

ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Case No. 2009-CP-23-7707

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SC Court of Appeals

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

v.

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

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

v.

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

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

APPENDIX TO RECORD ON APPEAL

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Transcript of de bene esse deposition of Claire T. Manning
Hearing date – September 4 & 5, 2012
Pages 1 – 40 with exhibits



Southern Reporting, Inc.

Transcript of the
Deposition of

Claire T. Manning

8/13/2012

Hanold, et al. vs. Watson's Orchard Property
Owners Association, Inc., et al.
2009-CP-23-7707

COPY

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

2)
3) CASE NO.: 2009-CP-23-7707

4 R.C. FREDERICK HANOLD, III,)
ET AL.,)
5 PLAINTIFFS/COUNTER DEFENDANTS,)
6 VS.) DEPOSITION

7 WATSON'S ORCHARD PROPERTY)
OWNERS ASSOCIATION, INC.,) OF
8 ET AL.,) CLARE T. MANNING

9)
10 DEFENDANTS/COUNTER PLAINTIFFS,)
11 VS.)

12 PROPERTY OWNERS IN WATSON'S)
ORCHARD SUBDIVISION:)
13 N. CARTER POE, III, ET AL.)
THIRD-PARTY DEFENDANTS.)

14)
15)

16 THE DEPOSITION OF CLARE T. MANNING WAS TAKEN
17 BEFORE NICOLE C. GLEATON, A NOTARY PUBLIC IN AND FOR THE
18 STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF 10:32
19 A.M., AUGUST 13, 2012, AT THE CHICAGO TITLE INSURANCE
20 COMPANY, 3700 FOREST DRIVE, COLUMBIA, SOUTH CAROLINA.

21)
22)

23)
24)

25)
REPORTED BY

NICOLE C. GLEATON

1 APPEARANCES

2 FOR THE PLAINTIFFS:

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11 EXHIBITS

12 (Exhibit No. 3 was retained by Mr. Herlong.)

12	Exhibit No. 1	Notice of Deposition	4
13	Exhibit No. 2	Affidavit of Ms. Manning	4
14	Exhibit No. 3	Plat	10
15	Exhibit No. 4	December 3, 1980 Survey	10
16	Exhibit No. 5	Deed from Watson's Orchard Property Association	12
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23	Exhibit No. 12	Letter from Mr. Norwood	39

24 *DIGITALLY RECORDED AUDIO RETAINED FOR TWELVE (12) MONTHS
25 FROM DATE OF CERTIFICATION.

1

STIPULATIONS

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The deposition of CLAIRE T. MANNING is taken in accordance with provisions of the circuit court rules for the purpose of discovery or for use as evidence, or for both purposes, and all questions as notice are waived.

It is stipulated that all objections will be reserved until the time of trial, with the exception of objections as to the form of the question.

It is stipulated that the witness waives the reading and the signing of the deposition.

- - - -

CLAIRE T. MANNING, having first been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HERLONG:

Q. Ms. Manning, my name is William Herlong just to introduce myself to you on the record. And we've met before but -- obviously. Just to give you a little information about how depositions work, this deposition is being taken for purposes of trial testimony. So it will be a little different than some depositions but not really. If you have a -- if you don't understand a question I ask, which is almost certain from time to

1 time, say so. And I'll try to rephrase it and clarify
2 it. If you -- it's better to answer yes or no, rather
3 than uh-huh or unh-uh, assuming it's a yes or no
4 question just to make sure that the answer is clear on
5 the record. This won't be real long. But if you do
6 need to take a break, just say so. Mr. Hiller could
7 conceivably object to some of my questions. If he
8 does, you still answer the question, okay? And I think
9 that's about all we need to say to start off. Ms.
10 Manning, are you appearing here today pursuant to a
11 Notice of Deposition?

12 A. Yes, I am.

13 Q. Okay.

14 MR. HERLONG: Can you mark that as Exh. No. 1?
15 (Defendant's Exh. No. 1 was marked for identification
16 purposes.)

17 Q. And is Defendant's Exh. No. 1, is that a copy of the
18 Notice of Deposition?

19 A. It is.

20 Q. All right. And, Ms. Manning, I also want to mark --

21 MR. HERLONG: Can you mark this Defendant's Exh.
22 No. 2?
23 (Defendant's Exh. No. 2 was marked for identification
24 purposes.)

25 MR. HERLONG: Do you have copy of her affidavit? I know

1 I've gone one here but -- okay.

2 Q. All right. Exhibit No. 2; is that a copy of the
3 affidavit you have submitted in this case?

4 A. Yes, it is.

5 Q. All right. Do you adopt what you said in your
6 affidavit as your testimony today?

7 A. I do.

8 Q. Okay. And I just want to go through it with you a
9 little bit.

10 A. Okay.

11 Q. The first part of it is obviously your background. So
12 you can read it if you want to or not; just whatever
13 you want to do. But let me just ask you generally
14 speaking, what is your occupation? Where do you work?

15 A. I'm a lawyer. I work for Chicago Title Insurance
16 Company. For 16 years I was Underwriting Counsel, and
17 the last four years I've been State Manager of this
18 office.

19 Q. Okay. And what does Chicago Title do?

20 A. We are a title insurance company which means we issue
21 title insurance in connection with real estate
22 transactions in South Carolina.

23 Q. Okay. And you're one of the attorneys --

24 A. I am.

25 Q. -- that works on the staff for the company?

1 A. Yes.

2 Q. All right. And what kind of law or what sort of issues
3 do you deal with in your capacity as an attorney?

4 A. I'm a real estate lawyer and always have been since I
5 graduated from law school in '81. And generally what
6 we do here is deal with real estate title concerns that
7 lawyers raise as they search titles and do closings.

8 Q. All right. Do you consult with lawyers around the
9 State on these kind of issues?

10 A. We do every -- everyday.

11 Q. All right. Just give me a little -- I think it says
12 you graduated from the University of South Carolina Law
13 School in '81.

14 A. Correct.

15 Q. Just tell me about that.

16 A. Yes, I went to undergraduate and law school at
17 Carolina.

18 Q. Okay. And you practiced law, I think, for a little
19 while in --

20 A. For eleven years, I represented real estate
21 developers in a firm here in Columbia.

22 Q. Okay. And then after that, you joined Chicago Title?

23 A. Correct.

24 Q. So you've been with Chicago since 1992?

25 A. In October it will be 20 years, yes.

1 Q. Okay. All right. And I believe you also -- do you
2 teach?

3 A. Well, I have until this year. I taught four years, a
4 real estate transactions class at the law school. I'm
5 not teaching it this Fall.

6 Q. Okay. All right. Tell me how you came to be involved
7 in the issues that are involved in this lawsuit.

8 A. In 2008 Pat Grayson who we know because he used to be
9 in private practice in Greenville, and he was an agent
10 of ours. So he, he knew us very well. And he had this
11 title concern, and so he brought it to us for us to
12 consider.

13 Q. And this --

14 A. That's how we became involved.

15 Q. And this is with respect to the Watson's Orchard
16 issues?

17 A. Correct.

18 Q. Okay. And what was Pat asking you at that time?

19 A. His, his bottom line question was, "Please help me
20 decide how we can amend or terminate these restrictive
21 covenants in a way that after they're amended or
22 terminated you would insure the title to say that they
23 had been amended or terminated?"

24 Q. Okay. So is it a question of how to properly go
25 through the process of getting new restrictions and

1 covenants in place?

2 A. Correct.

3 Q. All right. Now, in connection with -- I'm just sort of
4 sticking with the order of the affidavit. In
5 connection with that question, I take it you reviewed
6 various documents and consulted with others within
7 the office?

8 A. Correct. There are four lawyers that are here in the
9 office including me, and all four of us were involved
10 in this deal.

11 Q. Is that Mr. Hedgepath, Mr. --

12 A. Charles Hedgepath, Martha McConnell, and Tom Dunlop.

13 Q. All right. And did you all confer on these issues?

14 A. We did.

15 Q. Reach a common opinion?

16 A. We did.

17 Q. All right. And what did you advise -- we'll go into a
18 little more detail, but just what did you tell Mr.
19 Grayson?

20 A. We basically said that we believed he could amend the
21 restrictions based on the terminology set out in the
22 restrictions by getting the majority of the vote of the
23 then lot owners.

24 Q. Okay. All right. And that would be the then lot
25 owners in Watson's Orchard and in the strip of property

1 at issue?

2 A. Right.

3 Q. Okay. All right. In connection with testifying here
4 today, you and I have met a time or two; is that
5 correct?

6 A. Correct.

7 Q. All right. Are you being compensated in any way,
8 shape, or form?

9 A. No.

10 Q. All right. Now, are you familiar with -- your
11 affidavit talks about the Stephens lots.

12 A. Yes.

13 Q. Are you familiar with that?

14 A. Yes.

15 Q. All right. Do you know what -- what are the Stephens
16 lots? And we have the graphic right here.

17 MR. HERLONG: Randy, I don't know if we need to
18 introduce this as an Exhibit. It might not be a
19 bad idea, I suppose. I've got a copy of it.
20 Let me introduce this as Exhibit 3 and 4. And,
21 Randy, we've got a copy of this notebook with
22 these papers in it. And so --

23 MR. HILLER: Do you have one that's the full --

24 MR. HERLONG: I don't. All I've got is this right
25 here. I don't have one that's the full thing. Do

1 you want to mark that? That's not a bad idea.

2 Why don't I just mark the whole thing, and I'll

3 keep custody of it.

4 MR. HILLER: Okay.

5 (Defendant's Exh. No. 3 was marked for identification
6 purposes.)

7 (Defendant's Exh. No. 4 was marked for identification
8 purposes.)

9 Q. Ms. Manning, Exhibit No. 3, do you recognize this
10 document?

11 A. I do.

12 Q. The survey for Richard Watson, this being the December
13 3, 1980 draft?

14 A. Correct. Right. Pat Grayson would have brought that
15 to us.

16 Q. Okay. Do you recognize the strip of property up at the
17 top as being as sort of the strip that's at issue here?

18 A. Correct.

19 Q. All right. And in your affidavit, there's -- on the
20 front page of your affidavit is an excerpt of
21 that strip. And we've marked it as Exhibit 4. Do you
22 recognize that?

23 A. I do.

24 Q. All right. Now, the issue with respect to the Stephens
25 Lots, what, what was the issue there? Do you recall?

1 A. Well, the issue was we were trying to count votes. We
2 were trying to decide how many votes we would need to
3 be a majority. And the question was whether we could
4 count each of those lots as a lot and count five votes
5 for those lots.

6 Q. And what was your conclusion with respect to that
7 question?

8 A. We concluded that we could count those as lots, and we
9 could count those five votes.

10 Q. Okay. And feel free to look at your affidavit if you
11 want because I know this is discussed in there. But
12 tell me the basis for that conclusion.

13 A. Well, we looked at several things. We looked at this
14 plat. And you can see that the plat shows the five
15 lots with the metes and bounds description of each of
16 the lots. They're not just lines on the plat.
17 Somebody actually went out and platted using survey
18 measurements and, and distances. And those are on the
19 plat. We also looked at an Order from Judge McGowan, I
20 believe it was, who had said -- he called them five
21 lots in the Order. And he authorized that they be
22 sold. And we also looked at several deeds where the
23 lots were transferred as lots. All of this would have
24 been in the chain of title, and anybody who searched
25 the title would have seen these things. And so if

1 anybody was trying to decide who could vote, they would
2 look at those five lots and see that they were lots.

3 Q. Okay. Let me --

4 MR. HERLONG: Would you pull out the first deed?
5 That's page 250, 51. If you could mark that as
6 the next one. You to staple that and then hand it
7 to Randy?

