

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FOR AIKEN COUNTY
Court of Common Pleas

M. Anderson Griffith, Master-in-Equity for Aiken County

Case Number 2011-CP-02-00548

Three Runs Plantation Homeowners Association, Inc.,

Respondent,

vs.

Jay J. Jacobs and Judith B. Jacobs,

Appellants,

vs.

T.R. Sales Plantation, LLC and J. Wayne Raiford,

Respondents.

RECORD ON APPEAL
VOLUME I

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FILE

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Three Runs Plantation Homeowners
Association, Inc.)

Plaintiff,)

Vs.)

Jay J. Jacobs and Judith B. Jacobs)

Defendants and Third- Party)

Plaintiffs,)

Vs.)

T. R. Sales Plantation, LLC and J. Wayne
Raiford)

Third-Party Defendant.)

CASE NO.: 11-CP-02-00548

ORDER

FILED 7/1 200 13
Liz Godard
C.C.P. & G.S.
4:50
Kerry Logg

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Liz Godard, Clerk of Court of Common Pleas and General
Sessions for Aiken County, South Carolina do hereby certify
that the foregoing constitutes a true and correct copy of the
original documents which have been filed in my office this

Hearing Dates:

August 20, 2012, October 30, 2012,
October 31, 2012 and December 11, 2012

Judge:

M. Anderson Griffith

C.C.P. & G.S., Aiken County, S.C.

Attorneys for Plaintiff:

William Byrd Warlick and James S. Murray

Deputy Clerk

Attorney for Defendants:

Clarke McCants, III

PROCEDURE

1. The Summons and Complaint were filed on March 11, 2011.
2. The defendants filed their Answer, Counterclaims and Third Party Summons and Complaint on April 29, 2011.
3. The Third Party defendants filed an Answer on May 12, 2011.
4. The Reply was filed on May 12, 2011.
5. The hearings were held on August 20, 2012, October 30, 2012, October 31, 2012 and December 11, 2012.

STATEMENT OF FACTS

Three Runs Plantation Homeowners Association, Inc. is a corporation organized and existing under the laws of South Carolina. The subdivision is located in Aiken County, South Carolina. Three Runs Plantation Homeowners Association, Inc. consists of homeowners who own property in the subdivision or use the facilities by some form of agreement.

The defendants, Jay J. Jacobs and Judith B. Jacobs, purchased lots 10 and 11 in Phase 2 of Three Runs Plantation on December 14 2007. The defendants' deed was recorded on December 17, 2007. The original Protective Covenants for Three Runs was originally recorded on November 30, 2005. The defendants were presented with a brochure for Three Runs Plantation that stated future amenities included tennis courts and a fitness center. Those amenities had not been built when the defendants purchased their lots. Although the plaintiff stated that the brochure had a disclaimer, the brochure presented to the defendants did not have the disclaimer language. The defendants and the plaintiff used the same real estate broker/agency and it appears a dual agent agreement was signed by the parties. The Contract for Purchase and Sale allowed the defendants five days to review the protective covenants of the subdivision prior to being bound by the terms of the agreement. The original language in the protective covenants refers to the original subdivision plat recorded on November 23, 2005. Numerous amendments were filed including the Fifth Amendment to the protective covenants on May 30, 2007 adding Phase 2 lots (1-60) to the Protective Covenants. This is prior to the defendants obtaining their property.

The plaintiff claims that the defendants are in violation of the protective covenants by failing to maintain their property in "clean and first class condition" which is the language used in Article III, Paragraph 12, Maintenance of Lots which states:

All lots, including vacant lots, must be maintained in a clean and first class condition, including mowing all grass, controlling the weeds and keeping the same free from trash, debris or accumulation of other items on said lot. In the event that an owner does not maintain said owner's lot(s) in such first class condition, the Association shall be entitled to perform the necessary work to said lot to bring it up to an acceptable condition in the Association's sole discretion and any costs so incurred by the Association shall be treated as assessments in accordance with Article VI.

Pursuant to Article V, Paragraph 1 (B), until 95% of the residential lots shown on the referenced plat are sold, the Association is controlled by the developer. The protective covenants identify J. Wayne Raiford as the Developer.

The defendants filed a third party action against T. R. Sales Plantation, LLC and J. Wayne Raiford. The defendants deny the plaintiff is entitled to any requested relief and assert

the affirmative defenses of failure to state a cause of action, release/accord and satisfaction, waiver, estoppel and unclean hands. The defendant also requested relief pursuant to counterclaims that the plaintiff failed to comply with terms of the protective covenants and by-laws. The defendants also claimed they sustained actual damages and attorney fees as a result of the plaintiff's failure to comply with the by-laws and covenants.

The defendant's third party complaint alleges a breach of the agreement with the third party for failure to provide certain amenities that were represented when the defendants purchased their property.

The third party defendants and the plaintiff denied the allegations of the defendant third party plaintiff.

Jay J. Jacobs was the first witness called by the plaintiff. He testified that the lots were purchased in 2007 and the home was built in 2009. The defendant did not remember reviewing the protective covenants prior to purchasing the property but did not deny the language in the contract of sale signed by the defendants. The defendant agreed that he had received a letter from Mr. Raiford that their lot was not in compliance with the protective covenants on October 21, 2010. The defendant did not agree that they were in violation of the covenants. The defendant stated he believed that he can maintain the lots as long as he stays within the guidelines of the protective covenants. The defendant then received a letter from the attorney for the plaintiff dated January 26, 2011 stating that, pursuant to the language of the covenants, the Association had the sole discretion to determine what was acceptable under the protective covenants guidelines.

Daniel Willis, an appraiser testified that Three Runs Plantation's sales numbers and prices per acre (for vacant lots) were higher than those of other comparable subdivisions in Aiken County. He agreed that if the amenities that were promised were not built, owners could feel their property was worth less due the absence of those amenities.

John Garner is a marketing consultant employed by the developer. He has been marketing real estate for 44 years and began working with the developer in 2005. He worked on the brochure presented to the defendants. He believed Three Runs Plantation was to be an equestrian development but admitted that the publication, The Aiken Horse, did represent the development as equestrian and non-equestrian. By 2011, the tennis courts and fitness center were removed from the brochure. He described the existing amenities of the riding easements,

the various riding arenas, swimming pool, picnic areas and clubhouse. He testified that the fitness center was still in the plans but little interest had been shown by residents for the tennis courts.

