fact or conclusion of law, or require any changes to the ultimate outcome in this case, because the standard of review is so clearly related to implied easements and so well established in South Carolina. 11:46AM

Thank you, Judge. 11:46AM

THE COURT: So, Ms. Bailey, the segment in the Order referencing -- for example, on Page 26, "The declarations expressly disclaim any easement in the subject"...

MS. BAILEY: And, Your Honor, with reference to that, I point to Page 7. And I think that language is an expressed disclaimer. 11:47AM

THE COURT: All right. You're speaking about Paragraph 22 on Page 7? 11:47AM

MS. BAILEY: That's correct, Judge.

THE COURT: Okay. Thank you, Ms. Bailey.

Mr. Miller, you've got the last word.

MR. MILLER: Your Honor, if you've got any questions, I'm happy to address them. 11:47AM

THE COURT: I think you-all have both covered your respective points very well.

MR. MILLER: One thing I would very briefly respond to, and that is, when did the severance occur? That's an interesting point. 11:48AM

THE COURT: Right.

MR. MILLER: There were two. Dr. Platt held the entire 1800 acres in his own 11:48AM

name --

THE COURT: Right.

MR. MILLER: -- and put together this plan of development; and as part of the plan of development, severed it and put the golf course property into his wholly-owned, wholly-controlled entity. 11:48AM

THE COURT: Right.

MR. MILLER: Of course, Dr. Platt is not around for us to talk to about what his intent might have been at that time. 11:48AM

THE COURT: Right.

MR. MILLER: That severance could arguably give rise to the implied easement right then and there -- 11:48AM

THE COURT: Right.

MR. MILLER: -- and there's no issue of unity of title at that time. There's no reference to a plat as such there.

THE COURT: Right. 11:49AM

MR. MILLER: There is, however, in that deed -- and that deed is in this record as part of Defendant's Exhibit 1; I don't know which letter.

THE COURT: Right. 11:49AM

MR. MILLER: But that deed, if you look at it, describes each and every portion of the property by reference to golf holes.

THE COURT: Right.

MR. MILLER: So that the plan, we know, was already in place at the time of the initial severance by Dr. Platt himself. 11:49AM

THE COURT: Right.

MR. MILLER: Then you've got the conveyance to the property owners. And that's when some more analysis comes in, because they're looking at their expectation rights and contracts and deeds in reference to a recorded plat, et cetera. 11:49AM

So I just found it interesting in the materials that there were, in fact, two severances worthy of consideration. 11:49AM

THE COURT: Right.

I'm certain, as I may have suggested at some point in time, that it was everyone's hope, when this development began, that the golf course would run in perpetuity and be profitable in perpetuity, and that everyone would have the beneficial enjoyment of it, either by open space or by profit motive 11:50AM 11:50AM

that it -- that occurs.

Of course, the separation of the subject property, the golf course property, from the developed property for the sale of lots is a common device that is used almost universally now for various reasons so that they can be encumbered separately, can be developed separately, and can be conveyed separately should the case arise. 11:50AM

All of the cases, I think, that are cited here -- I haven't read all of the ones throughout today that were handed to me -- but most all the cases dealing with easements of one sort or another also reference the rather universal principle that governs real estate law, that holds in effect that the -- I'm not sure this is exactly the right word -- the liberal alienation of property, or words to that effect, are things that the law seeks to encourage, rather to encumber property in perpetuity. And we have a great deal of caselaw on that point. 11:51AM 11:51AM

And what I was dealing with, of course, the very fine legal points that you-all have 11:52AM

both so effectively raised at trial, in your Proposed Orders and here today, those issues are like surgical applications to the general law itself in a broad and scoping way -- broader scoping fashion, that here we have for some 30-odd years, I believe 33 years I heard recited at some point in time, that the golf course did remain open; and for some of those years was at least profitable enough to continue its operation to the benefit of everyone during that period of time. 11:52AM 11:52AM

The question is whether or not, given the broader principle of the law against restraint of alienation of property, are trumped in this particular case by the facts of this case to give rise to the easements so as to create an encumbrance in perpetuity on this property. 11:53AM

That was sort of a balancing test that I dealt with in my mind and, frankly, that the law itself deals with in general terms, but it -- there are obviously sub-parts to it that you-all have both raised. 11:53AM

I had hoped to be able to deal with 11:53AM

this today rather than take it back with me. And I'm trying to decide whether or not a recess will allow me to cogitate on this a little longer here today, would be helpful so that I could assemble you-all back. And I frankly don't think that it would give me the time to read the cases and to focus primarily on the issue that was raised early on, Mr. Miller, and that is whether or not I have conducted an improper analysis in dealing with the specific issues in this case of the negative reciprocal easement resulting from the documents, the manner in which this property was developed and sold. And I need to go back and review the Order in that regard and see. 11:54AM 11:54AM 11:54AM

Ms. Bailey has raised a point that if the pleadings, which has been some time since I read, obviously, simply refer to an easement in general terms and that it was necessary for her to address each one of these -- these types of easements in order to cover the landscape. 11:55AM

And I think that I really need to go back and look at the cases that you've 11:55AM

handed up and refer back to the Order to see if there's any necessary modification in that regard.

I will review again the points that you have raised regarding some of the language of the reservations. 11:55AM

Frankly, the language which I found to be most compelling in my analysis was from the -- whatever document, the property agreement -- it was the document that said "we don't own it; we leased it for ten years," in essence, something to that effect. 11:56AM

That seemed to me to be self-evident, and it was not hidden language as such. 11:56AM

I recognize that there are a lot of documents that have to be read in conjunction with each other, perhaps to find the full extent of the disclaimer.

And so I go back to an analysis that I conducted at the time that I was doing this; and that is, how much or how broad and sweeping does the disclaimer language have to be or did it have to be -- and I think that is a relevant point -- did it have to 11:56AM 11:57AM

be in the early-1970s before these types of development became the rule here at the beach rather than the exception?

And before the law governing drafting of disclaimers and the prominent display of that language became as well established as it is here today, what was necessary then to establish it? 11:57AM

Because these documents all say separate things, different things and addressed different areas, each of them. I don't think any of them were necessarily superfluous documents; they were all drawn up for a particular purpose. 11:57AM

And so whether all of them had to expressly disclaim or not, or whether they simply had to refer to other documents that did is a point that I'll be glad to review. But I'm not sure that the disclaimer has to be spread across the face of every document pertaining to this property. 11:57AM 11:58AM

I don't think this is -- I don't think anybody is playing a shell game here in which the pea is being hidden under one of these shells and the landowner has to pick 11:58AM

up all three of them in order to determine where it lies. I think these are just necessary documents that were drawn at the time and probably, goodness knows, since that time have expanded beyond that. 11:58AM

So those are things, frankly, that I thought about when I made my decision on this initially. And I will review those findings again.

And I will look at the analysis that 11:58AM you have invited me to make, Mr. Miller, on whether or not the analysis made in the Order is not as clear and as clean as it should be under these circumstances, and whether it leaves for clearing up the record 11:59AM in that regard, notwithstanding whether my ruling changes, that should be done as well.

I will not be able to do that in the time that I would ask you-all to sit around today. I have some time later this week. I 11:59AM have got some other stuff that I need to get off my desk as well. But I'll try to get rid of this quickly and get it back to you-all so that whatever uncertainty continues to exist in this can at least get 11:59AM

transferred to another level.

All right?

MR. MILLER: Thank you so much.

MS. BAILEY: Thank you, Judge.

THE COURT: All right. 11:59AM

(The hearing concluded at 11:59 a.m.)

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	CASE NO.: 2006-CP-26-4440
Dale Hill, Betty Hill, Carl Clemmons, Geraldine Clemmons, Individually and on behalf Of a Class of all others Similarly Situated,	
Plaintiffs,	
vs	
Deertrack Golf and Country Club, Inc., Deertrack Golf, Inc., Deerfield Plantation, Inc., the Estate of John Schaad, by and through Ann Schaad as Executrix, and Deertrack Investors, LLC.,	
Defendants.	
Deertrack Investors, LLC.,	
Third-Party Plaintiff,	
vs	
Plantation Resort of Myrtle Beach, Inc., and Plantation Resort Properties, Inc.,	
Third-Party Defendants	

COPY

THE HEARING HELD BEFORE
THE HONORABLE THOMAS W. COOPER, JR.,
AT THE McNAIR LAW FIRM, P.A.,
LOCATED IN MYRTLE BEACH, SOUTH CAROLINA

Wednesday, September 1, 2010
10:09 a.m. --- 10:45 a.m.

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413 Paul Street
Conway, South Carolina 29526
(843) 248-5252

APPEARANCES:

FOR THE PLAINTIFFS:
David B. Miller, Esquire
Robert S. Shelton, Esquire
THE BELLAMY LAW FIRM
1000 29th Avenue North
Post Office Box 357
Myrtle Beach, South Carolina 29578-0357

FOR THE DEFENDANTS:
Amanda A. Bailey, Esquire
MCNAIR LAW FIRM, P.A.
2411 Oak Street, Suite 206
Post Office Box 336
Myrtle Beach, South Carolina 29578

(via telephone)
Leigh P. Boan, Esquire
MCNAIR LAW FIRM, P.A.
14361 Ocean Highway, 3rd Floor
Pawleys Island, SC 29585

COURT REPORTER:
Alice S. Nelson
Verbatim Court Reporter

ALSO PRESENT:
McCray Smith

The following is a transcript of the hearing held before The Honorable Thomas W. Cooper, Jr., at the McNair Law Firm, P.A., located in Myrtle Beach, South Carolina, on Wednesday, September 1, 2010.

EXHIBITS

DEFENDANT:

Defendant's Exhibit Number 1
(Affidavit of McCray Smith) 5

PLAINTIFF:

Plaintiff's Exhibit Number 1
(Contract for Sale of Real Estate) 23

Plaintiff's Exhibit Number 2
(Page 107 of The 30(b)(6) Deposition of Deertrack Investors, LLC by McCray Smith & McCray Smith, Individually) 27

Plaintiff's Exhibit Number 3
(Pages 32 & 33 of The 30(b)(6) Deposition of Deertrack Investors, LLC by McCray Smith & McCray Smith, Individually) 27

The Court: Amanda, this is your petition for a writ of supersedeas, and I'll hear from you first.

Ms. Bailey: Thank you, Your Honor. We have petitioned for a writ of supersedeas, a lift of the stay or, in the alternative, a posting of bond by the plaintiffs in order to stay the final order that was issued by Your Honor back in February of 2010.

And the first basis of the motion is related to an exception to the automatic stay requirement, and typically orders of a trial court would be automatically stayed pending appeal if they're not subject to an exception, and in this case, the specific wording of the order and, in particular, the wording in the last paragraph, on page 31 of the order, falls within two exceptions of the automatic stay requirement, and that's under two statutory exceptions, one under Section 18-9-150, which would require the posting of a bond or surety, and another exception under Section 18-9-160, which requires that the order would not be stayed until the instrument is executed.

The reason why this order would fall

under those two statutory exceptions to the automatic stay would be because the order directs the plaintiffs deliver written notice of cancellation, and that falls under Section 150, which provides that an order appealed from is not automatically stayed unless it directs the delivery of documents, and in this case it directs the delivery of the written cancellation of the notice of lis pendens.

So, Your Honor, we would request a bond be posted, and I would ask to mark and admit the Affidavit of McCray Smith, which sets forth the basis for the amount of bond we would be requesting, in particular, the defendant, Deertrack Investors, purchased the property March 26, 2006.

DEFENDANT'S EXHIBIT NUMBER 1

MARKED FOR IDENTIFICATION

This was before the litigation was started. The purchase price was eight million dollars. They've invested substantial sums in the purchase price of the land, the development efforts, including engineering fees, attorneys' fees, water, sewer, erosion control, and other items.

They've also incurred interest charges, and they've incurred regular carrying costs, which include property taxes, insurance, utilities, repairs, all during the time that this case has been pending, and all these charges will continue to be required to be carried during the pendency of an appeal.

The statutory section, which is 150, requires the posting of a bond in the event that the order appealed from requires the delivery of documents. This order appealed from does require delivery of documents, and we would ask that the bond be posted.

Your Honor, the purchase price of the property was eight million. The appraised value back in 2008 was 18.9 million. The Affidavit of McCray Smith, as well as his testimony, sets forth the expected development profits to be between 42 and 54 million, and then the carrying costs would be approximately, I think, 22.8 thousand dollars per month, and that amount of money has been carried since this lawsuit has started, and so we would respectfully request that bond be posted in the amount of the appraised value of the property,

which is 18.9 million dollars, plus carrying costs for $22,800 for each month since this litigation has started and for an additional two years, which is the expected anticipation of the resolution of an appeal through the state Supreme Court.

In the event that the finding would be that this order does not fall within Section 18-9-150, it would also fall within Section 160, which requires that the instrument be executed in order to stay the appeal, in this case the instrument being the cancellation of the lis pendens; and if the lis pendens is cancelled, then that would meet the requirements of 18-9-160.

It is undisputed, and the plaintiffs set forth the same case law that we rely on, too, which is the Pond Place Partners case, and I think that that is the preeminent case on describing what a lis pendens is in South Carolina; but a lis pendens is a cloud on title, and that's undisputed. A lis pendens has to be a cloud on title. Plaintiffs have placed this cloud on the title to this property, and they've done so, and we've

asserted counterclaims, for abuse of process based on the filing of this lis pendens.

The lis pendens, and also set forth in the Pond Place case, is not intended to benefit either party to the case. The plaintiffs have used the filing of a lis pendens specifically to benefit them, and what I'd like to present to Your Honor is some deposition excerpts specifically from Gary Loftus, who was at one point in time the president of the homeowners association, and the deposition excerpts set forth that, you know, it was the intent of the homeowners association and intent of the plaintiffs in this case, after this property was purchased, to change the zoning from R-7 to R-3 for the purposes of delaying and increasing the expense efforts of these developers.

Gary Loftus testifies that he drafted, behind the scenes, this ordinance that was then adopted by Horry County. He also testifies that it was his intent to delay the development of this property, and he does not deny that he had made statements that they would wear out the developers and prevent them from developing the property.

So that is part of the basis, outside the statutory exceptions, the basis for the requirement of the posting bond. The posting of a bond, in this case, in order to stay the effect of this order, is that the lis pendens does create a cloud on the title. The plaintiffs in this case are using that lis pendens for their benefit, for the benefit to prevent development, when they have a unrecognizable claim against this property that's been decided by Your Honor in this final order.

It was previously decided on summary judgment, and then that summary judgment was reversed, and the plaintiffs had sat on documents during the entire discovery phase of this litigation that weren't presented until the day before we started trial, and those documents clearly established that there was no equitable right to this property.

So, our first argument would be that there's a statutory exception to the automatic stay requirement under both Sections 150 and 160. The second argument is that a bond should be posted in order to stay the effect of the

final order, and that's based on the cloud on the title of the property and the abuse of process claim that we have pending that has not been pursued at this point in time; and that abuse of process claim, as well as the equitable considerations, that's the reasons behind why the plaintiffs are pursuing this lis pendens, and it's for the purposes of delaying.

The Court: All right. Let me ask you one point about, if I were to direct the cancellation of the notice of lis pendens, what would that do to prospective purchasers, prospective lenders if, in fact, the court of appeals could disagree with my decision and decide that there were imposed easements on this property which would prohibit its development; how would those people be protected in that event?

Ms. Bailey: Well, I think the lis pendens, and I would agree with what the case law provides, part of the purpose, in addition to placing a cloud on the title, part of the purpose is to put third party purchasers on notice of the existence of this lawsuit. So, typically, when a title search is conducted,

when any potential lender will investigate the title to the property, they will otherwise find the existence of this litigation, as well.

The Court: Right. Would the posting of a bond then, under your argument, would provide your client the protection that it might need if the lis pendens were stayed on, were left on the property?

Ms. Bailey: That's correct. And it also provides the protection in pursuing the remaining causes of action that are stayed, as well, the abuse of process cause of action.

The Court: All right. As a matter of curiosity, Mr. Smith, this is your Affidavit. I won't pose a question to you, I'll pose it to your lawyer, this property is now worth two and a quarter times what it was worth when you bought it in 2006?

Ms. Bailey: The Affidavit, the appraisal -- The last appraisal that was conducted was in July 2008. So we don't have a current appraisal; but there has been, being an owner of the land, the appraisal conducted was undeveloped value.

The Court: I understand.

Ms. Bailey: And then there's also value based on what the zoning would have been had it not been changed by the efforts of the plaintiffs.

The Court: But the zoning today is what it is; is that right? There's no going back on that. Is that fair to say?

Ms. Bailey: The zoning has been changed. That's correct. And I would, in the interest of disclosure, there is also litigation currently pending related to that, that spot zoning.

The Court: Okay. Good, thank you. David, Rob?

Mr. Miller: I think, first, we have to come at this procedurally. I don't hear that there's any dispute that the appeal does in fact stay the cancellation of a lis pendens. The cases have addressed it, and that's clear. To the extent Rule 241 itemizes some but not all exceptions to the general stay rule, none of them would catch this situation.

If you'll recall, we did bring this to The Court's attention immediately following the order. We sent you a letter February 22nd,

together with the cases Lebovitz and Pond Place, which are the controlling cases here, so that the order requiring preliminary cancellation of the lis pendens is contrary to the law. And that the stay takes care of that. So that the stay is there, such that neither the plaintiffs nor the clerk should cancel that lis pendens.

To the extent they want to lift the stay, the rules require that they post a bond, not that we post a bond. And so I think, procedurally, the way that this has been couched is inconsistent with that reality. And that's just what the rules are. The party seeking the lift of the stay has got to try to protect the rights. When you're talking about property rights, money doesn't get it.

These folks, as you know, have alleged an easement, which is enumerated as one of the proper purposes for which a lis pendens is recorded. And if the lis pendens were to come off, if a innocent third party purchaser, without notice, were to take title, and that third party were then to claim, "I'm not bound by it because you didn't have the notice of

record like you're supposed to, to let me know," that's just contra to the entire intent of the lis pendens statute.

The purpose of the statute is not to place a cloud on the title. The purpose of the statute is to give notice to the world that there's an action pending that affects title to real property. That's plain as day.

As a consequence of that, does it create title problems? Of course, everybody knows it does, because people don't want to buy unless they know that they've got good title. And until this matter gets resolved, they can't know that.

So that I think, procedurally, the way it's been couched is inconsistent with what the plain rules are. To the extent code sections 18-9-150 and 160 have been raised, those are not applicable to this situation. It's a form over substance argument that the order says, "Go deliver a document," is a form over substance argument.

Additionally, what those statutes say -- well, first off, what they're for, is certificates of title and the like. That's

what these statutes do so that the respondent to the appeal isn't put at risk that, "Well, I won't get what I'm supposed to get at the end of the day," for whatever reason. What they say is, "Well, you just go post the document with whomever," it could be the court, could be the clerk.

So, if she's asking us to sign a notice of cancellation of lis pendens to be held in trust by the court pending the outcome of the case, well, whatever. I can tell you that the Bellamy Law Firm will abide by that order and will effect the cancellation should we be unsuccessful on appeal.

It's not a situation where a party has to do anything. Lawyers sign notices of cancellation of lis pendens, and to the effect the implication is that, well, we might not do that, I think that's poorly received, I would say. Those two sections aren't there to do what's being addressed here.

The standard that The Court should look at under Rule 241 is whether what you're being asked to do is somehow necessary to preserve or prevent an issue from becoming

moot. Again, if they go sell it to an innocent third party without notice, and our rights are therefore impaired, and that would generate, I guess, subsequent litigation as to whether they knew or not. I understand the seller would be under a duty to disclose that, but the mootness issue runs there. Our rights would be forever lost, potentially, because of an innocent party, and the cancellation of the lis pendens, therefore, could render the issue moot and so that the standard that is specifically enumerated in Rule 241 dictates that this not be done, you know, this isn't a lien, this isn't a, really not even an encumbrance.

I understand that the cases recite that it's a cloud, but it's not an encumbrance as such. It's simply a legislatively created notice that there is an action pending which affects title to real property. Well, there is, and there continues to be, an action pending which affects title. To take away the legislative notice vehicle just runs contrary to everything in there.

Now, when the defendant, Mr. Smith's entity, bought the property, the contract, and

this is in the deposition of Mr. Smith and the note provide that he's paying four million dollars and a note for four more. The note is only payable if and when lots are developed and sold, okay?

The reason that's there is, because, as is acknowledged in the deposition, he knew that these issues existed. In fact, the Contract of Sale specifically recites to the fact that a court of competent jurisdiction may order that the property not be developed, so that when the developers came in and bought this property, they bought it with notice that these claims were out there.

There's two golf courses, and this is why Leigh's on the phone. There's the south course and the north course, and there's, you know, the same litigation pending on both. When this property got bought by Mr. Smith's company, that lawsuit was already filed on the south course. Those notices were out there and everybody knew it, and everybody was talking about it and, therefore, his contract negotiations, and it's in his deposition, that the notice was there and a vehicle built into

his contract to deal with two values. There's the value if I can develop it, eight million, and there's the value if I can't, four million; and that vehicle is built into the contract and the note creating the additional four million dollar debt.

There's another lawsuit that was going on about that. It may be 40(j)'ed, perhaps, but -- so there's other litigation that goes to there. The plaintiffs in this lawsuit, who you saw at trial, are doing no more than what is legislatively created and proper in pursuing their claim that the facts and circumstances surrounding the original development created this easement. It's clear as a bell. That is a fully proper purpose for the filing of the lis pendens. They didn't mean him any harm.

The fact of the matter is that if they don't do this, they are at jeopardy that if they prevail that it's a mooted issue. And so for all those reasons, what they're asking you to do is improper. It's procedurally improper, it's equitably improper, and it runs contrary to the cases and everything else that's been submitted to Your Honor.

The Court: All right. I've got two points I want to follow-up with Amanda. Leigh, do you have anything to add to this situation at this time?

Ms. Boan: No, Your Honor. I simply join in with Ms. Bailey's argument.

The Court: Amanda, what about the case law that seems to indicate that if I were to cancel the lis pendens, that that is immediately appealable ---

Ms. Bailey: The Lebovitz case is the case that was cited to by the plaintiffs and, I think, the case that you're referring to.

The Court: That's right.

Ms. Bailey: That case law addresses whether or not it's a final judgment and immediately appealable. I don't dispute that. I don't. I don't think there's a way to dispute that. That case law is pretty clear. But in this case and based on these facts and the wording of this order, a bond is appropriate under these circumstances in order to protect all the parties' interests, including the defendants, Deertrack Investors.

The Court: Is this to protect against

lost sales as much as anything else?

Ms. Bailey: Yes.

The Court: Can development continue of this property with the lis pendens still in place?

Ms. Bailey: Based on the Affidavit, development is not possible because they're not able to secure financing or refinancing. I think development is, I think, at this stage in the game, the order, even if it's stayed, is status quo, which is there is no easement over this property. So they could develop it. They couldn't get financing for it. There is certainly a cloud on the title. But I do think the status quo is there's no easement on the property. So, technically, development is possible, although feasibly it's practically impossible.

The Court: I understand. Okay, you've answered that question. Now let me hear your response to the points that's David has raised.

Ms. Bailey: Certainly. And I think David has brought up the Lebovitz case, which I've touched on already. I don't dispute that it is an immediately appealable cancellation.

The language of this order is different than an order cancelling a lis pendens, and the language of this order does require specific actions to be taken.

I understand that his argument is form over substance, but there's statutory construction, and under statutory construction, it's strict construction, and I think it falls within those statutory exceptions in this case and requires a posting of bond. I do think the equities favor our clients, and that has been part of the basis, and what I've given up to The Court is the consent motion and order for severance, reference, and stay, and we've agreed to stay our counterclaims for both abuse of process and interference with contractual relations only until this final order was issued. It's not stayed outside of the, pending an appeal. So I think that the equities favor the posting of the bond in order to stay the effect of this final order.

The Court: Now, you suggested that if a bond is established, it should be in an amount sufficient to protect your client if he is successful in the abuse of process.

Ms. Bailey: Yes. And, Your Honor, part of what the abuse of process claim would be, included the potential lost profits, and those potential lost profits, based on this Affidavit, are between 42 and 53 million dollars.

The Court: Okay. David, I'll come back to you, and then I'm going to give Amanda the last word. It's her motion.

Mr. Miller: Well, first, Your Honor, if I may ask, I'll enlist Mr. Shelton's assistance, the original deposition of Mr. Smith was placed into the record and is out of our possession, at the Summary Judgment proceedings.

The Court: Right.

Mr. Miller: But that if I may mark the contract and the note, and I think we have a deposition copy.

Ms. Bailey: I think those were all admitted at trial, as well.

The Court: Okay. I probably have them in my stack in here somewhere.

Mr. Miller: So you'll have them convenient and available.

PLAINTIFF'S EXHIBIT NUMBER 1
MARKED FOR IDENTIFICATION

Mr. Miller: 150 and 160, again, if you were to order that I deliver title to my car and I appeal that, then you can have me either place the title with you until it's over or put up an amount sufficient. Again, to the extent they're concerned that we're not going to execute the document at the end of the day and want me to give you one now, I'll be happy to, and that's exactly what those statutes say.

First off, they're not applicable to this, because this is just form over substance; but that to the extent their concern is that we won't deliver at the end of the day were we not to prevail, well, we'll deliver it now, and you can hold it or the clerk can hold it or whoever can hold it so long as it's clear that it's not to remove the lis pendens until the end of the day.

The Court: I don't think that's Amanda's concern.

Mr. Miller: I don't think it is either.

The Court: The concern is if it's on there now, ---

Ms. Bailey: That's right.
Mr. Miller: I don't read any of these to somehow say that they are requesting The Court to lift a stay and that we have to put up a bond, that that is just contrary to 241 and it's contrary to the law. And that's it. I don't have anything else to say about that. That is what it is.
The Court: All right. Of course, if the lis pendens is lifted, then there is no bond required, right?
Ms. Bailey: That's right.
The Court: But if it stays, you're still saying there stood the statute on its head or that at least it stood Rule 241 on its head.
Mr. Miller: (Indicates affirmatively.)
The Court: Madam?
Ms. Bailey: And, Your Honor, I would just join in. We are not concerned with whether or not they're going to execute that. That's all I need to address.
The Court: All right. Folks, I got this information last night. It came in, and I tried to read it last night. I was in an

arbitration for two days in Columbia, and frankly, I have not had the chance to review the statutes. I reviewed the information that you sent me, and I read the statutes, but I haven't had a chance to analyze those statutes sufficiently before today. I'll do that when I get back home this afternoon and I will let you all know by the end of the week my ruling in this regard. I've got some time that I can spend on doing this after the fact.

I normally like to do this research before I come here, and I did read what you told me. I read the case law, and I read the statutes, but I did not read them and analyze them specifically. David, from the point that you've raised, even though your brief mentioned what they were meant to do, I need to look at that a little bit more deeply, frankly, before I make a final decision in this regard.

If I reach the matter of bond, Amanda, I'm not sure that lost profits under these circumstances, given the nature of the, let me say, the timing of the development, the status of the development at this point in time, and whether it is likely that 43 to 50, whatever

the figures were, would be lost during the pendency of this appeal if the lis pendens stays on there, frankly.

It would be wonderful if there were that much profit that could be gleaned within the two year period from the development of this property. I would think that it would be unique in all of Horry County and, perhaps, anywhere in the state for that realization to come about given the market today. So if I were to even direct a bond, I could not consider those figures in establishing a bond.

I'm not sure how long it would take to develop this property if Mr. Smith and his folks were able to crank it up today and get it fully developed and put the lots up for sale. Even as slowly as the appellate process works, my guess would be that the appellate process will be over before the development is ready to be full blown and put on the market, so. But anyway, that would be if I reach the issue of bond at all and, of course, if the lis pendens is cancelled, then there's no need for bond, David's right, and then there's no need for a bond either. I've got to review those things,

and I will be able to do it this afternoon and tomorrow and let you all know something by the end of the week.

Mr. Shelton: Your Honor, if I could just offer two excerpts from Mr. Smith's deposition that have been marked 2 and 3, the first one evidencing Mr. Smith's awareness of the south course lawsuit that Mr. Miller mentioned a moment ago, and the second one evidencing Mr. Smith's admission that it's really only a four million dollar contract in the event that the development does not take place, it's not an eight million dollar contract.

PLAINTIFF'S EXHIBIT NUMBER 2
PLAINTIFF'S EXHIBIT NUMBER 3
MARKED FOR IDENTIFICATION

Ms. Bailey: And I think we would not dispute that either.

The Court: I'm going to ask you, I've got a copy of Mr. Smith's affidavit you sent me and this original. If you could have that filed it would be helpful, because you'll probably have better access to the courts ---

Mr. Miller: We'll just mark it as an Exhibit, give it to the court reporter, and I'm

satisfied.

Ms. Bailey: Do you want a signed copy, Judge?

The Court: I'll take one just because you've got one, but the copy that you provided is fine for me, tell me what I needed to know. I will look at these other Exhibits that you all have given me today that I haven't seen and see how that bears on things, but I think mainly your briefs and your arguments today have pretty well laid out everything that I need except to review the statutes. And I'll review the Pond case again. As I say, when I got back from Columbia last night and went to my office and saw that it was a Judge Anderson opinion, I wasn't sure that I was going to have enough time to ---

Mr. Miller: Well, it's 22 pages long.

Ms. Bailey: It's very thorough.

The Court: But I think we can skim to the last two. I did not read all the New Jersey law in there, I kind of cut to the chase.

(THE HEARING CONCLUDED AT 10:45 A.M.)

CERTIFICATE

This is to certify that the foregoing transcript of the hearing before The Honorable Thomas W. Cooper, Jr., consisting of **TWENTY-NINE (29)** pages, is a true and correct transcript of the testimony given at said hearing. The hearing was reported by method of stenomask with backup.

I further certify that I am neither employed by nor related to any of the parties in this matter nor their counsel; nor do I have any interest, financial or otherwise, in the outcome of the same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this **12th** day of **OCTOBER, 2010.**

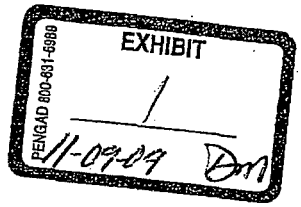
Alice S. Nelson
Verbatim Court Reporter
Notary in and for the State of South Carolina
My Commission Expires: 7-26-16

COPY

STATE OF SOUTH CAROLINA)) COUNTY OF HORRY)	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT CIVIL ACTION NO. 06-CP-26-4440
Dale Hill, Betty Hill, Carl Clemmons, and Geraldine Clemmons, individually, and on behalf of a class of all others similarly situated, Plaintiffs, vs. Deertrack Golf and Country Club, Inc., Deertrack Golf, Inc., Deerfield Plantation, Inc., the Estate of John Schaad, by and through Ann Schaad as Executrix, and Deertrack Investors, LLC Defendants. Deertrack Investors, LLC, Third-Party Plaintiff, vs. Plantation Resort of Myrtle Beach, Inc. Plantation Resort Properties, Inc., and Deerfield Plantation Property Owners= Association, Inc. Third-Party Defendants.	**PRE-TRIAL STIPULATIONS OF FACT**

Pursuant to Rule 43(k) of the South Carolina Rules of Civil Procedure, the undersigneds hereby stipulate the following facts:

1. Deerfield Plantation, Inc. was a South Carolina corporation in existence on October 13, 1972. V.F. Platt, Jr. served as President and Kate W. Platt served as Secretary. (hereinafter referred to as the "Deerfield Plantation I")



2. Caro Pines Realty, Inc. was a South Carolina corporation formed on May 5, 1978 by John H. Schaad, Louis E. Schaad, Sr. and James Schaad, and changed its name to Deerfield Plantation, Inc. (hereinafter referred to as the "Deerfield Plantation II")

3. Despite similar names, the Deerfield Plantation I Entity and the Deerfield Plantation II Entity have always been separate and distinct entities, with separate and distinct shareholders, officers, and directors.

4. The parties have pre-admitted Deeds from Deerfield Plantation, Inc. into the Plaintiffs Hills for Lot 358 and Clemmons for Lot 36. The other deeds conveying the remaining lots 1-458 from Deerfield Plantation I or Deerfield Plantation II utilize the same or substantially the same form as the Hill's and Clemmons' Deeds, each of which is in the record chain of title.

Respectfully submitted by,

McNAIR LAW FIRM, P.A.

Amanda A. Bailey, SC Bar #71085
2411 Oak Street, Suite 206
Post Office Box 336 (29578-0336)
Myrtle Beach, SC 29577
abailey@mcnair.net
Attorneys for Defendant Deertrack Investors, LLC

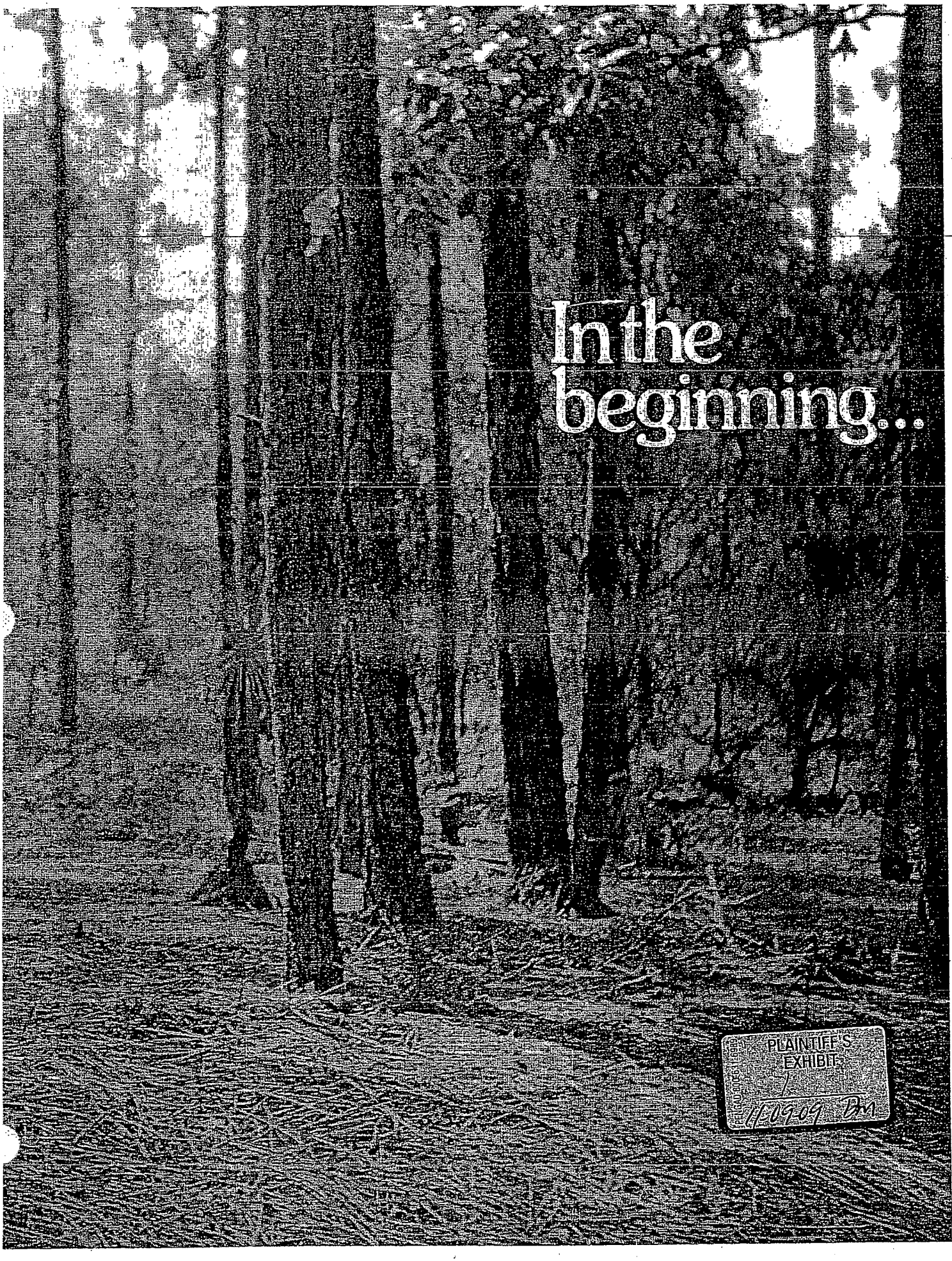
November 9, 2009

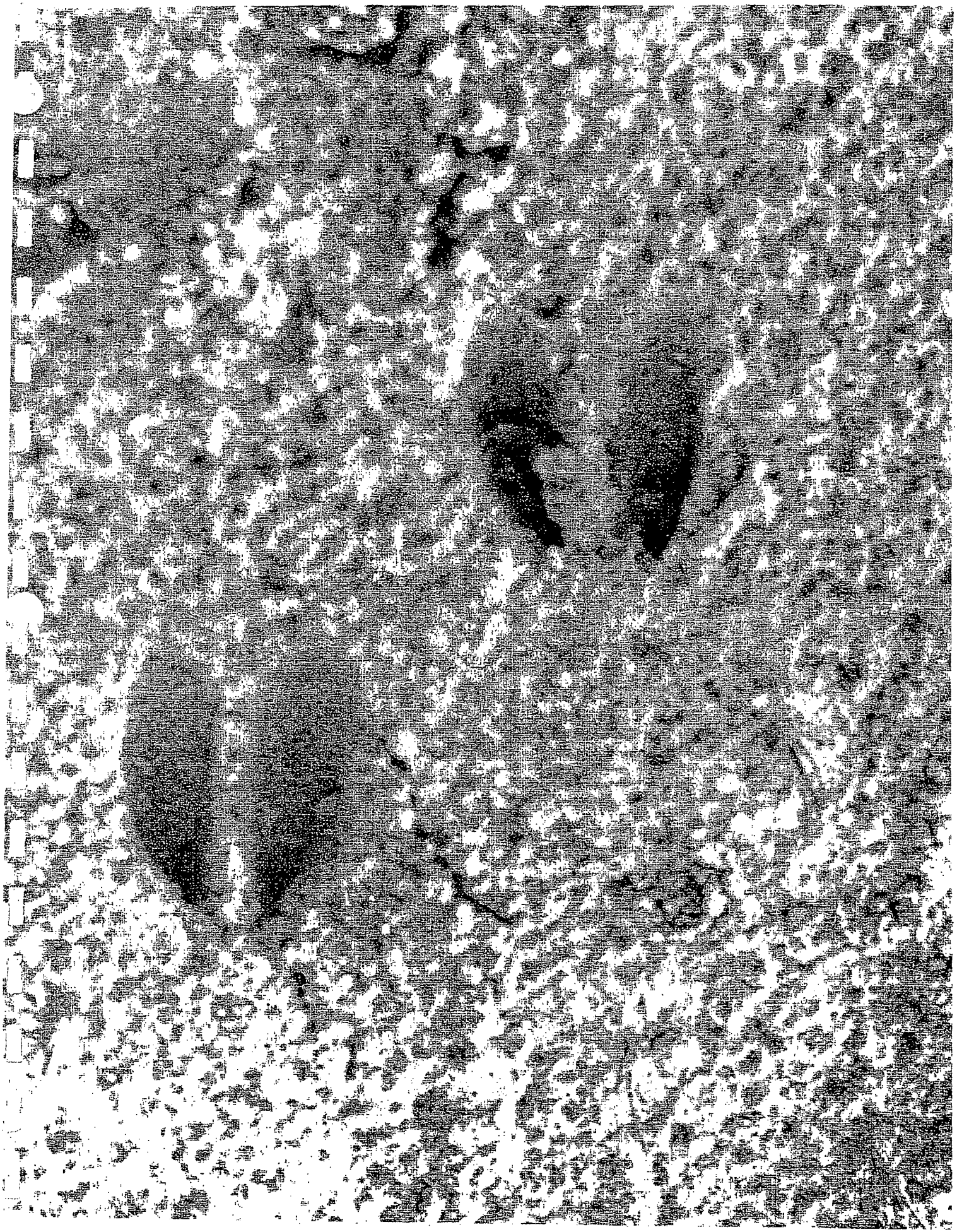
BELLAMY, RUTENBERG, COPELAND, EPPS, GRAVELY & BOWERS, P.A.

David B. Miller
Robert S. Shelton
1000 29th Avenue North
Post Office Box 357
Myrtle Beach, SC 29578

dmiller@bellamylaw.com
rshelton@bellamylaw.com
Attorneys for the Plaintiffs

November ____, 2009


In the beginning...
PLAINTIFF'S EXHIBIT
1
11-07-09 DM



There was the land...

And, oh, what a beautiful land!

Deerfield Plantation has slumbered through the centuries. Here deer tracks guided Indians in stalking their game before the white man came. Even after, the land was untouched by the American Revolution...and continued to quietly greet the season each year in its primitive and beautiful state.

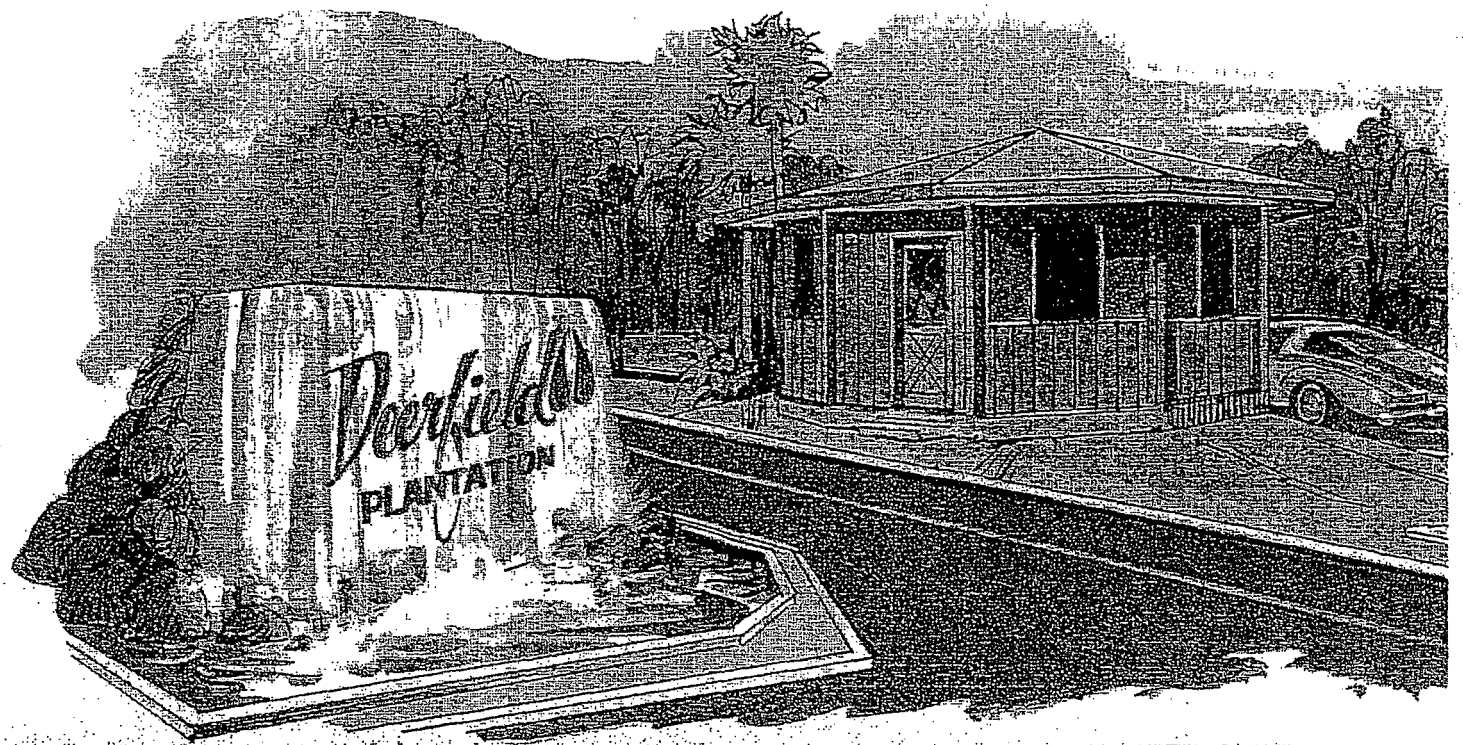
Time passed. The Civil War passed Deerfield by. Even in World War II, the airforce planes passed overhead from nearby Myrtle Beach base, but the land itself still slumbered.

Now the time has come to carefully preserve this treasure in a way that will serve man, but in a way that will preserve its beauty.

Deerfield Plantation is the largest unspoiled tract of land on the South Carolina Grand Strand. And we have dedicated ourselves to here make man at home with his environment...his heritage...the land.

Deerfield T.M.
PLANTATION

ront cover and Deer tracks are actual property shots of Deerfield Plantation.



Artist's conception of Deerfield Plantation Gatehouse and Clubhouse



Tradition translated for today

Master land planners and architects have been commissioned to translate Deerfield Plantation's natural beauty into today's terms of a total community. The total plan, in its grand scope and design, has never been seen before on the Grand Strand. And will probably never be again.

From the initial groundbreaking...to the sweeping welcome of the gateway...to the breathtaking splendour of the Clubhouse grounds...

Everything has been done in the grand manner. In a grand tradition, translated for today.

ancis & Kate Platt at Ground Breaking Ceremonies with South Carolina Governor John C. West.

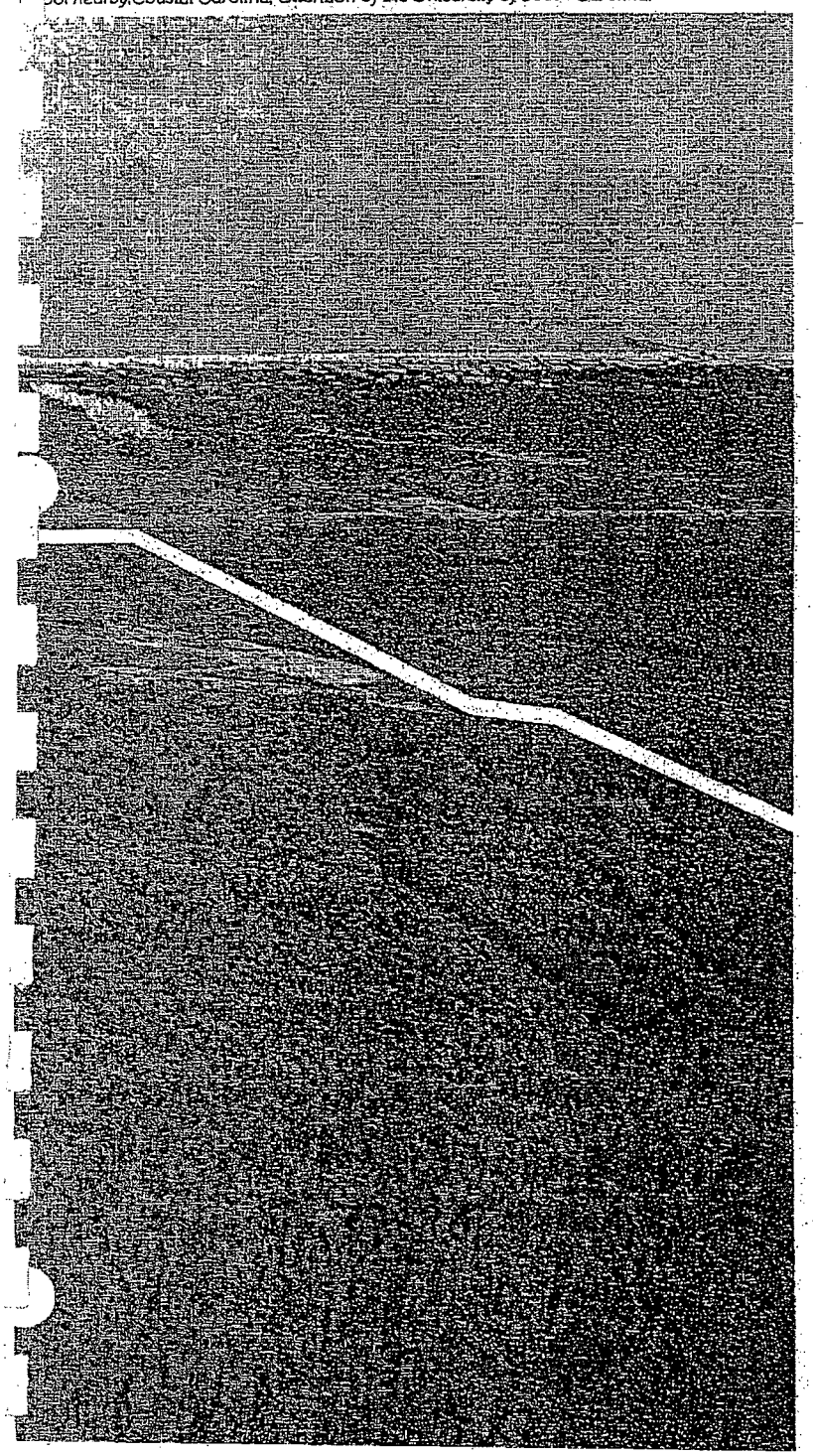


Surveying at Deerfield Plantation.





ool nearby, Coastal Carolina, extention of the University of South Carolina.





A tradition of the good life

Deerfield Plantation is a living example of the grace and dignity of southern living...a tradition that has not faded during the rush and bustle of the 20th Century.

Coastal South Carolina has a history rich in the living of the good life, and here at Deerfield we are upholding that tradition...with all of the most modern marvels of architecture and planning.

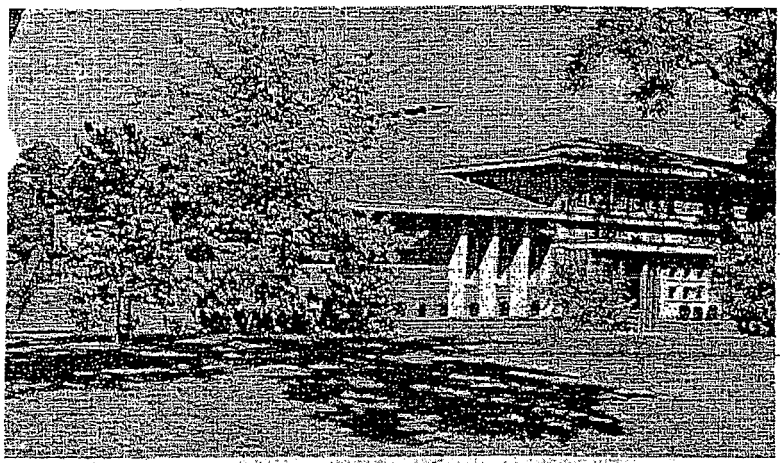
The area is renowned for its lovely homes and magnificent settings. Deerfield Plantation is no exception.

Picture, if you will, streets winding beneath magnificent trees. Arranged in quiet seclusion are beautiful homes. There are no ugly overhead wires...here everything is underground. Electricity, telephone and television lines. Even the unobtrusive street lamps blend into their surroundings and have no overhead wires.

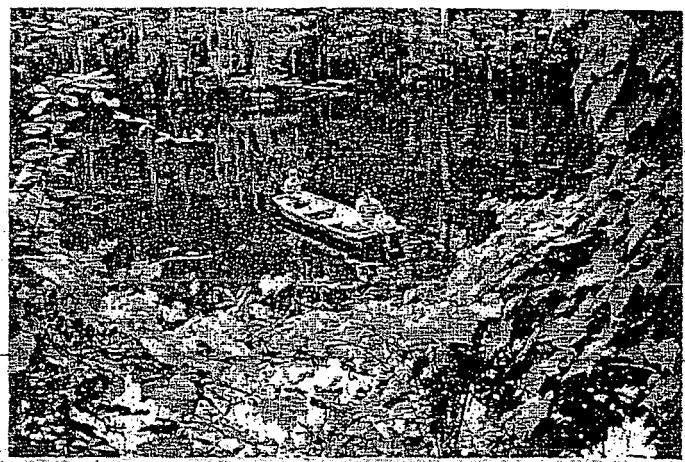
Many homes and condominium apartments will look out over the fairways of the championship golf course, or upon the clear waters of Lake Vivian.

All details such as 24-hour security service, water and sewage, waste disposal, and street paving have been arranged so as to minimize your concern with day-to-day problems.

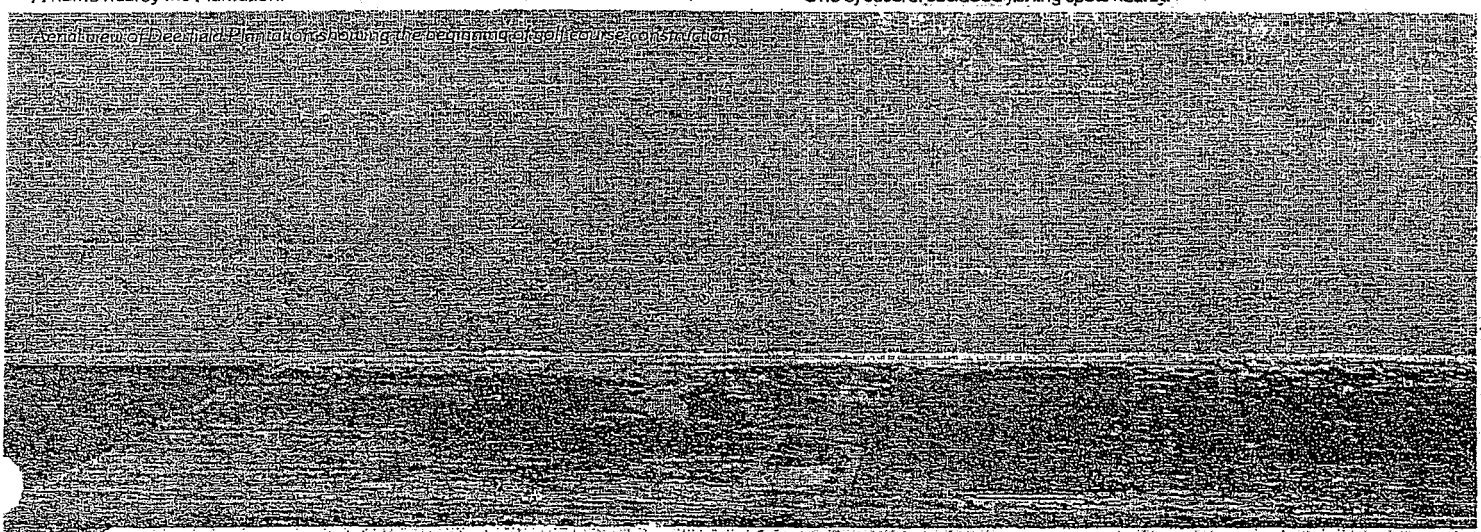
Nowhere else on the Grand Strand is there such a grand concept.



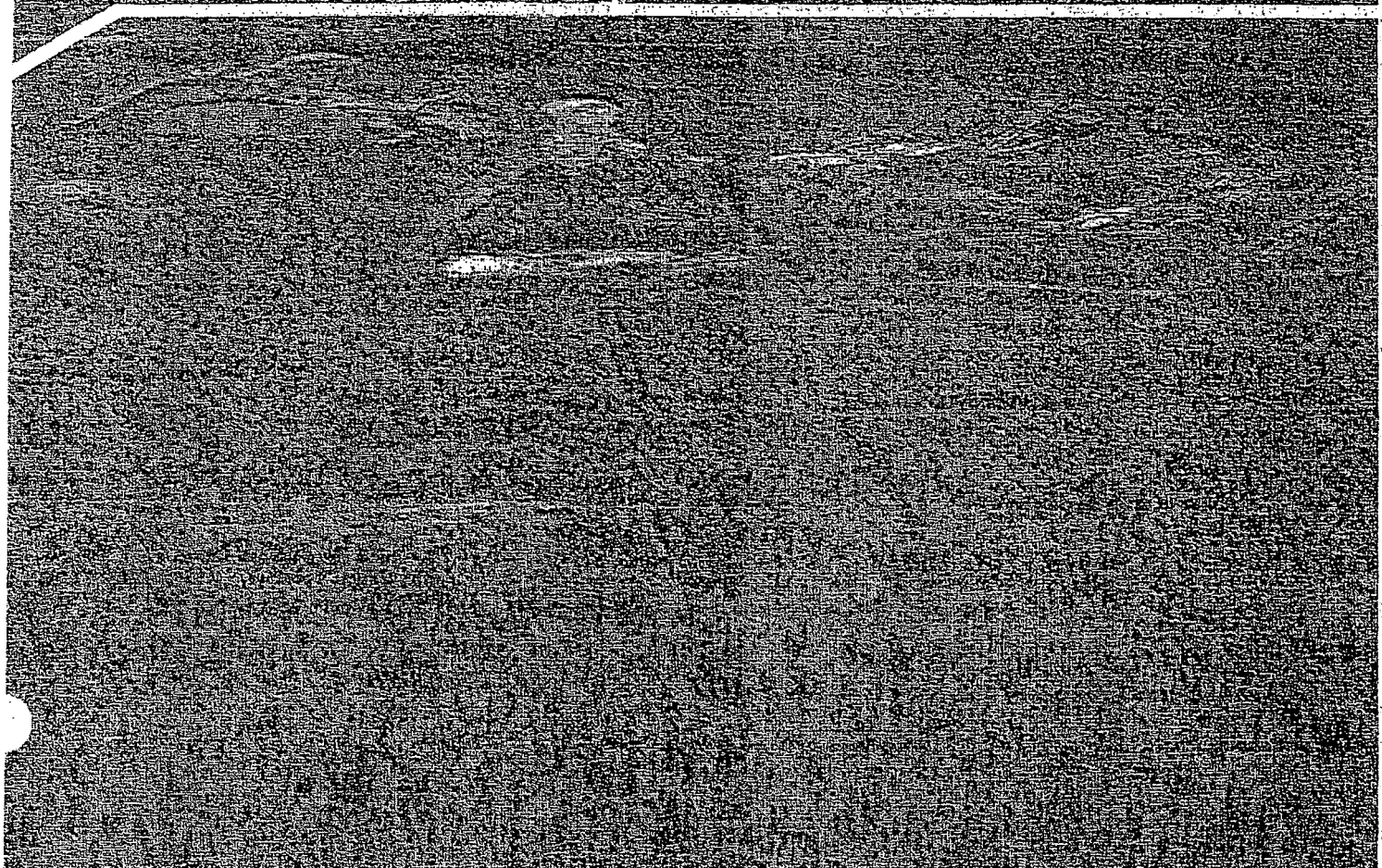
A home nearby the Plantation.



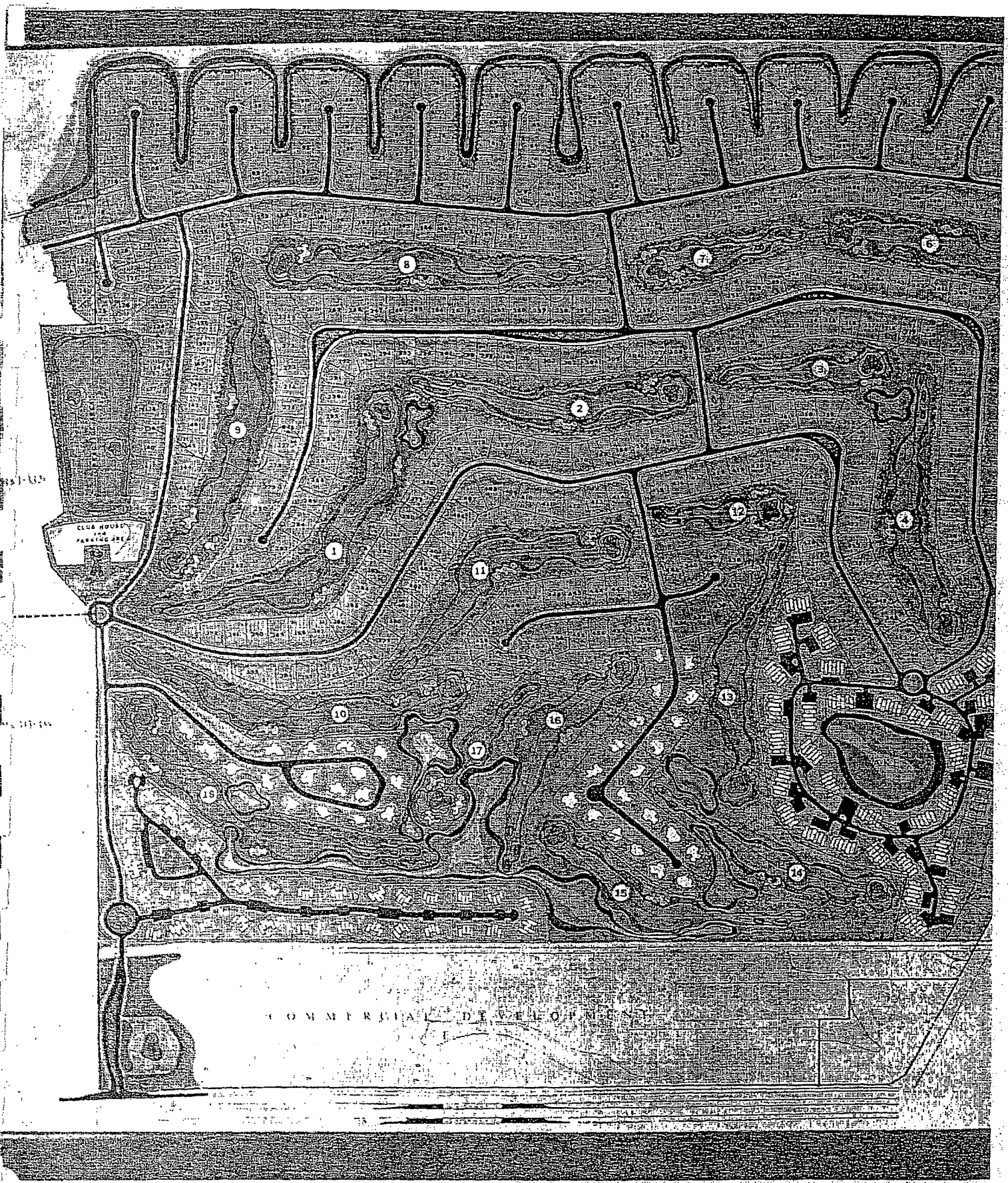
One of several secluded fishing spots nearby.



Aerial view of Deerfield Plantation showing the beginning of golf course construction.



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CLUB HOUSE
AND
PARKING AREA
COMMERCIAL DEVELOPMENT



A family tradition

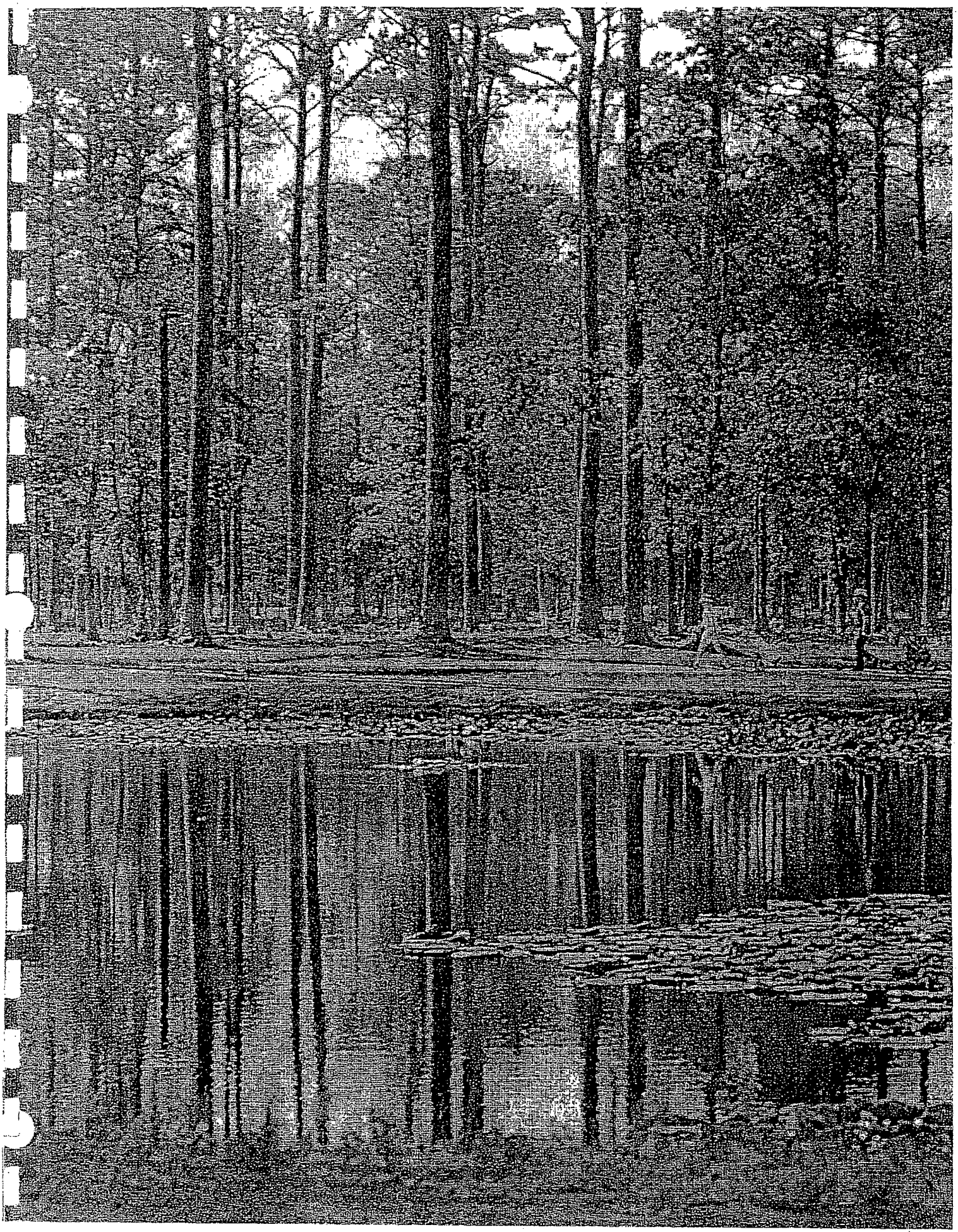
As Francis Platt brings the dream of Deerfield Plantation into a reality, he carries forth a family dream. A family tradition.

He, and his father before him, resisted the headlong rush into real estate development that has so characterized the Grand Strand. They dreamed of something better for Deerfield. And they held onto their dream.

Rather let the land continue to sleep, than desecrate it with a get-rich-quick development that would destroy the natural ecology and beauty.

Now this dream of the Platt family is taking shape. And perhaps nowhere else on the Grand Strand will such care and devotion be lavished on the land.

Deerfield Plantation is so much more than a new community. It is indeed a family tradition come to flower.



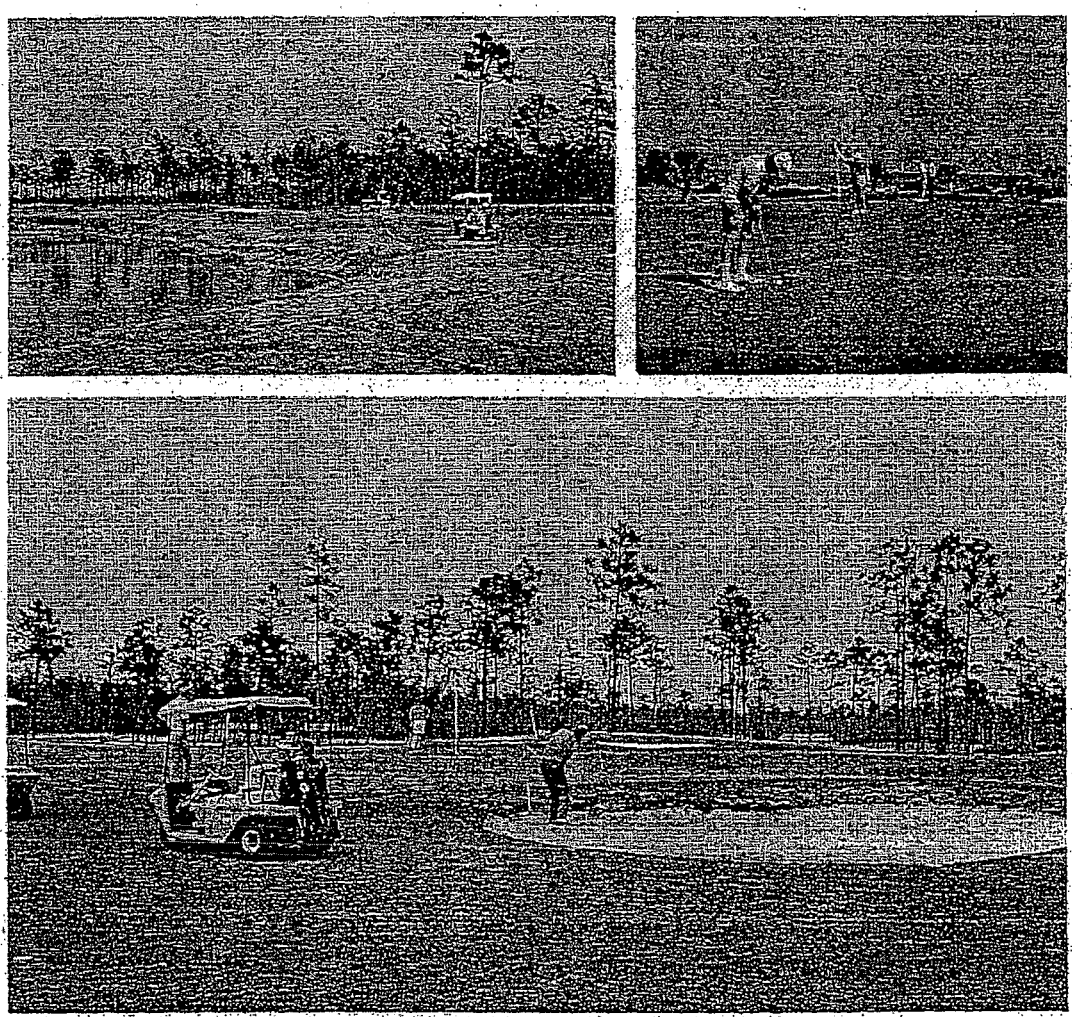
A sporting tradition

Golf, the traditional sport of the Scottish and English kings, has taken its rightful place under the American sun.

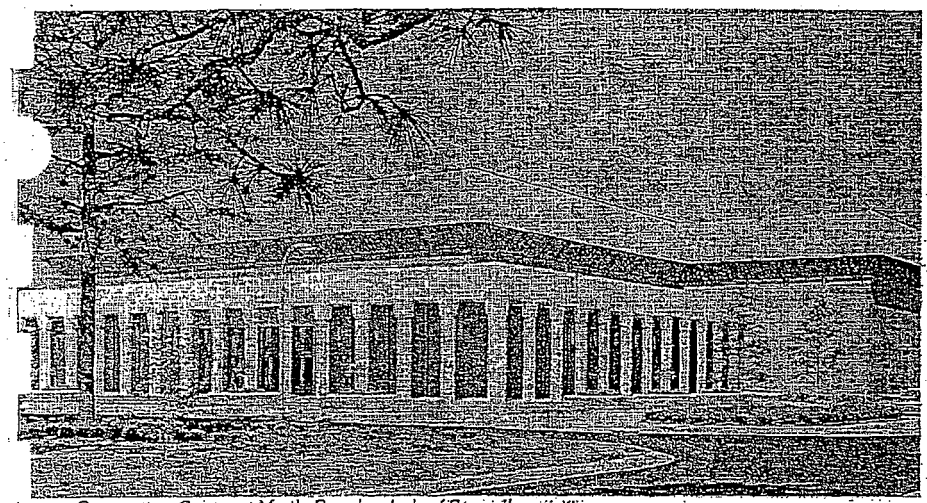
No other sport offers recreation and good health to so many people. And, on the Grand Strand, golf has become almost a way of life. Here so many golf courses abound that the area is rapidly becoming the golf capital of the nation.

Added to these, of course, will be Deerfield Plantation's own Deer Track golf course. Its 18-hole championship layout will be a new standard for the entire area...and will be the most outstanding course in the heart of the Grand Strand.

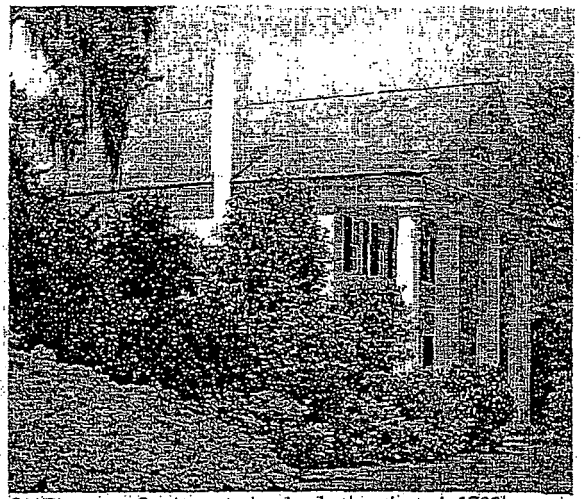
The fabulous Clubhouse will also provide an 18-hole putting green, practice range, a six-lane Olympic pool, lighted tennis courts, restaurant and cocktail lounge, game rooms, saunas, etc. Truly a first for the Myrtle Beach area.



Some of the beautiful golf courses on the Grand Strand.



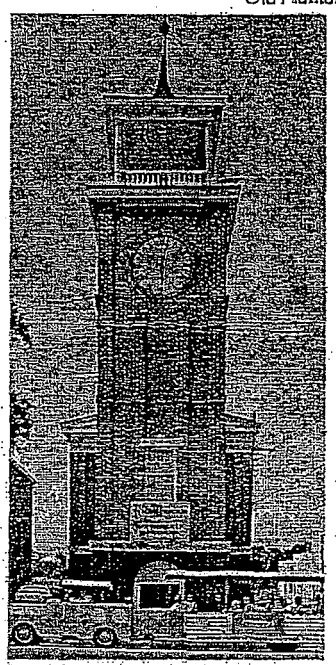
Convention Center at Myrtle Beach— hub of Strand's activities.



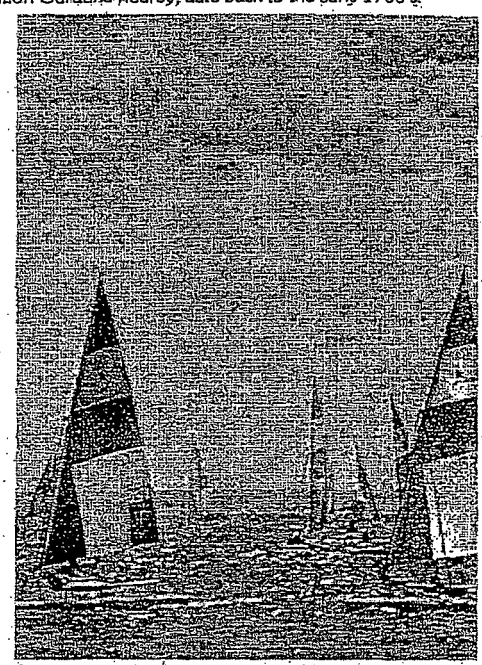
Old Plantation Gardens nearby, date back to the early 1700's.



Hunting in the Strand— many varieties of game and fowl.



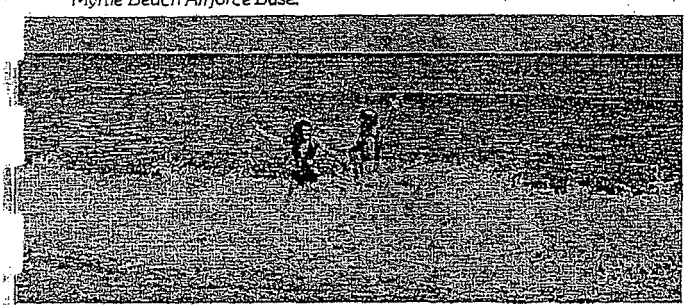
Rice Museum in Georgetown.



Catamarans, skimming over a sparkling sea.



Myrtle Beach Airforce Base.

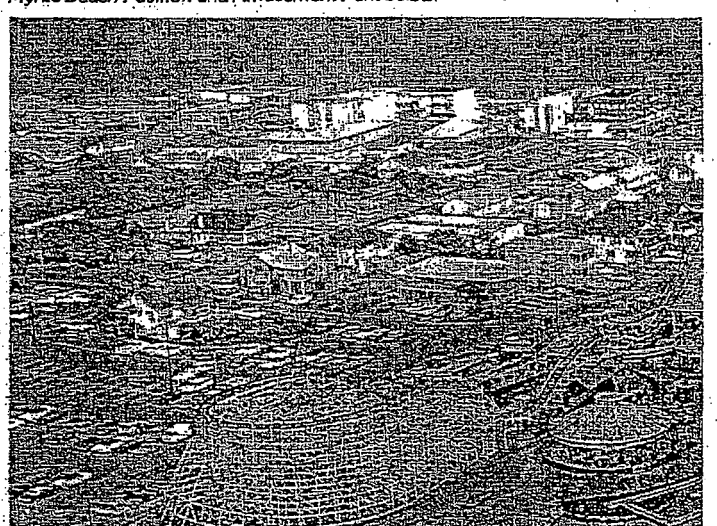


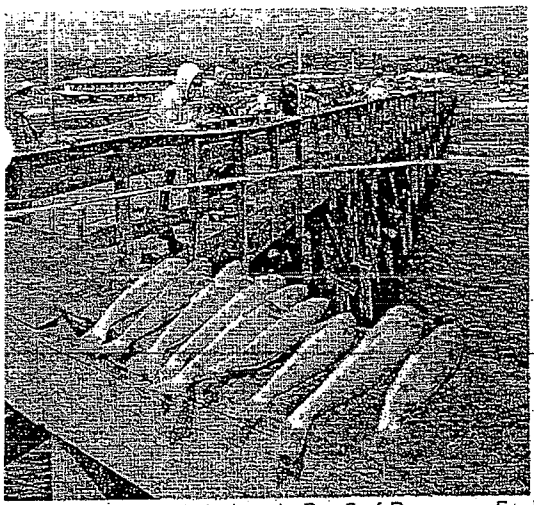
World-famous Reflecting Pool at Brookgreen Gardens below.

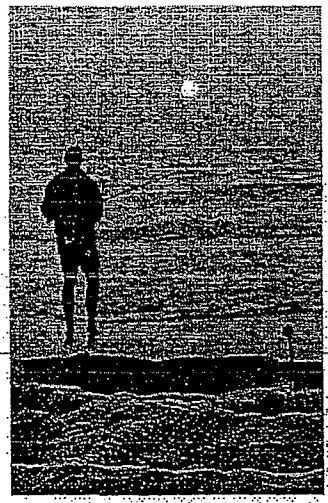


Myrtle Beach Pavilion and Amusement Park below.