8 MR. HILLER: Thank you.

9 (Defendant's Exh. No. 5 was marked for identification
10 purposes.)

11 Q. Ms. Manning, Exh. No. 5 is the deed from Watson's
12 Orchard Property Owners Association to Pelham
13 Properties in 1981. Yeah, 1981. Is that one of the
14 documents y'all looked at?

15 A. It is. I believe this is the first deed that referred
16 to those lots.

17 Q. Okay. All right. And did you look at subsequent deeds
18 as well?

19 A. We did.

20 MR. HERLONG: Let's find those; 261, 263 and 265.

21 262, yeah. You want to mark this one?

22 (Defendant's Exh. No. 6 was marked for identification
23 purposes.)

24 Q. Exhibit 262 is a deed from Pelham Properties to J. B.
25 Stephens, his heirs, and assigns. Is that another one

1 of the deeds you looked at?

2 A. It is. This would have been the second deed.

3 MR. HERLONG: Can you mark this as the next one?

4 (Defendant's Exh. No. 7 was marked for identification
5 purposes.)

6 Q. And Exhibit 7 is the deed from Mr. Stephens to, it
7 looks like, his revocable trust. And I believe the
8 bottom, parcel 3, is the one. Is this another one of
9 the deeds that you looked at?

10 A. Yes, it is.

11 Q. All right. And what was your -- what do the deeds tell
12 you with respect to the issue of whether these were
13 five separate lots?

14 A. The deeds told me that the parties in question, the
15 sellers and the buyers in each case, referred to these
16 as lots, thoughts they were lots, considered them to be
17 lots, intended that they were lots.

18 Q. Okay. And do these deeds refer to the survey we
19 were just looking at; the Richard lots in the December
20 3rd provision. That's Exhibit, Defendant's Exh. 3.

21 A. Let me check and make sure all of them do. Yes, they
22 all three refer to the same survey.

23 MR. HERLONG: I'm going to mark this deed, too.

24 This is 272 through 274.

25 (Defendant's Exh. No. 8 was marked for identification

1 purposes.)

2 Q. I think this is another deed in the chain relating to
3 the property?

4 A. Right. From the trust and the trustee to Pelham Farm,
5 LLC and Legacy One, LLC.

6 Q. Okay.

7 A. And SCSP, LLC.

8 Q. Okay. And that's relating to the same property?

9 A. Same property, refers to the same plat. It still calls
10 it five lots.

11 Q. Okay. All right. In Paragraph 6 of your affidavit, it
12 just says, "In the course of our analysis, we concluded
13 that the appropriate process was the one which I
14 understand Mr. Grayson ended up following. We
15 concluded that the new R&C's would be validly adopted
16 if they received a majority vote, majority vote of the
17 lots entitled to vote which we concluded were those in
18 Watson's Orchard Subdivision and those in the
19 property." And the property here is referring to the
20 strip up here, isn't it?

21 A. Correct.

22 Q. And then the strip along Haywood Road?

23 A. Right.

24 Q. Okay. "We concluded that the Stephens lots within the
25 property were in fact lots and entitled to one vote

1 each. We concluded that the potential lots within the
2 remainder of the property were not in fact lots and not
3 entitled to votes, but they would just be one vote for
4 those portions of the property." Does that accurately
5 state what your conclusion was in -- I guess it was
6 2009?

7 A. Right. That was our conclusion.

8 Q. Okay. And in -- as it says in Paragraph 8, you
9 concluded that if that vote was obtained, Chicago Title
10 would be willing to issue title insurance for the
11 property?

12 A. That's correct.

13 Q. All right. It looks like -- and this is -- you talk
14 about this in Paragraph 10 of your affidavit. It looks
15 like Mr. Grayson came back to you on this with a
16 question about the lots or the plat, the Richard plots
17 and December 3rd plat which is Exh. 3, Defendant's 3.
18 That it wasn't filed -- it's at the end of Paragraph 8
19 actually. That it wasn't filed with the Greenville
20 County Subdivision Ordinance. Do you remember that
21 issue being raised?

22 A. I do. We had, we had drawn our conclusion. And then
23 he -- I think he either emailed us back or called us
24 back and said, "I just want to make sure you understand
25 that this plat was not recorded."

1 Q. Okay.

2 A. And we said, "Yes, we understood." We looked at it
3 again. Every time he came back to us -- we had set all
4 this aside, so we would pull it back out. The four of
5 us would look at it. We would meet and we would draw
6 our conclusions. And then we would usually email or
7 call Pat back. So we looked at it again. And, again,
8 the four real estate lawyers decided they were still
9 lots, whether the plat was recorded or not.

10 Q. Well, that's -- let me ask you to elaborate on that a
11 little bit because that's an issue that's gotten some
12 attention in this case. Why is it that y'all did not
13 think that was -- why did that not change your point of
14 view?

15 A. Because the intent of the parties -- you know, deeds
16 are always interpreted based on what were the intent of
17 the parties. And the intent of the parties was
18 obviously that four lots --

19 MR. HILLER: I object.

20 MR. HERLONG: Go ahead.

21 WITNESS: Keep going?

22 A. That four lots -- I mean, five lots be sold.

23 Q. Okay. That was your understanding of the intent of the
24 parties --

25 A. Right.

1 Q. -- based on the document?

2 A. Right.

3 Q. All right. Did you have any information about the
4 intent of the parties other than what the documents
5 themselves said?

6 A. No.

7 Q. But in your capacity as far as Chicago Title, do you,
8 do you typically look at documents in order to
9 understand what the intent of the parties was?

10 A. We do. We look at the four corners of the document.

11 Q. And in your capacity as an attorney for Chicago Title
12 rendering advice on this issue or interpreting on
13 behalf of Chicago Title, was it your conclusion that
14 these were five lots?

15 A. Correct.

16 Q. Now, there was -- I think we have -- it's in here. I
17 want to direct your attention to Paragraph 11 in the
18 affidavit. I'm sorry, Paragraph 10, yeah.

19 MR. HERLONG: Randy, I don't have another copy of
20 this, but you probably have it.

21 MR. HILLER: Yeah.

22 MR. HERLONG: You can mark this.

23 (Defendant's Exh. No. 9 was marked for identification
24 purposes.)

25 Q. I'm going to show you Exh. 9, Ms. Manning. And that

1 came from your file.

2 A. Right.

3 Q. Do you recognize that document?

4 A. Yes. This is the tax map that Pat would have brought
5 to us. And, basically, he brought it to us to say, you
6 know, "I want to make sure you understand that the tax
7 map shows that the lines between the, the lots," --
8 that we had determined were five lots, "Are
9 dotted lines on the tax map."

10 Q. Okay. And what was the significance of that to you?

11 A. We assumed -- we didn't know but we assumed that that
12 meant that even though the plat wasn't recorded that
13 someone must have taken the plat up to the tax office
14 for somebody to look at and somebody to draw the lines
15 on the tax map.

16 Q. Now, it's my understanding, Ms. Manning, that at the
17 time you were rendering --

18 MR. HILLER: I object.

19 Q. It's my understanding, Ms. Manning, that at the time
20 you were looking at these issues, you looked at Judge
21 McGowan's Order but not the exhibits to his Order; is
22 that correct?

23 A. There was some confusion about what the exhibits to the
24 Order were. I looked back at my emails back and forth
25 between us and Pat. And it looked like we may have had

1 some of the exhibits, but we weren't sure. So we were
2 a little bit confused about what all the exhibits were.

3 Q. Okay. Have you looked at the Order and the exhibits
4 since that time?

5 A. I have.

6 Q. Okay. Are there any documents --

7 MR. HERLONG: Randy, I don't really want to make
8 this fat Order an exhibit in this case if that's
9 all right with you?

10 MR. HILLER: That's fine.

11 Q. I want to call your attention to -- I'm sorry, I
12 apologize. Ms. Manning, I'm not going to make this an
13 exhibit in the case. But in the notebook of documents
14 we submitted in connection with summary judgment in
15 Judge McGowan's Order is within all that. And I just
16 wanted to show you -- where is it -- it's Exh. 15. I
17 wanted to show you in particular, Exhibit 15, which is
18 page D-166 in that notebook of summary judgment
19 exhibits. And then Exh. 16 of Judge McGowan's Order
20 which is page D-169. And just -- there's a better copy
21 of the offer which is Exh. 15 at page -- what page is
22 that -- 359 of the summary judgment exhibits. So if
23 you need to look at that feel free.

24 A. Uh-huh (affirmative response.)

25 Q. But did these, did these documents, having looked at

1 these now, did these substantiate your conclusion?

2 A. Right. It looks like an offer that Mr. Stephens made
3 to purchase the five lots back in 1980. And so it's
4 just another indication that the buyer of those five
5 lots considered that they were lots when he bought
6 them.

7 Q. Okay. All right. Turn to, turn to page -- I'm sorry,
8 Paragraphs 18 and 19 of your affidavit. If you would
9 just read those two into the record?

10 A. Paragraph 18, "To summarize, it was our conclusion in
11 2008 and 2009 that the Stephens lots were lots into
12 which the property had been developed, and that each
13 was entitled to a vote on the amendments -- on the
14 amendment of the R&C."

15 Q. All right. Hold on one second. Does that correctly
16 state your conclusion in 2008 and '09?

17 A. It does.

18 Q. And do you still feel that way?

19 A. I do.

20 Q. All right. And read Paragraph 19.

21 A. 19. "Based upon -- based on that opinion, we, Chicago
22 Title, gave our commitment to issue title insurance if
23 a majority vote was obtained for the amended R&C's with
24 the Stephens lots having one vote each, since in that
25 case, we believed as a factual matter and as a matter

1 of real estate law that the amended R&C's would then
2 have been validly adopted and would be in full force
3 and effect."

4 Q. And does that correctly state your opinion 2008 and
5 '09?

6 A. It did. It does.

7 Q. And you still feel that way?

8 A. I do.

9 Q. All right.

10 MR. HERLONG: That's all the questions I have.

11 Answer any questions Mr. Hiller may have.

12 CROSS EXAMINATION BY

13 MR. HILLER:

14 Q. Obviously, I represent the Plaintiffs in this action.
15 And you just -- of course, I've had your affidavit.
16 You just testified that you reviewed the plat,
17 the McGowan Order, and the deeds that were put into
18 evidence during the course of your deposition. You
19 affidavit says you also have reviewed the R&C's.

20 A. Correct.

21 Q. And you did, in fact, review those?

22 A. We did.

23 Q. And, and the -- now, were you aware of have you ever
24 been made aware that Mr. Watson did not own the
25 property when that survey that's been entered as

1 Defendant's Exh. 3 -- I can't see it.

2 MR. HERLONG: Three.

3 Q. Three was prepared?

4 A. No, I wasn't aware of that. But it's really not that
5 unusual that somebody who was considering buying a
6 piece of property has a survey made of the property.

7 Is that what you're saying, he hadn't bought it --

8 Q. No. He had already sold it.

9 A. Oh. No, I didn't know.

10 Q. He had already sold it before that survey was prepared.

11 MR. HERLONG: Did you say Watson or Stephens?

12 MR. HILLER: Watson.

13 MR. HERLONG: Okay.

14 Q. You weren't, you weren't aware of that?

15 A. I was not aware of that, no.

16 Q. Okay. And would it be fair to say that all the
17 information that you got regarding this situation came
18 from Mr. Grayson?

19 A. That's correct.

20 Q. All right. And absent from the things that you've
21 discussed, that you reviewed was the Greenville
22 County Subdivision Ordinance?