Mr. Garner testified that the defendant's lots were not cut in the same pattern as other lots in the subdivision. Normally, the lots/pasture areas are cut twice a year. Mr. Garner admitted that the protective covenants reference 95% of the lots being sold refer to a specific plat that is described in the original covenants. The witness also testified that Article IX provides for additional property to be added to the scheme of the development.

Laurie Garner is also involved with the marketing of the subdivision. She testified that she has received complaints about the defendants' lot. She further testified that the amenities in a subdivision can change as the subdivision develops. There were amenities such as the cabana, cross country school and a second arena that were built and never advertised in any publication. The protective covenants allow the developer to change, add or delete amenities.

The plaintiff presented numerous homeowners in the subdivision to testify about the defendant's property and the protective covenants. Laurie Ann King testified that she wanted the protective covenants enforced and that the defendant's property is not maintained in the same manner as other owners. She was not concerned with the amenities schedule or voting rights for the owners, even though she would like a fitness center. She had no interest in tennis courts.

Kari D. Schneider did not know the standards outlined in the covenants. She believed the standard should be a comparison to other owner's yards. She was not interested in any voting rights for the owners at this time, but would like the added amenities whenever the developer believes it appropriate to add those specific amenities.

Katherine Viele testified the defendants' lot was different from other lots in the subdivision. She was not familiar with the "first class condition" language in the protective covenants. She thought the protective covenants set a specific height limit for the grass. She also testified that there were other lots that she did not believe were in compliance with the grass requirements under the protective covenants. She had no complaints about the amenities and understood that those may expand depending on future sales. She was not interested in any owners having voting rights at this time.

George King believed that the defendant's property had more trees than other lots. He would like all lots to be maintained in the same manner as his lot or in a neat and attractive fashion. The witness keeps horses on his lot. The defendants do not keep horses on their lots. Mr. King believes the term "lot" is the same as "pasture". He felt the condition of the lots shown in Defendant Exhibits 6 and 7 were not acceptable or in compliance with the protective covenants.

Arthur L. Streami lives on the same street as the defendants. He reviewed the protective covenants before he purchased property in the subdivision. He felt the defendants lot had "scrap trees" growing on their lots. He believes that owners should observe the way their neighbors keep their lots in the subdivision and maintain their lot in the same fashion. He did agree that this was not the standard under the protective covenants. He believes more amenities will be added as more lots are sold.

Carl Juvrud lives on the same street as the defendants. He reviewed the protective covenants before he purchased property in the subdivision. He described the defendant's lot as a jungle. He agreed that the term "first class condition" could be interpreted differently by different individuals. He received approval from the developer to install a radio tower in his yard. An email from this witness to the developer was introduced discussing the developer cutting the defendants grass when the defendants were going out of town. The developer did not attempt to cut the defendants grass.

Rhonda LaVerghetta has lived in the subdivision since 2010. She reviewed the protective covenants prior to purchasing her lot. Her belief was that the owners were supposed to keep the lots in the same condition as it was when it was purchased. She felt the defendants maintained their lot in a different manner than allowed in the covenants. She did not use the language in the protective covenants when she testified about the defendant's lot. She testified that the defendants had small "bushy things" on the lot, had some trees growing in the riding easement area and that the owners were provided with guidelines for mowing.

Mary Guynn is an attorney with fifteen years experience. Her practice includes transactional real estate law. She drafted the protective covenants for Three Runs Plantation. She discussed the covenants being a contract between the parties. Homeowners, owners, the homeowners association or the developer may enforce the covenants. She testified that the Three Runs Plantation Subdivision covenants provide that the developer controls the

development until ninety five percent of the lots are sold. She testified that the percentage applies to all phases in the subdivision. She prepared and recorded nine amendments to the protective covenants. She testified that an examination of the title would disclose the protective covenants and the amendments. She further testified that Article II allows the developer to add land to be covered by the covenants. Article V discusses the duties of the homeowners association and states that the developer may add or delete amenities and controls the schedule for the amenities being completed.

On cross examination, she testified that she was aware that there had been attempts to settle this matter. She identified the property maintenance guidelines and testified that she felt the guidelines were enforceable against the owners. She referenced Article XI as the section that allowed the developer to change the restrictions. She testified that she did not believe the guidelines were more restrictive than the covenants.

The Guidelines are dated August 30, 2010. The cover letter states, in part, "The HOA... has decided that further explanation is needed to clearly state the required level of maintenance for all property owners..." The guidelines were to go into effect on October 1, 2010. The document states that the purpose is to clarify the, "clean and first class condition" phrase in the protective covenants. The guidelines require regular mowing and weed control. Grass and undergrowth was to be no higher than 18 inches in the pasture, paddock and wooded areas. The guidelines also discuss the intention of the HOA to enforce the guidelines. Owners were advised that the HOA would perform inspections to assure compliance with "the lot maintenance guidelines". The sample email notification letter uses the phrase "your lot(s) were found to be in violation of the lot maintenance guidelines..."

Article X of the protective covenants provides the duties of the association to add or delete amenities and schedule the amenities. Article XI provides the effective period of the covenants and when changes may be made by the developer or the owners. Article XI also provides the terms under which the developer may waive, repeal or vary the declarations if the decision does not result in the restriction being more restrictive without the prior consent of the affected owner or fifty percent of the lot owners within the subdivision.

Ms. Guynn also testified that the original protective covenants and five amendments had been recorded prior to the defendants purchasing the property. The first amendment dealt with setbacks and the second through the fifth amendments added additional phases to the

subdivision. Although the brochure provided to the defendants did not contain a disclaimer, the protective covenants were recorded and were included in the marketing material.

Freeman Belser is an attorney retained by the defendants to respond to the letters they received from the attorney for the developer. After reviewing the protective covenants and the guidelines, he felt the guidelines, in adding specific height requirements for the grass were more restrictive than the recorded covenants. By the language in Article XI, the guidelines would have no effect on the defendants since the guidelines were more restrictive. After some additional communication with the attorney for the developer, the defendants agreed to mow and weed their property to comply with the original covenants. The developer's attorney then advised Mr. Belser that the developer would seek to recover approximately \$4,000.00 in attorney fees. Mr. Belser responded that the developer was not a prevailing party in the agreement and that his fees were only \$1,000.00 for his representation. On cross examination, Mr. Belser admitted that the defendants had apparently not cut the grass within five weeks of the agreement.