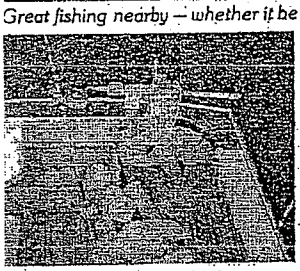


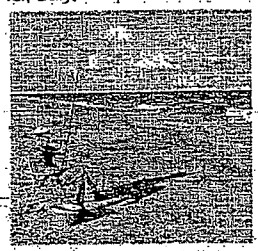






Great fishing nearby — whether it be Pier, Surf, Deep sea or Fresh water...



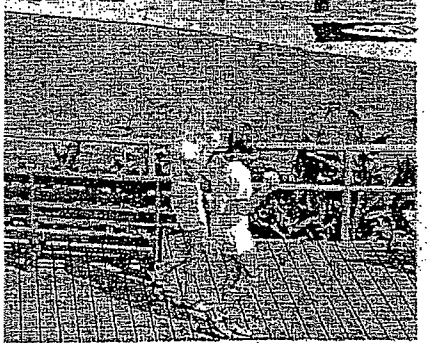


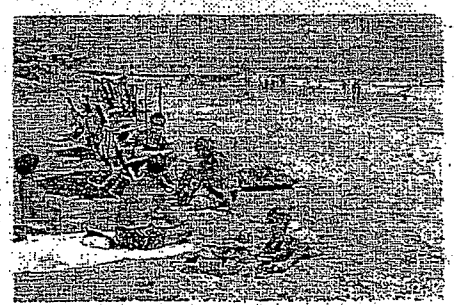


Every variety of fish and fishing.

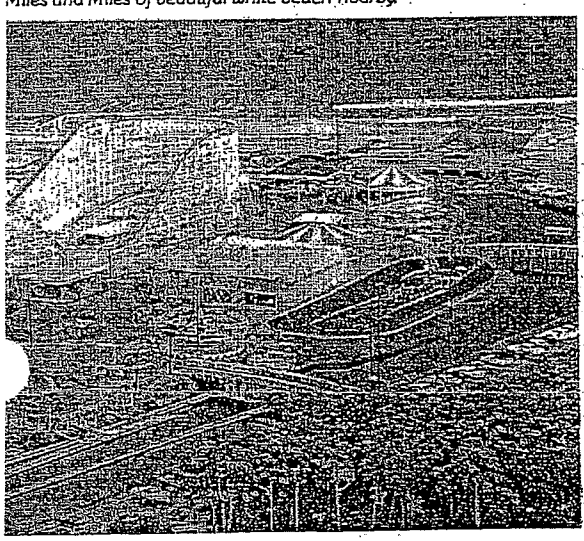


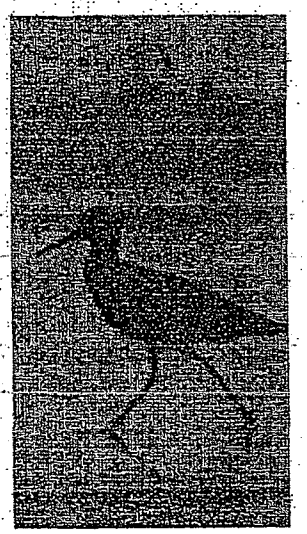






Miles and Miles of beautiful white beach nearby.





A tradition of hospitality

In the Myrtle Beach area, a resident enjoys all the advantages of southern living...plus an extra bonus.

Here you are residing in the midst of one of America's most charming and popular resorts. And all of the fun and glamour that lures many visitors to the area are yours for the asking.

Whether your choice is hunting, fishing, tennis, surfing, amusement parks, swimming, shell collecting, or just strolling along wide beaches or through beautiful gardens...the Grand Strand awaits your pleasure.

After dark, fine dining and dancing and a range of entertainment are to be found along the Strand.

The other niceties of a well-rounded life are all here too. Schools, churches and temples, medical facilities, library, municipal auditorium, motion picture theatres, television, other news media, transportation. Everything you could possibly need or want is at your fingertips.

In the tradition of business on a high level

DEERFIELD PLANTATION, INC.
The principal officers in Deerfield Plantation, Inc. are V.F. Platt, Jr. and his wife, Kate W. Platt. Deerfield Plantation, Inc. is the developer of DEER TRACK GOLF & COUNTRY CLUB. Mr. and Mrs. Platt are both natives of Coastal South Carolina and Deerfield Plantation was formerly in the Platt family since 1930. V. Francis Platt, Jr. was born in Conway, S.C. and Mrs. Platt, in Marion, S.C. Mr. Platt earned his B.A. Degree at Wofford College in 1941 and a B.S. Degree in Pharmacy from the University of South Carolina in 1947. Both Mr. & Mrs. Platt have long been active in area civic, fraternal and community affairs...Mrs. Platt having recently served as a member of the Town Council of the town of Surfside Beach.

BILLY DELK: Golf Professional
William S. "Billy" Delk, a P.G.A. Head Professional for 15 years...6 of which include experience with Golf Operations in the Myrtle Beach area. An excellent Golf Instructor and a promoter of Golf Clinics for Ladies and Juniors, he has also been instrumental in the physical construction and efficient operation of 3 Golf & Country Clubs here in South Carolina.

J. PORTER GIBSON: Land Planner and Golf Architect.
In charge of general development planning and supervision, engaging the services of GMG Development Counsultants, Inc. and its personnel.

GMG DEVELOPMENT CONSULTANTS, INC.:
A. Russell Maddox: President, Director of GMG Development Consultants, Inc. Director of Sales, Mr. Maddox has extensive experience in administration and finance...including 15 years in real estate and land development, 6 years of which was gained in the Bahamas as Vice President of World Land & Investing Co., Ltd., the developers of Norman's Cay. Mr. Maddox's other associations include: Controller—Magnuson Corporation—The Deltona Corporation...Mackle Brothers...and Vice President & Director of Sales of MGIC-First Properties, developers of Springtree, in Ft. Lauderdale. Mr. Maddox is a Licensed South Carolina Real Estate Broker.

J. Porter Gibson: Secretary, Treasurer & Director of GMG Development Consultants Inc. In charge of the overall construction of the Plantation, Mr. Porter Gibson, a distinguished Golf Course Architect & Land Planner, has handled land planning, golf course architecture and golf course construction all over the eastern half of the United States. Two of Mr. Gibson's proudest accomplishments are his recent affiliation with the firm of Tait-Toski-Gibson, Inc. and his plan for the development of Deerfield Plantation and Deer Track Golf & Country Club. Porter Gibson has designed and built approximately 50 golf courses, Deer Track being the most outstanding.

GOLF COURSE CONTRACTOR:
R.E. CHAKALES & ASSOCIATES, INC., of Richmond, Virginia...headed by Bob Chakales, a former Major League Baseball player with the Cleveland Indians and the Washington Senators. Among the more than 50 golf courses constructed by R.E. Chakales and Associates, Inc., some of the more prominent are Brettonwood, in Washington, D.C., The Country Club of Virginia, Tuckahoe Course and Britton Bay on the eastern shore of Maryland. Bob Chakales is presently President of the Golf Course Builders of America and his firm has five golf courses under construction at this printing.

ARCHITECTS:
RODNEY WESTBURY ASSOCIATES, Architects and Planners of Atlanta, Georgia, entered the Greater Myrtle Beach area in February 1973. The firm has been active in the architecture and planning of planned unit resort developments with current projects throughout the Southeast. Rodney Westbury is a native of Charleston, S.C., a graduate of Clemson University and M.I.T. Larry Timbes, a native of Conway, S.C., Vice President and Associate, is also a graduate of Clemson.

J.PORTER GIBSON, Golf Course Architect and Land Planner.

ENGINEERING:
MOORMAN & LITTLE, INC., Fayetteville, N.C. are specialists in all phases of land development. The firm handles planning, engineering, surveying, supervision of construction, coordination and filing of permits with regulatory agencies. Personnel are sensitive to value of esthetics and influence on environment. Since 1959 the firm has completed numerous projects from the mountains to the seacoast, mostly in North and South Carolina, with emphasis on recreational and innovative design.

ATTORNEYS:
SINGLETON & SINGLETON
401 12th Avenue N., Myrtle Beach, S.C.

BANKING & FINANCE:
THE SOUTH CAROLINA NATIONAL BANK

ADVERTISING & LAYOUT:
JUSTIN ASSOCIATES, INC., advertising and public relations, 1465 South Miami Avenue, Miami, Florida Ralph J. Surrency, President.

DON PLATT ADVERTISING ART, Don Platt, 950 S.E. 8th Street, in the Graphic Center, Hialeah, Florida.

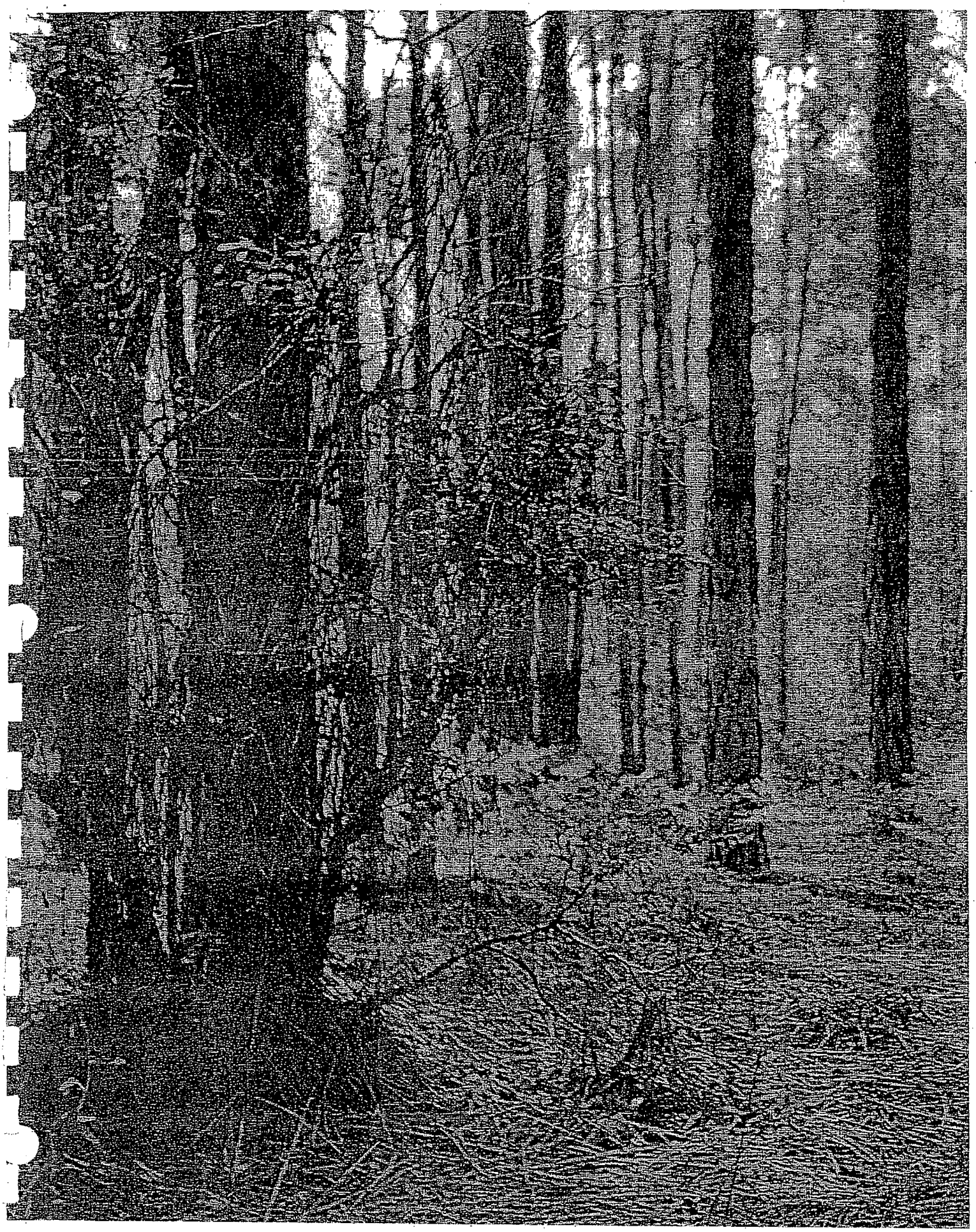
WASTE TREATMENT LINES:
PIERCE DITCHING CO., INC. of Florence, S.C.



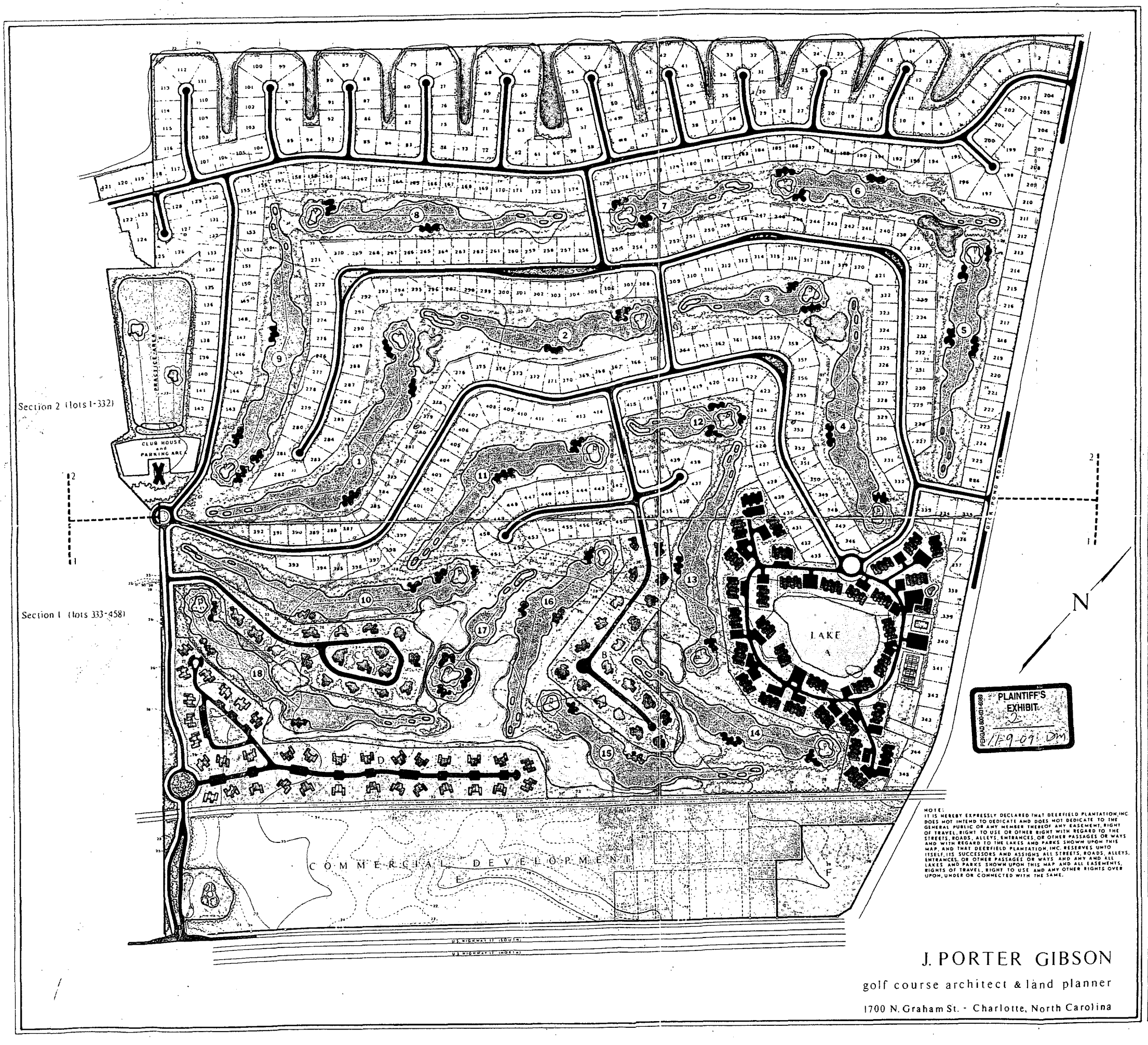
PLANTATION, INC.

The Grand Strand's Grand Community

U.S. 17 SOUTH/MYRTLE BEACH, S.C. 29577/TELEPHONE 803-238-5183

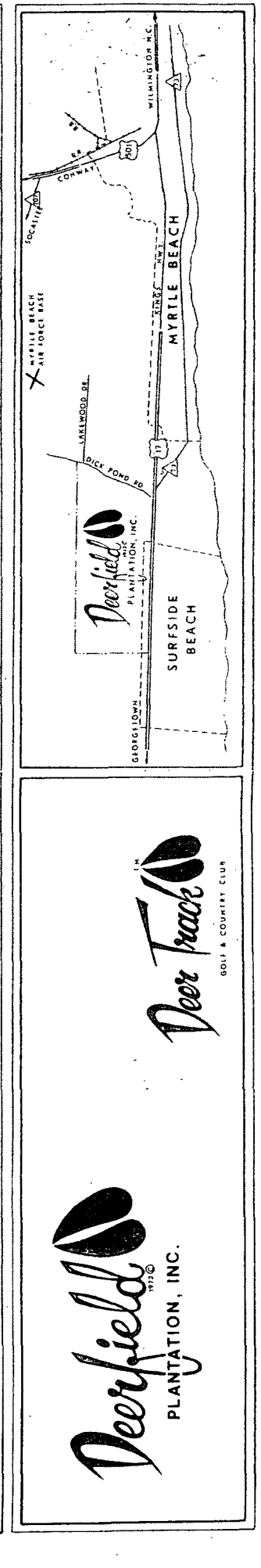


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NOTE:
IT IS HEREBY EXPRESSLY DECLARED THAT DEERFIELD PLANTATION, INC DOES NOT INTEND TO DEDICATE AND DOES NOT DEDICATE TO THE GENERAL PUBLIC OR ANY MEMBER THEREOF ANY EASEMENT, RIGHT OF TRAVEL, RIGHT TO USE OR OTHER RIGHT WITH REGARD TO THE STREETS, ROADS, ALLEYS, ENTRANCES, OR OTHER PASSAGES OR WAYS AND WITH REGARD TO THE LAKES AND PARKS SHOWN UPON THIS MAP, AND THAT DEERFIELD PLANTATION, INC. RESERVES UNTO ITSELF, ITS SUCCESSORS AND ASSIGNS ALL STREETS, ROADS, ALLEYS, ENTRANCES, OR OTHER PASSAGES OR WAYS AND ANY AND ALL LAKES AND PARKS SHOWN UPON THIS MAP AND ALL EASEMENTS, RIGHTS OF TRAVEL, RIGHT TO USE AND ANY OTHER RIGHTS OVER UPON, UNDER OR CONNECTED WITH THE SAME.

J. PORTER GIBSON
golf course architect & land planner
1700 N. Graham St. - Charlotte, North Carolina



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Thomas W. Cooper, Jr., Special Referee

Case No. 2006-CP-26-4440

Dale Hill, Betty Hill, Carl Clemmons, Geraldine Clemmons, Individually, and on behalf of a Class of all others similarly situated ..... *Appellants*,

vs.

Deertrack Golf and Country Club, Inc., Deertrack Golf, Inc., Deerfield Plantation, Inc., the Estate of John Schaad, by and through Ann Schaad as Executrix, and Deertrack Investors, LLC .. *Respondents*.

RECORD ON APPEAL

VOLUME II of II

David B. Miller, Esq., SCB # 10296
Robert S. Shelton, Esq., SCB # 68543
BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
P.O. Box 357
Myrtle Beach, SC 29578
(843) 448-2400
Counsel for Appellants

Henrietta U. Golding, Esq.
Amanda Bailey, Esq.
McNair Law Firm, P.A.
P.O. Box 336
2411 Oak Street, Suite 206
Myrtle Beach, SC 29578
(843) 444-1107
Counsel for Respondent
Deertrack Investors, LLC

Richard M. Smith, Esq.
Leigh Powers Boan, Esq.
McNair Law Firm
P.O. Drawer 418
Georgetown, SC 29442
(843) 546-6102
Counsel for Respondents Deertrack Golf and Country Club, Inc., Deertrack Golf, Inc., Deerfield Plantation, Inc., and the Estate of John Schaad, by and through Ann Schaad as Executrix

Lot 365

BOOK 488 PAGE 824 18412 824

PLAINTIFF'S EXHIBIT 3 1:50-cv-

HORRY COUNTY

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

'73 APR 4 PM 2 15

R. G. HORTON
CLERK OF COURT

KNOW ALL MEN BY THESE PRESENTS, that Deerfield Plantation, Inc., a South Carolina corporation, in the State aforesaid for and in consideration of the sum of Thirteen Thousand Two Hundred Dollars ($ 13,200.00), Dollars to it paid by Carl L. & Geraldine O. Clemmons in the State aforesaid, (Receipt whereof is hereby acknowledged) granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Carl L. & Geraldine O. Clemmons subject to the within conditions, reservations, covenants and restrictions and easements:

All and singular that certain piece, parcel or lot of land situate, lying and being in Socastee Township, Horry County, S. C., and being designated as Lot # 365 on that certain map of Deerfield Plantation, property of Deerfield Plantation, Inc., made by Moorman & Little Inc., Engineers, dated November 14, 1972, and recorded in Plat Book 54, at page 124, office of the Clerk of Court for Horry County, S. C., which said map and the record thereof is hereby incorporated herein and made a part hereof by reference.

Together with a non-exclusive private right of way and easement for ingress and egress for travel purposes to and from the above lot of land over, across and upon all streets and roads within the subdivision encompassing lots number 1 through 458 on certain map of property of Deerfield Plantation, Inc. made by Moorman & Little, Inc., Engineers recorded in Plat Book 54, page 124, office of the Clerk of Court for Horry County, S. C., and all streets, roads, and ways lying contiguous to any such said lot and all streets, roads and ways leading thereto from U.S. Highway number 17 and South Carolina Highway number 375 (Dick Pond Road).

This conveyance is made subject to those certain conditions, reservations, covenants and restrictions set forth in that certain Declaration and Establishment of Conditions, Reservations, Covenants and Restrictions for Deerfield Plantation Single Family Residential Subdivision, Horry County, South Carolina, recorded in Deed Book 488, page 305, office of the Clerk of Court for Horry County, S. C., which said Declaration and Establishment of Conditions, Reservations, Covenants and Restrictions and the record thereof is hereby incorporated herein and made a part hereof by reference and subject to general electric easements to the South Carolina Public Service Authority of record.

TOGETHER WITH all and singular, the Rights, Members, Hereditaments and Appurtenances to the said premises belonging, or in any wise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Carl L. & Geraldine O. Clemmons its, his, her or their Heirs, Successors and Assigns forever, subject to the aforesaid conditions, reservations, covenants and restrictions and easements.

And the Grantor herein hereby binds itself, and its successors, to warrant and forever defend all and singular the said premises unto the said Carl L. & Geraldine O. Clemmons and its, his, her or their heirs, successors and assigns, against itself and its successors and all persons whomsoever lawfully claiming, or to claim the same, or any part thereof, subject to the aforesaid conditions, reservations, covenants and restrictions and easements.

WITNESS the execution hereof by Grantor this 7th day of February in the year of our Lord one thousand nine hundred and Seventy Three and in the one hundred and Ninety Seven year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered in the Presence of:

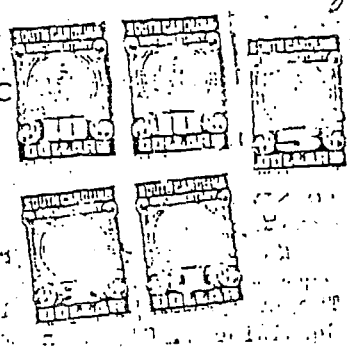
DEERFIELD PLANTATION, INCORPORATED (SEAL)

By: W. F. Collins
As President

Attest: Kate W. Price
As Secretary

ORIGINAL

County Documentary Stamps
$1485
been paid on this instrument.
FREE
HORRY COUNTY
R. G. HORTON
CLERK OF COURT
APR 4 PM 2 13



Lot Number 365 Tax $ 13,200.00

SOCASTEE TOWNSHIP

State of South Carolina

COUNTY OF HORRY

DEERFIELD PLANTATION, INC.

TO

CARL L. CLEMONS &

GERALDINE O. CLEMONS

1800 North Oak Street
Myrtle Beach, S. C. 29577

DEED TO REAL ESTATE

I hereby certify that the within deed has been this ___ day of ___ A.D. 19__ Recorded in Book ___ of Deeds Page ___ at ___ o'clock ___ M.

Clerk of Court of Horry County, South Carolina

I hereby certify that the within deed has been this ___ day of ___ A.D. 19__ Transferred on Auditor's Book Page ___

Auditor of Horry County, South Carolina

STATE OF SOUTH CAROLINA)
PROBATE FOR CORPORATE GRANTOR
COUNTY OF HORRY)

PERSONALLY appeared before me A. Russell Maddox and made oath that he saw the within named Deerfield Plantation, Inc. by V. F. Platt, Jr. its President and Kate W. Platt its sign, seal and as the corporate act and deed deliver the within written deed, David F. Romesburg witnessed the execution thereof and subscribed thereto affixed.

SWORN to before me this 7th day of April A.D. 1982.

(L.S.)

Notary Public of South Carolina

My commission expires: 3-9-91

A. Russell Maddox

000394



Deerfield T.M. PLANTATION

SINGLE FAMILY RESIDENTIAL PROPERTY

Property Report.....page 1

Declaration and Establishment of Conditions, Reservations, Covenants and Restrictions for Deerfield Plantation Single Family Residential Subdivision Horry County, South Carolina.....page 13

Privilege and Obligation Agreement.....page 21

Deerfield Plantation Property Owners Association, Inc. By-Laws.....page 27

U.S. 17 SOUTH, MYRTLE BEACH, S. C. 29577 • Telephone: (803) 238-5183

PROPERTY REPORT

NOTICE AND DISCLAIMER BY OFFICE OF INTERSTATE LAND SALES REGISTRATION, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.

This report is not a recommendation or endorsement of the offering herein by the Office of Interstate Land Sales Registration, nor has that office made an inspection of the property nor passed upon the accuracy or adequacy of this report or any promotional or advertising materials used by the seller.

It is in the interest of the buyer or lessee to inspect the property and carefully read all sales or lease documents.

Prospective buyers and lessees are notified that unless they have recieved this property report prior to, or at the same time they enter into a contract, they may void the contract by notice to seller.

Unless a buyer or lessee acknowledges in writing that he has read the report and personally inspected the lot prior to signing his contract, he may revoke his contract within 48 hours from the signing of his contract, if he has received the property report less than 48 hours prior to signing such contract.

1. **NAME AND ADDRESS OF DEVELOPER:**

The developer of this subdivision is Deerfield Plantation, Inc. who can be contacted at 911 Surfside Drive, Surfside Beach, South Carolina, 29577, phone (803) 238-5138.

2. **NAME AND LOCATION OF SUBDIVISION:**

The subdivision (Deerfield Plantation) is located in the County of Horry, S.C., a single family residential subdivision.

a . STATE THE DATE THE REGISTRATION WITH THE OFFICE OF INTERSTATE LAND SALES REGISTRATION BECAME EFFECTIVE:

The registration of this subdivision with the Office of Interstate Land Sales Registration became effective on December 26, 1972.

b . THIS OFFERING CONSISTS OF: Lots of land numbered 1 through 117, 126 through 458, as shown and delineated upon that certain map made by Mooreman and Little, Inc., dated November 14, 1972, and recorded in Plat Book 54, Page 124, office of the Clerk of Court for Horry County, State of South Carolina.

(Estimated Completion Dates)

UNIT	LOT NO.	WATER	ELECTRICITY	TELEPHONE
Two	1-117	Oct., 73	Oct., 73	Oct., 73
Two	126-203	Oct., 73	Oct., 73	Oct., 73
Two	204-226	June, 73	June, 73	June, 73

Note: Lots 204-226 are surveyed, staked and have access by paved two lane highway.

Two	227-332	July, 73	July, 73	July, 73
One	333-345	June, 73	June, 73	June, 73

Note: Lots 335-345 are surveyed, staked and have access by paved two lane highway.

One	346-433	Aug., 73	Aug., 73	Aug., 73
One	434-458	Aug., 73	Aug., 73	Aug., 73

3. **LIST NAMES AND POPULATIONS OF SURROUNDING COMMUNITIES AND LIST DISTANCES OVER PAVED AND UNPAVED ROADS TO THE SUBDIVISION:**

a . Deerfield Plantation is located in Horry County, South Carolina with a

population of some 69,992. Conway, South Carolina is the County Seat some 16 miles from the center of Deerfield. The population of Conway is 8,151. Access is by paved roads.

b. Deerfield Plantation is 5 miles South of Myrtle Beach, South Carolina...a city of 9,035 with access via 4-lane, U.S. Highway 17. Surfside Beach, South Carolina, adjoining Deerfield, on U.S. Highway 17, is a city of some 2,300; Georgetown, S.C., some 30 miles to the South via U.S. Highway 17, has a population of 10,449. The State Capital of South Carolina is Columbia, via U.S. 501 - S.C. 378.

It's located 140 miles Southwest and has a population of 113,542. Access to all cities is by paved roads. Access from all Southeastern cities, Miami to Deerfield is via U.S. 17 and I-95, (714 miles). Montreal, to the North, via U.S. 17, U.S. 13, I-95 and U.S. 87, (1100 miles).

4. IF PERIODIC PAYMENTS ARE TO BE MADE BY A BUYER [AS IN THE CASE OF INSTALLMENT SALES CONTRACTS] COMPLETE ALL ITEMS UNDER THE PARAGRAPH.

a. WILL THE SALES CONTRACT BE RECORDABLE?

Yes, the sales contract will be recordable. However, a seller's warranty deed will not be issued until the full purchase price of lot or lots has been paid.

b. IN THE ABSENCE OF RECORDING, COULD THE DEVELOPER'S CREDITORS OR OTHERS ACQUIRE TITLE TO THE PROPERTY FREE OF ANY OBLIGATION TO DELIVER A DEED TO THE BUYER WHEN FINAL PAYMENT HAS BEEN MADE UNDER THE SALES CONTRACT?

Yes, during the period between signing a sales contract and the recording of a warranty deed, developer's creditors could impede or prevent transfer of the title of a lot to a buyer. However, the developer will be able to issue deeds with free and clear title to lots upon which the developer has recieved full payment subject to matters set forth in 8 (b). An individual lot release provision has been made with the mortgage holders.

c. WHAT PROVISION, IF ANY, HAS BEEN MADE FOR REFUNDS IF BUYER DEFAULTS:

If the buyer defults and does not close, the developer can retain the down payment and all payments made under the sales agreement.

d. STATE PREPAYMENT PENALTIES OR PRIVILEGES, IF ANY.

Prepayment may be made at any time without penalty.

5. IS THERE A BLANKET MORTGAGE OR OTHER LIEN ON THE SUBDIVISION OR PORTION THEREOF IN WHICH THE SUBJECT PROPERTY IS LOCATED?

Yes, there are two blanket encumberances on the property: One in favor of the South Carolina National Bank, Columbia, South Carolina and the other in favor of V.F. Platt, Jr., of Surfside Beach, South Carolina. Lien holder may take title to the property free of any obligation to convey a lot to the purchaser in the event of default by the developer. The developer has made arrangements with the holders of the liens to release portions of the property covered by the lien before conveyance is made to the purchaser upon payment of certain amounts to the lien holders. The developer has made arrangements with the lien holders that upon receiving twenty-five percent (25%) of the sales price of an individual lot it shall be released from the lien.

6. DOES THE OFFERING CONTEMPLATE LEASES OF THE PROPERTY IN ADDITION TO, OR AS DISTINGUISHED FROM SALES?

No arrangements are available to lease property from the developer.

7. IS BUYER OR LESSEE TO PAY TAXES, SPECIAL ASSESSMENTS OR TO MAKE PAYMENTS OF ANY KIND FOR THE MAINTENCE OF COMMON FACILITIES IN THE SUBDIVISION [a] BEFORE TAKING TITLE OR SIGNING OF LEASE OR [b] AFTER TAKING TITLE OR SIGNING OF LEASE?

TAXES: Purchaser will pay to developer an amount equal to the property taxes paid by the developer upon property purchased from time of execution of purchase agreement. After taking title, purchaser will pay property taxes. For amount, consult local taxing authorities.

SPECIAL ASSESSMENTS: None known other than those included in property taxes assessment. For amount, consult local taxing authorities.

PAYMENTS TO PROPERTY OWNER'S ASSOCIATION: A Property Owner's Association has been formed. The Association will have the power to make annual assessments to cover the cost of maintenance, i.e. roads, rights-of-way, lighting thereon, garbage and trash collection, security protection, and other common areas as designated on the plat. The cost of these services may be apportioned among the property owners.

No assessment for maintenance of roads, rights-of-way, lighting thereon, security protection, or other common area, as designated on the plat, will be made until such time as there is a conveyance of title to or contract for purchase and sale of 90% of all single family residential lots or until all roads and streets and lightning therefor have been completed and developer elects to cause to be devolved upon the property owner's association the obligation to assess for said purposes and then developer shall be assessed pro rata upon property which developer continues to own. Assessment for garbage and trash collection will be made by developer or property owner's association for any lot improved, from time of improvement. See Declaration and Establishment of Conditions, Reservations, Convenants and Restrictions, also Purchase Agreement, also By-Laws of Deerfield Plantation Property Owner's Association, Inc., and also Privileges and Obligations Agreement.

OTHER: None.

8. a . **WILL BUYER'S DOWNPAYMENT AND INSTALLMENT PAYMENTS BE PLACED IN ESCROW OR OTHERWISE SET ASIDE? YES OR NO? IF YES, WITH WHOM? IF NOT, WILL TITLE BE HELD IN TRUST OR IN ESCROW?**

There are no arrangements for escrowing payments or title.

b . **EXCEPT FOR THOSE PROPERTY RESERVATIONS WHICH LAND DEVELOPERS COMMONLY CONVEY OR DEDICATE TO LOCAL BODIES OR PUBLIC SERVICES TO THE LAND BEING DEVELOPED, WILL BUYER RECEIVE A DEED FREE OF EXCEPTIONS?**

The deed will be subject to common subdivision conditions, Reservations, Convenants and Restrictions set out in Declaration of Restrictions, Convenants, Conditions, and Reservations and public utility easements of record upon the property.

c . **LIST ALL PERMISSIBLE USES OF THE PROPERTY BASED UPON LOCAL ZONING ORDINANCES.**

The subdivision is not located within a municipality with zoning ordinances. However, County zoning permits developer to set zoning with the recording of a plat. A copy of the developer's plat is given to each purchaser.

d . **LIST ALL EXISTING OR PROPOSED UNUSUAL CONDITIONS RELATING TO THE LOCATION OF THE SUBDIVISION AND TO NOISE, SAFETY OR OTHER NUISANCES WHICH AFFECT OR MIGHT AFFECT THE SUBDIVISION.**

There are no existing or proposed natural hazards, unusual noises, unusual safety factors or noxious odors which affect or may affect the subdivision.

9. a . **LIST ALL RECREATIONAL FACILITIES CURRENTLY AVAILABLE (e.g. TELEVISION, SPORTS, BEACHES, ETC.). STATE ANY COSTS OR ASSESSMENTS TO BUYER OR LESSEE.**

TELEVISION: No local station. Surrounding area is served by 9 channels representing ABC, NBC, and CBS, CATV and South Carolina Educational Television Network. NO CHARGE EXCEPT, FOR CATV (CABLE TV).

BEACHES: The Grand Strand covering some sixty miles of beach front with numerous public beaches. NO CHARGE.

AIRPORT: Located at North Myrtle Beach for private and commercial aircraft. TIE DOWN COST MAY VARY FROM TIME TO TIME.

RECREATIONAL: Myrtle Beach has two of the most renown amusement parks on the Southeastern Coast (5 miles from Deerfield Plantation). NO CHARGE INTO PARK, ADMISSION FOR RIDES.

FISHING: Pier and surf fishing along The Grand Strand. NO CHARGE FOR SURF FISHING, BUT CHARGE FOR PIER FISHING ($1.26).

MOVIES: Several indoor and outdoor movies featuring the latest movies. ADMISSION CHARGED.

ENTERTAINMENT: Numerous dinner clubs featuring well known entertainers. MODERATELY PRICED.

b. IF FACILITIES ARE PROPOSED OR PARTLY COMPLETED, STATE PROMISED COMPLETION DATE, PROVISIONS TO ASSURE COMPLETION, AND ALL ESTIMATED COSTS OR ASSESSMENTS TO BUYER OR LESSEE. IF THERE ARE NO PROVISIONS TO ASSURE COMPLETION, SO STATE.

CLUBHOUSE: Proposed, with 19th Hole Club Room, Meeting Rooms, Snack Bar, Pro Shop, Card Room, Patio Area.

SWIMMING POOL: Proposed, with patio and lounge furniture.

TENNIS COURTS: Three (3) proposed. (Lighted).

GOLF COURSE: 18 Hole Championship Course. COST TO BUYER FOR COMPLETION OR MAINTENANCE OF FACILITIES? NONE.

DEVELOPER ESTIMATES ABOVE ITEMS TO BE COMPLETED BY September, 1973, and gives its assurance of completion, and additionally requiring all contractors to provide completion bonds.

Initiation dues, annual dues and fees, and other use or privilege charges shall be charged to buyers or lessees and adjusted from time to time, as determined by the developer from time to time.

The developer will have no obligation or committment to maintain clubhouse, swimming pool, tennis courts or golf course for any period of time and no purchaser or lessee of property shall be automatically entitled to membership in or use of said facilities by virtue of acquiring an interest in real property in the development.

10. STATE WHETHER THE FOLLOWING ARE NOW AVAILABLE IN THE SUBDIVISION: GARBAGE AND TRASH COLLECTION, SEWAGE DISPOSAL, PAVED STREETS, ELECTRICITY, GAS, WATER, TELEPHONE. IF YES, STATE ANY ESTIMATED COSTS TO BUYER OR LESSEE.

GARBAGE AND TRASH COLLECTION: Collection service is available in the area upon the completion of construction of a home at $48.00 per year. ($4.00 per month).

SEWAGE DISPOSAL: The developer will construct and maintain or provide a sewer disposal system at no cost to the purchaser of lots in the subdivision, at such

reasonable rates, regulated by the state of South Carolina Public Service Commission, to be charged to lot owners. In addition, the lot owner will be charged a "Hook-Up" charge of $350.00, or such other amount as is approved by said South Carolina Public Service Commission.

The developer estimates completion to be August 1, 1973, and gives its assurance of completion, requiring completion bonds from all contractors.

PAVED STREETS: Access from the subdivision is via U.S. Highway 17 and S.C. State Highway 375–3.5 miles to Myrtle Beach, .5 miles to Surfside. Developer estimates completion by November, 1973, and gives its assurance of completion, requiring completion bonds from all contractors.

The roads in the platted area are not complete, roads will have a 60 foot right-of-way, 18 to 20 feet being paved. There will be no charge to lot owners for construction; and no charge to lot owners for maintenance except as set forth in paragraph (7) above.

ELECTRICITY: Underground electricity will be available from a local public utility with lines being installed to each lot. No cost of installation will be borne by the purchaser. Developer and public utility estimates completion by August 1, 1973.

GAS: Gas service will not be available in the subdivision. Bottled gas is available from local suppliers.

WATER: Water lines will be installed to each lot or provided for by the developer. Water is available from Platt Water Company, Inc.. Charges are regulated by the South Carolina Public Service Commission.

Developer estimates completion to be August 1, 1973, and gives its assurance of completion, requiring completion bonds from all contractors.

There will be no charge to purchaser covering installation of water lines to the property line. The developer will construct and maintain or provide a water system at no cost to the purchaser of lots in the subdivision, at such reasonable rates, regulated by the State of South Carolina Public Service Commission, to be charged to lot owners. In addition, the lot owner will be charged a "Hook-Up" charge of $250.00 or such other amount as is approved by said South Carolina Public Service Commission.

The developer has obtained a letter from a cognizant health officer on the quality and purity of the water. Accordingly, there is assurance that the water will be both pure and of acceptable quality.

TELEPHONE: Underground telephone lines will be installed to each lot within the subdivision at no charge to lot owners.

Service will be provided by Horry Telephone Cooperative, Inc., public utility.

Installation of service being borne by purchaser according to regular telephone company tariffs.

The developer estimates completion to be August 1, 1973, and gives its assurance of completion, having received a completion commitment from the Horry Telephone Cooperative, Inc..

11. WILL THE WATER SUPPLY BE ADEQUATE TO SERVE THE ANTICIPATED POPULATION OF THE AREA?

Yes, the developer has obtained from Platt Water Company, Inc., a public utility, a report indicating the source and quantity of water. Accordingly, the developer is assured that a sufficient quantity of water will be available to serve the anticipated population of the area.

12. IS ANY DRAINAGE OF SURFACE WATER, OR USE OF FILL NECESSARY TO MAKE LOTS SUITABLE FOR CONSTRUCTION OF A ONE STORY RESIDENTIAL STRUCTURE?

The lots being sold hereunder are not ones troubled by surface water, nor are they ones in which fill is necessary to build.

13. STATE WHETHER ANY OF THE FOLLOWING ARE CURRENTLY AVAILABLE IN THE SUBDIVISION: SCHOOLS; MEDICAL FACILITIES [HOSPITALS, DOCTORS, DENTISTS]: SHOPPING FACILITIES. LIST AVAILABILITY OF PUBLIC TRANSPORTATION TO, AND DISTANCE OF FACILITY FROM GEOGRAPHICAL CENTER OF SUBDIVISION.

None of the above listed facilities are available within the subdivision.

SCHOOLS: Elementary, Junior and Senior High Schools are located within 1to 5 miles of the subdivision.

MEDICAL FACILITIES: Hospitals, doctors and dentists are available within 1 to 7 miles.

SHOPPING: Major shopping centers available within 1 to 7 miles.

TRANSPORTATION: Bus, 7 miles distant; taxi, available on call; train, 65 miles in Florence, South Carolina; air, 20 miles in North Myrtle Beach, South Carolina.

14. APPROXIMATELY HOW MANY HOMES WERE OCCUPIED AS OF NOVEMBER 30, 1972? NONE.

15. a. STATE ELEVATION OF THE HIGHEST AND LOWEST LOTS IN THE SUBDIVISION AND BRIEFLY DESCRIBE TOPOGRAPHY AND PHYSICAL CHARACTERISTICS OF THE PROPERTY.

The elevation of the highest lot in the development is 38 feet above sea level, while the elevation of the lowest lot is 22.5 feet above sea level. The property rolls with the lower elevations being alongside U.S. Highway 17, the Eastern boundary. Rising to 38 feet in the center and sloping to 22.5 feet on the Western boundary. The property is general to the area along this part of the Atlantic Coast. Soil conditions are predominantly sandy loam. The area is wooded with pine, oak, dogwood and an abundance of surface vegetation.

b . STATE IN INCHES THE AVERAGE ANNUAL RAINFALL AND, IF APPLICABLE, THE AVERAGE ANNUAL SNOWFALL FOR THE SUBDIVISION OR THE AREA IN WHICH IT IS LOCATED.

Rainfall average is 50-65 inches annually.

c . STATE TEMPERATURE RANGES FOR SUMMER AND WINTER, INCLUDING HIGHS, LOWS AND MEANS.

The mean November to March temperature is 62.3 degrees April through October averaging 80.6 degrees; highest average 83.7; lowest 52.5; daily sunshine average 7.8 hours.

16. WILL ANY SUBSURFACE IMPROVEMENT, OR SPECIAL FOUNDATION WORK BE NECESSARY TO CONSTRUCT ONE STORY RESIDENTIAL OR COMMERCIAL STRUCTURES ON THE LAND?

No subsurface, special foundation or improvement work will be necessary to construct normal one story residential or commerical structures.

17. ARE ALL LOTS AND COMMON FACILITIES LEGALLY ACCESSIBLE BY PUBLIC ROAD OR STREET?

The subdivision is legally accessible by public roads. U.S. Highway 17 on the Eastern boundary and S.C. Highway 375 on the Northern boundary. Roads within the subdivision will be private. The developer estimates completion by November 1, 1973, and gives its assurance of completion and will require completion bonds from all contractors.

18. HAS LAND IN THE SUBDIVISION BEEN PLATTED OF RECORD?

The entire development has been platted and the plat is filed of record, in the Office of the Clerk of Court for Horry County, State of South Carolina, in the Plat Book 54, at Page 124.

The subdivision has been surveyed. Metes and bounds and lots have been computerized and platted. A buyer can obtain a copy of a plat survey showing his lot within the developement without charge, upon taking title or signing Purchase Agreement.

19. ARE LOTS STAKED OR MARKED SO THAT BUYER CAN LOCATE HIS LOT(S)?

No, except as stated in paragraph 2 (b) above. Individual lots in the subdivision are not staked. However, various points have been established by survey so that a buyer can locate his lot(s). The developer estimates that individual lots will be staked by August 1, 1973, and gives its assurance of completion, further requiring completion bonds from all contractors.

20. STATE WHETHER THE DEVELOPER HAS EXPERIENCED AN OPERATING LOSS OR DEFICIT DURING THE CURRENT OR LAST FISCAL YEAR. IF SO, THE PURCHASER'S ATTENTION IS CALLED TO THOSE ITEMS OF THE PROPERTY REPORT WHEREIN THE DEVELOPER MAY HAVE PROMISED TO COMPLETE CERTAIN FACILTITES AND/OR TO DISCHARGE FINANCIAL OBLIGATIONS.

The developer is engaging for the first time in the business of developing and selling real estate and has experianced no profit or loss from real estate sales nor made any real estate sales covering the current or last fiscal year.

21. WILL THE PURCHASER BE PERMITTED TO TAKE POSSESSION OF LOT OR LOTS PURCHASED PRIOR TO FULL PAYMENT OF LOTS PURCHASED.

No, Purchaser will not be allowed to take possession prior to lot or lots being paid in full.

22. DOES DEVELOPER OWN GOLF COURSE PROPERTY & FACILITIES REFERRED TO HEREIN?

No, Developer, Deerfield Plantation, Inc. does not own the golf course & facilities related thereto, but holds a leasehold from the owner, a major stock holder of Deerfield Plantation, Inc. for a period of ten (10) years.

DECLARATION AND ESTABLISHMENT OF CONDITIONS, RESERVATIONS, COVENANTS AND RESTRICTIONS FOR DEERFIELD PLANTATION SINGLE FAMILY RESIDENTIAL SUBDIVISION HORRY COUNTY, SOUTH CAROLINA

STATE OF SOUTH CAROLINA]
]
COUNTY OF HORRY]

DECLARATION AND ESTABLISHMENT OF CONDITIONS, RESERVATIONS, COVENANTS AND RESTRICTIONS FOR DEERFIELD PLANTATION SINGLE FAMILY RESIDENTIAL SUBDIVISION HORRY COUNTY, SOUTH CAROLINA

KNOW ALL MEN BY THESE PRESENTS:

Deerfield Plantation, Inc., a South Carolina Corporation, being the owner of all of the following described premises situate within Horry County, South Carolina, to wit:

> Lots of land numbered 1 through 458, as shown and delineated upon that certain map made by Moorman & Little, Inc., dated November 14, 1972, and recorded in Plat Book 54, page 124, office of the Clerk of Court for Horry County, S.C.; reserving, however, unto the Developer, its successors and assigns the right to relieve and remove lots 434 through 458, inclusive, from the effect of this declaration and to reclassify the same so as to put or cause the same to be put to a different use other than herein specified as the Developer may see fit at any time prior to the selling of any one of said lots 434 through 458.

has established a general plan for the improvement and development of such premises, and does hereby establish the covenants, conditions, reservations, and restrictions upon which and subject to which all lots and portions of such lots shall be improved or sold or conveyed by it as owner thereof. Each and every one of these covenants, conditions, reservations, and restrictions is and all are for the benefit of each owner of land in the abovementioned development or subdivision, or any interest therein, and shall inure to and pass with each and every parcel of such subdivision, and shall bind the respective successors in any interest of the present owner thereof. These covenants, conditions, reservations and restrictions are and each thereof is imposed upon such lots, all of which are to be construed as restrictive covenants running with the title to such lots with each and every parcel thereof, to wit:

1. No building, fence, sidewalk, wall, drive or other structure shall be erected, placed or altered on any lot until the proposed building plans, specifications, exterior color or finish, plot plans (showing the proposed location of such building or structure, drives and parking area), and construction schedule shall have been approved in writing by Developer, its successors and assigns. Refusal of approval of plans, location or specifications may be based by the Developer upon any ground, including purely aesthetic considerations, which in the sole and uncontrolled discretion of the Developer shall seem sufficient. No alterations may be made in such plans after approval by the Developer is given except by and with the written consent of the Developer. No alterations in the exterior appearance of any building or structure shall be made without like approval by the Developer. One copy of all plans, specifications and related data shall be furnished the Developer for its records.

2. No building shall be located closer than thirty (30) feet to the front street line and not closer than ten (10) feet to the side property line and not closer than twenty-five (25) feet to the rear property lines, provided however, that no building shall be located closer than fifteen (15) feet to the side property line on any lot which has a width in excess of one hundred (100) feet and not closer than twenty-five (25) feet to any side lot line bordering on any street. In order to assure that houses will be located with regard to the topography of each individual lot, Developer herein reserves unto itself, its successors and assigns, the right to control absolutely and solely to decide the precise site and location of any house or dwelling or other structure upon any lot or building plot consisting of more than one lot, provided, however, that such location shall be determined only after reasonable opportunity is afforded the lot owner to recommend a specific site.

3. The exterior of all houses and other structures must be completed within one year after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the owner or builder due to strikes, fires, national, emergencies or natural calamities. No building under initial construction shall be occupied until construction is completed.

4. All lots shall be used for residential purposes exclusively. No structures, except as hereinafter provided, shall be erected, altered, placed or permitted to remain on any lot other than one (1) detached single family dwelling of not less than eighteen hundred (1800) square feet of floorspace exclusive of porches and garage and not to exceed two (2) stories in height above ground level and one small one-story accessory building which shall cover any outside pump and which may include a detached private garage, provided the use of such dwelling or accessory building does not include any activity normally conducted as a business. Such accessory building may not be constructed prior to the construction of the main dwelling, and shall conform substantially with the style and exterior finish of the main dwelling.

5. It shall be the responsibility of each lot owner to prevent the development of any unclean, unsightly, or unkempt condition of buildings or grounds on such lot which shall tend to substantially decrease the beauty of the neighborhood as a whole or the specific area.

6. No noxious or offensive activity shall be carried on upon any lot, nor shall any thing be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. There shall not be maintained any plants, poultry, animals (other than household pets) or device or thing of any sort the normal activities or existence of which is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other property in the neighborhood by the owner thereof.

7. All electrical service and telephone lines shall be placed underground and no outside electrical lines shall be placed overhead, but this restriction may be waived by the Developer. No exposed or exterior radio or television transmission or receiving antennae shall be erected, placed, or maintained on any part of the premises, but this restriction may be waived by the Developer. Any waiver of these restrictions shall not constitute a waiver as to other lots or lines or antennae.

8. No billboards or advertising signs of any character shall be erected, placed, permitted, or maintained on any lot or improvement thereon except as herein expressly permitted. A name and address sign, the design of which shall be furnished to the lot owner on request by the reversionary owner, shall be permitted. No other sign of any kind or design shall be allowed. The provisions of this paragraph may be waived by the Developer, only when in its discretion the same is necessary to promote the sale of property in and the development of the subdivision area. Nothing herein shall be construed to prevent the reversionary owner from erecting, placing, or maintaining signs, structures and offices as may be deemed necessary by the Developer for the operation of the subdivision.

9. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, placed, or permitted upon any part of such premises, nor shall any oil, natural gas, petroleum, asphaltum, or hydrocarbon products or minerals of any kind be produced or extracted from the premises.

10. The Developer shall determine the location, color, size, design, lettering, and all other particulars of all mail or paper delivery boxes, and standards and brackets and name signs for such boxes in order that the area be strictly uniformed in appearance with respect thereto.

11. Easements to permit the doing of every act necessary and proper in the playing of golf on the golf course adjacent to the lots and the playing of tennis on tennis courts adjacent to the lots which are subject to these restrictions are hereby granted and established. These acts shall include, but not be limited to, the recovery of golf balls and tennis balls from such lots, the flight of golf balls and tennis balls over and upon such lots, the use of necessary and usual equipment upon such golf course and tennis courts, the usual and common noise level created by the playing of the game of golf, together with all the other common and usual activity associated with the game of golf or the game of tennis and with all the normal and usual activities associated with the operation of a country club or clubhouse. The Developer shall have the right to determine the manner and extent to which the rights under this easement shall be exercised, and in the event that some other person, corporation, or other entity shall hereafter operate said golf course, tennis courts, country club or clubhouse facility then the Developer shall have the right to prescribe in writing to such person, corporation, or entity charged with the operation of the said golf course, tennis courts, country club or clubhouse facility the manner and extent to which the rights under this easement shall be exercised. In addition the Developer may, in its sole discretion, limit or withdraw or prohibit certian of the acts authorized by this easement, and it may limit the manner or place of doing all or certain of the acts authorized by this easement.

12. Each lot owner shall provide space for parking two automobiles off the street prior to the occupancy of any dwelling constructed on said lot in accordance with reasonable standards established by the Developer.

13. Each lot owner shall provide underground garbage receptacles or similar facility in accordance with reasonable standards established by the Developer, or a roll out garbage rack of type approved by the Developer, which shall be visable from streets on garbage pick-up day only. No garbage or trash incinerators shall ber permitted upon the premises.

14. The Developer reserves unto itself, its successors and assigns, a perpetual, alienable and reasonable easement and right of ingress and egress, over, upon, across and under each lot for the erection, maintenance, installation and use of electrical and telephone poles, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public convenience or utilities, including easement for privately owned television and other communications cable and equipment, and the Developer may further cut drainways for surface water wherever and whenever such action may appear to the Developer to be necessary in order to maintain reasonable standards of health, safety and appearance. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility or other said installation and to maintain reasonable standards of health, safety and appearance. It further reserves the right to locate wells, pumping stations, and tanks within residential areas on any walkway, or any residential lot designated for such use on the applicable plat of a residential subdivision, or to locate same upon any adjacent lot with the premission of the owner of such adjacent lot. Such rights may be exercised by any licensee of the Developer but this reservation shall not be considered an obligation of the Developer to provide or maintain any such utility or service. The Developer guarantees that in exercising the rights of this easement that no water, sewer, or power lines or other installations abovesaid shall be located upon any lot in any area more than fifteen (15) feet from the property line, except to service the premises. No structures, including walls, fences, paving or planting shall be erected upon any part of the property which will interfere with the rights of ingress and egress provided for in this paragraph.

15. No structure of a temporary character shall be placed upon any lot at any time, provided, however, that this prohibition shall not apply to shelters used by the contractor during the construction of the main dwelling house, it being clearly understood that these latter temporary shelters may not, at any time, be used as residence or permitted to remain on the lot after completion of construction.

16. No trailer, tent, barn, tree house or other similar outbuilding or structure shall be placed on any lot at any time, either temporarily or permanently.

17. No fuel tanks or similar storage receptacles may be exposed to view, and may be installed only with the main dwelling house, within the accessory building, or buried underground.

18. No lot shall be subdivided, or its boundary lines changed, except with the written consent of the Developer. However, the Developer hereby expressly reserves to itself, its successors and assigns, the right to re-plat any two (2) or more lots shown on the plat of said subdivision prior to delivery of deed therefor in order to create a modified building lot or lots. The restrictions and covenants herein apply to each such building lot so created.

19. No clothesline or drying yard shall be located upon the premises so as to be visable from any street or from the golf course or from any adjoining real property or lot.

20. No individual water supply system shall be permitted upon the premises with the exception of a shallow well to be used for irrigation purposes only, which shallow well shall be approved in writing in all aspects, including the pump and the covering or screening thereof, by the Developer prior to installation.

21. No commercial vehicles, construction, or like equipment or mobile or stationary trailers of any kind shall be permitted on any lot of the subdivision unless first approved by the Developer and kept in a garage completely enclosed.

22. No septic tank or other sewage disposal facility shall be placed upon any lot in the subdivision but the sewage treatment plant and sewer system for the collection and disposal of sewage provided for the development shall be used as the sole means of sewage disposal for the premises.

23. The Developer hereby expressly states its intent not to dedicate or convey to the general public or any member thereof any easement, right of travel, right to use or other right with regard to the streets, roads, alleys, entrances, or other passages or ways and with regard to the lakes and parks shown upon the above

referred to map of this subdivision (except such private easement as is stated in the Deed to each property owner purchasing or acquiring title to one of the herein described lots) and the Developer hereby reserves unto itself, its successors and assigns, all streets roads, alleys, entrances, or other passages or ways, any and all lakes and parks, all easements and rights in connection therewith for any purpose, matter or thing set forth in paragraph 14 herein, rights of travel, right to use and any other right over, upon, under or connected with the same, as shown upon the above referred to map (except such private easements as is stated in the Deed to each property owner purchasing or acquiring title to one of the herein described lots).

24. The Grantee of any of the abovesaid lots or any person contracting for the purchase of the same for himself, itself, his or its heirs, successors, administrators, executors and assigns, by the acceptance of a deed of conveyance or contract of purchase and sale for any of the abovesaid lots, covenants and agrees to pay monthly thereafter as herein provided his or its pro rata share of the cost to maintain the roads, streets, and lighting system thereon, police protection, garbage and trash collection, within this subdivision. The said Grantee's or Contractor's assessment in this regard shall be paid in advance on the first day of each month promptly and in the event of the said Grantee's or Contractor's failure to pay the same promptly when due shall constitute a lien upon the premises of the said Grantee or Contractor and the same may be enforced in equity as in the case of any lien foreclosure. Such monthly assessment may be in such amount as may be necessary to defray the cost of the abovesaid items and shall be adjusted from time to time based upon any preceeding years experience and the anticipated estimated reasonable cost for the next ensuing years requirements. The cost of providing the above items shall be borne and paid for by the Developer until such time as the Developer has sold or contracted for the sale of ninety (90%) per cent of the abovesaid lots in this subdividion, with the exception of the cost of garbage and trash collection and the cost of such said garbage and trash collection shall be paid for on the first day of each month to the Developer by any lot owner who has improved one or more lots, on a per improved lot basis, in such amount as the Developer may be able to obtain garbage and trash collection services for, and all lot owners shall use the garbage and trash collection services contracted for or offered by the Developer. In the event that the Developer fails to enforce the assessment for garbage and trash collection, said assessment may be enforced jointly and severally by the other property owners in the subdivision. At such time as the Developer has sold or contracted for the sale of ninety (90%) per cent of the abovesaid lots in this subdivision, then the maintenance of the roads, streets, lighting system therefor, police protection and garbage and trash collection, and the cost of providing and maintaining the same, shall automatically devolve upon Deerfield Plantation Property Owners Association, Inc., a non-profit corporation, and thereafter the abovementioned monthly assessment for the providing of the abovesaid items shall be determined by and collected by and paid to the said Deerfield Plantation Property Owners Association, Inc., and such assessment shall be enforced by the said Deerfield Plantation Property Owners Association, Inc. Each and every lot owner or person contracting for the purchase of one of the abovesaid lots (regardless of whether said owner or person contracting obtained title to said property or contracted for the purchase of said property from the Developer or from some subsequent or other Grantor or contracting party), in accepting a deed or in executing a Contract for the purchase of any lot in this subdivision, agrees to and shall be immediately a member of and be subject to the obligations and duly enacted by-laws, rules, regulations, and resolutions of Deerfield Plantation Property Owners Association, Inc., a non-profit corporation. Provided, however, that all assessments and charges mentioned herein, and all liens connected therewith shall be subordinate and junior to any mortgage lien placed upon any of the real property subject to the same by the owner thereof. Provided, however, that neither the Developer nor property retained by the Developer shall be subject to assessment by Deerfield Plantation Property Owners Association, Inc., or any member thereof or any other property owner, after the duty of providing for and maintaining the above item and levying assessment therefor has devolved upon Deerfield Plantation Property Owners Association, Inc. as aforesaid. Provided further, however, that at such time as the Developer has completed the installation of all roads and streets and the lighting system therefor, then the Developer may at its option devolve upon and transfer to Deerfield Plantation Property Owners Association, Inc. the responsibility for providing and maintaining the above items and levying assessment therefor, even though ninety (90%) per cent of the abovesaid lots in this subdivision shall not have been sold or contracted for sale by the Developer, and in such event Deerfield Plantation Property Owners Association, Inc. shall have the right and privilege of assessing the Developed on a pro rata basis for any property which the Developer still owns and for which the Developer has not contracted for the sale of.

25. All covenants, conditions, limitations, restrictions and affirmative obligations set forth in this Declaration shall run with the land and shall continue and be binding until January 1, 1992, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then owners of lots affected by the same has been recorded, agreeing to change the same in whole or in part; provided however, that all property rights and other rights reserved to the Developer shall

continue forever to the Developer, its successors and assigns, except as otherwise provided herein.

26. Any land owner shall be required to receive and accept water supply and/or sewer services from Developer or any person or corporation with whom the Developer contracts for the furnishing of water and/or sewer services as and when the same shall be made available to the landowner, and the land owner shall pay such charges therefor as shall be established by the Public Utilities Commission for the State of South Carolina or such other governmental authority as may have the power to set and determine rates for the same.

27. In the event the owner of any residential lot permits any underbrush, weeds, etc., to grow upon any lot to a height of two (2) feet (except as part of a landscaping plan approved by the Developer) and on request fails to have the premises cut within thirty (30) days, agents of the Developer may enter upon said land and remove the same at the expense of the owner, provided, however, that such expense shall not exceed Fifty ($50.00) Dollars annually. The Developer may likewise enter upon said land to remove any trash which has collected on said lot without such entrance and removal being deemed a trespass, all at the expense of the owner of said lot; provided, however, that such expense shall not exceed Fifty ($50.00) Dollars annually. This provision shall not be construed as an obligation on the part of the Developer to provide garbage or trash removal services.

28. In the event that any owner desires to sell any lot or lots, either improved or unimproved, then the said lot or lots which such owner shall desire to sell shall be first offered for sale to the Developer at the same price and on the same terms at which the highest bona fide offer has been made to the owner for the said lot or lots. The owner desiring to sell such lot or lots shall give the Developer written notice via registered mail, return receipt requested, of the owner's desire to sell any such lot or lots and shall further advise the Developer in said offer of the name and address of the person, firm or corporation or entity making said highest bona fide offer, as well as the amount and terms of said offer. The Developer shall have a period of thirty (30) days after receipt of said written notice within which to give notice to the owner of its intention to exercise its option to purchase said lot or lots at the same price and on the same terms as said highest bona fide offer and the Developer shall have an additional period of not less than twenty (20) days within which to close the said transaction. Should the Developer fail or refuse within said 30-day period to notify the owner as aforesaid of its intention to exercise its option to purchase said lot or lots at the offered price and terms, then the owner shall have the right to sell said lot or lots to the person, firm or corporation or other entity making said bona fide offer whose identity was revealed to the Developer in said written notice, provided, however, that any such sale of any lot or lots by the owner to the person, firm or corporation making such offer shall be subject to all of the terms, covenants, conditions, restrictions, reservations and limitations and provisions of this Declaration. The provisions of this Paragraph shall continue and be effective until January 1, 1992, at which time the provisions of this paragraph, including all options and rights granted to or reserved by the Developer by this Paragraph shall terminate.

29. It is agreed that time is of the essence with regard to these restrictions, covenants, limitations and conditions.

30. In the event of a violation or breach of any of these restrictions by any property owner, or agent, or agent of such owner, the owners of lots in the subdivision, or any of them jointly or severally, shall have the right to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any event. In addition to the foregoing, the Developer, its successors and assigns, shall have the right, whenever there shall have been built on any lot in the subdivision any structure which is in violation of these restrictions, to enter upon the property where such violation exists, and summarily abate or remove the same at the expense of the owner, if after thirty (30) days written notice of such violation, it shall not have been corrected by the owner. Any such entry and abatement or removal shall not be deemed a trespass. The failure to enforce any right, reservation, restriction or condition contained in this Declaration, however long continued shall not be deemed a waiver of the rights to do so hereafter as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement. Should the Developer employ counsel to enforce any of the foregoing covenants, conditions, reservations or restrictions, because of a breach of the same, all costs incurred in such enforcement, including a reasonable fee for the Developer's counsel, shall be paid by the owner of such lot or lots in breach thereof and the Developer shall have a lien upon such lot or lots with regard to which there is a breach of these covenants, conditions, reservations, or restrictions to secure payment of all such costs and fees.

31. In the event that any one or more of the foregoing covenants, conditions, reservations, or restrictions shall be declared for any reason, by a court of competent jurisdiction, to be null and void, such judgement or decree shall not in any manner whatsoever affect, modify, change, aberrant, or nullify any of the covenants, conditions,

reservations, and restrictions not so declared to be void, but all of the remaining covenants, conditions, reservations, and restrictions not so expressly held to be void shall continue unimpaired and in full force and effect.

32. In the event that any of the provisions hereunder are declared void by a court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then in that event such terms shall be reduced to a period of time which shall not violate the rule against perpetuities or any other law of the State of South Carolina, and such provision shall be fully effective for said reduced period of time.

33. The term "Developer" wherever used herein shall mean Deerfield Plantation, Inc., a South Carolina corporation.

IN WITNESS WHEREOF, Deerfield Plantation, Inc., a South Carolina Corporation, has caused this instrument to be executed by its duly authorized officers and its corporate seal to be hereunto affixed this 10th day of November 1972.

DEERFIELD PLANTATION, INC.[CORP]
[SEAL]

J. Stanton Cross, Jr. (sig.)

By: V.F. Platt, Jr., President (sig.)

Ann W. Goodwin (sig.)

Attest: Kate W. Platt, Secretary (sig.)

STATE OF SOUTH CAROLINA]
]
COUNTY OF HORRY]

PERSONALLY appeared before me J. Stanton Cross, Jr. (sig.) and made oath that he saw the within named Deerfield Plantation, Inc. by V.F. Platt, Jr., as President and Kate W. Platt, as Secretary, sign, seal and as their act and deed deliver the within written Declaration and Establishment of Conditions, Reservations, Covenants, and Restrictions for Deerfield Plantation, and that he with Ann W. Goodwin (sig.) witnessed the execution thereof.

SWORN TO before me this 10th day of
November A.D. 1972.

Ann W. Goodwin (L.S.) (sig.)
Noraty Public for South Carolina
My commission expires: 5-29-78

J. Stanton Cross, Jr. (sig.)

The within instrument was recorded in the office of the Clerk of Court for Horry County on November 29, 1972, and accordingly appears in Deed Book 481 at page 305 in said office.

PRIVILEGE AND OBLIGATION AGREEMENT

STATE OF SOUTH CAROLINA]
]
COUNTY OF HORRY]

PRIVILEGE AND OBLIGATION AGREEMENT

This agreement made and entered into in the County and State aforesaid, this 29th day of November 1972, by and between Deerfield Plantation, Inc., a South Carolina Corporation, hereinafter referred to as the Developer, and Deerfield Plantation Property Owners Association, Inc., a non-profit corporation, hereinafter referred to as the Association, which terms shall be deemed to extend to and include the successors and assigns of the parties hereto,

WITNESSES AND SHOWS:

WHEREAS, the Developer has subdivided and developed certain land in Horry County, South Carolina, into single family residential lots of land numbered 1 through 458 as shown on that certain map of said lots made by Moorman & Little, Inc., dated November 14, 1972, and recorded in Plat Book 54, page 124, office of the Clerk of Court for Horry County, S.C., and

WHEREAS, the Association is a non-profit corporation to which all property owners within the aforesaid single family residential subdivision must belong, and **WHEREAS**, the purpose of the said Association is to establish, maintain, and operate an organization not for profit, solely for the mutual advantages to be derived therefrom by property owners in Deerfield Plantation single family residential subdivision aforesaid, and to present a unified effort to the members in protecting the value of the aforesaid property and the members of this orgization, and to engage in such other activities as may be to the mutual benefit of the owners of the aforesaid property, and

WHEREAS, the Developer intends to construct certain improvements adjacent to and around the aforesaid lots of land comprising the aforesaid single family residential development, and

WHEREAS, it is the desire of the parties hereto to set forth and delineate the rights, privileges, responsibilities, and obligations of the parties hereto.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that for and in consideration of the mutual covenants herein contained and the undertakings of the parties hereto, it is agreed, by the parties hereto as follows:

1. The parties hereto acknowledge the provisions of Paragraph 24 of the Declaration and Establishment of Conditions, Reservations, and Covenants and Restrictions for Deerfield Plantation single family residential subdivision, Horry County, South Carolina, recorded in Deed Book 481, page 305, office of the Clerk of Court for Horry County, S.C., and agree to undertake, carry out, fullfil, and abide by the same, both in spirit and in letter, and agree to undertake and carry out and accomplish all of the requirements thereof for the purposes of effecting the provisions and purposes of the same, and the parties hereto do ratify and affirm the same.

2. The Developer has leased certain lands in, around, and near the property comprising the abovesaid Deerfield Plantation single family residential subdivision, said lease being for a period of ten (10) years, for the purpose of constructing thereupon an eighteen hole golf course. The Developer agrees to construct an eighteen hole golf course upon the property leased for such purposes, substantially as shown upon that certain map made by Moorman & Little, Inc., dated November 14, 1972, and recorded in Plat Book 54, page 124, office of the Clerk of Court for Horry County, S.C., according to plans and specifications as determined by J. Porter Gibson, Golf Course Architect and Land Planner, Charlotte, North Carolina, within a reasonable time.

3. The Developer further agrees to construct within the bounds of the property shown and described upon the above referred to map, three lighted tennis courts, within a reasonable time period.

4. The Developer also agrees to construct within a reasonable time, a clubhouse for use in connection with the golf course and tennis courts abovesaid, including an area for a professional golf shop, a snack bar, meeting room, and such other incidental accommodations as the Developer shall deem expedient.

5. The Developer also agrees to construct, within a reasonable time, a swimming pool, within the property boundaries of the Developer as shown upon the above referred to map.

6. The Developer further agrees to install for the purpose of servicing the aforesaid single family residential subdivision, an adequate sewer and water system, within a reasonable time.

7. The Developer further agrees to construct for the use of the property owners in the aforesaid single family residential subdivision the streets adjacent or contiguous to all said lots and the streets connecting the same to U.S. Highway 17 and S.C. Highway 375 (Dick Pond Road), all as shown upon the above referred to map, within a reasonable time, said roads and streets to be constructed of sand asphalt on a base sufficient to meet the requirements of the State of South Carolina Highway Department farm to market roads and to have a pavement of eighteen (18) to twenty (20) feet in width.

8. The Developer agrees to make the abovesaid golf course, tennis courts, club house, and swimming pool facilities available to the owners of the property in Deerfield Plantation single family residential subdivision (reserving the right to make said facilities available to any other persons whomsoever in addition), subject, however, to the other provisions hereof, upon the filing of application for membership by the said property owners and upon approval of said application for membership by Deerfield Plantation, Inc., until such time as maximum membership as set by the Developer from time to time is reached. It is agreed that Deerfield Plantation, Inc. may reject the application of any applicant, other than on grounds of race, color, or creed, without cause or reason and without being required to assign any cause or reason therefor, it being understood and agreed that the aforesaid facilities consisting of the aforesaid golf course, tennis courts, club house, and swimming pool, and any other incidential operations in connection therewith, are separate and distinct business operations of Deerfield Plantation, Inc., apart from Deerfield Plantation single family residential subdivision as aforesaid. It is further agreed that application for membership for the use of said facilities shall be made upon such form or forms and at such time or times as Deerfield Plantation, Inc. may direct. It is further understood and agreed that Deerfield Plantation, Inc. reserves the right to discontinue the maintenance and/or operation of said golf course, tennis courts, club house, and swimming pool, or any other incidential operations connected therewith, at such time as Deerfield Plantation, Inc., in the sole discretion of its Board of Directors, shall determine that the maintenance and operation of the aforesaid facilities, or any one of them, is not economically feasible or is not advisible for any other reason and to use the property devoted thereto for other purposes.

9. Permitted uses and fees for said permitted uses by a lot owner and his immediate family residing with said owner, including any unmarried child of said owner who is a full time college student (where more than one person owns an undivided interest in any one lot of land and where said persons are not married, then each co-owner shall be considered to be separate owners for the purposes of the following schedules and charges) as follows:

FULL MEMBERSHIP- (all above facilities):

(1) Non-resident owner of Lot in Deerfield Plantation (person residing more than forty-five (45) miles distant from Deerfield Plantation):

(a) Initiation fee - $250.00.

(b) Annual dues - $240.00.

(2) Resident owner of Lot in Deerfield Plantation (person residing within forty-five (45) miles of Deerfield Plantation):

(a) Initiation fee - $500.00.

(b) Annual dues - $480.00.

LIMITED MEMBERSHIP - (Club house, tennis and swimming pool):

(1) Resident owner of Lot in Deerfield Plantation:

(a) Initiation fee - $500.00.

(b) Annual dues - $180.00.

(2) Not available to non-residents.

TENANTS OF FULL MEMBERSHIP PROPERTY OWNERS IN DEERFIELD PLANTATION:

(1) Tenant residing upon property for period of less than one hundred twenty (120) days during year:

(a) Courtesy Golfer's Greens Fee per person per day - $6.60.

(b) Courtesy fee for use of tennis courts per person per hour - $1.65.

(c) Courtesy fee for use of swimming pool per person per day $ .75.

(2) Tenant residing upon property for period of more than one hundred twenty (120) days per year - No privileges available unless tenant acquires an appropriate membership for facilities available.

HOUSE GUESTS OF MEMBER AND GUESTS PLAYING WITH MEMBER:

Same charges as for tenants of Full Membership Property Owner residing upon property for period of less than one hundred twenty (120) days.

10. It is understood and agreed that the Developer reserves the right to change, alter, and amend the above schedule and charges pertaining to membership, initiation fees, annual dues, and any other charges, and

to the same, from time to time as the Developer may deem, in its sole discretion, in keeping with the business practices and ends desired by the Developer.

11. The Developer reserves the right to receive and approve applications for membership from members of the general public and also applications for membership for commercial memberships from any person or persons and to regulate and set all fees and charges, including initiation fees and annual dues, as the Devloper may from time to time see fit, whether or not the same is in keeping with the foregoing fees, dues, and other charges and provisions or requirements set forth herein.

12. It is agreed that all members shall be required to abide by the rules and regulations for the operation of the abovesaid golf course, tennis courts, club house, swimming pool, and any other facilities as determined and adopted from time to time by the Developer, and it is further agreed and understood that the Developer may sever and terminate the membership of any member for violation or infraction of the rules, regulations, or policies of the Developer and that upon such severence and termination of membership all fees and dues or other charges theretofore paid by said member shall be forfeited to the Developer as liquidated damages to the Developer, without accountability of the Developer therefor.

IN WITNESS WHEREOF the parties hereunto set their hands and seals, by their proper officers, this day first hereinabove written.

WITNESSES:

J. Stanton Cross, Jr. (sig.)

Barbara A. Thigpen (sig.)

DEERFIELD PLANTATION, INC. (CORP. SEAL)

by: V.F. Platt, Jr., as President (sig.)

Attest: Kate W. Platt, as Secretary (sig.)

DEERFIELD PLANTATION PROPERTY OWNERS ASSOCIATION, INC. (CORP. SEAL)

by: V.F. Platt, Jr., as President (sig.)

Attest: Kate W. Platt, as Secretary (sig.)

STATE OF SOUTH CAROLINA]
]
COUNTY OF HORRY]

PERSONALLY appeared before me J. Stanton Cross, Jr. who, on oath, says that he saw the within named Deerfield Plantation, Inc. by V.F. Platt, Jr. as its President, and Kate W. Platt, as its Secretary, and Deerfield Plantation Property Owners Association, Inc. by V.F. Platt Jr. as its President, and Kate W. Platt, as its Secretary, sign, seal and as their act and deed deliver the within written Privilege and Obligation Agreement, and that he with Barbara A. Thigpen witnessed the execution thereof.

SWORN TO before me this 29th
day of November A.D. 1972.
Barbara A. Thigpen (L.S.)
Notary Public for South Carolina
My commission expires: 1/13/80

J. Stanton Cross, Jr. (sig.)

DEERFIELD PLANTATION PROPERTY OWNERS ASSOCIATION, INC.
BY-LAWS

DEERFIELD PLANTATION PROPERTY OWNERS ASSOCIATION, INC.
BY-LAWS
ARTICLE I
OFFICERS

Section 1. Executive Officers: The Executive Officers of the Corporation shall be a President, a Vice President, a Secretary, an Assistant Secretary, and a Treasurer. The first President shall hold office for five years, unless he sooner resigns, after which time the President shall be elected annually by the Board of Directors. All other officers shall be elected annually by the Board of Directors, hereafter sometimes referred to as the Board. They shall take office immediately after election. The officers of the Corporation for the first five years need not be members of the Corporation. Thereafter, they shall be members of the Board of Directors and members of the Corporation.

Section 2. The President: Subject to the direction of the Board of Directors, the President shall be the chief executive officer of the Corporation, and shall perform such other duties as from time to time may be assigned to him by the board. The President shall be ex officio a member of all committees.

Section 3. The Vice President: The Vice President shall have such power and perform such duties as may be assigned to him by the Board of Directors or the President. In case of the absence or disability of the President, the duties of that officer shall be performed by the Vice President.

Section 4. The Secretary: The Secretary shall keep the minutes of all proceedings of the Board of Directors and of all committees and the minutes of the members' meetings in books provided for that purpose; he shall have custody of the corporate seal and such books and papers as the Board may direct, and he shall in general perform all the duties incident to the office of Secretary, subject to the control of the Board of Directors.

Section 5. The Treasurer: The treasurer shall have the custody of all the receipts, disbursements, funds, and securities of the corporation and shall perform all duties incident to the office of Treasurer, subject to the control of the Board of Directors. He shall perform such other duties as may from time to time be assigned to him by the Board. If required by the Board, he shall give a bond for the faithful discharge of his duties in such sum as the Board may require.

Section 6. Subordinate Officers: The President, with the approval of the Board of Directors, may appoint such other officers and agents as the Board may deem necessary, who shall hold office during the pleasure of the Board, and who shall have such authority and perform such duties as from time to time may be prescribed by the President or by the Board.