23 A. That's correct.

24 Q. You have not reviewed that?

25 A. Well, I have not until Mr. Herlong put together

1 this file, and I looked at them just really briefly
2 over the weekend. But, no, I had never seen them until
3 then.

4 Q. Okay. So at the time you prepared this affidavit, you
5 had never seen them?

6 A. I don't think I had, no.

7 Q. And over the weekend would have been yesterday and the
8 day before?

9 A. Correct.

10 Q. Well, you would agree with me, would you not, that
11 based upon any -- or do you believe you've
12 reviewed them enough to give an opinion as to whether
13 these qualify as lots under the Greenville County
14 Subdivision Ordinance?

15 A. I don't think I -- I mean, I'll be glad to give you
16 that opinion. But I don't think I need to get there to
17 make the opinion that I've already given.

18 Q. Okay. Well, I'm going to ask you to give it --

19 A. Okay.

20 Q. -- to me anyway.

21 A. Okay.

22 Q. You would agree with me, would you not, that these lots
23 could not be legally sold as individual lots as they
24 exist today?

25 A. As they exist today, I don't know. I would have to

1 review the ordinances that exist today which I haven't
2 been asked to do.

3 Q. Okay.

4 A. And it really wasn't relevant.

5 Q. Well, in your review of it, you would agree with me
6 that in 1980 when this conveyance was made, they could
7 not be legally sold as individual lots?

8 A. No, I don't agree with that.

9 Q. Okay. And what do you base that on?

10 A. Well, they were sold as individual lots.

11 Q. Really? What does the description say?

12 A. It says the five lots shown on the plat.

13 Q. No. What does it actually say?

14 A. Actually say. It says, "All that certain piece,
15 parcel, or tract of land, situate lying and being and
16 the State of South Carolina, County of
17 Greenville, containing five lots."

18 Q. It says containing --

19 A. Correct.

20 Q. -- five lots?

21 A. Uh-huh (affirmative response).

22 Q. Right?

23 A. Uh-huh (affirmative response).

24 Q. And there's -- the survey that is referenced is not
25 recorded?

1 A. Correct.

2 Q. And the survey that it was referenced was not approved
3 by the Greenville County Planning Commission for
4 recording?

5 A. Not that I could tell, no.

6 Q. And then the metes and bounds description is a boundary
7 survey; is it not?

8 A. The metes and bounds description is a boundary survey
9 of the five lots, yes.

10 Q. But it is just the exterior boundary of the tract of
11 land that we've referred to as the Stephens lots
12 containing five lots?

13 A. I don't know that I remember whether we went all the
14 way around it to see. Because, you know, when you look
15 at the hierarchy of what's important in a legal
16 description, the metes and bounds is the
17 least important thing. So the plat would be more
18 important.

19 Q. Well, isn't that true only if it's recorded? Isn't
20 there a State Statute that requires the recording of a
21 subdivision?

22 A. I think there might be.

23 Q. Of a subdivided line?

24 A. Yes, I think there might be.

25 Q. And when it, in fact, is recorded, pursuant to that

1 Statute, then you are entitled, as a matter of law, to
2 reference the survey and that becomes the legal
3 description.

4 A. Right.

5 Q. Correct?

6 A. Correct.

7 Q. Absent a recorded survey, there's got to be a metes
8 bounds; does there not?

9 A. Not necessarily. You could describe property bounded
10 by Taylor, Smith, Jones. So it doesn't have to
11 be metes and bounds.

12 Q. Well, that would have, that would have been prior to
13 the creation of that Statute. I can't recall it off
14 the top of my head.

15 A. I mean, even today you could just buy property that
16 way. I mean, I could, I could sell my lot and
17 describe it as bounded by the road and the three
18 owners. There's nothing that says you can't do that.

19 Q. Would you not accept that if you were writing up title
20 insurance policy?

21 A. No.

22 Q. It wouldn't bother you?

23 A. No, not as far as the legal description is concerned.

24 Q. Well, in this particular case, we have a legal
25 description.

1 A. Right.

2 Q. And it says containing --

3 A. It does.

4 Q. -- five lots. And then it has a metes and bounds
5 description. And I'll represent to you that it is, in
6 fact, a boundary survey --

7 A. Okay.

8 Q. -- description. But you never bothered -- y'all, y'all
9 never looked at that?

10 MR. HERLONG: Object to the form.

11 A. We may have looked at it, but I don't remember that we
12 did.

13 Q. All right. And the last document that Mr. Herlong had
14 you look at which was the offer to the sale.

15 A. Right.

16 Q. In fact, what that says is that Mr. Stephens was going
17 to buy the lots across from his home. And they were
18 minimum lots. And then it says how much frontage and
19 how many minimum square feet contained within the
20 property?

21 A. It says, "Five lots as more fully described in Exh. A,"
22 which is the same legal description. "Annexed hereto
23 and made a part hereof by reference for \$21,100.00 per
24 lot."

25 Q. I thought he was looking at 169.

1 MR. HERLONG: Here's a copy. 169 is the illegible
2 version. Look at 59.

3 MR. HILLER: Oh, I thought 169 was the legible
4 version.

5 MR. HERLONG: No. Page 59 is the more legible
6 version. Let's mark that.

7 MR. HILLER: I thought you were having her look at
8 the Norwood letter.

9 MR. HERLONG: The Norwood. It is in the -- it is
10 towards the latter part, I'm sorry. The Norwood
11 letter is --

12 MR. HILLER: Did you not ask her about the
13 Norwood letter?

14 MR. HERLONG: I did. It's 169. It is 169 so I'm
15 sorry. You want me to pull these out and mark
16 them?

17 MR. HILLER: No. That's all right.

18 Q. The Norwood letter was, in fact, to buy the five lots
19 most directly across from his home. He has made an
20 offer to purchase five minimum lots 200 feet frontage
21 and 55,000 square feet in front of his house; is that
22 correct?

23 A. Right.

24 Q. Is that consistent with R&C's?

25 A. Is it consistent with R&C's?

1 Q. Yes.

2 A. In what way?

3 Q. Well, the R&C's as it existed at the time that this --
4 all these documents were created required certain
5 minimum frontages.

6 A. Oh.

7 Q. And certain minimum lot sizes.

8 A. I, I don't remember.

9 Q. You don't remember any of that?

10 A. No.

11 Q. Would it -- were you aware that the R&C's specifically
12 designated how many lots the -- what we call the Pelham
13 strip, being converted into and what sizes they had to
14 be?

15 A. I'm sure we looked at that at the time, but I don't
16 remember what it says at this point.

17 Q. And do you remember any of the specifics with regards
18 to the Haywood property and --

19 A. No.

20 Q. -- what minimum lot sizes --

21 A. I don't because that looked like a big tract at the
22 time we looked at it. We never considered lots for it.

23 Q. All right. Were you aware that the R&C's allow you to
24 combine lots?

25 A. No. I may have been aware then. I probably read it

1 then, but I don't remember now.

2 Q. Well, did someone -- if the R&C's say that you can
3 combine lots, then there no longer would be separate
4 lots, correct?

5 A. If you combined them, right.

6 Q. Right. And you would agree with me that, that these
7 additional deeds that came about afterwards were all
8 related transactions for no consideration?

9 A. They looked like some kind of estate planning kind of
10 documents.

11 Q. Related parties for no value?

12 A. Correct.

13 Q. It's the same people that -- deeding it around,
14 among the entities and/or trust?

15 A. Right. After the first deed.

16 Q. After the first deed?

17 A. That's correct.

18 Q. And each one of them just would be customary to just
19 use the same description from the previous documents?

20 A. Correct.

21 Q. The exact same description every time?

22 A. Right.

23 Q. And so there really wasn't a buyer or a seller at any
24 time from 1980 through the present?

25 A. After the first deed, it looks like there were just

1 related parties.

2 Q. Right.

3 A. Yes.

4 Q. So it was just -- Pelham Properties, LLC bought the
5 property from the Homeowners' Association. And then
6 after that, reconveyed it among itself and never paid
7 any tax stamps and never paid any consideration,
8 correct?

9 A. That's what it looks like, yes.

10 Q. Okay. So they -- no intervening owners at any time?

11 A. Not during that period of time that I can see, no.

12 Q. Right.

13 MR. HILLER: Where's the tax map Exh.?

14 MR. HERLONG: This one.

15 Q. Do you have any information that -- well, you testified
16 that y'all just assumed that somebody had shown that
17 survey to somebody at the tax office?

18 A. I, I testified that that's what it looked like to me
19 with the dotted lines and --

20 Q. But you don't have any knowledge?

21 A. I do not have any knowledge, no.

22 Q. And do you have -- were you provided any information as
23 to whether any of that property was ever taxed?

24 A. No.

25 Q. Those individual lots?

1 A. We didn't look at the tax issue.

2 Q. Okay. So there's no significance to that?

3 A. Not as far as whether they are lots.

4 Q. But they've never taxed these individual lots, or did
5 you not even bother to find out?

6 A. We didn't, we didn't think that was significant.

7 Q. Okay. As I understand your testimony then, you're
8 relying on the deed?

9 A. The deed, yes.

10 Q. The unrecorded survey?

11 A. Correct.

12 Q. And what about the R&C's made you believe that these
13 lots under the R&C's?

14 A. The R&C's described the property and talked about lots
15 into which it may be developed.

16 Q. May be developed?

17 A. Right.

18 Q. And do you have a definition of developed?

19 A. I think developed just means showing the lots on a
20 plat.

21 Q. Well, that would not be developed under any County's
22 State and Subdivision Law in South Carolina, would it?

23 A. County Subdivision Regulations really are not relevant
24 as to whether a piece of property is a piece of
25 property that's a tract, that's a lot. I mean,

1 it's -- we had four real estate lawyers here with
2 lots of experience dealing with real estate matters and
3 nobody said, "Let us look at the Subdivision
4 Regulations." It just didn't appear to us to even make
5 a difference, so we didn't ask.

6 Q. You have no subdivision plat, no compliance with the
7 subdivision regulations, and no authority in the R&C's.
8 Where, where does it come -- where do you arrive at
9 these being lots without those documents?

10 A. We arrive at it because they are shown on a plat and
11 they were conveyed from one party to another with
12 reference to the plat. And everybody agreed that they
13 were lots that were involved in the conveyances.

14 Q. And who were those parties?

15 A. The Owners' Association conveyed to the Stephens
16 entity. I don't remember the first entity. Pelham
17 Properties maybe.

18 Q. Let me give you a hypothetical. If there were a
19 recorded subdivision plat that showed 50 lots and a
20 recreation area of five acres -- and that's recorded.
21 If I were the developer and I owned that five acre
22 tract and I had a survey done cutting it into ten lots
23 and then deeded it to somebody based on that plat
24 without recording the plat, would they have ten lots in
25 that subdivision?

1 A. They might have ten lots. They wouldn't be lots in the
2 subdivision, and they wouldn't be insurable as lots
3 because the prior plat would have created a title issue
4 by calling it a recreational area.

5 Q. What's different about this? Somebody prepares a plat
6 and a deed that says five lots. Why is that binding
7 on everybody else?

8 A. Well, there's no impediment to the five lots. There's
9 no recreational area. There's no reason that they
10 couldn't have divided it into five lots.

11 Q. But shouldn't they have divided it into five lots?

12 A. They did.

13 Q. When?

14 A. When they prepared the plat and conveyed the lots.

15 Q. Are you familiar with Section 30-5-250 of the South
16 Carolina Code?

17 A. Not off the top of my head. You want me to pull the
18 Statute?

19 Q. Are you aware that Section 30-5-240 of the South
20 Carolina Code of Laws requires that all plats or
21 blueprints of subdivisions be recorded?