Wayne Raiford is the developer of Three Runs Plantation. He has developed six other developments. He has incorporated protective covenants in all of those developments. The marketing material was prepared by the Garner Group. The Three Run Plantation contract provides five days to review the protective covenants. Mr. Raiford signed the defendant's contract of purchase and sale and the deed into the defendants. The Carolina First material was prepared by Courtney Conger and Mr. Raiford did not participate in the preparation of the material. She was an agent for the development.

He testified that decisions about the amenities are based on comments from existing owners and potential buyers. Currently the existing amenities include horse arenas, equestrian trails, cross country arena being built, a clubhouse, picnic shelter and swimming pool. Mr. Raiford testified there has not been a big demand for tennis courts. He testified that a well has been installed that is of sufficient size for the fitness center. The amenities that have been built are paid for as the facility is built. The clubhouse, arenas, pool have been deeded to the homeowners association.

Mr. Raiford testified about his attempts to have the defendants cut their grass. After a discussion in 2010, he received an email from the defendants about portions of the defendant's property being allowed to grow naturally including trees being allowed to grow. He met with

Mr. Jacobs and was not able to resolve the issue. He testified that the "scrub oaks" were not in compliance with the covenants. He did testify that if the property looked like it did prior to the time his deposition was taken, he would not have filed the action. He still did not believe it was in compliance at that time though. He believes the defendants began cutting their grass in January 2011. At some point, the defendants cut the grass between the trees that were growing, but did not cut or trim the grass around the trees. Numerous pictures were introduced as examples of the defendant's failure to comply with the covenant concerning the maintenance of the lot. These photographs were compared to other photographs to show what he believed was acceptable. Mr. Raiford believes he is the party with authority to determine what is in compliance with the covenants. He also testified about the Architectural Committee responsibility to approve plans. No plans or letter from the Architectural Committee were introduced.

On cross examination, Mr. Raiford admitted that Ms. Conger, who provided the brochure, was his agent. In fact, she was a dual agent in this case and a disclosure form appears to have been signed by the defendants about this relationship. He admitted that 95% of lots have been sold based on the original plat referenced in the covenants, but not on the additional areas added to the subdivision. His position is that until 95% of all the lots are sold, he has control of meetings being scheduled, setting agendas, the financial records, dues and the use of dues and other duties and powers outlined for the developer in the covenants and by-laws.

He admitted that the 2009 Aiken Horse publication mentioned the tennis courts and the fitness center. The information does not state that those amenities were just being considered or subject to change. There were also some signs in the subdivision that had information about tennis courts and the fitness center. At some point after the defendants purchased their property, those signs were removed or changed to delete the reference to those two amenities. He believes the restrictions give the developer that authority. The protective covenants were part of the brochure that the defendants relied on when reviewing information about the subdivision. He also emphasized that potential buyers have five days to review the covenants before they are bound by the terms of the Contract of Sale.

Mr. Raiford agreed that the money was available to build the tennis courts and fitness center when he was deposed. Further, that the marketing material can be relied on by potential

buyers and may be inconsistent with Article V of the covenants concerning the developer's authority to control what amenities will be built. He disagreed that the defendants had been damaged without those amenities. The fitness center is still expected to be built and he does not believe the value of the real estate was affected by those amenities not being built. On May 16, 2011, the developer sent a letter to property owners that discussed the amenities. The proposed amenities discussed included the tennis courts and the fitness center. Another portion of the letter discusses landscaping but does name the defendants. Mr. Raiford admitted Defendants' Exhibit 16 and 17 are brochures that describe a recreational facility with swimming pool, tennis and fitness center. Defendants' Exhibit 19 contains an advertisement for the subdivision that does not mention the fitness center or tennis courts. It also does not mention other amenities that have built in subdivision.

The plaintiff and the defendant exchanged several emails in 2010 discussing the landscaping. The developer stated that the defendants had mowed some of their lot but other areas had not been cut. The defendant's position was that they would continue to mow the front of their property, right of ways and open areas but wanted to maintain a more natural woods area on other portions of their property. Mr. Raiford felt this was just an excuse not to cut and maintain the lots. The defendants responded that they mowed 50-100 feet from the road and that they had received no complaints from neighbors.

Mr. Raiford testified there was no distinction between mowing all grass and mowing the lot. He relied on the "clean and first class condition" language in the covenants. He agreed that the covenants contain no requirements on how often to mow the grass, the types of trees that can be grown and what is the maximum height for vegetation. He testified that the Architectural Committee (ACC) does control what is approved for the lots for landscaping. There was no testimony about any particular action by the ACC in reference to the defendant's lots.

In August 2010, the owners received a set of guidelines from the developer. According to the developer, the guideline of 18 inches for a height requirement is not more restrictive than "clean and first class condition". He does not believe the guidelines amended the covenants.

Mr. Raiford felt there was an agreement that the defendants would cut their grass. This was not done by the defendants, Mr. Raiford did not feel the agreement meant that he had prevailed in the matter. The developer reviewed numerous photographs testifying that some

met the standard of clean and first class condition while others did not. He testified that the horse manure spread on the riding trail was not a violation based on his review of the photograph. The covenants do address this condition and it was not clear why this is not a violation. He felt the radio tower was not a violation since the developer approved the installation through the covenant procedure. Horse trailers parked in view of the road were felt to be in compliance by the witness. Article III, Paragraph 5 allows trailers to be kept on a lot if they are not unsightly and parked in the rear yard not visible from the street. Mr. Raiford felt the covenant language only addresses those vehicles parked in an "unsightly manner". However, the covenants clearly state that trailers will be parked in the rear yard and not visible from the street. The spreading of the manure appeared to only occur once and the extent of the parking trailers in other areas was difficult to determine.

Following the completion of the plaintiff's case in chief, the defendant's motions for a directed verdict on the attorney fee, cost and other matters were denied.