ARTICLE II
BOARD OF DIRECTORS

Section 1. Number of Members: The business and affairs of this corporation shall be managed by a Board of Directors which shall consist of not less than two nor more than nine members. The first Board of Directors shall serve for five years unless they sooner resign and they need not be members of the corporation. Thereafter, all of the Board shall consist of members of the Corporation. At the inception of the Corporation and for five years thereafter, the Board shall consist of two members named in the Articles of Incorporation, and thereafter the number of Directors shall be fixed by the Board.

Section 2. Regular Meetings: The Board shall meet for the transaction of business at such place as may be designated from time to time.

Section 3. Special Meetings: Special Meetings of the Board of Directors may be called by the President or by two members of the Board for any time and place, provided reasonable notice of such meetings shall be given to each member of the Board before the time appointed for such meetings.

Section 4. Quorum. The Directors shall act only as a Board, and the individual Directors shall have no power as such. A majority of the Directors for the time being in office shall constitute a quorum for the transaction of business, but a majority of those present at the time and place of any regular or special meeting although less than a quorum, may adjourn the same from time to time without notice until a quorum be at hand. The act of a

majority of Directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise provided by law.

Section 5. Order of Business: The Board of Directors may from time to time determine the order of business at its meeting.

Section 6. Chairman: At all meetings of the Board of Directors the President, or, in his absence, the Vice President, or in the absence of both, a Chairman chosen by the Directors present, shall preside.

Section 7. Term of Members of the Board: The first Board of directors named in the Charter of the corporation shall serve for five years, unless they sooner resign. Thereafter, they shall be elected annually by the members of the corporation, and shall serve for a period of one year or until their successors have been elected and qualified.

Section 8. Annual Report: The Board of Directors, within a reasonable time after the close of the fiscal year, shall submit to the members of this corporation a report as to the condition of the corporation and its property and shall submit also an account of the financial transactions of the past year.

Section 9. Vacancies in Board: Whenever a vancancy in the membership of the Board shall occur, the remaining members of the Board shall have the power, by a majority vote, to select a successor to serve the unexpired term of the vacancy.

ARTICLE III
MEETINGS OF MEMBERS

Section 1. Annual Meetings: There shall be an annual meeting of the members of the Corporation at such place as may be designated, on the third Tuesday in January of each year if not legal holiday under the laws of the State of South Carolina, and if a legal holiday then on the next succeeding business day, at 11:00 a.m., for the transaction of such business as may come before the meeting. No notice shall be required for such meeting.

Section 2. Substitute Annual Meeting: If the annual meeting shall not be held on the day designated by these By-Laws, a substitute annual meeting may be called in the manner provided for the call of a special meeting and a substitute annual meeting so called shall be designated as and shall be treated, for all purposes, as the annual meeting.

Section 3. Special Meetings: Special meetings of the members shall be held whenever called by the Board of Directors or by at least ten members. Notice of each special meeting, stating the time, place, and in general terms the purpose or purposes thereof, shall be sent by mail to the last known address of all members at least ten days prior to the meeting.

Section 4. Voting: Every member may cast one vote, either in person or by proxy, for each lot owned in fee simple or for which a contract of purchase has been executed and delivered by the parties thereto. In case of ownership of or contract as aforesaid for the purchase of any lot by tenancy-in-common or other joint ownership, then all of said tenants-in-common or other joint tenants and persons so contracting for purchase shall be required to cast one joint vote only for each lot owned, otherwise said vote shall be of no effect.

Section 5. Quorum: At any meeting of the members a quorum shall consist of members owning, jointly or solely, in fee simple or members representing the corporation owning in fee simple a majority of the lots in Deerfield Plantation Property Owners Association, Inc., present either in person or by proxy, and a majority in amount of such quorum shall decide any question that may come before the meeting.

ARTICLE IV
MEMBERSHIPS

Section 1. Qualifications: All persons owning any lot of land, numbered 1 through 458, as shown on map of property of Deerfield Plantation, Inc. made by Moorman & Little, Inc., Engineers, filed of record in the office of the Clerk of Court for Horry County, S.C. in Plat Book 54, page 124, constituting Deerfield Plantation Single Family real estate subdivision, and any person contracting with Deerfield Plantation, Inc., its successors or assigns, for the purchase of any such said lot shall be a member of this corporation.

Whenever a member shall cease to own real property as aforesaid or shall have his rights under a contract of purchase therefore terminated for any reason, such member shall automatically be dropped from the membership roll of this corporation and shall no longer be a member.

A member shall have no vested right, interest, or privilege of, in, or to the assets, functions, affairs, or franchises of this corporation, or any right, interest, or privilege which may be transferable or inheritable, or which shall continue after his membership ceases or while he is not in good standing.

No member shall be required to pay an initiation fee. However, every member shall be required to pay annual dues to this corportion in the amount and at the times determined by the Board of Directors of this corporation for the purposes of providing funds for the normal operation and functions and affairs of this corporation conducted pursuant to the Declaration and Petition for incorporation and/or Charter or Articles or Certificate of Incorporation and the By-Laws enacted by the members and/or Directors of this corporation, as amended from time to time, and said annual dues may be assessed and changed from year to year by the Board of Directors. This corporation shall have a lien on all of the lots above referred to, owned by or contracted for the purchase of by any member for that members' annual dues as determined by the Board of Directors, and failure of any member to pay the same promptly when due shall entitle this corporation to enforce the collection of the same in equity together with all court cost and a reasonable attorneys fee for the same as in case of any lein foreclosure, and the record owner or record contractor for the purchase of said lot or lots shall be personally liable for the same, provided, however, that all said dues and all liens connected therewith shall be subordinate and junior to any mortgage lien placed upon any of the real property subject to the same by any member.

Each member shall be entitled to a certificate or card of membership, the same to be valid only when held by and registered in the name of the member. No membership shall be transferred, sold, assigned or hypothecated voluntarily or by operation of law.

ARTICLE V
LOSS OF PROPERTY

Section 1. The Board of Directors shall not be liable or responsible for the destruction or the loss of or damage to the property of any member or the guest of any member, or visitor, or other person.

ARTICLE VI
MAINTENANCE CHARGES

Section 1. The Board of Directors of this corporation shall have the right and power to subject the members of this corporation, and the property owned or contracted for the purchase of by said members, to a monthly maintenance charge on a pro rata basis per lot for each lot of land owned or contracted for the purchase of by any member in an amount sufficient to provide for the cost of maintaining the roads, streets, lighting system thereon, parks, if any, police protection, and garbage and trash collection within the subdivision encompassing lots of land numbered 1 through 458 on that certain map of property of Deerfield Plantation, Inc. made by Moorman & Little, Inc., Engineers, recorded in Plat Book 54, page 124, office of the Clerk of Court for Horry County, S.C., including all streets, roads and ways lying contiguous to any such said lot, parks, if any, and all streets, roads and ways leading thereto from U.S. Highway 17 and S.C. Highway 375 (Dick Pond Road), and said charges when received by this corporation shall be placed in a Maintenance Fund to be used for such purposes and any other purpose incidental thereto which the Board of Directors shall determine to be of general benefit to the members hereof. The aforesaid monthly maintenance charge may be assessed and changed from time to time by the Board of Directors in order to provide necessary funds for the aforesaid purposes. This corporation shall have a lien on all of the lots above referred to, owned by or contracted for the purchase of by any member for that member's pro rata share of the maintenance charges as above set forth, and failure of any member to pay the same promptly when due shall entitle this corporation to enforce the collection of the same in equity together with all court costs and a reasonable attorneys fee for the same as in case of any lien foreclosure, and the record owner or record contractor for the purchase of such said lot or lots shall be personally liable for all maintenance charges.

Upon demand, this corporation, and the officers thereof, shall furnish to any member or to any mortgagee of any member or other person interested a certificate showing the unpaid maintenance charges against any lot or lots.

All of the aforesaid maintenance charges and all liens connected therewith shall be subordinate and junior to any mortgage lien placed upon any of the real property subject to the same by any member.

ARTICLE VII
NOTICE

Section 1. Notice: Whenever, according to these By-Laws, a notice shall be required to be given to any member or Director, it shall not be construed to mean personal notice, but such notice may be given in writing, by depositing the same in a U.S. Post Office in the continental United States in a postpaid sealed wrapper, addressed to such member or Director at his address as the same appears on the books of the corporation, and the time when such notice is mailed shall be deemed the time of the giving of such notice.

Section 2. Waiver of Notice: Any notice required to be given by these By-Laws may be waived by the person entitled thereto.

ARTICLE VIII
CORPORATE SEAL

Section 1. Corporate Seal: The Directors of this corporation shall adopt a corporate seal for this corporation in such form as the Board of Directors shall determine. The corporate seal shall remain in the custody of the Secretary of this corporation and shall be by him affixed to all documents of the corporation requiring a signature of any officer thereof.

ARTICLE IX
COMPENSATION AND DIVIDENDS

Section 1. Compensation: No officer or Director of this corporation shall receive any compensation for his duties or services as such.

Section 2. Dividends: No dividends shall be paid to any member of this corporation.

ARTICLE X
INFORMAL ACTION OF DIRECTORS AND/OR MEMBERS

Section 1. Informal action: Action taken by a majority of the Directors or a majority of the members without a meeting shall constitute board action or member action if written consent to the action in question is signed by all of the Directors or all of the members, as the case may be, and is filed with the minutes of the proceedings of the Board or minutes of the proceedings of the members, as the case may be, whether the same be done before or after the action so taken.

ARTICLE XI
FISCAL YEAR

Section 1: Fiscal Year: The fiscal year of the corporation shall be determined by the Board of Directors.

ARTICLE XII
AMENDMENTS

Section 1. Amendments: Except as otherwise herein provided, these By-Laws may be amended or repealed and new By-Laws may be adopted by the affirmative vote of those persons representing not less than seventy-five (75%) per cent of the persons entitled to vote pursuant to provisions of Article III, Section 4 of these By-Laws; except that no By-Laws shall be enacted and no amendment of these By-Laws may be made which shall have the effect of making any liens for delinquent dues or delinquent maintenance assessments or charges superior to the lien of any mortgage placed upon any of the property of any member hereof by such member; and no By-Law shall be enacted and no amendment of these By-Laws may be made which shall alter or change the provisions of Article I Section 1 or Article II Sections 1 and 7, within the first five years of the existence of this corporation. Amendment of the By-Laws, repeal thereof or the adoption of new By-Laws may be made at any regular or special meeting of the members, except as herein limited.

000421

Purchaser DALE W. & BETTY J. HILL

Address _____
STREET CITY STATE ZIP

Phone — _____

Lot # 358

PLAINTIFF'S EXHIBIT

STATE OF SOUTH CAROLINA)
) DEERFIELD PLANTATION
COUNTY OF HORRY)

PURCHASE AGREEMENT - SINGLE FAMILY RESIDENTIAL PROPERTY

THIS AGREEMENT made and entered into this 7 day of February 19 73, by and between Deerfield Plantation, Inc., a South Carolina corporation, Surfside Beach, South Carolina, hereinafter called the "Seller"; and
NAME: Carl L. Clemmons & Geraldine O. Clemmons
ADDRESS: 1800 North Oak Street, Myrtle Beach, S. C. 29577
HOME PHONE: 448-3987 OFFICE PHONE: _____
AREA CODE: 803 hereinafter called the "Purchaser(s)"; which terms "Seller" and "Purchaser(s)" shall be deemed to extend to and include the heirs, executors, legal representatives, successors and assigns of the said parties.

1. The Seller agrees to sell and convey, and the Purchaser(s) agrees to buy all that certain lot of land described as Lot Number 765 as shown on a Plat of Deerfield Plantation recorded in Plat Book 54, at page 124, in the office of the Clerk of Court for Horry County, South Carolina (hereinafter referred to as the "Property").

CASH PURCHASE

2. The total price to be paid for said property is Thirteen Thousand Two Hundred ($13,200.00), payable as follows: Two Thousand Six Hundred Forty Dollars ($2,640.00), on execution of this agreement and the balance of Ten Thousand Five Hundred Sixty ($10,560.00), to be paid by Purchaser(s) to Seller within fifteen (15) days after the date hereof at the office of the Seller. In the event of a Cash Purchase, Paragraph three (3) is not applicable.

TIME PURCHASE

3. The total price to be paid for said property is N/A ($N/A), payable as follows: a deposit of N/A ($N/A), on execution of this agreement and the balance of N/A ($N/A), payable in ____ monthly installments of N/A ($N/A), including interest from date hereof at the rate of N/A per cent per annum, on or before the N/A day of each month hereafter, until paid in full; provided, however, that the Purchaser(s) may prepay the entire amount remaining unpaid on the purchase price without penalty at any time. In the event of a Time Purchase, paragraph two (2) is not applicable.

4. The Disclosure Statement of Terms of Financing are as Follows:

(1) Cash Price	(2) Less: Cash Down Payment	(3) Unpaid Balance of Cash Price (amt. financed)	(4) FINANCE CHARGE	(5) Total of Payments (3 & 4)	(6) Deferred Payment Price (1 & 4)	(7) ANNUAL PERCENTAGE RATE
$13,200.00	$2,640.00	$10,560.00	$ N/A	$ N/A	$ N/A	N/A %

Down Payment paid by _____ Check X Cash

5. In addition to the above deposit and/or payments, the Purchaser(s) will pay to Seller the amount of taxes which Seller may pay on the Property after execution of this contract, together with any assessment by the Seller or Deerfield Plantation Property Owners Association, Inc., a non-profit South Carolina corporation, such amounts to be paid according to the Declaration of Conditions, Reservations, Covenants and Restrictions recorded in Deed Book 481, Page 305, office of the Clerk of Court for Horry County, South Carolina, and the By-Laws, Resolutions, and agreements of said Deerfield Plantation Property Owners Association, Inc.

6. Purchaser(s) agrees to pay such water service tapping fee and such sewer service tapping fee and such monthly water and sewer charges as may be approved or designated by the South Carolina Public Service Commission from time to time, unto Platt Water Company, Inc., its successors or assigns, or such other person as Seller shall designate, the said water and sewer tapping fees to be paid and taps to be made for same as soon as application for service is made by purchaser and said monthly charges for water and sewer to be paid monthly hereafter as soon as the same is available to the property, regardless of whether this purchase is a cash purchase or a time purchase. Before Purchaser(s) may actually tap on to either of these systems, all fees referred to in this paragraph must be paid.

7. In the event of a Cash Purchase or a Time Purchase, failure or refusal of Purchaser(s) to execute all of the necessary instruments required of him promptly, in accordance with the terms of this contract, or failure or refusal to pay any sums due the Seller on the purchase price or any closing costs or any other sums as may be required as set forth in this contract, then and in that event, the Seller shall give the Purchaser(s) written notice of said default by mailing the same by certified or registered mail, return receipt requested, to the address of the Purchaser(s) in this contract or such subsequent address as Purchaser(s) shall furnish to Seller in writing, and in the event that Purchaser(s) shall fail to cure said default within ten (10) days subsequent to the

upon the Property as therein described. The foregoing provisions of the Paragraph may be omitted from the Warranty Deed to be delivered hereunder at the option of the Seller, but shall nevertheless survive delivery of said deed.

12. The Seller shall convey to the Purchaser(s) by General Warranty Deed an unencumbered marketable fee simple title to said property subject, however, to the following:
A. The provisions of the Declaration of Conditions, Reservations, Covenants and Restrictions recorded in Deed Book 481, page 305, office of the Clerk of Court for Horry County, South Carolina.
B. The provisions of the Declaration and Certificate of Incorporation, By-Laws and Resolutions of Deerfield Plantation Property Owners Association, Inc. and contracts affecting said property entered into by the Deerfield Plantation Property Owners Association, Inc. and Seller, existing at the time of the execution of this agreement and as thereafter duly modified.
C. Easements of record or created by Law, including easements granted or otherwise created prior to the closing.
D. Such zoning and other restrictions upon the use of said Property as may be imposed by governmental authorities having jurisdiction.
E. Taxes for the year in which this agreement is made, if not paid, the same to be pro-rated as herein specified, however.
F. Any or all of the foregoing exceptions may be omitted from the Warranty Deed of conveyance to be delivered hereunder, at the option of the Seller, but all such provisions so omitted shall nevertheless survive delivery of said deed.

13. The Purchaser(s) shall begin paying to the person or persons entitled thereto the assessments and other charges required by any of the documents referred to in Paragraphs No. Five (5) and Eleven (11) hereof, on the first day of the first month following the date of the execution.

14. The Seller has advised the Purchaser(s) that the Seller has executed and delivered two (2) blanket

mailing of the notice as abovesaid, then and in that event the Seller shall, at its option, be entitled to retain any deposits made by the Purchaser(s) as liquidated damages in order to properly compensate the Seller for any expenses which it may have incurred in connection with this sale, and damages which it will have suffered, without accountability therefor, and in such event, this agreement shall be null and void and ended as between the Seller and the Purchaser(s). Seller may, however, at its option require specific performance of this contract. It is further agreed that Seller shall have the right to file of record a notice of the ending and termination of this contract and the rights of the purchaser(s) for breach thereof, upon breach thereof by the Purchaser(s) as abovesaid, and the Seller is hereby irrevocably appointed as the agent of the Purchaser(s) for the filing of record of such said notice of ending and termination of this contract on behalf of the Purchaser(s). Failure of Seller to exercise this option on any one or more of said payments as specified in Item 3 shall not constitute a waiver of the right to exercise the same in the event of subsequent default. Time is of the essence of this agreement and no extention, forbearance, or any contemporaneous or subsequent agreement in any way modifying the above payment schedule shall be valid unless executed in writing by Seller.

8. Purchaser(s) shall not be entitled to possession or use of the premises until payment of 100% of the purchase price and compliance by purchaser(s) with all of the requirements hereof and execution and delivery of deed of conveyance by Seller.

9. Upon payment of 100% of the purchase price, the Seller will make and deliver to the Purchaser(s) a fee simple general warranty deed, subject only to the exceptions as set forth in Paragraph 12 herein.

10. The closing of this sale and purchase shall take place in the business office of the Seller, or as otherwise agreed upon. Seller agrees to pay for preparation of the deed of conveyance and Documentary Stamps thereon, and to pro-rate the property taxes for the year of execution of this agreement. All other expenses of closing shall be the responsibility of the Purchaser(s).

11. The Purchaser(s) acknowledges receipt and retention of a copy of the Conditions, Reservations, Covenants, and Restrictions applicable to the Property recorded in Deed Book 481, Page 305, Office of the Clerk of Court for Horry County, S. C., and does hereby ratify and affirm them. The Purchaser(s) agrees to abide by the terms of the said Conditions, Covenants, Reservations and Restrictions, and agrees that subject the Property sold hereby to the terms and provisions of the same and to any liens created by them, and agrees that he hereby immediately becomes and is a member of Deerfield Plantation Property Owners Association, Inc., a non-profit corporation. Purchaser(s) also acknowledges receipt and retention of copies of the Articles of Incorporation or Charter and By-Laws of Deerfield Plantation Property Owners Association, Inc., and of the Privilege and Obligation Agreement between the Seller and Deerfield Plantation Property Owners Association, Inc., and affirms and ratifies said Privilege and Obligation Agreement, said By-Laws and the acts of the officers and directors of Deerfield Plantation Property Owners Association, Inc. Purchaser(s) further agrees that he shall pay his share of all moneys due, pursuant to and in the amounts specified by such documents, agrees to be bound by all of the terms and conditions of such documents and that such terms and conditions are reasonable, fair and equitable, and agrees that there shall be impressed a lien mortgages which mortgages constitute liens against all of the Property included within Deerfield Plantation Single Family Subdivision; said mortgage liens shall be paid off and satisfied or released prior to or at the time of presentation of the deed of conveyance to Purchaser(s).

15. This agreement is declared and agreed to be a contract executed and delivered within the State of South Carolina and shall be construed according to the laws of the State of South Carolina. It is agreed and declared that this agreement together with any exhibits attached thereto constitutes the entire agreement between the parties hereto and that no warranties, representations, promises, statements or inducements have been made by the Seller or any agent of the Seller other than is contained herein in writing or other than is set forth in writing in the documents mentioned herein which the Purchaser has acknowledged receipt of or endorsed hereon in writing and signed by the Seller through an officer of the Seller.

16. All rights and remedies given to the Seller herein, or by law, shall be cumulative and not alternative. If any provision of this contract is held to be invalid or unenforceable, the remainder of the agreement shall not be affected thereby and to that end the provisions hereof are declared severable.

17. This agreement shall not become effective until accepted by the Seller.

18. Transfer of this agreement by the Purchaser(s) shall be subject to all of the requirements of Paragraph 28 of the Declaration of Conditions, Reservations, Covenants and Restrictions hereinabove referred to and recorded in Deed Book 481, page 305, office of the Clerk of Court for Horry County, South Carolina, the same as is the property constituting the subject of this agreement. Seller shall have the right to transfer or assign this agreement, however, without any limitation.

19. All funds paid by the Purchaser(s) shall be held and used by and shall belong to the Seller when paid, without restriction, and shall not be held in escrow or trust.

20. Purchaser(s) represents and certifies that he is twenty-one (21) years of age at the time of the execution of this contract.

21. Purchaser(s) acknowledges that he has read and understands this agreement and that he has received and retained a copy thereof.

22. Purchaser(s) acknowledges that he has received a copy of the Property Report prepared pursuant to the rules and regulations of the Department of Housing and Urban Development prior to the signing of this agreement.

23. Any words or terms herein used in the singular shall be deemed and interpreted to include the plural usage when applicable.

24. The Purchaser(s) shall have the right to void this Agreement if he does not receive a Property Report prepared pursuant to the rules and regulations of the Department of Housing and Urban Developemnt in advance of, or at the time of his signing this Agreement, and the Purchaser(s) shall have the right to revoke this Agreement within forty-eight (48) hours after signing this Agreement if he does not receive a copy of the Property Report at least forty-eight (48) hours prior to signing this Agreement. The revocation authority contained herein shall not apply if the Purchaser(s) has received the Property Report and inspected the Property subject to this Agreement in advance of signing this Agreement and acknowledges by his signature that he made such inspection and has read and understood such Report.

IN WITNESS WHEREOF the parties hereto have hereunto set their Hands and Seals as of the day, month and year first hereinabove written.

IN THE PRESENCE OF:

(As to Seller)

(As to Purchaser)

DEERFIELD PLANTATION, INC. 1972 (SEAL)

By: _____ President

Attest: _____ Secretary

(SELLER)

(L.S.) (PURCHASER)

(L.S.) (PURCHASER)

Purchaser(s) hereby acknowledges that he has received the Property Report and inspected the Property subject to this Agreement in advance of signing this agreement and acknowledges by his signature that he has read and understood such Report and has made such inspection.

Purchaser

Purchaser.

DUPLICATE ORIGINAL COPY

Do Not Destroy Before or After Closing

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

PERSONALLY appeared before me A. Russell Maddox
(type or print name of first witness)

who, on oath, says that he saw the within named Deerfield Plantation, Inc., a South Carolina corporation, by V. F. Platt, Jr., its President, sign the within Purchase Agreement, and Kate W. Platt, its Secretary, attest the same, and the said Corporation, by said officers, seal said Purchase Agreement, and, as its act and deed, deliver the same, and that he with Barbara S. Trippe witnessed the execution thereof.
(type or print name of second witness)

SWORN TO before me this 24th
day of [illegible] A.D. 19 93
[illegible] (L. S.)
Notary Public for South Carolina

A. Russell Maddox
(Signature of FIRST Witness)

My commission expires: [illegible]

STATE OF [illegible])
COUNTY OF [illegible])

PERSONALLY appeared before me _____
(type or print name of first witness)

who, on oath, says that he saw the within named _____
(type or print name(s) of purchaser(s)

Purchaser(s), sign, seal and as his, her or their act and deed deliver the within written Purchase Agreement and that he with _____ witnessed the execution thereof.
(type or print name of second witness)

SWORN TO before me this _____
day of _____ A.D. 19__
_____ (L. S.)
(signature of Notary Public)

_____
(Signature of FIRST Witness)

Notary Public for State of _____
My Commission expires: _____

Lot Number 335 for $ 13,200.00

SOCASTEE TOWNSHIP

State of South Carolina

COUNTY OF HORRY

DEERFIELD PLANTATION, INC.
1972o

AND

Carl L. Clemmons and Geraldine O. Clemmons

CONTRACT FOR PURCHASE OF REAL ESTATE

I hereby certify that the within contract has been this _____ day of _____ A. D. 19 _____ Recorded in Book _____ of Deeds, Page _____ at _____ o'clock _____ M.

_____

Clerk of Court of Horry County, South Carolina

I hereby certify that the within contract has been this _____ day of _____ A. D. 19 _____ Transferred on Auditor's Book Page _____

_____

Auditor of Horry County, South Carolina

000425

True Copy.

STATE OF SOUTH CAROLINA]
]
COUNTY OF HORRY]

KNOW ALL MEN BY THESE PRESENTS, that Deerfield Plantation, Inc., a South Carolina corporation, in the State aforesaid for and in consideration of the sum of Thirteen Thousand Two Hundred Dollars ($ 13,200.00), Dollars to it paid by Carl L. & Geraldine O. Clemmons in the State aforesaid, (Receipt whereof is hereby acknowledged) has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Carl L. & Geraldine O. Clemmons
subject to the within conditions, reservations, covenants and restrictions and easements:

All and singular that certain piece, parcel or lot of land situate, lying and being in Socastee Township, Horry County, S. C., and being designated as Lot # 365 on that certain map of Deerfield Plantation, property of Deerfield Plantation, Inc., made by Moorman & Little, Inc., Engineers, dated November 14, 1972, and recorded in Plat Book 54, at page 124, office of the Clerk of Court for Horry County, S. C., which said map and the record thereof is hereby incorporated herein and made a part hereof by reference.

Together with a non-exclusive private right of way and easement for ingress and egress for travel purposes to and from the above lot of land over, across and upon all streets and roads within the subdivision encompassing lots number 1 through 458 on that certain map of property of Deerfield Plantation, Inc. made by Moorman & Little, Inc., Engineers, recorded in Plat Book 54, page 124, office of the Clerk of Court for Horry County, S. C., and all streets, roads, and ways lying contiguous to any such said lot and all streets, roads and ways leading thereto from U.S. Highway number 17 and South Carolina Highway number 375 (Dick Pond Road).

This conveyance is made subject to those certain conditions, reservations, covenants and restrictions set forth in that certain Declaration and Establishment of Conditions, Reservations, Covenants and Restrictions for Deerfield Plantation Single Family Residential Subdivision, Horry County, South Carolina, recorded in Deed Book 481, page 305, office of the Clerk of Court for Horry County, S. C., which said Declaration and Establishment of Conditions, Reservations, Covenants and Restrictions and the record thereof is hereby incorporated herein and made a part hereof by reference and subject to general electrical easements to the South Carolina Public Service Authority of record.

TOGETHER WITH all and singular, the Rights, Members, Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Carl L. & Geraldine O. Clemmons its, his, her or their Heirs, Successors and Assigns forever, subject to the abovesaid conditions, reservations, covenants and restrictions and easements.

And the Grantor herein hereby binds itself, and its successors, to warrant and forever defend all and singular the said premises unto the said Carl L. & Geraldine O. Clemmons and its, his, her or their heirs, successors and assigns, against itself and its successors and all persons whomsoever lawfully claiming, or to claim the same, or any part thereof, subject to the abovesaid conditions, reservations, covenants and restrictions and easements.

WITNESS the execution hereof by Grantor this 7th day of February in the year of our Lord one thousand nine hundred and Seventy Three and in the one hundred and Ninety Seven year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered in the Presence of:

DEERFIELD PLANTATION, INC. (CORP.) 1972 (SEAL)

By: _____
As President

Attest: _____
As Secretary

Received Check from atty 11/6/73
Deed To Be Recorded & Mailed To Purchaser

ATTORNEY

STATE OF SOUTH CAROLINA)
) DEERFIELD PLANTATION
COUNTY OF HORRY)

PURCHASE AGREEMENT - SINGLE FAMILY RESIDENTIAL PROPERTY

THIS AGREEMENT made and entered into this 7 day of February 19 73, by and between Deerfield Plantation, Inc., a South Carolina corporation, Surfside Beach, South Carolina, hereinafter called the "Seller"; and
NAME: Carl L. Clemmons & Geraldine O. Clemmons
ADDRESS: 1800 North Oak Street, Myrtle Beach, S. C. 29577
HOME PHONE: 448-3937 OFFICE PHONE: _____
AREA CODE: 803 hereinafter called the "Purchaser(s)"; which terms "Seller" and "Purchaser(s)" shall be deemed to extend to and include the heirs, executors, legal representatives, successors and assigns of the said parties.

1. The Seller agrees to sell and convey, and the Purchaser(s) agrees to buy all that certain lot of land described as Lot Number 365 as shown on a Plat of Deerfield Plantation recorded in Plat Book 54, at page 124, in the office of the Clerk of Court for Horry County, South Carolina (hereinafter referred to as the "Property").

CASH PURCHASE

2. The total price to be paid for said property is Thirteen Thousand Two Hundred ($ 13,200.00), payable as follows: Two Thousand Six Hundred Forty Dollars ($ 2,640.00), on execution of this agreement and the balance of Ten Thousand Five Hundred Sixty ($ 10,560.00), to be paid by Purchaser(s) to Seller within fifteen (15) days after the date hereof at the office of the Seller. In the event of a Cash Purchase, Paragraph three (3) is not applicable.

TIME PURCHASE

3. The total price to be paid for said property is N/A ($ N/A), payable as follows: a deposit of N/A ($ N/A), on execution of this agreement and the balance of N/A ($ N/A) payable in ____ monthly installments of N/A ($ N/A), including interest from date hereof at the rate of N/A per cent per annum, on or before the N/A day of each month hereafter, until paid in full; provided, however, that the Purchaser(s) may prepay the entire amount remaining unpaid on the purchase price without penalty at any time. In the event of a Time Purchase, paragraph two (2) is not applicable.

4. The Disclosure Statement of Terms of Financing are as Follows:

(1) Cash Price	(2) Less: Cash Down Payment	(3) Unpaid Balance of Cash Price (amt. financed)	(4) FINANCE CHARGE	(5) Total of Payments (3 & 4)	(6) Deferred Payment Price (1 & 4)	(7) ANNUAL PERCENTAGE RATE
$ 13,200.00	$ 2,640.00	$ 10,560.00	$ N/A	$ N/A	$ N/A	N/A %

Down Payment paid by _____ Check _____ Cash

5. In addition to the above deposit and/or payments, the Purchaser(s) will pay to Seller the amount of taxes which Seller may pay on the Property after execution of this contract, together with any assessment by the Seller or Deerfield Plantation Property Owners Association, Inc., a non-profit South Carolina corporation, such amounts to be paid according to the Declaration of Conditions, Reservations, Covenants and Restrictions recorded in Deed Book 481, Page 305, office of the Clerk of Court for Horry County, South Carolina, and the By-Laws, Resolutions, and agreements of said Deerfield Plantation Property Owners Association, Inc.

6. Purchaser(s) agrees to pay such water service tapping fee and such sewer service tapping fee and such monthly water and sewer charges as may be approved or designated by the South Carolina Public Service Commission from time to time, unto Platt Water Company, Inc., its successors or assigns, or such other person as Seller shall designate, the said water and sewer tapping fees to be paid and taps to be made for same as soon as application for service is made by purchaser and said monthly charges for water and sewer to be paid monthly hereafter as soon as the same is available to the property, regardless of whether this purchase is a cash purchase or a time purchase. Before Purchaser(s) may actually tap on to either of these systems, all fees referred to in this paragraph must be paid.

7. In the event of a Cash Purchase or a Time Purchase, failure or refusal of Purchaser(s) to execute all of the necessary instruments required of him promptly, in accordance with the terms of this contract, or failure or refusal to pay any sums due the Seller on the purchase price or any closing costs or any other sums as may be required as set forth in this contract, then and in that event, the Seller shall give the Purchaser(s) written notice of said default by mailing the same by certified or registered mail, return receipt requested, to the address of the Purchaser(s) in this contract or such subsequent address as Purchaser(s) shall furnish to Seller in writing, and in the event that Purchaser(s) shall fail to cure said default within ten (10) days subsequent to the

upon the Property as therein described. The foregoing provisions of the Paragraph may be omitted from the Warranty Deed to be delivered hereunder at the option of the Seller, but shall nevertheless survive delivery of said deed.

12. The Seller shall convey to the Purchaser(s) by General Warranty Deed an unencumbered marketable fee simple title to said property subject, however, to the following:
A. The provisions of the Declaration of Conditions, Reservations, Covenants and Restrictions recorded in Deed Book 481, page 305, office of the Clerk of Court for Horry County, South Carolina.
B. The provisions of the Declaration and Certificate of Incorporation, By-Laws and Resolutions of Deerfield Plantation Property Owners Association, Inc. and contracts affecting said property entered into by the Deerfield Plantation Property Owners Association, Inc. and Seller, existing at the time of the execution of this agreement and as thereafter duly modified.
C. Easements of record or created by Law, including easements granted or otherwise created prior to the closing.
D. Such zoning and other restrictions upon the use of said Property as may be imposed by governmental authorities having jurisdiction.
E. Taxes for the year in which this agreement is made, if not paid, the same to be pro-rated as herein specified, however.
F. Any or all of the foregoing exceptions may be omitted from the Warranty Deed of conveyance to be delivered hereunder, at the option of the Seller, but all such provisions so omitted shall nevertheless survive delivery of said deed.

13. The Purchaser(s) shall begin paying to the person or persons entitled thereto the assessments and other charges required by any of the documents referred to in Paragraphs No. Five (5) and Eleven (11) hereof, on the first day of the first month following the date of the execution.

14. The Seller has advised the Purchaser(s) that the Seller has executed and delivered two (2) blanket

PLAINTIFF'S EXHIBIT 6

mailing of the notice as abovesaid, then and in that event the Seller shall, at its option, be entitled to retain any deposits made by the Purchaser(s) as liquidated damages in order to properly compensate the Seller for any expenses which it may have incurred in connection with this sale, and damages which it will have suffered, without accountability therefor, and in such event, this agreement shall be null and void and ended as between the Seller and the Purchaser(s). Seller may, however, at its option require specific performance of this contract. It is further agreed that Seller shall have the right to file of record a notice of the ending and termination of this contract and the rights of the purchaser(s) for breach thereof, upon breach thereof by the Purchaser(s) as abovesaid, and the Seller is hereby irrevocably appointed as the agent of the Purchaser(s) for the filing of record of such said notice of ending and termination of this contract on behalf of the Purchaser(s). Failure of Seller to exercise this option on any one or more of said payments as specified in Item 3 shall not constitute a waiver of the right to exercise the same in the event of subsequent default. Time is of the essence of this agreement and no extention, forbearance, or any contemporaneous or subsequent agreement in any way modifying the above payment schedule shall be valid unless executed in writing by Seller.

8. Purchaser(s) shall not be entitled to possession or use of the premises until payment of 100% of the purchase price and complinace by purchaser(s) with all of the requirements hereof and execution and delivery of deed of conveyance by Seller.

9. Upon payment of 100% of the purchase price, the Seller will make and deliver to the Purchaser(s) a fee simple general warranty deed, subject only to the exceptions as set forth in Paragraph 12 herein.

10. The closing of this sale and purchase shall take place in the business office of the Seller, or as otherwise agreed upon. Seller agrees to pay for preparation of the deed of conveyance and Documentary Stamps thereon, and to pro-rate the property taxes for the year of execution of this agreement. All other expenses of closing shall be the responsibility of the Purchaser(s).

11. The Purchaser(s) acknowledges receipt and retention of a copy of the Conditions, Reservations, Covenants, and Restrictions applicable to the Property recorded in Deed Book 481, Page 305, office of the Clerk of Court for Horry County, S. C., and does hereby ratify and affirm them. The Purchaser(s) agrees to abide by the terms of the said Conditions, Covenants, Reservations and Restrictions, and agrees that subject the Property sold hereby to the terms and provisions of the same and to any liens created by them, and agrees that he hereby immediately becomes and is a member of Deerfield Plantation Property Owners Association, Inc., a non-profit corporation. Purchaser(s) also acknowledges receipt and retention of copies of the Articles of Incorporation or Charter and By-Laws of Deerfield Plantation Property Owners Association, Inc., and of the Privilege and Obligation Agreement between the Seller and Deerfield Plantation Property Owners Association, Inc., and affirms and ratifies said Privilege and Obligation Agreement, said By-Laws and the acts of the officers and directors of Deerfield Plantation Property Owners Association, Inc. Purchaser(s) further agrees that he shall pay his share of all moneys due, pursuant to and in the amounts specified by such documents, agrees to be bound by all of the terms and conditions of such documents and that such terms and conditions are reasonable, fair and equitable, and agrees that there shall be impressed a lien mortgages which mortgages constitute liens against all of the Property included within Deerfield Plantation Single Family Subdivision; said mortgage liens shall be paid off and satisfied or released prior to or at the time of presentation of the deed of conveyance to Purchaser(s).

15. This agreement is declared and agreed to be a contract executed and delivered within the State of South Carolina and shall be construed according to the laws of the State of South Carolina. It is agreed and declared that this agreement together with any exhibits attached thereto constitutes the entire agreement between the parties hereto and that no warranties, representations, promises, statements or inducements have been made by the Seller or any agent of the Seller other than is contained herein in writing or other than is set forth in writing in the documents mentioned herein which the Purchaser has acknowledged receipt of or endorsed hereon in writing and signed by the Seller through an officer of the Seller.

16. All rights and remedies given to the Seller herein, or by law, shall be cumulative and not alternative. If any provision of this contract is held to be invalid or unenforceable, the remainder of the agreement shall not be affected thereby and to that end the provisions hereof are declared severable.

17. This agreement shall not become effective until accepted by the Seller.

18. Transfer of this agreement by the Purchaser(s) shall be subject to all of the requirements of Paragraph 28 of the Declaration of Conditions, Reservations, Covenants and Restrictions hereinabove referred to and recorded in Deed Book 481, page 305, office of the Clerk of Court for Horry County, South Carolina, the same as is the property constituting the subject of this agreement. Seller shall have the right to transfer or assign this agreement, however, without any limitation.

19. All funds paid by the Purchaser(s) shall be held and used by and shall belong to the Seller when paid, without restriction, and shall not be held in escrow or trust.

20. Purchaser(s) represents and certifies that he is twenty-one (21) years of age at the time of the execution of this contract.

21. Purchaser(s) acknowledges that he has read and understands this agreement and that he has received and retained a copy thereof.

22. Purchaser(s) acknowledges that he has received a copy of the Property Report prepared pursuant to the rules and regulations of the Department of Housing and Urban Development prior to the signing of this agreement.

23. Any words or terms herein used in the singular shall be deemed and interpreted to include the plural usage when applicable.

24. The Purchaser(s) shall have the right to void this Agreement if he does not receive a Property Report prepared pursuant to the rules and regulations of the Department of Housing and Urban Developemnt in advance of, or at the time of his signing this Agreement, and the Purchaser(s) shall have the right to revoke this Agreement within forty-eight (48) hours after signing this Agreement if he does not receive a copy of the Property Report at least forty-eight (48) hours prior to signing this Agreement. The revocation authority contained herein shall not apply if the Purchaser(s) has received the Property Report and inspected the Property subject to this Agreement in advance of signing this Agreement and acknowledges by his signature that he made such inspection and has read and understood such Report.

IN WITNESS WHEREOF the parties hereto have hereunto set their Hands and Seals as of the day, month and year first hereinabove written.

IN THE PRESENCE OF

(As to Seller)

(As to Purchaser)

DEERFIELD PLANTATION, INC. 19720 (SEAL)

By: _____
President

Attest: _____
Secretary

(SEAL)

_____ (L.S.)
(PURCHASER)

_____ (L.S.)
(PURCHASER)

Purchaser(s) hereby acknowledges that he has received the Property Report and inspected the Property subject to this Agreement in advance of signing this agreement and acknowledges by his signature that he has read and understood such Report and has made such inspection.

_____
Purchaser

_____
Purchaser.

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

PERSONALLY appeared before me A. Russell Maddox
(type or print name of first witness)

who, on oath, says that he saw the within named Deerfield Plantation, Inc., a South Carolina corporation, by V. F. Platt, Jr., its President, sign the within Purchase Agreement, and Kate W. Platt, its Secretary, attest the same, and the said Corporation, by said officers, seal said Purchase Agreement, and, as its act and deed, deliver the same, and that he with Barbara S. Trippe witnessed the execution thereof.
(type or print name of second witness)

SWORN TO before me this 24th
day of April A.D. 19 73

Notary Public for South Carolina (L. S.)

My commission expires: 3/9/83

A. Russell Maddox
(Signature of FIRST Witness)

STATE OF South Carolina)
COUNTY OF Horry)

PERSONALLY appeared before me _____
(type or print name of first witness)

who, on oath, says that he saw the within named _____
(type or print name(s) of purchaser(s)

Purchaser(s), sign, seal and as his, her or their act and deed deliver the within written Purchase Agreement and that he with _____ witnessed the execution thereof.
(type or print name of second witness)

SWORN TO before me this _____
day of _____ A.D. 19__

(signature of Notary Public) (L. S.)

Notary Public for State of S. C.

My Commission expires: 3/9/83

A. Russell Maddox
(Signature of FIRST Witness)

Lot Number 385 for $ 13,200.00

SOCASTEE TOWNSHIP

State of South Carolina

COUNTY OF HORRY

DEERFIELD PLANTATION, INC.
1972©

AND

Carl L. Clemmons and Geraldine O. Clemmons

CONTRACT FOR PURCHASE OF REAL ESTATE

I hereby certify that the within contract has been this _____ day of _____ A.D. 19 _____ Recorded in Book _____ of Deeds, Page _____ at _____ o'clock _____ M.

_____

Clerk of Court of Horry County, South Carolina

I hereby certify that the within contract has been this _____ day of _____ A.D. 19 _____ Transferred on Auditor's Book Page _____

_____

Auditor of Horry County, South Carolina

000430

True Copy.

STATE OF SOUTH CAROLINA]
]
COUNTY OF HORRY]

KNOW ALL MEN BY THESE PRESENTS, that Deerfield Plantation, Inc., a South Carolina corporation, in the State aforesaid for and in consideration of the sum of Thirteen Thousand Two Hundred Dollars ($ 13,200.00), Dollars to it paid by Carl L. & Geraldine O. Clemmons in the State aforesaid, (Receipt whereof is hereby acknowledged) has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Carl L. & Geraldine O. Clemmons ——————— subject to the within conditions, reservations, covenants and restrictions and easements:

All and singular that certain piece, parcel or lot of land situate, lying and being in Socastee Township, Horry County, S. C., and being designated as Lot # 365 on that certain map of Deerfield Plantation, property of Deerfield Plantation, Inc., made by Moorman & Little, Inc., Engineers, dated November 14, 1972, and recorded in Plat Book 54, at page 124, office of the Clerk of Court for Horry County, S. C., which said map and the record thereof is hereby incorporated herein and made a part hereof by reference.

Together with a non-exclusive private right of way and easement for ingress and egress for travel purposes to and from the above lot of land over, across and upon all streets and roads within the subdivision encompassing lots number 1 through 458 on that certain map of property of Deerfield Plantation, Inc. made by Moorman & Little, Inc., Engineers, recorded in Plat Book 54, page 124, office of the Clerk of Court for Horry County, S. C., and all streets, roads, and ways lying contiguous to any such said lot and all streets, roads and ways leading thereto from U.S. Highway number 17 and South Carolina Highway number 375 (Dick Pond Road).

This conveyance is made subject to those certain conditions, reservations, covenants and restrictions set forth in that certain Declaration and Establishment of Conditions, Reservations, Covenants and Restrictions for Deerfield Plantation Single Family Residential Subdivision, Horry County, South Carolina, recorded in Deed Book 481, page 305, office of the Clerk of Court for Horry County, S. C., which said Declaration and Establishment of Conditions, Reservations, Covenants and Restrictions and the record thereof is hereby incorporated herein and made a part hereof by reference and subject to general electrical easements to the South Carolina Public Service Authority of record.

TOGETHER WITH all and singular, the Rights, Members, Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Carl L. & Geraldine O. Clemmons ——————— its, his, her or their Heirs, Successors and Assigns forever, subject to the abovesaid conditions, reservations, covenants and restrictions and easements.

And the Grantor herein hereby binds itself, and its successors, to warrant and forever defend all and singular the said premises unto the said Carl L. & Geraldine O. Clemmons ——————— and its, his, her or their heirs, successors and assigns, against itself and its successors and all persons whomsoever lawfully claiming, or to claim the same, or any part thereof, subject to the abovesaid conditions, reservations, covenants and restrictions and easements.

WITNESS the execution hereof by Grantor this 7th day of February in the year of our Lord one thousand nine hundred and Seventy Three and in the one hundred and Ninety Seven year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered in the Presence of:

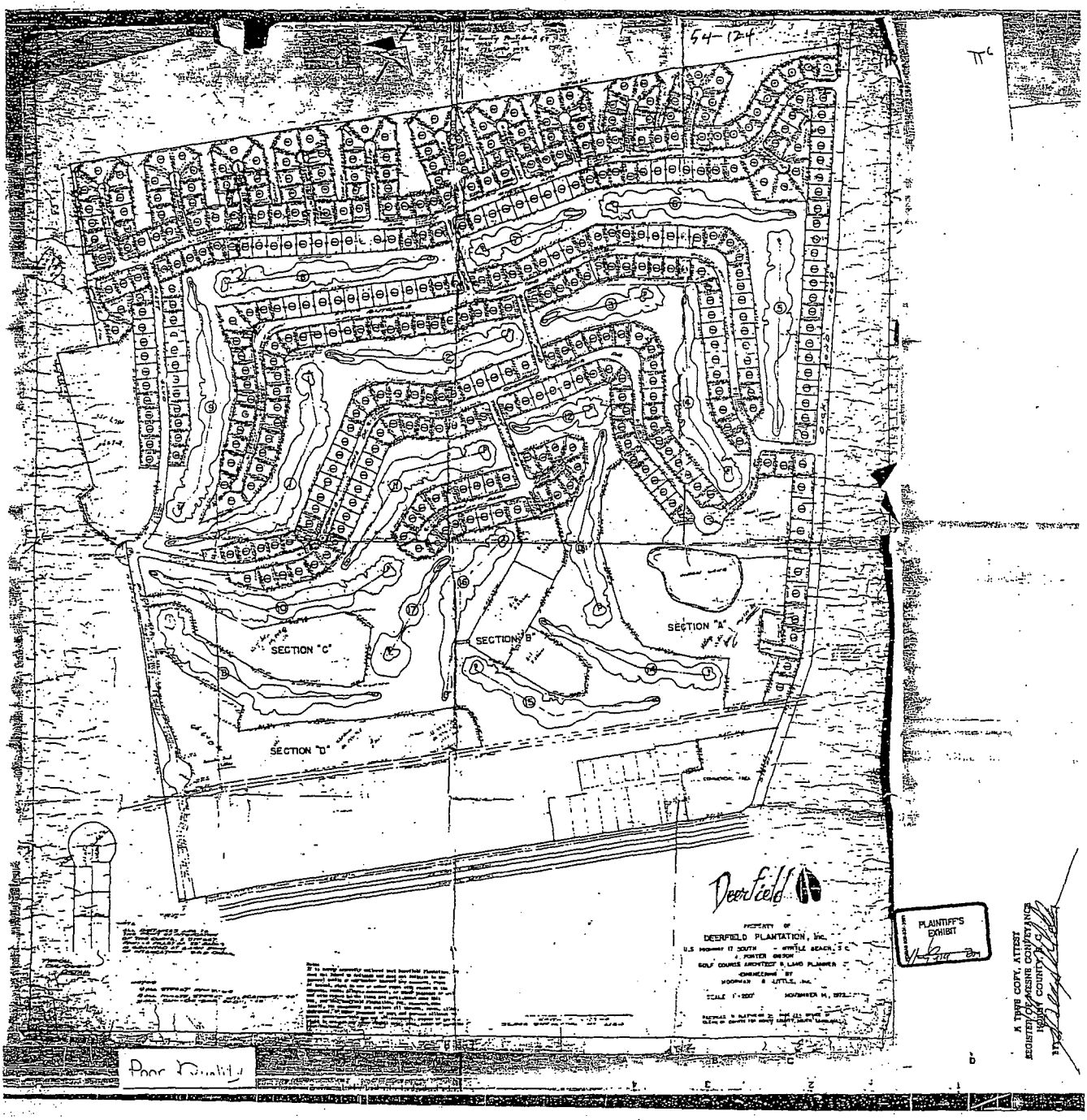
DEERFIELD PLANTATION, INC. (CORP.)
1972© (SEAL)

By: _____
As President

Attest: _____
As Secretary

Received Check from attor 12/6/73
Deed To Be Recorded & Mailed To Purchaser

ATTORNEY


54-124
SECTION "C"
SECTION "B"
SECTION "A"
SECTION "D"
Deerfield
PROPERTY OF
DEERFIELD PLANTATION, Inc.
PLAINTIFF'S EXHIBIT
A TRUE COPY, ATTEST
CLERK OF COURT
Poor Quality

PLAINTIFF'S EXHIBIT 1 Feb 04 DM

GRAND UNION HORRY COUNTY

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

R. S. HORTON CLERK OF COURT

KNOW ALL MEN BY THESE PRESENTS, that Deerfield Plantation, Inc., a South Carolina corporation, in the State aforesaid for and in consideration of the sum of Fourteen Thousand Dollars & no/100's ($ 14,000.00), Dollars to it paid by Dale W. Hill & Betty J. Hill in the State aforesaid; (Receipt whereof is hereby acknowledged) has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Dale W. Hill & Betty J. Hill ----------

subject to the within conditions, reservations, covenants and restrictions and easements:

All and singular that certain piece, parcel or lot of land situate, lying and being in Conway Township, Horry County, S. C., and being designated as Lot # 358 on that certain map of Deerfield Plantation, property of Deerfield Plantation, Inc., made by Moorman & Little, Inc., Engineers, dated November 14, 1972, and recorded in Plat Book 54, at page 124, office of the Clerk of Court for Horry County, S. C., which said map and the record thereof is hereby incorporated herein and made a part hereof by reference.

Together with a non-exclusive private right of way and easement for ingress and egress for travel purposes to and from the above lot of land over, across and upon all streets and roads within the subdivision encompassing lots number 1 through 458 on that certain map of property of Deerfield Plantation, Inc. made by Moorman & Little, Inc., Engineers, recorded in Plat Book 54, page 124, office of the Clerk of Court for Horry County, S. C., and all streets, roads, and ways lying contiguous to any such said lot and all streets, roads and ways leading thereto from U.S. Highway number 17 and South Carolina Highway number 375 (Dick Pond Road).

This conveyance is made subject to those certain conditions, reservations, covenants and restrictions set forth in that certain Declaration and Establishment of Conditions, Reservations, Covenants and Restrictions for Deerfield Plantation Single Family Residential Subdivision, Horry County, South Carolina, recorded in Deed Book 481, page 50, office of the Clerk of Court for Horry County, S. C., which said Declaration and Establishment of Conditions, Reservations, Covenants and Restrictions and the record thereof is hereby incorporated herein and made a part hereof by reference and subject to general electrical easements to the South Carolina Public Service Authority of record.

TOGETHER WITH all and singular, the Rights, Members, Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Dale W. Hill & Betty J. Hill ---------- its, his, her, their Heirs, Successors and Assigns forever, subject to the aforesaid conditions, reservations, covenants and restrictions and easements.

And the Grantor herein hereby binds itself and its successors, to warrant and forever defend all and singular the said premises unto the said Dale W. Hill & Betty J. Hill ---------- and its, his, her or their heirs, successors and assigns, against itself and its successors and all persons whomsoever lawfully claiming, or to claim the same, or any part thereof, subject to the aforesaid conditions, reservations, covenants and restrictions and easements.

WITNESS the execution hereof by Grantor this 2nd day of February in the year of our Lord one thousand nine hundred and Seventy three and in the one hundred and Ninety Seven year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered in the Presence of:

J. Russell Hodges

David F. Lowenberg

DEERFIELD PLANTATION, INC. (CORP.) 1972 (SEAL)

By: [signature]
As President

Attest: Kate W. Platt
As Secretary

485-361

ORIGINAL

BOOK 450 PAGE 634

15.40 paid

Horry County, Documentary
this instrument

FILED
HORRY COUNTY

1973 FEB 7 PM 3 27

R. G. HORTON
Clerk of Court

R. G. HORTON
CLERK OF COURT

R. G.

Tax Number 358 for $ 14,000.00

State of South Carolina

COUNTY OF HORRY

SOCASTEE TOWNSHIP

DEERFIELD PLANTATION, INC.

TO

Dale W. Hill & Betty J. Hill
Beachwood Shopping Center
Myrtle Beach, South Carolina 29577

DEED TO REAL ESTATE

I hereby certify that the within deed has been this 7 day of Feb

A.D. 19 73 Recorded in Book 458 of Deeds Page 327 Book D

Clerk of Court of Horry County, South Carolina

I hereby certify that the within deed has been this day of A.D. 19

Auditor of Horry County, South Carolina

STATE OF SOUTH CAROLINA

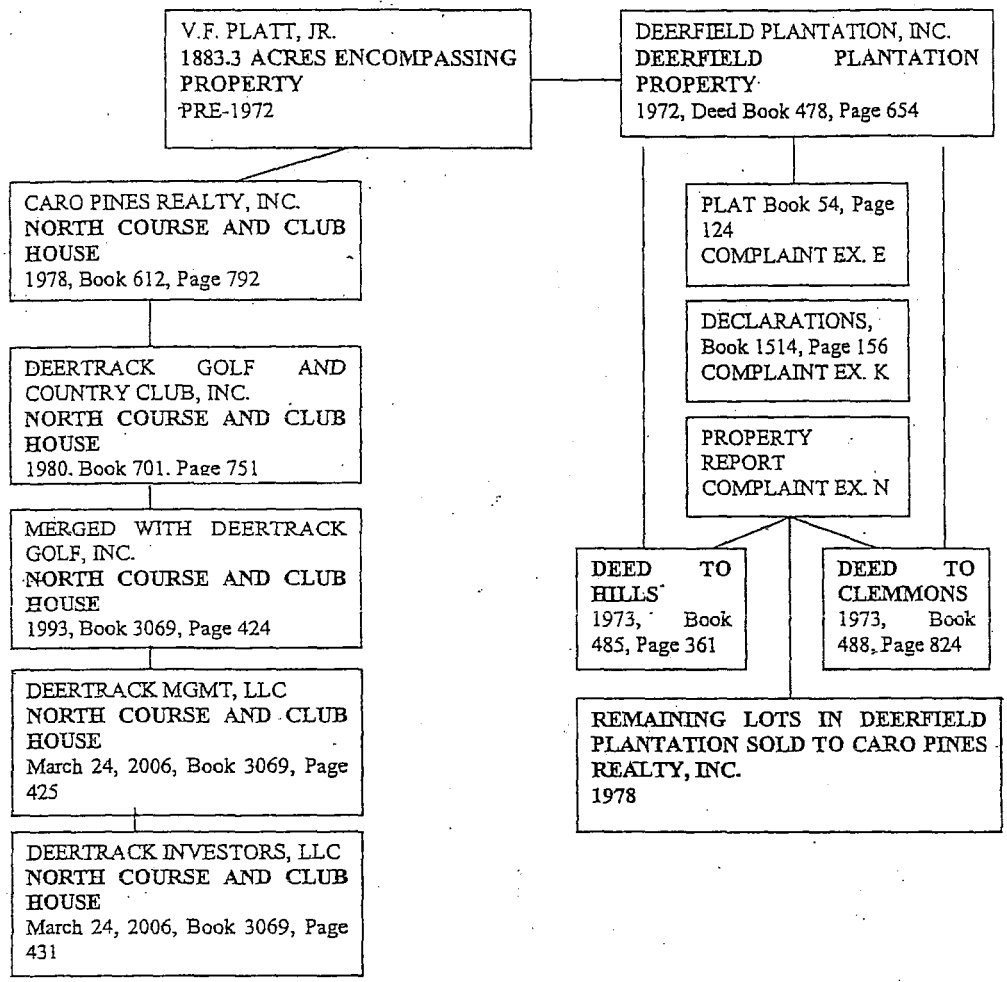
COUNTY OF HORRY

PROBATE FOR CORPORATE GRANTOR

PERSONALLY appeared before me A. Russell Maddox and made oath that he saw the within named Deerfield Plantation, Inc. by V. F. Platt, Jr. its President and Kate W. Platt its Secretary sign, seal and as the corporate act and deed deliver the within written deed, and that he with David F. Romeabu witnessed the execution thereof and saw the corporate seal thereto affixed.

SWORN TO before me this 5th day February A.D. 1973.

Carol A. Bruce (L.S.)
Notary Public for South Carolina
My commission expires March 9, 1981


V.F. PLATT, JR.
1883.3 ACRES ENCOMPASSING PROPERTY
PRE-1972
DEERFIELD PLANTATION, INC.
DEERFIELD PLANTATION PROPERTY
1972, Deed Book 478, Page 654
CARO PINES REALTY, INC.
NORTH COURSE AND CLUB HOUSE
1978, Book 612, Page 792
PLAT Book 54, Page 124
COMPLAINT EX. E
DECLARATIONS, Book 1514, Page 156
COMPLAINT EX. K
PROPERTY REPORT
COMPLAINT EX. N
DEERTRACK GOLF AND COUNTRY CLUB, INC.
NORTH COURSE AND CLUB HOUSE
1980. Book 701. Page 751
MERGED WITH DEERTRACK GOLF, INC.
NORTH COURSE AND CLUB HOUSE
1993, Book 3069, Page 424
DEED TO HILLS
1973, Book 485, Page 361
DEED TO CLEMMONS
1973, Book 488, Page 824
DEERTRACK MGMT, LLC
NORTH COURSE AND CLUB HOUSE
March 24, 2006, Book 3069, Page 425
REMAINING LOTS IN DEERFIELD PLANTATION SOLD TO CARO PINES REALTY, INC.
1978
DEERTRACK INVESTORS, LLC
NORTH COURSE AND CLUB HOUSE
March 24, 2006, Book 3069, Page 431


DEFENDANT'S
EXHIBIT

DEFENDANT'S EXHIBIT 1a 1997 Dm

A TRUE COPY, ATTEST
REGISTER OF MESNE CONVEYANCE
HORRY COUNTY, S. C.
BY: [signature] BOOK 478 PAGE 654 13348

654

TIMESAVER BLANK NO. 7 - TITLE TO REAL ESTATE — HORRY CORPORATE PERSON TO PRIVATE PERSON
TIMESAVER PUBLISHING CO., CONWAY, S. C.

STATE OF SOUTH CAROLINA,
COUNTY OF HORRY

1972 OCT 13 PM 5 11

R. G. HORTON
CLERK OF COURT

Know all Men by these Presents,

That I. V. F. Platt, Jr.

in the State aforesaid, for and in consideration of the sum of Ninety and no/100 ($1,756,390.00) One Million Seven Hundred Fifty Six Thousand Three Hundred / DOLLARS

to me paid by Deerfield Plantation, Inc., a South Carolina Corporation

in the State aforesaid, (Receipt whereof is hereby acknowledged) I

have granted, bargained, sold and released; and by these presents do grant, bargain, sell and release unto the said Deerfield Plantation, Inc., a South Carolina Corporation

All and Singular that certain piece, parcel or tract of land situate, lying and being in Socastee Township, Horry County, S. C. containing 547.76 acres and being bounded and described and shown upon that certain plat of property surveyed for Deerfield Plantation, Inc. by Moorman & Little, Inc., dated September 1972, and recorded in Plat Book 54, page 73, office of the Clerk of Court for Horry County, S. C., which said plat and the record thereof is hereby incorporated herein by reference, and which said property is more particularly described on the Schedule attached hereto and made a part hereof, less Exceptions of 3.18 acres commercial property and 0.69 acre Hobbs lot and 182.92 acres golf course and clubhouse area.

This conveyance is made subject to all conditions, covenants, limitations, reservations, restrictions and easements of record.

I Certify $1932 Horry County Documentary Tax has been paid on this instrument

R. G. Horton

R. G. HORTON

3513.00

ALL AND SINGULAR that certain piece, parcel or tract of land situate, lying and being in Socastee Township, Horry County, S. C. containing 547.76 acres and being bounded and described and shown upon that certain plat of property surveyed for Deerfield Plantation, Inc. by Moorman & Little Inc., dated September 1972, and recorded in Plat Book 54, page 73, office of the Clerk of Court for Horry County, S. C., which said plat and the record thereof is hereby incorporated herein by reference, as follows:

BEGINNING at a point South 48 degrees 44 minutes West, 50.41 feet from the point of intersection of the western right-of-way margin of Dick Pond Road with the northern right-of-way margin of U. S. Highway 17 South Service Road and running

thence with the northern right-of-way margin of U.S. Highway 17 South, Service Road, South 48 degrees 44 minutes West, 3150.73 feet to a point of curvature;

thence with a curve to the left on a radius of 11, 772.98 feet, an arc distance of 601.15 feet to the point of tangency;

thence South 45 degrees 48 minutes West, 97.75 feet to a point

thence a new line North 40 degrees 55 minutes West, 2454.96 feet to a point;

thence South 21 degrees 59 minutes West, 53.74 feet to a point;

thence North 83 degrees 32 minutes West, 266.69 feet to a point;

thence North 53 degrees 08 minutes West, 200.00 feet to a point;

thence North 16 degrees 16 minutes East, 125.00 feet to a point;

thence North 73 degrees 34 minutes West, 927.63 feet to a point;

thence North 47 degrees 55 minutes East, 289.86 feet to a point;

thence North 40 degrees 55 minutes West, 1218.79 feet to a point;

thence North 49 degrees 05 minutes East, 5278.38 feet to a point in the western right-of-way margin of Dick Pond Road;

thence with said western right-of-way the following courses and distances;

South 28 degrees 54 minutes East, 3935.78 feet to a point of curvature, with a curve to the right on a radius of 1032.29 feet an arc distance of 288.27 feet to a point of tangency;

South 12 degrees 54 minutes East, 930.89 feet to a point;

thence South 17 degrees 55 minutes West, 86.59 feet to the beginning;

Containing 547.76 acres more or less.

6 of 6

EXCEPTING THEREFROM, HOWEVER, all of the following pieces, parcels and tracts of land:

TRACT # 1 EXCEPTED (Hobbs Lot): ALL AND SINGULAR that certain piece, parcel and tract of land described as follows:

BEGINNING at a point North 22 degrees 28 minutes West, 1158.67 feet from the point of intersection of the centerline of Dick Pond Road with the centerline of U.S. Highway 17 South, Service Road and running;

thence South 70 degrees 20 minutes West, 151.95 feet to an iron pipe;

thence North 28 degrees 51 minutes West, 200.00 feet to an iron pipe;

thence North 70 degrees 20 minutes East, 151.95 feet to an iron pipe;

thence South 28 degrees 51 minutes East, 200.00 feet to the beginning;

Containing 0.69 acres.

6V7

TRACT #2 EXCEPTED (Deer Track Golf Course - Parcels A, B, C, D, and E):

ALL AND SINGULAR those certain pieces, parcels and tracts of land described as follows:

PARCEL A (Golf C[illegible]e holes 10 through 18):

BEGINNING at a point North 29 degrees 09 minutes East, 547.24 feet from the westernmost corner of the Platt Water Company lot, said beginning point also being in the northern right-of-way of a S. C. P. S. A. power line and running thence with said northern right-of-way South 48 degrees 54 minutes West, 1669.62 feet to a point;

thence North 47 degrees 14 minutes West, 157.19 feet to a point;

thence North 64 degrees 32 minutes West, 116.30 feet to a point;

thence South 66 degrees 02 minutes West, 98.49 feet to a point;

thence South 49 degrees 27 minutes West, 684.42 feet to a point;

thence South 55 degrees 15 minutes West, 377.26 feet to a point;

thence South 47 degrees 55 minutes West, 417.73 feet to a point;

thence North 34 degrees 42 minutes West, 79.06 feet to a point;

thence North 10 degrees 48 minutes West, 100.63 feet to a point;

thence South 87 degrees 26 minutes West, 470.00 feet to a point;

thence North 76 degrees 33 minutes West, 181.60 feet to a point;

thence South 58 degrees 24 minutes West, 76.32 feet to a point;

thence North 42 degrees 13 minutes West, 302.41 feet to a point;

thence North 47 degrees 47 minutes East, 179.51 feet to a point;

thence North 74 degrees 25 minutes East, 72.35 feet to a point;

thence South 80 degrees 34 minutes East, 91.24 feet to a point;

thence South 41 degrees 59 minutes East, 134.54 feet to a point;

thence North 87 degrees 26 minutes East, 445.45 feet to a point;

thence North 81 degrees 15 minutes East, 197.29 feet to a point;

thence North 61 degrees 52 minutes East, 487.65 feet to a point;

thence North 34 degrees 30 minutes East, 97.08 feet to a point;

thence North 24 degrees 23 minutes West, 351.32 feet to a point;

thence North 82 degrees 24 minutes West, 151.33 feet to a point;

thence South 71 degrees 34 minutes West, 63.25 feet to a point;

thence South 46 degrees 16 minutes West, 636.55 feet to a point;

thence South 83 degrees 17 minutes West, 513.52 feet to a point;

thence South 66 degrees 02 minutes West, 98.44 feet to a point;

thence South 47 degrees 47 minutes West, 173.51 feet to a point;

thence North 42 degrees 13 minutes West, 292.44 feet to a point;

thence North 69 degrees 10 minutes East, 492.16 feet to a point;

thence North 61 degrees 33 minutes East, 1[illegible]7 feet to a point;

thence South 45 degrees 00 minutes East, 70.7[illegible] feet to a point;

thence North 70 degrees 26 minutes East, 238.80 feet to a point;

thence North 43 degrees 44 minutes East, 318.28 feet to a point;

thence North 25 degrees 38 minutes East, 138.65 feet to a point;

thence North 08 degrees 26 minutes East, 136.47 feet to a point;

thence North 09 degrees 17 minutes West, 805.56 f[illegible] to a point;

thence North 27 degrees 39 minutes East, 118.53 feet to a point;

thence North 60 degree[illegible] 18 minutes East, 340.04 feet to a point;

thence North 37 degrees 01 minutes East, 315.00 feet to a point;

thence South 53 degrees 38 minutes East, 306.90 feet to a point;

thence South 43 degrees 53 minutes West, 512.93 feet to a point;

thence South 31 degrees 54 minutes West, 192.28 feet to a point;

thence South 01 degrees 00 minutes East, 285.05 feet to a point;

thence South 54 degrees 28 minutes East, 139.04 feet to a point;

thence South 87 degrees 48 minutes East, 130.10 feet to a point;

649

thence North 48 degrees 22 minutes East, 120.42 feet to a point;
thence North 10 degrees 07 minutes East, 142.22 feet to a point;
thence North 28 degrees 27 minutes East, 136.47 feet to a point;
thence North 43 degrees 53 minutes East, 360.69 feet to a point;
thence South 46 degrees 07 minutes East, 180.35 feet to a point;
thence South 03 degrees 33 minutes East, 726.40 feet to a point;
thence South 39 degrees 48 minutes East, 39.05 feet to a point;
thence North 88 degrees 36 minutes East, 615.18 feet to a point;
thence North 70 degrees 30 minutes East, 119.87 feet to a point;
thence North 68 degrees 46 minutes East, 128.97 feet to a point;
thence North 26 degrees 34 minutes West, 161.71 feet to a point;
thence North 66 degrees 14 minutes West, 90.23 feet to a point;
thence South 88 degrees 36 minutes West, 399.74 feet to a point;
thence North 03 degrees 33 minutes West, 473.46 feet to a point;
thence North 26 degrees 32 minutes West, 94.12 feet to a point;
thence North 46 degrees 07 minutes West, 320.00 feet to a point;
thence North 35 degrees 18 minutes East, 128.45 feet to a point;
thence North 07 degrees 26 minutes West, 231.95 feet to a point;
thence North 35 degrees 00 minutes West, 183.70 feet to a point;
thence South 74 degrees 22 minutes West, 129.73 feet to a point;
thence South 37 degrees 01 minutes West, 350.00 feet to a point;
thence North 53 degrees 38 minutes West, 240.00 feet to a point;
thence North 37 degrees 01 minutes East, 729.00 feet to a point;
thence North 82 degrees 52 minutes East, 40.31 feet to a point;
thence South 34 degrees 07 minutes East, 187.22 feet to a point;
thence South 70 degrees 21 minutes East, 297.32 feet to a point;
thence South 30 degrees 35 minutes West, 127.77 feet to a point;

660

thence South 70 degrees 27 minutes East, 25.00 feet to a point;

thence South 19 degrees 33 minutes West, 120.00 feet to a point;

thence South 14 degrees 34 minutes East, 205.15 feet to a point;

thence South 31 degrees 36 minutes East, 305.29 feet to a point;

thence South 48 degrees 01 minutes East, 538.1[illegible] feet to a point;

thence South 72 degrees 21 minutes East, 230.87 feet to a point;

thence North 70 degrees 28 minutes East, 328.94 feet to a point;

thence North 60 degrees 31 minutes East, 264.20 feet to a point;

thence South 30 degrees 14 minutes East, 334.54 feet to the beginning.

Containing 84.82 acres more or less.

661

PARCEL B (Golf course holes 3 and 4):

BEGINNING at a point North 27 degrees 43 minutes East 408.37 feet from the northernmost corner in the foregoing description of Holes 10 through 18 of Deer Track Golf Course and running

thence North 56 degrees 15 minutes West, 150.26 feet to a point;

thence South 82 degrees 32 minutes West, 161.25 feet to a point;

thence South 50 degrees 12 minutes West, 154.21 feet to a point;

thence South 45 degrees 00 minutes West, 197.99 feet to a point;

thence South 34 degrees 20 minutes West, 126.21 feet to a point;

thence South 37 degrees 01 minutes West, 169.89 feet to a point;

thence North 49 degrees 27 minutes West, 246.81 feet to a point;

thence North 32 degrees 44 minutes East, 510.46 feet to a point;

thence North 48 degrees 39 minutes East, 106.51 feet to a point;

thence North 59 degrees 07 minutes East, 487.06 feet to a point;

thence North 86 degrees 25 minutes East, 32.06 feet to a point;

thence South 38 degrees 14 minutes East, 791.82 feet to a point;

thence South 47 degrees 29 minutes East, 162.79 feet to a point;

thence South 70 degrees 49 minutes East, 243.72 feet to a point;

thence North 54 degrees 29 minutes East, 86.02 feet to a point;

thence South 26 degrees 34 minutes East, 178.88 feet to a point;

thence South 09 degrees 59 minutes East, 91.71 feet to a point;

thence South 15 degrees 33 minutes West, 160.00 feet to a point;

662

thence North 70 degrees 27 minutes West, 610.00 feet to a point;

V.F.F.

thence North 54 degrees 38 minutes West, 107.41 feet to a point;

thence North 34 degrees 07 minutes West, 425.00 feet to the beginning.

Containing 16.20 ± acres.

663

PARCEL C (Golf Course holes 1, 2, 8, and 9):

BEGINNING at a point North 20 degrees 50 minutes East 60.00 feet, from the westernmost corner in the foregoing description of Holes 10 through 18 of Deer Track Golf Course and running

thence North 01 degrees 17 minutes East, 283.99 feet to a point;
thence North 28 degrees 04 minutes West, 340.01 feet to a point;
thence North 58 degrees 00 minutes East, 94.34 feet to a point;
thence North 16 degrees 35 minutes West, 245.20 feet to a point;
thence North 35 degrees 40 minutes West, 1046.23 feet to a point;
thence North 38 degrees 40 minutes East, 160.02 feet to a point;
thence North 45 degrees 00 minutes East, 169.71 feet to a point;
thence North 54 degrees 06 minutes East, 1296.19 feet to a point;
thence North 44 degrees 34 minutes East, 216.02 feet to a point;
thence South 50 degrees 12 minutes East, 220.00 feet to a point;
thence South 49 degrees 31 minutes West, 1683.66 feet to a point;
thence South 52 degrees 08 minutes East, 342.05 feet to a point;
thence South 39 degrees 17 minutes East, 284.25 feet to a point;
thence South 20 degrees 33 minutes East, 170.68 feet to a point;
thence South 20 degrees 25 minutes East, 458.60 feet to a point;
thence South 04 degrees 24 minutes East, 260.77 feet to a point;
thence North 35 degrees 55 minutes East, 358.05 feet to a point;
thence North 07 degrees 26 minutes East, 231.95 feet to a point;

664

thence North 08 degrees 17 minutes West, 122.15 feet to a point;

thence North 20 degrees 25 minutes West, 211.37 feet to a point;

thence North 22 degrees 53 minutes West, 234.20 feet to a point;

thence North 39 degrees 17 minutes West, 190.00 feet to a point;

thence North 44 degrees 19 minutes West, 53.40 feet to a point;

thence North 09 degrees 28 minutes East, 60.83 feet to a point;

thence North 37 degrees 13 minutes East, 67.20 feet to a point;

thence North 49 degrees 31 minutes East, 400.00 feet to a point;

thence North 53 degrees 18 minutes East, 580.18 feet to a point;

thence North 41 degrees 38 minutes East, 361.25 feet to a point;

thence North 48 degrees 14 minutes East, 187.68 feet to a point;

thence South 49 degrees 27 minutes East, 250.52 feet to a point;

thence South 37 degrees 01 minutes West, 600.00 feet to a point;

V.30.P

thence South 52 degrees 32 minutes West, 104.74 feet to a point;

thence South 60 degrees 18 minutes West, 399.31 feet to a point;

thence South 29 degrees 44 minutes West, 181.33 feet to a point;

thence South 09 degrees 17 minutes East, 935.99 feet to a point;

thence South 37 degrees 17 minutes West, 90.00 feet to a point;

thence South 43 degrees 44 minutes West, 560.00 feet to a point;

thence South 46 degrees 16 minutes East, 69.00 feet to a point

thence South 69 degrees 10 minutes West, 462.52 feet to the beginning.

Containing 43.42 ± acres.

665

PARCEL D (Golf Course holes 5, 6, and 7):

BEGINNING at a point North 23 degrees 44 minutes East 407.88 feet from the northernmost corner in a description of Holes 3 and 4 of Deer Track Golf Course and running

thence North 76 degrees 24 minutes West, 197.64 feet to a point;

thence South 5 degrees 07 minutes West, 894.23 feet to a point;

thence South 32 degrees 44 minutes West, 613.44 feet to a point;

thence South 44 degrees 30 minutes West, 318.03 feet to a point;

thence North 50 degrees 12 minutes West, 234.31 feet to a point;

thence North 37 degrees 47 minutes East, 1012.13 feet to a point;

thence North 49 degrees 46 minutes East, 170.29 feet to a point;

thence North 55 degrees 39 minutes East, 726.71 feet to a point;

thence North 48 degrees 01 minutes East, 134.54 feet to a point;

thence South 52 degrees 26 minutes East, 164.01 feet to a point;

thence North 60 degrees 55 minutes East, 341.66 feet to a point, said point being 150.00 feet West of the western right-of-way margin of Dick Pond Road;

thence with a line parallel to and 150.00 feet west of the abovementioned road, South 28 degrees 54 minutes East, 1602.68 feet to a point;

thence South 60 degrees 55 minutes West, 232.54 feet to a point;

thence North 57 degrees 32 minutes West, 130.38 feet to a point;

thence North 11 degrees 14 minutes East, 126.65 feet to a point;

thence North 38 degrees 14 minutes West, 1083.56 feet to the beginning.

Containing 24.10 acres more or less.

666

PARCEL E (Deer Track Golf Course Clubhouse Area):

BEGINNING at a point South 81 degrees 34 minutes West 136.47 feet from the westernmost corner in a description of holes 10 through 18 of Deer Track Golf Course and running

thence North 83 degrees 32 minutes West, 266.69 feet to a point;

thence North 53 degrees 05 minutes West, 200.00 feet to a point;

thence North 16 degrees 16 minutes East, 125.00 feet to a point;

thence North 48 degrees 04 minutes West, 927.63 feet to a point;

thence North 47 degrees 55 minutes East, 417.73 feet to a point;

thence North 12 degrees 56 minutes East, 146.66 feet to a point;

thence South 35 degrees 40 minutes East, 958.76 feet to a point;

thence North 54 degrees 20 minutes East, 122.27 feet to a point;

thence South 28 degrees 04 minutes East, 294.29 feet to a point;

thence South 01 degrees 17 minutes West, 210.00 feet to a point;

thence South 22 degrees 07 minutes West, 82.65 feet to a point;

thence South 21 degrees 59 minutes West, 63.74 feet to the beginning.

Containing 14.38 acres more or less.

667

Exhibit "A"

Real Acres

That certain parcel of land described as

the northern right-of-way margin of U. S. Highway
point point South 48 degrees 45 minutes West 131.8
thence from the western right-of-way margin of Dick
northern right-of-way margin of U. S. Highway 17 South
running

degrees 00 minutes West, 290.20 feet to a point;

degrees 00 minutes East, 250.45 feet to a point;

degrees 00 minutes West, 228.00 feet to a point;

degrees 00 minutes East, 240.00 feet to a point in
Pure Water Company lot;

West and beyond North 41 degrees 9 minutes
a portion the southern right-of-way margin of an
of U. S. A.;

the northern right-of-way margin North 48 degrees 54
feet to the western right-of-way margin of Dick Road

right-of-way margin, South 12 degrees 54
point;

degrees 45 minutes West, 528.87 feet to a point;

degrees 9 minutes East, 200.00 feet to a point;

degrees 45 minutes West, 150.00 feet to a point;

degrees 9 minutes East, 330.55 feet to a point in the
-of-way margin U. S. Highway 17 South Service Road;

said northern right-of-way margin South 48 degrees 45
West, 926.00 feet to the beginning.

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668

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

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said:

Deerfield Plantation, Inc., a South Carolina Corporation, its

successors and assigns

Heirs and Assigns forever.

And I do hereby bind myself and my Heirs and Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said:

Deerfield Plantation, Inc., a South Carolina Corporation, its

successors

Heirs and Assigns, against

me and my Heirs, and all persons whomsoever

lawfully claiming, or to claim the same or any part thereof.

Witness my Hand and Seal this 6th day of October

in the year of our Lord one thousand nine hundred and seventy-two

and in the one hundred and ninety-sixth year of the Sovereignty and Independence of the United States of America.

V. F. Platt (L. S.)

V. F. Platt, Jr. (L. S.)

(L. S.)

(L. S.)

(L. S.)

Signed, Sealed and Delivered in the Presence of

Jane Cross Jr.

Linda L. Cribb

669

STATE OF SOUTH CAROLINA,

COUNTY OF HORRY.

PERSONALLY appeared before me, J. Stanton Cross Jr.

and made oath that he saw the within named V. F. Platt, Jr.