22 A. I know that there was a Statute that reads that way.
23 I'm not sure that it's still in effect. I'll be glad
24 to pull the Code.

25 Q. Are you aware that Section 30-5-250 is the Statute that

1 applies to referencing plats and deeds and requires
2 that they be recorded?

3 A. I don't know the number off the top of my head. But,
4 yes, I know there is a Statute like that.

5 Q. The fact that this plat was not recorded in accordance
6 with the Statute wouldn't change your opinion?

7 A. No. And, you know, I see what goes in every county in
8 this State. And it never ceases to amaze me that most
9 plats in Charleston County don't get recorded. The
10 lawyers just refer to the plats, but they don't record
11 them. Don't know why. It's just custom there. So,
12 no, I don't think that that means that it's not good
13 property.

14 Q. When you testified that Chicago Title would be able to
15 -- would be willing to issue a title insurance policy,
16 was that without any exceptions?

17 A. No. We didn't deal with the other exceptions. I mean,
18 we didn't search the title. We don't know what all the
19 exceptions would have been. But we meant without
20 exception to this issue, we would have issued a policy.
21 I mean, we would have taken exception to the new
22 restrictions as they were amended and then whatever the
23 other exceptions would have been.

24 Q. Does Chicago Title typically issue title insurance
25 policies insuring against commercial versus residential

1 use?

2 A. We are asked to do that, yes.

3 Q. Do you?

4 A. Yes. I mean, I've gone to look at a many a piece of
5 property to determine whether we thought the character
6 changed enough so we could now call it commercial even
7 though it had residential restrictions.

8 Q. Did you issue any special language or use any special
9 language when you insure specifically for that?

10 A. We do.

11 Q. Do you charge an additional premium?

12 A. We might, yes.

13 Q. Do you know what that language would be, what it would
14 typically be in there?

15 A. It would -- it would say something like, "This policy
16 insures against loss or damage arising from the fact
17 that the property is used as a commercial use despite
18 the restrictive covenants recorded at Page blank at
19 Page blank."

20 Q. But you never got far enough long to determine
21 what language you would use specifically in this
22 policy?

23 A. We did not at this point, no.

24 Q. You had mentioned that in Judge McGowan's Order he
25 called these lots five lots?

1 A. Right.

2 Q. You said you placed some significance on that because
3 he, he used that phrase in that Order?

4 A. I think that was one piece of evidence.

5 Q. Are you aware that he also called this property in the
6 Order multiple times the buffer zone?

7 A. Yes.

8 Q. Did that not have any significance to you?

9 A. It was significant in that it was called a buffer zone
10 when the restrictions were imposed. But, you know,
11 many years have passed. And there was a method to
12 amend the restrictions.

13 Q. You would agree with me that you could have issued a
14 title policy in 2008 for a residential piece?

15 A. Without amending the restrictions; is that what you
16 mean?

17 Q. Yeah.

18 A. Yeah. Sure.

19 Q. Presumably any time between 1980 and 2008?

20 A. We could have taken exception to whatever the
21 restrictions were at the time, yes.

22 Q. Right. And there was nothing impeding this property or
23 preventing this property from filing a subdivision
24 application and recording a plat subdividing these lots
25 to your knowledge?

1 A. No. No, not to my knowledge.

2 Q. What's your understanding of the involvement of the
3 Watson's Orchard subdivision for these R&C's?

4 A. The amended ones or the original ones? Which ones?

5 Q. The original ones.

6 A. The 1980 version?

7 Q. Yes, ma'am.

8 A. My understanding is that they were amending a prior
9 version. I think it was 1961 maybe. And in order to
10 amend them they had to go door to door and get
11 everybody to sign off on them. And they were going to
12 form this Owners' Association that would own the two
13 strips; the one on Pelham Road and the one on Haywood
14 Road. And Mr. Stephens had no interest in being
15 involved in the Owner's Association. He instead wanted
16 five lots.

17 Q. Do you have an understanding as to the R&C's that you
18 reviewed as to what property they apply?

19 A. They apply to the subdivision and to the property on
20 Haywood Road and the property on Pelham Road.

21 MR. HILLER: Thank you. I think that's all I have.

22 RE-DIRECT EXAMINATION

23 BY MR. HERLONG:

24 Q. Just a little housekeeping. I should have done this.

25 Ms. Manning, let me introduce the --

1 MR. HERLONG: Randy, this is the restriction code.

2 That's D-11. Could you mark that?

3 (Defendant's Exh. No. 10 was marked for identification
4 purposes.)

5 MR. HILLER: I've got so many copies.

6 MR. HERLONG: Yeah, I'm just doing this for the record.

7 Q. Ms. Manning, I believe these are the restrictive
8 covenants that were adopted in 1981. I just want you
9 to identify.

10 A. Yes, the restrictions from 1981.

11 Q. Okay.

12 MR. HERLONG: And then I guess we'll mark this
13 Offer.

14 (Defendant's Exh. No. 11 was marked for identification
15 purposes.)

16 Q. Defendant's Exh. 11, that's the offer from Mr. Stephens
17 that we talked about already. You and I; and you and
18 Mr. Hiller as well?

19 A. Correct.

20 (Defendant's Exh. No. 12 was marked for identification
21 purposes.)

22 Q. And page D-69, Defendant's Exh. 12, that's the
23 Memorandum from Mr. Wilkins Norwood that we talked
24 about and you and Mr. Hiller talked about as well?

25 A. Correct.

1 Q. Okay.

2 MR. HERLONG: I would move for the admission of
3 these documents that have been marked.

4 Q. Mr. Hiller asked you a number of questions. Is it
5 still your opinion as stated in the last
6 couple paragraphs of your affidavit that the
7 Stephens lots were lots into which the property had
8 been developed and that each was entitled to a vote on
9 the amendment of the R&C?

10 A. It is.

11 MR. HERLONG: Okay. That's all I have.

12 WHEREUPON, THERE BEING NO FURTHER QUESTIONS, THE
13 DEPOSITION IS CONCLUDED AT 11:23 A.M

14

15 (*This transcript may contain quoted material.

16 Such material is reproduced as read or quoted by
17 the speaker.)

18 (**Certificate accompanies sealed original only.)

19

20

21

22

23

24

25

Exhibit

1

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

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

R.C. Frederick Hanold, III, et al.)
)

Plaintiffs/CounterDefendants,)
)

v.)
)

Watson's Orchard Property Owners
Association, Inc., et al.)
)

Defendants/CounterPlaintiffs,)
)

v.)
)

Property Owners in Watson's Orchard
Subdivision: N. Carter Poe, III, et al.)
)

Third-Party Defendants.)

**NOTICE OF DEPOSITION
OF
CLAIRE T. MANNING**

TO: Randall S. Hiller, Attorney for the Plaintiffs

YOU WILL PLEASE TAKE NOTICE that pursuant to South Carolina Rules of Civil Procedure, Defendants will take the deposition of Claire Manning at the time and place set forth below. The deposition will be taken upon oral examination before a Notary Public or before some other officer authorized by law to take depositions and said deposition will continue from day to day until completed. You are invited to attend and cross-examine.

WITNESS:

DATE:

PLACE:

CLAIRE T. MANNING

August 13, 2012 at 10:00 a.m.

Chicago Title Insurance Company

3700 Forest Drive, Suite 201

Columbia, SC 29204

William D. Herlong (SC Bar No. 014283)

The Herlong Law Firm, LLC

531 S. Main Street, Suite 201 (Zip 29601)

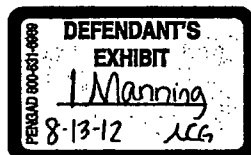
P. O. Box 2003

Greenville, SC 29602-2003

Tel: (864) 382 3800

Fax: (864) 209 1152

E-mail: william@herlonglaw.com



July 25, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

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

R.C. Frederick Hanold, III, et al.)
)
Plaintiffs/CounterDefendants,)
)
v.)

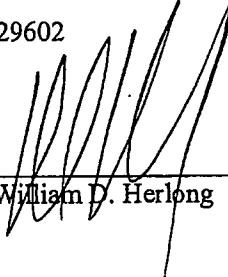
CERTIFICATE OF SERVICE

Watson's Orchard Property Owners)
Association, Inc., et al.)
)
Defendants/CounterPlaintiffs,)
)
v.)

Property Owners in Watson's Orchard)
Subdivision: N. Carter Poe, III, et al.)
)
Third-Party Defendants.)

I hereby certify that I have this day served a copy of the foregoing NOTICE OF
DEPOSITION OF CLAIRE T. MANNING upon defendants by email, with a courtesy copy also
served by United States Mail, postage prepaid, addressed as follows:

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



William D. Herlong

July 25, 2012

Exhibit

2

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

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

R.C. Frederick Hanold, III, et al.,)
)
Plaintiffs/CounterDefendants,)

v.)

Watson's Orchard Property Owners)
Association, Inc., et al.,)

Defendants/CounterPlaintiffs,)

v.)

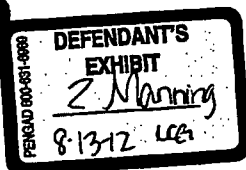
Property Owners in Watson's Orchard)
Subdivision: N. Carter Poe, III, et al.,)

Third-Party Defendants.)

**AFFIDAVIT OF
CLAIRE T. MANNING**

I, Claire T. Manning, hereby state as follows:

1. I am an attorney in Columbia, South Carolina. I am the Vice President and State Manager for Chicago Title Insurance Company ("CTI"). My office is at 3700 Forest Drive, Suite 201, Columbia, SC 29204. I graduated from the University of South Carolina law school in 1981 and have worked in the area of real estate law ever since then. I was in private practice for 11 years representing real estate developers. I have been with CTI for almost twenty years. I routinely deal with real estate title issues and have dealt with literally thousands of title questions over the years. These come up typically in connection with CTI's decisions on whether to issue title insurance. It is not uncommon for me to consult with lawyers around the state on such issues in connection with their title question. I am also a professor at the University of South Carolina law school where I teach a real estate transactions class. I have taught at the law school for four years.

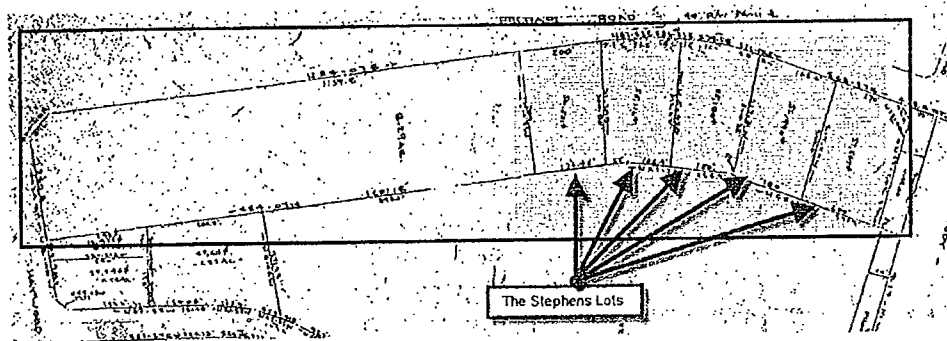


cm #1

2. In 2008, Mr. Patrick Grayson came to us in connection with amending the applicable restrictions and covenants ("R&Cs") on certain property in Greenville. We advised Mr. Grayson on what we believed was the proper procedure and process, such that we would be able to issue title insurance for the property once the process was completed. We considered numerous documents that he provided including the R&Cs themselves, plats, tax maps, the McGowan order, and the proposed amendment documents. In addition to myself, attorneys Charles Hedgepath, Martha McConnell, and Tom Dunlop of CTI were also involved. We had extensive dealings with Mr. Grayson and numerous internal conferences on the matter.