The defense called Mr. and Mrs. Branchato who reside in Three Runs Plantation subdivision. They have lived in the subdivision for approximately six years. Both testified that the amenities advertised include the tennis court and the fitness center. Mr. Branchato felt those amenities would add value to his property. Both discussed \$1,500.00 per year in homeowner's dues and would like to have some voting rights. Both felt that the defendants kept their property clean and that it was in clean and first class condition.

Mr. Jacobs testified that the defendants used Courtney Conger as their realtor. She provided the brochure to the defendants that did not have all of the disclaimer information. The Jacobs purchased two lots in 2007 for \$280,000.00. The home was completed in 2009 for \$800,000.00 to \$850,000.00. They moved to Aiken in 2009. The agent assured them that the tennis courts and fitness center would be built. Those amenities were selling points to the defendants. Mr. Jacobs believes those amenities would increase the value of his property and increase his enjoyment of living in the subdivision.

Mr. Jacobs does not believe there has been uniform enforcement of the protective covenants. In his opinion, they are the only owners being sued by the developer for alleged violations even though other violations have occurred. He believed there have been violations in the signage requirements, failure to complete construction of a home within one year, owners living in a trailer, unpainted fences (eventually painted on outside but not on the inside

of the fence), parking trailers in areas not allowed under the restrictions, allowing a fence to be built in an easement, allowing a radio tower to be installed, use of amenities by nonresidents including one party who has a horse training school adjacent to Three Runs subdivision and manure on the riding trails. Article V, Paragraph 3 allows the developer, as long as he owns common areas and land on which amenities are situated, to allow non-lot owners to become members of the Association. Mr. Jacobs believes his past experience as an officer/treasurer of a homeowners association and his business experience would be an asset if the owners were allowed to participate in the decisions for the subdivision. On cross examination, Mr. Jacobs agreed that the real estate has lost value due to the economy. He reviewed photographs and testified about the discussions he had with Mr. Raiford. Mr. Jacobs testified that he never intended to have pasture land since his lots are non-equestrian and owners have different opinions as to what first class and clean condition means in the protective covenants.

Judy Jacobs testified that she would use both the tennis courts and the fitness center and the amenities would increase the value of their property. She testified that they were told those amenities would be completed soon when they purchased the real estate. She further testified that they cut their grass three to four times per year. There was one period of time when the grass was not cut for six months. She also feels that Mr. Raiford does not enforce the same grass cutting requirements on other owners. She testified that the Jacobs did not change the property after the two lots were purchased.

She provided details through photographs identifying various oak trees on the property and that she would hand weed those areas and wished to have those natural trees grow on the property. She admitted that there were one or two small trees in the riding easement on their property. She agreed that the developer had built other amenities that were not advertised, that the brochure did contain a copy of the protective covenants and that the covenants allowed the developer to change the amenities. She also felt that owners should have voting rights.

The defendants presented Edward Girardeau as an expert real estate appraiser. He was admitted as an expert without objection. He testified that the current real estate market was responsible for ninety percent of the loss of real estate value for the defendants. The remaining ten percent was caused by the failure of the developer to complete the fitness center and tennis courts. He believed ten percent loss would equal a loss in value of \$27,900.00. This was based on comparisons with other subdivisions non-equestrian amenities. On cross examination,

he admitted that there was no information in the professional guidelines he was asked about that discussed making deductions based on amenities. Also, his appraisal did not specifically mention the amenities that had been built.

The plaintiff called Mr. Willis and Mr. Garner as rebuttal witnesses. Mr. Willis testified about Three Runs Plantation maintaining its value and the number of lots sold as opposed to other subdivisions. He believed any reduction in market value was related to the economic conditions. He did admit that he had not performed an appraisal and had no opinion of the defendant's property.

John Garner testified that he did not, from a marketing standpoint, recommend building the tennis courts or the fitness center at this time. He did admit that the subdivision had been advertised as an equestrian and non-equestrian subdivision.

CONCLUSIONS OF LAW

The defendants signed the contract to purchase the real estate on October 25, 2007. The Carolina Company was identified in the agreement as a dual agent and referenced the South Carolina Disclosure Form. The contract also provides five days for the defendants to review and approve the Three Runs Plantation Subdivision Covenants. Unless the seller was notified within the five day period, the covenants were considered acceptable to the defendants.

The original protective covenants for Three Runs Plantation were recorded in the Aiken County RMC Office on November 30, 2005. Prior to the defendants purchasing their lots on December 14, 2007, five amendments to the protective covenants had been recorded. These included the developer adding additional property to be subject to the protective covenants. The Fifth Amendment to the Protective Covenants of Three Runs Plantation added lots 1-60, Phase 2 to the subdivision. The defendants purchased lots 10 and 11 in Phase 2.

"Protective covenants are contractual in nature and bind the parties thereto in the same manner as any other contract." Palmetto Dunes Resort v. Brown, 287 S.C. 1, 336 S.E.2d 15 (Ct. App. 1985), Seabrook Island Property Owner's Ass'n v. Berger, 365 S.C. 234, 616 S.E. 431 (Ct. App. 2005). Historically, courts do not favor protective covenants based on the belief that society's best interest encourage unrestricted use of land. Edwards v. Surratt, 228 S.C. 894, 90 S.E.2d 906 (1956), Sea Pines Plantation Company v. Wells, 294 S.C. 266, 363 S.E.2d 891 (S.C. 1987). Although protective covenants are strictly interpreted and any doubts or ambiguities are resolved in favor of free use of the land, the covenant will be enforced if it expresses the party's

intent or purpose. The party seeking to enforce the protective covenant must show the restriction applies by the express language of the covenant or by plain and unmistakable implication. Id.

The plaintiff believes that the defendants have failed to maintain their property pursuant to the covenants. Article II, Paragraph 1 is entitled Architectural Control Committee and provides that, "Plans and specifications for all proposed improvements and landscaping upon lots must be submitted in writing to the ACC, which is hereby vested with full power and authority to approve or disapprove the same in whole or part, or require the modification of the same as it may, in its discretion deem proper. No construction, landscaping or erection of any improvements of any kind may be undertaken without its prior written approval." It also provides that plans may be refused for any reason, including aesthetic reasons. Landscape is defined as "to modify or ornament by altering the plant cover" www.merriam-webster.com.