Sign, Seal and as his Act and Deed deliver the within written Deed; and that he with Alice D. Goodwin witnessed the execution thereof.

Sworn to before me this 6th day of October A. D. 1972

Alice D. Goodwin (L. S.)
Notary Public for South Carolina
My commission expires: 5-2978

J. Stanton Cross Jr.

RENUNCIATION OF DOWER

STATE OF SOUTH CAROLINA,

COUNTY OF HORRY

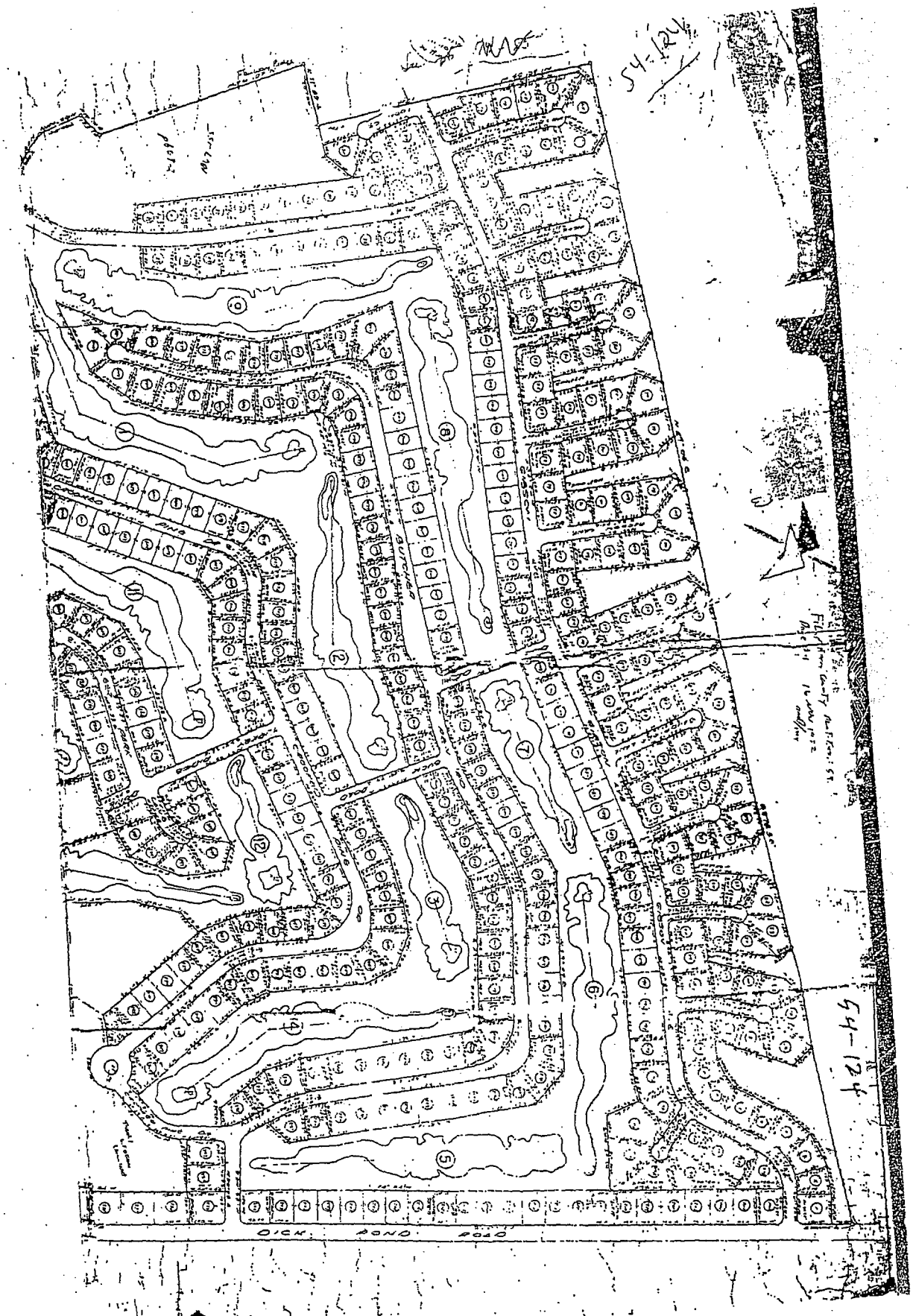
I, Alice D. Goodwin, a Notary Public for South Carolina do hereby certify unto all whom it may concern, that Mrs. Kate W. Platt the wife of the within named grantor did this day appear before me and upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within named grantee its successors and Assigns, all her interest and estate, and also all her right and claim of Dower, of, in or to, all and singular the premises within mentioned and released.

Given under my Hand and Seal this 6th day of October Anno Domini 19 72

Alice D. Goodwin (L. S.)
Notary Public for South Carolina
My commission expires: 5-29-78

Kate W. Platt (L. S.)
Kate W. Platt

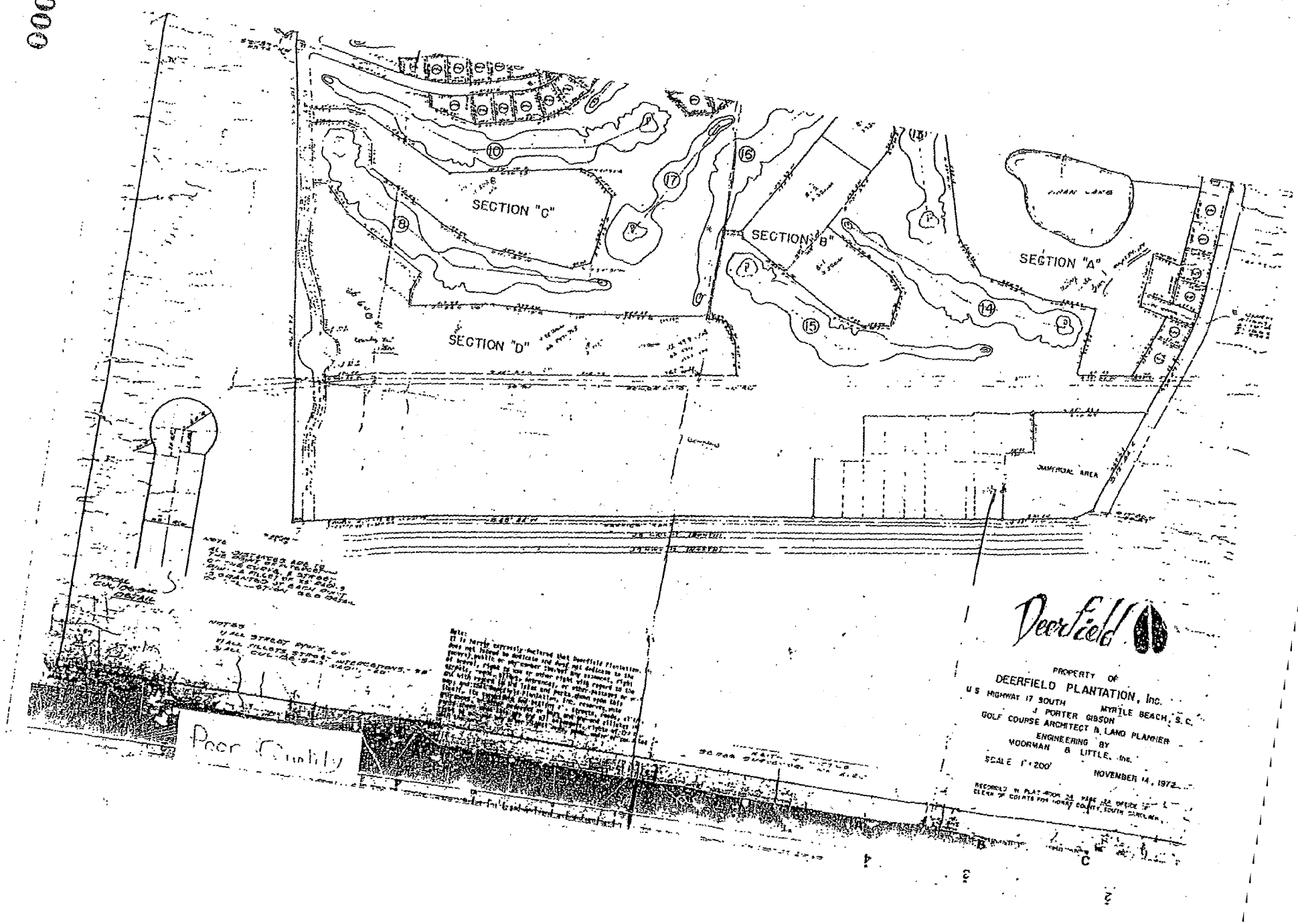
DEFENDANT'S EXHIBIT
D-
11-22-05 Dm



54-124

2

000453


SECTION "C"
SECTION "B"
SECTION "A"
SECTION "D"
COMMERCIAL AREA
Deerfield
PROPERTY OF
DEERFIELD PLANTATION, Inc.
U S HIGHWAY 17 SOUTH MYRTLE BEACH, S.C.
J PORTER GIBSON
GOLF COURSE ARCHITECT & LAND PLANNER
ENGINEERING BY
MOORMAN & LITTLE, Inc.
SCALE 1"=200'
NOVEMBER 14, 1972
Poor Quality

DEFENDANT'S EXHIBIT
LC
4-29-09

14889

FILED
HORRY COUNTY

STATE OF SOUTH CAROLINA)
) 2012 NOV 29 AM 10 06
COUNTY OF HORRY)

R. G. [illegible]
CLERK C[illegible]

DECLARATION AND ESTABLISHMENT OF CONDITIONS, RESERVATIONS, COVENANTS AND RESTRICTIONS FOR DEERFIELD PLANTATION SINGLE FAMILY RESIDENTIAL SUBDIVISION HORRY COUNTY, SOUTH CAROLINA

KNOW ALL MEN BY THESE PRESENTS:

Deerfield Plantation, Inc., a South Carolina Corporation, being the owner of all of the following described premises situate within Horry County, South Carolina, to wit:

> Lots of land numbered 1 through 458, as shown and delineated upon that certain map made by Moorman & Little, Inc., dated November 14, 1972, and recorded in Plat Book 54, page 124, office of the Clerk of Court for Horry County, S. C.; reserving, however, unto the Developer, its successors and assigns the right to relieve and remove lots 434 through 458, inclusive, from the effect of this declaration and to reclassify the same so as to put or cause the same to be put to a different use other than herein specified as the Developer may see fit at any time prior to the selling of any one of said lots 434 through 458

has established a general plan for the improvement and development of such premises, and does hereby establish the covenants, conditions, reservations, and restrictions upon which and subject to which all lots and portions of such lots shall be improved or sold or conveyed by it as owner thereof. Each and every one of these covenants, conditions, reservations, and restrictions is and all are for the benefit of each owner of land in the abovementioned development or subdivision, or any interest therein, and shall inure to and pass with each and every parcel of such subdivision, and shall bind the respective successors in any interest of the present owner thereof. These covenants, conditions, reservations and restrictions are and each thereof is imposed upon such lots, all of which are to be construed as restrictive covenants running with the title to such lots and with each and every parcel thereof, to wit:

1. No building, fence, sidewalk, wall, drive or other structure shall be erected, placed or altered on any lot until the proposed building plans, specifications, exterior color or finish, plot plans (showing the proposed location of such building or structure, drives and parking area), and construction schedule shall have been approved in writing by Developer, its successors and assigns. Refusal of approval of plans, location or specifications may be based by the Developer upon any ground, including purely aesthetic considerations, which in the sole and uncontrolled discretion of the Developer shall seem sufficient. No alterations may be made in such plans after approval by the Developer is given except by and with the written consent of the Developer. No alterations in the exterior appearance of any building or structure shall be made without like approval by the Developer. One copy of all plans, specifications and related data shall be furnished the Developer for its records.

Be. 481 pg. 306

2. No building shall be located closer than thirty (30) feet to the front street line and not closer than ten (10) feet to the side property line and not closer than twenty-five (25) feet to the rear property lines, provided however, that no building shall be located closer than fifteen (15) feet to the side property line on any lot which has a width in excess of one hundred (100) feet and not closer than twenty-five (25) feet to any side lot line bordering on any street. In order to assure that houses will be located with regard to the topography of each individual lot, Developer herein reserves unto itself, its successors and assigns, the right to control absolutely and solely to decide the precise site and location of any house or dwelling or other structure upon any lot or building plot consisting of more than one lot, provided, however, that such location shall be determined only after reasonable opportunity is afforded the lot owner to recommend a specific site.

3. The exterior of all houses and other structures must be completed within one year after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the owner or builder due to strikes, fires, national emergencies or natural calamities. No building under initial construction shall be occupied until construction is completed.

4. All lots shall be used for residential purposes exclusively. No structures, except as hereinafter provided, shall be erected, altered, placed or permitted to remain on any lot other than one (1) detached single family dwelling of not less than eighteen hundred (1800) square feet of floorspace exclusive of porches and garage and not to exceed two (2) stories in height above ground level and one small one-story accessory building which shall cover any outside pump and which may include a detached private garage, provided the use of such dwelling or accessory building does not include any activity normally conducted as a business. Such accessory building may not be constructed prior to the construction of the main dwelling, and shall conform substantially with the style and exterior finish of the main dwelling.

5. It shall be the responsibility of each lot owner to prevent the development of any unclean, unsightly, or unkempt condition of buildings or grounds on such lot which shall tend to substantially decrease the beauty of the neighborhood as a whole or the specific area.

6. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. There shall not be maintained any plants, poultry, animals (other than household pets) or device or thing of any sort the normal activities or existence of which is, in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other property in the neighborhood by the owner thereof.

7. All electrical service and telephone lines shall be placed underground and no outside electrical lines shall be placed overhead, but this restriction may be waived by the Developer. No exposed or exterior radio or television transmission or receiving antennae shall be erected, placed, or maintained on any part of the premises, but this restriction may be waived by the Developer. Any waiver of these restrictions shall not constitute a waiver as to other lots or lines or antennae.

8. No billboards or advertising signs of any character shall be erected, placed, permitted, or maintained on any lot or improvement thereon except as herein expressly permitted. A name and address sign, the design of which shall be furnished to the lot owner on request by the reversionary owner, shall be permitted. No other sign

of any kind or design shall be allowed. The provisions of this paragraph may be waived by the Developer, only when in its discretion the same is necessary to promote the sale of property in and the development of the subdivision area. Nothing herein shall be construed to prevent the reversionary owner from erecting, placing, or maintaining signs, structures and offices as may be deemed necessary by the Developer for the operation of the subdivision.

9. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, placed, or permitted upon any part of such premises, nor shall any oil, natural gas, petroleum, asphaltum, or hydrocarbon products or minerals of any kind be produced or extracted from the premises.

10. The Developer shall determine the location, color, size, design, lettering, and all other particulars of all mail or paper delivery boxes, and standards and brackets and name signs for such boxes in order that the area be strictly uniformed in appearance with respect thereto.

11. Easements to permit the doing of every act necessary and proper in the playing of golf on the golf course adjacent to the lots and the playing of tennis on tennis courts adjacent to the lots which are subject to these restrictions are hereby granted and established. These acts shall include, but not be limited to, the recovery of golf balls and tennis balls from such lots, the flight of golf balls and tennis balls over and upon such lots, the use of necessary and usual equipment upon such golf course and tennis courts, the usual and common noise level created by the playing of the game of golf, together with all the other common and usual activity associated with the game of golf or the game of tennis and with all the normal and usual activities associated with the operation of a country club or clubhouse. The Developer shall have the right to determine the manner and extent to which the rights under this easement shall be exercised, and in the event that some other person, corporation, or other entity shall hereafter operate said golf course, tennis courts, country club or clubhouse facility then the Developer shall have the right to prescribe in writing to such person, corporation, or entity charged with the operation of the said golf course, tennis courts, country club or clubhouse facility the manner and extent to which the rights under this easement shall be exercised. In addition the Developer may, in its sole discretion, limit or withdraw or prohibit certain of the acts authorized by this easement, and it may limit the manner or place of doing all or certain of the acts authorized by this easement.

12. Each lot owner shall provide space for parking two automobiles off the street prior to the occupancy of any dwelling constructed on said lot in accordance with reasonable standards established by the Developer.

13. Each lot owner shall provide underground garbage receptacles or similar facility in accordance with reasonable standards established by the Developer, or a roll out garbage rack of type approved by the Developer, which shall be visable from streets on garbage pick-up day only. No garbage or trash incinerators shall be permitted upon the premises.

14. The Developer reserves unto itself, its successors and assigns, a perpetual, alienable and releasable easement and right of ingress and egress, over, upon, across and under each lot for the erection, maintenance, installation and use of electrical and telephone poles, wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public convenience or utilities, including easement for privately owned television and other communications cable and equipment, and the Developer may further cut drainways for surface water wherever and whenever such action may appear to the Developer to be necessary in order to maintain reasonable standards of health, safety and appearance. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other

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similar action reasonably necessary to provide economical and safe utility or other said installation and to maintain reasonable standards of health, safety and appearance. It further reserves the right to locate wells, pumping stations, and tanks within residential areas on any walkway, or any residential lot designated for such use on the applicable plat of a residential subdivision, or to locate same upon any adjacent lot with the premission of the owner of such adjacent lot. Such rights may be exercised by any licensee of the Developer but this reservation shall not be considered an obligation of the Developer to provide or maintain any such utility or service. The Developer guarantees that in exercising the rights of this easement that no water, sewer, or power lines or other installations aboveasid shall be located upon any lot in any area more than fifteen (15) feet from the property line, except to service the premises. No structures, including walls, fences, paving or planting shall be erected upon any part of the property which will interfere with the rights of ingress and egress provided for in this paragraph.

15. No structure of a temporary character shall be placed upon any lot at any time, provided, however, that this prohibition shall not apply to shelters used by the contractor during the construction of the main dwelling house, it being clearly understood that these latter temporary shelters may not, at any time, be used as residences or permitted to remain on the lot after completion of construction.

16. No trailer, tent, barn, tree house or other similar outbuilding or structure shall be placed on any lot at any time, either temporarily or permanently.

17. No fuel tanks or similar storage receptacles may be exposed to view, and may be installed only with the main dwelling house, within the accessory building, or buried underground.

18. No lot shall be subdivided, or its boundary lines changed, except with the written consent of the Developer. However, the Developer hereby expressly reserves to itself, its successors and assigns, the right to re-plat any two (2) or more lots shown on the plat of said subdivision prior to delivery of deed therefor in order to create a modified building lot or lots. The restrictions and covenants herein apply to each such building lot so created.

19. No clothesline or drying yard shall be located upon the premises so as to be visable from any street or from the golf course or from any adjoining real property or lot.

20. No individual water supply system shall be permitted upon the premises with the exception of a shallow well to be used for irrigation purposes only, which shallow well shall be approved in writing in all aspects, including dr pump and the covering or screening thereof, by the Developer prior to installation.

21. No commercial vehicles, construction, or like equipment or mobile or stationary trailers of any kind shall be permitted on any lot of the subdivision unless first approved by the Developer and kept in a garage completely enclosed.

22. No septic tank or other sewage disposal facility shall be placed upon any lot in the subdivision but the sewage treatment plant and sewer system for the collection and disposal of sewage provided for the development shall be used as the sole means of sewage disposal for the premises.

23. The Developer hereby expressly states its intent not to dedicate or convey to the general public or any member thereof any easement, right of travel, right to use or other right with regard to the streets, roads, alleys, entrances, or other passages or

ways and with regard to the lakes and parks shown upon the above referred to map of this subdivision (except such private easement as is stated in the Deed to each property owner purchasing or acquiring title to one of the herein described lots) and the Developer hereby reserves unto itself, its successors and assigns, all streets roads, alleys, entrances, or other passages or ways, any and all lakes and parks, all easements and rights in connection therewith for any purpose, matter or thing set forth in paragraph 14 herein, rights of travel, right to use and any other right over, upon, under or connected with the same, as shown upon the above referred to map (except such private easements as is stated in the Deed to each property owner purchasing or acquiring title to one of the herein described lots).

24. The Grantee of any of the abovesaid lots or any person contracting for the purchase of the same for himself, itself, his or its heirs, successors, administrators, executors, and assigns, by the acceptance of a deed of conveyance or contract of purchase and sale for any of the abovesaid lots, covenants and agrees to pay monthly thereafter as herein provided his or its pro rata share of the cost to maintain the roads, streets, and lighting system thereon, police protection, and garbage and trash collection, within this subdivision. The said Grantee's or Contractor's assessment in this regard shall be paid in advance on the first day of each month promptly and in the event of the said Grantee's or Contractor's failure to pay the same promptly when due shall constitute a lien upon the premises of the said Grantee or Contractor and the same may be enforced in equity as in the case of any lien foreclosure. Such monthly assessment may be in such amount as may be necessary to defray the cost of the abovesaid items and shall be adjusted from time to time based upon any preceeding years experience and the anticipated estimated reasonable cost for the next ensuing years requirements. The cost of providing the above items shall be borne and paid for by the Developer until such time as the Developer has sold or contracted for the sale of ninety (90%) per cent of the abovesaid lots in this subdivision, with the exception of the cost of garbage and trash collection and the cost of such said garbage and trash collection shall be paid for on the first day of each month to the Developer by any lot owner who has improved one or more lots, on a per improved lot basis, in such amount as the Developer may be able to obtain garbage and trash collection services for, and all lot owners shall use the garbage and trash collection services contracted for or offered by the Developer. In the event that the Developer fails to enforce the assessment for garbage and trash collection, said assessment may be enforced jointly and severally by the other property owners in the subdivision. At such time as the Developer has sold or contracted for the sale of ninety (90%) per cent of the abovesaid lots in this subdivision, then the maintenance of the roads, streets, lighting system therefor, police protection and garbage and trash collection, and the cost of providing and maintaining the same, shall automatically devolve upon Deerfield Plantation Property Owners Association, Inc., a non-profit corporation, and thereafter the abovementioned monthly assessment for the providing of the abovesaid items shall be determined by and collected by and paid to the said Deerfield Plantation Property Owners Association, Inc., and such assessment shall be enforced by the said Deerfield Plantation Property Owners Association, Inc. Each and every lot owner or person contracting for the purchase of one of the abovesaid lots (regardless of whether said owner or person contracting obtained title to said property or contracted for the purchase of said property from the Developer or from some subsequent or other Grantor or contracting party), in accepting a deed or in executing a Contract for the purchase of any lot in this subdivision, agrees to and shall be immediately a member of and be subject to the obligations and duly enacted by-laws, rules, regulations, and resolutions of Deerfield Plantation Property Owners Association, Inc., a non-profit corporation. Provided, however, that all assessments and charges mentioned herein, and all liens connected therewith shall be subordinate and junior to any mortgage lien placed upon any of the real property subject to the same by the owner thereof. Provided, however, that neither the Developer nor property retained by the Developer shall be subject to assessment by Deerfield Plantation Property Owners Association, Inc., or any member thereof or any other property owner, after the duty of providing for and maintaining the above items and levying assessment therefor has devolved upon Deerfield Plantation Property Owners

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Association, Inc. as aforesaid. Provided further, however, that at such time as the Developer has completed the installation of all roads and streets and the lighting system therefor, then the Developer may at its option devolve upon and transfer to Deerfield Plantation Property Owners Association, Inc. the responsibility for providing and maintaining the above items and levying assessment therefor, even though ninety (90%) per cent of the aforesaid lots in this subdivision shall not have been sold or contracted for sale by the Developer, and in such event Deerfield Plantation Property Owners Association, Inc. shall have the right and privilege of assessing the Developer on a pro rata basis for any property which the Developer still owns and for which the Developer has not contracted for the sale of.

25. All covenants, conditions, limitations, restrictions and affirmative obligations set forth in this Declaration shall run with the land and shall continue and be binding until January 1, 1992, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then owners of lots affected by the same has been recorded, agreeing to change the same in whole or in part; provided however, that all property rights and other rights reserved to the Developer shall continue forever to the Developer, its successors and assigns, except as otherwise provided herein.

26. Any land owner shall be required to receive and accept water supply and/or sewer services from the Developer or any person or corporation with whom the Developer contracts for the furnishing of water and/or sewer services as and when the same shall be made available to the landowner, and the land owner shall pay such charges therefor as shall be established by the Public Utilities Commission for the State of South Carolina or such other governmental authority as may have the power to set and determine rates for the same.

27. In the event the owner of any residential lot permits any underbrush, weeds, etc., to grow upon any lot to a height of two (2) feet (except as part of a landscaping plan approved by the Developer) and on request fails to have the premises cut within thirty (30) days, agents of the Developer may enter upon said land and remove the same at the expense of the owner, provided, however, that such expense shall not exceed Fifty ($50.00) Dollars annually. The Developer may likewise enter upon said land to remove any trash which has collected on said lot without such entrance and removal being deemed a trespass, all at the expense of the owner of said lot; provided, however, that such expense shall not exceed Fifty ($50.00) Dollars annually. This provision shall not be construed as an obligation on the part of the Developer to provide garbage or trash removal services.

28. In the event that any owner desires to sell any lot or lots, either improved or unimproved, then the said lot or lots which such owner shall desire to sell shall be first offered for sale to the Developer at the same price and on the same terms at which the highest bona fide offer has been made to the owner for the said lot or lots. The owner desiring to sell such lot or lots shall give the Developer written notice via registered mail, return receipt requested, of the owner's desire to sell any such lot or lots and shall further advise the Developer in said offer of the name and address of the person, firm or corporation or entity making said highest bona fide offer, as well as the amount and terms of said offer. The Developer shall have a period of thirty (30) days after receipt of said written notice within which to give notice to the owner of its intention to exercise its option to purchase said lot or lots at the same price and on the same terms as said highest bona fide offer and the Developer shall have an additional period of not less than twenty (20) days within which to close the said transaction. Should the Developer fail or refuse within said 30-day period to notify the owner as aforesaid of its intention to exercise its option to purchase said lot or lots at the offered price and terms, then the owner shall have the right to sell said lot or

lots to the person, firm or corporation or other entity making said bona fide offer whose identity was revealed to the Developer in said written notice, provided, however, that any such sale of any lot or lots by the owner to the person, firm or corporation making such offer shall be subject to all of the terms, covenants, conditions, restrictions, reservations and limitations and provisions of this Declaration. The provisions of this Paragraph shall continue and be effective until January 1, 1992, at which time the provisions of this paragraph, including all options and rights granted to or reserved by the Developer by this Paragraph shall terminate.

29. It is agreed that time is of the essence with regard to these restrictions, covenants, limitations and conditions.

30. In the event of a violation or breach of any of these restrictions by any property owner, or agent, or agent of such owner, the owners of lots in the subdivision, or any of them jointly or severally, shall have the right to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any event. In addition to the foregoing, the Developer, its successors and assigns, shall have the right, whenever there shall have been built on any lot in the subdivision any structure which is in violation of these restrictions, to enter upon the property where such violation exists, and summarily abate or remove the same at the expense of the owner, if after thirty (30) days written notice of such violation, it shall not have been corrected by the owner. Any such entry and abatement or removal shall not be deemed a trespass. The failure to enforce any right, reservation, restriction or condition contained in this Declaration, however long continued shall not be deemed a waiver of the rights to do so hereafter as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement. Should the Developer employ counsel to enforce any of the foregoing covenants, conditions, reservations or restrictions, because of a breach of the same, all costs incurred in such enforcement, including a reasonable fee for the Developer's counsel, shall be paid by the owner of such lot or lots in breach thereof and the Developer shall have a lien upon such lot or lots with regard to which there is a breach of these covenants, conditions, reservations, or restrictions to secure payment of all such costs and fees.

31. In the event that any one or more of the foregoing covenants, conditions, reservations, or restrictions shall be declared for any reason, by a court of competent jurisdiction, to be null and void, such judgement or decree shall not in any manner whatsoever affect, modify, change, aberrant , or nullify any of the covenants, conditions, reservations, and restrictions not so declared to be void, but all of the remaining covenants, conditions, reservations, and restrictions not so expressly held to be void shall continue unimpaired and in full force and effect.

32. In the event that any of the provisions hereunder are declared void by a court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then in that event such terms shall be reduced to a period of time which shall not violate the rule against perpetuities or any other law of the State of South Carolina, and such provision shall be fully effective for said reduced period of time.

33. The term "Developer" wherever used herein shall mean Deerfield Plantation, Inc., a South Carolina corporation.

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IN WITNESS WHEREOF, Deerfield Plantation, Inc., a South Carolina corporation, has caused this instrument to be executed by its duly authorized officers and its corporate seal to be hereunto affixed this 10th day of November 1972.

WITNESSES:

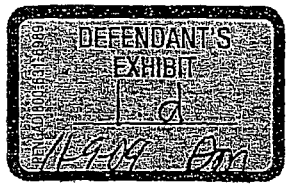
DEERFIELD PLANTATION, INC. (SEAL)
By: V. F. Platt, Jr., President
Attest: Kate W. Platt, Secretary

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

PERSONALLY appeared before me [illegible] and made oath that he saw the within named Deerfield Plantation, Inc. by V. F. Platt, Jr., as President and Kate W. Platt, as Secretary, sign, seal and as their act and deed deliver the within written Declaration and Establishment of Conditions, Reservations, Covenants, and Restrictions for Deerfield Plantation, and that he with [illegible] witnessed the execution thereof.

SWORN TO before me this 10th day of November A. D. 1972.

(L.S.)
Notary Public for South Carolina
My commission expires: 5-29-78



PROPERTY REPORT

NOTICE AND DISCLAIMER BY OFFICE OF INTERSTATE LAND SALES REGISTRATION, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.

This report is not a recommendation or endorsement of the offering herein by the Office of Interstate Land Sales Registration, nor has that office made an inspection of the property nor passed upon the accuracy or adequacy of this report or any promotional or advertising materials used by the seller.

It is in the interest of the buyer or lessee to inspect the property and carefully read all sales or lease documents.

Prospective buyers and lessees are notified that unless they have recieved this property report prior to, or at the same time they enter into a contract, they may void the contract by notice to seller.

Unless a buyer or lessee acknowledges in writing that he has read the report and personally inspected the lot prior to signing his contract, he may revoke his contract within 48 hours from the signing of his contract, if he has received the property report less than 48 hours prior to signing such contract.

1. NAME AND ADDRESS OF DEVELOPER:

The developer of this subdivision is Deerfield Plantation, Inc. who can be contacted at 911 Surfside Drive, Surfside Beach, South Carolina, 29577, phone (803) 238-5138.

2. NAME AND LOCATION OF SUBDIVISION:

The subdivision (Deerfield Plantation) is located in the County of Horry, S.C., a single family residential subdivision.

a. STATE THE DATE THE REGISTRATION WITH THE OFFICE OF INTERSTATE LAND SALES REGISTRATION BECAME EFFECTIVE:

The registration of this subdivision with the Office of Interstate Land Sales Registration became effective on December 26, 1972.

b. THIS OFFERING CONSISTS OF: Lots of land numbered 1 through 117, 126 through 458, as shown and delineated upon that certain map made by Mooreman and Little, Inc., dated November 14, 1972, and recorded in Plat Book 54, Page 124, office of the Clerk of Court for Horry County, State of South Carolina.

(Estimated Completion Dates)

UNIT	LOT NO.	WATER	ELECTRICITY	TELEPHONE
Two	1-117	Oct., 73	Oct., 73	Oct., 73
Two	126-203	Oct., 73	Oct., 73	Oct., 73
Two	204-226	June, 73	June, 73	June, 73

Note: Lots 204-226 are surveyed, staked and have access by paved two lane highway.

Two	227-332	July, 73	July, 73	July, 73
One	333-345	June, 73	June, 73	June, 73

Note: Lots 335-345 are surveyed, staked and have access by paved two lane highway.

One	346-433	Aug., 73	Aug., 73	Aug., 73
One	434-458	Aug., 73	Aug., 73	Aug., 73

3. LIST NAMES AND POPULATIONS OF SURROUNDING COMMUNITIES AND LIST DISTANCES OVER PAVED AND UNPAVED ROADS TO THE SUBDIVISION:

a. Deerfield Plantation is located in Horry County, South Carolina with a

population of some 69,992. Conway, South Carolina is the County Seat some 16 miles from the center of Deerfield. The population of Conway is 8,151. Access is by paved roads.

b. Deerfield Plantation is 5 miles South of Myrtle Beach, South Carolina...a city of 9,035 with access via 4-lane, U.S. Highway 17. Surfside Beach, South Carolina, adjoining Deerfield, on U.S. Highway 17, is a city of some 2,300; Georgetown, S.C., some 30 miles to the South via U.S. Highway 17, has a population of 10,449. The State Capital of South Carolina is Columbia, via U.S. 501 - S.C. 378.

It's located 140 miles Southwest and has a population of 113,542. Access to all cities is by paved roads. Access from all Southeastern cities, Miami to Deerfield is via U.S. 17 and I-95, (714 miles). Montreal, to the North, via U.S. 17, U.S. 13, I-95 and U.S. 87, (1100 miles).

4. IF PERIODIC PAYMENTS ARE TO BE MADE BY A BUYER [AS IN THE CASE OF INSTALLMENT SALES CONTRACTS] COMPLETE ALL ITEMS UNDER THE PARAGRAPH.

a. WILL THE SALES CONTRACT BE RECORDABLE?

Yes, the sales contract will be recordable. However, a seller's warranty deed will not be issued until the full purchase price of lot or lots has been paid.

b. IN THE ABSENCE OF RECORDING, COULD THE DEVELOPER'S CREDITORS OR OTHERS ACQUIRE TITLE TO THE PROPERTY FREE OF ANY OBLIGATION TO DELIVER A DEED TO THE BUYER WHEN FINAL PAYMENT HAS BEEN MADE UNDER THE SALES CONTRACT?

Yes, during the period between signing a sales contract and the recording of a warranty deed, developer's creditors could impede or prevent transfer of the title of a lot to a buyer. However, the developer will be able to issue deeds with free and clear title to lots upon which the developer has recieved full payment subject to matters set forth in 8 (b). An individual lot release provision has been made with the mortgage holders.

c. WHAT PROVISION, IF ANY, HAS BEEN MADE FOR REFUNDS IF BUYER DEFAULTS:

If the buyer defults and does not close, the developer can retain the down payment and all payments made under the sales agreement.

d. STATE PREPAYMENT PENALTIES OR PRIVILEGES, IF ANY.

Prepayment may be made at any time without penalty.

5. IS THERE A BLANKET MORTGAGE OR OTHER LIEN ON THE SUBDIVISION OR PORTION THEREOF IN WHICH THE SUBJECT PROPERTY IS LOCATED?

Yes, there are two blanket encumberances on the property: One in favor of the South Carolina National Bank, Columbia, South Carolina and the other in favor of V.F. Platt, Jr., of Surfside Beach, South Carolina. Lien holder may take title to the property free of any obligation to convey a lot to the purchaser in the event of default by the developer. The developer has made arrangements with the holders of the liens to release portions of the property covered by the lien before conveyance is made to the purchaser upon payment of certain amounts to the lien holders. The developer has made arrangements with the lien holders that upon receiving twenty-five percent (25%) of the sales price of an individual lot it shall be released from the lien.

6. DOES THE OFFERING CONTEMPLATE LEASES OF THE PROPERTY IN ADDITION TO, OR AS DISTINGUISHED FROM SALES?

No arrangements are available to lease property from the developer.

7. IS BUYER OR LESSEE TO PAY TAXES, SPECIAL ASSESSMENTS OR TO MAKE PAYMENTS OF ANY KIND FOR THE MAINTENCE OF COMMON FACILITIES IN THE SUBDIVISION [a] BEFORE TAKING TITLE OR SIGNING OF LEASE OR [b] AFTER TAKING TITLE OR SIGNING OF LEASE?

TAXES: Purchaser will pay to developer an amount equal to the property taxes paid by the developer upon property purchased from time of execution of purchase agreement. After taking title, purchaser will pay property taxes. For amount, consult local taxing authorities.

SPECIAL ASSESSMENTS: None known other than those included in property taxes assessment. For amount, consult local taxing authorities.

PAYMENTS TO PROPERTY OWNER'S ASSOCIATION: A Property Owner's Association has been formed. The Association will have the power to make annual assessments to cover the cost of maintenance, i.e. roads, rights-of-way, lighting thereon, garbage and trash collection, security protection, and other common areas as designated on the plat. The cost of these services may be apportioned among the property owners.

No assessment for maintenance of roads, rights-of-way, lighting thereon, security protection, or other common area, as designated on the plat, will be made until such time as there is a conveyance of title to or contract for purchase and sale of 90% of all single family residential lots or until all roads and streets and lightning therefor have been completed and developer elects to cause to be devolved upon the property owner's association the obligation to assess for said purposes and then developer shall be assessed pro rata upon property which developer continues to own. Assessment for garbage and trash collection will be made by developer or property owner's association for any lot improved, from time of improvement. See Declaration and Establishment of Conditions, Reservations, Convenants and Restrictions, also Purchase Agreement, also By-Laws of Deerfield Plantation Property Owner's Association, Inc., and also Privileges and Obligations Agreement.

OTHER: None.

8. a. **WILL BUYER'S DOWNPAYMENT AND INSTALLMENT PAYMENTS BE PLACED IN ESCROW OR OTHERWISE SET ASIDE? YES OR NO? IF YES, WITH WHOM? IF NOT, WILL TITLE BE HELD IN TRUST OR IN ESCROW?**

There are no arrangements for escrowing payments or title.

b. **EXCEPT FOR THOSE PROPERTY RESERVATIONS WHICH LAND DEVELOPERS COMMONLY CONVEY OR DEDICATE TO LOCAL BODIES OR PUBLIC SERVICES TO THE LAND BEING DEVELOPED, WILL BUYER RECEIVE A DEED FREE OF EXCEPTIONS?**

The deed will be subject to common subdivision conditions, Reservations, Convenants and Restrictions set out in Declaration of Restrictions, Convenants, Conditions, and Reservations and public utility easements of record upon the property.

c. **LIST ALL PERMISSIBLE USES OF THE PROPERTY BASED UPON LOCAL ZONING ORDINANCES.**

The subdivision is not located within a municipality with zoning ordinances. However, County zoning permits developer to set zoning with the recording of a plat. A copy of the developer's plat is given to each purchaser.

d. **LIST ALL EXISTING OR PROPOSED UNUSUAL CONDITIONS RELATING TO THE LOCATION OF THE SUBDIVISION AND TO NOISE, SAFETY OR OTHER NUISANCES WHICH AFFECT OR MIGHT AFFECT THE SUBDIVISION.**

There are no existing or proposed natural hazards, unusual noises, unusual safety factors or noxious odors which affect or may affect the subdivision.

9. a. **LIST ALL RECREATIONAL FACILITIES CURRENTLY AVAILABLE (e.g. TELEVISION, SPORTS, BEACHES, ETC.). STATE ANY COSTS OR ASSESSMENTS TO BUYER OR LESSEE.**

TELEVISION: No local station. Surrounding area is served by 9 channels representing ABC, NBC, and CBS, CATV and South Carolina Educational Television Network. NO CHARGE EXCEPT, FOR CATV (CABLE TV).

BEACHES: The Grand Strand covering some sixty miles of beach front with numerous public beaches. NO CHARGE.

AIRPORT: Located at North Myrtle Beach for private and commercial aircraft. TIE DOWN COST MAY VARY FROM TIME TO TIME.

RECREATIONAL: Myrtle Beach has two of the most renown amusement parks on the Southeastern Coast (5 miles from Deerfield Plantation). NO CHARGE INTO PARK, ADMISSION FOR RIDES.

FISHING: Pier and surf fishing along The Grand Strand. NO CHARGE FOR SURF FISHING, BUT CHARGE FOR PIER FISHING ($1.26).

MOVIES: Several indoor and outdoor movies featuring the latest movies. ADMISSION CHARGED.

ENTERTAINMENT: Numerous dinner clubs featuring well known entertainers. MODERATELY PRICED.

b. IF FACILITIES ARE PROPOSED OR PARTLY COMPLETED, STATE PROMISED COMPLETION DATE, PROVISIONS TO ASSURE COMPLETION, AND ALL ESTIMATED COSTS OR ASSESSMENTS TO BUYER OR LESSEE. IF THERE ARE NO PROVISIONS TO ASSURE COMPLETION, SO STATE.

CLUBHOUSE: Proposed, with 19th Hole Club Room, Meeting Rooms, Snack Bar, Pro Shop, Card Room, Patio Area.

SWIMMING POOL: Proposed, with patio and lounge furniture.

TENNIS COURTS: Three (3) proposed. (Lighted).

GOLF COURSE: 18 Hole Championship Course. COST TO BUYER FOR COMPLETION OR MAINTENANCE OF FACILITIES? NONE.

DEVELOPER ESTIMATES ABOVE ITEMS TO BE COMPLETED BY September, 1973, and gives its assurance of completion, and additionally requiring all contractors to provide completion bonds.

Initiation dues, annual dues and fees, and other use or privilege charges shall be charged to buyers or lessees and adjusted from time to time, as determined by the developer from time to time.

The developer will have no obligation or committment to maintain clubhouse, swimming pool, tennis courts or golf course for any period of time and no purchaser or lessee of property shall be automatically entitled to membership in or use of said facilities by virtue of acquiring an interest in real property in the development.

10. STATE WHETHER THE FOLLOWING ARE NOW AVAILABLE IN THE SUBDIVISION: GARBAGE AND TRASH COLLECTION, SEWAGE DISPOSAL, PAVED STREETS, ELECTRICITY, GAS, WATER, TELEPHONE. IF YES, STATE ANY ESTIMATED COSTS TO BUYER OR LESSEE.

GARBAGE AND TRASH COLLECTION: Collection service is available in the area upon the completion of construction of a home at $48.00 per year. ($4.00 per month).

SEWAGE DISPOSAL: The developer will construct and maintain or provide a sewer disposal system at no cost to the purchaser of lots in the subdivision, at such

reasonable rates, regulated by the state of South Carolina Public Service Commission, to be charged to lot owners. In addition, the lot owner will be charged a "Hook-Up" charge of $350.00, or such other amount as is approved by said South Carolina Public Service Commission.

The developer estimates completion to be August 1, 1973, and gives its assurance of completion, requiring completion bonds from all contractors.

PAVED STREETS: Access from the subdivision is via U.S. Highway 17 and S.C. State Highway 375–3.5 miles to Myrtle Beach, .5 miles to Surfside. Developer estimates completion by November, 1973, and gives its assurance of completion, requiring completion bonds from all contractors.

The roads in the platted area are not complete, roads will have a 60 foot right-of-way, 18 to 20 feet being paved. There will be no charge to lot owners for construction; and no charge to lot owners for maintenance except as set forth in paragraph (7) above.

ELECTRICITY: Underground electricity will be available from a local public utility with lines being installed to each lot. No cost of installation will be borne by the purchaser. Developer and public utility estimates completion by August 1, 1973.

GAS: Gas service will not be available in the subdivision. Bottled gas is available from local suppliers.

WATER: Water lines will be installed to each lot or provided for by the developer. Water is available from Platt Water Company, Inc.. Charges are regulated by the South Carolina Public Service Commission.

Developer estimates completion to be August 1, 1973, and gives its assurance of completion, requiring completion bonds from all contractors.

There will be no charge to purchaser covering installation of water lines to the property line. The developer will construct and maintain or provide a water system at no cost to the purchaser of lots in the subdivision, at such reasonable rates, regulated by the State of South Carolina Public Service Commission, to be charged to lot owners. In addition, the lot owner will be charged a "Hook-Up" charge of $250.00 or such other amount as is approved by said South Carolina Public Service Commission.

The developer has obtained a letter from a cognizant health officer on the quality and purity of the water. Accordingly, there is assurance that the water will be both pure and of acceptable quality.

TELEPHONE: Underground telephone lines will be installed to each lot within the subdivision at no charge to lot owners.

Service will be provided by Horry Telephone Cooperative, Inc., public utility.

Installation of service being borne by purchaser according to regular telephone company tariffs.

The developer estimates completion to be August 1, 1973, and gives its assurance of completion, having received a completion commitment from the Horry Telephone Cooperative, Inc..

11. WILL THE WATER SUPPLY BE ADEQUATE TO SERVE THE ANTICIPATED POPULATION OF THE AREA?

Yes, the developer has obtained from Platt Water Company, Inc., a public utility, a report indicating the source and quantity of water. Accordingly, the developer is assured that a sufficient quantity of water will be available to serve the anticipated population of the area.

12. IS ANY DRAINAGE OF SURFACE WATER, OR USE OF FILL NECESSARY TO MAKE LOTS SUITABLE FOR CONSTRUCTION OF A ONE STORY RESIDENTIAL STRUCTURE?

The lots being sold hereunder are not ones troubled by surface water, nor are they ones in which fill is necessary to build.

13. STATE WHETHER ANY OF THE FOLLOWING ARE CURRENTLY AVAILABLE IN THE SUBDIVISION: SCHOOLS; MEDICAL FACILITIES [HOSPITALS, DOCTORS, DENTISTS]: SHOPPING FACILITIES. LIST AVAILABILITY OF PUBLIC TRANSPORTATION TO, AND DISTANCE OF FACILITY FROM GEOGRAPHICAL CENTER OF SUBDIVISION.

None of the above listed facilities are available within the subdivision.

SCHOOLS: Elementary, Junior and Senior High Schools are located within 1 to 5 miles of the subdivision.

MEDICAL FACILITIES: Hospitals, doctors and dentists are available within 1 to 7 miles.

SHOPPING: Major shopping centers available within 1 to 7 miles.

TRANSPORTATION: Bus, 7 miles distant; taxi, available on call; train, 65 miles in Florence, South Carolina; air, 20 miles in North Myrtle Beach, South Carolina.

14. APPROXIMATELY HOW MANY HOMES WERE OCCUPIED AS OF NOVEMBER 30, 1972? NONE.

15. a. STATE ELEVATION OF THE HIGHEST AND LOWEST LOTS IN THE SUBDIVISION AND BRIEFLY DESCRIBE TOPOGRAPHY AND PHYSICAL CHARACTERISTICS OF THE PROPERTY.

The elevation of the highest lot in the development is 38 feet above sea level, while the elevation of the lowest lot is 22.5 feet above sea level. The property rolls with the lower elevations being alongside U.S. Highway 17, the Eastern boundary. Rising to 38 feet in the center and sloping to 22.5 feet on the Western boundary. The property is general to the area along this part of the Atlantic Coast. Soil conditions are predominantly sandy loam. The area is wooded with pine, oak, dogwood and an abundance of surface vegetation.

b. STATE IN INCHES THE AVERAGE ANNUAL RAINFALL AND, IF APPLICABLE, THE AVERAGE ANNUAL SNOWFALL FOR THE SUBDIVISION OR THE AREA IN WHICH IT IS LOCATED.

Rainfall average is 50-65 inches annually.

c. STATE TEMPERATURE RANGES FOR SUMMER AND WINTER, INCLUDING HIGHS, LOWS AND MEANS.

The mean November to March temperature is 62.3 degrees April through October averaging 80.6 degrees; highest average 83.7; lowest 52.5; daily sunshine average 7.8 hours.

16. WILL ANY SUBSURFACE IMPROVEMENT, OR SPECIAL FOUNDATION WORK BE NECESSARY TO CONSTRUCT ONE STORY RESIDENTIAL OR COMMERCIAL STRUCTURES ON THE LAND?

No subsurface, special foundation or improvement work will be necessary to construct normal one story residential or commerical structures.

17. ARE ALL LOTS AND COMMON FACILITIES LEGALLY ACCESSIBLE BY PUBLIC ROAD OR STREET?

The subdivision is legally accessible by public roads. U.S. Highway 17 on the Eastern boundary and S.C. Highway 375 on the Northern boundary. Roads within the subdivision will be private. The developer estimates completion by November 1, 1973, and gives its assurance of completion and will require completion bonds from all contractors.

18. HAS LAND IN THE SUBDIVISION BEEN PLATTED OF RECORD?

The entire development has been platted and the plat is filed of record, in the Office of the Clerk of Court for Horry County, State of South Carolina, in the Plat Book 54, at Page 124.

The subdivision has been surveyed. Metes and bounds and lots have been computerized and platted. A buyer can obtain a copy of a plat survey showing his lot within the developement without charge, upon taking title or signing Purchase Agreement.

19. ARE LOTS STAKED OR MARKED SO THAT BUYER CAN LOCATE HIS LOT(S)?

No, except as stated in paragraph 2 (b) above. Individual lots in the subdivision are not staked. However, various points have been established by survey so that a buyer can locate his lot(s). The developer estimates that individual lots will be staked by August 1, 1973, and gives its assurance of completion, further requiring completion bonds from all contractors.

20. STATE WHETHER THE DEVELOPER HAS EXPERIENCED AN OPERATING LOSS OR DEFICIT DURING THE CURRENT OR LAST FISCAL YEAR. IF SO, THE PURCHASER'S ATTENTION IS CALLED TO THOSE ITEMS OF THE PROPERTY REPORT WHEREIN THE DEVELOPER MAY HAVE PROMISED TO COMPLETE CERTAIN FACILTITES AND/OR TO DISCHARGE FINANCIAL OBLIGATIONS.

The developer is engaging for the first time in the business of developing and selling real estate and has experianced no profit or loss from real estate sales nor made any real estate sales covering the current or last fiscal year.

21. WILL THE PURCHASER BE PERMITTED TO TAKE POSSESSION OF LOT OR LOTS PURCHASED PRIOR TO FULL PAYMENT OF LOTS PURCHASED.

No, Purchaser will not be allowed to take possession prior to lot or lots being paid in full.

22. DOES DEVELOPER OWN GOLF COURSE PROPERTY & FACILITIES REFERRED TO HEREIN?

No, Developer, Deerfield Plantation, Inc. does not own the golf course & facilities related thereto, but holds a leasehold from the owner, a major stock holder of Deerfield Plantation, Inc. for a period of ten (10) years.

DEFENDANT'S EXHIBIT 1C 11-9-09 DM

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

HORRY COUNTY

R. G. HORTON CLERK OF COURT

KNOW ALL MEN BY THESE PRESENTS, that Deerfield Plantation, Inc., a South Carolina corporation, in the State aforesaid for and in consideration of the sum of Fourteen Thousand Dollars & no/100's ($ 14,000.00), Dollars to it paid by Dale W. Hill & Betty J. Hill in the State aforesaid, (Receipt whereof is hereby acknowledged) has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Dale W. Hill & Betty J. Hill ----------

subject to the within conditions, reservations, covenants and restrictions and easements:

All and singular that certain piece, parcel or lot of land situate, lying and being in Socastee Township, Horry County, S. C., and being designated as Lot # 358 on that certain map of Deerfield Plantation, property of Deerfield Plantation, Inc., made by Moorman & Little, Inc., Engineers, dated November 14, 1972, and recorded in Plat Book 54, at page 124, office of the Clerk of Court for Horry County, S. C., which said map and the record thereof is hereby incorporated herein and made a part hereof by reference.

Together with a non-exclusive private right of way and easement for ingress and egress for travel purposes to and from the above lot of land over, across and upon all streets and roads within the subdivision encompassing lots number 1 through 458 on that certain map of property of Deerfield Plantation, Inc. made by Moorman & Little, Inc., Engineers, recorded in Plat Book 54, page 124, office of the Clerk of Court for Horry County, S. C., and all streets, roads, and ways lying contiguous to any such said lot and all streets, roads and ways leading thereto from U.S. Highway number 17 and South Carolina Highway number 375 (Dick Pond Road).

This conveyance is made subject to those certain conditions, reservations, covenants and restrictions set forth in that certain Declaration and Establishment of Conditions, Reservations, Covenants and Restrictions for Deerfield Plantation Single Family Residential Subdivision, Horry County, South Carolina, recorded in Deed Book 481, page 30 office of the Clerk of Court for Horry County, S. C., which said Declaration and Establishment of Conditions, Reservations, Covenants and Restrictions and the record thereof is hereby incorporated herein and made a part hereof by reference and subject to general electrical easements to the South Carolina Public Service Authority of record.

TOGETHER WITH all and singular, the Rights, Members, Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Dale W. Hill & Betty J. Hill ---------- its, his, her, their Heirs, Successors and Assigns forever, subject to the aforesaid conditions, reservations, covenants and restrictions and easements.

And the Grantor herein hereby binds itself and its successors, to warrant and forever defend all and singular the said premises unto the said Dale W. Hill & Betty J. Hill ---------- and its, his, her or their heirs, successors and assigns, against itself and its successors and all persons whomsoever lawfully claiming, or to claim the same, or any part thereof, subject to the aforesaid conditions, reservations, covenants and restrictions and easements.

WITNESS the execution hereof by Grantor this 2nd day of February in the year of our Lord one thousand nine hundred and Seventy three and in the one hundred and Ninety Seven year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered in the Presence of:

DEERFIELD PLANTATION, INC. (CORP.) 1972 (SEAL)

By: ----------

As President

Attest: ----------

As Secretary

485-361

ORIGINAL

Horry County, Documentary
this Instrument

FILED
HORRY COUNTY

1973 FEB 7 PM 3 27

R. G. HORTON
Clerk of Court

R. G. HORTON
CLERK OF COURT

R. G.

Lot Number 358 for $ 14,000.00

SEASIDE TOWNSHIP

State of South Carolina

COUNTY OF HORRY

DEERFIELD PLANTATION, INC.

TO

Dale W. Hill & Betty J. Hill
Beachwood Shopping Center
Myrtle Beach, South Carolina 29577

DEED TO REAL ESTATE

I hereby certify that the within deed has been filed this 7 day of Feb

A.D. 19 73 Recorded in Book 455 Page 12

Clerk of Court for Horry County, South Carolina

I hereby certify that the within deed has been this ___ day of ___

A.D. 19 ___ Transferred on Tax Book Page ___

Auditor of Horry County, South Carolina

STATE OF SOUTH CAROLINA

PROBATE FOR CORPORATE GRANTOR

COUNTY OF HORRY

PERSONALLY appeared before me A. Russell Maddox and made oath that he saw the within named Deerfield Plantation, Inc. by V. F. Platt, Jr. its President and Kate W. Platt its Secretary sign, seal, and as the corporate act and deed deliver the within written deed, and that he with David F. Romeaby witnessed the execution thereof and saw the corporate seal thereto affixed.

SWORN TO before me this 5th day of February A.D. 1973

Carol A. Bowen (L.S.)
Notary Public for South Carolina
My commission expires: March 9, 1981

A. Russell Maddox

(W1.56)

000474

BOOK 100 PAGE 824 15412

DEFENDANT'S EXHIBIT 11-9-09 Dm

HORRY COUNTY

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

'83 APR 4 PM 2 15

R. G. HORTON
CLERK OF COURT

KNOW ALL MEN BY THESE PRESENTS, that Deerfield Plantation, Inc., a South Carolina corporation, in the State aforesaid for and in consideration of the sum of Thirteen Thousand Two Hundred Dollars ($ 13,200.00), Dollars to it paid by Carl L. & Geraldine O. Clemmons in the State aforesaid, (Receipt whereof is hereby acknowledged) granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Carl L. & Geraldine O. Clemmons subject to the within conditions, reservations, covenants and restrictions and easements:

All and singular that certain piece, parcel or lot of land situate, lying and being in Socastee Township, Horry County, S. C., and being designated as Lot # 36 on that certain map of Deerfield Plantation, property of Deerfield Plantation, Inc., made by Moorman & Little, Inc., Engineers, dated November 14, 1977, and recorded in Plat Book 54, at page 124, office of the Clerk of Court for Horry County, S. C., which said map and the record thereof is hereby incorporated herein and made a part hereof by reference.

Together with a non-exclusive private right of way and easement for ingress and egress for travel purposes to and from the above lot of land over, across and upon all streets and roads within the subdivision encompassing lots number 1 through 458 on that certain map of property of Deerfield Plantation, Inc. made by Moorman & Little, Inc., Engineers recorded in Plat Book 54, page 124, office of the Clerk of Court for Horry County, S. C., and all streets, roads, and ways lying contiguous to any such said lot and all streets, roads and ways leading thereto from U.S. Highway number 17 and South Carolina Highway number 375 (Dick Pond Road).

This conveyance is made subject to those certain conditions, reservations, covenants and restrictions set forth in that certain Declaration and Establishment of Conditions, Reservations, Covenants and Restrictions for Deerfield Plantation Single Family Residential Subdivision, Horry County, South Carolina, recorded in Deed Book 481, page 305, office of the Clerk of Court for Horry County, S. C., which said Declaration and Establishment of Conditions, Reservations, Covenants and Restrictions and the record thereof is hereby incorporated herein and made a part hereof by reference and subject to general electric easements to the South Carolina Public Service Authority of record.

TOGETHER WITH all and singular, the Rights, Members, Hereditaments and Appurtenances to the said premises belonging, or in any wise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Carl L. & Geraldine O. Clemmons its, his, her or their Heirs, Successors and Assigns forever, subject to the aforesaid conditions, reservations, covenants and restrictions and easements.

And the Grantor herein hereby binds itself, and its successors, to warrant and forever defend all and singular the said premises unto the said Carl L. & Geraldine O. Clemmons and its, his, her or their heirs, successors and assigns, against itself and its successors and all persons whomsoever lawfully claiming, or to claim the same, or any part thereof, subject to the aforesaid conditions, reservations, covenants and restrictions and easements.

WITNESS the execution hereof by Grantor this 7th day of February in the year of our Lord one thousand nine hundred and Seventy Three and in the one hundred and Ninety Seven year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered in the Presence of:

H. Lamar Moorman

David F. Rosenberg

DEERFIELD PLANTATION, INC. (CORP. SEAL)

By: W. F. Ellis
As President

Attest: Kate W. Pratt
As Secretary

ORIGINAL

488-824

825

$1485 County Documents-T
been paid on this instrument. HORRY COUNTY
R C
APR 4 PM 2 13
R. G. HORTON
CLERK OF COURT



Lot Number 365 for $ 13,200.00

NO. MYRTLE TOWNSHIP

State of South Carolina

COUNTY OF HORRY

DEERFIELD PLANTATION, INC.

TO

CARL L. CLEMONS &
GERALDINE O. CLEMONS

1800 North Oak Street
Myrtle Beach, S. C. 29577

DEED TO REAL ESTATE

I hereby certify that the within deed has been this 4 day of April A.D. 1973 Recorded in Book 488 of Deeds, Page 824 at 2:15 o'clock P. M.

Clerk of Court of Horry County, South Carolina

I hereby certify that the within deed has been this day of A.D. 19 Transferred on Auditor's Book Page

Auditor of Horry County, South Carolina

STATE OF SOUTH CAROLINA
PROBATE FOR CORPORATE GRANTOR
COUNTY OF HORRY

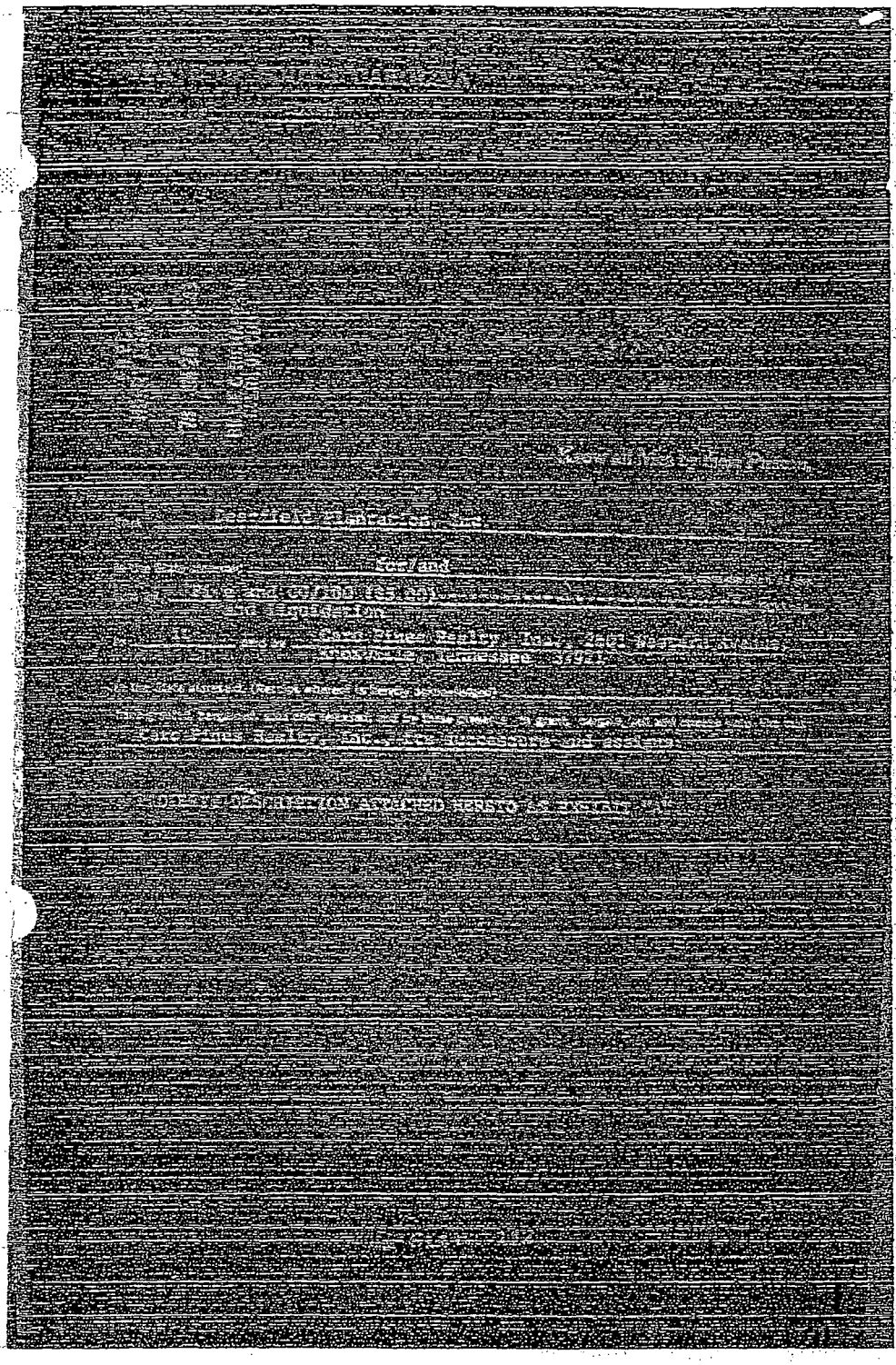
PERSONALLY appeared before me A. Russell Maddox and made oath that he saw the within named Deerfield Plantation, Inc. by V. F. Platt, Jr. its President and Kate W. Platt its sign, seal and as the corporate act and deed deliver the within written deed, and that he with David F. Romegburg witnessed the execution thereof and saw the other subscribing witness thereto affixed.

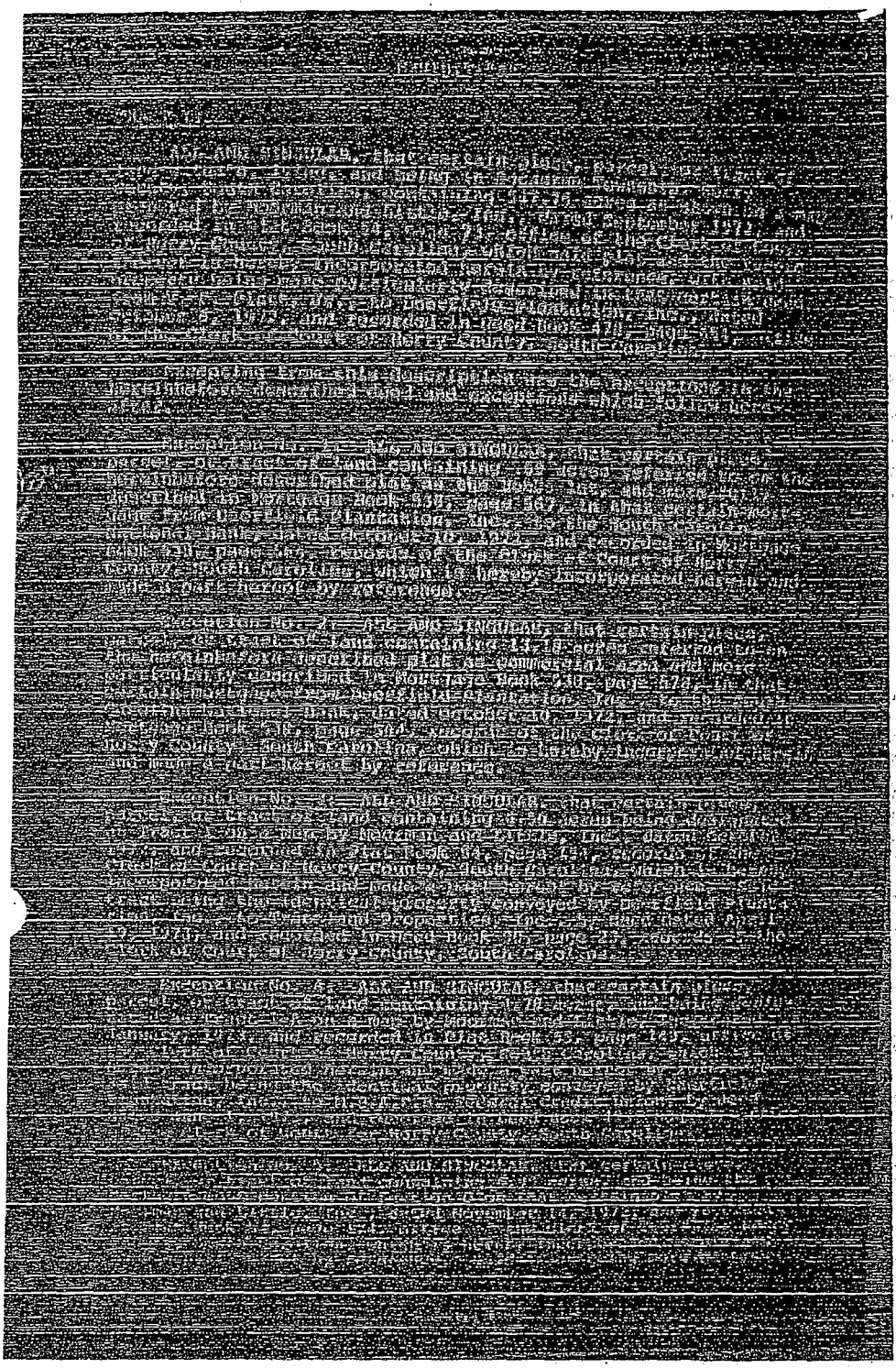
SWORN TO before me this 7th day of April A.D. 1973.

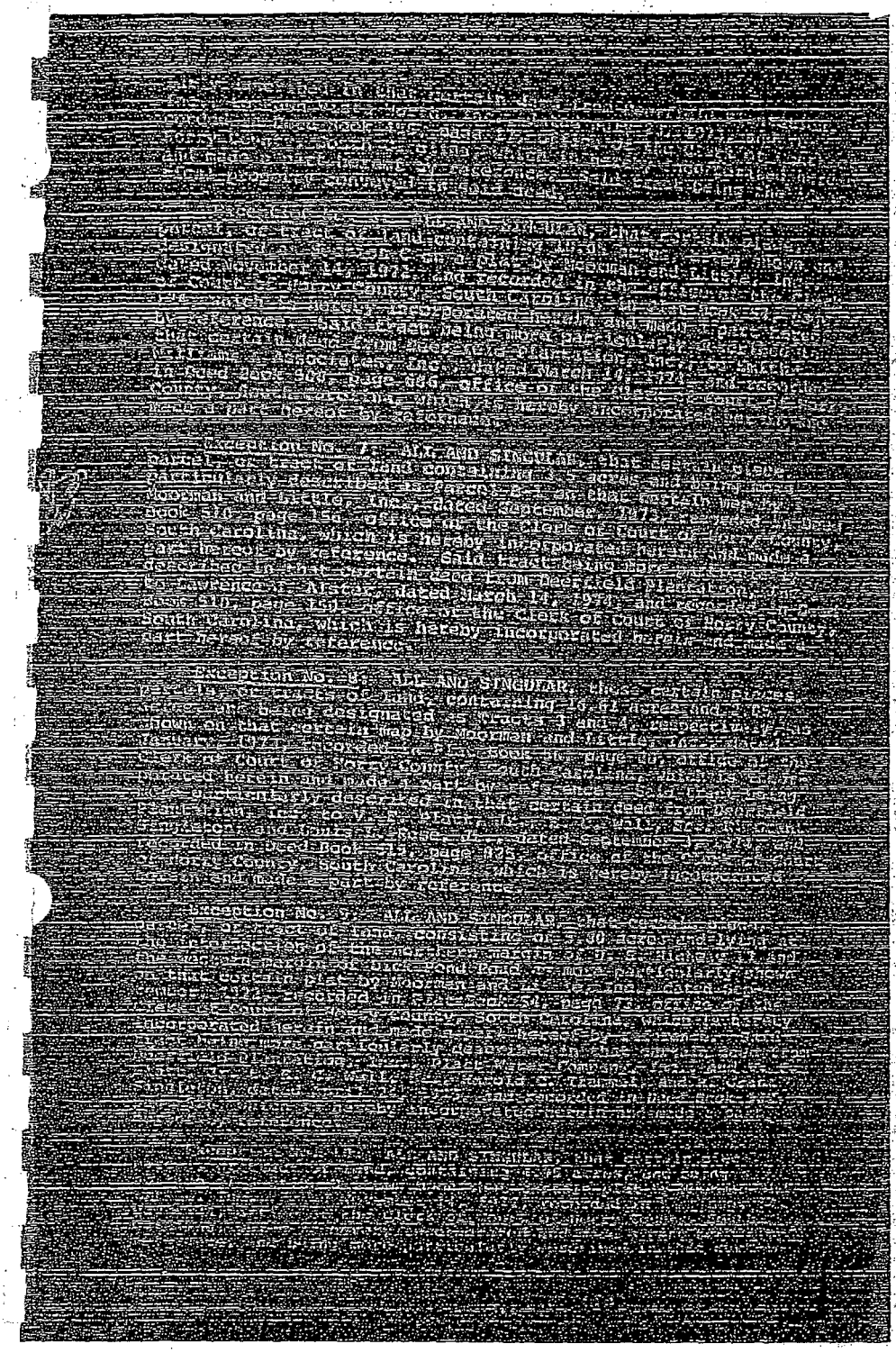
A. Russell Maddox

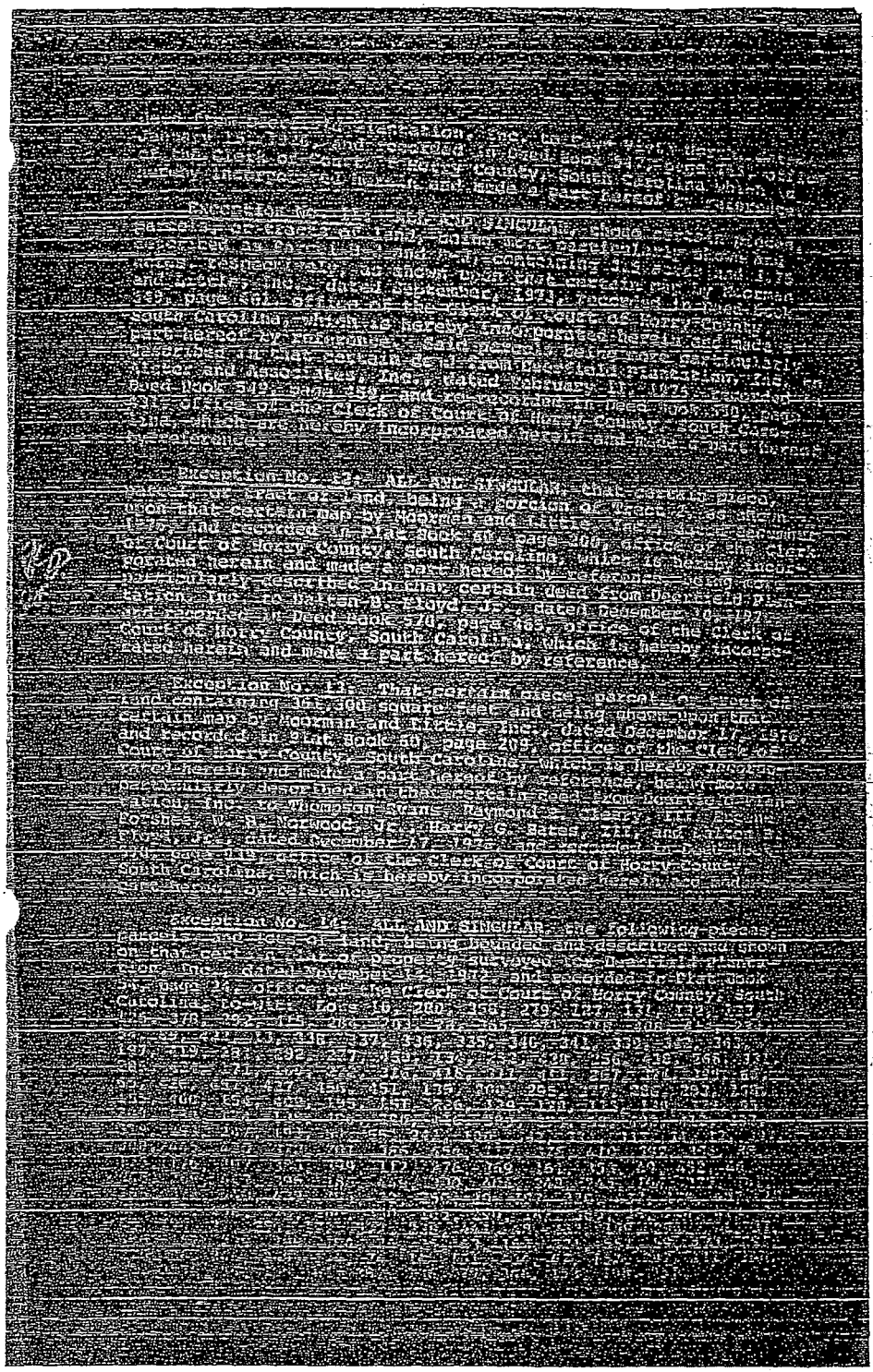
Notary Public for South Carolina
My commission expires: 3-6-81

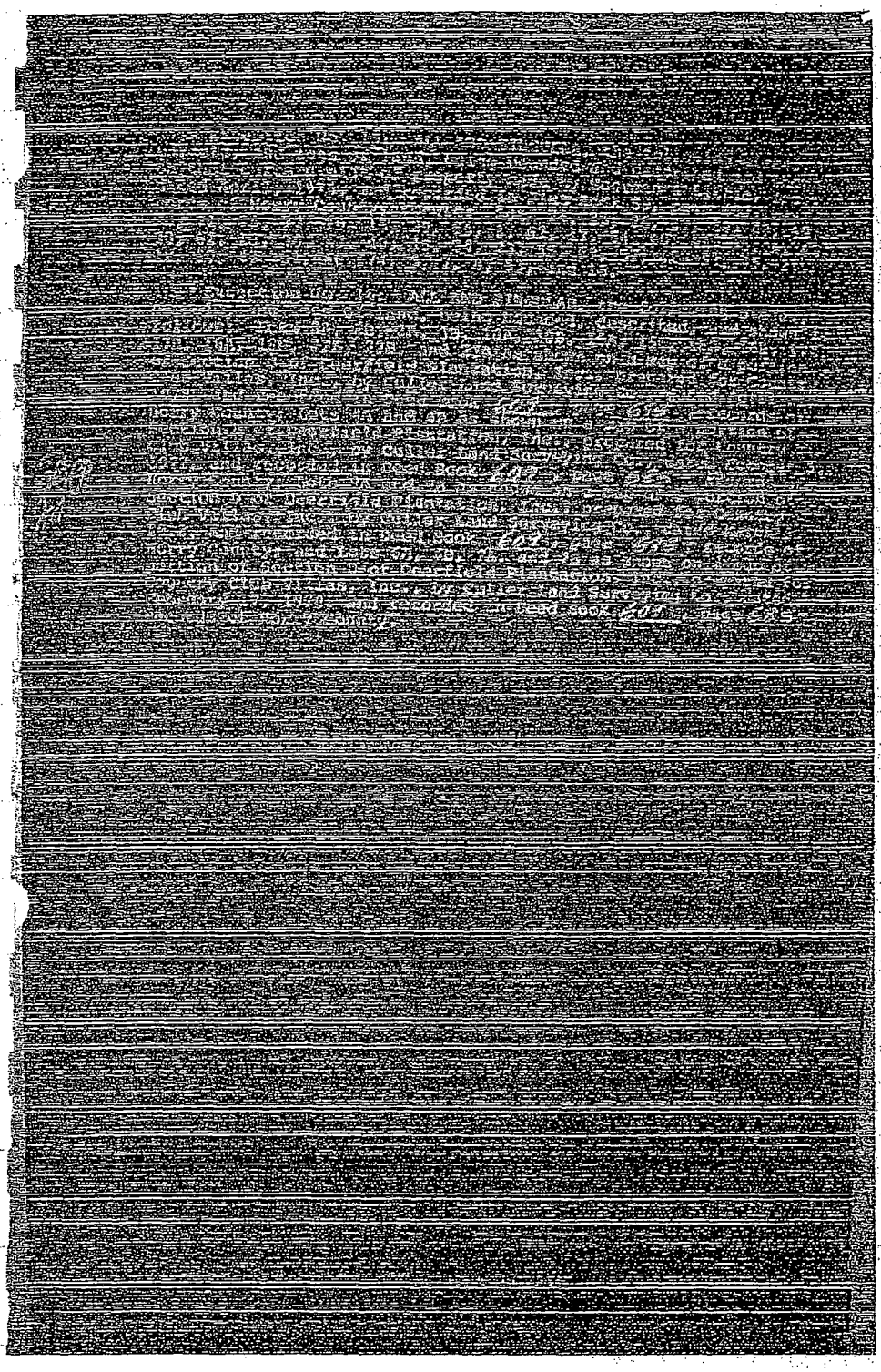
DEFENDANT'S EXHIBIT
9
REJECTED 000681-6989
1/29-08 DW

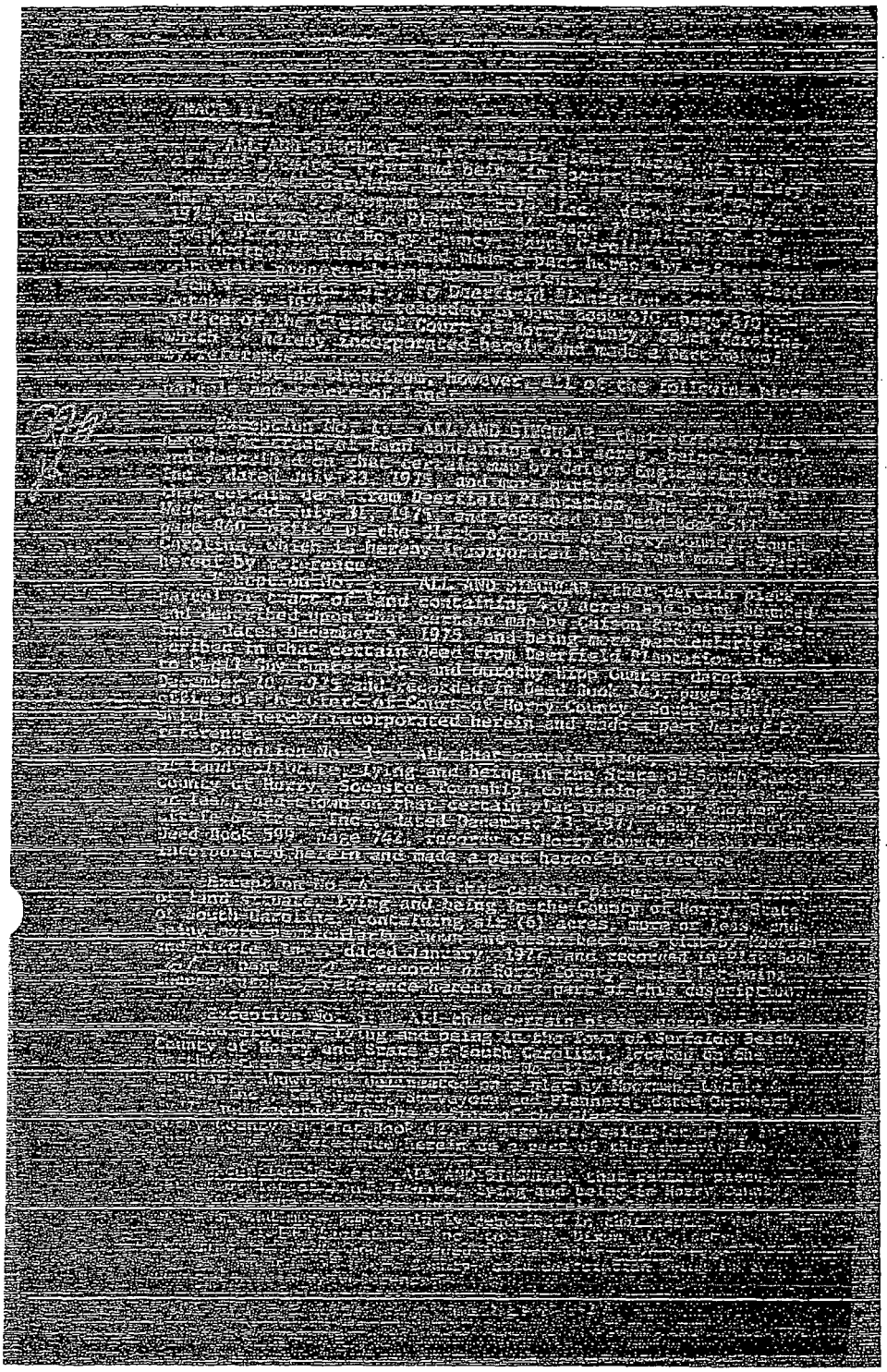












DEFENDANT'S EXHIBIT
4-9-09 DM

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

FILED
HORRY COUNTY
78 JAN -6 PM 2:47
REGISTER OF DEEDS

Know all Men by these Presents

That I, [illegible]

in the State aforesaid, for and

in consideration of the

sum of Five and 00/100 ($5.00) --

and the assumption of existing indebtedness

to me

in hand paid by CAROLINA PINES REALTY, INC.

the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said

CAROLINA PINES REALTY, INC., its successors and assigns the following described property, to wit:

ALL AND SINGULAR, that certain piece, parcel, or tract of land lying, being and situate in Socastee Township, Horry County, South Carolina, containing 82.78 acres, as shown on a plat prepared for V. J. Plath, Jr. by Gordon Reynolds and dated April 24, 1973, and recorded in Plat Book 39, page 1, in the Clerk of Court for Horry County, South Carolina, which said plat is hereby incorporated herein and made a part hereof by reference. Said tract is bounded as follows: Northwest by property of [illegible]; Northeast by S.C. Highway 57; Southeast by Deerfield Plantation, Phase I; and Southwest by Deerfield Plantation, Phase IB.