3. Based on that, I have been asked to submit an affidavit regarding our work and conclusions in connection. I have also been asked to testify at trial in this matter and I am prepared to do so. In connection with this I have reviewed CTI's file, I reviewed the Motion for Summary Judgment and the supporting materials, and I have reviewed the Affidavit of Patrick Grayson. I have no stake in this matter. I speak from personal knowledge. I am over 18 years old.

4. The property at issue (the "Property") is across Pelham Road from Watson's Orchard subdivision in Greenville. It is shown on the following excerpt from the plat on the first page of the Motion for Summary Judgment:



In this graphic, the Property can be seen within the large box. (The excerpt comes from the December 3, 1980 Survey for Richard Watson which is referenced in the various deeds

conveying the Stephens portion of the Property. (See SJ-Ex 1 in the Notebook¹ at D-6-D-9.) The lots on the right side of the graphic belong to the Stephens defendants in this case and are referred to here as the "Stephens Lots."

5. The R&Cs applicable to the Property in 2008 (which Mr. Grayson provided to us) included a specific process for amendment. They could be amended as of January 1, 2010, "by vote of a majority of the then owners of the lots into which the property described above [the Property along with another strip along Haywood Road which I understood was also owned by Watson's Orchard Property Owners Association, Inc. ("WOPOA")] shall have been developed and in Watson's Orchard Subdivision." (See Motion for Summary Judgment, page 2; SJ-2 [Notebook, p. D-11]; Affidavit of Patrick H. Grayson, Jr., ¶7.)

6. In the course of our analysis, we concluded that the appropriate process was the one which I understand Mr. Grayson ended up following. We concluded that the new R&Cs would be validly adopted if they received a majority vote of the lots entitled to vote which we concluded were those in Watson's Orchard subdivision and those in the Property. We concluded that the Stephens Lots within the Property were in fact lots and entitled to one vote each. We concluded that the "potential" lots within the remainder of the Property were not in fact lots and were not entitled to votes (that there would be just one vote for those portions of the Property).

7. And we agreed, assuming such a majority vote was obtained, that Chicago Title would issue title insurance for the Property with the amended R&Cs.

8. One of simpler issues we dealt with was the question of whether the Stephens Lots were entitled to votes. Mr. Grayson felt that they were but wanted to be certain we agreed

¹ The "SJ" exhibits have already been submitted to the Court in the "Documents In Support Of Defendants' Motion for Summary Judgment" which is referred to here as the "Notebook." The pages of the Notebook have been numbered in the aggregate in the upper right-hand corner. The page number references in the citations in the text above are to those aggregate page numbers.

before beginning the voting process. The issue, as Mr. Grayson put it, was that the Stephens portion of the Property had not been officially subdivided into lots pursuant to the Greenville County Subdivision Ordinance.

9. We concluded that the Stephens Lots were lots and entitled to one vote each. We conveyed this conclusion to Mr. Grayson on October 10, 2008.

10. I believe we had a further specific conversation with Mr. Grayson on this issue where he double-checked our conclusion. I say this because we reiterated our conclusion that the Stephens Lots were in fact lots in an email to him on October 15, 2008. We noted specifically that the plat (excerpted in the graphic above) showing the five lots did not merely have "dotted lines or anything else that would indicate the lots are not 'legal lots.'" Instead, it "looks like a real plat with metes and bounds."

11. A few weeks or later we received a memorandum from Mr. Grayson dated October 29, 2008, which included a photocopy of the tax map for the property. The tax map showed the lots with dotted lines. This indicated to us that, even though the plat showing the lots which was referenced in the deeds to the Stephens Property had not been recorded and the individual lots were not being taxed separately, the tax authority had been advised that there were separate lots within the parcel and may even have been given a copy of the plat (in order to know where to put the dotted lines). Accordingly, it further supported our conclusion.

12. Here, there really is no doubt that the lots were in fact created. The plat which lays them out is expressly referenced in the deed in which WOPOA conveyed the property to Pelham Properties, Inc.:

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

(Exhibit SJ-9 [Notebook, p. D-250].) The deed and the plat are unambiguous.

13. Further, the existence of the Stephens Lots was confirmed by the transfer of those five lots from WOPOA to Stephens and the subsequent re-conveyance of those lots multiple times among various Stephens entities.

14. Even if they had not been conveyed, they could still have come into existence (the property could still have been developed into them). The issue would simply be a matter of evidence, that is, whether there was evidence that they lots had come into existence. In that case, the recording pursuant to the Greenville County Subdivision Ordinance would be good evidence that they had in fact come into existence. Here no such evidence is necessary since they came into existence when they were sold if not before. Also evidence of their existence would be the dotted lines on the tax map (showing that the plat had been shown to the tax authorities).

15. On March 8 of this year, I meet with Mr. Herlong, whom I understand to be counsel WOPOA and the Stephens defendants. I reviewed again the plat along with Judge McGowan's order. I also reviewed then, and more carefully later, the exhibits to Judge McGowan's order. As we had noted in 2008, his order specifically references the sale of the five lots at issue. Further, the exhibits to his order included the offer to buy the lots and the memorandum of Mr. Wilkins Norwood recommending acceptance, the acceptance of that offer by the necessary number of homeowners in Watson's Order, and Judge McGowan's approval of that acceptance and declaratory judgment authorizing WOPOA to accept that offer and convey the five lots.

16. Accordingly, the record includes an offer to buy five lots, and acceptance of that offer, and the multiple transfers of the five lots. (See Exhibit SJ-5 & SJ-6 [Notebook, pp. D-58-62], Exhibit 16 to SJ-8 [Notebook, pp. D-169-93], and SJ-9, SJ-12, SJ-14, SJ-15 [Notebook, pp. D-250-52, D-261-62, D-265-70, D-271-74].)

17. To the extent recognition by the government is of interest, it is noteworthy that the property index regarding the transfers of the Stephens Lots repeatedly identifies them as five lots: in 1981, "5 lots Pelham Rd." (SJ-11 [Notebook, p. 260]); in 1986, "5 Lots Cnr Pelham & Proposed Rd" (SJ-13 [Notebook at 264]); 2008, "INT 5 LTS PELHAM ROAD." (SJ-16 [Notebook at 276]).

18. To summarize, it was our conclusion in 2008-09 that the Stephens Lots were lots into which the property had been developed and that each was entitled to a vote on the amendment of the R&Cs.

19. Based on that opinion, we (Chicago Title) gave our commitment to issue title insurance if a majority vote was obtained for the amended R&Cs, with the Stephens lots having one vote each, since in that case we believed as a factual matter and as a matter of real estate law that the amended R&Cs would then have been validly adopted and would be in full force and effect.

20. Having re-reviewed the file and applicable materials, I am still of the same opinions.

FURTHER AFFIANT SAYETH NOT.

Claire T. Manning
Claire T. Manning

Sworn to and Subscribed before me this

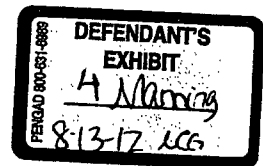
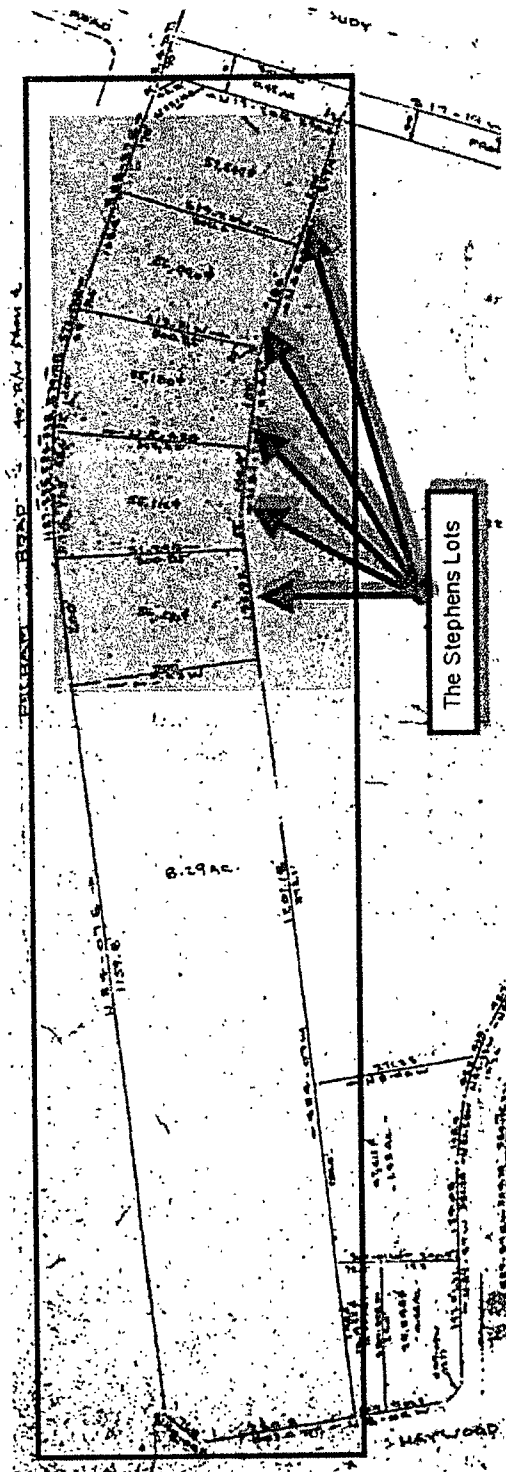
8th day of June, 2012

Michael J. Manning
Notary Public for South Carolina

My Commission expires: April 13, 2016

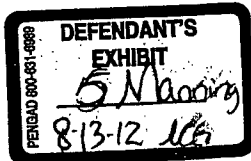
Exhibit

4



Exhibit

5



141 2

Being a portion of the same property conveyed to the Grantor by Lincoln of South Carolina, Inc. by deed of even date, to be recorded herewith.



E 6 0 0

RECORDED JAN 16 1981 at 4:29 P.M.

21637

1-16, 81
21637 & K
STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Willson's Orchard Property
Owner's Association, Inc.

TO

Polkum Properties, Inc.

**TITLE TO REAL ESTATE
BY A CORPORATION**

I hereby certify that the within deed has been duly filed
day of JAN. 19 81
at 4:29 P.M. recorded in Book 1161
of Deeds, page 1

Register of Deeds Greenville, S.C. County

I hereby certify that the within deed has been returned of re-
cord in the Office of the County Auditor for this county, perma-
nent to Section 40-56, Code of Laws of South Carolina, 1975.

Author County

LAW OFFICES OF
EARLE, BOZEMAN & GRAYSON
THE PRIMER FEDERAL BUILDING
401 COLLIER STREET
GREENVILLE, S.C. 29601

5 Lots Polkum Rd.

21637

Exhibit

6

TITLE TO REAL ESTATE BY A CORPORATION

LATHAN & BARBARE, P. A. VOL 1274 PAGE 237

K.C. B. 1907
CITY 29602STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

KNOW ALL MEN BY THESE PRESENTS, that PELHAM PROPERTIES, INC.