Article II, Paragraph 2 is entitled Preservation of Trees and Vegetation. The language discusses the procedure for removing or trimming existing vegetation and trees. This particular section does not discuss the procedure for an owner to choose which trees will be allowed to grow and mature. One of the alleged violations complained of by the plaintiff was that the defendants allowed "scrub oaks" to grow on their lots. Scrub oak is defined as "any of the various chiefly American oaks of small size and usually shrubby habit." www.merriam-webster.com.

As previously discussed, Article III, Paragraph 12 requires all lots, including vacant lots, must be maintained in a clean and first class condition, including mowing all grass, controlling the weeds...

The issue of voting rights is provided for in Article V of the protective covenants. Class A members are entitled to have voting rights. This group is limited to the Developer. This section also references the developers right to add additional real estate through Article IX of the covenants. The remaining owners are Class B members who own residential lots in Three Runs until the developer has conveyed 95 percent of the residential lots. There is language in Article V that refers to a particular plat that contains lots 1-22 of phase one. There are areas marked for future development on the plat. The developer exercised those rights and added other real estate, including the defendants lots through amendments recorded in Aiken County. The defendants argue that the owners should have voting rights after 95 percent of the 22 lots have sold. It does not appear to be disputed that 95 percent of those lots have been sold. However, 95 percent of the

additional real estate added through the recorded amendments has not been sold. The plaintiff's position is that Article IX allows the addition of the real estate and the developer took the appropriate steps to add those phases and lots to the development.

Article V, Paragraph 5 reserves to the developer the right to make changes to the amenities, add or delete amenities as the developer believes is appropriate and at his sole discretion. Also, the developer specifically states that he makes no representations as to the type of amenities to be constructed or any completion date. There was testimony that the developer still has plans to build the fitness center but has no current plans for the tennis courts.

Article VII of the covenants provides for the remedies for violations of the covenants. In particular, Article VII states, "In the event of a violation or breach of any of the declarations and restrictions contained herein by any owner, or agent of such owner, the owners of the lot in Three Runs or the Association or the ACC or any of them jointly or severally shall have the right to proceed at law or in equity to compel the compliance with the terms hereof or to prevent the violation." The same provision allows the prevailing party shall to recover attorney fees and cost in an amount to be determined by the court hearing any such action.

PLAINTIFFS CLAIM

Maintenance of Defendant's Lots

The complaint in this action alleged that the defendants were in violation of Article III, Paragraph 12 of the protective covenants.

The defendants had notice of the existence of the protective covenants. The court must determine if the defendants use of their property violates the protective covenants and if the balance of equities favors enforcement of the covenant.

The plaintiff believes that the defendants have failed to keep the grass cut, control weeds and allowed certain trees to grow on the lots. The language in the protective covenants specifically includes the phrase, "mowing all grass, controlling weeds..." The issue with the grass appears to be the grass in the pasture area. The photographs of the area around the defendant's home shows landscaped property and a nice lawn. The issue concerns the areas that would normally be the pasture area of the defendant's lots. The developer, other witnesses and some of the exhibits established that those areas on other lots are cut at least two times per year. The photographs of the defendant's lot do show the grass growing that was higher than grass in photographs of other lots in the subdivision. The defendants do not maintain an equestrian lot.

The photographs introduced by the defendants appear to show lots with grass of a similar height to the defendants. At some point, the defendants cut the grass between the trees that were growing but did not cut or trim the grass around the trees. Numerous pictures were introduced by the plaintiff as examples of the defendants failure to comply with the covenant concerning the maintenance of the lot. These photographs were compared to other photographs to show what he believed was acceptable. Mr. Raiford believes he is the party with authority to determine what is in compliance with the covenants. He also testified about the Architectural Committee responsibility to approve plans.

The complaint did not contain any allegation that the Architectural Control Committee refused any plan submitted or alleged that the owners failed to submit any plan. There were no objections to the testimony about the ACC. "When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings," Rule 15, SCRCP.

Due to the nature of this claim, it is difficult to determine when there is noncompliance with the protective covenant since the photographs show the grass at different stages of growth and height. Also, the developer did testify that he would not have filed a lawsuit if the defendant's property like it did prior to his deposition being taken. The same issues apply to the trees or "scrub oaks" (depending on who is viewing the photographs and testifying) in regards to comparing the defendant's lots with other lots shown in various photographs. The courts in South Carolina have addressed the issue of vague or ambiguous covenants. Article II, Paragraph 1 of the protective covenants states that the "ACC shall have the right to refuse to approve any building specifications, site plans, or grading plans which are not suitable or desirable in its sole opinion for any reason, including purely aesthetic reasons." The same paragraph advises owners that no landscaping may be undertaken without prior written approval. The initial ACC is listed as J. Wayne Raiford, Tanya Cooper and Linda Raiford.

This claim of the ACC, as opposed to the Association, must be supported with the plaintiff establishing that the defendants were found to be in violation of the actions required by the ACC. The plaintiff provided no exhibits or testimony concerning any specific violation found by the ACC. While the plaintiff is correct that the ACC has authority to refuse matters based on aesthetic reasons, evidence was not presented that the ACC took any action in this case. The

defendant's home was completed in 2009. The issue in this case concerns whether the defendants have failed to maintain their lot in a clean and first class condition.

In Palmetto Dunes Resort v. Brown, 287 S.C. 1, 336 S.E.2d 15 (S.C. App. 1985) the Architectural Review Board reviewed all plans for construction in the subdivision. The board had authority to not approve a plan submitted for "purely aesthetic reasons". In that case, the Court recognized that the "paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document." Palmetto Dunes Resort v. Brown, citing Hoffman v. Cohen, 262 S.C. 71, 202 S.E.2d 363 (1974). An examination of the entire document in this case shows that the intent was to allow the Association and/or the Developer to have authority to determine what meets the "clean and first class condition" is when reviewing property. The second sentence of Article III, Paragraph 12 is, "In the event that an owner does not maintain said owner's lot(s) in such first class condition, the Association shall be entitled to perform the necessary work to said lot to bring it up to an acceptable condition **in the Association's sole discretion** (emphasis added) and any costs so incurred by the Association shall be treated as assessments in accordance with Article VI." The Bylaws provide the same voting rights as the protective covenants. Bylaw Five states that the initial Board of Directors of the Association will consist of a single director, J. Wayne Raiford until Class B members get voting rights. The defendants agreed to these terms when they purchased their lots in Three Runs Plantation.