ALSO, ALL AND SINGULAR, that certain piece, parcel or tract of land containing 18.34 acres, consisting of the Deerfield Golf Course Country Club Course project, as shown on a plat prepared for [illegible] by [illegible] dated [illegible], and recorded in the Office of the Clerk of Court for Horry County, South Carolina, in Plat Book [illegible], page [illegible], which said plat is hereby incorporated herein and made a part hereof by reference.

ALSO, ALL AND SINGULAR, that certain piece, parcel or tract of land containing 1.8 acres, more or less, and being the Deerfield Country Club, as shown on a plat prepared for [illegible] by [illegible] dated [illegible], and recorded in Plat Book [illegible], page [illegible], in the Office of the Clerk of Court for Horry County, South Carolina, which said plat is hereby incorporated herein and made a part hereof by reference.

ALSO, ALL AND SINGULAR, that certain piece, parcel or tract of land containing 1.8 acres, more or less, consisting of the Club House, pool and tennis courts of the Deerfield Golf and Country Club, as shown

6/12/78

on that certain map by Moorman and Little, Inc., recorded in Plat Book [illegible], page [illegible] of the Clerk of Court of Horry County, South Carolina, which is hereby incorporated herein and made a part hereof by reference. Said tract being more particularly described at Mortgage Book [illegible], page [illegible] in those certain mortgages from Desert Island Plantation, Inc. to the South Carolina National Bank, dated October [illegible], 1972, and recorded in Mortgage Book 530, page 564, records of the Clerk of Court of Horry County, South Carolina, which is hereby incorporated herein and made a part hereof by reference.

The property referred to the 1st paragraph of the description herein, being Tract "F" and containing 47.78 acres, and the conveyance of the said 47.78 Tract "F" shall be subject to the following conditions subsequent:

At such time as the said 47.78 acres or any portion thereof ceases to be used exclusively for a sewerage treatment plant and related facilities by Grantee, his heirs, successors or assigns, then and in that event the said 47.78 acres shall revert to Grantor without consideration. The Grantee by acceptance hereof agrees and acknowledges to this covenant contained and the reverter shall be self-executing.

TOGETHER with all and singular the rights, Members, Hereditaments and Appurtenances to the said premises belonging or in anywise incidental or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said

DESPINES REALTY, INC.

Successors and Assigns forever.

And the Grantor

hereby binds himself, themselves, his or their successors or his, her

and their Heirs, Executors or Administrators, to the said may be), to warrant and forever defend all and

singular the said premises unto the said DESPINES REALTY, INC.

and their Heirs and Successors and Assigns, against him, her and their Heirs and against (as the case may be) against all

persons whomsoever lawfully claiming or to claim the same or any part thereof.

Witness his hand and seal this 21st day of May

in the year of our Lord one thousand nine hundred and seventy-eight

and in the two hundred and second year

of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered

in the Presence of

[illegible]

[illegible]

STATE OF SOUTH CAROLINA,
COUNTY OF _____

Probate for Corporate Grantor

Personally appeared before me, _____

and made oath that he saw the within named _____ by _____ its _____ and _____ its _____ Sign, Seal and as their Corporate Act and Deed deliver the within written Deed; and that he with _____ witnessed the execution thereof and saw the corporate seal thereto affixed.

Sworn to before me, this _____ day of _____ A. D. 19 _____

_____ (L. S.)
Notary Public for S. C.
My commission expires _____

STATE OF SOUTH CAROLINA,
COUNTY OF HORRY

Probate for Individual

Personally appeared before me Richard M. Cleveland and made oath that he saw the within named _____ Sign, Seal and as _____ Act and Deed deliver the within written Deed and that he with James B. Van Dercil witnessed the execution thereof.

Sworn to before me this 1st day of May A. D. 19 78

(L. S.)
Notary Public for S. C.
My commission expires 12-19-87

STATE OF SOUTH CAROLINA,
COUNTY OF HORRY

RENUNCIATION OF DOWER
(Not Needed for Grantor's Spouse)

I, James B. Van Dercil do hereby make oath unto all whom it may concern that Mrs. Kate W. Beal the wife of the within named grantor did this day appear before me and upon being privately and separately examined by me did declare that she does freely, voluntarily and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within named grantee _____ Heirs and Assigns of Such and all her interest and estate and also all her right and claim of Dower of, in or to all and singular the premises within mentioned and released.

GIVEN under my Hand and Seal this 1st day of May Anno Domini 19 78

(L. S.)
Notary Public for S. C.
My commission expires 12-19-87

Kate W. Beal

Recorded May 2, 1978 at 3:30 P.M.

DEFENDANT'S EXHIBIT 1906 D

21049

Timesaver Blank No. 34—DEED TO REAL ESTATE For (1) Corporation to Corporation; (2) Corporation to Private Person; (3) Private Person to Corporation. Timesaver Publishing Co., Conway, S. C.

STATE OF SOUTH CAROLINA,

COUNTY OF HORRY

FILED Horry County
1981 FEB 20 P 3:08
BILLIE S. RICHARDSON
CLERK OF COURT

FILED Horry County
1981 FEB 23 A 10:25
BILLIE S. RICHARDSON
CLERK OF COURT

Know all Men by these Presents,

That DEERFIELD PLANTATION, INC.

in the State aforesaid for and in consideration of the sum of Five and 00/100 ($5.00) DOLLARS to it paid by Deerfield Golf and Country Club, Inc., U.S. Hwy. 17 South, Myrtle Beach, SC 29577

in the State aforesaid, (Receipt whereof is hereby acknowledged) have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said Grantee, its successors and assigns forever, the following described property to wit:

ALL THAT certain piece, parcel or tract of land consisting of 158.54 acres and also shown on that certain plat prepared by Moorman and Little, Inc., dated June, 1980 and recorded in Plat Book 70, Page 27 of the real property records of Horry County,

Also, conveyed hereby is that certain piece, parcel and lot of land consisting of 1.991 acres as shown on that certain plat prepared by Moorman, Little & Kizer, Inc., dated May, 1980 and recorded in Plat Book 69, Page 7 of the real property records of Horry County,

Also, conveyed hereby is that certain piece, parcel, or tract of land, situate, lying and being in Socastee Township, Horry County, South Carolina, and being more particularly described as Tract "F", containing 47.78 acres as shown on a map prepared for V. F. Platt, Jr., by Caison Engineering Co., Inc., dated April 24, 1975, and recorded in Plat Book 58, Page 72, office of the Clerk of Court for Horry County, South Carolina, which is hereby incorporated herein and made a part hereof by reference. Said tract is bounded as follows: Northwest by Tract "E"; Northeast by S.C. Highway 375; Southeast by Deerfield Plantation, Phase I; and Southwest by Deerfield Plantation, Phase II.

The above property being portions of the property conveyed to Caropines Realty by Deed of V. F. Platt, Jr. dated May 31, 1978 and recorded in Deed Book 612, Page 792 and by Deed of Deerfield Plantation, Inc. to Caropines Realty, Inc. dated June 1, 1978 and recorded in Deed Book 614, Page 112 of the real property records of Horry County.

Thereafter the name of Carropines Realty, Inc. was changed to Deerfield Plantation, Inc. as shon on those certain Articles of Amendment, recorded in said Clerk's office on June 20, 1978 in Deed Book 636, Page 303.

This instrument prepared by Bill M. Pridgen, Box 1038, Myrtle Beach, South Carolina.

751

BOOK 701 PAGE 751

This property is taken subject to existing mortgage liens.

FILED
RICHLAND COUNTY
1981 FEB 23 A 10:25
BILLIE E. RICHARDSON
CLERK OF COURT

FILED
RICHLAND COUNTY
1981 FEB 23 P 3:08
BILLIE E. RICHARDSON
CLERK OF COURT

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

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said _____

Grantee, its Heirs, Successors and Assigns forever.

And the Grantor does herein hereby binds its, themselves, its or their successors, or his, her, and their Heirs, Executors or Administrators, (as the case may be), to warrant and forever defend all and singular the said premises unto the said Grantee

and its and their successors and assigns, or his, her and their Heirs and assigns, as the case may be, against itself, themselves, and its or their successors, or his, her and their heirs, (as the case may be), and all persons whomsoever _____

lawfully claiming, or to claim the same, or any part thereof.

Witness the execution hereof by grantor this 5th day of June

in the year of our Lord one thousand nine hundred and eighty

and in the two hundredth fifth year

of the Sovereignty and independence of the United States of America.

Signed, Sealed and Delivered
in the Presence of

Blaine K. Sheppard

Karen Armstrong

DEERFIELD PLANTATION, INC. (L. S.)

By: Ward A. Pilers (L. S.)
President

(L. S.)

By: Jan Sebel (L. S.)
Secretary

(L. S.)

BOOK 701 PAGE 752

752

STATE OF SOUTH CAROLINA,
COUNTY OF HORRY

Probate for Corporate Grantor

Personally appeared before me, Blaine Lilljenquist

and made oath that he saw the within named Deerfield Plantation, Inc. by Harold W. Pierce its President and John Schaad its Secretary Sign, Seal and as the Corporate Act and Deed deliver the within written Deed; and that he with Ronnie Armstrong witnessed the execution thereof and saw the corporate seal thereto affixed.

Sworn to before me this 5th day of June A. D. 19 80

Cynthia R. Baker (L. S.)
Notary Public for S. C.
My Commission Expires 5-4-86

STATE OF SOUTH CAROLINA,
COUNTY OF

Probate for Individual

Personally appeared before me,

and made oath that he saw the within named

Sign, Seal and as Act and Deed deliver the within written Deed; and that he with witnessed the execution thereof.

Sworn to before me this
day of A. D. 19

(L. S.)
Notary Public for S. C.
My Commission Expires

STATE OF SOUTH CAROLINA,
COUNTY OF

RENUNCIATION OF DOWER
(Not needed for corporate grantor)

I, do hereby certify unto all whom it may concern, that Mrs.

the wife of the within named tor did this day appear before me and upon being privately and separately examined by me, did declare that she does freely, voluntarily, and without any compulsion, dread or fear of any person or persons whomsoever, renounce, release and forever relinquish unto the within named grantee Heirs and Assigns or Successors, all her interest and estate, and also all her right and claim of Dower, of, in or to, all and singular the premises within mentioned and released.

GIVEN under my Hand and Seal this day of

Anno Domini 19

(L. S.)

(L. S.)
Notary Public for S. C.
My Commission Expires

BOOK 701 PAGE 153

153

893411

DEFENDANT'S EXHIBIT

STATE OF TENNESSEE)
) AFFIDAVIT OF CORPORATE NAME
COUNTY OF KNOX) CHANGE AND MERGER

FILED
HORRY COUNTY, S.C.
2006 MAR 24 PM 4:13
BARBARA J. SNIPPER
REGISTRAR OF DEEDS

Personally appeared before me, Patrick J. Schaad and John Schaad first being sworn, state:

1. Deerfield Golf and Country Club, Inc. changed its name, by Articles of Amendment properly filed with the South Carolina Secretary of State on June 2, 1980, with the new name being Deertrack Golf and Country Club, Inc.

2. Deertrack Golf and Country Club, Inc., by Articles of Merger properly filed with the South Carolina Secretary of State on August 26, 1993, merged with Deertrack Golf, Inc., and Deertrack Golf, Inc. was the surviving entity from that merger, and all assets of Deertrack Golf and Country Club, Inc. became property of Deertrack Golf, Inc.

3. John Schaad was the President of Deertrack Golf and Country Club, Inc. and Patrick J. Schaad was the President of Deertrack Golf, Inc. at the time of the aforesaid merger.

WITNESSES:

Patrick J. Schaad

John Schaad

STATE OF TENNESSEE)
) ACKNOWLEDGEMENT
COUNTY OF KNOX) (S.C. CODE ANN. 30-5-30 (B) (C))

I, the undersigned, a Notary Public for Tennessee hereby certify that Patrick J. Schaad and John Schaad personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 16th day of March, 2006.

Notary Public in and for Tennessee
My Commission Expires: 11/3/07

JASON THADDEUS MURPHY
STATE OF TENNESSEE
NOTARY PUBLIC
KNOX COUNTY

DEED
3069 0424

424

000489

893411



FILED
HORRY COUNTY, S.C.

RETURN TO:

2006 MAR 24 PM 4:14

DOVE LAW FIRM, P.A.
P.O. BOX 625
MURRELLS INLET, SC 29576

BALLERY V. SKIPPER
REGISTRAR OF DEEDS

STATE OF SOUTH CAROLINA

DEED TO REAL ESTATE
(SPECIAL WARRANTY)

COUNTY OF Horry

WHEREAS, Deerfield Golf and Country Club, Inc. was deeded the property described below. Deerfield Golf and Country Club, Inc. changed its name to Deertrack Golf and Country Club, Inc. by Articles filed with the Secretary of State on June 2, 1980. Deertrack Golf, Inc. was the surviving entity of a Merger between Deertrack Golf and Country Club, Inc. and Deertrack Golf, Inc. by Articles of Merger filed with the South Carolina Secretary of State on August 26, 1993. An Affidavit in form required by S.C. Code Ann. § 34-10-140 has been filed prior to the filing hereof. Therefore, Deertrack Golf, Inc. is the proper party to transfer the Property described herein.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that, **Deertrack Golf, Inc.**, hereinafter called Grantor, in consideration of **Three Million Five Hundred Thousand and 00/100 Dollars ($3,500,000.00)** to the Grantor in hand paid at and before the sealing of these presents by the Grantee hereinafter named, the receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto **Deertrack Management, Inc.**, its successors and assigns forever, the following described property, to-wit:

ALL that certain piece, parcel, or tract of land consisting of 168.54 acres and also shown on that certain plat prepared by Moorman and Little, Inc., dated June, 1980 and recorded in Plat Book 70 at Page 27 of the real property records of Horry County.

Also, conveyed hereby that certain piece, parcel and lot of land consisting of 21.99 acres as shown on that certain plat prepared by Moorman, Little & Kizer, Inc., dated May, 1980 and recorded in Plat Book 69 at Page 2 of the real property records of Horry County.

This conveyance is made subject to all ordinances, conditions, reservations, encroachments, restrictions, and easements as shown by instruments and plats of public record.

DEED 3069 0425

STATE 9100.00 COUNTY 3850.00

EXEMPT YES ( ) (NO)

ASSESSOR 191-00-01-044 + 191-07-02-018

3-27-06

425

This conveyance is further made subject to the items shown in the attached Exhibit "A" and the following:

1. By acceptance of this Deed, Grantee covenants, for itself and for its successors, assigns and grantees that it shall not interfere, impede or prohibit the owners of the Deertrack South Golf Course (TMS # 191-00-01-068) (hereinafter the "South Course") from either utilizing it as a golf course or developing it into a residential development; provided, that Grantee, its successors, assigns and grantees shall have no obligation to provide the owners and users of the South Course with the use of the clubhouse facilities or any other maintenance facility (other than those related to utilities or the easements reserved herein) now or hereafter located on the property described herein.

2. By acceptance of this Deed, Grantee covenants, for itself and for its successors, assigns and grantees that it shall not interfere, hinder, impede and/or prevent any person or entity from using any utilities located on the property described herein and from utilizing, accessing and maintaining the same in the future.

3. By acceptance of this Deed, Grantee covenants, for itself and for its successors, assigns and grantees that it shall grant easements over the North Course for the installation and maintenance of utilities (which utilities shall include without limitation water service, public sewer, electricity service, natural gas service, cable television service and internet service) when reasonably necessary to assist the owner of the South Course with its development and/or operation of the same; provided, that all such easements shall be of a reasonable size and character and in reasonable locations; provided, that such easements shall not entitle any holders of the easements or their agents or contractors to construct or install such utilities or any improvements over, under, or through any existing dwelling, improvements or structure (whether complete or under construction or renovation) located on the property described herein; provided further that the holder of such easements shall also be responsible for the repair of any damage caused to the property described herein as a result of the installation and/or maintenance of said utilities. These easements shall also not unreasonably interfere with the use of any dwelling or structure now or hereafter located on the property described herein.

4. In the event any portion of the property described herein is divided, subdivided, or resubdivided into two (2) or more lots, tracts or parcels of land in the future, Deertrack Golf, Inc. shall be entitled to the sum of One Thousand Dollars ($1,000) (the "Subdivision Fee") for each new lot, tract or parcel created by said division, subdivision or resubdivision. The Subdivision Fee shall be due within fifteen (15) days after the date of the recording of the final, bonded subdivision plat and shall be the responsibility of the Grantee; provided that if the Grantee did not perform the division, subdivision or resubdivision, the Grantee and the party performing the same shall be jointly responsible for the payment of the Subdivision Fee. Upon receipt of the Subdivision Fee, Deertrack Golf, Inc. agrees to execute any documents reasonably requested by the owner of a lot, tract or parcel to evidence that the Subdivision Fee has been paid; provided, that Deertrack Golf, Inc. shall not be responsible for the costs of preparing and/or recording the same.

5. In the event any portion of the property described herein is improved with a single-family house, a condominium unit, an apartment, an office, a manufactured

home, a retail store, a warehouse, or other similar structure (each a "Unit") in the future, Deertrack Golf, Inc. shall be entitled to the sum of One Thousand Dollars ($1,000) U.S. ("Development Fee") for each Unit constructed; provided, that if the Unit is located on a new lot, tract or parcel which has been created and for which a Subdivision Fee has previously been paid, a credit shall be given for the Subdivision Fee so paid – it being the intention of the parties that if a new lot is created and a single-family home is erected thereon that only a $1,000 Subdivision Fee shall be paid, but if a multi-family structure, apartment or similar structure is constructed on a newly created lot, tract or parcel, that the party constructing the same shall pay $1,000 for each new Unit constructed less the $1,000 Subdivision Fee which was previously paid when the lot upon which the multi-family structure is built was created. The Development Fee shall be the joint responsibility of the Grantee and the party constructing the Unit and shall be due within 15 days after a Certificate of Occupancy for the Unit is issued. Upon receipt of its payment of the Development Fee, Deertrack Golf, Inc. agrees that it will execute any documents reasonably requested by the owner of any Unit to evidence that the Development Fee has been paid; provided, that Deertrack Golf, Inc. shall not be responsible for the costs of preparing and/or recording the same.

Grantee specifically acknowledges that the obligations in the restrictions set forth in items 1, 2, 3, 4 and 5 above are continuing upon the Grantee. Any party bringing an action to enforce the provisions of items 1, 2, 3, 4 and 5 above shall be entitled to its attorney's fees upon recovery. To assist in the enforcement of the provisions of the restrictions contained in this Deed, the Grantee agrees that a restrictive covenant setting forth these preceding matters shall be placed in any deed or other instrument transferring all or a portion of the property described herein, provided that if deed transfers a portion of the property described herein, and the Development Fee for that portion has been paid, then the restrictions shall not be required in the deed of conveyance, but such omission shall not relieve any party of any obligations under these restrictions. The address of Deertrack Golf, Inc. is 150 Major Reynolds Place, Knoxville, TN 37919. Any change of payee or address shall be effectuated by the filing of a document in the Register of Deeds for Horry County.

This being a portion of the property conveyed to the Deerfield Golf and Country Club, Inc. by deed of Deerfield Plantation, Inc. recorded February 23, 1981 in Deed Book 701 at Page 751, Horry County Records. Deerfield Golf and County Club, Inc. changed its name to Deertrack Golf and Country Club, Inc. Deerfield Golf, Inc. is the surviving entity of a merger between Deertrack Golf and Country Club, Inc. and Deertrack Golf, Inc.

TMS# 191-07-02-018 and 191-00-01-040

GRANTEE'S ADDRESS: 1925 Shore Lane, Myrtle Beach, SC 29575

Together with all and singular the rights, hereditaments and appurtenances to said premises

belonging, or in anywise incident or appertaining; to have and to hold all and singular the premises before mentioned unto said Grantee, its successors and assigns forever.

And Grantor does hereby bind itself and its successors and assigns to warrant and forever defend all and singular the said premises unto the said grantee, its successors and assigns, against the Grantor, its successors or assigns, or any person or entity lawfully claiming, or to claim the same or any part thereof, through or under said Grantor, but against no others.

Witness the execution hereof by Grantor this 23rd day of March, 2006.

Signed, Sealed and Delivered
in the Presence of:

Witness

Witness/Notary

GRANTOR:
Deerfield Golf, Inc.

By: _____
Michael E. Schaad, Secretary

STATE OF TENNESSEE)
) **ACKNOWLEDGEMENT**
COUNTY OF KNOX) **(S.C. CODE ANN. 30-5-30 (B) (C))**

I, the undersigned, a Notary Public for Tennessee hereby certify that **Michael E. Schaad, Secretary of Deerfield Golf, Inc.**, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 23rd day of March, 2006.

Notary Public in and for Tennessee

JASON THADDEUS MURPHY
STATE OF TENNESSEE
NOTARY PUBLIC
KNOX COUNTY

My Commission Expires:
11/3/07

EXHIBIT "A"

1. Horry County property taxes for 2006 and subsequent years subject to any roll back provisions, all of which are assumed by the Grantee.

2. All ordinances, conditions, reservations, encroachments, restrictions, and easements as shown by instruments and plats of public record.

3. All applicable matters and conditions that would be revealed by a current and accurate survey of the subject property performed on the date of this instrument.

4. All applicable matters and conditions that would be revealed by a physical inspection of the subject property on the date of this instrument;

5. Easement granted to South Carolina Public Service Authority recorded May 9, 1973 in Deed Book 491 at Page 242, Horry County Records.

6. Declaration and Establishment of Conditions, Reservations, Covenants and Restrictions for Deerfield Plantation Single Family Residential Subdivision Horry County, South Carolina recorded November 29, 1972 in Deed Book 481 at Page 305, Horry County Records.

7. Easement granted to South Carolina Public Service Authority recorded in Deed Book 640 at Page 763, Horry County Records.

8. Easement granted to South Carolina Public Service Authority recorded October 3, 1973 in Deed Book 500 at Page 401, Horry County Records.

9. Easement granted to South Carolina Public Service Authority recorded in Deed Book 519 at Page 551, Horry County Records.

10. Easement granted to Deerfield Plantation Inc. recorded December 16, 1974 in Deed Book 525 at Page 363, Horry County Records.

11. Declaration and Establishment of Conditions, Reservations, Covenants and Restrictions for Deerfield Plantation Single Family Residential Subdivision Horry County, South Carolina recorded November 16, 1972 in Deed Book 480 at Page 716, Horry County Records.

12. Rights of persons in possession.

13. Any unpaid water bills, assessments, or sewer charges.

14. Agreement between Deerfield Plantation, Inc. and Clearview Cable, Inc. dated February 22, 1975.

EXHIBIT "A"
(Continued)

15. Easement and Agreement dated September 13, 1988 between Deerfield Plantation, Inc., Deertrack Development Corporation and Clearview Cablevision Associates, II and recorded in Book 1249 at Page 689.

16. All applicable matters shown and/or noted on that certain plat recorded in Plat Book 70 at page 27 in the real property records for Horry County.

17. All applicable matters shown and/or noted on that certain plat record in Plat Book 69 at page 2 in the real property records for Horry County.

State of Tennessee

AFFIDAVIT

County of Knox

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

1. Property located at **Clubhouse Tract and North Course** bearing Horry County Tax Map Number 191-07-02-018 and 191-00-01-040 was transferred by **Deertrack Golf, Inc.** to **Deertrack Management, Inc. on 03/17/06.**

2. The transaction was (Check one):

__X__ an arm's length real property transaction and the sales price paid or to be paid in money or money's worth was **$ 3,500,000.00**.

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

The above transaction is exempt, or partially exempt, from the recording fee as set forth in South Carolina Ann. Section 12-24-10 et. seq. because the deed is (See back of Affidavit): _____.

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

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

Michael E. Schaad, Secretary

SWORN to before me this 23rd day of March, 2006.

Notary Public for Tennessee
My Commission Expires: 11/3/07

JASON THADDEUS MURPHY STATE OF TENNESSEE NOTARY PUBLIC KNOX COUNTY

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

000496

893411

FILED
HORRY COUNTY, S.C.
2006 MAR 24 PM 4:15
DALLERY V. GRIPPER
REGISTRAR OF DEEDS

09

STATE 20,800 COUNTY 8,800 00

EXEMPT YES T NO

ASSESSOR

RETURN TO:
DOVE LAW FIRM
P.O. BOX 625
MURRELLS INLET, SC 29576

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

DEED TO REAL ESTATE

DEFENDANT'S EXHIBIT 1 E 11-9-07 DM

KNOW ALL MEN BY THESE PRESENTS, that, **Deertrack Management, Inc.**, hereinafter called Grantor in consideration of **Eight Million and 00/100 ($8,000,000.00) Dollars** to the Grantor in hand paid at and before the sealing of these presents by the Grantee hereinafter named, the receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto **Deertrack Investors, LLC**, its successors and assigns forever, the following described property, to-wit:

ALL that certain piece, parcel, or tract of land consisting of 168.54 acres and also shown on that certain plat prepared by Moorman and Little, Inc., dated June, 1980 and recorded in Plat Book 70 at Page 27 of the real property records of Horry County.

Also, conveyed hereby that certain piece, parcel and lot of land consisting of 21.99 acres as shown on that certain plat prepared by Moorman, Little & Kizer, Inc., dated May, 1980 and recorded in Plat Book 69 at Page 2 of the real property records of Horry County.

This conveyance is made subject to all ordinances, conditions, reservations, encroachments, restrictions, and easements as shown by instruments and plats of public record.

This conveyance is further made subject to the restrictions shown in the attached Exhibit "A":

This being the identical property as conveyed to the grantor by deed of Deertrack Golf, Inc., recorded March 24, 2006 in Deed Book 3069 at Page 425, Horry County Records.

DEED
3069 0431

TMS#: 191-07-02-018 and 191-00-01-040

3-27-06

GRANTEE'S ADDRESS: 1701 Platt Blvd., Surfside Beach, SC 29575

431 DE

Together with all and singular the rights, hereditaments and appurtenances to said premises belonging, or in anywise incident or appertaining; to have and to hold all and singular the premises before mentioned unto grantee its successors and assigns forever.

And, grantor, does hereby bind itself and its successors and assigns to warrant and forever defend all and singular said premises unto the said grantee, its successors and assigns, against all persons or entities whomsoever lawfully claiming, or to claim the same or any part thereof.

Witness the execution hereof by Grantor this 24th day of March, 2006.

Signed, Sealed and Delivered
in the Presence of:

Witness

Witness/Notary

SELLER(S):
Deertrack Management, Inc.

By:
Alfred M. Olivetti, President

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

ACKNOWLEDGEMENT
(S.C. CODE ANN. 30-5-30 (B) (C))

I, the undersigned, a Notary Public for South Carolina hereby certify that **Alfred M. Olivetti as President of Deertrack Management, Inc.** personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 24th day of March, 2006.

Notary Public in and for South Carolina

My Commission Expires: 2/12/14

State of South Carolina

AFFIDAVIT

County of Horry

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

1. Property located at **Clubhouse Tract and North Course**, bearing Horry County TM#: 191-07-02-018 and 191-00-01-040 was transferred by **Deertrack Management, Inc. to Deertrack Investors, LLC** on March 24, 2006.

2. The transaction was (Check one):

__XX__ an arm's length real property transaction and the sales price paid or to be paid in money or money's worth was $ 8,000,000.00 .

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

The above transaction is exempt, or partially exempt, from the recording fee as set forth in South Carolina Ann. Section 12-24-10 et. seq. because the deed is (See back of Affidavit):

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

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

Alfred M. Olivetti, President

SWORN to before me this
21th day of March, 2006.

Notary Public for South Carolina
My Commission Expires: 2/16/11

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

EXHIBIT "A"

1. By acceptance of this Deed, Grantee covenants, for itself and for its successors, assigns and grantees that it shall not interfere, impede or prohibit the owners of the Deertrack South Golf Course (TMS # 191-00-01-068) (hereinafter the "South Course") from either utilizing it as a golf course or developing it into a residential development; provided, that Grantee, its successors, assigns and grantees shall have no obligation to provide the owners and users of the South Course with the use of the clubhouse facilities or any other maintenance facility (other than those related to utilities or the easements reserved herein) now or hereafter located on the property described herein.

2. By acceptance of this Deed, Grantee covenants, for itself and for its successors, assigns and grantees that it shall not interfere, hinder, impede and/or prevent any person or entity from using any utilities located on the property described herein and from utilizing, accessing and maintaining the same in the future.

3. By acceptance of this Deed, Grantee covenants, for itself and for its successors, assigns and grantees that it shall grant easements over the North Course for the installation and maintenance of utilities (which utilities shall include without limitation water service, public sewer, electricity service, natural gas service, cable television service and internet service) when reasonably necessary to assist the owner of the South Course with its development and/or operation of the same; provided, that all such easements shall be of a reasonable size and character and in reasonable locations; provided, that such easements shall not entitle any holders of the easements or their agents or contractors to construct or install such utilities or any improvements over, under, or through any existing dwelling, improvements or structure (whether complete or under construction or renovation) located on the property described herein; provided further that the holder of such easements shall also be responsible for the repair of any damage caused to the property described herein as a result of the installation and/or maintenance of said utilities. These easements shall also not unreasonably interfere with the use of any dwelling or structure now or hereafter located on the property described herein.

4. In the event any portion of the property described herein is divided, subdivided, or resubdivided into two (2) or more lots, tracts or parcels of land in the future, Deertrack Golf, Inc. shall be entitled to the sum of One Thousand Dollars ($1,000) (the "Subdivision Fee") for each new lot, tract or parcel created by said division, subdivision or resubdivision. The Subdivision Fee shall be due within fifteen (15) days after the date of the recording of the final, bonded subdivision plat and shall be the responsibility of the Grantee; provided that if the Grantee did not perform the division, subdivision or resubdivision, the Grantee and the party performing the same shall be jointly responsible for the payment of the Subdivision Fee. Upon receipt of the Subdivision Fee, Deertrack Golf, Inc. agrees to execute any documents reasonably requested by the owner of a lot, tract or parcel to evidence that the Subdivision Fee has been paid; provided, that Deertrack Golf, Inc. shall not be responsible for the costs of preparing and/or recording the same.

5. In the event any portion of the property described herein is improved with a single-family house, a condominium unit, an apartment, an office, a manufactured home, a retail store, a warehouse, or other similar structure (each a "Unit") in the future, Deertrack Golf, Inc. shall be entitled to the sum of One Thousand Dollars

A

($1,000) U.S. ("Development Fee") for each Unit constructed; provided, that if the Unit is located on a new lot, tract or parcel which has been created and for which a Subdivision Fee has previously been paid, a credit shall be given for the Subdivision Fee so paid – it being the intention of the parties that if a new lot is created and a single-family home is erected thereon that only a $1,000 Subdivision Fee shall be paid, but if a multi-family structure, apartment or similar structure is constructed on a newly created lot, tract or parcel, that the party constructing the same shall pay $1,000 for each new Unit constructed less the $1,000 Subdivision Fee which was previously paid when the lot upon which the multi-family structure is built was created. The Development Fee shall be the joint responsibility of the Grantee and the party constructing the Unit and shall be due within 15 days after a Certificate of Occupancy for the Unit is issued. Upon receipt of its payment of the Development Fee, Deertrack Golf, Inc. agrees that it will execute any documents reasonably requested by the owner of any Unit to evidence that the Development Fee has been paid; provided, that Deertrack Golf, Inc. shall not be responsible for the costs of preparing and/or recording the same.

Grantee specifically acknowledges that the obligations in the restrictions set forth in items 1, 2, 3, 4 and 5 above are continuing upon the Grantee. Any party bringing an action to enforce the provisions of items 1, 2, 3, 4 and 5 above shall be entitled to its attorney's fees upon recovery. To assist in the enforcement of the provisions of the restrictions contained in this Deed, the Grantee agrees that a restrictive covenant setting forth these preceding matters shall be placed in any deed or other instrument transferring all or a portion of the property described herein, provided that if deed transfers a portion of the property described herein, and the Development Fee for that portion has been paid, then the restrictions shall not be required in the deed of conveyance, but such omission shall not relieve any party of any obligations under these restrictions. The address of Deertrack Golf, Inc. is 150 Major Reynolds Place, Knoxville, TN 37919. Any change of payee or address shall be effectuated by the filing of a document in the Register of Deeds for Horry County.

893411

FILED
HORRY COUNTY, S.C.
2006 MAR 24 PM 4:17
BALLERY W. CAMMER
REGISTRAR OF DEEDS

STATE OF SOUTH CAROLINA)
) MORTGAGE AND
COUNTY OF HORRY) SECURITY AGREEMENT

THIS MORTGAGE AND SECURITY AGREEMENT is given this 24th day of March, 2006, by **DEERTRACK INVESTORS, LLC, a South Carolina limited liability company** ("Mortgagor"), whose address is 1701 Platt Blvd., Surfside Beach, South Carolina 29575 to **DEERTRACK MANAGEMENT, INC.** ("Mortgagee"), whose address is 1925 Shore Lane, Myrtle Beach, SC 29575.

WITNESSETH:

WHEREAS, Mortgagor is indebted to Mortgagee in the principal sum of Four Million and No/100 Dollars ($4,000,000.00) together with interest thereon, if any, as evidenced by that certain Promissory Note of even date herewith, executed by Mortgagor and delivered to Mortgagee. The Note and documents renewing, extending or modifying it or given in substitution thereof or in consolidation thereof or therewith and any notes evidencing future advances or readvances are all referred to as the "Note" and are considered to be a part of this Mortgage. The final maturity date of the Note is as stated in the Note, said Note being incorporated herein by reference as if fully set out.

NOW, THEREFORE, (a) to secure the performance and observance by Mortgagor of all covenants and conditions contained in the Note, in any renewal, extension or modification thereof, in this Mortgage and Security Agreement and in all other instruments securing the Note; and (b) also to secure in accordance with Section 29-3-50, as amended, Code of Laws of South Carolina 1976: (i) all renewals and extensions of the Note; provided, however, that nothing contained herein shall create an obligation on the part of Mortgagee to make any such renewal or extension and (ii) all interest thereon, all charges and expenses of collection incurred by Mortgagee, including court costs, and reasonable attorneys' fees; and (c) also in order to charge the properties, interests and rights hereinafter described with such payment, performance and observance; and (d) for and in consideration of the sum of One and No/100 Dollar ($1.00) paid by Mortgagee to Mortgagor this date, and for other valuable consideration, the receipt of which is acknowledged, Mortgagor does hereby grant, bargain, sell, alien, remise, release, convey, assign, transfer, mortgage, hypothecate, pledge, deliver, set over, warrant and confirm unto Mortgagee, its successors and assigns forever all right, title and interest of Mortgagor in and to:

THE MORTGAGED PROPERTY

(A) THE LAND: All the land located in the County of Horry, State of South Carolina (the "Land"), described in Exhibit "A" attached hereto and made a part hereof;

(B) THE IMPROVEMENTS: TOGETHER WITH all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, and all fixtures, machinery, appliances, equipment, furniture and personal property of every nature whatsoever now or hereafter owned by Mortgagor and located in or on, or attached to, or used or intended to

MORTGAGE
4462 0766

DEFENDANT'S EXHIBIT 2

be used in connection with or with the operation of, the Land, buildings, structures or other improvements, including all extensions, additions, improvements, betterments, renewals and replacements to any of the foregoing and all of the right, title and interest of Mortgagor in and to any such personal property or fixtures subject to any lien, security interest or claim together with the benefit of any deposits or payments now or hereafter made by Mortgagor or on its behalf (the "Improvements").

(C) EASEMENTS OR OTHER INTERESTS: TOGETHER WITH all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the property hereinabove described, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of Mortgagor of, in and to the same, including but not limited to all judgments, awards of damages and settlements, hereafter made resulting from condemnation proceedings or the taking of the property described in paragraphs (A), (B) and (C) hereof or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the property described in paragraphs (A), (B) and (C) hereof or any part thereof, or to any rights appurtenant thereto, and all proceeds of any sales or other dispositions of the property described in paragraphs (A), (B) and (C) hereof or any part thereof.

(D) ASSIGNMENT OF RENTS: TOGETHER WITH all rents, royalties, issues, profits, revenue, income and other benefits from the property described in paragraphs (A), (B) and (C) hereof to be applied against the indebtedness and other sums secured hereby, provided, however, that permission is hereby given to Mortgagor so long as no default has occurred hereunder, to collect, receive, take, use and enjoy such rents, royalties, issues, profits, revenue, income and other benefits as they become due and payable, but not in advance thereof. The foregoing assignment shall be fully operative without any further action on the part of either party and specifically Mortgagee shall be entitled, at its option upon the occurrence of a default hereunder, to all rents, royalties, issues, profits, revenue, income and other benefits from the property described in paragraphs (A), (B) and (C) hereof whether or not Mortgagee takes possession of the property described in paragraphs (A), (B) and (C) hereof. Upon any such default hereunder, the permission hereby given to Mortgagor to collect such rents, royalties, issues, profits, revenue, income and other benefits from the property described in paragraphs (A), (B) and (C) hereof shall terminate and such permission shall not be reinstated upon a cure of the default without Mortgagee's specific consent. Neither the exercise of any rights under this paragraph by Mortgagee nor the application of any such rents, royalties, issues, profits, revenue, income or other benefits to the indebtedness and other sums secured hereby, shall cure or waive any default or notice of default hereunder or invalidate any act done pursuant hereto or to any such notice, but shall be cumulative of all other rights and remedies.

(E) ASSIGNMENT OF LEASES: TOGETHER WITH all right, title and interest of Mortgagor in and to any and all leases now or hereafter on or affecting the property described in paragraphs (A), (B) and (C) hereof, together with all security therefor and all monies payable

thereunder, subject, however, to the conditional permission hereinabove given to Mortgagor to collect the rentals under any such lease. The foregoing assignment of any lease shall not be deemed to impose upon Mortgagee any of the obligations or duties of Mortgagor provided in any such lease, and Mortgagor agrees to duly perform all obligations of the lessor under all such leases. Upon Mortgagee's request, Mortgagor agrees to send to Mortgagee a list of all leases covered by the foregoing assignment and as any such lease shall expire or terminate or as any new lease shall be made, Mortgagor shall so notify Mortgagee in order that at all times Mortgagee shall have a current list of all leases affecting the property described in paragraphs (A), (B) and (C) hereof. Mortgagee shall have the right, at any time and from time to time, to notify any lessee of the rights of Mortgagee as provided by this paragraph. From time to time, upon request of Mortgagee, Mortgagor shall specifically assign to Mortgagee as additional security hereunder, by an instrument in writing in such form as may be approved by Mortgagee, all right, title and interest of Mortgagor in and to any and all leases now or hereafter on or affecting the Mortgaged Property, together with all security therefor and all monies payable thereunder, subject to the conditional permission hereinabove given to Mortgagor to collect the rentals under any such lease. Mortgagor shall also execute and deliver to Mortgagee any notification, financing statement or other document reasonably required by Mortgagee to perfect the foregoing assignment as to any such lease.

This instrument constitutes an absolute and present assignment of the rents, royalties, issues, profits, revenue, income, and other benefits from the Mortgaged Property, subject, however to the conditional permission given to Mortgagor to collect, receive, take use and enjoy the same as provided hereinabove; provided, further, that the existence or exercise of such right of Mortgagor shall not operate to subordinate this assignment to any subsequent assignment, in whole or in part, by Mortgagor, and any such subsequent assignment by Mortgagor shall be subject to the rights of Mortgagee hereunder.

(F) FIXTURES AND PERSONAL PROPERTY: TOGETHER WITH a security interest in (i) all property and fixtures now or hereafter acquired and affixed to or located on the property described in paragraphs (A), (B) and (C) hereof which, to the fullest extent permitted by law shall be deemed fixtures and a part of the real property, (ii) all articles of personal property now or hereafter acquired and all materials delivered to the property described in paragraphs (A), (B) and (C) hereof for use in any construction being conducted thereon, and owned by Mortgagor; (iii) and all contract rights, general intangibles, actions and rights in action now or hereafter acquired pertaining to the Mortgaged Property, including, all rights to insurance proceeds, and (iv) all proceeds, products, replacements, additions, substitutions, renewals and accessions of any of the foregoing. Mortgagor (Debtor) hereby grants to Mortgagee (Secured Party) a security interest in all fixtures, rights in action and personal property described herein. This Mortgage is a self-operative security agreement with respect to such property, but Mortgagor agrees to execute and deliver on demand such other security agreements, financing statements and other instruments as Mortgagee may reasonably request in order to perfect its security interest or to impose the lien hereof more specifically upon any of such property. Mortgagor agrees to pay Mortgagee's charge, to the maximum amount permitted by law, for any statement by Mortgagee regarding the obligations secured by this Mortgage and Security Agreement requested by Mortgagor or on behalf of Mortgagor. On demand, Mortgagor will promptly pay all costs and expenses of filing statements, continuation statements, partial releases, and termination

statements deemed necessary or appropriate by Mortgagee to establish and maintain the validity and priority of the security interest of Mortgagee, or any modification thereof, and all costs and expenses of any searches reasonably required by Mortgagee. Mortgagee may exercise any or all of the remedies of a secured party available to it under the Uniform Commercial Code (South Carolina) with respect to such property, and it is expressly agreed in accordance with the provisions of the Uniform Commercial Code (South Carolina), 10 days' notice by Mortgagee to Mortgagor shall be deemed to be reasonable notice under any provision of the Uniform Commercial Code (South Carolina) requiring such notice; provided, however, that Mortgagee may at its option dispose of the collateral in accordance with Mortgagee's rights and remedies in respect to the real property pursuant to the provisions of this Mortgage and Security Agreement, in lieu of proceeding under the Uniform Commercial Code (South Carolina).

Some of the items of property described herein are goods that are or may become fixtures related to the real estate described herein, and it is intended that, as to those goods, this Mortgage and Security Agreement shall be effective as a financing statement filed as a fixture filing from the date of its filing for record in the real estate records of the county in which the Land is located. Information concerning the security interest created by this instrument may be obtained from the Mortgagee, as Secured Party, or the Mortgagor, as Debtor, at the address first shown above.

Everything referred to in paragraphs (A), (B), (C), (D), (E) and (F) hereof and any additional property hereafter acquired by Mortgagor and subject to the lien of this Mortgage or intended to be so is herein referred to as the "Mortgaged Property".

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto Mortgagee, its successors and assigns, to its own proper use and benefit forever, subject, however, to the terms and conditions herein.

PROVIDED, HOWEVER, that if Mortgagor shall promptly pay or cause to be paid to Mortgagee the principal and interest payable under the Note, at the times and in the manner stipulated therein, herein, and in all other instruments securing the Note, all without any deduction or credit for taxes or other similar charges paid by Mortgagor, and shall keep, perform and observe all the covenants and promises in the Note, and any renewal, extension or modification thereof, and in this Mortgage and in all other instruments securing the Note, to be kept, performed or observed by Mortgagor, then this Mortgage, and all the properties, interest and rights hereby granted, conveyed and assigned shall cease and be void, but shall otherwise remain in full force and effect.

Mortgagor covenants and agrees with Mortgagee as follows:

1. Performance of Note, Mortgage, etc. Mortgagor shall perform, observe and comply with all provisions hereof, of the Note and of every other instrument securing the Note, and will promptly pay to Mortgagee the principal with interest thereon and all other sums required to be paid by Mortgagor under the Note and pursuant to the provisions of this Mortgage and of every other instrument securing the Note when payment shall become due, all without deduction or credit for taxes or other similar charges paid by Mortgagor.

2. Warranty of Title. Mortgagor covenants and warrants that it is seized of an indefeasible estate in fee simple in the Land and real property hereby mortgaged, has good and absolute title to all existing personal property hereby mortgaged or made subject to the security interest hereby created and has good right, full power and lawful authority to convey, mortgage and encumber the same as provided herein; that Mortgagee may at all times peaceably and quietly enter upon, hold, occupy and enjoy the Land and real property hereby mortgaged and every part thereof, that the Land, real property and all existing personal property hereby mortgaged or made subject to the security interest hereby created is free and clear of all liens, security interests, charges and encumbrances whatsoever, except for the lien for property taxes not yet due and payable and those permitted encumbrances, if any, described in the title insurance policy. Mortgagor shall and will make such further assurances to perfect Mortgagee's fee simple title to the Land and the real property hereby mortgaged, and the title to the personal property hereby mortgaged or made subject to the security interest created as may reasonably be required. Mortgagor fully warrants the title to the Land, real property and all existing personal property hereby mortgaged or made subject to the security interest hereby created and every part thereof, and will forever defend the same against the claims of all persons whomsoever.

3. Zoning and Environmental Laws. Mortgagor covenants and warrants that all applicable zoning laws, ordinances and regulations affecting the Land permit the use and occupancy of the Improvements and further covenants and warrants to comply with all environmental and ecological laws, ordinances and regulations affecting the Mortgaged Property.

4. Taxes and Liens.

(a) Mortgagor shall pay or bond promptly, when and as due, and shall promptly exhibit to Mortgagee receipts for the payment of all taxes, assessments, rates, dues, charges, fees, levies, fines, impositions, liabilities, obligations and encumbrances of every kind whatsoever now or hereafter imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon or against this Mortgage or the indebtedness or other sums secured hereby, or upon or against the interest of Mortgagee in the Mortgaged Property, as well as all income taxes, assessments and other governmental charges levied and imposed by the United States of America or any state, county, municipality, borough or other taxing authority upon or against Mortgagor or in respect of the Mortgaged Property or any part thereof, and any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property prior to or equal to the lien of this Mortgage before they become delinquent and before any interest attaches or any penalty is incurred.

(b) Mortgagor shall not permit or suffer more than fifteen (15) days any mechanics', laborers', materialmen's, statutory or other lien upon any of the Mortgaged Property.

5. Insurance. Mortgagee shall not require any insurance to be maintained on the Property, but the destruction of the Property, or any part thereof by any event, shall not act to relieve Mortgagor of any obligations hereunder or under the Note.

6. Condemnation. If all or any material part of the Mortgaged Property shall be damaged or taken through condemnation (which terms when used herein shall include any damage or taking by any governmental authority or any other authority authorized by the laws of the state where the Land is located or the United States of America to so damage or take, and any transfer by private sale in lieu thereof), either temporarily or permanently, the entire indebtedness and other sums secured hereby shall, at the option of Mortgagee, become immediately due and payable. Mortgagee shall be entitled to all compensation awards, damages, claims, rights of action and proceeds of, or on account of any damage or taking through condemnation and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or Mortgagor's name, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. All such compensation awards, damages, claims, rights of action and proceeds, and any other payments or relief, and the right thereto, are hereby assigned by Mortgagor to Mortgagee, who, after deducting therefrom all its expenses including attorney's fees, may release any monies so received by it without affecting the lien of this Mortgage or may apply the same, in such manner as Mortgagee shall determine, to the reduction of the sums secured hereby and to any prepayment charge provided in the Note, this Mortgage or other instrument securing the Note. Any balance of such monies then remaining shall be paid to Mortgagor. Mortgagor agrees to execute such further assignments of any compensations, awards, damages, claims, rights of action and proceeds as Mortgagee may require.

7. Care of Property. Mortgagee shall not suffer any action upon the Property which would devalue the Property or cause any loss in the Mortgagor's security hereunder.

8. Expenses. Mortgagor shall pay or reimburse Mortgagee for all costs, charges and expenses, including reasonable attorney's fees and disbursements, and costs incurred or paid by Mortgagee in any action which is threatened, pending or completed or proceeding or dispute in which Mortgagee is or might be made a part or appears as a party plaintiff or party defendant and which affects or might affect the Note, or the Mortgaged Property or any part thereof, or the interests of Mortgagor or Mortgagee therein, including but not limited to the foreclosure of this Mortgage, condemnation involving all or part of the Mortgaged Property or any action to protect the security hereof. All costs, charges and expenses except where Mortgagor and Mortgagee are adverse parties unless awarded by the Court so incurred or paid by Mortgagee shall become due and payable immediately, whether or not there be notice, demand, attempt to collect or suit pending. The amounts so incurred or paid by Mortgagee, together with interest thereof at the Default Rate as hereinafter defined from the date incurred until paid by Mortgagor, shall be added to the indebtedness and secured by the lien of this Mortgage. Provided, however, Mortgagor shall not be liable to pay or reimburse Mortgagee for any such costs, charges and expenses incurred by Mortgagee resulting from Mortgagee's gross negligence or willful misconduct.

9. Mortgagee's Performance of Defaults. If Mortgagor defaults in the payment of any tax, assessment, encumbrance or other imposition, in its obligation to furnish insurance hereunder or in the performance or observance of any other covenant, condition or term in this Mortgage or in any other instrument securing the Note, Mortgagee may at its option perform or observe the same, and all payments made (whether such payments are regular or accelerated

payments) and costs and expenses incurred or paid by Mortgagee in connection therewith shall become due and payable immediately by Mortgagor. Mortgagee agrees to give Mortgagor written notice of any default not involving the payment of money and allow Mortgagor thirty (30) days from the giving of the notice to cure the default. The amounts so incurred or paid by Mortgagee, together with interest thereof at the Default Rate as hereinafter defined from the date incurred until paid by Mortgagor, shall be added to the indebtedness and secured by the lien of this Mortgage. Nothing contained herein shall be construed as requiring Mortgagee to advance or expend monies for any purposes mentioned in this paragraph, or for any other purpose. Mortgagee is hereby empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or terms, without thereby becoming liable to Mortgagor or any person in possession holding under Mortgagor.

10. Event of Default. The term Event of Default, wherever used in this Mortgage, shall mean any one or more of the following events:

(a) A breach or default under the terms of the Note.

(b) A breach by Mortgagor of any of the covenants, agreements and conditions herein.

(c) If either (A) Mortgagor, or any guarantor or endorser of the Note: (i) files a voluntary petition in bankruptcy, or (ii) is adjudicated as a bankrupt or insolvent, or (iii) files any petition or answer seeking or acquiescing in any reorganization, management, composition, readjustment, liquidation, dissolution or similar relief for itself under any law relating to bankruptcy, insolvency or other relief for debtors, or (iv) seeks or consents to or acquiesces in the appointment of any trustee, receiver, master or liquidator of itself Mortgaged Property or of any or all of the rents, or of all of any substantial part of the revenues, issues, earnings, profits or income thereof, or (v) makes any general assignment for the benefit of creditors, or (vi) makes an admission in writing of its inability to pay its debts generally as they become due; or (B) a court of competent jurisdiction enters an order, judgment or decree approving a petition filed against Mortgagor or any guarantor or endorser of the Note, seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state, or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, which order, judgment or decree remains unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the date of entry thereof, or (C) any trustee, receiver or liquidator of Mortgagor or of all or any substantial part of the Mortgaged Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof, is appointed without the prior written consent of Mortgagee, which appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive).

11. Acceleration of Maturity. If an Event of Default shall have occurred, Mortgagee may declare the outstanding principal amount of the Note and the interest accrued thereon, and all other sums secured hereby, to be due and payable immediately, and upon such declaration such principal and interest and other sums shall immediately become and be due and payable without demand or notice.

12. Mortgagee's Power of Enforcement. If an Event of Default shall have occurred, Mortgagee may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or by any other appropriate proceeding or remedy: (a) to enforce payment of the Note or the performance of any term hereof or any other right; (b) to foreclose this Mortgage and to sell, as an entirety or in separate lots or parcels, the Mortgaged Property, under the judgment or decree of a court or courts of competent jurisdiction; and (c) to pursue any other remedy available to it. Mortgagee shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, or both, as the Mortgagee may determine.

13. Purchase by Mortgagee. Upon any such foreclosure sale, Mortgagee may bid for and purchase the Mortgaged Property and, upon compliance with the terms of sale, may hold, retain and possess and dispose of such property in its own absolute right without further accountability.

14. Waiver of Appraisement, Valuation, Stay, Extension and Redemption Laws. Mortgagor agrees to the full extent permitted by law that in case of a default on its part hereunder, neither Mortgagor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisement, valuation, stay, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the absolute sale of the Mortgaged Property or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereat, and Mortgagor, for itself and all who may at any time claim through or under it hereby waives, to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprising the Mortgaged Property marshaled upon any foreclosure of the lien hereof deficiency judgment obtained by Mortgagee against Mortgagor and or appraised for the purpose of reducing any agrees that Mortgagee or any court having jurisdiction to foreclose such lien may sell the Mortgaged Property in part or as an entirety.

15. No Waiver of Default. No delay or omission of Mortgagee or of any holder of the Note to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to waive any such Event of Default or to constitute acquiescence therein. Every right, power and remedy given to Mortgagee may be exercised from time to time and as often as may be deemed expedient by Mortgagee. Further, no waiver of one default shall affect another default.

16. Release Provisions. The Mortgagee shall release any portion of the Property from this Mortgage upon the following terms: Where there is a bona fide sale of the Property, 70% of the Gross Proceeds shall be paid to the first lien position Mortgagee and 20% shall be paid to the Mortgagee hereunder – upon payment of said 20%, Mortgagee shall release the portion of the Property sold. Once the first lien position Mortgagee has been satisfied, then the Mortgagee hereunder shall receive 70% of the gross proceeds of the sale and shall release the portion of the Property sold upon receipt of same. Upon payment of the full indebtedness, the Mortgagee shall satisfy this Mortgage.

17. Heirs, Successors, and Assigns Included in Parties. Whenever one of the parties hereto is named or referred to herein, the heirs, successors and assigns of such party shall be included and all covenants and agreements contained in this Mortgage, by or on behalf of Mortgagor or Mortgagee, shall bind and inure to the benefit of their respective heirs, successors and assigns, whether so expressed or not.

18. Addresses for Notices, etc. All notices hereunder shall be in writing and shall be deemed to have been sufficiently given or served when presented personally or three (3) days following the date when deposited in the mail by registered or certified U.S. Mail, return receipt requested, with sufficient postage prepaid, addressed to MORTGAGOR at **1701 Platt Blvd., Surfside Beach, SC 29575** and to MORTGAGEE at **1925 Shore Lane, Myrtle Beach, South Carolina 29575.**

19. Heading. The headings of the articles, sections, paragraphs and subdivisions of this Mortgage are for convenience of reference only, are not to be considered a part hereof, and shall not limit or expand or otherwise affect any of the terms hereof.

20. Invalid Provisions to Affect No Others. In the event that any of the covenants, agreements, terms or provisions contained in the Note, this Mortgage or any other instrument securing the Note shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein and in the Note and any other instrument securing the Note shall be in no way affected, prejudiced or disturbed thereby.

21. Changes, etc. Neither this Mortgage nor any term hereof may be changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. Any agreement hereafter made by Mortgagor and Mortgagee relating to this Mortgage shall be superior to the rights of the holder of any intervening lien or encumbrance.

22. Governing Law. This Mortgage is made by Mortgagor and accepted by Mortgagee in the State of South Carolina, with reference to the laws of such State, and shall be construed, interpreted, enforced and governed by and in accordance with such laws (excluding the principles thereof governing conflicts of law).

23. Default Rate. The Default Rate shall be the default rate as set out in the Note.

WAIVER OF APPRAISAL RIGHTS: The Laws of the South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may, within thirty (30) days after the sale of the mortgaged property, apply to the court for an order of appraisal. The statutory appraisal value as approved by the court could be substituted for the high bid and may decrease the amount of any deficiency owning in connection with the transaction. THE UNDERSIGNED BORROWER HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.

IN WITNESS WHEREOF, the undersigned have executed this instrument the day and year above first written.

Signed, Sealed and Delivered
In the presence of:

MORTGAGOR:

DEERFIELD INVESTORS, LLC,
a South Carolina limited liability company

By: _____ (L.S.)
McCray Smith
Its: President

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within named Mortgagor, Deerfield Investors, LLC, by McCray Smith, its President, Sign, Seal and as its Act and Deed deliver the within written Mortgage and Security Agreement; and that s/he with the other witness subscribed above witnessed the execution thereof

_____
(witness)

SWORN TO before me this 24th
day of March, 2006.

_____ (SEAL)
Notary Public for South Carolina
My Commission Expires: 02-19-08

Exhibit A
Legal Description

ALL THAT certain piece, parcel or tract of land consisting of 168.54 acres and also shown on that certain plat prepared by Moorman and Little, Inc., dated June, 1980, and recorded in Plat Book 70 at Page 27, of the real property records of Horry County.

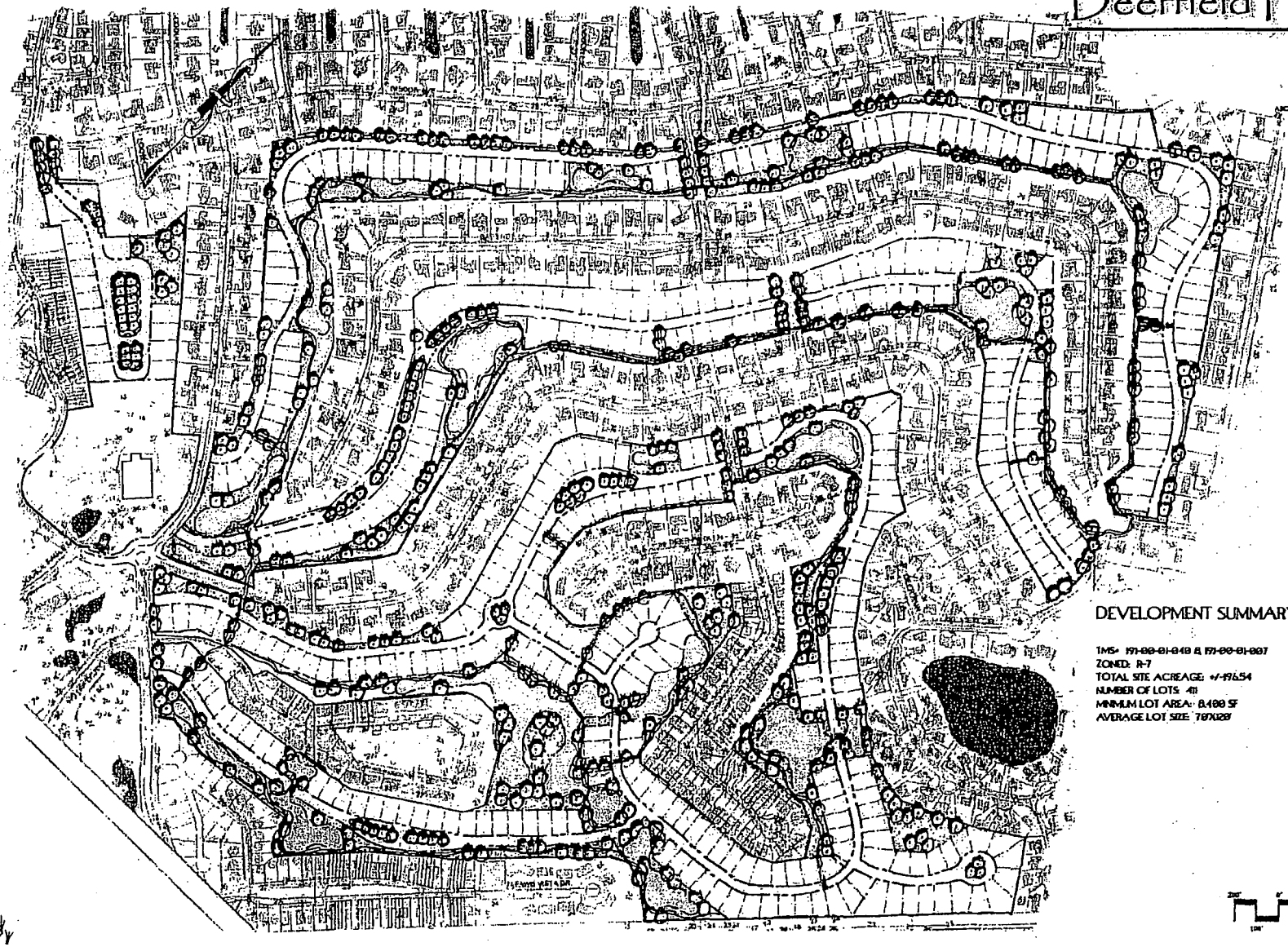
ALSO, conveyed hereby is that certain piece, parcel and lot of land consisting of 21.991 acres as shown on that certain plat prepared by Moorman, Little & Kiser, Inc., dated May, 1980, and recorded in Plat Book 69 at Page 2 of the real property records of Horry County.

BEING the same property conveyed to DEERTRACK INVESTORS, LLC, a South Carolina limited liability company by Deed of DEERFIELD MANAGEMENT, INC., dated March 24, 2006, and recorded March 24, 2006, in Deed Book 3068 at Page 431, in the Office of the Clerk of Court for Horry County, South Carolina.

TMS#: 191-00-01-040 and 191-07-02-018, respectively

Deerfield Plantation

SGA ARCHITECTURE



DEVELOPMENT SUMMARY

TMS# 171-00-01-048 & 171-00-01-007
ZONED: R-7
TOTAL SITE ACREAGE: +/-19.54
NUMBER OF LOTS: 41
MINIMUM LOT AREA: 8,400 SF
AVERAGE LOT SIZE: 78'X128'

June 21, 2006
Scale: 1"= 200'

DEFENDANT'S EXHIBIT 3

000512

CONTRACT FOR SALE OF REAL ESTATE

This CONTRACT FOR SALE OF REAL ESTATE (hereinafter "Contract") is made on the date it is last executed by one of the parties hereto ("Effective Date"), by and between Deertrack Management, Inc., a South Carolina corporation (hereinafter "Seller"), and Deerfield Investors, LLC (hereinafter "Buyer").

WITNESSETH

FOR AND IN CONSIDERATION of the premises and the mutual covenants hereinafter set forth and other good and valuable consideration, the parties agree as follows:

1. Definitions. When used in this Contract, the following terms shall have the following meanings unless the context requires otherwise:

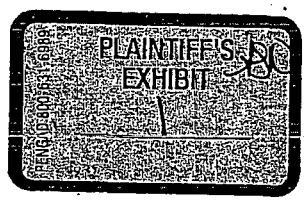
   (a) "Closing," with an initial capital letter, shall mean and refer to the consummation of the transaction contemplated in this Contract.

   (b) "Property," with an initial capital letter, shall mean and refer to that certain real property described on the attached Exhibit A, to which Exhibit A specific reference is hereby made for a more particular description.

2. Purchase and Sale. Seller hereby agrees to sell and Buyer hereby agrees to purchase the Property, subject to and in accordance with the terms and conditions of this Contract.

3. Purchase Price. Buyer shall pay Eight Million and 00/100 Dollars ($8,000,000.00) (the "Purchase Price") as the purchase price for the Property, which shall be payable as follows:

   a. Buyer shall pay to Seller, in cash or immediately available funds, Four Million and no/100 ($4,000,000.00) Dollars at the Closing.
   b. Buyer shall execute a promissory note to Seller at Closing in the original principal amount of Four Million and no/100 ($4,000,000.00) Dollars and Seller shall hold a second lien position mortgage over the Property. The terms and repayment schedule of the loan from Seller secured by the second mortgage shall be as follows: No interest shall accrue on the loan. The loan shall be repaid from the proceeds of sales of lots or units or a bulk sale of all or a portion of the Property. Seller agrees that its mortgage shall be subordinated to one or more mortgages on the property for acquisition and infrastructure, said mortgages not to exceed the maximum amount of Seven Million Dollars ($7,000,000.00). From the gross proceeds of any sale, 70% shall be paid to NBSC to release the mortgage, 20% shall be paid to Seller to release its mortgage from that particular property, and 10% shall be applied to closing costs or paid to Buyer.



Upon satisfaction of the first mortgage lien, Seller shall begin to receive 70% of the gross proceeds of any sale until the principal under the note is paid in full. Seller agrees to sign a Mortgage Release for any portion of the Property upon receipt of the percentage of the gross proceeds stated herein. All moneys due hereunder, if not earlier paid, shall be paid not later than four years from the date of closing. Notwithstanding any other provision herein, if Buyer is unable to develop the Property as a result of the refusal by Horry County to grant any required zoning or permitting, or if any court of competent jurisdiction shall issue any order or decree prohibiting Buyer from developing the Property, then the due date shown above shall be tolled until two years after a subdivision plan is approved by Horry County authorizing Buyer, or any subsequent owner, to develop the Property. All amounts due under said mortgage shall be held in abeyance until such approval is granted and all amounts due shall be paid in accordance herewith at the time that Buyer, or any future owner, develops the Property, or within two years of approval by Horry County. Failure of Buyer or a subsequent owner to aggressively pursue such approval shall not act to toll the due date of the loan secured by the Mortgage. Buyer and Seller acknowledge that there may be a necessity to sign one mortgage with the original due date and agree, with said agreement surviving closing, that an additional mortgage shall be filed to replace the original in the event approval is denied.

4. Title.

(a) Title to be Conveyed to Property. At the Closing, Seller shall convey the title to the Property to Buyer by General Warranty Deed (hereinafter "Deed") which is in a form that it is reasonably acceptable to Buyer, Seller and Escrow Agent, free and clear of any and all liens, encumbrances, conditions, easements, assessments, restrictions and other conditions except for the following:

(i) real estate taxes for the year in which the Closing is held and all subsequent years;

(ii) any matter which is or would be revealed by a current and accurate survey of the Property;

(iii) any matter which is or would be revealed by a current and accurate title search and examination of the Property's title; and

(iv) the restrictive covenants to be inserted into the Deed pursuant to subsection 10(a) and Section 19 of this Contract.

(b) Legal Description for Property. The legal description in the Deed shall be the same as the deed(s) originally vesting title to the Property into Seller; provided, that in the event Buyer obtains an ALTA survey of the Property and said survey is certified to Seller, Seller agrees that it shall, at Buyer's request, also execute a Quit Claim Deed (a deed without any warranties of title)

conveying the Property pursuant to the legal description contained in Buyer's survey.

(c) Survey or Plat. Buyer may, at Buyer's sole cost and expense, obtain a survey and/or plat of the Property.

5. **Due Diligence and Closing.**

(a) Due Diligence. The Buyer acknowledges that there is insufficient time to perform all due diligence normally associated with such a contract. This includes, but is not limited to, reviews of applicable statutes, ordinances, and regulations; soil tests; environmental studies; fiscal feasibility studies; and any other matters the Buyer might normally undertake. Buyer acknowledges that the time limitation is built into the price and terms of this agreement.

(b) Closing Date. The Closing shall take place at a time and date which is mutually agreed to by the parties; provided, that in no event shall the Closing take place later than March 17, 2006 (the date upon which the Closing takes place is hereinafter referred to as the "Closing Date").

(c) Closing Entity and Location. The Closing shall be conducted by and held at the offices of Nelson Mullins Riley & Scarborough, L.L.P. or such other location as Buyer may choose; provided, that nothing in this section 5(b) shall be construed as requiring the physical presence of any party or their representatives as a required condition of the Closing if such party has performed all acts and delivered to Closing Attorney all items and documents necessary for the Closing. Time shall be of the essence with respect to the Closing Date.

(d) Additional Closing Documents. At Closing, Seller shall deliver to Buyer, in addition to the Deed and the other documents required by this Contract, the following:

(i) A FIRPTA Certificate;
(ii) An owner's affidavit in a form standard to that given in similar transactions and which has been completed by Seller; and
(iii) Such other instruments as may be reasonably requested by Buyer and/or Escrow Agent and which are reasonably necessary to complete the Closing.

(e) Closing Costs. Unless specifically addressed elsewhere in this Contract, the costs associated with the Closing shall be apportioned as follows:

(i) Buyer shall be responsible for the following:
(A) The costs and fees of its attorneys, if any;
(B) RESERVED;
(C) RESERVED;

(D) All costs charged by any governmental office to record and/or register the Deed and any other documents necessary to complete the transaction;
(E) All costs associated with any title search, title examination, title insurance commitment and/or title insurance policy obtained by Buyer on the transaction contemplated in this Contract;
(F) All costs associated with the Buyer's acquisition of financing, if any;
(G) RESERVED;
(H) Such other fees and costs as may be expressly provided by this Contract; and
(I) Any other costs and fees not addressed in this Contract, but which are typically paid by a purchaser of real property in Horry County, South Carolina.

(ii) Seller shall be responsible for the following:
(A) The costs and fees of its attorneys, if any;
(B) Any real property taxes for previous tax periods and which are not addressed in this Contract;
(C) Any costs associated with the preparation of the Deed;
(D) Such other fees and costs as may be expressly provided for in this Contract;
(E) All revenue, documentary, conveyance and similar taxes or stamps which are imposed on the transaction and/or the recording of any other documents necessary to complete the same; and
(F) Any rollback taxes which are assessed to the Property.

(iii) The following costs and expenses shall be apportioned between the parties as of the date of the Closing (except where the terms of Paragraph 6 herein dictate otherwise):
(A) Except as set forth above, all real property taxes for the current year; provided, that Seller shall not be responsible for any increase in real property taxes which arise as a result of Buyer's improvement of the Property after the Closing;
(B) All utility bills associated with the Property for the current billing period;
(C) All service contracts associated with the Property for the current billing period; and
(D) Any other taxes, costs or fees which are typically apportioned between the parties to a similar transaction in Horry County, South Carolina.

6. Possession.

Seller shall deliver possession of the Property to Buyer on the day of closing. Buyer agrees to accept the Property in its "AS IS, WHERE IS" condition and subject to the rights, privileges, easements and licenses of other persons and

entities having an interest in the same. Buyer intends to continue to allow Gary Shaw to operate the golf course on a month to month basis.

7. No Warranties or Representations by Seller.

Seller makes absolutely no warranties or representations whatsoever regarding the title, status, or condition of the Property. Likewise, Seller makes absolutely no warranties (express or implied) or representations regarding the Property, including, but not limited to any warranties regarding the fitness or sufficiency of the Property for Buyer's intended purpose or use. By signing below, Buyer acknowledges that it has not relied on any statement made by Seller regarding the Property.

8. Buyer's Warranties and Representations.

In addition to the other warranties and representations of Buyer set forth in this Contract, Buyer, for the purpose of inducing Seller to enter into this Contract, hereby represents and warrants the following to Seller:

(a) Buyer is duly organized, validly existing and in good standing under the laws of the State of South Carolina, its state of organization, and has full power and authority to enter into this Contract, and to perform all of its obligations under this Contract; and

(b) All information Buyer has provided or will provide to Seller regarding Buyer's financial positions and conditions were, and remain, accurate and complete.

9. Seller's Covenants. Seller hereby covenants with Buyer as to each of the following:

(a) Seller will deliver to Buyer copies of all surveys, engineering plans, soil studies and other documents which have been prepared by or at the direction of Seller with respect to the Property and which are in Seller's possession. Seller further agrees that in the event Seller discovers or comes into possession of other surveys, engineering plans, soil studies, or other documents relating to the condition of the Property prior to Closing, that it will provide Buyer with copies of the same within a reasonable period of time following their discovery. Seller makes no representation that it has any such documents in its possession.

Notwithstanding anything contained in this subsection 9(a) to the contrary, Seller makes absolutely no warranties or representations regarding the accuracy or sufficiency of any surveys, engineering plans, or other documents provided to Buyer by Seller, Seller's representatives, or Seller's agents. To the contrary, Buyer acknowledges that any reliance on said documents shall be at its own risk.

(b) Seller will make no material improvements, repairs or alterations to the Property prior to Closing without first providing written notice to Buyer; provided that nothing contained in this subsection 9(b) shall be construed as

requiring Seller to make any improvements, repairs or alterations whatsoever to the Property.

(c) Seller is duly organized, validly existing and in good standing under the laws of the State of South Carolina, its state of incorporation, and has full corporate power and authority to carry on its business as now being conducted, to own and use its properties and assets, and to perform all of its obligations under this Contract.

10. Covenants.

(a) Interference/Hindrance.

(i) Neither Buyer nor its successors, assigns or grantees, shall in any way interfere, hinder, impede or prohibit the operation and/or development of the golf course commonly known as the South Course ("South Course"). Further, neither Buyer nor its successors, assigns or grantees shall interfere, hinder, impede and/or prevent any person or entity from using any part of the Property that has previously been used as, or which is otherwise reasonably necessary to, provide access and/or to install and/or maintain any utility service to any person's or entity's property. Buyer's obligation under this paragraph 10(a)(i) shall include the affirmative duty of Buyer, its successors, assigns and grantees, to execute such instruments to grant and convey easements access and the installation and maintenance of all utilities (which utilities shall include without limitation to water service, public sewer, electricity service, natural gas service, cable television service and internet service) where the same is reasonably necessary to provide and/or maintain one or more of the above-described uses. Further, Buyer hereby covenants and agrees that it will put provisions describing its obligations under this paragraph 10(a)(i) into any instrument conveying any interest in the Property in the future. Buyer acknowledges that Seller, in order to ensure enforcement of this provision, may insert a Restriction in the Deed of Conveyance outlining the requirement herein.

(ii) Seller acknowledges that following Buyer's acquisition of the Property pursuant to this Contract, Buyer may need to utilize certain portions of the South Course in order to operate and/or develop the Property. As such, Seller agrees that Seller shall assign to Buyer, without any warranties or recourse against it, any easements for access and/or utilities which it retained on, over or under the South Course, if any, and which easements are (1) reasonably necessary for Buyer's use and/or development of the Property, and (2) do not now and will not in the future provide Seller any income.

(b) Buyer's lack of authority. Buyer will not take any action in the name of or on behalf of Seller or any other entity owned or managed by Seller without Seller's written permission; provided, that nothing contained in this subsection 10(b) shall be construed as either (i) authorizing Buyer to do the same, or (ii)

implying that Buyer has authority to do the same; provided further that in such event Seller shall have, in addition to the remedies set forth in this Contract, the right to pursue all other rights and remedies available in law or equity.

(c) Buyer's indemnity for use and occupancy. Buyer shall forever indemnify and hold Seller harmless from and against any all claims, losses, damages, liabilities and expenses (including Seller's reasonable attorneys' fees and costs) which arise or threaten to arise as a result of Buyer's use, occupancy and/or entry onto the Property prior to Closing.

(d) Buyer's other indemnities. Buyer shall forever indemnify and hold Seller harmless from and against any and all claims, losses, damages, liabilities and expenses (including Seller's reasonable attorneys' fees and costs) which are suffered or incurred by Seller as a result of any use or occupancy of the Property, whether the same occurs prior to Closing or after Closing, so long as Seller is not aware of the potential liability prior to Closing; provided, however, that nothing contained in this subsection 10(d) shall be construed as limiting Buyer's covenants in subsection 10(c) above.