A Corporation chartered under the laws of the state of South Carolina

and having a principal place of business at

Greenville, State of South Carolina, in consideration of Distribution in kind pursuant to corporate dissolution of Pelham Properties, Inc. of which J. B. Stephens was owner of 100% of the outstanding stock; the receipt of which is hereby acknowledged, has granted, bargained, sold, and released, and by these presents does grant, bargain, sell and release unto J. B. Stephens, his heirs and assigns forever; (11)-200-543.3-1-59.1

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

BEGINNING at a stake at the intersection of Pelham Road and a proposed road, running thence with the curvature of said intersection, the chord of which is S. 25-48 E. 43.8 feet to a stake; running thence with the western side of said proposed road, S. 17-20 W. 270.6 feet to a stake at the corner of a tract containing 22.15 acres; running thence with the line of said tract, N. 68-57 W. 200 feet to a point; thence continuing N. 86-57 W. 180 feet to a point; thence continuing N. 68-57 W. 7.9 feet to a point; running thence N. 82-28 W. 256.9 feet to a point; running thence S. 84-07 W. 55 feet to a point; thence continuing S. 84-07 W. 176.92 feet to a point; running thence N. 5-53 W. 300 feet to a point on the southern side of Pelham Road; running thence with the southern side of Pelham Road, N. 84-07 E. 200 feet to a point; thence continuing with the southern side of Pelham Road, N. 84-07 E. 31.9 feet to a point; thence continuing with the southern side of Pelham Road, the following courses and distances, to-wit: N. 87-55 E. 99.5 feet; S. 85-33 E. 68.6 feet to a point; S. 85-33 E. 32 feet to a point; S. 79-11 E. 100 feet to a point; S. 72-58 E. 63 feet to a point; S. 72-58 E. 31.6 feet to a point; S. 68-57 E. 168.4 feet to a point; S. 68-57 E. 170 feet to the point of beginning.

THIS conveyance is subject to all restrictions, setback lines, roadways, zoning ordinances, easements and rights of way appearing on the property and/or of record.

THIS is the same property as that conveyed to the Grantor herein by deed of Watson's Orchard Property Owners Association, Inc. recorded in the RMC Office for Greenville County in Deed Book 1141 at Page 1 on January 18, 1981.

together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned unto the grantee(s), and the grantee(s)'s heirs or successors and assigns, forever. And, the grantor does hereby bind itself and its successors to warrant and forever defend all and singular said premises unto the grantee(s) and the grantee(s)'s heirs or successors against every person who may lawfully claim or to claim the same or any part thereof.

IN WITNESS whereof the grantor has caused its corporate will to be affixed hereto and these presents to be subscribed by its duly authorized officers, this 22nd day of August 19 86.

SIGNED, sealed and delivered in the presence of:

PELHAM PROPERTIES, INC.

(SEAL)

A Corporation

By:

President

Secretary

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

PROBATE

Personally appeared the undersigned witness and made oath that (s)he saw the within named Corporation, by its duly authorized officers, sign, seal and as its act and deed, deliver the within written Deed, and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

SWORN to before me this 22nd day of August 19 86.

Notary

Notary Public for South Carolina
My commission expires 1/17/90

--2 AUG 25 96 1325

4.000CI

RECORDED this

day of AUG 25 1986

19

at 2:17 P/

M. No.

7570

PERIOD 800-881-0889

DEFENDANT'S
EXHIBIT6-Manning
8-13-12 JCG

Exhibit

7

LAW OFFICES OF DANNIS R. WYATT & KAPPLI, LLC, 401 PETERSON STREET, GREENVILLE, SOUTH CAROLINA 29601

BOOK 2053 PAGE 157/1

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that J. B. STEPHENS a/k/a JAMES B. STEPHENS in consideration of ONE AND 00/100 (\$1.00)— Dollars, the receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto JAMES B. STEPHENS, as Trustee for the James B. Stephens Revocable Trust Agreement dated March 19, 1996, amended by First Amendment to Revocable Trust Agreement dated February 22, 1999, as amended by Second Amendment to Revocable Trust Agreement dated June 20, 2001, and as amended by Amended and Restated James B. Stephens Revocable Trust Agreement dated July 15, 2003, its successors and assigns, forever:

PARCEL ONE:

ALL that certain piece, parcel or Tract of Land, situate, lying and being in the County of Greenville, State of South Carolina, containing 97.26 acres, more or less, as shown on a plat entitled "Survey for J. B. Stephens", prepared by W. R. Williams, Jr., dated May 2, 2000, and recorded of even date herewith in the Register of Deeds Office for Greenville County, South Carolina in Plat Book 474, Page 13. Reference is hereby made to said plat for a more accurate metes and bounds description thereof.

This being the same property conveyed to J. B. Stephens by deed of John W. Humphries and Goldie M. Humphries dated February 20, 1970, and recorded in the RMC Office for Greenville County, South Carolina on February 23, 1970, in Deed Book 884, Page 636 and also by deed of Judy Hill dated March 2, 1971 and recorded in the RMC Office for Greenville County, South Carolina in Deed Book 910, Page 259.

TMS #0675.07-01-001.00
 TMS #0675.07-01-004.00

EXEMPT

PARCEL TWO:

ALL that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Greenville, Butler Township on the northern side of Pelham Road, being known and designated as Lot No. 4 as shown on plat entitled "Property of Harriet Cleveland Dobbins, Gertrude Cleveland McCain and Alice Cleveland Richardson" prepared by Piedmont Engineers and Architects, dated September 30, 1963, and having according to said plat, the following metes and bounds:

BEGINNING at an iron pin on the northern edge of Pelham Road at the joint front corner of Lots 3 and 4, which pin is 1,040 feet, measuring along the northern edge of Pelham Road, from the southeast corner of a lot belonging to Hungerford and running thence along the joint lines of Lots 3 and 4, N. 2-10 E. 440.0 feet to an iron pin on the line of other property belonging to the grantors; thence along the line of that property, S. 86-08 E. 300.0 feet to an iron pin at the joint rear corner of Lots 4 and 5; thence along the joint line of said lots, S. 11-03 W. 453.8 feet to an iron pin on the northern edge of Pelham Road, N. 80-39 W. 115.0 feet to an iron pin; thence continuing along the northern edge of Pelham Road, N. 86-28 W. 115.0 feet to the beginning corner.

This being the same property conveyed to the J. B. Stephens and Ann Stephens by deed of Richard F. Watson, Jr. and Evelyn P. Watson, dated December 31, 1963, and recorded in the RMC Office for Greenville County, South Carolina in Deed Book 730, Page 119. Ann Stephens having deeded her undivided one-half interest to J.B. Stephens by deed dated September 4, 1984, recorded in the RMC Office for Greenville County, South Carolina on September 18, 1984, in Deed Book 1221, Page 979.

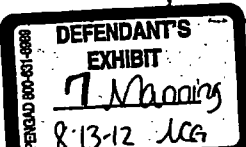
TMS #0543.03-01-007.06

PARCEL THREE:

101628

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

BEGINNING at a stake at the intersection of Pelham Road and a proposed road; running thence with the curvature of said intersection, the chord of which is S. 25-48 E. 43.8 feet to a stake; running thence with the western side of said proposed road, S. 17-20 W. 270.6 feet to a stake at the corner of a tract containing 22.15 acres; running thence with the line of said



BOOK 2053 PAGE 158

tract, N. 68-57 W. 200 feet to a point; thence continuing N. 86-57 W. 180 feet to a point; thence continuing N. 68-57 W. 7.9 feet to a point; running thence N. 82-28 W. 256.9 feet to a point; running thence S. 84-07 W. 55 feet to a point; thence continuing S. 84-07 W. 176.92 feet to a point; running thence N. 5-53 W. 300 feet to a point on the Southern side of Pelham Road; running thence with the Southern side of Pelham Road, N. 84-07 E. 200 feet to a point; thence continuing with the Southern side of Pelham Road, N. 84-07 E. 31.9 feet to a point; thence continuing with the Southern side of Pelham Road, the following courses and distances, to-wit: N. 87-55 E. 99.5 feet; S. 85-33 E. 68.6 feet to a point; S. 85-33 E. 32 feet to a point; S. 79-11 E. 100 feet to a point; S. 72-58 E. 63 feet to a point; S. 72-58 E. 31.6 feet to a point; S. 68-57 E. 168.4 feet to a point; S. 68-57 E. 170 feet to the point of beginning.

This being the same property conveyed to J. B. Stephens by deed of Pelham Properties, Inc. dated August 22, 1986 and recorded in the RMC Office for Greenville County, South Carolina on August 25, 1986, in Deed Book 1274, Page 237.

TMS #0543.03-01-057.01

PARCEL FOUR:

ALL that piece, parcel or tract of land in Butler Township, Greenville County, State of South Carolina, containing 11.447 acres, situate, lying and being on the norther side of Rocky Creek Road, and being known as property of James B. Stephens, as shown on plat thereof by C. O. Riddle, RLS, dated December 2, 1983, and recorded in the RMC Office for Greenville County in Plat Book _____, Page _____; and having, according to said plat, the following metes and bounds, to-wit:

BEGINNING at a nail in the center of Rocky Creek Road at the corner of property now or formerly belonging to Ola S. Harris, and running thence N. 17-55 W. 96.66 feet to an iron pin; thence N. 21-15 W. 145.0 feet to an iron pin; thence N. 75-09 W. 80.69 feet to an iron pin; thence S. 87-50 W. 125.69 feet to an iron pin in the line of property now or formerly belonging to Thomas M. Stevenson; thence along Stevenson's line N. 6-57 W. 700.58 feet to an old iron pin and stone; thence N. 74-46 E. 300.37 feet to an old iron pin; thence S. 55-03 E. 199.67 feet to an old iron pin; thence S. 54-05 E. 129.38 feet to an iron pin; thence S. 11-18 E. 336.84 feet to an iron pin; thence S. 11-18 E. 901.39 feet to an iron pin in the center of Rocky Creek Road; thence along the center of Rocky Creek Road as the line S. 81-44 W. 50 feet to an iron pin; thence continuing with the center of Rocky Creek Road S. 81-44 W. 212.28 feet to the beginning corner.

This being the same property conveyed to James B. Stephens by deed of A. M. Stephens, Jr., Hazel S. Jones, Frances S. Mason, Perry R. Stephens and Clinton Stephens dated February 24, 1984, and recorded in the RMC Office for Greenville County, South Carolina in Deed Book 1211, Page 127.

157790-5473-1-22.3 → 11.447A
TMS #0547.03-01-022.00
DWS

PARCEL FIVE:

ALL that certain piece, parcel or lot of land situate, lying and being in the County of Greenville, State of South Carolina, near Rocky Creek Baptist Church as shown on plat entitled "Property of James L. Miers and Susan E. Miers", prepared by R. B. Bruce, RLS, dated July 2, 1984 and recorded in the RMC Office for Greenville County, in Plat Book 10-S at Page 85 and having such metes and bounds as shown thereon, reference to said plat being made for a more complete description.

This being the same property conveyed to James B. Stephens by deed of James L. Miers and Susan E. Miers dated July 12, 1990, and recorded in the RMC Office for Greenville County on July 13, 1990, in Deed Book 1405, Page 472.

TMS #0547.03-01-022.02

This conveyance is subject to any and all restrictions, easements, rights-of-way and/or zoning ordinances of record or actually existing on the premises.

Grantee's Address: 621 Pelham Road
Greenville, SC 29615

BOOK 2053 PAGE 159
 together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned unto the grantee(s), and the grantee's(s') heirs or successors and assigns, forever. And, the grantor(s) do(es) hereby bind the grantor(s) and the grantor's(s') heirs or successors, executors and administrators to warrant and forever defend all and singular said premises unto the grantee(s) and the grantee's(s') heirs or successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS the grantor's(s') hand(s) and seal(s) this 15th day of July, 2003

SIGNED, sealed and delivered in the presence of:

James B. Benthin
James B. Benthin

J. B. STEPHENS

J.B. Stephens
James B. Stephens
 a/k/a JAMES B. STEPHENS

STATE OF SOUTH CAROLINA)
 COUNTY OF GREENVILLE)

PROBATE

PERSONALLY APPEARED before me the undersigned witness and made oath that (s)he saw the within named J. B. STEPHENS, a/k/a JAMES B. STEPHENS sign, seal and as his act and deed deliver the within written TITLE TO REAL ESTATE and that (s)he with the other witness subscribed above, witnessed the execution thereof.