The defendants believe the term "clean and first class condition" is vague or ambiguous. In Palmetto Dunes Resort v. Brown, 287 S.C. 1, 336 S.E.2d 15 (S.C. App. 1985), the Court of Appeals found that the term "aesthetic considerations" was not ambiguous. In that case, the covenants were not ambiguous in leaving the decision and determination as to what the term aesthetic considerations meant to Palmetto Dunes.

In the present case, the term "clean and first class condition" must be considered by reviewing the entire scope of the protective covenants. That shows that there is no ambiguity since the Developer, clearly has the authority to determine what complies with that standard. The Developer/Association must still exercise that judgment in a reasonable and good faith manner.

There was no evidence submitted to establish any trash or debris on the defendant's property. As stated earlier, photographs of the area around the home show the property to be

clean and well maintained. The plaintiffs' claims of a violation of the protective covenants concern the height of the grass in the open area of the lots and the trees growing on the defendant's property. There was evidence of other owners being notified that the grass needed to be cut on their lots. Several emails were introduced that indicated the grass would be cut or that the owner authorized the Association to cut the grass for a fee on those lots. The protective covenants specifically state that "clean and first class condition" includes mowing all grass and controlling the weeds. The decision of what is an acceptable condition when considering grass height and weeds are reserved to the Association under the same protective covenant. There was an issue raised about the guidelines created by the association in regards to the height of the grass and whether the guidelines were more restrictive. Based on the authority of the protective covenants, the Association does not require any guidelines. The Association has the authority to determine what meets the requirements of the protective covenants based on a review of the entire document as long as it exercises those decisions in a reasonable and good faith manner. The condition of the grass has been addressed with other owners and there was no evidence that any owners, after being notified or after the biannual cuttings did not comply with the decision of the Association. Based on the evidence submitted, the Association has applied the requirement of mowing all the grass and controlling the weeds in a reasonable and good faith manner. Therefore, the defendants, through their acceptance and agreement to abide by the protective covenants when they purchased the property and the reasonable and good faith effort of the Association to enforce this requirement will have to maintain the grass in a manner consistent with other owners who are in compliance with the protective covenants. In reaching this decision, the court would note that many of the photographs support the defendants position that they have cut their grass and do appear to be, at certain times, in compliance with the protective covenant.

The other issue is the growth of the trees on portions of the defendant's property. One issue was that there are trees growing in the riding easement on their property. Article IV, Reservations of Easements, provides for the use of the equestrian/pedestrian easements in the subdivision. It requires owners to keep the easement open and accessible for the full width of the easement. Based on that language, the trees should be removed from the equestrian/pedestrian easement.

The testimony on the remaining trees are not specifically covered in the protective covenants. The covenants discuss the procedure for removing trees. The covenants do not have a specific reference to an owner deciding which trees will be allowed to grow. Article II, Paragraph 2 states that "living trees, shrubs and other vegetation contribute to the aesthetic value of the lots in Three Runs..." Further, "Clear cutting for a view is not allowed and the subtle beauty of a view through the trees is encourages." Defendant's Exhibits 52-59 show various trees on the defendant's property that they wish to keep. Although it is difficult to determine the boundaries of the defendant's lot, there appears to be numerous developed trees on the lots.

There was no expert testimony to identify "scrub oaks". It does appear that the defendants have a large number of small growth trees. However, photographs show similar trees or scrub oaks in Defendant's Exhibits 37-40 and others in Defendant's Exhibits 22-36.

Having already found that the Association has the sole discretion to determine what is an acceptable condition, the Association still has to exercise its judgment reasonably and in good faith. As stated above, other lots appear to have similar conditions in regards to tree growth on lots. This may not apply to most of the lots but, unlike the height of the grass, there was no testimony of the Developer or Association contacting any other owners about tree growth.

Based on the evidence, the plaintiff has not shown why defendants should not be able to maintain small trees that will grow into a mature tree. No evidence was submitted of any plans submitted to the ACC that were not approved. The ACC is not a party to this action, but even with that testimony, no evidence was presented that the ACC has advised the defendants of any issue with the tree growth on the defendant's property. The defendants will be responsible for cutting the grass and controlling the weeds around any trees. The Association has the responsibility to exercise any judgment reasonably and in good faith and in a uniform manner among the owners in regards to trees that owners are allowed to have. The Court cannot determine what is or may become a full growth tree and what is a scrub oak. Based on the evidence submitted, the defendants are allowed to keep any full growth trees subject to the requirements of keeping weeds under control and the grass cut as outlined in this order.

The decision is based on the testimony and exhibits presented at the hearings. The Association may under its authority decide that owners need to remove scrub oaks or shrubs that will not develop into a mature tree, but that decision must be the same for all owners and not just

enforced against these defendants. Any action that requires these defendants to remove these items from their property must also be enforced against other lot owners in the subdivision.

DEFENDANTS AFFIRMATIVE DEFENSES,
COUNTERCLAIMS AND THIRD PARTY CLAIMS

Breach of Contract

The defendants believe that the developer represented that the tennis courts and the fitness center would be built. These amenities were listed in marketing material presented to the defendants by the real estate agent, listed in some local publications and signs were posted in the subdivision. Although the marketing material contained a disclaimer, the one presented to the defendants did not contain the disclaimer. The testimony and material presented establish that the subdivision was marketed as an equestrian and non-equestrian subdivision.