11. Conditions Precedent to Seller's Obligation to Close.

Seller's obligation to consummate the Closing shall be conditioned upon the satisfaction in all material respects of each and all of the following items on or before the Closing Date; provided, that Seller shall have the right to waive each of these conditions, which waiver must be in writing to be effective, in whole or in part:

(a) All of the documents and other items required to be delivered by Buyer to Seller at the Closing, as provided by this Contract, shall have been delivered in form and substance reasonably satisfactory to Seller;

(b) Buyer shall have complied with, fulfilled, and performed, in each case in all material respects, each of the covenants, terms, and conditions to be complied with, fulfilled, or performed by Buyer under this Contract, including, but not limited to, payment of the Purchase Price; and

(c) all of the representations and warranties made by Buyer in this Contract shall be true in all material respects as of the Closing Date.

12. Right of Entry.

At any time prior to the Closing, and at Buyer's sole expense, Buyer, its employees, authorized agents, representatives, assigns, and contractors shall have the right to enter upon the Property at any reasonable time and for any lawful purpose, including, without limitation, conducting any tests, analyses, surveys, or other studies concerning the Property which Buyer may determine, in its sole discretion, are necessary. For this purpose, Buyer agrees that it shall restore any disturbance to the Property caused by it, or its employees, representatives, agents, contractors, or invitees during the exercise of the rights contained in this Section 12. Further, Buyer agrees that it shall forever indemnify Seller for and against any damage occasioned to the Property by the negligent or intentional acts of Buyer,

its employees, contractors or agents. Further, Buyer agrees that it shall forever indemnify and hold Seller harmless from and against any and all damages sustained by Buyer, its employees, contractors or agents while inspecting, studying, or working on the Property, which injuries do not solely result from the intentional or negligent actions of Seller, its officers, employees, invitees or agents.

The provisions of this Section 12 shall survive the Closing or earlier termination of this Contract.

13. Default.

(a) Default by Seller. Except as may be provided for in this Contract, if Seller fails or refuses to comply with the terms or conditions of this Contract, or if the Closing shall not occur through the fault of Seller, Buyer shall be entitled to recover the sum of $10,000.00 and this shall be the sole remedy of the Buyer.

(b) Default by Buyer. Except as may be provided for in this Contract, if Buyer shall fail to comply with the terms of the Contract or if the Closing shall not occur through the fault of Buyer, Seller shall be entitled to recover the sum of $10,000.00 and this shall be the sole remedy available to Seller.

14. Brokerage.

(a) Seller represents and warrants to Buyer that there are no real estate or brokerage commissions payable in connection with the transactions contemplated by this Contract to any party claiming through Seller, or arising out of the actions of Seller, other than the commission payable by Seller to Olivetti Realty on the conditions set forth in a separate agreement. Seller shall indemnify and hold Buyer harmless from all costs, claims, damages, or liability of any kind in connection with the breach of this representation.

(b) Buyer represents and warrants to Seller that there are no real estate or brokerage commissions payable in connection with the transactions contemplated by this Contract to any party claiming through Buyer, or arising out of the actions of Buyer, except Chuck Murphy, whose commission shall be paid according to a separate agreement between the Seller and Chuck Murphy. Buyer shall indemnify and hold Seller harmless from and against all costs, claims, damages, and liability of any kind in connection with the breach of this warranty and representation.

(c) The representations and indemnities set forth in this Section 14 shall survive the Closing or the earlier termination of this Contract.

15. Assignment.

Buyer may not assign any right or delegate any duty hereunder without the prior written consent of Seller, which consent shall not be unreasonably withheld or delayed; provided that Buyer may assign its rights hereunder to an entity wholly owned by Buyer so long as Buyer remains personally liable for any

continuing obligations hereunder. Any attempted assignment or delegation without the prior written consent of the Seller, other than as authorized above, shall be void ab initio and constitute a default under this Contract.

Seller may assign its rights under this Contract to another entity.

16. Condemnation.

In the event any portion of the Property is taken by condemnation or in lieu thereof prior to Closing, and the portion of the Property taken shall, in Buyer's reasonable opinion, have a materially adverse impact on Buyer's proposed use of the Property, Buyer may, within thirty (30) days after receiving notice from Seller of such taking or the time period before the date of Closing, whichever shall occur first, elect to terminate this Contract and receive a full refund of the Deposit, or (ii) proceed with the Closing with the Property "AS IS, WHERE IS" and with a prorated deduction in the Purchase Price; provided, that all condemnation awards shall be and remain the sole and exclusive property of Seller.

17. Notice. All notices, demands, elections, deliveries, instructions to Escrow Agent, and other communications required or desired to be given in connection with this Contract, to be effective under this Contract, shall be in writing and shall be deemed to be given and received (i) when delivered personally; (ii) one business day after deposit with a national overnight courier service (e.g., Federal Express, etc.); or (iii) three (3) business days after deposit with the United States Postal Service certified mail, return receipt requested, in any event with all charges or postage prepaid and addressed as follows:

If to Seller:
Deertrack Management, Inc.
1925 Shore Lane
Myrtle Beach, SC 29575

With a copy to (if by U.S. Mail):
J. Matthew Dove
Dove Law Firm, P.A.
P.O. Box 625
Murrells Inlet, SC 29576

Or, if by any other method:
J. Matthew Dove
Dove Law Firm, P.A.
2339 Highway 17 Business South
Garden City, SC 29576

If to Seller:

Deertrack Investors, LLC

With Copy to:
Nelson Mullins Riley & Scarborough, L.L.P.
2411 North Oak Street, Suite 301
Myrtle Beach, SC 29577
Attn: James F. McCrackin, Esq.

18. Licensure Disclosure.

Buyer acknowledges that the principal owner of Seller is licensed as a Real Estate Broker in the State of South Carolina.

19. Obligations upon future subdivisions or buildings. As a portion of the consideration for this transaction, Buyer hereby promises, covenants and agrees that in the event any portion of the Property shall (1) be subdivided into two or more lots, tracts or parcels of land, or (2) any lot, tract or parcel of the Land (whether as now constituted or hereafter subdivided) shall be improved with more than one single-family house, condominium unit, apartment, office, retail store, warehouse, or other similar structure) (each a "Unit"), Deertrack Golf, Inc., its successors or assigns, shall be entitled to the sum of One Thousand Dollars ($1,000) U.S. ("Development Fee") for each new lot, tract and parcel created; provided, that if a multi-family structure is built on any new lot, tract or parcel created by a subdivision and/or resubdivision of the Land, Buyer shall receive a credit for the One Thousand Dollars ($1,000) paid to Deertrack Golf, Inc., its successors or assigns, for the creation of the tract, lot or parcel upon which the multi-family structure is erected; provided further that said credit shall be applied to the amount owed to Deertrack Golf, Inc., its successors or assigns, at the time Buyer pays the Development fee on the multi-family structure pursuant to the following paragraphs of this Section 19.

The Development fee shall be the responsibility of Buyer and its successors and assigns; provided that if Buyer is no longer the fee simple owner of the property being subdivided or improved, Buyer and the then fee simple owner of the subject property shall be jointly and severally liable for paying the same; provided further that the obligation to pay the Development Fee with respect to the construction of a Unit shall not arise until the Unit has been completed and a certificate of occupancy for the same has been obtained. Each Development Fee due for lots shall be due within 15 days of the recording of the final, bonded subdivision plat. Each Development Fee for a unit shall be due within 15 days of the receipt of the Certificate of Occupancy.

Buyer specifically acknowledges that the obligations in that paragraph 19 are continuing upon Seller, and Buyer understands that the failure to make any

payment when due shall constitute a default hereunder. Any party bringing an action to enforce this paragraph shall be entitle to attorney's fees upon recovery.

To assist in the enforcement of the provisions of this Section 19, the parties agree that a restrictive covenant shall be placed in the Deed setting forth the preceding matters. Said restrictive covenant shall run with the land and shall be binding upon Buyer, Seller, and their successors and assigns.

The provisions of this Section 19 shall survive the Closing.

20. 1031 Exchange.

Buyer acknowledges that Seller may desire to affect a 1031 or tax-deferred exchange in connection with the sale of the Property and Buyer covenants and agrees that it shall cooperate to the extent reasonably requested by Seller to assist with Seller's consummation of the same. Said cooperation shall include, without limitation, cooperation with the timing of the Closing, and the execution such additional instruments as may be reasonably necessary to affect the same.

21. Miscellaneous.

(a) Severability. In the event any portion of this Contract is determined to be unenforceable by a court of competent jurisdiction, all other provisions hereof shall remain in full force and effect.

(b) Use of Captions. The captions used in this Contract are for the purpose of convenience only and in no way define, describe or limit the scope or intent of this Contract or any of the provisions hereof.

(c) Pronouns and Tense. Whenever used in this instrument, as necessary to effectuate its purposes, the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall be applicable to all genders.

(d) Entire Agreement; Modifications. This Contract represents the entire agreement of the parties and may only be modified by a subsequent written agreement executed by both parties.

(e) Multiple Counterparts. This Contract may be executed in multiple counterparts, the combination of which shall constitute the entire Contract. Copies, facsimiles, or other duplications of the original signatures of the parties hereto shall constitute effective execution of this Contract.

(f) Successors and Assigns. This Contract shall be binding upon and inure to the benefit and burden of the parties hereto and their respective heirs, executors, administrators, personal representatives, successors and permitted assigns.

(g) No Presumption from Draftsmanship. In the event of a dispute involving the interpretation or construction of this Contract involving Buyer, Seller and/or any other party or parties, it shall be deemed that this Contract was jointly drafted by all parties to the dispute, and no rule of construction or presumption shall be asserted in favor or to the detriment of either Buyer, Seller or any other party based upon the identity of the party actually drafting this Contract.

(h) Time of Essence. Time is expressly declared to be of the essence of this Contract.

(i) No Offer. This Contract shall have no binding force and effect on either party, shall not constitute an offer, and shall not confer any rights upon either party or impose any obligations upon either party irrespective of any reliance thereon, change of position or partial performance unless and until such time as both parties shall have executed this Contract.

(j) Governing Law. This Contract and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of South Carolina.

(k) Vendor-Purchaser Relationship. Nothing contained in this Contract and no act by Buyer or Seller in the performance of, or in any way related to, this Contract will be construed to create or evidence in any manner any employment, partnership, agency or joint venture relationship, between the parties hereto. Buyer and Seller represent and acknowledge that it is their mutual intent that the sole relationship created between them by this Contract is that of vendor and purchaser.

(l) Attorneys' Fees and Costs. If any legal action is commenced by any party to enforce any provision of this Contract, the prevailing party shall be entitled to recover from the other party all its actual costs, expenses and reasonable attorneys' fees which it has expended in the same.

(m) Illegality. Nothing contained in this Contract shall be construed as requiring Buyer or Seller to: (i) perform any act which is prohibited by law, or (ii) abstain from the performance of any which is required by law.

IN WITNESS WHEREOF, the parties have executed this Contract by and through their duly authorized undersigned officer on the day and year below their respective signatures.

SELLER:

Deertrack Management, Inc.

By: _____
Al Olivetti, President

Date: 15 MARCH 06

BUYER:

Deertrack Investors, LLC

By: _____
McCray Smith, President

Date: 14 March 2006

Exhibit "A"

The property being transferred bears Horry County Tax Map Numbers 191-07-02-018 (the Clubhouse Tract) and 191-00-01-040 (the North Course). The property shall include the North Golf Course, the driving range, and the clubhouse. The Fairway Drive lots are not included.

A: I believe three to seven months from March the 24th would be around October, would be the beginning of sales.
Q: Seven, okay. So October would be ---
A: I believe we had a September target date.
Q: Okay. And 30 months would start from that date?
A: And typically, we set our target date for six months after closing.
Q: You told us you met with Gordon Hirsch, he was doing some PR work, and you didn't initiate that meeting. Who did initiate that meeting with him?
A: I don't know.
Q: How did you come to meet? Did he call you? Did you call him? How did you initially meet Mr. Hirsch, Gordon Hirsch?
A: I believe he knew someone who knew one of us, being Jerry or I, and I don't recall if we called him or he called us.
Q: Were you aware at the time you purchased the north course that there was a lawsuit on the south course?
A: Yeah. We heard about it just before closing.
Q: Who told you about it?
A: Mr. McCrackin.
MS. GOLDING: AGAIN, ANSWERING THAT

Q: So if Horry County never approves it, then the four million dollars never has to be paid?
A: That's right, according to what I read.
Q: Okay. Just above that, the sentence that starts with, "Notwithstanding any other," do you see that?
A: Uh-huh (affirmative response).
Q: "Notwithstanding any other provision herein, if Buyer is unable to develop the Property as a result of the refusal by Horry County to grant any required zoning or permitting, or if any court of competent jurisdiction shall issue any order or decree prohibiting Buyer from developing the Property," is it your understanding that, what we just talked about, it wouldn't be due if you can't get the zoning, is that also true for if there's a court order saying you can't develop the property?
A: Well, that's a boilerplate item in the purchase of a piece of property for our company, for property to be developed, number one. Number two, we weren't applying for zoning. It was already zoned.
Q: But the zoning has changed, hasn't it?
A: Not, not at my hand.

PLAINTIFF'S EXHIBIT 2

Q: I understand that, but ---
A: Not by my hand.
Q: I understand that. So what's your understanding if either due to the current zoning or any court order that comes out, if either of those two things prohibits you guys from developing the property, do you still owe the four million dollars?
A: Not to my knowledge.
Q: The loan from NBSC, what's the status of that loan or the payment back on it?
A: It is a interest only land loan.
Q: What are the terms of its repayment, when is it due?
A: That due date has come and gone more than once.
Q: How much do you still owe on it?
A: The original amount plus any interest between our last payment and now.
Q: Has the contract been renegotiated? You said the dates have come and gone.
A: The note has been renewed.
Q: Are there any other contracts that you've entered into, aside from the NBSC note and the contract to purchase the land, with regard to purchased land, developed land, anything of that nature?

000529

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE ☒ COURT OF COMMON PLEAS
☐ FAMILY COURT

Dale Hill, et al.)
☒ Plaintiffs)
v.)
Deertrack Golf and Country Club, Inc., et al.)
☐ Defendants)

CASE NO. 2006-CP-26-4440

MOTION INFORMATION FORM

AND COVER SHEET

check box above indicating submitting party

Name, SC Bar No. & Address of Plaintiff's attorney	Name, SC Bar No. & Address of Defendant's attorney
Robert S. Shelton SC Bar #68543	Richard M. Smith SC Bar
Bellamy Law Firm, PO Box 357, Myrtle Beach, SC 29578	McNair Law Firm, P.A., PO Drawer 418 Georgetown, SC 29442
Telephone: 448-2400 Fax: 448-3022	Telephone: 546-6102 Fax:
E-Mail: Other:	E-Mail: Other:

08 JUL -7 PM 4:49
MELANIE HUGGINS
CLERK OF COURT
HORRY COUNTY

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion for Class Certification

Estimated Time Needed: 15 mins. Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion Type

☒ Written motion attached
☐ Form Motion –

I hereby move for relief or action by the court as set forth in the attached proposed motion.

Signature of Attorney for Plaintiffs 7/7/08 Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: $25.00

☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse of Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ 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: (print name)

DATE FILED

☐ MOTION FEE COLLECTED:
☐ CONTESTED - AMOUNT DUE:

STATE OF SOUTH CAROLINA)	**IN THE COURT OF COMMON PLEAS**
)	**FIFTEENTH JUDICIAL CIRCUIT**
COUNTY OF HORRY)	**CIVIL ACTION NO. 06-CP-26-4440**
Dale Hill, Betty Hill, Carl Clemmons, and Geraldine Clemmons, individually, and on behalf of a class of all others similarly situated,)	
Plaintiffs,)	
vs.)	**PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**
Deertrack Golf and Country Club, Inc., Deertrack Golf, Inc., Deerfield Plantation, Inc., the Estate of John Schaad, by and through Ann Schaad as Executrix, and Deertrack Investors, LLC)	
Defendants.)	
Deertrack Investors, LLC,)	
Third-Party Plaintiff,)	
vs.)	
Plantation Resort of Myrtle Beach, Inc. Plantation Resort Properties, Inc., and Deerfield Plantation Property Owners' Association, Inc.)	
Third-Party Defendants.)	

HORRY COUNTY
08 JUL -7 PM 4:49
HELANIE HUGGINS
CLERK OF COURT

TO: DEFENDANTS DEERTRACK GOLF AND COUNTRY CLUB, INC., DEERTRACK GOLF, INC., DEERFIELD PLANTATION, INC., AND THE ESTATE OF JOHN SCHAAD, BY AND THROUGH ANN SCHAAD AS EXECUTRIX, AND THEIR ATTORNEY, RICHARD M. SMITH, ESQ.

Plaintiffs Dale Hill, Betty Hill, Carl Clemmons, and Geraldine Clemmons, individually, and on behalf of a class of all others similarly situated, respectfully move this Court for an Order, pursuant to Rule 23 of the *South Carolina Rules of Civil Procedure*, certifying the above-captioned action as a class action on behalf of a class consisting of all persons who owned residential dwellings within the Deerfield Plantation subdivision in the Surfside Beach area of Horry County, South Carolina, as of the date of the filing of this a.

As demonstrated in Plaintiff's accompanying Memorandum of Law in Support of Their Motion for Class Certification, the prerequisites for class certification pursuant to Rule 23, *SCRCP* are met here, to-wit: (1) the class is so numerous that joinder of all members is impractical; (2) questions of law and fact are common to the class; (3) the representative Plaintiffs' claims are typical of those of the class; (4) the representative Plaintiffs will fairly and adequately represent the interests of the class; and (5) the amount in controversy exceeds one hundred dollars for each member of the class.

Accordingly, this action meets all of the requirements for class certification set forth in Rule 23, *SCRCP*, and the class should be certified with Plaintiffs as the representatives of the class, and Plaintiffs' counsel appointed as class counsel.

Respectfully submitted,

David B. Miller, SCB #10296
Robert S. Shelton, SCB #68543
BELLAMY, RUTENBERG, COPELAND, EPPS, GRAVELY & BOWERS, P.A.
P.O. Box 357
Myrtle Beach, SC 29578
(843) 448-2400
Attorneys for Plaintiffs

Myrtle Beach, South Carolina

July 7, 2008

000533

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE ☒ COURT OF COMMON PLEAS
☐ FAMILY COURT

Dale Hill, et al.)
☒ Plaintiffs)
v.)
Deertrack Golf and Country Club, Inc., et al.)
☐ Defendants)

CASE NO. 2006-CP-26-4440

MOTION INFORMATION FORM

AND COVER SHEET

check box above indicating submitting party

Name, SC Bar No. & Address of Plaintiff's attorney	Name, SC Bar No. & Address of Defendant's attorney
Robert S. Shelton SC Bar #68543 Bellamy Law Firm, PO Box 357, Myrtle Beach, SC 29578 Telephone: 448-2400 Fax: 448-3022 E-Mail: Other:	Henrietta U. Golding SC Bar McNair Law Firm, P.A., PO Box 336 Myrtle Beach, SC 29578 Telephone: Fax: E-Mail: Other:

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Notice of Motion and Motion to Alter or Amend Judgment Under Rule 59(e), SCRCP

Estimated Time Needed: 1 hour Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion Type

☒ Written motion attached
☐ Form Motion --
I hereby move for relief or action by the court as set forth in the attached proposed motion.

25 Feb
Signature of Attorney for Plaintiffs Date submitted

FILED
HORRY COUNTY
2010 FEB 25 AM 10:28
MELANIE HUGGINS-WARD
CLERK OF COURT

SECTION III: Motion Fee

☒ PAID - AMOUNT: $25.00

☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse of Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ 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:
(print name)

DATE FILED

☐ MOTION FEE COLLECTED:
☐ CONTESTED - AMOUNT DUE:

STATE OF SOUTH CAROLINA COUNTY OF HORRY	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT CIVIL ACTION NO. 06-CP-26-4440
Dale Hill, Betty Hill, Carl Clemmons, and Geraldine Clemmons, individually, and on behalf of a class of all others similarly situated, Plaintiffs, vs. Deertrack Golf and Country Club, Inc., Deertrack Golf, Inc., Deerfield Plantation, Inc., the Estate of John Schaad, by and through Ann Schaad as Executrix, and Deertrack Investors, LLC Defendants.	**PLAINTIFFS' NOTICE OF MOTION AND MOTION TO ALTER OR AMEND JUDGMENT UNDER RULE 59(e), SCRCP**
Deertrack Investors, LLC, Third-Party Plaintiff, vs. Plantation Resort of Myrtle Beach, Inc. Plantation Resort Properties, Inc., and Deerfield Plantation Property Owners' Association, Inc. Third-Party Defendants.	

FILED
HORRY COUNTY
2010 FEB 25 AM 10: 28
MELANIE HUGGINS-WARD
CLERK OF COURT

TO: THE DEFENDANTS AND THEIR ATTORNEYS

YOU WILL PLEASE TAKE NOTICE that the Plaintiffs, by and through their undersigned attorneys, will move pursuant to Rule 59(e), SCRCP, before the Honorable

Thomas W. Cooper, Jr., Active Retired Circuit Court Judge and Special Referee upon ten (10) days notice hereof or as soon thereafter as counsel may be heard, for an Order of the Court altering or amending the Final Order entered on February 17, 2010 as a result of the November 9, 2009 final merits hearing on Plaintiffs' First Cause of Action for Declaratory Judgment. The grounds for this Motion are as follows:

I. An easement arose because of the manner in which Deerfield Plantation was planned, developed, marketed, and sold.

a. The lower court failed to find V. F. Platt, Jr. and/or Deerfield Plantation, Inc. established a common plan or scheme of development.

b. The lower court failed to find the Plaintiffs established that under the facts and law at bar there arose an implied easement.

II. This easement was not effectively disclaimed.

a. The lower court erroneously cited to the Plat recorded at Plat Book 54, Page 124 in the Office of the Register of Deeds for Horry County, South Carolina as "expressly" disclaiming "any easement to the Subject Property." (Order, page 25.)

b. The lower court erroneously cited to the Declarations as "expressly" disclaiming "any easement to the Subject Property." (Order, page 26.)

c. The lower court erroneously found "the Property Report, the Purchase Agreement, and the Privilege and Obligation Agreement expressly disclaim any rights of Plaintiffs to the Subject Property." (Order, page 29.)

d. The lower court erroneously found "the recorded documents expressly prohibit Plaintiffs from claiming any right to the property." (Order, page 29.)

e. The lower court erred in concluding the Contract, the Privilege and Obligation Agreement, the Plat, the Restrictions, and the Property Report, taken together, adequately disclaimed the implied easement.

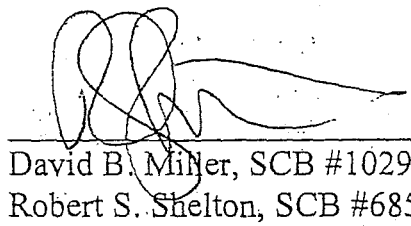
f. To the extent the lower court may have considered the Privilege and Obligation Agreement a recorded document, such is erroneous and, to the extent this erroneous conclusion weighed in the Court's determination of the issues before the Court, such consideration and findings were improper.

g. The lower court erroneously held the principles underpinning the holding in Blue Ridge Realty Co. v. Williamson, 247 S.C. 112, 145 S.E.2d 922 (1965), were limited to implied easements in roads and streets.

III. Plaintiffs did not allege any easement by prescription or necessity.

a. The lower court made findings as to a prescriptive easement and an easement by necessity. To the extent these weighed in the Court's determination of the issues before the Court, such consideration and findings were improper.

All of which is respectfully submitted,



David B. Miller, SCB #10296
Robert S. Shelton, SCB #68543
BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
P.O. Box 357
Myrtle Beach, SC 29578
(843) 448-2400
Attorneys for Plaintiffs

Myrtle Beach, South Carolina

February 25, 2010.

STATE OF SOUTH CAROLINA)
) THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY) Civil Action No.: 2006-CP-26-4440

Dale Hill, Betty Hill, Carl Clemmons Geraldine Clemmons, Individually, and on behalf of a Class of all others similarly Situated,

Plaintiffs,

v.

Deertrack Golf and Country Club, Inc. Deertrack Golf, Inc., Deerfield Plantation, Inc., the Estate of John Schaad, by and through Ann Schaad as Executrix, and Deertrack Investors, LLC.,

Defendants.

Deertrack Investors, LLC.,

Third-Party Plaintiff,

v.

Plantation Resort of Myrtle Beach, Inc., and Plantation Resort Properties, Inc.

Third-Party Defendants.

FILED
HORRY COUNTY
2006 JUL 21 PM 1:24
ELAINE BRIGGS-WARD
CLERK OF COURT

PETITION FOR WRIT OF SUPERSEDEAS; LIFT OF STAYAND/OR BOND

Pursuant to Rule 62(c) of the South Carolina Rules of Civil Procedure, Rule 225(c) of the South Carolina Appellate Court Rules, and South Carolina Code Ann. §§18-9-150 and 160, the undersigned, on behalf of the Defendant, Deertrack Investors, LLC, hereby moves for an order imposing a supersedeas, lift of stay, and/or appeal bond on the matters decided in the Special

Referee, the Honorable Thomas W. Cooper, Jr.'s, Final Order filed on February 18, 2010, Order denying Plaintiffs' Rule 59(e) Motion filed July 6, 2010.

As a general rule, the service of a notice of intent to appeal automatically stays the matters decided in the order on appeal. Exceptions to this rule exist for judgments directing the delivery of documents and execution of a conveyance or other instrument pursuant to S.C. Code Ann. §§18-9-150 and 160.

In the present case, although the Plaintiffs have timely served their Notice of Appeal, the order appealed form directs the delivery and execution of an instrument, which is not automatically stayed under S.C. Code Ann. §§18-9-150 and 160. As a result, Defendant Deertrack Investors, LLC requests this Court grant its Petition and find that the Order filed February 18, 2010 is not stayed by the Appeal, pursuant to §18-9-160, until Plaintiffs provide:

> "...written notice of cancellation of the Notice of Lis Pendens filed in Horry County, 2007-LP-26-1931 to the Clerk of Court of Horry County within ten (10) days of the date of this Order. In the event that Plaintiffs fail to provide written notice of cancellation of the Notice of Lis Pendens filed in Horry County, 2007-LP-26-1931 to the Clerk of Court in Horry County within ten (10) days of the date of this Order, the Notice of Lis Pendens filed in Horry County, 2007-LP-26-1931 shall be cancelled of record by the Horry County Clerk of Court. The cancellation must be made by an endorsement to that effect on the margin of the record which refers to this Order and for which the clerk is entitled to a fee of one ($1.00) dollar."

In the alternative, Defendant Deertrack Investors, LLC petitions this Court to find that the Order is not stayed by the Appeal pursuant to §18-9-150, until Plaintiffs' post bond in the amount of the value of the land, plus any lost use and profits.

This motion is based on the Orders of the Special Referee, testimony, as well as any affidavits and memoranda, or other matters as may be submitted to the court at the time of a hearing on this motion. Based on the foregoing, this court should grant Defendant's Petition for Supersedeas, Lift of Stay and/or Bond.

McNAIR LAW FIRM, P.A.

Henrietta U. Golding, SC Bar 02173
Amanda A. Bailey, SC Bar 71085
2411 N. Oak Street, Suite 206 (29577)
Post Office Box 336
Myrtle Beach, SC 29578-0336
Ph: (843) 444-1107
Fax: (843) 443-9137
Email: abailey@mcnair.net
hgolding@mcnair.net
Attorneys for Defendant, Deertrack Investors, LLC

Myrtle Beach, South Carolina

July 21, 2010

STATE OF SOUTH CAROLINA)	**IN THE COURT OF COMMON PLEAS**
)	**FIFTEENTH JUDICIAL CIRCUIT**
COUNTY OF HORRY)	**CIVIL ACTION NO. 06-CP-26-4440**
Dale Hill, Betty Hill, Carl Clemmons, and Geraldine Clemmons, individually, and on behalf of a class of all others similarly situated, Plaintiffs, vs. Deertrack Golf and Country Club, Inc., Deertrack Golf, Inc., Deerfield Plantation, Inc., the Estate of John Schaad, by and through Ann Schaad as Executrix, and Deertrack Investors, LLC Defendants.	**PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR MOTION FOR CLASS CERTIFICATION**
Deertrack Investors, LLC, Third-Party Plaintiff, vs. Plantation Resort of Myrtle Beach, Inc. Plantation Resort Properties, Inc., and Deerfield Plantation Property Owners' Association, Inc. Third-Party Defendants.	

HORRY COUNTY
08 JUL -7 PM 4:49
MELANIE HUGGINS
CLERK OF COURT

The Plaintiffs, by and through their undersigned counsel, hereby request this Court, pursuant to Rule 23(a) of the *South Carolina Rules of Civil Procedure*, issue an Order determining this matter shall be maintained as a class action for the benefit of a class

consisting of: All persons who owned residential dwellings within the Deerfield Plantation subdivision in the Surfside Beach area of Horry County, South Carolina, as of the date of the filing of this action.

FACTUAL BACKGROUND

This matter involves the Deerfield Plantation subdivision (hereinafter "Deerfield") in the Surfside Beach area of Horry County, South Carolina. This development began in the early 1970's and continued throughout the 1980's. Within Deerfield there exist today thousands of single family homes, apartments, and condominiums, as wells as a fractional ownership vacation development known as Plantation Resort. As depicted in plats and sales materials since its inception, Deerfield was a planned golf course community. Indeed, most of the streets and home-sites were laid out in such a manner as to best facilitate the construction of two championship 18-hole golf courses and an extensive clubhouse and recreation facility. The North Course was developed first, then the South Course was developed. This action deals with the North Course, and another action currently pending in Horry County bearing Civil Action No. 06-CP-26-0818 involves a similar set of facts regarding the South Course.

According to the testimony of the former President of Deerfield Plantation, Inc., Harold Pierce, these courses and other areas were constructed and marketed as amenities. The sale of individual home lots brought higher prices because of these amenities, according to Pierce. As such, when on September 7, 2006, the North Course was closed and the

Plaintiffs became aware the new owners of that property, Defendant Deertrack Investors, LLC, intended to develop it as a residential subdivision, the present action was filed pursuant to Rule 23 of the *South Carolina Rules of Civil Procedure* to protect the Plaintiffs' individual property rights and those of others similarly situated.

PROCEDURAL HISTORY

This matter was filed in Horry County on September 8, 2006. On May 23, 2008, Defendant Deertrack Investors, LLC was permitted to amend its Complaint to bring counterclaims personally against the named Plaintiffs.

REQUIREMENTS FOR CLASS CERTIFICATION

SCRCP Rule 23 sets forth five requirements for class certification:

1. The class is so numerous that joinder of all members is impracticable;
2. There are questions of law or fact common to the class;
3. The claims or defenses of the representative parties are typical of the claims or defenses of the class;
4. Representative parties will fairly and adequately protect the interest of the class; and
5. In cases in which the relief primarily sought is not injunctive or declaratory with respect to the class as a whole, the amount in controversy exceeds $100 for each member of the class.

Also, the "drafters of Rule 23, South Carolina Rules of Civil Procedure (SCRCP) intentionally omitted from our state rule the additional requirements found in Federal Rule 23(B), Federal Rules of Civil Procedure (FRCP). By omitting the additional requirements, Rule 23, SCRCP, endorses a more expansive view of classaction availability than its federal counterpart." *Littlefield v. South Carolina Forestry Commission*, 337 S.C. 348, 354–355, 523 S.E.2d 781 (1999).

(1) Numerosity.

There are several hundred single family homes surrounding each golf course within Deerfield. Additionally, there are many condominium buildings, apartments, and a fractional ownership development consisting of hundreds of units. It would be clearly impracticable to join each individual property owner in one action.

(2) Questions of Law and Fact Common to the Class.

In this matter, there are many issues of law and fact common throughout the entire Plaintiffs' class including, *inter alia*:

a. Whether Defendants or their predecessors in title established a clear scheme of development of the golf course-centered Deerfield Plantation subdivision.

b. Whether Defendants or their predecessors in title sold the property currently serving as the North Course and Clubhouse subsequent to establishing a general scheme of development.

c. Whether Plaintiffs were drawn to Deerfield Plantation by the golf course-centered community development plan Defendants established and, in reliance thereupon, purchased their respective properties.

d. Whether Defendants established equitable servitudes/implied easements/negative reciprocal easements favoring the Plaintiffs in the land formerly operated as the North Course and Clubhouse.

e. Whether the North Course and Clubhouse are amenities to the respective properties Plaintiffs purchased.

f. Whether the equitable servitudes/implied easements/negative reciprocal easements/amenities so established require the North Course and Clubhouse lands be restricted to such use.

g. Whether the equitable servitudes/implied easements/negative reciprocal easements/amenities so established can be unilaterally extinguished by Defendants.

h. Whether the conceptual plan, attached hereto and incorporated herein by reference as **Exhibit A**, constitutes an anticipatory breach of the equitable servitudes/implied easements/negative reciprocal easements/amenities favoring Plaintiffs' properties.

i. Whether language contained within: (1) the deed to Deertrack Management, Inc., attached hereto and incorporated herein by reference as **Exhibit B**, and recorded in the Office of the Register of Deeds for Horry County, South Carolina,

in Deed Book 3069 at Page 0425; (2) the deed to Defendant Deertrack Investors, LLC, attached hereto and incorporated herein by reference as **Exhibit C** and recorded in the Office of the Register of Deeds for Horry County, South Carolina, in Deed Book 3069 at Page 0431; and/or (3) the Mortgage and Security Agreement between Defendant Deertrack Investors, LLC and Deertrack Management, Inc., attached hereto and incorporated herein by reference as **Exhibit D** and recorded in the Office of the Register of Deeds for Horry County, South Carolina, in Mortgage Book 4462 at Page 0766, constitute an anticipatory breach of the equitable servitudes/implied easements/negative reciprocal easements/amenities favoring Plaintiffs' properties. Specifically, the deeds state, *inter alia*, as follows:

> 4. In the event any portion of the property described herein is divided, subdivided, or resubdivided into two (2) or more lots, tracts or parcels of land in the future, Deertrack Golf, Inc. shall be entitled to the sum of One Thousand Dollars ($1,000) (the "Subdivision Fee") for each new lot, tract or parcel created by said division, subdivision or resubdivision. The Subdivision Fee shall be due within fifteen (15) days after the date of the recording of the final, bonded subdivision plat and shall be the responsibility of the Grantee; provided that if the Grantee did not perform the division, subdivision or resubdivision, the Grantee and the party performing the same shall be jointly responsible for the payment of the Subdivision Fee. Upon receipt of the Subdivision Fee, Deertrack Golf, Inc. agrees to execute any documents reasonably requested by the owner of a lot, tract or parcel to evidence that the Subdivision Fee has been paid; provided, that Deertrack Golf, Inc. shall not be responsible for the costs of preparing and/or recording same.
>
> 5. In the event any portion of the property described herein is improved with a single-family house, a condominium unit, an

> apartment, an office, a manufactured home, a retail store, a warehouse, or other similar structure (each a "Unit") in the future, Deertrack Golf, Inc. shall be entitled to the sum of One Thousand Dollars ($1,000) U.S. ("Development Fee") for each Unit constructed; provided, that if the Unit is located on a new lot, tract or parcel which has been created and for which a Subdivision Fee has previously been paid, a credit shall be given for the Subdivision Fee so paid – it being the intention of the parties that if a new lot is created and a single-family home is erected thereon that only a $1,000 Subdivision Fee shall be paid, but if a multi-family structure, apartment or similar structure is constructed on a newly created lot, tract or parcel, that the party constructing the same shall pay $1,000 for each new Unit constructed less the $1,000 Subdivision Fee which was previously paid when the lot upon which the multi-family structure is built was created. The Development Fee shall be the joint responsibility of the Grantee and the party constructing the Unit and shall be due within 15 days after a Certificate of Occupancy for the Unit is issued. Upon receipt of its payment of the Development Fee, Deertrack Golf, Inc. agrees that it will execute any documents reasonably requested by the owner of any Unit to evidence that the Development Fee has been paid; provided, that Deertrack Golf, Inc. shall not be responsible for the costs of preparing and/or recording the same.

j. Whether Plaintiffs had the right to and in fact did rely upon representations of Defendants, their predecessors in title, and their officers and agents in purchasing their properties.[1]

---

[1]Additional documentation relied upon by Plaintiffs and incorporated as Exhibits to the Complaint in this matter are attached hereto and incorporated herein by reference as **Exhibits**: **"E"** (Plat Book 54 at Page 124); **"F"** (Plat Book 70, at Page 27); **"G"** (Plat Book 69, at Page 2); **"H"** (Brochure distributed by Deerfield Plantation, *"Vacationer's Guide Souvenir Copy"*); **"I"** (Deed Book 485, at Page 361); **"J"** (Deed Book 488, at Page 824); **"K"** (Brochure distributed by Deerfield Plantation "*In the beginning...*"); and, **"L"** (November 30, 1972 Property Report).

Generally, one who purchases property via a deed referencing a plat depicting the developed area purchases therewith an easement in such amenities as are shown upon the plat. *Blue Ridge Realty Company v. Williamson*, 247 S.C. 112, 145 S.E.2d 922 (1965). In the present matter, the original developer of the subject properties recorded such a plat and all purchasers of properties within Deerfield thereafter were reasonable to purchase in reliance upon that plat. The questions affecting each of the claims of the class members will all address this argument.

(3) The Claims of the Plaintiff Are Typical of the Class.

Each member of the class purchased property since the date the original plat was filed. At the time the original plat was filed, all of the properties later purchased by the class members were owned by Defendant Deerfield Plantation, Inc. Plaintiffs are original purchasers whose properties are adjacent to the North Course. Their claims will differ from other class members only in percentage of damage suffered as a result of the proposed golf course redevelopment. Clearly, the Plaintiffs' claims arise from the "same event or practice or course of conduct that gives rise to the claims of other class members," and " are based on the same legal theory." Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* § 3.13 (3d ed. 1992); *Central Wesleyan College v. W. R. Grace & Co.*, 143 F.R.D. 628, 637 (D.S.C. 1992) (citing Newberg), aff'd, 6 F.3d 177 (4th Cir. 1993); *Roger v. Electronic Data Sys. Corp.*, 160 F.R.D. 532, 538 (E.D.N.C. 1995).

Moreover, each class member owns property within Deerfield. A ruling upon Plaintiffs' First Cause of Action, for Declaratory Judgment as to the existence of easements in the North Course and Clubhouse restricting the use of those properties to one consistent with the stated use shown on the plat, will have an affect upon the property interest of each class member.

(4) The Plaintiff Will Fairly and Adequately Protect the Interests of the Class.

Finally, Rule 23(a)(4) of the *South Carolina Rules of Civil Procedure* also requires that "the representative parties will fairly and adequately protect the interests of the class." This requires: (1) that the class representatives and their counsel will competently and vigorously prosecute the action; and (2) that the interests of the class representatives are not adverse to those of the class member. *Waller v. Seabrook Island Property Owners Association*, 300 S.C. 465, 468, 388 S.E.2d 799, 801 (1990).

The Plaintiffs are residents of Deerfield who have each been deposed in this matter and have subjected themselves to lengthy discovery requests of the Defendants. They serve as representative plaintiffs in an effort to preserve their respective property interests as well as those of others similarly situated. The only distinction between the property interests of the Plaintiffs and the remaining class members is the degree to which their respective property values will suffer as a result of the planned redevelopment of the North Course and Clubhouse. This variance need not be ascertained until and unless Plaintiffs are successful in establishing the presence of easements/servitudes in their First Cause of Action, for

declaratory judgment, and any variance will be discernable via a mathematical equation based upon comparable properties in the region with and without golf courses.

Regardless, it is clear the Plaintiffs are working in earnest to protect the rights of all property owners in Deerfield and have no conflict of interest with other class members. Rule 23 requires Plaintiffs' counsel demonstrate they will fairly and adequately represent the entire class. This vigorous prosecution prong of the adequacy of representation test is presumed in the absence of proof to the contrary. *Newberg*, supra, § 3.24. Lastly, the Deerfield Plantation Property Owners' Association has agreed to pay Plaintiffs' costs and legal fees in this matter. Accordingly, Plaintiffs' are clearly able to maintain the financial obligations concomitant with the prosecution of this action.

(5) Amount in Controversy.

Lastly, Rule 23(a) requires the amount in controversy for each class member to exceed one hundred dollars. Plaintiffs' initial expert findings indicate each class member will suffer property value reductions of at least 11%. Their damages, were the North Course and Clubhouse to be redeveloped into a residential subdivision within the existing subdivision, will be thousand of dollars for each class member. Moreover, the First Cause of Action in this matter is declaratory in nature and resolution thereof will determine the central issues as to the claims of all class members.

CONCLUSION

Based on the foregoing, Plaintiffs respectfully request this Honorable Court certify the following class in this action: All persons who owned residential dwellings within the Deerfield Plantation subdivision in the Surfside Beach area of Horry County, South Carolina, as of the date of the filing of this action.

Respectfully submitted,

David B. Miller, SCB #10296
Robert S. Shelton, SCB #68543
BELLAMY, RUTENBERG, COPELAND, EPPS, GRAVELY & BOWERS, P.A.
P.O. Box 357
Myrtle Beach, SC 29578
(843) 448-2400
Attorneys for Plaintiffs

Myrtle Beach, South Carolina

July 7, 2008.

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT Civil Action No.: 2006-CP-26-4440
Dale Hill, Betty Hill, Carl Clemmons Geraldine Clemmons, Individually, and on behalf of a Class of all others similarly Situated, Plaintiffs, v. Deertrack Golf and Country Club, Inc. Deertrack Golf, Inc., Deerfield Plantation, Inc., the Estate of John Schaad, by and through Ann Schaad as Executrix, and Deertrack Investors, LLC., Defendants.	)	**MEMORANDUM IN SUPPORT OF DEFENDANT/THIRD-PARTY PLAINTIFF DEERTRACK INVESTORS, LLC'S MOTION FOR SUMMARY JUDGMENT**
Deertrack Investors, LLC., Third-Party Plaintiff, v. Plantation Resort of Myrtle Beach, Inc., and Plantation Resort Properties, Inc. Third-Party Defendants.	)	

The Defendant and Third-party Plaintiff Deertrack Investors, LLC hereby submits this memorandum of law in support of its Motion for Summary Judgment. Deertrack Investors has moved for summary judgment as to all of Plaintiffs' causes of action, including: 1) Declaratory Judgment/Equitable Servitures/Implied Easements/Negative Reciprocal Easements/Amenities, 2)

Injunction, 3) Civil Conspiracy, 4) Negligent Misrepresentation, 4) Fraud, and 5) South Carolina Unfair Trade Practices Act. [1] This court should grant Deertrack Investors' motion for summary judgment because no genuine issues of material fact exists with respect to any of Plaintiffs' claims against Deertrack Investors, and Deertrack Investors is entitled to judgment as a matter of law.

PROCEDURAL HISTORY

On September 9, 2006, Plaintiffs Betty and Dale Hill and Geraldine and Carl Clemmons, in their individual capacity and on behalf others similarly situated[2], commenced a lawsuit against Deertrack Golf and Country Club, Inc., Deertrack Golf, Inc., Deerfield Plantation, Inc. the Estate of John Schaad, and Deertrack Investors, LLC. Plaintiffs seek declaratory relief that certain real property upon which the Deertrack north golf course and clubhouse operated (hereinafter referred to as the North Course and Clubhouse Property) is restricted in use as a golf course and clubhouse by reason of equitable servitude, implied easements, negative reciprocal easements, and/or amenities, and seek to enjoin Deertrack Investors from developing the North Course and Clubhouse Property.

Deertrack Investors filed a Second Amended Answer, denying the material allegations and asserted a counterclaim for abuse of process, and counterclaims and a third-party complaint against Plaintiffs, Deerfield Plantation Property Owners Association, Inc., Plantation Resort of Myrtle Beach, Inc., and Plantation Resort Properties, Inc. for interference with contractual relations, interference with prospective contractual relations, civil conspiracy, and violation of the South Carolina Unfair Trade Practices Act. Plaintiffs and Third-party Defendants Deerfield

[1] Plaintiffs have agreed to dismiss with prejudice their claims for civil conspiracy, negligent misrepresentation, fraud, and unfair trade practices. The parties will put this agreement on the record at the hearing on summary judgment.

[2] No class has been certified todate.

Plantation Property Owners Association, Inc., Plantation Resort of Myrtle Beach, Inc., and Plantation Resort Properties, Inc. answered and denied the material allegations.

Deertrack Investors moves for summary judgment on the ground that no issues of material fact exist with respect to any of Plaintiffs' causes of action.

FACTS

I) HISTORY OF THE PROPERTY DEVELOPMENT

On October 13. 1972, V.F. Platt, Jr. recorded a deed transferring 547.76 acres of real property to Deerfield Plantation, Inc. (hereinafter referred to as "Deerfield Plantation Property"), specifically excluding the 182.92 acres of the North Course and Clubhouse Property. **(Deed Book 478, Page 654, Horry County Register of Deeds).** Deerfield Plantation, Inc. developed the Deerfield Plantation Property into a residential subdivision in Surfside Beach, South Carolina known as Deerfield Plantation **(Plat Book 54, Page 124, Horry County Register of Deeds; Exhibit N to Complaint).** The principals of Deerfield Plantation, Inc. were V.F. Platt, Jr. and his wife Kate Platt. **(Exhibit M to Complaint).**

On February 2, 1973, Plaintiffs Dale W. Hill and Betty J. Hill purchased one of the first lots from Deerfield Plantation, Inc. "designated as Lot #358 on that certain map of Deerfield Plantation property of Deerfield Plantation, Inc made by Moorman & Little, Inc., Engineers, dated November 14. 1972, and recorded in Plat Book 54, page 124, office of the Clerk of Court for Horry County, S.C., which said map and the record thereof is hereby incorporated herein and made a part hereof by reference." **(Deed Book 488, Page 824, Horry County Register of Deeds).**

Shortly thereafter, Plaintiffs Carl L. Clemmons and Geraldine O. Clemmons also purchased a lot from Deerfield Plantation, Inc. "designated as Lot #365 on that certain map

of Deerfield Plantation property of Deerfield Plantation, Inc made by Moorman & Little, Inc., Engineers, dated November 14, 1972, and recorded in Plat Book 54, page 124, office of the Clerk of Court for Horry County, S.C., which said map and the record thereof is hereby incorporated herein and made a part hereof by reference." **(Deed Book 488, Page 824, Horry County Register of Deeds).**

By 1975. the golf course, clubhouse, tennis courts, and swimming pool on the North Course and Clubhouse Property were constructed and opened for business. **(Deposition of Carl Clemmons, pg. 32).** The golf course was operated by Deerfield Plantation, Inc. by virtue of a ten year lease from the property owner, V.F. Platt, Jr., which was disclosed to Plaintiffs in the Property Report filed on December 26, 1972 **(Exhibit N to Complaint).**

Subsequently, on June 6, 1978, V.F. Platt, Jr. recorded a deed transferring the 182.92 acres of the North Course and Clubhouse Property to Caro Pines Realty, Inc. **(Deed Book 612, Page 792, Horry County Register of Deeds; Deposition of Harold Pierce, p. 14, 18).** Around that same time, Deerfield Plantation, Inc. sold the remaining residential lots in Deerfield Plantation to Caro Pines Realty, Inc. **(Deed Book 614, Page 112; Deposition of Harold Pierce, p. 17).** Caro Pines Realty, Inc.'s principles were Harold Pierce, Scott Quinn, Steve Rothrock, John Schaad, Louis Schaad, and Jimmy Schaad. **(Deposition of Harold Pierce, p. 17)** Thereafter, Caro Pines Realty, Inc. changed its name to Deerfield Plantation, Inc. Despite the similarity in name, Caro Pines Realty, Inc. n/k/a Deerfield Plantation, Inc. is not the same entity as the Deerfield Plantation, Inc., which purchased the Deerfield Plantation Property in 1972 and was comprised of V.F. Platt, Jr. and Kate W. Platt. **(Id., Exhibit M to Complaint; Deed Book 614, Page 112).**

The North Course and Clubhouse Property was transferred several times thereafter. On

June 5, 1980, the North Course and Clubhouse Property was sold to Deerfield Golf & Country Club, Inc. **(Deed Book 701, Page 751, Horry County Register of Deeds).** In 1993, Deertrack Golf & Country Club, Inc. merged into Deertrack Golf, Inc. **(Deed Book 3069, Page 424).** Then on March 23, 2006, Deertrack Golf, Inc. sold the property to Deertrack Management, Inc. **(Deed Book 3069, Page 425, Horry County Register of Deeds).** Deertrack Management, Inc. flipped the property to Deertrack Investors, LLC on March 24, 2006, and Deertrack Investors, LLC remains the owner of the North Course and Clubhouse Property. **(Deed Book 3069, Page 431, Horry County Register of Deeds).**

II) HISTORY OF DEERTRACK INVESTORS, LLC

Deertrack Investors, LLC filed Articles of Organization on March 16, 2006 with South Carolina Secretary of State. The only members of Deertrack Investors, LLC are Jerrold ("Jerry") Pettus and McCray Smith. Deertrack Investors, LLC was formed for the purpose of acquiring the North Course and Clubhouse Property for development. Deertrack Investors, LLC contracted with Deertrack Management, Inc. to purchase the North Course and Clubhouse Property for $8,000,000. The terms of the sale provided that $4,000,000 was due on closing and the remaining $4,000,000 was payable pursuant to a Promissory Note and Second Mortgage, which required a $1,000 "Development Fee" be paid to Deertrack Golf, Inc. for each lot subsequently subdivided and sold. The sale closed on March 24, 2006. The recorded deed and mortgages reflected the purchase price and the Development Fees. **(Exhibits C and D to Complaint).**

III) RECENT PROPERTY DEVELOPMENT

At the time Deertrack Investors, LLC purchased the North Course and Clubhouse Property, the property was zoned by Horry County residential, as "R-7". **(Deposition of Gary**

Loftus, p. 99-100) Deertrack Investors, LLC intended to develop the property according to the R-7 zoning as shown in the conceptual drawing. **(Exhibit A, B, and C to Complaint).** After the commencement of this lawsuit, members of Deerfield Plantation Property Owners Association, Inc. petitioned Horry County to have the Golf Course rezoned to "R-3". **(Deposition of Gary Loftus, p. 101-02, 156-157).** Horry County subsequently rezoned the property from R-7 to R-3, thereby precluding the development of the property pursuant to the conceptual drawing, but allowing development according to R-3 zoning.

IV) ALLEGATIONS OF REGARDING USE OF PROPERTY

Notwithstanding the R-7 zoning in place at the time Deertrack Investors, LLC purchased the property, the terms of the sale to Deertrack Investors, LLC requiring payment of the purchase price pursuant to a Development Fee, and the subsequent change to R-3 zoning, Plaintiffs allege that Deertrack Investors, LLC should be enjoined from developing the North Course and Clubhouse Property because its use is impliedly restricted for golf course and clubhouse purposes only. Plaintiffs alleged that they hold an implied easement in the property as a result of the following:

a) Deed Book 3069, Page 425 from Deertrack Golf, Inc. to Deertrack Management, Inc., recorded March 24, 2006 **(Exhibit B to Complaint);**

b) Deed Book 3069, Page 432 from Deertrack Management, Inc., recorded March 24, 2006 **(Exhibit C to Complaint);**

c) Mortgage Book 4462, Page 766, Mortgage and Security Agreement from Deertrack Management, Inc. to Deertrack Investors, LLC, recorded March 24, 2006 **(Exhibit D to Complaint);**

d) Recorded Plat, Book 54, Page 124, recorded November 14, 1972 **(Exhibit E to Complaint; Deposition of Dale Hill, p. 19-23, Betty Hill, p. 8-9, 33; Geraldine Clemmons, p. 10, 13-14, referring to Exhibit 85 of Depositions, Plat**

Book 54, Page 124);

e) Recorded Plat, Book 70, Page 27, recorded December 16, 1988 **(Exhibit F to Complaint);**

f) Recorded Plat, Book 69, Page 2, recorded July 9, 1980 **(Exhibit G to Complaint);**

g) "Vacationer's Guide Souvenir Copy", undated **(Exhibit H to Complaint);**

h) Hill Deed, Book 485, Page 361, recorded February 7, 1973 **(Exhibit I to Complaint);**

i) Clemmons Deed, Book 488, Page 824, recorded April 4, 1973 **(Exhibit J to Complaint);**

j) Declaration and Establishment of Conditions, Reservations, Covenants, and Restrictions, Deed Book 1514, Page 156, recorded November 11, 1972 **(Exhibit K to Complaint);**

k) "In the Beginning...", undated **(Exhibit L to Complaint; Deposition of Dale Hill, p. 42-44, 72-73, Betty Hill, p. 28-29; Deposition of Carl Clemmons, p. 24-25 Geraldine Clemmons, p. 9-11; 30(b)(6) Deposition of Deerfield Plantation Property Owners Assoc., p. 37);**

l) Statement that Deerfield Plantation, Inc.'s principles are V.F. Platt, Jr. and his wife Kate W. Platt and that it is the developer of Deer Track Golf and Country Club, undated **(Exhibit M to Complaint);**

m) Property Report of Deerfield Plantation effective December 26, 1972 **(Exhibit N to Complaint, Deposition of Dale Hill, p. 64, Betty Hill, p. 28-30);**

n) Representations of Deerfield Plantation, Inc. and its agents:

i. that homesites warranted premium pricing because of the North Course and Clubhouse. **(Paras. 19 and 20, Complaint);**
ii. that the Hill's lot would have a pond or lake behind his house **(Deposition of Dale Hill, p. 23-24);**
iii. that the Hill's lot would be on a golf course **(Deposition of Dale Hill, p. 29);**

iv. that there would be certain amenities added to the subdivision, streetlights, paved roads, sewer system, TV station, clubhouse for members only, and an Olympic size swimming pool. **(Deposition of Dale Hill, p. 29-30, 67-70);**

v. that Deerfield Plantation was a planned golf course resort or golf community **(Deposition of Dale Hill, p. 32; Deposition of Betty Hill, p. 12-14; 31-32; Deposition of Carl Clemmons, p. 21, 28-29; Deposition of Geraldine Clemmons, p. 16);**

vi. that the Clemmons lot was a corner lot on with a golf course behind it **(Deposition of Carl Clemmons, p. 22, 28; Deposition of Geraldine Clemmons, p. 13).**

More particularly, Plaintiffs' alleged that Deerfield Plantation, Inc. established a general scheme of development represented by: 1) **Exhibit B to the Complaint,** Deed Book 3069, Page 425 from Deertrack Golf, Inc. to Deertrack Management, Inc., recorded March 24, 2006; 2) **Exhibit C to the Complaint,** Deed Book 3069, Page 432 from Deertrack Management, Inc., recorded March 24, 2006; 3) **Exhibit D to the Complaint,** Mortgage Book 4462, Page 766, Mortgage and Security Agreement from Deertrack Management, Inc. to Deertrack Investors, LLC, recorded March 24, 2006;[3] 4) **Exhibit K to Complaint,** Declaration and Establishment of Conditions, Reservations, Covenants, and Restrictions, Deed Book 1514, Page 156, recorded November 11, 1972; and 5) **Exhibit N to Complaint,** Property Report of Deerfield Plantation effective December 26, 1972. **Complaint, Paras. 29 and 30.**

Despite Plaintiffs' allegations, no document on public record expressly grants Plaintiffs

[3] It is unclear in what manner Exhibits B, C, and D to Plaintiffs' Complaint would support Plaintiffs' position of a general scheme of development to include the golf course. Exhibits B, C, and D – the sale documents of the North Course and Clubhouse from Deertrack Golf, Inc. to Deertrack Management, Inc. and thereafter to Deertrack Investors, LLC – occurred well after the development of Deerfield Plantation and contained provisions contemplating the development of the North Course and Clubhouse, specifically provided for payment of the purchase price pursuant to a "Development Fee." **(Complaint, Paras. 29 and 30, Exhibits B, C and D).**

any right to use or easement to the North Course and Clubhouse Property. Moreover, no document on public record expressly restricts the use of the North Course and Clubhouse Property to a golf course and clubhouse, or otherwise restricts development of the North Course and Clubhouse Property. Moreover, no document on public record impliedly grants Plaintiffs any right to use or easement, or otherwise restricts the use of the North Course and Clubhouse Property to a golf course and clubhouse, or otherwise prevents development.

In fact, the recorded documents relied upon by the Plaintiffs and attached to the Complaint, expressly disclaim any rights to the North Course and Clubhouse. For example, the language in the Hills' and Clemmons' deeds does not contain any reference to the North Course and Clubhouse Property or otherwise grant and rights to the Hills' and Clemmons' to the same. **(Exhibits I and J to Complaint).** The deeds, however, expressly reference the plat recorded at Plat Book 54, page 124. **(Exhibit E to Complaint).** The plat depicts the North Course and Clubhouse Property, and provides:

> It is hereby expressly declared that Deerfield Plantation, Inc. does not intend to dedicate and does not dedicate to the general public or any member thereof any easement, right of travel, right to use or other right with regard to the streets, roads, alleys, entrances, or other passages or ways and with regard to the lakes and parks shown upon this map, and that Deerfield Plantation, Inc. reserves unto itself, its successors and assigns, all streets, roads, alleys, entrances, or other passages or ways and any and all lakes and parks shown upon this map and all easements, rights of travel, right to use and any other rights over, upon, under or connected with the same.

(Exhibit E to Complaint, Plaintiff Betty Hills' Responses to Deertrack Investors, LLC's

Request to Admit).

The Declaration and Establishment of Conditions, Reservations, Covenants, and Restrictions, Deed Book 1514, Page 156, recorded November 11, 1972 **(Exhibit K to Complaint),** provide Deerfield Plantation, Inc., as developer, easements over lots 1-458 in Deerfield Plantation:

> to permit the doing of every act necessary and proper in the playing of golf on the golf course adjacent to the lots and the playing of tennis on the tennis courts adjacent to the lots which are subject to these restrictions are hereby granted and established. These acts shall include, but not limited to, the recovery of golf balls and tennis balls from such lots, the flight of golf balls and tennis balls over and upon such lots, the use of necessary and usual equipment upon such golf course and tennis courts, the usual and common noise level created by the paying of the game of golf or the game of tennis and with all the normal and usual activities associated with the operation of a country club or clubhouse. The Developer shall have the right to determine the manner and extent to which the rights under this easement shall be exercised, and in the event that some other person, corporation, or other entity shall hereafter operate said golf course, tennis courts, country club or clubhouse facility then the Developer shall have the right to prescribe in writing to such person, corporation or entity charged with the operation of the said golf course, tennis courts, country club or clubhouse facility the manner and extent to which the rights under this easement shall be exercised. **In addition the Developer may, in its sole discretion, limit or withdraw or prohibit certain of the acts authorized by this easement, and may limited the manner or place of doing all or certain of the acts authorized by this easement.**

(Emphasis supplied, Exhibit K to Complaint). Importantly, the Declaration and Establishment of Conditions, Reservations, Covenants, and Restrictions, Deed Book 1514, Page 156, recorded November 11, 1972 give the Developer an easement over "the lots which are subject to these restrictions" – specifically lots 1-458. Nothing in the Declarations gives the owners of lots 1-458 any easement to any property, including the North Course and Clubhouse Property – property that is not subject to the Declarations. **(Exhibit K to Complaint, Depositions of Dale**

Hill, p. 38; Betty Hill, pp. 21-22; Geraldine Clemmons, p. 14-15). Further, the Declarations expressly provide that the Developer may withdraw or prohibit all acts authorized by the easement. **(Id.).**

Lastly, the Property Report of Deerfield Plantation effective December 26, 1972, sets for a listing of proposed or partly completed facilities as follows:

> 9. b. CLUBHOUSE: Proposed, with 19th Hole Club Room, Meeting Rooms, Snack Bar, Pro Shop, Card Room, Patio Area
>
> SWIMMING POOL: Proposed, with patio and lounge furniture.
>
> GOLF COURSE: 18 Hole Championship Course. COST TO BUYER FOR COMPLETION OR MAINTENANCE OF FACILITIES? NONE.
>
> DEVELOPER ESTIMATES ABOVE ITEMS TO BE COMPLETED BY September, 1973, and gives its assurance of completion, and additionally requiring all contractors to provided completion bonds.
>
> Initiation dues, annual dues and fees, and other use or privilege charges shall be charged to buyers or lessees and adjusted from time to time, as determined by the developer from time to time.
>
> **The developer will have no obligation or commitment to maintain clubhouse, swimming pool, tennis courts or golf course for any period of time and no purchaser or lessee of property shall be automatically entitled to membership in or use of said facilities by virtue of acquiring an interest in real property in the development.**

(Emphasis supplied. Exhibit N to Complaint). In addition, Paragraph 21 of the Property Report discloses, "Deerfield Plantation, Inc. does not own the golf course & facilities related thereto, but holds a leasehold from the owner, a major stock holder of Deerfield Plantation, Inc. for a period of ten (10) years." **(Exhibit N to Complaint).** Importantly, the Property Report expressly disclaims any obligation to use the North Course and Clubhouse Property as a golf

course or any other obligations regarding the amenities. In fact, Plaintiffs testified that the other amenities – the pool and tennis courts- had previously been closed and redeveloped. **(30(b)(6) Deposition of Deerfield Plantation Property Owners Association, p. 131-32; Deposition of Dale Hill, p. 67-70).**

In addition to the complete lack of express or implied easement or restriction on use of the North Course and Clubhouse Property contained in the public records, the sales and marketing representations alleged by the Plaintiffs do not give rise to any easement or restriction on use of the North Course and Clubhouse Property. Specifically, each Plaintiff testified that no one ever told them that the North Course and Clubhouse Property would be a golf course forever or would be restricted in use as a golf course. **(Depositions of Dale Hill at 31-32; Betty Hill at 14; Geraldine Clemmons at 16; Carl Clemmons at 28-29; 30(b)(6) Deposition of Deerfield Plantation Property Owners Assoc. p. 141-42, 145-46).**

STANDARD OF REVIEW

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). "A motion for summary judgment shall be granted 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' " Rule 56(c), SCRCP.

In determining whether a genuine issue of fact exists, the evidence and all factual inferences drawn from it must be viewed in a light most favorable to the nonmoving party. Sauner v. Pub. Serv. Auth. of South Carolina, 354 S.C. 397, 404, 581 S.E.2d 161, 165 (2003). It is not sufficient for one to create an inference that is not reasonable or an issue of fact that is not

genuine. Evans v. Stewart, 370 S.C. 522, 526, 636 S.E.2d 632, 635 (Ct. App. 2006) (citing Durkin v. Hansen, 313 S.C. 343, 346, 437 S.E.2d 550, 552 (Ct.App.1993)). Although summary judgment is a drastic remedy which should be cautiously invoked, where a verdict is not reasonably possible under the facts presented, summary judgment is proper. Id.

The determination of the existence of an easement is a question of fact in a law action. Inlet Harbour v. South Carolina Dept. of Parks, Recreation and Tourism, 377 S.C. 86, 91, 659 S.E.2d 151, 153 (2008). The determination of the scope of an easement sounds in equity. Id.

DISCUSSION

The Uniform Declaratory Judgments Act "does not create substantive rights or duties." Felts v. Richland County, 299 S.C. 214, 216, 383 S.E.2d 261, 262-63 (Ct.App.1989). Rather, it authorizes an action to establish a party's entitlement to a pre-existing right. Harvey v. South Carolina Dept. of Corrections, 338 S.C. 500, 506, 527 S.E.2d 765, 768 (Ct. App. 2000).

The remedy of injunction is a drastic one and should be cautiously applied only when legal rights are unlawfully invaded or legal duties are willfully or wantonly neglected. LeFurgy v. Long Cove Club Owners Assoc., 313 S.C. 555, 558, 443 S.E.2d 557, 578 (Ct. App. 1994).

Plaintiffs assert that they have preexisting rights to the North Course and Clubhouse Property by virtue of the doctrines of: A) equitable servitude, B) implied easement, C) negative reciprocal easement, and D) amenities, and seek an injunction to prevent the development of the North Course and Clubhouse Property by Deertrack Investors, LLC.

A) Equitable Servitude

Equitable servitudes are encumbrances indistinguishable from negative easements. Butler v. Sea Pines Plantation Co., 282 S.C. 113, 116 n.2, 317 S.E.2d 464, 466 n.2 (Ct. App. 1984). As a result, Deertrack Investor's incorporates by reference the argument herein related to

negative reciprocal easements.

B) **Implied Easements**

Covenants, expressed or implied, restricting the free use of land are not favored and must be strictly construed. Edwards v. Surratt, 228 S.C. 512, 90 S.E.2d 906 (1956). An easement restricting the use of property must be created in express terms or by plain and unmistakable implication. Bomar v. Echols, 270 S.C. 676, 244 S.E.2d 308 (1978); Shoney's, Inc. v. Cooke, 291 S.C. 307, 353 S.E.2d 300 (Ct. App. 1987).

Recent case law provides an in-depth analysis of implied easements in South Carolina. In Boyd v. Bellsouth Telephone Telegraph, Co., 369 S.C. 410, 633 S.E.2d 136 (2006), Boyd argued that she had an easement implied by prior use, implied by necessity, or by equitable estoppel with regard to a driveway passing over property owned by Bell South. The supreme court affirmed the lower court's denial of summary judgment finding a genuine issue of material fact existed as to whether an easement by prior use existed.

The Bell South court began by discussing the similarities and distinctions between easements by prescription, by prior use and by necessity, stating that they "have different elements and are applicable to different factual scenarios." Id. at 420. A prescriptive easement must be evidenced with: (1) 20 years continuous use, (2) specific identity of the thing enjoyed, and (3) use which is adverse or under a claim of right. Id. at 419. An easement by necessity is proven by: (1) unity of title, (2) severance of title, and 3) necessity. Id. at 419-20. The elements of easements by prior use included: (1) unity of title, (2) severance of title, (3) prior to use was in existence at the time of unity of title, (4) prior use was not merely temporary or casual, (5) prior use was apparent or known to the parties, (6) prior use was necessary in that there could be no other reasonable mode of enjoying the dominant tenement without prior use, (7) the common

grantor indicated an intent to continue the prior use after severance of title. Id. at 139. The court summarized as follows:

> A prescriptive easement is not implied by law but is established by the conduct of the dominant tenement owner; however easements by prior use and by necessity are implied by law. An easement by necessity does not require a preexisting use during unity of title where as an easement by prior use does impose this requirement. An easement implied by prior use will not be extinguished if the easement is no longer necessary, but an easement by necessity will be extinguished once the necessity ends.

Id. at 419-420 (citations omitted).

The Bell South court also clarified the essential elements for a claim of implied easement by equitable estoppel, and affirmed the trial court's grant of summary judgment in favor of Bell South as to Boyd's claim for easement by estoppel because the fact that there was not an easement to use the driveway was a matter of public record. The court stated:

> The essential elements of equitable estoppel as related to the party estopped are: (1) conduct which amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intentional, or at least expectation, that such conduct shall be acted upon by the other party; and (3) knowledge, actual or constructive, of the real facts. As related to the party claiming the estoppel, they are: lack of knowledge and of the means of knowledge of the truth as to the facts in question (2) reliance upon the conduct of the party estopped; and (3) action based thereon of such a character as to change his position prejudicially.
>
> A properly recorded title normally precludes an equitable estoppel against assertion of that title due to the requirement that the party raising the estoppel be ignorant of the true state of title or reasonable means of discovering it. One with knowledge of the truth or the means by which with reasonable diligence he could acquire knowledge cannot claim to have been misled.

Id. at 422.

More recently, in Inlet Harbour v. South Carolina Dept. of Parks, Recreation and Tourism, 377 S.C. 86, 659 S.E.2d 151 (2008), the Court considered the scope of an easement over a private road implied in a deed from Inlet Harbour to the South Carolina Department of Parks, Recreation and Tourism by reference to a plat depicting the easement. Although the existence of the implied easement was not the subject of the Inlet Harbour appeal, the Court provided a scholarly analysis in affirming the trial court's limitation of the scope of the implied easement to "environmental purposes associated with maintaining the navigability of Murrells Inlet."

"The creation of an implied easement generally requires that the facts and circumstances surrounding the conveyance, the property, the parties, or some other characteristic demonstrate that the objective intention of the parties was to create an easement." Inlet Harbour, 377 S.C. at 92, 659 S.E.2d at 154. Moreover, whatever easements are created by implication must be determined as of the time of the severance of the ownership of the tracts involved. Clemson Univ. v. First Provident Corp., 260 S.C. 640, 652, 197 S.E.2d 914, 920 (1973). The Inlet Harbour court clarified previous case law on implied easements, explaining that presumptions regarding the creation of implied easements have developed in certain circumstances, including: i) implied easement by reference, ii) implied easement of prior use; and, iii) implied easement of necessity. Id.

The presumption regarding the creation of an implied easement by reference is that when an owner conveys subdivided lots and references the plat in the deed, the owner grants the lot owners an easement over the streets appearing in the plat. Id., citing Blue Ridge Realty Co. v. Williamson, 247 S.C. 112, 145 S.E.2d 922 (1965). This rule is "nothing more than a presumption that when a grantor conveys property with reference to a plat showing streets or

other ways of passage, the grantor intends to allow the grantee the use of the delineated streets and ways of passage." Id. at 93.

A presumption of an implied easement by prior use exists where the grantor used one portion of the property to serve another prior to the severance of the property. Id. at 92. An easement implied by prior use is presumed to exist when there is: "(1) unity of title, (2) severance of title, (3) the prior use was in existence at the time of unity of title; (3) the prior use was not merely temporary or casual, (4) the prior use was apparent or known to the parties, (5) the prior use was necessary in that there could be no other reasonable mode of enjoying the dominant tenement without the prior use, and (6) the common grantor indicated an intent to continue the prior use after severance of title." Boyd v. Bellsouth Telephone Telegraph Co., 369 S.C. 410, 416, 633 S.E.2d 136, 139 (2006).

The presumption of implied easement by necessity arises when an easement is necessary to allow a grantee to have meaningful access to his land. Id. at 92. "The party asserting the right of an easement by necessity must demonstrate: (1) unity of title, (2) severance of title, and (3) necessity." Boyd, 369 S.C. at 418-19; 633 S.E.2d at 140-41.

The Inlet Harbour court explained that, while presumptions in these circumstances may exist, the intentions of the parties to the transaction are the overriding focus when examining and determining the existence of any implied easements. Id. The court's "guidepost must be what the parties intended, and the best evidence of the parties' intentions are the facts and circumstances surrounding the conveyance." Id. at 93. "The creation of an implied easement generally requires that the facts and circumstances surrounding the conveyance, the property, the parties, or some other characteristic demonstrate that the objective intention of the parties was to create an easement." Id. at 91. However, the court in Inlet Harbour cautioned that implied

easements are not favored because "the implication of an easement in a conveyance goes against the general rule that a written instrument speaks for itself." Id. at 91-92.

Thus, after detailing the historical treatment of implied easements in South Carolina, the Inlet Harbour court focused its analysis regarding the scope of the easement over a private road implied in a deed from Inlet Harbour to the South Carolina Department of Parks, Recreation and Tourism to the facts and circumstances surrounding the sale of the dominant tract of property. The court upheld the decision of the trial court finding that the scope of the easement was limited to environmental purposes associated with maintaining the navigability of Murrells Inlet, and noted that the Department of Parks, Recreation and Tourism could have abated this limitation by negotiating and expressly providing for an unrestricted easement. Id. at 96.

Shortly after the Inlet Harbour decision, the Court of Appeals issued a decision in a similar case, Murrells Inlet Corp. v. Ward, Opinion No. 4384 (Ct. App. filed May 2, 2008). The Court of Appeals in the Murrells Inlet case addressed the issue of whether "a plat recorded when property is subdivided confers an easement to the subsequent grantees of the property to the extent the easement is delineated in the plat." Id. at 3. In 1990, Ward subdivided a parcel of land in Horry County into five tracts for the purpose of transferring portions to her children. At the time that Ward subdivided the property, she granted a fifty-foot right-of-way to the lots to allow ingress and egress from Highway 57, which was evidenced in a plat recorded in the Horry County Register of Deeds. Ward argued, despite the fifty-foot right-of-way depicted in the plat, that she did not intend to grant a fifty-foot easement. The Murrells Inlet Corp., a subsequent owner of one of the subdivided tracts, argued that an implied easement was created at the time the property was subdivided by virtue of the recorded plat.

In undertaking an analysis set forth in Inlet Harbour, the Court of Appeals noted that

notwithstanding any "intent" analysis, the deed and the recorded plat are controlling to a determination of whether an implied easement is created by reference to a plat. In particular, the court held that "to allow Ward's intent to override the original grant of a fifty foot easement [contained in the plat] would result in a travesty of justice." Id.; see also Clemson University v. First Provident Corp. 260 S.C. 640, 652, 197 S.E.2d 914, 920 (1973) (stating that implied easements may not be created by the acts of the party claiming the implied easement). Moreover, the court noted that "by recording the easement on the plat, Ward evidenced an intention to grant that easement to any future lot owners in the subdivision." Id. at 5; Cf. Carolina Land Co. v. Bland, 265 S.C. 98, 107, 217 S.E.2d 16, 20 (1975) ("Law imputes to purchaser who proposes to acquire title to real estate notice of recitals contained in any properly recorded instrument in writing which forms line in chain of title to property proposed to be acquired.").

Balancing the presumptions set forth in prior case law, the analysis discussed in Inlet Harbour, and the explanation set forth in Murrells Inlet, the law regarding implied easements can be summarized into the following two points: (1) the intent of the parties at the time of the severance controls the existence and scope of an implied easement, (2) the best evidence of the intent of the parties to create an implied easement is the recorded documents.

Turning to the facts related to the Hills and Clemmons purchase of their residential lots in Deerfield Plantation from Deerfield Plantation, Inc. in 1973, there exists no genuine issue of material fact as to whether the parties intended to create an implied easement to the North Course and Clubhouse Property. Addressing the presumptions as to each of the implied easements separately, it is clear that neither the Hills and/or the Clemmons are the holder of a prescriptive easement, easement by necessity, easement by prior use, easement by reference, or easement by

estoppel over the North Course and Clubhouse Property.

i. Prescriptive Easement

A prescriptive easement is presumed to be created if the dominant property uses the easement for (1) 20 years continuously; (2) with a specific identity of the thing enjoyed, and (3) adversely to the rights of the servient property holder. Id. at 419. Plaintiffs have failed to produce any evidence to show the creation of a prescriptive easement for two reasons.

First, Plaintiffs cannot identify the "thing enjoyed" to create an easement. The Plaintiffs acknowledge that they were not permitted to use the North Course or Clubhouse Property without paying a fee. **(Deposition of Carl Clemmons, p. 29; Geraldine Clemmons, p. 17; Dale Hill p. 67-70; 30(b)(6) Deposition of Deerfield Plantation Property Owners Assoc. p 57-58).** Further, Plaintiffs state that they were not permitted to maintain any portion of the North Course or Clubhouse, and if they did so they did with permission. **(Deposition of Betty Hill, p. 14, Geraldine Clemmons p. 23-24; Carl Clemmons p. 32-33).** At most, what Plaintiffs enjoyed was a view. When asked what they want with the property, they state "green space", a golf course, or forest. However, Plaintiffs acknowledge that even when the property was used as a golf course, it was not "green space." **(Deposition of Betty Hill p. 15; Dale Hill p. 74-75, Carl Clemmons p. 44, Geraldine Clemmons, p. 18).**

Second, Plaintiffs cannot show that their use of the North Course was adverse in any manner to the owner of the North Course and Clubhouse at any time. Plaintiffs used their "view" in a manner not at all adverse to the property owner, who leased it to the operator of the golf course.

As a result, there is no genuine issue of material fact with respect to whether a prescriptive easement exists over the North Course and Clubhouse Property in favor of the

Plaintiffs.

ii. Easement by necessity

The intent of the parties is presumed to create an easement by necessity when there exists: (1) unity of title to the property severed, (2) severance of title, and (3) necessity for meaningful access to land. Here, Plaintiffs are not alleging that their use of the North Course and Clubhouse Property is necessary or that it is required to access their property. **(Complaint).** Moreover, as discussed in relation to an easement by prior use below, unity of title and severance of title does not exist with respect to Plaintiffs purchase of their lot and the North Course and Clubhouse Property.

Thus, summary judgment is proper because Plaintiffs have failed to show any evidence of the existence of an easement by necessity over the North Course and Clubhouse Property.

iii. Easement by prior use

Similarly, summary judgment is proper as to any allegation that Plaintiffs are entitled to an easement over the North Course and Clubhouse Property by prior use. A presumption of an implied easement by prior use exists where the grantor used one portion of the property to serve another prior to the severance of the property and is presumed where there exists: (1) unity of title, (2) severance of title, (3) the prior use was in existence at the time of unity of title; (3) the prior use was not merely temporary or casual, (4) the prior use was apparent or known to the parties, (5) the prior use was necessary in that there could be no other reasonable mode of enjoying the dominant tenement without the prior use, and (6) the common grantor indicated an intent to continue the prior use after severance of title.

The Plaintiffs have failed to offer any evidence of an easement by prior use for several reasons. First, Plaintiffs cannot demonstrate that unity of title existed at the time of severance.

Specifically, when Deerfield Plantation was developed and subdivided, the Deerfield Plantation Property was owned by Deerfield Plantation, Inc. **(Exhibits I, J, K, L, M to Complaint).** At that same time, the North Course and Clubhouse Property was owned by V.F. Platt, Jr., individually. **(Deed Book 612, Page 792, Deposition of Dale Hill, p. 31; Betty Hill p. 23; Geraldine Clemmons p. 24, Carl Clemmons, p. 34).** V.F. Platt, Jr. did not transfer the North Course and Clubhouse Property until 1978, six years after Plaintiffs purchased their lots, when it sold to Caro Pines Realty, Inc. **(Deed Book 612, Page 792, Deposition of Dale Hill p. 45-46; 50-51)**

Second, Plaintiffs admit that the North Course and Clubhouse Property was not used as a golf course and clubhouse until after they purchased their lots in Deerfield Plantation. **(Deposition of Carl Clemmons, p. 32; Exhibit N to Complaint).**

Third, even if the North Course and Clubhouse was used as a golf course prior to their purchase of the lots in Deerfield Plantation, Plaintiffs cannot show that the golf course was necessary for the enjoyment of their lots. See Boyd v. Bell South, 369 S.C. 410, 633 S.E.2d 136, 142 (2006). Plaintiffs only allege that if the North Course and Clubhouse changed use, it may affect their property values. **(Deposition of Geraldine Clemmons, p. 17-18, 23; Dale Hill 74-75).**

Accordingly, summary judgment is proper as to Plaintiffs' claims of implied easement to the extent they allege one exists as a result of prior use.

iv. Easement by reference

Plaintiffs also failed to show any genuine issue of material fact as to an easement by reference. The rule regarding the creation of an easement by reference to a recorded document is "nothing more than a presumption that when a grantor conveys property with reference to a plat

showing streets or other ways of passage, the grantor intends to allow the grantee the use of the delineated streets and ways of passage." Id. at 93.