SWORN to before me this 15th day of July, 2003

James B. Benthin (LS)
 Notary Public for South Carolina
 My commission expires:

James B. Benthin
 Witness

BOOK 2053 PAGE 160

STATE OF SOUTH CAROLINA)
COUNTY OF Greenville)

AFFIDAVIT

Page 1 of 2

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

1. I have read the information on this affidavit and I understand such information.

2. The property being transferred is located at _____
bearing _____ County Tax Map Number _____, was
transferred by _____ to _____ on _____.

3. Check one of the following: The deed is

- (a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
- (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
- (c) Y exempt from the deed recording fee because (See Information section of affidavit): 9

(If exempt, please skip items 4, 7, and go to item 8 of this affidavit.)

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

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):

- (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of _____.
- (b) _____ The fee is computed on the fair market value of the realty which is _____.
- (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____.

5. Check Yes _____ or No _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____

6. The deed recording fee is computed as follows:

- (a) Place the amount listed in item 4 above here: _____
- (b) Place the amount listed in item 5 above here: _____ (If no amount is listed, place zero here.)
- (c) Subtract Line 6(b) from Line 6(a) and place result here: _____

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

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

BOOK 2053 PAGE 161

Page 2 of 2

9. I 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.

Carl S. Soper atty for Green/Gruber
Responsible Person Connected with the Transaction

SWORN to before me this 29 August 2003 John F. Wyatt day of
Print or Type Name Here
Notary Public for SC
My Commission Expires: _____

INFORMATION

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty to a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,
- (12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed.
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagor or deed pursuant to foreclosure proceedings;
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty;
- (15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the

Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

FILED FOR RECORD IN GREENVILLE
COUNTY SC R.O.D. OFFICE AT 01:06 PM
08 29 03 RECORDED IN DEED
BOOK 2053 PAGE 0157 THRU 0161
DOC # 2003101628

Judy A. Hiv

Exhibit

8

Wm Dale McKinney, Attorney at Law, 1201 E. Washington Street, Greenville SC 29601

Grantee's Address: 408 Hidden Hills Drive, Greenville SC 29605

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

TITLE TO REAL ESTATE

NO TITLE SEARCH PERFORMED

KNOW ALL MEN BY THESE PRESENTS:

That, James B. Stephens, as Trustee for the James B. Stephens Revocable Trust Agreement dated March 19, 1996, and as amended in various amendments thereafter, hereinafter referred to as Grantor, in consideration of the sum of TEN AND 00/100 DOLLARS (\$10.00) and no other consideration, paid to Grantor by Pelham Farm, LLC, and Legacy One, LLC, and SESP, LLC, all being South Carolina Limited Liability Companies, hereinafter referred to as Grantees, at and before the sealing of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Grantees, as tenants in common, their heirs and assigns forever, a total undivided one-percent (1.0%) interest in the following described property:

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

BEGINNING at a stake at the intersection of Pelham Road and a proposed road, either now or at that time; running thence with the curvature of said intersection, the chord of which is S. 25-48 E. 43.8 feet to a stake; running thence with the western side of said proposed road, S. 17-20 W. 270.4 feet to a stake at the corner of a tract containing 22.15 acres; running thence with the line of said tract, N. 68-57 W. 200 feet to a point; thence continuing N. 86-57 W. 180 feet to a point; thence continuing N. 68-57 W. 7.9 feet to a point; running thence N. 82-28 W. 256.9 feet to a point; running thence S. 84-07 W. 55 feet to a point; thence continuing S. 84-07 W. 176.92 feet to a point; running thence N. 5-53 W. 300 feet to a point on the Southern side of Pelham Road; running thence with the Southern side of Pelham Road, N. 84-07 E. 200 feet to a point; thence continuing with the Southern side of Pelham Road, N. 84-07 E. 31.9 feet to a point; thence continuing with the Southern side of Pelham Road, the following courses and distances, to wit: N. 87-55 E. 99.5 feet; S. 85-33 E. 68.6 feet to a point; S. 85-33 E. 32 feet to a point; S. 79-11 E. 100 feet to a point; S. 72-58 E. 63 feet to a point; S. 72-58 E. 31.6 feet to a point; S. 68-57 E. 168.4 feet to a point; S. 68-57 E. 170 feet to the point of beginning.

DERIVATION: THIS BEING a portion of the property conveyed unto Grantor by deed of J. B. Stephens a/k/a James B. Stephens dated July 15, 2003 and recorded August 29, 2003 in the Greenville County Register of Deeds Office in Deed Book 2053 at Page 157.

TMS NO: 0543.03-01-057.01

The above-described property is conveyed subject to all easements, rights of way, and restrictions appearing of record and actually existing on the ground affecting such property.

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 said premises before mentioned unto the Grantee and Grantee's Heirs/Successors and Assigns forever.

AND Grantor does hereby bind Grantor and Grantor's Heirs, Executors and Administrators to warrant and forever defend all and singular the said premises unto Grantee and Grantee's Heirs/Successors and Assigns against Grantor and Grantor's Heirs and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

Witness the hand and seal of Grantor this 15th day of April, 2008.

Signed, sealed and delivered in the presence of:

Johnny S. Woods
John R. Pomeroy

James B. Stephens, as Trustee for the James B. Stephens Revocable Trust Agreement dated March 19, 1996, and as amended in various amendments thereafter
James B. Stephens
James B. Stephens, Trustee

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

PROBATE

Personally appeared before me the undersigned witness and made oath that (s)he saw the Grantor sign, seal and as Grantor's act and deed deliver the written deed, and that said witness, together with the other witness whose name is also above subscribed, witnessed the execution of the within deed by Grantor.

SWORN to before me this 15 day of April, 2008.

Johnny S. Woods (Seal)
Notary Public for South Carolina

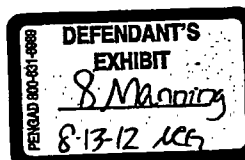
My Commission Expires: 3-10-10
3-09-10 JSW



April 17, 2008 12:00:58
Rec \$10.00 Only Tax: \$2.20

2008036072 DEED 3 PGS
Book: 06 2328 Page: 1674-1678
Case: \$1,500.00
State Tax: \$5.20

FILED IN GREENVILLE COUNTY, SC



BOOK 2320 PAGE: 1875

STATE OF SOUTH CAROLINA)

AFFIDAVIT OF CONSIDERATION

COUNTY OF GREENVILLE)

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

1. I have read the information on the back of this affidavit and I understand such information.
2. The property being transferred is located in Greenville County bearing Tax Map Number 0543.03-01-057.01, was transferred by James B. Stephens, as Trustee on April 15, 2008.
3. Check one of the following: The deed is
 - (a) X Subject to the deed recording fee as a transfer for consideration paid, or to be paid, in money or money's worth.
 - (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) _____ exempt from the deed recording fee because (See Information section of affidavit):
 (If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)
 If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes _____ or No _____
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):
 - (a) _____ The fee is computed on the consideration paid, or to be paid, in money or money's worth in the amount of _____
 - (b) _____ The fee is computed on the fair market value of the realty that is _____
 - (c) X The fee is computed on the fair market value of the realty as established for property tax purposes which is \$1,560.00 (1% of \$156,000.00)
5. Check Yes _____ or No _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is: _____
6. The deed recording fee is computed as follows:

(a) Place the amount listed in item 4 above here:	\$1,560.00
(b) Place the amount listed in item 5 above here:	_____
(If no amount is listed, place zero here.)	-0-
(c) Subtract Line 6(b) from Line 6(a) and place result here:	\$1,560.00
7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording, fee due is: \$ 5.77
8. As required by Code Section, 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantor
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

BOOK 2320 PAGE 1676

James B. Stephens
Signature of Responsible Person Connected with the Transaction
James B. Stephens
James B. Stephens, Trustee

SWORN to before me this 15 day of April, 2008.

Johnny A. Woods (L.S.)
Notary Public for South Carolina

FILED FOR RECORD IN GREENVILLE COUNTY, SC ROD
2008036072 Book: DE 2320 Page: 1674-1676
April 17, 2008 12:00:56

My Commission Expires: 3-10-10
3-09-10 gsw

Timothy J. Hannon

INFORMATION

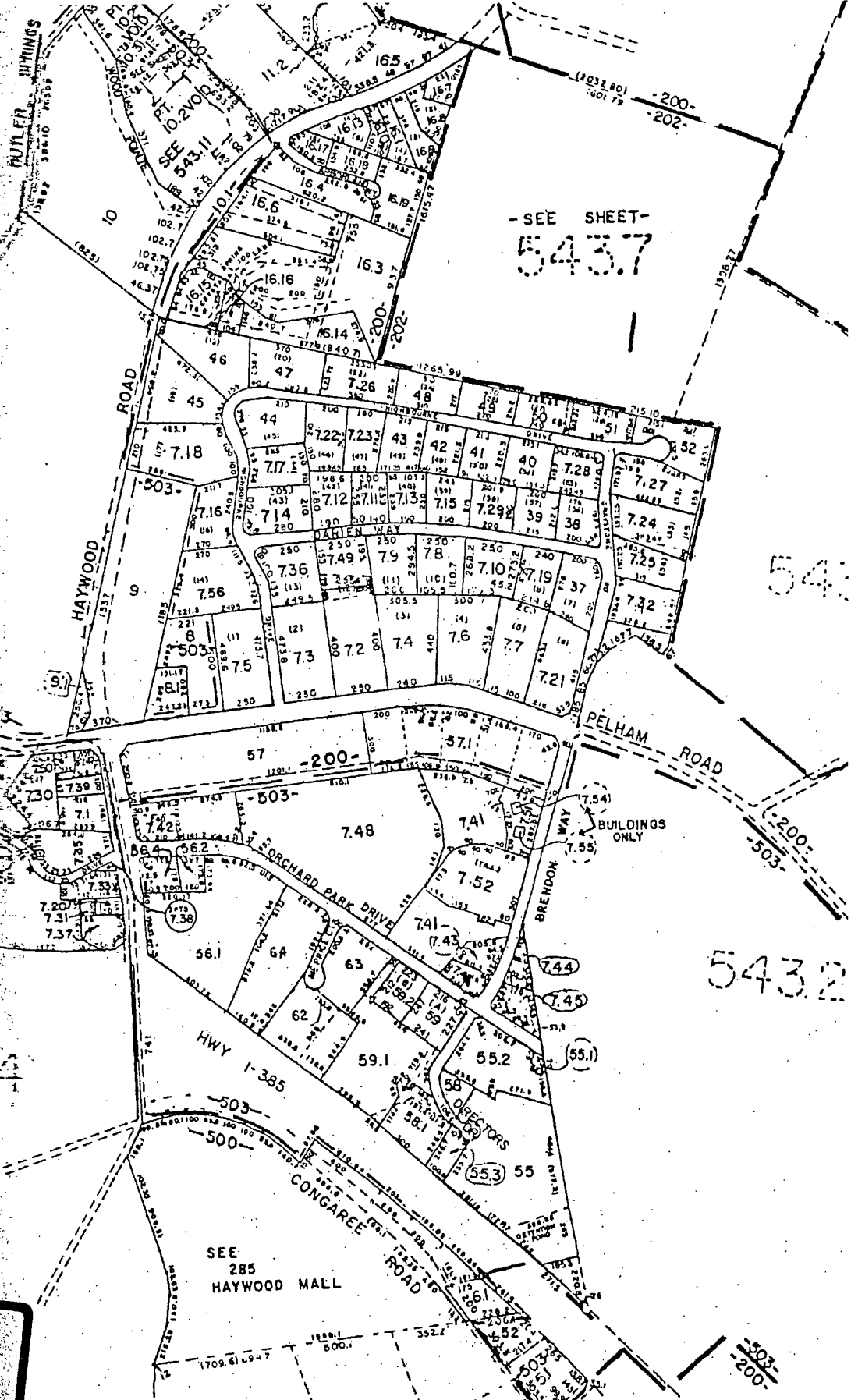
Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty." Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of time to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, aunts, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any the above. A "charitable entity" means an entity that may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,
- (12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed.
- (13) transferring realty subject to a mortgage to the mortgagee whether by deed in lieu of foreclosure executed by the mortgagor or deed pursuant to foreclosure proceedings.
- (14) Transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.
- (15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivision to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined the Federal Power Act.