The covenants reserve the right to the developer to add or delete amenities and state that no completion date is specified. The defendants argue that the developer's representations and failure to build the amenities for over seven years are a breach of the agreement between the parties. It is important in this analysis to review the notice the defendants had of the protective covenants. The marketing material also contained the protective covenants including the language about the developer's rights with respect to the amenities. In addition to that disclosure, the covenants and numerous amendments were recorded and in the chain of title for the defendants. Despite the covenants in the marketing material and the recorded documents, the defendants testified that they did not believe they reviewed the protective covenants prior to the real estate closing. While the defendants may argue they did not have had actual notice based on a review of the deed and the testimony, they should have been aware of the protective covenants by the language in the Contract for Purchase and Sale and the recorded documents. Actual notice has been defined as a person knowing of the existence of the particular facts or "is conscious of having the means of knowing it, even though such means may not be employed by him." Strother v. Lexington County Recreation Comm'n, 332 S.C. 54, 504 S.E.2d 117 (1998). The defendants clearly had notice in both the marketing material they rely on in their breach of contract claim and in the purchase agreement. Constructive Notice is "notice imputed to the person whose knowledge of facts is sufficient to put him on inquiry; if these facts were pursued with due diligence, they would lead to other undisclosed facts." Id., Anderson v. Buonforte, 365

S.C. 482, 617 S.E.2d 750 (S.C. App. 2005). If the restriction is properly recorded in the chain of title, the homeowner had constructive notice. Anderson v. Buonforte, 365 S.C. 482, 617 S.E.2d 750 (S.C. App. 2005) (quoting from Harbison Comm. Ass'n, Inc. v. Mueller, 319 S.C. 99, 459 S.E.2d 860 (Ct. App.1995)). In this case, the defendants, at a minimum, had constructive notice of the protective covenants and Article V. Therefore, they had knowledge of the authority of the developer to not build those amenities or to delay building those amenities prior to purchasing the property. The defendants accepted those terms when they did not object or decide within the five day period allowed in the purchase agreement to void the agreement. In regards to the amenities, the defendants have failed, by a preponderance of the evidence, to establish a claim for breach of contract.

Voting Rights Claim

The Protective Covenants of Three Runs Plantation describes the developer as the owner of property that references a plat of lots 1-10 and 15-22 on a 2005 plat. The plat does have references to areas for future development.

The original protective covenants for Three Runs Plantation were recorded in the Aiken County RMC Office on November 30, 2005. Prior to the defendants purchasing their lots on December 14, 2007, five amendments to the protective covenants had been recorded. These included the developer adding additional property to be subject to the protective covenants. The Fifth Amendment to the Protective Covenants of Three Runs Plantation added lots 1-60, Phase 2 to the subdivision. The defendants purchased lots 10 and 11 in Phase 2.

Article IX Paragraph 1 of the Protective Covenants allows the developer to add contiguous real estate to the scheme of the development. This includes language allowing the developer to extend the declarations to the property added to the development. The defendant's lots and other additional property were added to the development through various amendments signed by the developer and recorded in the Aiken County RMC Office. The language in the recorded amendments reference the recording of the original covenants and the right of the developer to make additional property subject to the covenants. The fifth amendment added lots 1-60 in Phase 2 of Three Runs Plantation.

In Cullen v. McNeal, 390 S.C. 470, 702S.E.2d 378 (S.C. App. 2010), the owners in Phase 1 of the subdivision believed that the developer did not have authority to annex real estate into the development or allow those owners to use the common areas in Phase 1 of the subdivision.

They also believed that the developer did not have the right to add the additional real estate to the declarations for the subdivision. The plat referenced in that case had the Phase 1 lots and other areas marked as "Phase II" and "Future Development". The Court found that "an examination of the Declarations in their entirety reveals Wright's Point includes the undeveloped land labeled Phase II and Future Development. Based on those facts and a review of the declarations, the Court ruled that Wright's Point was not confined to the properties in Phase I.

In this case, the defendants believe they are entitled to voting rights when 95% of the lots shown on the plat are sold. The plaintiff argues that the protective covenants allow the developer to add additional property that is adjacent to Phase I to the subdivision and that 95% of all the lots in the subdivision must be sold before the owners have voting rights. The plat referenced in the protective covenants does have areas marked "Future Development" in addition to the lots shown on the plat. In reading the protective covenants in their entirety, it seems clear that the plat referenced included any future development in Three Runs Plantation. The protective covenants provide for the expansion of the subdivision and that the additional phases and lots will be subject to protective covenants. Based on the testimony, exhibits and the recorded documents, the defendants are not entitled to voting rights at this time.

The defendants also believe the plaintiff has failed to enforce other provisions of the protective covenants and have suffered damages as a result of this action. Two of the complaints concerned an owner placing a radio tower antenna in his yard. The protective covenants allow the developer to grant a variance and that was done in this case. The defendants also raised an issue with a non-owner using the arena and trails and having riding students use those arenas. As stated earlier, the covenants provide for a procedure to allow non-member owners. Based on the testimony, the action is allowed under the protective covenants.

The complaint of horse manure on the riding easement does appear to be a violation of the protective covenants. Also, the photographs showing trailers visible from the road are in violation of the covenants based on the language of the covenants. However, the Court could not determine the extent of those violations and does not find that defendant's established any damages based on the evidence presented.

The defendants did present testimony that the failure to have the tennis courts and fitness center lowered the value of their property. Based on the fact that all parties acknowledged that economic conditions did lower the value on all real estate in the area and that the defendants

expert could not sufficiently quantify how that figure of damages was determined, the Court finds that the defendants failed to establish any damages.

The defendants also alleged several affirmative defenses. The Court finds that the complaint had sufficient facts pled to constitute a cause of action the defendants failed to establish any defense for release/accord and satisfaction. Based on the language of the protective covenants discussed above and that the evidence presented, the Court does not find that the defendant established they are entitled to any relief under the affirmative defenses of estoppel or waiver.

Waiver is a voluntary or intentional abandonment of a known right. Strickland v. Strickland, 364 S. C. 76, 650 S. E. 2d 465 (2007). Although there were isolated instances shown by the defendants of the plaintiff failing to enforce some of the protective covenants, those incidents do not establish the affirmative defense of waiver.

The defendants have alleged the affirmative defense of estoppel. The defendants testified that they relied on the representation of the tennis courts and fitness center being built in the future. As discussed above, the defendants in this case had notice of the protective covenants through the recorded documents and the published literature. The Court does not find any concealment of the authority of the developer to change or delay the amenities.

The defendants also allege that the plaintiff is barred from any recovery based on the doctrine of unclean hands. Assuming this affirmative defense is in regards to the plaintiff representing that tennis courts and a fitness center would be built, the Court has ruled that the protective covenants allow the developer to change and/or delay the amenities to be built and that the defendants had at least constructive notice of the protective covenants. Therefore, the defendants are not entitled to relief under this affirmative defense.