Plaintiffs alleged that the depiction of the golf course and clubhouse on the Plat referenced in their deed, Plat Book 54, page 124, give Plaintiffs an easement by reference over the golf course and clubhouse. **(Exhibit E to Complaint; Deposition of Dale Hill, p. 19-23, Betty Hill, p. 8-9, 33; Geraldine Clemmons, p. 10, 13-14, referring to Exhibit 85 of Depositions, Plat Book 54, Page 124).** However, Plaintiffs argument fails first because Plaintiffs are not claiming an easement to any streets or ways of passage, and because Plaintiffs acknowledge they cannot use the North Course and Clubhouse Property without paying a membership fee, and the Plat referred to in their deed expressly disclaims any easement Plaintiffs may have in the North Course and Clubhouse Property.

Plaintiffs testified that they were not permitted to use the Golf Course and Clubhouse Property without paying a fee. **(Deposition of Carl Clemmons, p. 29; Geraldine Clemmons, p. 17; Dale Hill p. 67-70; 30(b)(6) Deposition of Deerfield Plantation Property Owners Assoc. p 57-58).** In addition, the Plat referred to in Plaintiffs' deeds states on the face of the plat:

> It is hereby expressly declared that Deerfield Plantation, Inc. does not intend to dedicate and does not dedicate to the general public or any member thereof any easement, right of travel, right to use or other right with regard to the streets, roads, alleys, entrances, or other passages or ways and with regard to the lakes and parks shown upon this map, and that Deerfield Plantation, Inc. reserves unto itself, its successors and assigns, all streets, roads, alleys, entrances, or other passages or ways and any and all lakes and parks shown upon this map and all

easements, rights of travel, right to use and any other rights over, upon, under or connected with the same.

(Exhibit E to Complaint, Plaintiff Betty Hills' Responses to Deertrack Investors, LLC's Request to Admit).

As a result, Plaintiffs have failed to allege any genuine issue of material fact to overcome the express disclaimer of easements by reference. **(See also Exhibits I, J, K, and N to Complaint).** Moreover, Plaintiffs have failed to allege any genuine issue of material fact as to the existence of an implied easement over the North Course and Clubhouse Property as a result of the reference to Plat 54, Page 124.

v. Easement by estoppel

Additionally, Plaintiffs have failed to allege material facts as to the creation of an implied easement by estoppel over the North Course and Clubhouse Property. See Boyd v. Bellsouth Telephone Telegraph, Co., 369 S.C. 410, 422, 633 S.E.2d 136 (2006) (The essential elements of equitable estoppel as related to the party estopped are: (1) conduct which amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intentional, or at least expectation, that such conduct shall be acted upon by the other party; and (3) knowledge, actual or constructive, of the real facts. As related to the party claiming the estoppel, the are: lack of knowledge and of the means of knowledge of the truth as to the facts in question (2) reliance upon the conduct of the party estopped; and (3) action based thereon of such a character as to change his position prejudicially.).

Plaintiffs testified that no party ever represented that the North Course and Clubhouse

Property would be operated as a golf course forever. **(Depositions of Dale Hill at 31-32; Betty Hill at 14; Geraldine Clemmons at 16; Carl Clemmons at 28-29; 30(b)(6) Deposition of Deerfield Plantation Property Owners Assoc. p. 141-42, 145-46).** Further, Plaintiffs testified that any representations regarding the North Course and Clubhouse Property were not made with the intent to convey false information. **(Deposition of Betty Hill, p. 32; Carl Clemmons p. 41-42).** Finally, Plaintiffs had knowledge of and the means of knowledge of the lack of easement to and the express disclaimer of any easement to use the North Course and Clubhouse Property. **(Exhibits I, J, K, and N to Complaint).** The Plaintiffs' deeds did not grant them any easement to the North Course and Clubhouse Property, the Plat referred to in their deed expressly disclaims any easement to the North Course and Clubhouse Property, the Declarations expressly provide for a golf easement in favor of Deerfield Plantation, Inc. over Plaintiffs property and permits Deerfield Plantation, Inc. to withdraw all acts permitted by that easement, and the Property Report expressly states that Deerfield Plantation, Inc. has "no obligation or commitment to maintain clubhouse, swimming pool, tennis courts or golf course for any period of time and no purchaser or lessee of property shall be automatically entitled to membership in or use of said facilities by virtue of acquiring an interest in real property in the development." **(Exhibits E, I, J, K, and N to Complaint).** See id. ("A properly recorded title normally precludes an equitable estoppel against assertion of that title due to the requirement that the party raising the estoppel be ignorant of the true state of title or reasonable means of discovering it. One with knowledge of the truth or the means by which with reasonable diligence he could acquire knowledge cannot claim to have been misled.").

As a result, Plaintiffs have failed to allege any material fact as to the existence of an implied easement by estoppel, or any other implied easement and summary judgment in favor of

Deertrack Investors, LLC is proper.

C) . Negative Reciprocal Easement

In addition to the various presumptions regarding the implied easements discussed in the Boyd, Inlet Harbour, and Murrells Inlet cases, case law in South Carolina has developed regarding implied easements and/or implied restrictions by general plan, commonly referred to as a negative reciprocal easement. Unlike other implied easements in which the easement is created by the servient property owner in favor of a dominant property owner at the time of severance, negative reciprocal easements are implied restrictions on subdivided property created by a common grantor in favor of, for, against, and between the grantees of subdivided land. The Court of Appeals described negative reciprocal easements as follows:

> Where they arise by implication and subdivided land is involved, the restrictions are said to create a reciprocal negative easement. Ordinarily, four elements must be established to show a reciprocal negative easement. There must be: (1) a common grantor, (2) a designation of land subject to restrictions, (3) a general plan or scheme of restrictions, and (4) covenants running with the land in accordance with such plan or scheme.
>
> In determining whether a reciprocal negative easement has been created, the court should consider not only the language of the deeds, but also the circumstances surrounding the origin of the covenants. Generally, the developer must establish the general scheme of development before any lots are sold. To establish a general scheme, it is not necessary for every lot to be restricted in exactly the same manner, but extensive omissions or variations tend to show no scheme existed and the restrictions are only personal contracts. All doubts regarding the creation of an implied reciprocal negative easement must be resolved in favor of the freedom of land from restriction.

Gambrell v. Schriver, 312 S.C. 354, 358, 440 S.E.2d 393, 395 (Ct. App. 1994) (citations omitted).

The reservation of the grantor to vary, waive, or obliterate restrictions, is generally an indication of a lack of general plan. See Am. Jur. 2d. Covenants §160.

The Plaintiffs alleged that the a general plan or scheme of development arises as a result of the Plaintiffs' deeds, the Plat referenced therein, the Declarations, the Property Report, and the Developer's description of the Deerfield Plantation Property as a "golf community". However, Plaintiffs fail to assert a genuine issue of material fact as to the creation of a negative reciprocal easement restricting the use of the North Course and Clubhouse Property to a golf course. As an initial matter, Plaintiffs cannot show that the subdivided land in Deerfield Plantation includes the golf course. The developer of Deerfield Plantation was Deerfield Plantation, Inc. and the development included lots 1-458, which did not include the golf course or clubhouse. **(Exhibit K to Complaint, Depositions of Dale Hill, p. 38; Betty Hill, pp. 21-22; Geraldine Clemmons, p. 14-15).** At the time the residential lots were sold to Plaintiffs by Deerfield Plantation, Inc., the golf course was owned by V.F. Platt, Jr. and leased pursuant to a 10 year lease to Deerfield Plantation, Inc. Therefore, the first element of a negative reciprocal easement is absent – a common grantor.

Furthermore, Plaintiffs' cannot point to any evidence that the North Course and Clubhouse Property was intended to be subject to any restrictions of Deerfield Plantation. The restrictive covenants over the subdivided property applied only to the subdivided lots 1-458, and did not include the golf course or clubhouse. **(Exhibit K to Complaint, Depositions of Dale Hill, p. 38; Betty Hill, pp. 21-22; Geraldine Clemmons, p. 14-15).** The other recorded documents expressly disclaim any right of Plaintiffs to the North Course and Clubhouse. **(Exhibit E, I, J, K, N to Complaint).** Therefore, the Plaintiffs cannot show the remaining elements of a negative reciprocal easement because there is no evidence that the North Course

and Clubhouse property was ever subject to any restrictions and is specifically excluded from the Declarations restricting the Deerfield Plantation Property. **(Exhibit K to Complaint, Depositions of Dale Hill, p. 38; Betty Hill, pp. 21-22; Geraldine Clemmons, p. 14-15).**

Plaintiffs have failed to allege a genuine issue of material fact as to the existence of a negative reciprocal easement over the North Course and Clubhouse Property and therefore summary judgment should be granted in favor of Deertrack Investors, Inc.

D) Amenities

Plaintiffs also allege a right in the North Course and Clubhouse Property as a result of a doctrine they entitle "amenities." A specific implied easement with respect to amenities has not been recognized in South Carolina. Notwithstanding, in In re T-2 Green, LLC, 363 B.R. 753 (D.S.C. 2006), the bankruptcy court acknowledged that implied easements to amenities in a subdivision may arise under the same type of circumstances as other implied easements. However, the court cautioned that the use of property cannot be implicitly restricted by a plat or prior use if the clear language of other recorded documents prohibit the party asserting the claim from obtaining any proprietary right, title, or interest in the property. Id. at 768.

With respect to the North Course and Clubhouse Property, the recorded documents expressly prohibit the Plaintiffs from claiming any right to the property. Again, the Plat referenced in Plaintiffs' deeds expressly disclaims any easement to the North Course and Clubhouse Property, the Declarations expressly permits Deerfield Plantation, Inc. to withdraw all acts permitted by the golf easement it held over Plaintiffs' Property, and the Property Report expressly states that Deerfield Plantation, Inc. has "no obligation or commitment to maintain clubhouse, swimming pool, tennis courts or golf course for any period of time and no purchaser or lessee of property shall be automatically entitled to membership in or use of said facilities by

virtue of acquiring an interest in real property in the development." **(Exhibit E, I, J, K, N to Complaint).**

Thus, Plaintiffs have failed to allege the creation of any implied easement over the North Course and Clubhouse Property as a result of amenities and summary judgment is proper.

CONCLUSION

Defendant Deertrack Investors, LLC is entitled to summary judgment with respect to Plaintiffs claims for declaratory judgment and injunction because Plaintiffs have failed to allege any material fact to create an easement restricting the use of the North Course and Clubhouse Property in express terms or by plain unmistakable implication. Bomar v. Echols, 270 S.C. 676, 244 S.E.2d 308 (1978). Therefore, this court should grant Defendant Deertrack Investors, LLC's motion for summary judgment and dismiss with prejudice Plaintiffs' claims.

McNAIR LAW FIRM, P.A.

Amanda A. Bailey S.C. Bar#71085
Henrietta Golding S.C. Bar#2173
P.O. Box 336
Myrtle Beach, South Carolina 29578
Phone: 843-444-1107
Fax: 843-443-9137
Attorney for the Deertrack Investors, LLC

Date: August 29, 2008
Myrtle Beach, South Carolina

MYRTLEBEACH 112462v1

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT Civil Action No.: 2006-CP-26-4440
Dale Hill, Betty Hill, Carl Clemmons Geraldine Clemmons, Individually, and on behalf of a Class of all others similarly Situated, Plaintiffs, v. Deertrack Golf and Country Club, Inc. Deertrack Golf, Inc., Deerfield Plantation, Inc., the Estate of John Schaad, by and through Ann Schaad as Executrix, and Deertrack Investors, LLC., Defendants.	)	**DEFENDANT DEERTRACK INVESTORS, LLC'S MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION TO ALTER OR AMEND THE JUDGMENT UNDER RULE 59(e)**
Deertrack Investors, LLC., Third-Party Plaintiff, v. Plantation Resort of Myrtle Beach, Inc., and Plantation Resort Properties, Inc. Third-Party Defendants.	)	

The Defendant and Third-party Plaintiff Deertrack Investors, LLC hereby submits this memorandum of law in opposition to Plaintiffs' Motion to Alter or Amend the Judgment Under Rule 59(e). Plaintiffs move to alter or amend the judgment granting Defendants' Motion for Summary Judgment as to all of Plaintiffs' causes of action filed on November 5, 2008.

Specifically, Plaintiffs seek to alter or amend the November 5, 2008 Order granting Defendants' Motion for Summary Judgment on thirteen separate grounds.

1. **No genuine issue of material fact exists as to the effect of the October 13, 1972 Deed**

Grounds one through three in Plaintiffs' Motion assert that genuine issues of material fact exists as to the effect of the October 13, 1972 Deed from V.F. Platt, Jr. to Deerfield Plantation, Inc., recorded in the Horry County Register of Deeds Book 478, Page 654. *(See Affidavit of Patrick J. Schaad).* Paragraph 5 of the Order finds that the October 13, 1972 deed "specifically excluded the Subject Property, being 182.92 acres." This finding of fact is supported by the Affidavit of Patrick J. Schaad, the September 9, 2008 correspondence from Plaintiffs' counsel to The Honorable Larry B. Hyman, Jr., and is not contradicted by any affidavit, deposition or other evidence.

Plaintiffs also allege that the October 13, 1973 deed raised genuine issues of material fact as to whether V.F. Platt intended to create an implied easement in the Subject Property. Moreover, Plaintiffs allege that the recitations regarding the excluded property in the October 13, 1972 deed raise a genuine issue of material fact as to the Plaintiffs' rights in the Subject Property. However, Plaintiffs overlook the numerous other factors the trial court relied upon to determine the lack of an implied easement. Exclusions and/or exceptions in a deed alone are not enough to give rise to an implied easement. Covenants, expressed or implied, restricting the free use of land are not favored and must be strictly construed. Edwards v. Surratt, 228 S.C. 512, 90 S.E.2d 906 (1956). An easement restricting the use of property must be created in express terms or by plain and unmistakable implication. Bomar v. Echols, 270 S.C. 676, 244 S.E.2d 308 (1978); Shoney's, Inc. v. Cooke, 291 S.C. 307, 353 S.E.2d 300 (Ct. App. 1987).

Plaintiffs contend that the property description of the parcel specifically *excluded* from

the October 13, 1972 deed as "the golf course and clubhouse area" and metes and bounds description therein, referring to the golf course holes, creates a restriction in the use of the excluded property and an implied easement in the chain of title that runs with the land. Thus, Plaintiffs argue the deed giving rise to an implied easement is the October 13, 1972 deed from V. F. Platt to Deerfield Plantation, Inc.

Plaintiffs' assertion that the relevant sale is that from V. F. Platt to Deerfield Plantation, Inc. is, at best, questionable because the Plat relied upon by Plaintiffs to supposedly create the alleged implied easement was not recorded and the alleged representations relied upon by Plaintiffs in purchasing their lots had yet to occur. Notwithstanding, even assuming the relevant sale was that from V. F. Platt to Deerfield Plantation, Inc., Plaintiffs have failed to establish a genuine issue of material fact that an implied easement was created in favor of subsequent purchases of residential lots from Deerfield Plantation, Inc.

First, the Subject Property was specifically *excluded* from the transfer of Deerfield Plantation, Inc., clearly specifying V. F. Platt's intentions *not* to convey any interest in the Subject Property to Deerfield Plantation, Inc. and subsequent purchasers of subdivided lots. That the Subject Property was described as a golf course is of no consequence as the deed contains only descriptive language and language of exclusion. By comparison, deeds containing property descriptions by metes and bounds, such as the deed relied upon by Plaintiffs, referring to an adjacent tract, or a farm house, an old oak tree, or any other natural or artificial monument convey no right in the adjacent property described, rather function to sufficiently identify the land conveyed. In contrast, the deed relied upon by the Plaintiffs contains no language of restriction, inclusion, or granting any rights and/or easements to the Subject Property, to Deerfield Plantation, Inc.

Further, all other recorded documents relied upon by Plaintiffs for their assertion of an implied easement contain express disclaimers of any rights or easements to the Subject Property. Plaintiffs have presented no evidence on the face of the October 13, 1972 deed or any parole evidence sufficient to meet the plain and unmistakable implication necessary to create an implied easement or implied rights in the Subject Property.

2. **No genuine issue of material fact exists as to the lack of unity of title at the time Plaintiffs' purchased their property**

Grounds four and eleven of Plaintiffs' Motion assert that genuine issues of material fact exists as to whether unity of title existed at the time the property was severed and Plaintiffs purchased their lots. Specifically, Plaintiffs assert that because they thought they were purchasing their lots directly from V.F. Platt, Jr., and not from Deerfield Plantation, Inc. as the seller reflected on the Deeds, plats, property reports, and the like, a genuine issue of material fact exists as to unity of title.

This position, however, does not raise any genuine issue of material fact as to whether unity of title existed. Unity of title requires that the dominate estate, in this case Plaintiffs lots, and the servient estate, the Subject Property, have common ownership prior to and at the time the lots were transferred to Plaintiffs. There is no dispute that at the time of Plaintiffs' purchase, the Subject Property was owned by V.F. Platt, Jr. and Plaintiffs' lots were owned by Deerfield Plantation, Inc. Plaintiffs deeds, which they admit in their Complaint, state that they purchased from Deerfield Plantation, Inc. *Complaint, Exhibits I and J.* The plat referred to in the Complaint and in Plaintiffs' Deed recorded at Plat Book 54, Page 124 in the Horry County Register of Deeds state that their property was owned by Deerfield Plantation, Inc. *Complaint, Exhibit E.* Plaintiffs' Complaint admits that the principal officers of Deerfield Plantation, Inc.

were both V.F. Platt, Jr. and Kate Platt. *Complaint, Exhibit L.* Moreover, all of the documentation allegedly relied upon by the Plaintiffs states that Deerfield Plantation, Inc. owned the residential lots. *Complaint, Exhibit H, K, L, M, N. See also Deposition of Dale Hill p. 30.* Moreover, Plaintiffs do not dispute that the Subject Property, at the time Plaintiffs purchased their residential lots from Deerfield Plantation, Inc,. was owned individually by V.F. Platt, Jr. *Affidavit of Patrick J. Schaad; Deposition of Dale Hill p. 31.*

Although Plaintiffs assert that they believe that they purchased their lots from V.F. Platt, Jr., such is not sufficient to give rise to unity of title. It is generally recognized that a corporation is an entity that is separate and distinct from ... its officers and stockholders. Mid-South Mgt. Co. Inc. v. Sherwood Development Corp., 374 S.C. 588, 597, 649 S.E.2d 135, 140 (Ct. App. 2007). Such allegations merely give rise, if at all, to potential claims by Plaintiffs against V.F. Platt, Jr., not claims for unity of title.

Plaintiffs rely on New York and Illinois cases to assert that unity of title is met upon a showing that a single individual controls the two entities which own the respective interest at the time unity is required. See United States v. O.Connell, 496 F.2d 1329 (C.A.2 N.Y.1974); Cosmopolitan Nat'l Bank v. Chicago Title & Trust Co., 7 Ill.2d 471, 131 N.E.2d 4 (1955). However, South Carolina precedent clearly requires "an absolute ownership" of both the dominant and servient tenements. See Kennedy v. Bedenbaughn, 352 S.C. 56, 61-62, 572 S.E.2d 452, 455 (2002) (declining to find unity of title where owner of dominant tenement held servient tenement with his wife, as tenants in common).

Therefore, the trial court did not commit any error in finding no genuine issue of material fact existed as to the lack of unity of title.

3. No genuine issue of material fact exists as to any negative reciprocal easement

affecting the Subject Property.

Ground five of Plaintiffs' Motion alleges that the trial court erred in giving weight to the conclusion that the Subject Property was not subject to the Declaration and Establishment of Conditions, Reservations, Covenants, and Restrictions. *Exhibit K to Complaint.* Plaintiffs admit that the Declaration and Establishment of Conditions, Reservations, Covenants, and Restrictions does not burden the Subject Property. *Exhibit K to Complaint, Depositions of Dale Hill, p. 38, Betty Hill, pp. 21-22, Geraldine Clemmons, p. 14-15.* Moreover, that the Declaration and Establishment of Conditions, Reservations, Covenants, and Restrictions does not burden the Subject Property is entirely relevant as a factor as to the existence of any implied easement and/or any negative reciprocal easement.

The court's "guidepost must be what the parties intended, and the best evidence of the parties' intentions are the facts and circumstances surrounding the conveyance." Inlet Harbour v. South Carolina Dept. of Parks, Recreation and Tourism, 377 S.C. 86, 93, 659 S.E.2d 151 (2008). "The creation of an implied easement generally requires that the facts and circumstances surrounding the conveyance, the property, the parties, or some other characteristic demonstrate that the objective intention of the parties was to create an easement." Id. at 91. However, the court in Inlet Harbour cautioned that implied easements are not favored because "the implication of an easement in a conveyance goes against the general rule that a written instrument speaks for itself." Id. at 91-92.

In order for Plaintiffs to prove the existence of a negative reciprocal easement, they must show: (1) a common grantor, (2) a designation of land subject to restrictions, (3) a general plan or scheme of restrictions, and (4) covenants running with the land in accordance with such plan

or scheme. Gambrell v. Schriver, 312 S.C. 354, 358, 440 S.E.2d 393, 395 (Ct. App. 1994) (citations omitted). Further:

> In determining whether a reciprocal negative easement has been created, the court should consider not only the language of the deeds, but also the circumstances surrounding the origin of the covenants. Generally, the developer must establish the general scheme of development before any lots are sold. To establish a general scheme, it is not necessary for every lot to be restricted in exactly the same manner, but extensive omissions or variations tend to show no scheme existed and the restrictions are only personal contracts. All doubts regarding the creation of an implied reciprocal negative easement must be resolved in favor of the freedom of land from restriction.

Gambrell v. Schriver, 312 S.C. 354, 358, 440 S.E.2d 393, 395 (Ct. App. 1994) (citations omitted). The reservation of the grantor to vary, waive, or obliterate restrictions, is generally an indication of a lack of general plan. See Am. Jur. 2d. Covenants §160.

Plaintiffs' admission and the undisputed evidence that the Declaration and Establishment of Conditions, Reservations, Covenants, and Restrictions does not burden the Subject Property is but one fatal flaw to Plaintiffs' assertion of any rights to the Subject Property by virtue of a negative reciprocal easement or implied easement.

Therefore, the trial court did not commit any error in finding no genuine issue of material fact existed as to the lack of negative reciprocal easement over the Subject Property.

4. No genuine issue of material fact exists as to any easement by reference affecting the Subject Property

Grounds six, nine, and ten of Plaintiffs' Motion allege that the trial court erred finding no easement by reference to the plat recorded in Plat Book 54, Page 124. Specifically, Plaintiffs alleged that the trial court erred in finding that an easement by reference has only been found to apply to streets and ways of passage in South Carolina. The rule regarding the creation of an

easement by reference to a recorded document is "nothing more than a presumption that when a grantor conveys property with reference to a plat showing streets or other ways of passage, the grantor intends to allow the grantee the use of the delineated streets and ways of passage." Inlet Harbour v. South Carolina Dept. of Parks, Recreation and Tourism, 377 S.C. 86, 93, 659 S.E.2d 151 (2008). No case law in South Carolina has extended an easement by reference beyond delineated streets and ways of passage.

Therefore, the *presumption* that when a grantor conveys property with reference to a plat showing streets or other ways of passage, the grantor intends to allow the grantee the use of the delineated streets and ways of passage has not been extended to apply to the parks or golf courses reflected on the plat at issue. Moreover, this presumption is rebutted by at least three other reasons: (1) the Grantor of Plaintiffs' residential lots did not own the Subject Property; (2) Plaintiffs acknowledge they could not use the Subject Property without paying a membership fee, and (3) the Plat referred in their deeds expressly disclaims any easement Plaintiffs allege they have in the Subject Property.

Plaintiffs further allege that a genuine issue of material fact exists regarding the easement by reference because "Plaintiffs have not sought to force Deertrack Investors, LLC to permit them to use the subject property." Interestingly, however, Plaintiffs have alleged in their Complaint and in their Motion to Alter or Amend that they do intend have a right to use the property as an "amenity," or through implied easements. Black's Law Dictionary defines easement as: An interest in land owned by another person, consisting in the *right to use* or control the land, or an area above or below it, for a specific limited purpose (such as to cross it for access to a public road). Black's Law Dictionary 527 (7th ed. 1999) (emphasis supplied). Plaintiffs' causes of action assert that they have a right use the Subject Property. Yet, Plaintiffs

are unable to even describe what alleged rights they assert in the Subject Property. For example, Plaintiffs allege that they do not have the right to use the Subject Property, the right to insist the Subject Property be maintained as a golf course, or the right to prevent development of the Subject Property. Yet somehow, Plaintiffs allege they have the right to insist the property be used for a golf course or "like use", yet they do not identify any "like use."

Thus, that the Plaintiffs acknowledge they could not use the Subject Property without paying a membership fee is a proper and relevant factor regarding the presumption that when a grantor conveys property with reference to a plat showing streets or other ways of passage, the grantor intends to allow the grantee the use of the delineated streets and ways of passage, or in this case as alleged by Plaintiffs, the Subject Property.

In addition, the Plat referred to in Plaintiffs' deeds states on the face of the plat:

> It is hereby expressly declared that Deerfield Plantation, Inc. does not intend to dedicate and does not dedicate to the general public or any member thereof any easement, right of travel, right to use or other right with regard to the streets, roads, alleys, entrances, or other passages or ways and with regard to the lakes and parks shown upon this map, and that Deerfield Plantation, Inc. reserves unto itself, its successors and assigns, all streets, roads, alleys, entrances, or other passages or ways and any and all lakes and parks shown upon this map and all easements, rights of travel, right to use and any other rights over, upon, under or connected with the same.

Plaintiffs cite to a New Mexico case, Ute Park Summer Homes Assoc. v. Maxwell Land Grant Co., 77 N.M. 730, 727 P2d 249 (N.M.1967), in an attempt to extend the precedent in South Carolina regarding an easement by reference in streets or other ways of passage to golf courses. The trial court correctly declined to apply the Ute Park case as it is distinguishable from the present case on numerous grounds. In Ute Park, the court held that an easement by reference can extend to a golf course because a golf course is the equivalent to a park. To the extent that

the plat and golf course relied upon the Plaintiffs can be analogized to a park, as in Ute Park, the similarities end there.

In the present case, the Plat asserted by Plaintiffs, as relied upon in their affidavits and depositions, contains an express disclaimer of *any easement to any roads, streets or parks* to Plaintiffs or any other third party. The Property Report relied upon by Plaintiffs also contains similar express disclaimers. Lastly, the Declarations fail to create any easement over the Subject Property, but rather burden the Plaintiffs' lot with a revocable easement for golfers to, for example, recover their golf balls. Therefore, Plaintiffs' reliance on the Ute Park case to create a genuine issue of material fact is unpersuasive. As a result, Plaintiffs have failed to allege any genuine issue of material fact to overcome the express disclaimers of any easements or rights in favor of the Plaintiffs to the Subject Property and the trial court did not commit any error in determining that no genuine issue of material fact exists as to any easement by reference affecting the Subject Property.

5. No genuine issue of material fact exists as to any easement by necessity affecting the Subject Property

In ground eight of Plaintiffs' Motion, Plaintiffs assert that the trial court erred in finding the golf course was not necessary for the enjoyment of their lots. In order to demonstrate any right to the Subject Property by necessity or prior use, Plaintiffs would have to show that the use was necessary for access or that there could be no other reasonable mode of enjoying the dominant tenement without the prior use. Boyd v. Bellsouth Telephone Telegraph, Co., 369 S.C. 410, 633 S.E.2d 136 (2006). By correspondence to the Court dated September 9, 2008, Plaintiffs concede that they do not rely upon the doctrines of easement by necessity and/or easement by prior use to support their declaratory judgment and injunction causes of action. Moreover,

Plaintiffs dismissed their causes of action for money damages against Defendant Deertrack Investors, LLC. Therefore, whether the golf course had any effect on the property values of the Plaintiffs is of no consequence as to whether an implied easement or negative reciprocal easement was created at the time Plaintiffs purchased their property.

6. **No genuine issue of material fact exists as to any easement by equitable estoppel.**

In ground eleven of Plaintiffs' Motion, Plaintiffs assert that the trial court erred in failing to apply a Mississippi case to find an easement by estoppel.

Plaintiffs rely upon the Mississippi case of PMZ Oil Co. v. Lucroy, 449 So.2d 201 (Miss.1984) to assert Defendants use of the Subject Property should be restricted. In PMZ, the Mississippi court addressed, on first impression, whether a developer was equitably estopped from constructing six condominiums on a lot within a subdivision where the plats for the subdivision illustrated single owners and the deeds to the other lots contained protective covenants restricting the use to on single family resident.

The PMZ case is distinguishable from the present case in several manners, each fatal to Plaintiffs' position. First, the PMZ case applied equitable estoppel where the developer sold property within a subdivision to all of the subdivisions owners. In other words, PMZ applied equitable estoppel where there was unity of title. The PMZ court noted that equity acted "in personam" and not "in rem". Therefore, the court applied equity to estop the developer from denying the covenants.

Here, Plaintiffs did not and could not offer any evidence of unity of title as discussed above, and thus this Court is precluded from using equity to restrict the use of the Subject Property. This Court is similarly restricted from applying equity to restrict the use of the Subject Property when the Defendants were neither the developer nor Plaintiffs' predecessor in the title.

Additionally, contrary to the PMZ case where the deed expressly provided for restrictive covenants, the Plat and documents relied upon by Plaintiffs contain express disclaimers of any easement and/or restrictions in favor of Plaintiffs or any other third party. See Murrells Inlet, Op. No. 4384 at 3; Carolina Land Co., 26 SC at 107, 217 S.E.2d at 20.

Moreover, notwithstanding the PMZ case, Plaintiffs failed to set forth any genuine issue of material fact as to the existence of any easement by estopple over the Subject Property. The essential elements of equitable estoppel as related to the party estopped are: (1) conduct which amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intentional, or at least expectation, that such conduct shall be acted upon by the other party; and (3) knowledge, actual or constructive, of the real facts. As related to the party claiming the estoppel, the are: lack of knowledge and of the means of knowledge of the truth as to the facts in question (2) reliance upon the conduct of the party estopped; and (3) action based thereon of such a character as to change his position prejudicially.).

Plaintiffs testified that no party ever represented that the Subject Property would be operated as a golf course forever. *Depositions of Dale Hill p. 31-32, Betty Hill p. 14, Geraldine Clemmons p. 16, Carl Clemmons p. 28-29, 30(b)(6) Deposition of Deerfield Plantation Property Owners Association p. 141-42, 145-46.* Further, Plaintiffs testified that any representations regarding the Subject Property were not made with the intent to convey false information. *Betty Hill p. 32, Carl Clemmons p. 41-42.* Plaintiffs also had knowledge of and the means of knowledge of the lack of easement to and the express disclaimer of any easement to use the Subject Property. The Plaintiffs' deeds did not grant any easement to the Subject Property, the

Plat referred to in their deeds expressly disclaims any easement to the Subject Property, the Declarations expressly provide for a golf easement in favor of Deerfield Plantation, Inc. over Plaintiffs property and permits Deerfield Plantation, Inc. to withdraw all acts permitted by that easement, and the Property Report expressly states that Deerfield Plantation, Inc. has "no obligation or commitment to maintain clubhouse, swimming pool, tennis courts or golf course for any period of time and no purchaser or lessee of property shall be automatically entitled to membership in or use of said facilities by virtue of acquiring an interest in real property in the development." See id. ("A properly recorded title normally precludes an equitable estoppel against assertion of that title due to the requirement that the party raising the estoppel be ignorant of the true state of title or reasonable means of discovering it. One with knowledge of the truth or the means by which with reasonable diligence he could acquire knowledge cannot claim to have been misled.").

As a result, Plaintiffs failed to establish any material fact as to the existence of an implied easement by estoppel, or any other implied easement and summary judgment in favor of Deertrack Investors, LLC was proper.

7. No genuine issue of material fact exists as to any easement or right to use the Subject property under any doctrine of "amenity".

Ground twelve of Plaintiffs' Motion alleges that the trial court erred in failing to find Plaintiffs had any rights to the Subject Property under the doctrine of "amenity", because the disclaimer of an obligation to maintain the golf course in the Property Report created a genuine issue of material fact as to whether the Subject Property was restricted in use. Contrary to Plaintiffs' position, an implied easement is not created restricting the use of property unless it is done so by clear and unmistakable implication.

Bomar v. Echols, 270 S.C. 676, 244 S.E.2d 308 (1978); Shoney's, Inc. v. Cooke, 291 S.C. 307, 353 S.E.2d 300 (Ct. App. 1987). The express disclaimer of any of the Developer's obligations to maintain the golf course and clubhouse is but one factor the trial court used in determining that Plaintiffs had no rights by implication to the subject property. Certainly, the disclaimer of the Developer's obligation to maintain the golf course and clubhouse property does not provide Plaintiffs rights in the Subject Property by clear and unmistakable implication.

Moreover, a specific implied easement with respect to amenities has not been recognized in South Carolina. Notwithstanding, in In re T 2 Green, LLC, 363 B.R. 753 (D.S.C. 2006), the bankruptcy court acknowledged that implied easements to amenities in a subdivision may arise under the same type of circumstances as other implied easements. However, the bankruptcy court cautioned that the use of property cannot be implicitly restricted by a plat or prior use if the clear language of other recorded documents prohibit the party asserting the claim from obtaining any proprietary right, title, or interest in the property. Id. at 768.

With respect to the Subject Property, the recorded documents expressly prohibit the Plaintiffs from claiming any right to the property. Again, the Plat referenced in Plaintiffs' deeds expressly disclaims any easement to the Subject Property, the Declarations expressly permits Deerfield Plantation, Inc. to withdraw all acts permitted by the golf easement it held over Plaintiffs' Property, and the Property Report expressly states that Deerfield Plantation, Inc. has "no obligation or commitment to maintain clubhouse, swimming pool, tennis courts or golf course for any period of time and no purchaser or lessee of property shall be automatically entitled to membership in or use of said facilities by virtue of acquiring an interest in real property in the development."

Thus, Plaintiffs have failed to establish any material facts as to the creation of any implied easement over the Subject Property as a result of amenities and summary judgment was proper.

8. **The trial court's findings of fact were supported by the record.**

Ground thirteen of Plaintiffs' Motion alleges that the trial court erred making findings of fact unsupported by the record. Specifically, Plaintiffs allege that findings they label (a) through (q) are not supported by the record. However, findings (a) through (q), as set forth below are supported by the record and documents before the court.

a. Deed Book 478, Page 654, Horry County Register of Deeds; Affidavit of Patrick J. Schaad; p. 3 Memorandum of Law in Support of Defendant/Third Party Plaintiff Deertrack Investors, LLC's Motion for Summary Judgment; Chart Exhibit Tab 1 of Notebook given to trial judge at hearing; Page 2 of Sept. 9, 2008 Letter from David Miller to the Honorable Larry B. Hyman, Jr.

b. Deed Book 54, Page 124, Horry County Register of Deeds; Exhibit N to Complaint; Affidavit of Patrick J. Schaad; Deposition of Dale Hill p. 50-51; p. 3 Memorandum of Law in Support of Defendant/Third Party Plaintiff Deertrack Investors, LLC's Motion for Summary Judgment; Chart Exhibit Tab 1 of Notebook given to trial judge at hearing.

c. Deed Book 612, Page 792, Horry County Register of Deeds; Affidavit of Patrick J. Schaad; Deposition of Harold

Pierce, p. 14, 18; p. 4 Memorandum of Law in Support of Defendant/Third Party Plaintiff Deertrack Investors, LLC's Motion for Summary Judgment; Chart Exhibit Tab 1 of Notebook given to trial judge at hearing.

d. Deposition of Harold Pierce, p. 17; Affidavit of Patrick J. Schaad; p. 4 Memorandum of Law in Support of Defendant/Third Party Plaintiff Deertrack Investors, LLC's Motion for Summary Judgment; Chart Exhibit Tab 1 of Notebook given to trial judge at hearing.

e. Deposition of Harold Pierce, p. 17; Affidavit of Patrick J. Schaad; Exhibit M to Complaint; Deed Book 614 Page 112, Horry County Register of Deeds; p. 4 Memorandum of Law in Support of Defendant/Third Party Plaintiff Deertrack Investors, LLC's Motion for Summary Judgment; Chart Exhibit Tab 1 of Notebook given to trial judge at hearing.

f. Concession by Plaintiffs made on the record.

g. Deed Book 701, Page 751, Horry County Register of Deeds; Affidavit of Patrick Schaad; p. 5 Memorandum of Law in Support of Defendant/Third Party Plaintiff Deertrack Investors, LLC's Motion for Summary Judgment; Chart Exhibit Tab 1 of Notebook given to trial judge at hearing.

h. Deed Book 3069, Page 424, Horry County Register of Deeds; Affidavit of Patrick Schaad; p. 5 Memorandum of Law

in Support of Defendant/Third Party Plaintiff Deertrack Investors, LLC's Motion for Summary Judgment; Chart Exhibit Tab 1 of Notebook given to trial judge at hearing.

i. Deed Book 3069, Page 425 Horry County Register of Deeds, Exhibit B to Complaint; Affidavit of Patrick Schaad; p. 5 Memorandum of Law in Support of Defendant/Third Party Plaintiff Deertrack Investors; LLC's Motion for Summary Judgment; Chart Exhibit Tab 1 of Notebook given to trial judge at hearing.

j. Deed Book 3069, Page 431 Horry County Register of Deeds; Exhibit C to Complaint; Affidavit of Patrick Schaad; p. 5 Memorandum of Law in Support of Defendant/Third Party Plaintiff Deertrack Investors, LLC's Motion for Summary Judgment; Chart Exhibit Tab 1 of Notebook given to trial judge at hearing.

k. Deed Book 3069, Page 431 Horry County Register of Deeds; Exhibit C to Complaint; Deposition of Gary Loftis, p. 96; 269, p. 5 Memorandum of Law in Support of Defendant/Third Party Plaintiff Deertrack Investors, LLC's Motion for Summary Judgment; Chart Exhibit Tab 1 of Notebook given to trial judge at hearing.

l. That Deertrack Investors, LLC was not in existence at the time Plaintiffs' purchased the property is supported by

Deposition of Dale Hill p. 60-63; Deposition of Gary Loftis, p. 96; Deposition of John Brown, p. 92-93;

m. Deposition of Gary Loftus, p. 101-02, 156-57, Complaint Exhibit A, p. 6 Memorandum of Law in Support of Defendant/Third Party Plaintiff Deertrack Investors.

n. Deposition of Gary Loftus, p. 101-02, 156-57, Complaint Exhibit A, p. 6 Memorandum of Law in Support of Defendant/Third Party Plaintiff Deertrack Investors.

o. Complaint Second Cause of Action, p. 17 – 18

p. Complaint Exhibit I and J.

q. Complaint Second Cause of Action, p. 17-18, Complaint Exhibit N.

In addition to the specific references to the record before the trial court, judicial notice may be taken of the content of the recorded documents on file with the Horry County Register of Deeds, Horry County Zoning Department, and the South Carolina Secretary of State.

Moreover, Plaintiffs did not object to the evidence presented to the trial court contained Chart Exhibit Tab 1 of Notebook given to trial judge at hearing or the Affidavit of Patrick J. Schaad. Therefore, the issues raised in Plaintiffs post-judgment motion are not properly before the trial court. If an issue could have been initially presented to the trial court, a party cannot raise that issue for the first time in a post-trial motion. South Carolina Coastal Conservation League v. South Carolina Dept. of Health and Environmental Control 2008 WL 4693075, 15 (Ct. App. 2008) A party cannot use a Rule 59(e) motion to present an issue to the court that could have been raised prior to judgment but was not so raised. Fields v. Reg'l Med. Ctr.

Orangeburg, 363 S.C. 19, 27, 609 S.E.2d 506, 510 (2005).

CONCLUSION

For the reasons set forth herein, this court should deny Plaintiffs' Motion to Alter or Amend the Judgment under Rule 59(e), and the November 5, 2008 Order Granting Defendants' Motion for Summary Judgment should stand.

Respectfully submitted,

McNair Law Firm, P.A.
Henrietta U. Golding, SC Bar # 02173
Amanda A. Bailey, SC Bar # 71085
McNair Law Firm, P.A.
Post Office Box 336
Myrtle Beach, South Carolina 29578
Phone: 843-444-1107
Fax: 843-443-9137
Attorneys for Deertrack Investors, LLC

December 15, 2008
Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF HORRY	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT CIVIL ACTION NO. 06-CP-26-4440
Dale Hill, Betty Hill, Carl Clemmons, and Geraldine Clemmons, individually, and on behalf of a class of all others similarly situated, Plaintiffs, vs. Deertrack Golf and Country Club, Inc., Deertrack Golf, Inc., Deerfield Plantation, Inc., the Estate of John Schaad, by and through Ann Schaad as Executrix, and Deertrack Investors, LLC Defendants.	**Memorandum Opposing Defendant Deertrack Investors, LLC's Petition for Writ of Supersedeas; Lift of Stay and/or Bond**
Deertrack Investors, LLC, Third-Party Plaintiff, vs. Plantation Resort of Myrtle Beach, Inc. Plantation Resort Properties, Inc., and Deerfield Plantation Property Owners' Association, Inc. Third-Party Defendants.	

BACKGROUND

The present matter was heard November 9, 2009, and a Final Order as to Plaintiffs' first cause of action was entered February 18, 2010. Included in that Order was a directive

that the Plaintiffs cancel the lis pendens within ten (10) days or that the Clerk of Court cancel the lis pendens thereafter. On February 22, 2010, Plaintiffs' counsel wrote the Court seeking guidance as to the Final Order.[1] Thereafter, a teleconference was held and, as understood by Plaintiffs' counsel, the Court was to send the Horry County Clerk of Court notice that the lis pendens was not to be summarily cancelled "within ten (10) days" of the date the Order.

Defendant Deetrack Investors' Motion

Defendant Deertrack Investors, LLC (hereinafter "Deertrack Investors") has filed a motion "pursuant to Rule 62(c) of the South Carolina Rules of Civil Procedure, Rule 225(c) of the South Carolina Appellate Court Rules, and South Carolina Code Ann. §§ 18-9-150 and 160" seeking an "order imposing a supersedeas, lift of stay, and/or appeal bond on the matters decided in the Special Referee, the Honorable Thomas W. Cooper, Jr.'s, Final Order filed on February 18, 2010, and Order denying Plaintiffs' Rule 59(e) Motion filed July 2, 2010."

In its Motion, Defendant Deertrack Investors, citing the Order, requested:

> ... this Court grant its Petition and find that the Order filed February 18, 2010 is not stayed by the Appeal, pursuant to § 18-9-160, until Plaintiffs provide:
>
> > "written notice of cancellation of the Notice of Lis Pendens filed in Horry County, 2007-LP-26-1931 to the Clerk of Court of Horry County within ten (10) days of the date of this Order. In the event that Plaintiffs fail to provide written

[1] The February 22, 2010 letter is attached hereto and incorporated herein by reference as **"Exhibit A."**

> notice of cancellation of the Notice of Lis Pendens filed in Horry County, 2007-LP-26-1931 to the Clerk of Court in Horry County within ten (10) days of the date of this Order, the Notice of Lis Pendens filed in Horry County, 2007-LP-26-1931 shall be cancelled of record by the Horry County Clerk of Court. The cancellation must be made by an endorsement to that effect on the margin of the record which refers to this Order for which the clerk is entitled to a fee of one ($1.00) dollar."

Alternatively, Defendant Deertrack Investors petitioned the "Court to find that the Order is not stayed by the Appeal pursuant to § 18-9-150, until Plaintiffs' post bond in the amount of the value of the land, plus any lost use and profits." Defendant Deertrack Investors' requests are misplaced and should be denied for the reasons stated below.

Rule 241 of the South Carolina Appellate Court Rules

Rule 225, SCACR, was renumbered April 29, 2009 to Rule 241. According to Rule 241(a), "[a]s a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order...." Rule 241(b) lists exceptions to the general rule, including:

- money judgments;
- judgments directing the execution or delivery of documents or personal property;
- judgments directing sale or delivery of personal or perishable property;
- judgments affecting child support;
- judgments affecting worker's compensation;

- judgments affecting ejectment orders; and,
- judgments affecting administrative tribunals.

The present action evokes none of the exceptions to the general rule. A lis pendens is simply notice to the world of an action pending which affects title to real property. Clearly, the public policy affording notice remains in effect pending final resolution of the matter.

Rule 241(c), SCACR provides for supersedeas or lifting of the automatic stay and reads as follows:

> **(c) Supersedeas or Lifting of Automatic Stay.**
>
> (1) After service of notice of appeal, any party may move for an order lifting the automatic stay in cases which involve the general rule. In a case subject to an exception, any party may move for an order imposing a supersedeas of matters decided in the order, judgment, decree or decision on appeal after service of the notice of appeal. The effect of the granting of a supersedeas is to suspend or stay the matters decided in the order, judgment, decree or decision on appeal and, where a prior order or decision was in effect at the time the appealed order, judgment, decree or decision was filed, to revive the terms of the prior order or decision.
>
> (2) In determining whether an order should issue pursuant to this Rule, the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot.
>
> (3) The granting of a supersedeas or the lifting of the automatic stay under this Rule may be conditioned upon such terms, including but not limited to the filing of a

> bond or undertaking, as the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court may deem appropriate. Further, where is appears that the granting or lifting of a stay, or the issuance of a writ of supersedeas is insufficient to afford complete relief, the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court may order other affirmative relief upon such terms as are deemed appropriate.
>
> (4) If an order is issued pursuant to Rule 241(c)(1), the terms of that order continue in effect during the pendency of the appeal unless modified or revoked by the lower court, the administrative tribunal or the appellate court or judge or justice of the appellate court which issued it, or by a superior court. The granting of any relief pursuant to this Rule shall not be construed to affect the validity of the judgment, order, decree, decision and any liens until the judgment, order, decree, or decision is reversed or modified by the appellate court.

Whereas Rule 241(c) does provide a means to avoid the effect of the automatic stay, it is inappropriate in the present matter. As our Court of Appeals has explained:

> The lis pendens mechanism is not designed to aid either side in a dispute between private parties. Rather, lis pendens is designed primarily to protect unidentified third parties by alerting prospective purchasers of property as to what is already on public record, *i.e.*, the fact of a suit involving property. Thus, it notifies potential purchasers that there is pending litigation that may affect their title to real property and that the purchaser will take subject to the judgment, without any substantive rights.

Pond Place Partners, Inc. v. Poole, 351 S.C. 1, 17, 567 S.E.2d 881, 889 (Ct. App. 2002). This consideration echoes the analysis in Lebovitz v. Mudd, 289 S.C. 476, 347 S.E.2d 94 (1986), in which the South Carolina Supreme Court held that "[b]ecause the order cancelling

the notices of lis pendens is appealable, the appeal acts as an automatic stay of further proceedings upon the order."

The facts in Lebovitz are identical to the present matter. There, the Clerk cancelled the lis pendens upon entry of the order. The Court held this cancellation was improper because the order was immediately appealable. Thus, the cancellation was determined to be void and the notice of lis pendens was held to remain effective during the pendency of the appeal.

Moreover, this Rule instructs the Court to "... consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot" in determining whether to lift the stay. In the present action, Defendant Deertrack Investors has not raised any issue to suggest jurisdiction of the appeal is at risk and the appeal only addresses the question whether an easement arose upon its property for the benefit of Plaintiffs. This question remains germane to the interests of all parties to this action and, in furtherance of the purpose for lis pendens as stated in Pond Place, *supra*, to the interest of third parties who would otherwise be unaware of the present litigation.

Should the lis pendens be cancelled at this stage of the litigation, the appeal would continue. During that period of time a prospective purchaser would find no notice of the present litigation in the public records. Should Plaintiffs prevail after such a purchaser were to take title to the real property, that innocent third party would understandably protest the appellate court ruling as unenforceable as against their property interest.

Rule 62(c) of the South Carolina Rules of Civil Procedure

Rule 62(c) states:

> **(c) Injunction Pending Appeal.** Where an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

The present matter does not involve the granting, dissolution, or denial of an injunction. On August 24, 2009, Judge Steven H. John executed a Consent Order of Severance, Reference, and Stay. Pursuant to this Order, this Court heard only the first cause of action, for declaratory judgment, and the remaining issues were stayed. Accordingly, no evidence or argument has been presented regarding injunctive relief, and none has been considered by the Court. Thus, Rule 62(c) bears no application in the present matter.

S.C. Code Ann. §§ 18-9-150 and 160.

South Carolina Code Ann. § 18-9-150 provides as follows:

> 18-9-150. **Deposit of surety when judgment requires delivery of documents or personalty.**
>
> If the judgment appealed from directs the assignment or delivery of documents or personal property, the execution of the judgment shall not be stayed by appeal unless the things required to be assigned or delivered be brought into court or placed in the custody of such officer or receiver as the court shall appoint or unless an undertaking be entered into on the part of the appellant, with at least two sureties and in such amount as the court or a judge thereof shall direct, to the effect that the

> appellant will obey the order of the appellate court upon the appeal.

South Carolina Code Ann. § 18-9-160 provides as follows:

> 18-9-160. **Staying of judgment to execute conveyance.**
>
> If the judgment appealed from directs the execution of a conveyance or other instrument, the execution of the judgment shall not be stayed by the appeal until the instrument shall have been executed and deposited with the clerk with whom the judgment is entered, to abide the judgment of the appellate court.

The Order on appeal in the present matter anticipates only the cancellation of the lis pendens. It does not direct the delivery of personal property or documents such that a surety would be required of the Plaintiffs. The cancellation of the lis pendens can be filed by the Plaintiffs' attorneys and does not require the signature of the individual Plaintiffs. This Court has no indicia that Plaintiffs' attorneys will fail to "abide the judgment of the appellate court" and this request should be denied as an improvident application of these Code sections.

Conclusion

Cancellation of the lis pendens at this point in the litigation process would serve no purpose other than to cancel notice to the world that the referenced real property is the subject of ongoing litigation. Accordingly, and for the reasons stated above, Plaintiffs respectfully request Defendant Deertrack Investors, LLC's Motion be denied.

Respectfully submitted,

David B. Miller, SCB #10296
Robert S. Shelton, SCB #68543
BELLAMY, RUTENBERG, COPELAND, EPPS, GRAVELY & BOWERS, P.A.
P.O. Box 357
Myrtle Beach, SC 29578
(843) 448-2400
Attorneys for Plaintiffs

Myrtle Beach, South Carolina

August 30, 2010.

EXHIBIT A

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
ATTORNEYS AT LAW
1000 29TH AVENUE NORTH
P.O. BOX 357
MYRTLE BEACH, SOUTH CAROLINA 29578
TELEPHONE (843) 448-2400
TELECOPIER (843) 448-3022

Writer's Direct Line: 843-916-7168
E-Mail: DMiller@BellamyLaw.com

HOWELL V. BELLAMY, JR.
JOHN K. RUTENBERG
JOHN E. COPELAND
CLAUDE M. EPPS, JR.
DAVID R. GRAVELY**
EDWARD B. BOWERS, JR. *
BRADLEY D. KING
M. EDWIN HINDS, JR.
JILL F. GRIFFITH
DAVID B. MILLER****

C. WINFIELD JOHNSON, III
DOUGLAS M. ZAYICEK
JEFFREY W. KING***
MARTIN C. DAWSEY
ROBERT S. SHELTON****
HOWELL V. BELLAMY, III
ASHLEY P. MORRISON
GEORGE W. REDMAN, III
W. JOSEPH CUNNINGHAM***
BENJAMIN A. BAROODY
PHILLIP H. ALBERGOTTI

* CERTIFIED SPECIALIST IN TAXATION LAW
** FELLOW OF THE AMERICAN AGADEMY OF MATRIMONIAL LAWYERS
*** ALSO MEMBER OF NORTH CAROLINA BAR
**** CERTIFIED MEDIATOR

February 22, 2010

VIA EMAIL and U.S. MAIL
Honorable Thomas W. Cooper, Jr.
Third Judicial Circuit
Post Office Drawer 699
Manning, SC 29102-0699

Re: Dale Hill, *et al.* v. Deertrack Golf and Country Club, Inc., *et al.*
C/A No. 2006-CP-26-4440

Dear Judge Cooper:

I am writing you as an update and to seek your guidance as to a couple issues. First, we, as Class counsel, have not yet received instruction from the Class representatives as to how they would prefer for us to proceed in this matter. I anticipate they will let me know when we meet this week. Still, once we receive instruction from the Class representatives, I believe we must present our planned action to the Circuit Court for approval as being in the best interest of the Class. In reading the Order of Reference, it would appear I will be required to look to the referring Court for this approval.

In the meantime, I have a concern about the requirement of the Final Order that Plaintiffs must "provide written notice of cancellation of the Notice of Lis Pendens filed in Horry County, 2007-LP-26-1931" to the Horry County Clerk of Court "within ten (10) days of the date of this Order." The Order next states that if Plaintiffs fail to produce written notice, "the Notice of Lis Pendens filed in Horry County, 2007-LP-26-1931 shall be cancelled of record by the Horry County Clerk of Court." While I would never seek to disregard your Order, I am concerned that this requirement may well be at odds with the ruling in *Lebovitz v. Mudd, et al.*, 289 S.C. 476, 347 S.E.2d 94 (1986), a copy of which is attached for ready reference. In *Lebovitz*, the court held that the cancellation of a lis pendens is directly appealable and the Clerk's cancellation within ten (10) days was void. I know

EXHIBIT A

none of us would ever want to put our Clerk in an uncomfortable position, and I would appreciate some guidance as to how to proceed in this regard.

As always, please do not hesitate to call me should you have any questions.

With kindest personal regards, I remain

Yours very truly,

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.

David B. Miller

DBM:cld
Enclosure as noted
cc: Henrietta U. Golding, Esq.
Amanda Bailey, Esq.

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
ATTORNEYS AT LAW
1000 29TH AVENUE NORTH
P.O. BOX 357
MYRTLE BEACH, SOUTH CAROLINA 29578
TELEPHONE (843) 448-2400
TELECOPIER (843) 448-3022

HOWELL V. BELLAMY, JR.
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Writer's Direct Line: 843-916-7168
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February 22, 2010

VIA EMAIL and U.S. MAIL
Honorable Thomas W. Cooper, Jr.
Third Judicial Circuit
Post Office Drawer 699
Manning, SC 29102-0699

Re: Dale Hill, *et al.* v. Deertrack Golf and Country Club, Inc., *et al.*
C/A No. 2006-CP-26-4440

Dear Judge Cooper:

I am writing you as an update and to seek your guidance as to a couple issues. First, we, as Class counsel, have not yet received instruction from the Class representatives as to how they would prefer for us to proceed in this matter. I anticipate they will let me know when we meet this week. Still, once we receive instruction from the Class representatives, I believe we must present our planned action to the Circuit Court for approval as being in the best interest of the Class. In reading the Order of Reference, it would appear I will be required to look to the referring Court for this approval.

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As always, please do not hesitate to call me should you have any questions.

With kindest personal regards, I remain

Yours very truly,

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.

David B. Miller

DBM:cld
Enclosure as noted
cc: Henrietta U. Golding, Esq.
Amanda Bailey, Esq.

Dassoulas, Cindy L.

From: Boyd, Denise [DBoyd@mcnair.net]
Sent: Monday, August 30, 2010 3:48 PM
To: Miller, David B.; Shelton, Robert S.
Cc: 'Cooper, Thomas W. Jr.'; Smith, Richard; Boan, Leigh; Bailey, Amanda; Golding, Henrietta
Subject: Dale Hill et al. vs. Deertrack Golf & Country Club, et al.
Attachments: 20100830154308040.pdf

Counselors,
Attached please find correspondence dated August 30, 2010 from Amanda Bailey, enclosing an Affidavit of Defendant Deertrack Investors, LLC, in regards to the hearing scheduled for September 1, 2010 before Judge Cooper.

Denise Boyd-
Legal Assistant to Amanda Bailey-
dboyd@mcnair.net | 843 443 3015 Direct - - McNair Law Firm, P.A.- Myrtle Beach Office |
Founders Centre, 2411 Oak Street | Suite 206 | Myrtle Beach, SC 29577-
843 444 1107 Main | 843 444 3961 Fax -
Mailing Post Office Box 336 | Myrtle Beach, SC 29578- -

-Website: http://www.mcnair.net
-
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-----Original Message-----
From: CopierMB@mcnair.net [mailto:CopierMB@mcnair.net]
Sent: Monday, August 30, 2010 3:43 PM
To: Boyd, Denise
Subject:

This E-mail was sent from "11853600" (Aficio MP 5001).

Scan Date: 08.30.2010 15:43:07 (-0400)
Queries to: CopierMB@mcnair.net

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STATE OF SOUTH CAROLINA	)	**THE COURT OF COMMON PLEAS**
	)	**FIFTEENTH JUDICIAL CIRCUIT**
COUNTY OF HORRY	)	**Civil Action No.: 2006-CP-26-4440**
Dale Hill, Betty Hill, Carl Clemmons Geraldine Clemmons, Individually, and on behalf of a Class of all others similarly Situated, Plaintiffs, v. Deertrack Golf and Country Club, Inc. Deertrack Golf, Inc., Deerfield Plantation, Inc., the Estate of John Schaad, by and through Ann Schaad as Executrix, and Deertrack Investors, LLC., Defendants.	)	**AFFIDAVIT OF McCray Smith**
Deertrack Investors, LLC., Third-Party Plaintiff, v. Plantation Resort of Myrtle Beach, Inc., and Plantation Resort Properties, Inc. Third-Party Defendants.	)	

PERSONALLY APPEARED BEFORE ME, McCray Smith, who, after having been duly sworn, deposes and says as follows:

1. I am a member of and manager of Deertrack Investors, LLC, a South Carolina Limited Liability Company.

2. On March 26, 2006, Deertrack Investors, LLC purchased the property affected by the Notice of Lis Pendens filed in Horry County, 2007-LP-26-1931, by deed recorded in the Horry County Register of Deeds, Deed Book 3069, Page 431 (the "Subject Property").

3. The purchase price of the Subject Property was $8,000,000.00 (eight million dollars and no/100), as set forth in the deed.

4. Deertrack Investors, LLC purchased the Subject Property for the purpose of development.

5. Deertrack Investors, LLC has been unable to commence development of the Subject Property as a result of the Notice of Lis Pendens filed in Horry County, 2007-LP-26-1931.

6. Since March 26, 2006, the Deertrack Investors expended $1,400,000.00 toward the purchase price of the land.

7. Since March 26, 2006, Deertrack Investors, LLC has expended $493,953.00 toward its development efforts, including but not limited to engineering fees, attorneys fees, water/sewer and erosion control, and other items.

8. Since March 26, 2006, Deertrack Investors, LLC has incurred $838,322.00 in interest charges due to the Lis Pendens and its inability to commence development of the Subject Property.

9. Since March 26, 2006, Deertrack Investors, LLC has expended $515,541.00 in the upkeep of the Subject Property, including but not limited to property taxes, insurance, utilities, repairs, and other items, despite and its inability to commence development.

10. Currently, Deertrack Investors, LLC incurs $22,800.00 per month in interest and upkeep charges on the Subject Property.

11. If the Notice of Lis Pendens filed in Horry County, 2007-LP-26-1931 had not been filed, Deertrack Investors, LLC would have been able to commence development of the Subject Property with projected income of between $42,300,000.00 (forty-two million three hundred and no/100) and $54,000,000.00 (fifty-two million and no/100).

12. Currently, the property is worth $18,900,000 undeveloped based on the last appraisal in July 2008. Had the zoning not been changed by Horry County, the value would have come in at $28,350,000.

13. The Notice of Lis Pendens filed in Horry County, 2007-LP-26-1931 prevents Deertrack Investors, LLC from developing the property and/or selling the property, and/or refinancing the property.

FURTHER AFFIANT SAYETH NOT.

McCray Smith

SWORN to and subscribed before me
this 1 day of ~~August, 2~~010. September 2010

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 5/21/2012

000618

Shelton, Robert S.

From: Cooper, Thomas W. Jr. [TCooperJ@sccourts.org]
Sent: Friday, September 03, 2010 11:15 AM
To: Bailey, Amanda (ABailey@mcnair.net); Miller, David B.; Shelton, Robert S.; lboan@mcnair.net
Subject: Hill v. Deertrack

Dear Folks:

The current status of this case is as follows:

1. My Order of February 5, 2010, declined to impose any easement on the subject property requiring it to be maintained as a golf course or as natural (green) space.
2. While the Order initially directed the Clerk of Court to cancel the Lis Pendens filed by the Plaintiffs, I subsequently rescinded that portion of the order.
3. On June 21, 2010, I issued an Order denying Plaintiffs" Motion to Alter or Amend.
4. Defendants have moved for an Order imposing a supersedeas, lift of stay, and/or appeal bond regarding the continuing Lis Pendens on the subject property which inhibits the Defendants' right to continue development of the property.

The countervailing concerns of the parties, among others are primarily:

1. The Defendants' concern that the Lis Pendens makes it impossible to finance the continued development of the property and/or the sale of all or portions of it;
2. The Plaintiffs' concern that the lifting of the Lis Pendens would leave them without an adequate remedy at law if this Court's Order is reversed, and if all or any of the property is sold or otherwise encumbered during the pendency of the appeal.

Those are all legitimate concerns, and the law does provide some latitude to the court in addressing those concerns. Keeping the Lis Pendens in place and requiring the posting of a bond by the Plaintiffs would not be practical because the amount of the bond would be difficult, if not impossible to calculate, given the variables involved, and would be prohibitively high in any event. Lifting the Lis Pendens and allowing the continued development and/or sale of the property would, indeed, leave the Plaintiffs without remedy if this Court's Order is reversed.

Therefore, in an attempt to address those concerns and to maintain the status quo as much as possible (which is the purpose of the automatic stay); I direct the following:

The Lis Pendens will be lifted upon the following conditions:

1.The Defendants' will post a bond upon sufficient sureties equal to the amount of any additional monies advanced from this date, which are secured by mortgage, liens, or other encumbrances against the subject property, plus interest anticipated during the pendency of the appeal. This is designed to allow the continued development of the property and to protect the Plaintiffs against possible loss resulting from a reversal of this Court's Order;

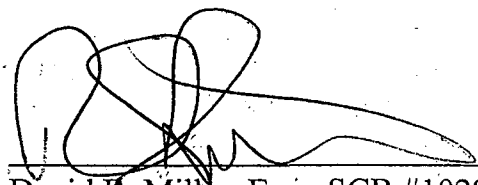
2. The Defendant shall not convey or assign any ownership rights to the property during the pendency of the appeal which would defeat the rights of the Plaintiffs to the property if the appellate process should determine that an easement does exist over the property as the Plaintiffs maintain.

If a more formal order is needed, I invite each party to submit proposals, sending copies to each other. If I have overlooked any salient points, I invite your comments in that regard.

Sincerely,
Tommy Cooper

CERTIFICATE OF COUNSEL

The undersigned certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



David B. Miller, Esq., SCB #10296
Robert S. Shelton, Esq., SCB #68543
BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
1000 29th Avenue North
Myrtle Beach, SC 29577
(843) 448-2400
Attorneys for Appellants

Myrtle Beach, South Carolina

December 23, 2010.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Thomas W. Cooper, Jr., Special Referee

Case No. 2006-CP-26-4440

Dale Hill, Betty Hill, Carl Clemmons, Geraldine Clemmons, Individually, and on behalf of a Class of all others similarly situated ..... *Appellants*,

vs.

Deertrack Golf and Country Club, Inc., Deertrack Golf, Inc., Deerfield Plantation, Inc., the Estate of John Schaad, by and through Ann Schaad as Executrix, and Deertrack Investors, LLC .. *Respondents*.

[FINAL] BRIEF OF APPELLANTS

David B. Miller, Esq., SCB # 10296
Robert S. Shelton, Esq., SCB #68543
BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
1000 29th Avenue North
Myrtle Beach, SC 29577
(843) 448-2400
Attorneys for Appellants

Myrtle Beach, South Carolina

January 4, 2011.

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I. STATEMENT OF ISSUES ON APPEAL

A. Did the Court below err in determining no implied easement arose prior to Appellants' respective purchases that would prevent the Golf Course property from being developed as a residential subdivision?

B. Did the Court below err in failing to find that no effective disclaimer of the implied easement was presented to purchasers of lots in the Deerfield Plantation residential single family subdivision?

C. Did the Court below err in directing the cancellation of the lis pendens?

II. STATEMENT OF THE CASE

Appellants brought this action September 8, 2006 in order to establish the existence of an easement in property that had historically been operated as the golf course within the Deerfield Plantation subdivision where Appellants own homes. An Order severing the First Cause of Action, for Declaratory Judgment as to whether this easement was present, was entered August 24, 2009 by consent of all parties. The severance Order referred the Declaratory Judgment action to the Honorable Thomas W. Cooper, Jr., as Special Referee, with finality, and stayed all remaining causes of action pending resolution of the Declaratory Judgment action by the Special Referee. Appellants moved for Class certification pursuant to Rule 23, SCRCP on July 7, 2008. On November 9, 2009 Judge Cooper executed an Order certifying a Class of 458 residential lot owners.

Trial of the Declaratory Judgment action was held on November 9, 2009, and Judge Cooper issued a Final Order as to Plaintiffs' First Cause of Action on

February 5, 2010. Appellants moved for rehearing pursuant to Rule 59(e), SCRCP on February 25, 2010, and Judge Cooper heard argument in that regard on March 22, 2010. Judge Cooper issued an Order Denying Plaintiffs' Motion to Alter or Amend Judgment Under Rule 59(e) on June 21, 2010. This appeal followed.

During the pendency of this appeal, Respondent Deertrack Investors, LLC filed a "Petition for Writ of Supersedeas; Lift of Stay and/or Bond." Judge Cooper heard Respondent/Defendant Deertrack Investors' Motion on September 1, 2010, and directed via electronic mail dated September 3, 2010 that the automatic stay of the portion of the Order requiring the cancellation of the lis pendens be lifted upon the following conditions:

> 1. The Defendants' [*sic*] will post a bond upon sufficient sureties equal to the amount of any additional monies advanced from this date, which are secured by mortgage, liens, or other encumbrances against the subject property, plus interest anticipated during the pendency of the appeal. This is designed to allow the continued development of the property and to protect the Plaintiffs against possible loss resulting from a reversal of this Court's Order;
>
> 2. The Defendant shall not convey or assign any ownership rights to the property during the pendency of the appeal which would defeat the rights of the Plaintiffs to the property if the appellate process should determine that an easement does exist over the property as the Plaintiffs maintain.

As of this filing, Appellants have received no notice that Respondent Deertrack Investors has met either of these conditions.

III. STATEMENT OF THE FACTS

The real properties at issue were initially within a 1,883 +/- acre tract owned by Dr. V. F. Platt, Jr., who undertook to develop the property into a golf course community to be known as Deerfield Plantation. [R. pp. 56–57; R. pp. 216, 221, 223, and 227; R. pp. 436–451] In doing so, Dr. Platt prepared a master plan depicting an 18-hole golf course, together with interspersed residential lots, lakes, ponds, and related facilities. [R. p. 391] Appellant Class Representative Betty Hill testified this master plan or "map" was displayed in Dr. Platt's place of business, a local pharmacy, toward marketing and selling lots in the golf course community. [R. p. 216]

By deed recorded October 13, 1972 in the Records of Horry County in Deed Book 478 beginning at Page 654 [R. pp. 436–451], Dr. Platt conveyed 345.97 acres of land to Deerfield Plantation, Inc., an entity he formed, owned, and controlled with his wife. [R. p. 57] He excepted from the 547.76 acres shown upon the plat referenced in this deed several tracts of land. [R. pp. 439–448]

The 345.97 acres were developed as the lots currently owned by the Class members. [R. p. 57] Of the excepted tracts, Tract 2 was described as Deer Track Golf Course – Parcels A, B, C, D, and E. [R. pp. 439–448] These parcels were further identified as follows: Parcel A (Golf Course holes 10 through 18); Parcel B (Golf Course holes 3 and 4); Parcel C (Golf Course holes 1, 2, 8, and 9); Parcel D (Golf Course holes 5, 6, and 7); and, Parcel E (Deer Track Golf Course Clubhouse

Area). [R. pp. 439–448] The Tract 2 Parcels are collectively the property upon which Appellants claim an easement (the "Golf Course"). [R. p. 57]

Dr. Platt thereafter undertook to build the golf course while marketing and selling residential lots through Deerfield Plantation, Inc. [R. p. 57] The testimony of Appellant Class Representative Geraldine Clemmons and Appellants' expert witness E. F. Hucks, a real estate appraiser and planned community consultant, confirms golf course frontage lots were sold at a premium price. [R. pp. 247–249] Similarly, non-golf course frontage lots were sold at a price higher than comparable lots not situate in a golf course community. [R. pp. 247–249]

The deeds conveying the various lots described the properties by reference to that certain plat recorded in the Records of Horry County in Plat Book 54 at Page 124. [R. pp. 392–393; R. pp. 433–434] Plat 54/124 depicts the 458 residential lots and various golf course parcels which make up the Golf Course and clearly depicts the individual golf course holes, again confirming the golf course community scheme of development. [R. p. 432]

Dr. Platt, through Deerfield Plantation, Inc., also undertook to record a Declaration and Establishment of Conditions, Reservations, Covenants and Restrictions (hereinafter the "Restrictions") upon the residential lots. [R. pp. 454–461] The Restrictions subject the lots to rights of golfers to do "every act necessary and proper in the playing of golf," to include retrieving their golf balls from the various lots. [R. p. 407, ¶ 11] The Restrictions also subject the lots for the golf

course operator to do those things ordinarily associated with the maintenance and operation of a golf course. [R. p. 407, ¶ 11] The Restrictions further provide the "Developer," being Deerfield Plantation, Inc. and its successors, may dictate to the Golf Course the scope and manner in which their aforementioned rights may be exercised. [R. p. 407, ¶ 11]. The Restrictions confirm Dr. Platt's intention that the Golf Course and residential lots co-exist.

Appellants Class representatives Dale and Betty Hill purchased their lot, which is shown on Plat 54/124 as Lot Number 358, on February 2, 1973. [R. p. 432; R. pp. 433–434] Appellant Class representatives Carl and Geraldine Clemmons purchased their lot, which is shown on Plat 54/124 as Lot Number 365, on February 7, 1973. [R. p. 432; R. pp. 392–393] Their deeds reference and incorporate Plat 54/124 *which specifically depicts the Golf Course*. [R. p. 432]

Appellant Betty Hill testified she had personally known the original owners of the land, V. F. Platt, Jr. and his wife Kate Platt. [R. p. 219] Mrs. Hill went on to explain she and her husband, Appellant Dale Hill, owned a house in Surfside Beach directly across Kings Highway from the property Dr. Platt was planning to develop as Deerfield Plantation, and that she shopped at the Platt's drugstore. [R. pp. 215–216] Mrs. Hill explained she "heard about Dr. Platt's project and the golfing community," and testified there was a map on the wall in the drugstore depicting the Golf Course and surrounding lots. [R. p. 221] Mrs. Hill testified she and her husband selected their lot, 358, from the map on the wall. [R. pp. 221–222]

Mrs. Hill testified her lot was "in a golfing community" and that "the golf was the everything." [R. p. 224] According to Mrs. Hill, if the Golf Course is taken away, "[w]e have no community, no golfing community. We have just another area with houses." [R. pp. 224–225] Moreover, Mrs. Hill testified that from her back yard, it is a "long way," potentially "a couple hundred feet," to the next house across the Golf Course. [R. p. 225] According to Mrs. Hill's testimony, she and her husband left a six year old house in the same area of town but outside the "golfing community," the lot for which she and her husband paid $3,400.00, and purchased their lot on the Golf Course for $14,000.00. [R. p. 216; R. p. 222]

Appellant Geraldine Clemmons testified that she was provided a copy of a brochure entitled *In the beginning...* prior to purchasing her lot. [R. pp. 374–389; R. p. 167] She explained the brochure "stayed on my night table by my bed for a long, long time, and I just read it over and over." [R. p. 153] The property that would become Deerfield Plantation, the brochure explains, "has slumbered through the centuries." [R. p. 376] The brochure continues: "Now the time has come to carefully preserve this treasure in a way that will serve man, but in a way that will preserve its beauty." [R. p. 376] In this document, the developer explained: "Many homes and condominium apartments will look out over the fairways of the championship golf course, or upon the clear waters of Lake Vivian." [R. p. 379] Finally, the brochure described the family tradition at Deerfield Plantation:

> As Francis Platt brings the dream of Deerfield Plantation into a reality, he carries forth a family dream. A family tradition.
>
> He, and his father before him, resisted the headlong rush into real estate development that has so characterized the Grand Strand. They dreamed of something better for Deerfield. And they held onto their dream.
>
> Rather let the land continue to sleep, than desecrate it with a get-rich-quick development that would destroy the natural ecology and beauty.
>
> Now this dream of the Platt family is taking shape. And perhaps nowhere else on the Grand Strand will such care and devotion be lavished on the land.
>
> Deerfield Plantation is so much more than a new community. It is indeed a family tradition come to flower.

[R. p. 382] Mrs. Clemmons testified this brochure was "very important to me because this is what I was buying." [R. p. 154] Lastly, Mrs. Clemmons explained: "This talk of the golfing community, the southern way of life, a dream come true, and this is indeed what it was to me." [R. p. 155]

For thirty-three years, life in Deerfield Plantation was much like these representations depicted. [R. pp. 159, 206, and 227] Golf was the center of life for most at Deerfield, and for some, such as Betty Hill, it was the wildlife in the pond behind her home. [R. pp. 222–223]

In March 2006, Respondent Deertrack Investors purchased the North Course and Clubhouse. [R. pp. 496–500] The documents associated with the purchase as

well as those associated with Respondent Deertrack Investors' Petition for Writ of Supersedeas; Lift of Stay and/or Bond make clear Respondent Deertrack Investors intended from the onset to redevelop the property into a residential subdivision. [R. pp. 489–495; R. pp. 496–500; R. pp. 501–511; R. p. 616] Respondent Deertrack Investors was also aware at the time of its purchase there was pending a similar lawsuit regarding the neighboring golf course and had contracted to pay twice the agreed purchase price in the event the property could be developed as they intend. [R. pp. 513–528]

Respondent Deertrack Investors ceased to maintain the North Course and Clubhouse during the first week of September 2006. Immediately thereafter, the present action was filed.

Appellants also presented testimony from E. F. Hucks, who was qualified as an expert witness in the fields of real estate appraisal and planned community development consulting. [R. pp. 235–269] Mr. Hucks explained Deerfield Plantation was a "master planned" community "centered around two 18-hole golf courses." [R. p. 244] He further testified as follows:

> Q: Do you know that there are 458 lots that make up the class in this lawsuit, do you not?
>
> A: Yes, sir.
>
> Q: And you've looked at the maps and you know what those 458 lots are; is that correct?
>
> A: I assume they are shown on the map.

Q: They are. I want to make sure I got your last comment correct. Is it your testimony then that premiums were paid for each of those?

A: Yes, sir.

Q: Be they on the golf course?

A: Yes, sir.

Q: Be they on the lakefront?

A: Yes, sir.

Q: Or be they interior lots neither on the golf course or on the lakefront?

A: Yes, sir.

Q: The whole community?

A: Right.

Q: How much?

A: 17 percent on the interior lots, which amounted to approximately $2,000. The golf course lots sold for 57 percent more, which translated to about $7,000 more; and the lake lots sold for about $2,000 more than the interior lots within the neighborhood, which implies about $4,000 premium to them.

[R. pp. 248–249]

Appellants also presented evidence the documents associated with the original marketing and sale of the lots within the subdivision contained no disclaimer that would be understood by a reasonably informed purchaser. [R. p. 257] Moreover, the

available market data supported the conclusions reached by Appellants' expert witness and further evidenced the lack of disclaimer. [R. p. 268] As Mr. Hucks explained, "... you wouldn't have a golf course frontage premium if the buyers thought that the golf course would never be there." [R. p. 268]

IV. STANDARD OF REVIEW

A declaratory judgment action is neither legal nor equitable, but is determined by the nature of the underlying issue. Felts v. Richland County, 303 S.C. 354, 400 S.E.2d 781 (1991). "The determination of existence of an easement is a question of fact in an at law action and subject to an any evidence standard of review when tried by a judge without a jury." Slear v. Hanna, 329 S.C. 407, 411, 496 S.E.2d 633, 635 (1998); Eldridge v. City of Greenwood, 331 S.C. 398, 503 S.E.2d 191 (Ct. App. 1998). The scope or extent of an easement is a question in equity. Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (1997).

V. ARGUMENT

A. The Court below erred in determining that no implied easement arose prior to Appellants' respective purchases that would prevent the Golf Course property from being developed as a residential subdivision.

South Carolina recognizes various types of implied easements. Two lines of cases discuss the creation of implied easements in South Carolina. The first line of cases addresses situations in which a properly recorded plat is not present. These

cases include: Edwards v. Surratt, 228 S.C. 512, 90 S.E.2d 906 (1956); Gambrell v. Shriver, 312 S.C. 354, 440 S.E.2d 393 (Ct. App. 1994); Bomar v. Echols, 270 S.C. 676, 244 S.E.2d 308 (1978); McDonald, et al. v. Welborn, 220 S.C. 10, 66 S.E.2d 327 (1951).

In Edwards, the court explained that one of the controlling principles in these decisions is:

> that where a common grantor opens a tract of land to be sold in lots and blocks, and, *before any lots are sold* (emphasis ours), inaugurates a general scheme of improvement for the entire tract *intended to enhance the value of each lot*,[1] and each lot, subsequently sold by such grantor, is made subject to such scheme of improvement, there is created and annexed to the entire tract what is termed a negative equitable easement, in which the various purchasers of lots have an interest, and between whom there exists mutuality of covenant and consideration. Sprouse v. Winston, 212 S.C. 176, 46 S.E.2d 874 (1948), *supra*, and Couch v. Southern Methodist University, Tex. Civ. App., 290 S.W. 256 [1926].

Edwards, 228 S.C. at 518–19, 90 S.E.2d at 909.

Similarly, in Gambrell, the court recites four factors which ordinarily must be shown in South Carolina in order to establish a *negative reciprocal easement* and states there must be:

> (1) a common grantor, (2) a designation of land subject to restrictions, (3) a general plan or scheme of restrictions, and (4) covenants running with the land in

[1] Emphasis added.

> accordance with such plan or scheme. Id.[2]; *see also* Shipyard Property Owners Ass'n v. Mangiaracina, 307 S.C. 299, 414 S.E.2d 795 (Ct. App. 1992).