Exhibit

9



- SEE SHEET -
543.7

543

543.2

DEFENDANT'S
EXHIBIT
9
8-13-12

SEE
285
HAYWOOD MALL

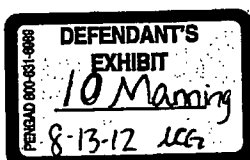
Exhibit

10

FILED
STATE OF SOUTH CAROLINA GREENVILLE COUNTY S.C. DECLARATION OF RESTRICTIONS
COUNTY OF GREENVILLE DATE: 11/28/01 AND PROTECTIVE COVENANTS
LORRAINE B. BENDERSLEY
P.M.C.

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

NOW, THEREFORE, Declarant hereby declares that all of the properties described in Exhibit "A" shall be held, sold and conveyed subject to the following easements, restrictive covenants and conditions, which are hereby imposed against said property for the purpose of protecting the value and desirability of said property; that the covenants, conditions and restrictions hereinafter set forth shall run with the property described in Exhibit "A" and be binding upon all parties having any right, title or interest in the said described properties or any part thereof, their heirs, successors and assigns and shall inure to the benefit of each owner thereof and all owners of property in Watson's Orchard Subdivision as shown on plat recorded in the R.M.C. Office for Greenville County in Plat Book 000, Page 99, and the lot in Plat Book 4-C, Page 133, hereinafter referred to as "Watson's Orchard Subdivision", until January 1, 2010 at which time said covenants, conditions, and restrictions shall be automatically extended for successive periods of ten (10) years each unless, by vote of a majority of the then owners of the lots into which the property described above shall have been developed and in Watson's Orchard Subdivision, the within covenants, conditions and restrictions are changed or amended, in whole or in part. In the event such vote shall take place, such vote shall be cast by the legal title holder of each individual lot, provided, however, that only one vote shall be cast for each lot in the event legal title thereto shall be held jointly or otherwise.



4320 W-23

-2-

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

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

ARTICLE I.

USES PERMITTED AND PROHIBITED

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

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

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

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

-3-

149 963

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

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

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

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

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

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

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

ARTICLE II.

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

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

140 p. 964

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

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

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

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

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

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

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

5.

140 p. 965

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

ARTICLE III.

APPROVAL OF PLANS

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

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

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

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

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

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

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-8-

140 966

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

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

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

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

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

140 966

4325 NY-2

-7-

140 PAGE 967

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

ARTICLE IV.

MISCELLANEOUS

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

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

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

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

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

In the presence of:

Robert H. Grayson
William D. Smith

LINCOLN OF SOUTH CAROLINA, INC. (SEAL)

BY: *W. A. Seaver*
President & Secretary

4328 W-2

-B-

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

PROBATE

140 DEC 968

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

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

Allen D. Smith

Peter H. Gray (L.S.)
Notary Public for South Carolina
My Commission Expires: 10-15-89

3320 M-2

EXHIBIT "A"

140 969

ALL that certain piece, parcel or tract of land situate, lying and being in the State of South Carolina, County of Greenville, containing 14.78 acres, as is more fully shown on a plat entitled "Survey for Richard Watson", prepared by Carolinn Surveying Company, dated June 27, 1980, revised August 19, 1980, revised August 27, 1980, revised September 3, 1980, and revised December 1, 1980, and having according to said plat, the following metes and bounds, to-wit:

BEGINNING at a stake on the southern side of Pelham Road, at its intersection with Haywood Road and running thence along the southern side of Pelham Road, N. 84-07 E. 1,391.7 feet to a stake; running thence N. 87-55 E. 99.6 feet to a stake; running thence S. 85-33 E. 100.6 feet to a stake; running thence S. 79-11 E. 100.0 feet to a stake; running thence S. 72-58 E. 99.6 feet to a stake; running thence S. 68-57 E. 338.4 feet to a stake at the intersection of Pelham Road and a proposed road; running thence with the curvature of said intersection, the chord of which is S. 25-48 E. 43.8 feet to a stake; running thence with the western side of said proposed road, S. 17-20 W. 270.6 feet to a stake at the corner of a tract containing 22.15 acres; running thence with the line of said tract, the following courses and distances to-wit: N. 68-57 W. 387.9 feet to a stake; N. 82-20 W. 258.9 feet to a stake; S. 84-07 W. 1,433.1 feet to a stake on the eastern side of Haywood Road; running thence with the eastern side of Haywood Road, N. 8-06 W. 250.8 feet to a stake at the intersection of Haywood Road and Pelham Road; running thence with the curvature of said intersection, the chord of which is N. 40-06 E. 71.0 feet to the point of beginning.

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

BEGINNING at an iron pin at Pelham Road at the corner of property now or formerly of Adams, and running with the line of the Adams property, N. 14-35 E. 1337 feet to an iron pin; thence S. 72 E. 348 feet, thence S. 14-35 W. 1185 feet to Pelham Road; thence with the northern side of Pelham Road, S. 83-50 W. 370 feet to the point of beginning.

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

BEGINNING at an iron pin on the north side of Pelham Road, formerly property of Nell Baker Adams, and running thence with Pelham Road, N. 84-25 E. 75-15 feet to an iron pin; thence with intersection of said road and intersection of Haywood Road, N. 37-45 E. 58.97 feet to an iron pin; thence with Haywood Road, N. 8-18 W. 251.20 feet to an iron pin; thence with property of Nell Baker Adams, S. 14-35 W. 250.4 feet to an old iron pin; thence S. 14-35 E. 70.35 feet to the beginning.

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

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

44

43217 RV.2

Exhibit

11

EXHIBIT "B"

STATE OF SOUTH CAROLINA

OFFER

COUNTY OF GREENVILLE

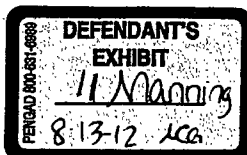
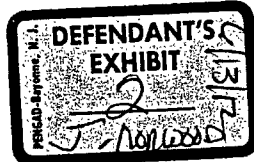
The undersigned, Pelham Properties, Inc., hereby offers to purchase from Watson's Orchard Homeowner's Associates, Inc.,

five (5) lots as are more fully described in Exhibit "A" annexed hereto and made a part hereof by reference, and known as the "Property", for a purchase price of Twenty One Thousand One Hundred and 00/100 (\$21,100.00) Dollars per lot.

Said Property to be free and clear of all liens and encumbrances except for utility easements consisting of electricity, telephone, water and sewer and the Restrictions and Protective Covenants set out in the Agreement to Release of Restrictions applicable to the Buffer Strip.

Dated at Greenville, South Carolina this 6th day of October, 1980.

PELHAM PROPERTIES, INC.

BY: *[Signature]*
President

ALL those certain pieces, parcels or lots of land, situate, lying and being in the State of South Carolina, County of Greenville, being identified as five (5) lots fronting on Pelham Road, to be more fully shown on a new survey, and being described in the aggregate according to a survey entitled "Survey for Richard Watson", dated June 27, 1980, revised August 18, 1980 and August 27, 1980, prepared by Carolina Surveying Company, with the following metes and bounds, to-wit:

BEGINNING at a point on the southern side of Pelham Road, at its intersection with a proposed road opposite Graysstone Road, and running thence with the southern side of Pelham Road, N. 88-57 W. 338.4 feet to a point; thence continuing with the southern side of Pelham Road, N. 72-58 W. 89.8 feet to a point; thence continuing with the southern side of said road, N. 79-11 W. 100 feet to a point; thence continuing with the southern side of said road, N. 85-33 W. 100.6 feet to a point; thence continuing with the southern side of said road, S. 87-55 W. 99.5 feet to a point; thence continuing with the southern side of said road, S. 84-07 W. 231.4 feet to a point; running thence in a southerly direction, perpendicular to Pelham Road, approximately S. 8-06 E. 300 feet to a point in the line of a tract containing 22.15 acres; running thence along the line of said property, N. 84-07 E. 225 feet, more or less, to a point; running thence S. 82-28 E. 256.9 feet to a point; running thence S. 68-57 E. 387.8 feet to a point on the western side of the proposed road; running thence with the western side of said proposed road, N. 17-20 E. 270.8 feet to a point at the intersection of said proposed road and Pelham Road; running thence with the curvature of said intersection, the chord of which is N. 23-48 W. 43.8 feet to the point of beginning.

Exhibit

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October 14, 1980

TO: Watson's Orchard Property Owners

SUBJECT: Releasing of Restrictions

It appears that at long last we, the lot owners in Watson's Orchard, have agreed to release the restrictions on the Watson property and to go forward with the formation of Watson's Orchard Property Owners Association, Inc., and other steps in the Agreement to Release.

J. B. Stephens, a homeowner whose lot fronts on Pelham Road, does not want to participate in the corporation. Instead, he is willing to buy the five lots most directly across from his home. He has made an offer to purchase five minimum lots (200 feet frontage and 55,000 sq. ft.) in front of his house for a purchase price of \$105,500.00 and give up his interest in the corporation. This is a price of \$21,100.00 per lot.

When you consider that the value of a share of stock in Watson's Orchard Property Owners Association, Inc. should be worth a minimum of \$7,000.00, the corporation will net around \$22,500.00 per lot.

If the lots were sold in the open market for \$25,000.00 through a realtor, only \$22,500.00 would be netted after commission... It is our opinion that this is a fair price for this purchase.

Therefore, your committee believes the offer is fair and recommends that it be accepted.

The Board of Directors and officers of the Watson's Orchard Property Owners Association, Inc. will not be selected until after the transaction conveying the Buffer Strip and payment of funds is complete, and you will be able to vote to elect the Board of Directors and officers.

However, in order to accept the offer and complete this transaction, a majority of the lot owners can vote in favor of the offer at this time.

To accept this offer, please sign your name on the copy of this letter, and return it at your earliest convenience in the enclosed envelope.

A declaratory judgment will be sought to confirm that the conditions in the Agreement to Release have been met, to confirm the location of the new road through the Watson property, and location of zoned property, and to declare that the currently existing restrictions are removed. The new restrictions which we have approved will be recorded at the closing of the conveyance of the Buffer Strip. Each of you will receive a copy of the Summons and Complaint in the declaratory judgment matter which will be brought by Lincoln of South Carolina, Inc.

Time is of the essence. Please return a signed copy of this letter at your earliest convenience.

Very truly yours,

Wilkins Norwood
Wilkins Norwood

Homeowners