Gambrell, 312 S.C. at 358, 440 S.E.2d at 395. In Gambrell, the landowner had sold parcels from a larger tract and inserted deed restrictions in each deed. The argument was made that later platted tracts would be reciprocally burdened by these restrictions. The court found this insufficient to burden later established tracts stating:

> In the various grants of the lots, there must have been included some restriction for the benefit of the land retained, evidencing a scheme or intent that the entire tract shall be similarly treated, so that once the plan has been effectively put into operation, the burden placed upon the land conveyed is by operation of law reciprocally placed upon the land retained. 20 Am.Jur.2d *Covenants, Conditions, Etc.* § 173 (1965).

Id. Likewise, in Bomar, no master plat was ever made and no restrictions had ever been recorded. There, the court held:

> In determining whether reciprocal negative easements have been created, resort should be had not only to the language of the deeds, but "the circumstances surrounding the origin of covenants should also be considered." Nance v. Waldrop, 258 S.C. 69, 72, 187 S.E.2d 226, 228 (1972).

Bomar, 270 S.C. at 680, 244 S.E.2d at 310. Neither Bomar nor Edwards relies upon the four factors cited in Gambrell.

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[2] Footnote added; citing Bomar, 244 S.E.2d at 310, 244 S.E.2d at 679.

A second line of cases makes clear that where a recorded plat is present, the grant of rights in the features shown upon the plat is effective upon transfer. In Epps v. Freeman, 261 S.C. 375, 200 S.E.2d 235 (1973), the court held that:

> "Generally, where property sold is described in the conveyance with reference to a plat or map on which streets, alleys, parks, and other open areas are shown, an easement therein is created in favor of the grantee. Such an easement is deemed a part of the property to which the grantee is entitled and of which he cannot be divested except by due process of law." 25 Am.Jur.2d, *Easements and Licenses*, Sec. 26, p. 438 (1966).

Id. at 388, 200 S.E.2d at 242. Moreover, the Epps court held "[t]he inclusion of the area within the bounds of the subdivision readily distinguishes this case from Edwards v. Surratt, 228 S.C. 512, 90 S.E.2d 906 (1956)...." Id. Likewise, the court in Carolina Land Co., Inc. v. Bland, 265 S.C. 98, 217 S.E.2d 16 (1975), cited the Epps case favorably and adopted its holding that "'... where property sold is described in conveyance with reference to plat or map on which streets, alleys, parks and other open areas are shown, an easement therein is created in favor of grantee.'" Id. at 106, 217 S.E.2d at 20. The court went on to hold that "'[s]uch an easement is deemed a part of the property to which the grantee is entitled and of which he cannot be divested except by due process of law.'" Id.

Accordingly, if a landowner sets up a master plan and plat, and conveys lots by reference to the plat, the four part test from Gambrell is not necessary. The correct analyses in those cases, such at the one at bar, is to establish whether the grantor in

creating a master plan, sought to enhance the value the grantor would receive by reference to the master plan in the conveyance of lots. The question before the Court should properly be whether the manner and method in which the property was originally developed and sold gave rise to an implied easement, absent any disclaimers. If the answer to the initial threshold question is yes, the Court should then look to South Carolina law to determine whether any effective disclaimers were presented. Elements common to implied easements include:

- Intention or expectation that the buyers will rely and act upon the conduct of the sellers. Boyd v. BellSouth Tel. Telegraph Co., Inc., 369 S.C. 410, 633 S.E.2d 136 (2006).

- Facts and circumstances which demonstrate an intent to create an easement. Inlet Harbour v. South Carolina Dep't of Parks, Recreation and Tourism, 377 S.C. 86, 659 S.E.2d 151 (2008).

- Reference to the plat and/or deed whereby the buyer acquires every easement privilege and advantage shown upon the plat. Blue Ridge Realty Co. v. Williamson, 247 S.C. 112, 145 S.E.2d 922 (1965).

- A general plan or scheme of development. Butler v. Sea Pines Plantation Co., 282 S.C. 113, 317 S.E.2d 464 (Ct. App. 1984).

Generally, one who purchases property via a deed referencing a plat depicting the developed area purchases therewith an easement in such amenities as are shown upon the plat. Blue Ridge, 247 S.C. 112, 145 S.E.2d 922 (1965). In the present matter, the original developer of the subject properties recorded such a plat and all purchasers of properties within Deerfield Plantation thereafter were reasonable to purchase in reliance upon that plat. As our Supreme Court stated in Newington

Plantation Estates Ass'n v. Newington Plantation Estates, 318 S.C. 362, 458 S.E.2d 36 (1995):

> While dedication for public use is significant to the creation of a public easement, it is irrelevant to the determination whether a **private easement** exists. Blue Ridge Realty Co. v. Williamson, 247 S.C. 112, 145 S.E.2d 922 (1965); Corbin v. Cherokee Realty Co., 229 S.C. 16, 91 S.E.2d 542 (1956); Outlaw v. Moise, 222 S.C. 24, 71 S.E.2d 509 (1952). Absent evidence of the seller's intent to the contrary, a conveyance of land that references a map depicting streets conveys to the purchaser, as a matter of law, a **private easement** by implication with respect to those streets, whether or not there is a dedication to public use. McAllister v. Smiley, 301 S.C. 10, 389 S.E.2d 857 (1990); Cason v. Gibson, 217 S.C. 500, 61 S.E.2d 58 (1950). As between an owner who has conveyed lots according to a plat and the grantee, the dedication of a **private easement** is complete when the conveyance is made. Carolina Land Co., Inc. v. Bland, 265 S.C. 98, 217 S.E.2d 16 (1975).

(Emphasis added.) This principle was echoed by our Court of Appeals two months later in Davis v. Epting, 317 S.C. 315, 454 S.E.2d 325 (1994), where the Court held:

> Where land is subdivided, platted into lots, and sold by reference to the plats, the buyers acquire a **special property right** in the roads shown on the plat. Blue Ridge Realty Co. v. Williamson, 247 S.C. 112, 145 S.E.2d 922 (1965). If the deed references the plat, the grantee acquires a **private easement** for the use of all streets on the map. Carolina Land Co. v. Bland, 265 S.C. 98, 217 S.E.2d 16 (1975).

(Emphasis added.) The facts here demonstrate each of these elements. Dr. Platt created, marketed, and sold a golf course community concept for which the Appellants paid a premium price. This scheme of development created reasonable

expectations on the part of all purchasers that the golf course amenity would remain in perpetuity such that they may realize the benefit of the lifestyle and investment intended. The plats by which Plaintiffs acquired their property specifically depict the Golf Course.

Moreover, the *In the beginning...* brochure explained clearly "[t]he principal officers in Deerfield Plantation, Inc. are V. F. Platt, Jr. and his wife, Kate W. Platt. Deerfield Plantation, Inc. is the developer of Deer Track Golf & Country Club." [R. p. 387] Moreover, the parties stipulated at trial to the fact that V. F. Platt, Jr. was the President of Deerfield Plantation, Inc. and Kate W. Platt served as its Secretary. [R. p. 371, ¶ 1] As the developer, all lot purchasers whose deeds reference the plat acquired a **private interest** in all common elements shown on the plat and not otherwise specifically disclaimed.

Common to the various theories of implied easements is the necessity of unity of title. Dr. Platt prepared a plat evidencing a golf course community concept prior to conveyance of the residential portion of the tract to Deerfield Plantation, Inc. The deed into Deerfield Plantation, Inc. specifically referenced the individual golf holes, and Dr. Platt retained control over all properties, whether held in his name individually or in the name of his controlled entity. Law of other jurisdictions supports the position that the unity of title requirement is satisfied by demonstrating unity of control, coupled with a common scheme of development. <u>What Constitutes Unity of Title or Ownership Sufficient for Creation of an Easement by Implication or</u>

Way of Necessity, 94 A.L.R.3d 502 (1979), as cited in Boyd v. BellSouth Tel. Telegraph Co., Inc., 359 S.C. 209, 215, 597 S.E.2d 161, 164 (Ct. App. 2004) (reversed in part on other grounds). The *In the beginning...* brochure alone makes clear the Platt's controlled the development of the Golf Course and the property owned by the Appellants, and sets forth a clear, common scheme of development. [R. pp. 374–389]

The same principles have been extended to golf courses in various other states. This point was well made by the Supreme Court of New Mexico in a legally analogous context:

> The rationale of the rule is that a grantor, who induces purchasers, by use of a plat, to believe that streets, squares, courts, parks, or other open areas shown on the plat will be kept open for their use and benefit, and the purchasers have acted upon such inducement, is required by common honesty to do that which he represented he would do. It is the use made of the plat in inducing the purchasers, which gives rise to the legally enforceable right in the individual purchasers, and such is not dependent upon a dedication to public use, or upon the filing or recording of the plat.

Ute Park Summer Homes Ass'n v. Maxwell Land Grant Co., 77 N.M. 730, 735, 427 P.2d 249, 253 (N.M. 1967). A cogent analysis of the Ute Park case and Shalimar Ass'n v. D.O.C. Enterprises, Ltd., 142 Ariz. 36, 688 P.2d 682 (Ariz. Ct. App. 1984) is contained in the Arizona Supreme Court holding in Skyline Woods Homeowners Ass'n, Inc. et al. v. Broekemeier, 276 Neb. 792, 758 N.W.2d 376 (Neb. 2008). The Appellant Class members purchased their respective properties in reasonable reliance

upon representations that Deerfield Plantation was to be a golf course community. They were sold a "living example of the grace and dignity of southern living." [R. p. 379]

Given the documentation employed to sell the lots at Deerfield Plantation and the Appellants' testimony, Appellants have clearly established all necessary factors to prove the existence of an implied easement in the Golf Course. Specifically, Deed 478/654 [R. pp. 436–451] and Plat 54/124 [R. p. 432] clearly evidenced the grantor's common scheme and plan of development of a golf course community. Further, the *In the beginning...* brochure [R. pp. 374–389] clearly evidenced the grantor's intent that: Deerfield Plantation would be a golf course community; prospective purchasers would expect Deerfield Plantation to be a golf course community; and, prospective purchasers would rely on this representation when purchasing their respective lots. This was essential to warrant the premium prices the developer would charge lot purchasers.

B. The Court below erred in failing to find no effective disclaimer of the implied easement was presented to purchasers of lots in the Deerfield Plantation residential single family subdivision.

The next inquiry involves the question of whether a sufficient disclaimer of the implied easement was made by the easement's creator. As an initial matter, it should be noted that if Dr. Platt had intended to clearly disclaim an easement in the Golf Course property, he could have done so in Plat 54/124 [R. p. 432], the Clemmons'

Purchase Agreement [R. pp. 422–426], the Property Report, Restrictions, Privilege and Obligation Agreement [R. pp. 394–421], the Appellants' individual deeds [R. pp. 392–393; R. pp. 433–434], or by any number of other available means. A review of the relevant documents confirms Dr. Platt made no such clear reservation.

Respondent Deertrack Investors argues that clauses printed in subsections of five separate documents, when read together, create a disclaimer significant enough to permit the owner of the Golf Course not only to discontinue the operation of the Golf Course as a golf course, but to convert it to whatever use it desires. Further, Respondent Deertrack Investors argues this piece-meal disclaimer, though not set out or printed in bold lettering, provided sufficient notice to purchasers that the Golf Course could be redeveloped. These documents are Plat 54/124 [R. p. 432], the Property Report, the Restrictions, the Privilege and Obligation Agreement [R. pp. 394–421], and Appellants Clemmons' Purchase Agreement [R. pp. 422–426]. Each requires separate analysis.

i. Plat 54/124.

As to Plat 54/124 [R. p. 432], the developer included the following disclaimer:

> It is hereby expressly declared that Deerfield Plantation, Inc. does not intend to dedicate and does not dedicate to the general public or any member thereof any easement, right of travel, right to use or other right with regard to the streets, roads, alleys, entrances, or other passages or ways and with regard to the lakes and parks shown upon his map, and that Deerfield Plantation, Inc. reserves unto itself, its successors and assigns all *streets, roads, alleys, entrances, or other passages or ways, and any and all*

> *lakes and parks* shown upon this map and all easements, rights of travel, right to use and any other rights over, upon, under or connected with the same.

Common sense dictates that charging a premium for an amenity while reserving the right to take away the amenity must be clearly and conspicuously stated and understood. The developer in this case printed a limited disclaimer on the face of Plat 54/124 and listed therein "streets, roads, alleys, entrances, or other passages or ways" and further listed "the lakes and parks shown upon this map" but carefully avoided mention of the very item shown upon the plat that permitted the developer to charge a premium price for the lots: the Golf Course itself. As explained by our Supreme Court, "[n]ormally, when one develops a subdivision and sells lots by reference to a plat, there is an implied dedication of the roads to the use of the lot owner and of the public unless an intent **clearly** appears otherwise." Briarcliffe Acres, et al. v. Briarcliffe Realty Co., Inc., 262 S.C. 599, 616, 206 S.E.2d 886, 895 (1974) (emphasis added). None of the evidence before the Court in the present matter can be characterized as a "clear" or "explicit" reservation of any right to replace the Golf Course with houses, as Respondent Deertrack Investors desires.

ii. The Purchase Agreement.

The Clemmons' Purchase Agreement reflects the Clemmons' paid $13,200.00 for Lot 365. [R. pp. 422–426] It is signed by both Dr. and Mrs. Platt, as were the Clemmons' and Hill's deeds [R. pp. 392–393; R. pp. 433–434], and references the

Restrictions as well as the Privilege and Obligation Agreement [R. pp. 394–421] in Paragraph 11 as follows:

> 11. The Purchaser(s) acknowledges receipt and retention of a copy of the Conditions, Reservations, Covenants, and Restrictions applicable to the Property recorded in Deed Book 481, Page 305, office of the Clerk of Court for Horry County, S.C., and does hereby ratify and affirm them. The Purchaser(s) agrees to abide by the terms of the said Conditions, Covenants, Reservations and Restrictions, and agrees to subject the Property sold hereby to the terms and provisions of the same and to any liens created by them, and agrees that he hereby immediately becomes and is a member of Deerfield Plantation Property Owners Association, Inc., a non-profit corporation. Purchaser(s) also acknowledges receipt and retention of copies of the Articles of Incorporation or Charter and By-Laws of Deerfield Plantation Property Owners Association, Inc., and of the Privilege and Obligation Agreement between the Seller and Deerfield Plantation Property Owners Association, Inc., and affirms and ratifies said Privilege and Obligation Agreement, said By-Laws and the acts of the officers and directors of Deerfield Plantation Property Owners Association, Inc. Purchaser(s) further agrees that he shall pay his share of all moneys due, pursuant to and in the amounts specified by such documents, agrees to be bound by all of the terms and conditions of such documents and that such terms and conditions are reasonable, fair and equitable, and agrees that there shall be impressed a lien upon the Property as therein described. The foregoing provisions of the Paragraph may be omitted from the Warranty Deed to be delivered hereunder at the option of the Seller, but shall nevertheless survive delivery of said deed.

However, the Purchase Agreement does not purport to waive the easement nor does it reserve any right to redevelop the Golf Course in the future. [R. pp. 422–426] Instead, this is the purported vehicle by which buried language in the Privilege and Obligation Agreement is bootstrapped into the Purchase Agreement to create what Respondent Deertrack Investors relies upon as a sufficient disclaimer.

The Order found the Hills signed the Purchase Agreement "individually and as Class Representatives." There existed no Class in 1972, as no lawsuit would be filed until 34 years later. Each instance in which the Order finds that any action was taken by Appellants Hill or Clemmons as Class representatives prior to the establishment of a class is clearly erroneous and should be set aside.

iii. The Property Report.

The Property Report contains language that the

> *developer* will have no obligation or commitment to *maintain* ... golf course for any period of time.

(Emphasis added.) [R. p. 400, ¶ 9.b] The developer is Deerfield Plantation, Inc., which Respondent Deertrack Investors conceded was not the owner of the Golf Course at the time the Property Report was filed. Appellants have not alleged that the "developer" (Deerfield Plantation, Inc.) has any obligation in these regards. Further, the Appellants have not complained in this action the Golf Course has not been maintained. They have complained that Respondent Deertrack Investors now seeks to build a subdivision within their existing subdivision, in contravention of the private

easement rights they acquired with their respective residential lots. The same page of the Property Report contains the following statement:

> GOLF COURSE: 18 Hole Championship Course. COST TO BUYER FOR COMPLETION OR MAINTENANCE OF FACILITIES? NONE.

[R. p. 400, ¶ 9.b] Clearly, the word "maintain" was intended in this document and context to simply refer to the up-keep associated with the Golf Course operation.

Critical to the issue of disclaimer are the HUD required disclosures within the Property Report. The Property Report contains the following question and answer:

> **b. EXCEPT FOR THOSE PROPERTY RESERVATIONS WHICH LAND DEVELOPERS COMMONLY CONVEY OR DEDICATE TO LOCAL BODIES OR PUBLIC SERVICES TO THE LAND BEING DEVELOPED, WILL BUYER RECEIVE A DEED FREE OF EXCEPTIONS?**
>
> The deed will be subject to common subdivision conditions, Reservations, Covenants and Restrictions set out in the Declaration of Restrictions, Covenants, Conditions, and Reservations and public utility easements of record upon the property.

[R. p. 399, ¶ 8.b] As Mr. Hucks explained on re-direct, the Property Report does not mention anything about reserving the right to redevelop the Golf Course property at some later date in its response. [R. pp. 263–264] The Federally-required Property Report does not direct purchasers to the other documents; it asserts the deed will be subject only to "those property reservations which land developers commonly convey or dedicate to local bodies or public services" and "subject to common subdivision

conditions." This language confirms the clear understanding and intentions of both the developer and the purchasers.

iv. The Covenants and Restrictions.

The Restrictions likewise contain no statement that would permit the developer to redevelop the Golf Course. In fact, the Restrictions contain language that makes clear the developer intended for the lot purchasers to accommodate the play of golf, reserving "[e]asements to permit the doing of every act necessary and proper in the playing of golf on the golf course...." This included permitting "the recovery of golf balls and tennis balls over and upon such lots." [R. p. 407, ¶ 11]

v. The Privilege and Obligation Agreement.

Respondents relied at trial most heavily upon the Privilege and Obligation Agreement which contains language in its Paragraph 8 that:

> The Developer agrees to make the abovesaid golf course, tennis courts, club house, and swimming pool facilities available to the owners of the property in Deerfield Plantation single family residential subdivision (reserving the right to make said facilities available to any other persons whomsoever in addition), subject, however, to the other provisions hereof, upon the filing of application for membership by the said property owners and upon approval of said application for membership by Deerfield Plantation, Inc., until such time as maximum membership as set by the Developer from time to time is reached. It is agreed that Deerfield Plantation, Inc. may reject application of any applicant, other than on grounds of race, color, or creed, without cause or reason and without being required to assign any cause or reason therefor, it being understood and agreed that the aforesaid facilities consisting of the aforesaid

> golf course, tennis courts, club house, and swimming pool, and any other incidential [*sic*] operations in connection therewith, are separate and distinct business operations of Deerfield Plantation, Inc., apart from Deerfield Plantation single family residential subdivision as aforesaid. It is further agreed that application for membership for the use of said facilities shall be made upon such form or forms and at such time or times as Deerfield Plantation, Inc. may direct. It is further understood and agreed that Deerfield Plantation, Inc. *reserves the right to discontinue the maintenance and/or operation of said golf course*, tennis courts, club house, and swimming pool, or any other incidential [*sic*] operations connected therewith, at such time a Deerfield Plantation, Inc., in the sole discretion of its Board of Directors, shall determine that the maintenance and operation of the aforesaid facilities, or any one of them, is not economically feasible or is not advisible [*sic*] for any other reason *and to use the property devoted thereto for other purposes*.

(Emphasis added.) [R. p. 414, ¶ 8] As has been stipulated by the parties, Deerfield Plantation, Inc. did not own the Golf Course, but was a lessee thereof. Mr. Hucks testified without objection a lessee can neither subdivide nor sell a lessor's land. Accordingly, the language in Paragraph 8 is not only intentionally inconspicuous, but also is wholly ineffective as a disclaimer of the easement upon the Golf Course.

Also, each representative Appellant who testified at trial made clear that nobody had explained any of this documentation to them at closing or indicated the Golf Course would ever be redeveloped. Appellant Carl Clemmons was clear on this point and testified as follows:

> Q: When you purchased your lot and built your house and Deerfield grew up, did you at any point

understand that someone would have the right to come in and tear up the golf course and build houses?

A: No. If I had, I would have never bought there.

[R. p. 206] Lastly, Mr. Hucks testified the market data did not support Respondent Deertrack Investors' position that the document effectively disclaimed the easement. According to Mr. Hucks, a reasonably informed purchaser would not pay a golf course frontage premium if the purchaser believed the golf course would be taken away at some point in the future. [R. p. 268] Market data confirmed this did not happen, and Mr. Hucks attributed no weight to these matters in his analysis.

Respondent Deertrack Investors maintains the above documents served as waiver of the implied easement. However, in addition to researching market data and determining the market did not reflect any notice of waiver was available to a reasonably informed purchaser, Mr. Hucks testified as to each document and found no clear statement that the owner of the Golf Course reserved the right to shut it down and redevelop it at a later date. [R. p. 268; R. pp. 261–269]

It is axiomatic that should a developer create value in a subdivision by constructing a golf course throughout the subdivision, yet desire to reserve the right to again extract that value from the property decades later by destroying the golf course for personal gain, *such a disclaimer must be clear and unambiguous.* Our Supreme Court has confirmed this is true when construing street dedications in subdivisions. Briarcliffe, 262 S.C. at 616, 206 S.E.2d at 895. The same holds true

when attempting to deprive purchasers of benefits gained through a personal easement. Carolina Land, 265 S.C. 98, 217 S.E.2d 16 (1975). Courts in other jurisdictions have held that even easements by necessity must be "explicitly" disclaimed in order to defeat their creation. Pine Tree Lumber Co. v. McKinley, 83 Minn. 419, 420, 86 N.W. 414, 415 (Minn. 1901). The developer of the Golf Course was provided many opportunities to fairly and openly reserve the right to subdivide and redevelop the Golf Course should he have so desired. The Federally-required Property Report would have been the ideal document for such a waiver. Dr. Platt inserted no such statement. Had he done so, he would not have been able to sell his lots.

The grantor's conduct was calculated to give the impression that the facts were inconsistent with the position Respondent Deertrack Investors now takes; and, as such, Respondent Deertrack Investors is estopped from its intended development. Blue Ridge, 247 S.C. 112, 145 S.E.2d 922 (1965). Golf course community developers are paid a premium from the sale of lots. They then have the opportunity to earn profit from the operation of golf. *To allow developers to profit a third time from the same piece of property, at the expense of those who relied upon their representations to the contrary, would be inequitable and contrary to public policy.*

C. The Court below erred in directing the cancellation of the lis pendens.

The Order, in part, directed Appellants to provide "written notice of cancellation of the Notice of Lis Pendens filed in Horry County, 2007-LP-26-1931 to the Clerk of Court of Horry County within ten (10) days of the date of this Order." The Order further provided:

> In the event that Plaintiffs fail to provide written notice of cancellation of the Notice of Lis Pendens filed in Horry County, 2007-LP-26-1931 to the Clerk of Court of [*sic*] in Horry County within ten (10) days of the date of this Order, the Notice of Lis Pendens filed in Horry County, 2007-LP-26-1931 shall be cancelled of record by the Horry County Clerk of Court. The cancellation must be made by an endorsement to that effect on the margin of the record which refers to this Order and for which the clerk is entitled to a fee of one ($1.00) dollar.

Insofar as Appellants believed this requirement to be in error, Appellants wrote a letter raising these concerns to Judge Cooper. [R. pp. 612–613] Thereafter, a teleconference was held and the parties discussed this matter with Judge Cooper. According to Judge Cooper's electronic mail message dated September 3, 2010, Judge Cooper "subsequently rescinded that portion of the Order." Insofar as Appellants have noted nothing in the Record to evidence that recision, this argument is included to preserve Appellants' position on this issue.

According to Rule 241(a), SCACR, "[a]s a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order...." Rule 241(b), SCACR lists exceptions to the general rule, including:

- money judgments;
- judgments directing the execution or delivery of documents or personal property;
- judgments directing sale or delivery of personal or perishable property;
- judgments affecting child support;
- judgments affecting worker's compensation;
- judgments affecting ejectment orders; and,
- judgments affecting administrative tribunals.

The present action evokes none of the exceptions to the general rule. A lis pendens is simply notice to the world of an action pending which affects title to real property. Clearly, the public policy affording notice remains in effect pending final resolution of the matter.

Rule 241(c), SCACR provides a means to avoid the effect of the automatic stay, yet it is inappropriate in the present matter. As our Court of Appeals has explained:

> The lis pendens mechanism is not designed to aid either side in a dispute between private parties. Rather, lis pendens is designed primarily to protect unidentified third parties by alerting prospective purchasers of property as to what is already on public record, *i.e.*, the

> fact of a suit involving property. Thus, it notifies potential purchasers that there is pending litigation that may affect their title to real property and that the purchaser will take subject to the judgment, without any substantive rights.

Pond Place Partners, Inc. v. Poole, 351 S.C. 1, 17, 567 S.E.2d 881, 889 (Ct. App. 2002). This consideration echoes the analysis in Lebovitz v. Mudd, 289 S.C. 476, 347 S.E.2d 94 (1986), in which the South Carolina Supreme Court held that "[b]ecause the order cancelling the notices of lis pendens is appealable, the appeal acts as an automatic stay of further proceedings upon the order."

The facts in Lebovitz are identical to the present matter. There, the clerk cancelled the lis pendens upon entry of the order. The court held this cancellation was improper because the order was immediately appealable. Thus, the cancellation was determined to be void and the notice of lis pendens was held to remain effective during the pendency of the appeal.

Moreover, Rule 241(c)(2), SCACR instructs the Court to "... consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot" in determining whether to lift the stay. In the present action, Respondent Deertrack Investors raised no issue to suggest jurisdiction of the appeal was at risk and the appeal only addresses the question whether an easement arose upon the Golf Course for the benefit of Appellants. This question remains germane to the interests of all parties to this action and, in furtherance of the

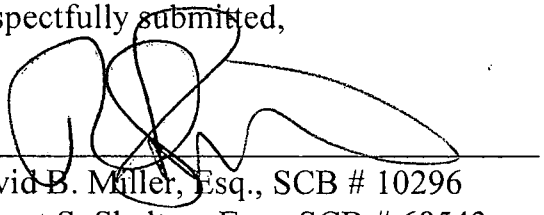
purpose for lis pendens as stated in Pond Place, *supra*, to the interest of third parties who would otherwise be unaware of the present litigation.

Were the lis pendens cancelled at this stage of the litigation, the appeal would continue. During that period of time a prospective purchaser would find no notice of the present litigation in the public records. Should Appellants prevail after such a purchaser were to take title to the real property, that innocent third party would understandably protest the appellate court ruling as unenforceable as against their property interest. For all these reasons, the portion of the Order directing the cancellation of the lis pendens was in error.

VI. CONCLUSION

The initial development, marketing and sale of the 458 Class lots created an implied easement(s) for the benefit of the Appellant Class members and burdening the Golf Course. The easement so created prohibits the Golf Course from being subdivided into residential lots, or any other use inconsistent with the golf community concept for which it was intended. Moreover, no clear disclaimer of the easement was made. Accordingly, Appellants respectfully request the Order below be Reversed.

Respectfully submitted,



David B. Miller, Esq., SCB # 10296
Robert S. Shelton, Esq., SCB # 68543
BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
1000 29th Avenue North
Myrtle Beach, SC 29577
(843) 448-2400
Attorneys for Appellants

Myrtle Beach, South Carolina

January 4, 2011.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Thomas W. Cooper, Jr., Special Referee

Case No. 2006-CP-26-4440

Dale Hill, Betty Hill, Carl Clemmons, Geraldine Clemmons, Individually, and on behalf of a Class of all others similarly situated ..... *Appellants*,

vs.

Deertrack Golf and Country Club, Inc., Deertrack Golf, Inc., Deerfield Plantation, Inc., the Estate of John Schaad, by and through Ann Schaad as Executrix, and Deertrack Investors, LLC .. *Respondents*.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR. The undersigned further certifies that this Final Brief complies with the Supreme Court's Order of August 13, 2007 regarding personal identifiers and sensitive information.

David B. Miller, Esq., SCB #10296
Robert S. Shelton, Esq., SCB #68543
BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
1000 29th Avenue North
Myrtle Beach, SC 29577
(843) 448-2400
Attorneys for Appellants

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FINAL BRIEF OF RESPONDENT DEERTRACK INVESTORS, LLC

McNAIR LAW FIRM, P.A.
Henrietta U. Golding
Amanda A. Bailey
Post Office Box 336
2411 Oak Street, Suite 206
Myrtle Beach, SC 29578
(843) 444-1107
Attorneys for Respondent Deertrack Investors, LLC

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Post Office Box 336
2411 Oak Street, Suite 206
Myrtle Beach, SC 29578
(843) 444-1107
Attorneys for Respondent
Deertrack Investors, LLC

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STATEMENT OF ISSUES ON APPEAL

A. **Whether Appellants offered any evidence by plain and unmistakable implication of any implied easement restricting the free use of the Subject Property? 14**

B. **Whether *stare decises* precludes Appellants argument that the Subject Property is restricted by any implied easements and restrictions on the free use of property? 17**

C. **Whether the trial court properly directed the cancellation of the lis pendens? 19**

STATEMENT OF THE CASE

Appellants are owners of residential property in the Deerfield Plantation subdivision in Horry County. By Order dated November 2, 2009, Appellants are members of a class defined as "the current owners of the single family residential lots numbered 1 through 458 as shown on the plat recorded in the Office of the Register of Deeds for Horry County, South Carolina, in Plat Book 54 at Page 124." **(R. pp. 49-54).**

Respondent Deertrack Investors, LLC is the owner of nearby property that formerly operated as a golf course and clubhouse. Appellants assert that because they erroneously believed a golf course would operate forever on the nearby property, Deertrack Investors, LLC should be restricted from freely using the property by virtue of an alleged implied easement or restriction.

Appellants commenced this lawsuit seeking, *inter alia*, a declaratory judgment that:

> a) That Deerfield Plantation, Inc. established an equitable servitudes/implied easements/negative reciprocal easements on behalf of Plaintiffs in the [Subject Property] adjacent to the Plaintiffs' residences;
>
> b) That the [Subject Property] were amenities to the respective homesites Plaintiffs purchased;
>
> c) That the equitable servitudes/implied easements/negative reciprocal easements/amenities so established require the land which Defendant Deertrack Investors, LLC owns be restricted to use as a golf course; and
>
> d) That the equitable servitudes/implied easements/negative reciprocal easements/amenities so established cannot be unilaterally extinguished by Defendants.

(R. p. 107).

Respondent Deertrack Investors, LLC moved for summary judgment as to Appellants' claims, which was granted on November 5, 2008 by the Honorable Larry B. Hyman. **(See R. pp. 553-581; 6-34).** Appellants moved for reconsideration of the Order Granting Defendants' Motion for Summary Judgment. Subsequently, Judge Hyman granted Appellants' motion to reconsider and denied summary judgment, noting the preference that a full record be developed at trial rather than ruling upon a dispositive motion. **(See R. pp. 582-600; 35-44).**

Thereafter, by Consent Motion and Order for Severance, Reference and Stay, the declaratory judgment cause of action was severed from the remaining causes of action and was referred to the Honorable Thomas W. Cooper, Jr., as Special Referee. **(R. pp. 45-48).**

Appellants were provided the opportunity to develop a full record and a final hearing on the merits of Appellants First Cause of Action for a Declaratory Judgment was held on November 9, 2009. **(R. pp. 131-173).** After hearing all the testimony and reviewing the exhibits and arguments of counsel, on February 10, 2010, the Honorable Thomas W. Cooper, Jr., as Special Referee, denied Appellants' First Cause of Action for a Declaratory Judgment. **(R. pp. 55-86).** Appellants filed a Rule 59(e) Motion, which was denied on June 22, 2010. **(R. pp. 272-344; 87-89).** This appeal follows.

STATEMENT OF THE FACTS[1]

On October 13, 1972, V.F. Platt, Jr. deeded 547.76 acres of real property in Horry County, South Carolina to Deerfield Plantation, Inc. **(R. pp. 435-451).** This 547.76 acres was developed by Deerfield Plantation, Inc. into the Deerfield Plantation

[1] Respondent incorporates by reference the Findings of Fact in paragraphs 1 through 34 of Judge Cooper's Final Order as To Plaintiffs' First Cause of Action, none of which were challenged by Appellants in their Rule 59(e) Motion or on Appeal.

subdivision ("hereinafter referred to as the Deerfield Plantation Property"). **(R. pp. 435).** The Deerfield Plantation Property deed to Deerfield Plantation, Inc. was recorded in the Horry County Register of Deeds Book 478, Page 654, and expressly excluded from the transfer approximately 182.92 acres, indentified as Parcels A, B, C, D, and E, comprising the real property later known as the Deer Track Golf Course and Clubhouse (this excluded property is hereinafter referred to as the "Subject Property"). **(R. pp. 435-451).**

Deerfield Plantation, Inc. was a South Carolina Corporation, in which V.F. Platt, Jr. was the President and Kate W. Platt was the Secretary (hereinafter referred to as "Deerfield Plantation I"). **(R. pp. 371-373).** No evidence was presented as to the shareholders or other corporate officers of Deerfield Plantation I, and we are left to speculate who had a controlling interest in the corporation. Deerfield Plantation I is identified as the developer of the Deerfield Plantation Property in all of documents related to the subdivision. **(R. pp. 374-434; 435, 452-484).** However, neither Deerfield Plantation I, V.F. Platt, Jr., nor Kate W. Platt are parties to this lawsuit.

The Subject Property was not owned by Deerfield Plantation I, but rather was retained by V.F. Platt, Jr., individually. **(R. pp. 435-451).** In 1972, V.F. Platt, Jr. leased the Subject Property for the operation of a golf course to Deerfield Plantation I for a period of ten years. **(R. pp. 435; 462-471; 404; 413-415).** Subsequently, the following transfers of the Subject Property occurred:

> 1978 – Deed from V.F. Platt, Jr. to Caro Pines Realty, Inc.[2]
> **(R. p. 435; 482-484)**

[2] Caro Pines Realty, Inc. later changed its name to Deerfield Plantation, Inc. By stipulation of the parties, it is agreed that Caro Pines Realty, Inc., now known as Deerfield Plantation, Inc., is not the same corporation as Deerfield Plantation I. As a result, Caro Pines Realty, Inc., now known as Deerfield Plantation, Inc., is hereinafter referred to as "Deerfield Plantation II" (R. pp. 371-72).

1980 – Deed from Deerfield Plantation II to Deertrack Golf and Country Club, Inc. **(R. p. 435; 485-487)**

1993 – Deertrack Golf and Country Club, Inc. merged with Deertrack Golf, Inc. **(R. p. 435; 488)**

2006 – Deertrack Golf, Inc. to Deertrack Management, Inc. **(R. p. 435; 489-495)**

2006 – Deertrack Management, Inc. to Deertrack Investors, Inc. **(R. p. 435; 496-500)**

Appellants assert their residential lots in the Deerfield Plantation Property were marketed and sold as part of a "golf course community", where the golf course and residential lots co-existed, and that they paid a premium for their lots because of the golfing community. **(Brief of Appellants).** Appellants specifically point to the initial purchases of the residential lots by the Hills and Clemmons in the early 1970s, the "In the beginning..." marketing brochure, and the subdivision plat recorded in Plat Book 54 at Page 124 and allege that they were led to erroneously believe that the Subject Property would forever be used a golf course and clubhouse only. **(Id. P. 5-6).** Appellants' error came to light in 2006, when the operation of the golf course became financial unfeasible, and it became necessary to discontinue its use. **(R. pp. 270-71; 84, ¶102).** No express easements or restrictions exist that limit the use of the Subject Property to a golf course and clubhouse or other use in perpetuity. **(R. pp. 435-500; 193-213).**

The error in Appellants' belief is further highlighted upon examination of the marketing material, purchase documents, the public record, and chain of title regarding their residential lot and the Subject Property, each of which Appellants had actual and constructive knowledge of prior to purchasing their lots in the Deerfield Plantation Property and each of which clearly sets forth the intent not to create any easement and/or

restriction in the Subject Property. The documents including the following: a) Plat, recorded at Plat Book 54, Page 124; **(R. pp. 435; 452-453)** b) Declaration and Establishment of Conditions, Reservations, Covenants and Restrictions for Deerfield Plantation Single Family Residential Subdivision; **(R. pp. 435; 454-461; 394-421)** c) Privilege and Obligations Agreement; **(R. pp. 413-415)** d) Property Report; **(R. p. 394-404)** e) Purchase Agreement; **(R. pp. 427-431)** and, f) the "In the beginning..." marketing brochure. **(R. pp. 374-391[3]).**

a) Plat, recorded at Plat Book 54, Page 124.

The November 14, 1972 Plat, filed in Plat Book 54, Page 124, that was referenced in Appellants deeds and relied upon by the Appellants in purchasing their lots, depicts both the Deerfield Plantation Property and the Subject Property, as well as numerous other parcels of property identified as Section A, Section B, Section C, and Section D not at issue in this lawsuit.[4] The Subject Property is illustrated on the Plat as open space, and portions of the open space are identified with what appear to be golf course hole numbers. The Plat states:

> It is hereby expressly declared that *Deerfield Plantation, Inc. does not intend to dedicate and does not dedicate to the general public or any member thereof any easement, right of travel, right to use or other right with regard to the streets, roads, alleys, entrances, or other passages or ways and with regard to the lakes and parks shown upon this map, and that Deerfield Plantation, Inc. reserves unto itself, its successors and assigns, all streets, roads, alleys, entrances, or other passages or ways and any and all lakes and parks shown upon this map and all easements, rights of travel, right to use and any other rights over, upon, under or connected with the same.* (Emphasis supplied.)

[3] Appellants testified that Exhibit 2 was contained within Exhibit 1. **(R. pp. 142, ll. 11-12; 146-147, 165, ll. 4-7).**

[4] Although also identified on the Plat recorded in Plat Book 54, Page 124, Appellants do not claim any implied easements in the property identified as Section A, B, C, or D. **(R. p. 435; 452-53)**

(R. p. 435; 452-53).

b) Declaration and Establishment of Conditions, Reservations, Covenants and Restrictions for Deerfield Plantation Single Family Residential Subdivision.

Shortly after the Plat was recorded, Deerfield Plantation I filed a Declaration and Establishment of Conditions, Reservations, Covenants and Restrictions for Deerfield Plantation Single Family Residential Subdivision Horry County, South Carolina on November 29, 1972 at Book 481, Page 305, covering lots 1 through 458[5] as shown on the November 14, 1972 Plat (hereinafter Declarations). Pertinent portions of the Declarations provide:

> 11. Easements to permit the doing of every act necessary and proper in the playing of golf on the golf course adjacent to the lots and the playing of tennis on the tennis courts adjacent to the lots which are subject to these restrictions are hereby granted and established. These acts shall include, but not limited to, the recovery of golf balls and tennis balls from such lots, the flight of golf balls and tennis balls over and upon such lots, the use of necessary and usual equipment upon such golf course and tennis courts, the usual and common noise level created by the paying of the game of golf or the game of tennis and with all the normal and usual activities associated with the operation of a country club or clubhouse. The Developer shall have the right to determine the manner and extent to which the rights under this easement shall be exercised, and in the event that some other person, corporation, or other entity shall hereafter operate said golf course, tennis courts, country club or clubhouse facility then the Developer shall have the right to prescribe in writing to such person, corporation or entity charged with the operation of the said golf course, tennis courts, country club or clubhouse facility the manner and extent to which the rights under this easement shall be exercised. *In addition the Developer may, in its sole discretion, limit or withdraw or prohibit*

[5] Each member of Appellants' class is subject to the Declarations. The members of the class are defined as "the current owners of the single family residential lots numbered 1 through 458 as shown on the plat recorded in the Office of the Register of Deeds for Horry County, South Carolina, in Plat Book 54 at Page 124." **(R. pp. 49-54).** The Subject Property is not subject to the Declarations. **(R. p. 435; 454-461).**

certain of the acts authorized by this easement, and may limited the manner or place of doing all or certain of the acts authorized by this easement.

***

23. The Developer hereby expressly states its *intent not to dedicate or convey to the general public or any member thereof any easement, right of travel, right to use or other right with regard to the streets, roads, alleys, entrances, or other passages or ways and with regard to the lakes and parks shown upon the above referred to map of this subdivision* (except such private easement as is stated in the Deed to each property owner purchasing or acquiring title to one of the herein described lots) and the *Developer hereby reserves unto itself, its successors and assigns, all streets , roads, alleys, entrances, or other passages or ways, any and all lakes and parks, all easements* and rights in connection therewith for any purpose, matter or thing set forth in paragraph 14 herein, rights of travel, right to use and any other right over, upon, under or connected with the same, as shown upon the above referred to map (except such private easements as is stated in the Deed to each property owner purchasing or acquiring title to one of the herein described lots). (Emphasis supplied).

(R. pp. 435; 454-461).

c) Privilege and Obligation Agreement.

A property owners association named Deerfield Plantation Property Owners Association, Inc. was organized and, according to the Declarations, each property owner in Deerfield Plantation, and therefore each member of Appellants' class, is a member of the Association.

Simultaneous with the filing of the Declarations, Deerfield Plantation I entered into a Privilege and Obligation Agreement with Deerfield Plantation Property Owners Association, Inc. dated November 29, 1972, the terms of which were deemed to extend to and include the successors and assigns of the parties. The applicable portions of the Privilege and Obligation Agreement provide:

2. *The Developer has leased certain lands in, around, and near the property comprising the abovesaid Deerfield Plantation single family residential subdivision, said lease being for a period of ten (10) years, for the purpose of constructing thereupon an eighteen hole golf course.* The Developer agrees to construct an eighteen hole golf course upon the property leased for such purposes, substantially as shown upon that certain map made by Moorman & Little, Inc., dated November 14, 1972, and recorded in Plat Book 54, page 124, office of the Clerk of Court for Horry County, S.C., according to plans and specifications as determined by J. Porter Gibson, Golf Course Architect and Land Planner, Charlotte, North Carolina, within a reasonable time.

3. The Developer further agrees to construct within the bounds of the property shown and described upon the above referred to map, three lighted tennis courts, within a reasonable time period.

4. The Developer also agrees to construct within a reasonable time, a clubhouse for use in connection with the golf course and tennis courts abovesaid, including an area for a professional golf shop, a snack bar, meeting room, and such other incidental accommodations as the Developer shall deem expedient.

5. The Developer also agrees to contract, within a reasonable time, a swimming pool, within the property boundaries of the Developer as shown upon the above referred to map.

***

8. The Developer agrees to make the abovesaid golf course, tennis courts, club house, and swimming pool facilities available to the owners of the property in Deerfield Plantation single family residential subdivision (reserving the right to make said facilities available to any other persons whomsoever in addition), subject, however, to the other provisions hereof, upon the filing of application for membership by the said property owners and upon approval of said application for membership by Deerfield Plantation, Inc., until such time as maximum membership as set by the Developer from time to time is reached. It is agreed that Deerfield Plantation, Inc. may reject the

application of any applicant, other than on grounds of race, color, or creed, without cause or reason and without being required to assign any cause or reason therefore, *it being understood and agreed that the aforesaid facilities consisting of the aforesaid golf course, tennis courts, club house, and swimming pool, and any other incidential [sic] operation in connection therewith, are separate and distinct business operations of Deerfield Plantation, Inc, apart from Deerfield Plantation single family residential subdivision as aforesaid.* It is further agreed that application for membership for the use of said facilities shall be made upon such form or forms and at such time or times as Deerfield Plantation Inc. may direct. *It is further understood and agreed that Deerfield Plantation, Inc. reserves the right to discontinue the maintenance and/or operation of said golf course, tennis courts, club house, and swimming pool, or any other incidential [sic] operations connected therewith, at such time as Deerfield Plantation, Inc, in its sole discretion of its Board of Directors, shall determine that the maintenance and operation of the aforesaid facilities, or any one of them is not economically feasible or is not advisable for any other reason and to use the property devoted thereto for other purposes.* (Emphasis supplied).

(R. p. 414).

d) Property Report.

Effective December 26, 1972, Deerfield Plantation I filed a Property Report with the U.S. Department of Housing and Urban Development. The significant portions of the Property Report provide:

> **9.b. IF FACILITIES ARE PROPOSED OR PARTLY COMPLETED, STATE PROMISED COMPLETION DATE, PROVISIONS TO ASSURE COMPLETION, AND ALL ESTIMATED COSTS OR ASSESSMENTS TO BUYER OR LESSEE. IF THERE ARE NO PROVISIONS TO ASSURE COMPLETION, SO STATE.**
>
> CLUBHOUSE: Proposed, with 19th Hole Club Room, Meeting Rooms, Snack Bar, Pro Shop, Card Room, Patio Area.

SWIMMING POOL: Proposed, with patio and lounge furniture.

GOLF COURSE. 18 Hole Championship Course. COST TO BUYER FOR COMPLETION OR MAINTENANCE OF FACILITIES? NONE

DEVELOPER ESTIMATES ABOVE ITEMS TO BE COMPLETED BY September, 1973, and gives its assurance of completion, and additionally requiring all contractors to provide completion bonds.

Initiation dues, annual dues and fees, and other use or privilege charges shall be charged to buyers or lessees and adjusted from time to time, as determined by the developer from time to time.

The developer will have no obligation or commitment to maintain clubhouse, swimming pool, tennis courts or golf course for any period of time and no purchaser or lessee of property shall be automatically entitled to membership in or use of said facilities by virtue of acquiring an interest in real property in the development.

***

22. DOES DEVELOPER OWN GOLF COURSE PROPERTY & FACILITIES REFERRED TO HEREIN?

No, Developer, [Deerfield Plantation I] does not own the golf course & facilities related thereto, but holds a leasehold from the owner, a major stock holder of Deerfield Plantation, Inc. for a period of ten (10) years. (Emphasis supplied).

(R. pp. 435, 467, 471, 400, 404).

e) Purchase Agreement.

Plaintiffs, individually and as class representatives, executed a form Purchase Agreement for their purchase of a Deerfield Lot. The form Purchase Agreement contains the following relevant provisions:

11. *The Purchaser(s) acknowledges receipt and retention of a copy of the conditions, Reservations, Covenants, and Restrictions applicable to the Property recorded in Deed Book 481, Page 305, office of the Clerk of Court for Horry County, S.C., and does hereby ratify and affirm them.* The

Purchaser(s) agrees to abide by the terms of the said Conditions, Covenants, Reservations and Restrictions, and agrees to subject the Property sold hereby to the terms and provisions of the same and to any liens created by them, and agrees that he hereby immediately becomes and is a member of Deerfield Plantation Property Owners Association, Inc., a non- profit corporation. *Purchaser(s) also acknowledges receipt and retention of copies of the Articles of Incorporation or Charter and By-Laws of Deerfield Plantation Property Owners Association, Inc., and of the Privilege and Obligation Agreement between Seller and Deerfield Plantation Property Owners Association, Inc., and affirms and ratifies said Privilege and Obligation Agreement*, said By-Laws and the acts of the officers and directors of Deerfield Plantation property Owners Association, Inc. upon the Property as therein described. *The foregoing provisions of the Paragraph may be omitted from the Warranty Deed to be delivered hereunder at the option of the Seller, but shall nevertheless survive delivery of said deed.*

***

15. This agreement is declared and agreed to be a contract executed and delivered within the State of South Carolina and shall be construed according to the laws of the State of South Carolina. *It is agreed and declared that this agreement together with any exhibits attached thereto constitutes the entire agreement between the parties hereto and that no warranties, representations, promises, statements or inducements have been made by the Seller or any agent of the Seller other than is contained herein in writing or other than is set forth in writing the documents mentioned herein which the Purchaser has acknowledged receipt of or endorsed hereon in writing and signed by the Seller through an officer of the Seller.*

***

21. Purchaser(s) *acknowledges that he has read and understands this agreement* and that he has received and retained a copy thereof.

22. Purchaser(s) *acknowledges that he has received a copy of the Property Report* prepared pursuant to the rules and regulations of the Department of Housing and Urban Development prior to the signing of this agreement. (Emphasis supplied).

(R. pp. 422-431).

f) "In the Beginning..." Brochure.

The Plaintiffs Betty J. Hill, Geraldine Clemmons and Carl Clemmons were witnesses in this action. Plaintiff Class Representative Geraldine Clemmons testified that she received a brochure entitled "In the Beginning...", kept it at her bedside for a long time and read it over and over. **(R. pp. 153, ll. 20-24).** Ms. Clemmons testified she believed, but was not 100% sure, that she received the brochure prior to purchasing the Deerfield Lot. **(R. pp. 167, ll. 5-16).** The "In the Beginning..." brochure talked of the golfing community and southern way of life. The brochure also contains a map of Deerfield Plantation, similar to the plat recorded on November 14, 1972 at Plat Book 54, Page 124, but depicted additional lakes, multi-family residential units, and an area labeled Club House and Parking Area. **(R. p. 374-391).** Ms. Clemmons testified that she and her husband decided to purchase Lot 365 based upon their expectations established by the "In the Beginning..." brochure. **(R. p. 153-156).** However, she also testified that her friendship with Mr. and Mrs. Hill was a factor in purchasing a lot. **(R. p. 41-43).**

The map in the "In the Beginning..." brochure contained the same language as on the plat recorded on November 14, 1972 at Plat Book 54, Page 124, stating:

> It is hereby expressly declared that *Deerfield Plantation, Inc. does not intend to dedicate and does not dedicate to the general public or any member thereof any easement, right of travel, right to use or other right with regard to the streets, roads, alleys, entrances, or other passages or ways and with regard to the lakes and parks shown upon this map, and that Deerfield Plantation, Inc. reserves unto itself, its successors and assigns, all streets, roads, alleys, entrances, or other passages or ways* and any and all lakes and parks shown upon this map and all easements, rights of travel, right to use and any other rights over, upon, under or connected with the same. *(Emphasis supplied.)*

(R. p. 391).

Appellants had actual and constructive knowledge of each of the forgoing documents, including the: a) Plat, recorded at Plat Book 54, Page 124; b) Declaration and Establishment of Conditions, Reservations, Covenants and Restrictions for Deerfield Plantation Single Family Residential Subdivision; c) Privilege and Obligations Agreement; d) Property Report; e) Purchase Agreement; and, f) the "In the beginning..." marketing brochure prior to purchasing their lots in the Deerfield Plantation Property. **(R. pp. 169-175, 179-188, 210-212, 228-231, 422-431).**

As a result, Appellants' belief that the Subject Property would forever be operated as a golf course and clubhouse was in error, and Appellants now request the court to imply restrictions that do not otherwise exist on the free use of the Subject Property.

SCOPE OF REVIEW

"The determination of the existence of an easement is a question of fact in a law action and subject to an any evidence standard of review when tried by a judge without a jury." Slear v. Hanna, 329 S.C. 407, 410, 496 S.E.2d 633, 635 (1998). "In an action at law, on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings." Ward v. Evans, 387 S.C. 401, 409, 693 S.E.2d 7, 11 (Ct. App. 2010). Establishing the existence of an easement is a question of fact in a law action. Jowers v. Hornsby, 292 S.C. 549, 551, 357 S.E.2d 710, 711 (1987); Hartley v. John Wesley United Methodist Church of Johns Island, 355 S.C. 145, 148, 584 S.E.2d 386, 387 (Ct. App. 2003). Under the any evidence standard, the scope of review is limited to the correction of errors of law, and a reviewing court will not disturb the referee's factual findings that

have some evidentiary support. Jones v. Daley, 363 S.C. 310, 314, 609 S.E.2d 597, 599 (Ct. App. 2005).

DISCUSSION

A. The Appellants failed to offer any evidence by plain and unmistakable implication of any implied easement restricting the free use of the Subject Property.

An easement is a right of use over another's property. Black's Law Dictionary 457 (5th ed. 1979). "Absent an easement or a license, a landowner generally enjoys no right to use the land of another." Inlet Harbour v. South Carolina Dept. of Parks, Recreation and Tourism, 377 S.C. 86, 96, 659 S.E.2d 151, 156 (2008). Easements can arise by both express creation and by implication. A restriction on the use of property must be created in express terms or by plain and unmistakable implication, and all such restrictions are to be strictly construed, with all doubts resolved in favor of the free use of the property. See, e.g., Hamilton v. CCM, Inc., 274 S.C. 152, 157, 263 S.E.2d 378, 380 (1980).

Implied easements are based upon the theory that whenever one conveys property, he intends to convey whatever is necessary for the property's use and enjoyment. 17A Am.Jur. Easements §19 (2010). "Implied easements ask the court to take a deed between grantor and grantee which is silent regarding any grant or reservation of a right to cross one party's land to access the others and imply what the parties must have meant to include in the deed but did not." Inlet Harbour, 377 S.C. at 96, 659 S.E.2d at 156 (2008). The purpose of an implied easement is to give effect to the intentions of the parties to a transaction, and because the implication of an easement in a conveyance goes against the general rule that a written instrument speaks for itself, implied easements are not favored.

Id., 377 S.C. at 91-92, 659 S.E.2d at 154; see also Boyd v. BellSouth Tel. Tel. Co., Inc., 369 S.C. 410, 633 S.E.2d 136 (2006), Murrells Inlet Corp. v. Ward, 378 S.C. 225, 662 S.E.2d 452 (Ct. App. 2008).

Appellants argue that the documentation employed to sell Appellants their lots is sufficient to create an implied easement in the Subject Property. Specifically, Appellants argue that the (1) the 1972 deed transferring the Deerfield Plantation Property, and excluding the Subject Property, from V.F. Platt, Jr. to Deerfield Plantation, Inc. for one million seven hundred fifty six thousand three hundred dollars ($1,756,300.00), (2) the November 14, 1972 Plat, filed in Plat Book 54, Page 124, and (3) the "In the beginning..." brochure created reasonable expectations that the golf course and clubhouse would remain in perpetuity.

Despite Appellants' unreasonable and erroneous expectations, Appellants presented no evidence of the creation of any type of implied easement in the Subject Property by plain and unmistakable implication, which is the burden of proof required for courts to award the extraordinary relief of implying restrictions in perpetuity on the free use of land. See, e.g., Hamilton, 274 S.C. at 157, 263 S.E.2d at 380; see also Taylor v. Lindsey 332 S.C. 1, 5, 498 S.E.2d 862, 864 (1998), citing Schaeffer v. Gatling, 243 Miss. 155, 137 So.2d 819 (1962) (declining to imply a restriction on property, stating "[i]f the original owner of the subdivision had desired to prohibit the use of house trailers as residences, this could easily have been accomplished by designating house trailers as [a] prohibited use, or by restricting architectural design, or by placing a minimum on the floor space for a residence, or by prohibiting temporary residences."). The 1972 Deed from V.F. Platt, Jr. to Deerfield Plantation, Inc., although it describes the Subject

Property as a golf course, expressly excludes from the transfer any interest in the Subject Property. **(R. pp. 435-451).** Further, the Plat, recorded in Plat Book 52, Page 124 and contained in the "In the beginning...:" brochure, although it depicts the Subject Property as open space, with portions of the open space identified with by appear to be golf course hole numbers,[6] expressly disclaims the transfer of any potential easements, rights of travel, right to use and any other rights over, upon, under or connected with the plat. **(R. pp. 435, 452-453, 391).**

Appellants appear to rely upon case law related to the creation of easements by reference to a plat, easement by estoppel, negative reciprocal easement, or some combination thereof, to attempt to defeat Respondent's free use of the Subject Property. However, the Special Referee held that Appellants did not present sufficient evidence to show the creation of any type of implied easement by plain and unmistakable implication. **(R. pp. 55-86).** The special referee's findings of fact will not be disturbed upon appeal unless found to be without evidence which reasonably supports the referee's findings. Ward, 387 S.C. at 409, 693 S.E.2d at 11.

The Plat, recorded at Plat Book 54, Page 124, the Declaration and Establishment of Conditions, Reservations, Covenants and Restrictions for Deerfield Plantation Single Family Residential Subdivision, the Privilege and Obligations Agreement, the Property Report, the Purchase Agreement; and, the "In the beginning..." marketing brochure all evidence the intent not to transfer any interest in the Subject Property to Appellants or otherwise restrict the use of the property to a golf course and club house, and are

[6] See Hamilton., 274 S.C. at 157, 263 S.E.2d at 380 (1980), *citing* Antonakas v. Chamber of Commerce, 130 S.C. 215, 126 S.E. 35 (1924) ("It has also been stated by this court that in the interpretation of maps and plats intention will not be inferred from symbols of uncertain meaning or from fanciful adornments on the plat. . .").

reasonable support for the Special Referee's finding that no implied easement was created by plain and unmistakable implication.

As such, the Final Order as to Plaintiffs' First Cause of Action should be affirmed.

B. *Stare decises* precludes Appellants argument that the Subject Property is restricted by virtue of any implied rights held by Appellants.

Stare decises exists to "insure a quality of justice which results from certainty and stability." State v. One Coin-Operated Video Game Mach., 321 S.C. 176, 181, 467 S.E.2d 443, 446 (1996). On appeal, Appellants purport to rely upon a mishmash of case law related to the creation of easements by reference to a plat, easement by estoppel, and negative reciprocal easement, to persuade the court to imply a restriction on Respondent's otherwise free use of the Subject Property.

However, contrary to well established law in South Carolina regarding the creation of implied easements, Appellants assert that the test for the creation of an implied easement is "whether the grantor in creating a master plan, sought to enhance the value the grantor would receive by reference to the master plan in the conveyance of the lots". According to the Appellants, if the court answers the question in the affirmative in this case, an implied easement to restrict the property to a use not inconsistent with a golf course is created, and the court must then answer "whether any effective disclaimers were present."

What Appellants essentially seek to do is argue against precedent, as Appellants' position is contrary to the clear established case law in South Carolina. Specifically, clear and established case law in South Carolina requires proof by "clear and unmistakable implication" of the intent of the parties to a transaction to create an implied

easement on property.[7] Appellants ask this court to shift this burden of proof and presume the existence of an implied easement absent a clear and unmistakable disclaimer. The burden of proof asserted by Appellants is not the law in South Carolina regarding easements . See, e.g., Hamilton, 274 S.C. at 157, 263 S.E.2d at 380.[8]

Specifically, Appellants ask the court to adopt the Blue Ridge rule that purchasers of lots with reference to the plat of a subdivision acquire "every easement, privilege and advantage shown upon said plat", and argue this includes the right to the restrict the use of all of the open space as laid down on the plat by which the lots were purchased. Blue Ridge Realty Co. v. Williamson, 247 S.C. 112, 119-120, 145 S.E.2d 922, 925 (1965) ("The purchasers of lots with reference to the plat of this subdivision acquired every easement, privilege and advantage shown upon said plat, including the right to the use of all of the streets, near or remote, as laid down on the plat by which the lots were purchased."). However, the court in Inlet Harbour v. South Carolina Dept. of Parks, Recreation and Tourism, 377 S.C. 86, 659 S.E.2d (2008) clarified that the rule applied in Blue Ridge is nothing more than a presumption that when a grantor conveys property

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[7] In addition to arguing against clear precedent regarding the burden of proof in South Carolina for implied easements, Appellants have also attempted to argue against the clear precedent that absolute ownership of the dominant tenement and servient tenement is not required to establish unity of title. See Kennedy v. Bedenbaugh, 352 S.C. 56, 61, 572 S.E.2d 452, 455 (2002) ("For unity of title to exist there must have been an absolute ownership of both tracts of land."). Judge Cooper thoroughly analyzed the facts of this case in light of the elements of various implied easements, including the unity of title requirement. In responding to Appellants' Brief on Appeal, the Respondents incorporate by reference Judge Cooper's Conclusions of Law in the Final Order on Plaintiff's First Cause of Action, and Respondents arguments as set forth in the Memorandum in Support of Defendant Deertrack Investors, LLC's Motion for Summary Judgment, August 29, 2008 and Memorandum in Opposition to Plaintiffs' Motion to Alter or Amend the Judgment under Rule 59(e), December 15, 2008. **(R. pp. 55-86, 553-581; 582-600).**

[8] Even if the burden of proof required a clear and unmistakable disclaimer of any implied easements as Appellants argue, which Respondents in no way concede, the express language contained in the a) Plat, recorded at Plat Book 54, Page 124; b) Declaration and Establishment of Conditions, Reservations, Covenants and Restrictions for Deerfield Plantation Single Family Residential Subdivision; c) Privilege and Obligations Agreement; d) Property Report; e) Purchase Agreement; and, f) the "In the beginning..." marketing brochure contain clear and unmistakable disclaimers of any implied restrictions in the use of the Subject Property as a golf course and clubhouse in perpetuity.

with reference to a plat showing streets or other ways of passage, the grantor intends to allow the grantee the use of the delineated streets and ways of passage.

In the present case, Appellants are not claiming any easement to the streets or ways of passage referenced on the Plat, recorded at Plat Book 54, Page 124, and therefore the Blue Ridge rule is inapplicable. Rather, Appellants are claiming an easement in the open space reflected on the Plat. Importantly, Appellants are not claiming that they have a right to utilize the open space reflected on the Plat, either as a golf course or open space, and acknowledge they have never had a right to use the Subject Property without paying a fee. **(R. pp. 190-191).** The only right Appellants' claim to have in the Subject Property is their view – they want to see open space and not look at tract houses behind their residential homes. **(R. pp. 160, 225, 232-233).** South Carolina has long held that easements in a view, breezes, light, or air are not recognized in this state. See O'Shea v. Lesser, 308 S.C. 10, 18, 416 S.E.2d 629, 633 (1992), Hill v. The Beach Co., 279 S.C. 313, 306 S.E.2d 604 (1983); Schroeder v. O'Neill, 184 S.E. 679 (1936); Bailey v. Gray, 53 S.C. 503, 515-517, 31 S.E. 354 (1898).

As a result, clear South Carolina precedent precludes Appellants' claims in the Subject Property and the Special Referee's final order denying Appellants' claim for declaratory judgment should be affirmed.

C. The trial judge did not err in directing the cancellation of the lis pendens.

Appellants assert that the trial judge erred in directing the cancellation of the lis pendens. As an initial matter, this issue was neither raised by motion for reconsideration nor ruled upon in the order denying motion for reconsideration. As a result, this issue is not preserved for appeal.

Even if this issue were preserved for appeal, which Respondents do not concede, the trial judge did not err in cancelling the lis pendens as his final order resolved that portion of the litigation involving real property. Further, according to Rule 241(a), SCACR, the filing of a notice of appeal automatically stays the matter decided in the order unless exceptions to the rule exist. Specific exceptions applicable to the automatic stay requirement in this case include Section 18-9-150 of the South Carolina Code, which requires the Appellants post a bond to stay the order on appeal where the order directs delivery of a written instrument, and Section 18-9-160 of the South Carolina Code, which directs the execution and deposit of an instrument with the clerk of court.

Both exceptions to the automatic stay requirement set forth in sections 18-9-150 and 160 are applicable to the Order on Appellant's First Cause of Action for Declaratory Judgment, and as a result the cancellation of the lis pendens set forth in the order should not be stayed without a bond posted by Appellants. Moreover, the equities favor a bond requirement in this instance because Appellants have no right to restrict the use of the Subject Property, expressly or in equity, and have utilized the lis pendens in order to gain a tactical advantage and prevent the free use during the pendency of this litigation and appeal. See Pond Place Ptns. v. Poole, 351 S.C. 1, 17, 567 S.E.2d 881, 889 (Ct. App. 2002) ("The lis pendens mechanism is not designed to aid either side in a dispute between private parties.").

As a result, the Special Referee did not err in directing the cancellation of the lis pendens and Appellants should be required to post a bond in order for the portion of the of the Order directing the cancellation of the lis pendens to be stayed pending the appeal.

CONCLUSION

For the reasons set forth herein and by Judge Cooper in the Final Order as to Plaintiffs' First Cause of Action for Declaratory Judgment, the Final Order should be affirmed.

McNAIR LAW FIRM, P.A.
Henrietta U. Golding
Amanda A. Bailey
P.O. Box 336
Myrtle Beach, South Carolina 29578
Phone: 843-444-1107
Fax: 843-443-9137
Attorneys for Respondent
Deertrack Investors, LLC

Myrtle Beach, South Carolina
January 12, 2011

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Thomas W. Cooper, Jr., Special Referee

Case No.: 2006-CP-26-4440

Dale Hill, Betty Hill, Carl Clemmons, Geraldine Clemmons, Individually, and on behalf of a Class of all others similar situated ..... Appellants,

vs.

Deertrack Golf and Country Club, Inc., Deertrack Golf, Inc., Deerfield Plantation, Inc., the Estate of John Schaad, by and through Ann Schaad as Executrix, and Deertrack Investors, LLC ..... Respondents.

CERTIFICATE OF COUNSEL

The undersigned certified that the Final Brief complies with Rule 211(b), SCACR.

McNAIR LAW FIRM, P.A.

Henrietta U. Golding
Amanda A. Bailey
Post Office Box 336
2411 Oak Street, Suite 206
Myrtle Beach, SC 29578
(843) 444-1107
Attorneys for Respondent Deertrack Investors, LLC

Myrtle Beach, South Carolina
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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
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[FINAL] REPLY BRIEF OF APPELLANTS

David B. Miller, Esq., SCB # 10296
Robert S. Shelton, Esq., SCB #68543
BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
1000 29th Avenue North
Myrtle Beach, SC 29577
(843) 448-2400
Attorneys for Appellants

Myrtle Beach, South Carolina

January 4, 2011.

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STATEMENT OF THE CASE

Appellant takes exception to the manner in which Respondent Deertrack Investors, LLC characterizes the proximity of Respondent's property in relation to Appellants'. In its Statement of the Case, Respondent states: "Respondent Deertrack Investors, LLC is the owner of nearby property that formerly operated as a golf course and clubhouse." In truth, Appellants' respective lots are contiguous to the golf course property, not merely "nearby" properties. The Subject Property or lots co-exist as a single golf community. As depicted on Respondent's Exhibit 1.B [R. p. 452], and Appellant's Exhibit 2 [R. p. 391], the golf course property weaves throughout the property owned by the individual members of the Class.

REPLY ARGUMENTS

A. Respondent's Brief Makes Allegations of Fact That Require Clarification or Correction.

1. Evidence of corporate officers of Deerfield Plantation I was presented at trial.

At page 3 of its Initial Brief, Respondent asserts: "No evidence was presented as to the shareholders or other corporate officers of Deerfield Plantation I, and we are left to speculate who had a controlling interest in the corporation." This is contrary to the Record before the Court. Appellants presented at trial, as Plaintiff's Exhibit 1, a brochure entitled "*In the Beginning...*" which contains under the heading "In the

tradition of business on a high level" the statement that "[t]he principal officers in Deerfield Plantation, Inc. are V.F. Platt, Jr. and his wife Kate W. Platt." [R. p. 387]

Moreover, Appellants introduced at trial the Deed by which Appellants Clemmons purchased their lot, the Purchase Agreement by which Appellants Clemmons purchased their lot, and the Deed by which Appellants Hill purchased their lot.[1] Each of these documents bears the signature of "V. F. Platt" above the notation "As President" or "President" of Deerfield Plantation, Inc. Each of these documents likewise bears the signature of "Kate Platt" above the notation "As Secretary" or "Secretary" of Deerfield Plantation, Inc.

2. The Subject Property is shown upon the plat as a golf course, not "open space."

Respondent states at page 6 of its Initial Brief: "The Subject Property is illustrated on the plat as open space, and portions of the open space are identified with what appear to be golf course hole numbers." [R. p. 432; R. pp. 452–453] In fact, the plat clearly depicts eighteen (18) sequentially numbered fairways and greens complete with bunkers and flags marking the individual holes. The overwhelming majority of each of these golf course holes is bordered entirely by the homes of individual Appellant Class members.

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[1] [R. pp. 392–393; R. pp. 422–426; R. pp. 427–431; R. pp. 433-434]

3. Deerfield Plantation, Inc. exercised control over the Subject Property.

At page 6 of its Initial Brief, Respondent correctly notes Deerfield Plantation, Inc. (identified by Respondent as Deerfield Plantation I) filed a Declaration and Establishment of Conditions, Reservations, Covenants and Restrictions for Deerfield Plantation Single Family Residential Subdivision (hereinafter, "Restrictions"). These Restrictions were presented at trial in full as Defendant's Exhibit 1.C. [R. pp. 454–461]

Respondent quotes, at pages 7 and 8 of its Initial Brief, portions of Paragraphs 11 and 33 of the Restrictions. [R. p. 456; R. p. 460] The last quoted portion of Paragraph 11 states "... the Developer may, in its sole discretion, limit or withdraw or prohibit certain of the acts authorized by this easement, and it may limit the manner or place of doing all or certain of the acts authorized by this easement." [R. p. 456] The Developer is identified in Paragraph 33 as follows: "The term 'Developer' wherever used herein shall mean Deerfield Plantation, Inc., a South Carolina corporation." [R. p. 460]

As the owner of the individual lots, the Developer stated in the Restrictions quoted by Respondent its intent to maintain control over the property reserved for the golf course. This is further evidenced in the following sections quoted by Respondent:

> The Developer shall have the right to determine the manner and extent to which the rights under this easement shall be exercised, and in the event that some other person, corporation, or other entity shall hereafter operate said golf course, tennis courts, country club or clubhouse facility then the Developer shall have the right to prescribe in writing to such person, corporation or entity charged with the operation of the said golf course, tennis courts, country club or clubhouse facility the manner and extent to which the rights under this easement shall be exercised. *In addition, the Developer may, in its sole discretion, limit or withdraw or prohibit certain of the acts authorized by this easement, and may limit the manner or place of doing all or certain of the acts authorized by this easement.*
>
> *... the Developer hereby expressly reserves unto itself, its successors, and assigns, all streets, roads, alleys, entrances, or other passages or ways, any and all lakes and parks, and all easements and rights in connection therewith for any purpose, matter, or thing....*

[R. p. 456, ¶ 11; R. p. 458, ¶ 23] Clearly the Developer intended to exercise substantial control over the Subject Property even after the individual lots had been sold. This is consistent with Appellants' belief at the time they purchased their lots and supports their conclusion that the Developer intended for the golf course community scheme of development to remain.

4. The Developer went to great lengths to conceal any statement indicating the Subject Property could be used for a purpose other than a golf course.

Beginning at page 8 of its Initial Brief, Respondent quotes several portions of the Privilege and Obligation Agreement between the Developer and the Deerfield

Plantation Property Owners Association. [R. pp. 412–415] Later, at page 11 of its Initial Brief, Respondent quotes portions of a Purchase Agreement the Developer used in the sale of lots. [R. pp. 422–426; R. pp. 427–431] Respondent maintains language contained in these documents is sufficient to inform purchasers the golf course property could be dedicated to another use at the Developer's discretion. Yet, these quoted statements are not printed in the same size font used in Respondent's Brief, but in a substantially smaller typeface. Moreover, these statements are buried in the middle of lengthy legal documents, and had not been presented in such a fashion as to place prospective purchasers on notice of any intent by the Developer that the Subject Property could be used for purposes inconsistent with the golf course community scheme of development.

The Developer could have included a clear and plainly understandable disclaimer in the Contract, the Deed, the Property Report, the Plat, or in a document created solely for the disclaimer; yet the Developer elected not to do so.

Indeed, as expert witness Edward F. Hucks testified, market data proved otherwise. [R. p. 268] Rather than evidence any intent to allow other uses for the property, the Developer went to great lengths to prepare the "*In the Beginning...*" brochure, which paints a very clear image of Deerfield Plantation as a golf course community. [R. pp. 374–389] This is the only plan or scheme of development ever made clear to the Appellants, and it is the one upon which they relied in purchasing their homes.

5. The burden is upon Respondent to disclaim the easement created in the Subject Property.

Respondent claims in its Initial Brief that Appellants argue against case law with regard to the burden in the present analysis. Yet, Respondent also acknowledges Blue Ridge Realty Co. v. Williamson, 247 S.C. 112, 145 S.E.2d 922 (1965), "creates a presumption" the grantor intended to convey more than the lot purchased when the conveyances reference a plat showing more. [Respondent's Initial Brief, p. 19] This presumption stands in the present matter, and has not been effectively rebutted. The testimony and evidence paint a clear image of the community in which Appellants invested, and no fair disclaimer of that scheme of development exists.

6. A Motion for Reconsideration was not required to preserve the issue of lis pendens cancellation for appeal.

Respondent alleges the issue whether the trial court erred in directing the cancellation of the lis pendens was not preserved for appeal because it was not the subject of a motion for reconsideration or ruled upon in the Order denying the motion for reconsideration. The question of the cancellation of the lis pendens was ruled upon in the Order currently under review and need not have been the subject of a motion to reconsider to have been properly preserved for judicial review. [R. pp. 55–86] The motion for reconsideration did not address the issue of the lis pendens because the Judge had already indicated he had rescinded that portion of his Order.

The lis pendens is essential in the present matter to inform potential purchasers of the present dispute. Respondent's claim that equities favor a bond in this instance is misplaced. Respondent was aware of similar claims already raised in a separate lawsuit within the Deerfield Plantation subdivision prior to its purchase of the Subject Property. Moreover, the closing documents make clear that if could be developed as a Respondents intend, the purchase price would double. [R. pp. 489–495; R. pp. 496–500; R. pp. 501–511] Clearly, Respondent took title with notice of the issues raised herein, and it would be inequitable to require Appellants to post a bond to relieve Respondent of the result of its own bargain at the peril of prospective purchasers who would be without notice were the lis pendens to be lifted.

B. Respondent Relies upon Case Law Which Is Distinguishable from the Present Matter.

Respondent sets forth a series of cases beginning at page 20 of its Initial Brief to support the proposition that "South Carolina has long held that easements in a view, breezes, light, or air are not recognized in this state." Each of these cases dealt with prescriptive easements, not easements arising by implication. As the court in Hill v. Beach Co., 279 S.C. 313, 306 S.E.2d 604 (1983), explained:

> In our view, the appellants' claim amounts to a prescriptive right to ocean view, breezes, light and air. Such right does not exist in South Carolina. Schroeder v. O'Neill, 179 S.C. 310, 315, 184 S.E. 679. Seeking to avoid this conclusion, the appellants draw upon the ruling in Epps v. Freeman, 261 S.C. 375, 200 S.E.2d 235, wherein we found that open spaces within a developer's

> plat as grantor could not be subsequently exploited by such developer in disregard of equitable rights arising in the grantees. In that case, the lot owners were named as defendants in actions by the developer to quiet title to a swash laying between lots of the defendants and the ocean.
>
> The decisive factor in Epps was the nature of the plat itself. We rested our holding upon the fact that the swash lay clearly within the boundaries of the subdivision plats without reservation of right in the developer to the open spaces. 261 S.C. at 388–389, 200 S.E.2d 235. The plat was reproduced in the opinion. 261 S.C. at 377, 200 S.E.2d 235.
>
> The case at bar presents completely different facts from the Epps case. The plats in the record before us contain no real subdivision boundary but rather a simple bold line designating the high water mark around the Isle of Palms. We noted in State v. The Beach Company, supra, that no reference is made to the waterline as a boundary. In Epps, there appeared both a high waterline and a boundary for each subdivision unit. The present case is thus clearly distinguishable in that we can find no intention by the developer to encompass open spaces within its grant to these plaintiff lot owners or their predecessors. The result in this case is not controlled by Epps, a conclusion correctly reached by the trial court.

Hill v. Beach Co. at 315, 306 S.E.2d at 605.

Schroeder v. O'Neill, 179 S.C. 310, 184 S.E. 679 (1936), also relied upon a case only setting forth the law of the state as to prescriptive easements, Bailey v. Gray, 53 S.C. 503, 31 S.E. 354 (1898). The Bailey court explained "that no **prescriptive** right to the use of light and air through windows can be acquired by any length of use or enjoyment." Id., 31 S.E. at 358 (emphasis added).

Notably, the Court in O'Shea v. Lesser, 308 S.C. 10, 416 S.E.2d 629 (1992), distinguished prescriptive easement cases from those such as the present matter:

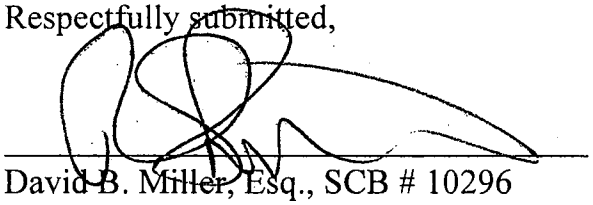
> As to the diminution of appellant's view, this State recognizes no **prescriptive** easement of view. Hill v. The Beach Co., 279 S.C. 313, 306 S.E.2d 604 (1983). As to any easement of view that may arise from the common scheme of development, the master-in-equity found that each home in Fairway Club is designed and situated on each lot so as to draw each owner's vision in a particular direction toward some desirable view, such as an inlet, lagoon, or fairway. Appellant's home is situated so that her attention is drawn away from the Lessers' home. Appellant's view of the golf course is not impaired by the extension to the Lessers' residence. Accordingly, we find that the master-in-equity's order conforms to his findings of fact, and that he did not err in finding that appellant suffered no damages.

O'Shea at 18, 416 S.E.2d at 633 (emphasis added). In the present action, the Developer designed each portion of the golf course to maximized the per lot value, and, as those Appellants who testified each made clear, the golf course view was a substantial influence in deciding to pay a premium to the Developer for their respective home sites. None of these cases establish any rule of law as to easements which arise by implication. Rather, they clearly distinguish themselves.

CONCLUSION

For the foregoing reasons and those stated in Appellants' Final Brief, Appellants respectfully request this Honorable Court reverse the Order of the trial court.

Respectfully submitted,



David B. Miller, Esq., SCB # 10296
Robert S. Shelton, Esq., SCB # 68543
BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
1000 29th Avenue North
Myrtle Beach, SC 29577
(843) 448-2400
Attorneys for Appellants

Myrtle Beach, South Carolina

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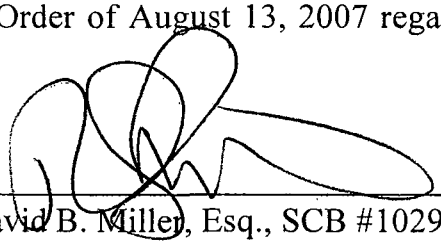
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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Reply Brief complies with Rule 211(b), SCACR. The undersigned further certifies that this Final Reply Brief complies with the Supreme Court's Order of August 13, 2007 regarding personal identifiers and sensitive information.



David B. Miller, Esq., SCB #10296
Robert S. Shelton, Esq., SCB #68543
BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
1000 29th Avenue North
Myrtle Beach, SC 29577
(843) 448-2400
Attorneys for Appellants

Myrtle Beach, South Carolina
January 4, 2011.