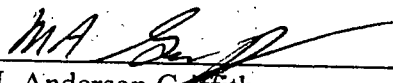
Attorney Fees

Attorney fees are not recoverable unless authorized by contract or statute. Seabrook Island Property Owners Assoc. v. Berger, 365 S.C. 234, 616 S.E. 2d 431 (S.C. App. 2005). The protective covenants are based on contract principles. Seabrook Island Property Owner's Association v. Pelzer, 292 S. C. 343, 356 S.E. 2d 411 (Ct. Appl. 1987). The six factors to be considered are: 1) nature and difficulty of the legal services ordered; 2) time and labor devoted to the case; 3) professional standing of counsel; 4) contingency of compensation; 5) fee customarily

charged in the area for similar services; and 6) beneficial results obtained. Blumberg v. Nealco, Inc., 310 S. C. 492, 427 S.E. 2d 659 (1993).

The attorneys in this case have agreed to submit their fees for this action. The parties have already agreed that the hourly fee was reasonable. The Court will schedule a supplemental hearing to review the attorney fees and allow any arguments by counsel as discussed at the trial.

July 1, 2013



M. Anderson Griffith
Master-in-Equity for Aiken County

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP0200548

Three Runs Plantation Homeowners Association, Inc	Jay J Jacobs	Judith B Jacobs
	T R Sales Plantation LLC	J Wayne Raiford
PLAINTIFF(S)		DEFENDANT(S)

Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case. ORDER

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Three Runs Plantation Homeowners Association, Inc.	Jay J. Jacobs, Judith B. Jacobs,	N/A
Jay J. Jacobs and Judith B. Jacobs	T. R. Sales Plantation, LLC and J. Wayne Raiford	N/A

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

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


M. Anderson Griffith, Master-in-Equity

3076
Judge Code

7/1/2013
Date

026

For Clerk of Court Office Use Only

This judgment was entered on **07/01/2013**, and a copy mailed first class or placed in the appropriate attorney's box on , to attorneys of record or to parties (when appearing pro se) as follows:

James Samuel Murray PO Box 1495 Augusta, GA
309031495

ATTORNEY(S) FOR THE PLAINTIFF(S)

Master
Clarke W. McCants III PO Box 2881 Aiken, SC 298022881

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Liz Godard by Amy Doyle
Liz Godard - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

FILE

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Three Runs Plantation Homeowners
Association, Inc.)
Plaintiff,)

CASE NO.: 11-CP-02-00548

Vs.)

Jay J. Jacobs and Judith B. Jacobs)
Defendants and Third- Party)
Plaintiffs,)

Vs.)

T. R. Sales Plantation, LLC and J. Wayne
Raiford)
Third-Party Defendant.)

ORDER

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General
Sessions for Aiken County, South Carolina do hereby certify
that the foregoing constitutes a true and correct copy of the
original documents which have been filed in my office this

SEP 26 2013

Liz Godard
C.C.C.P. & G. A., Aiken County, S.C.
[Signature]
Deputy Clerk

Hearing Date: August 9, 2013
Judge: M. Anderson Griffith
Attorneys for Plaintiff: William Byrd Warlick and James S. Murray
Attorney for Defendants: Clarke McCants, III

PROCEDURE

1. The Order was filed on July 2, 2013.
2. The defendants/third party plaintiffs filed a Notice of Motion to Alter or Amend on July 17, 2013.
3. The motion hearing was held on August 9, 2013.

The first issue raised by the defendants was:

1. By way of Counterclaim the Defendants sought a declaration that the Plaintiff has failed to abide by its bylaws and the protective covenants applicable to Three Runs Plantation. The Court did conclude that the Plaintiff has failed to abide by the bylaws and / or protective covenants but did not enter judgment in favor in the Defendants. The Defendant respectfully request that the Court amend and / alter its decision to enter judgment in favor of the Defendants against the Plaintiff.

FILED 9/20 20013
Liz Godard
C.C.C.P. & G.S.
2:05 *[Signature]*
Deputy Clerk

028

MAG 21

In Conclusion of Law, on page 21, the court stated the following: "The complaint of horse manure on the riding easement does appear to be a violation of the protective covenants. Also, the photographs show trailers visible from the road are in violation of the covenants based on the language of the covenants. However, the Court could not determine the extent of those violations and does not find that the defendant's established any damages based on the evidence submitted." The same issues are discussed in the Statement of Facts on page 10 of the Order.

To the extent that the defendants are asking that the Court find that the developer failed to enforce these two violations of the protective covenants, that language is already part of the Order. The Court will not alter or amend the portion of the Order that finds the defendants are not entitled to any damages based on the evidence presented at the trial.

The second issue raised by the defendants was:

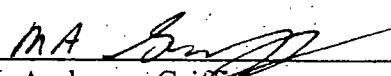
2. The Court found that certain trees on the Defendants' property obstructed an equestrian easement and that the Defendants should remove such trees. The Plaintiff has never requested such relief nor followed proper procedure, prior to filing its civil action, to obtain such relief. The Defendants respectfully request that the Court amend and / or alter its judgment to delete such findings and conclusions.

A review of the record reveals that the plaintiff did not make any specific allegations about the trees in the equestrian easement. The developer did not offer any testimony about the issue. As the defendants argue, the only witness to raise the issue was Rhonda Laverghetta. Based on this review of the record, the Order is amended to remove the following paragraph from page 17 of the Order:

The other issue is the growth of the trees on portions of the defendant's property. One issue was that there are trees growing in the riding easement on their property. Article IV, Reservations of Easements, provides for the use of the equestrian/pedestrian easements in the subdivision. It requires owners to keep the easement open and accessible for the full width of the easement. Based on that language, the trees should be removed from the equestrian/pedestrian easement.

IT IS SO ORDERED:

September 20, 2013


M. Anderson Griffith
Master-in-Equity for Aiken County

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP0200548**

Three Runs Plantation Homeowners Association , Inc	<table style="width:100%;"> <tr> <td style="width:50%;">Jay J Jacobs</td> <td style="width:50%;">Judith B Jacobs</td> </tr> <tr> <td>T R Sales Plantation Llc</td> <td>J Wayne Raiford</td> </tr> </table>	Jay J Jacobs	Judith B Jacobs	T R Sales Plantation Llc	J Wayne Raiford
Jay J Jacobs	Judith B Jacobs				
T R Sales Plantation Llc	J Wayne Raiford				

PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

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

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

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

9/20/2013

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on 9/20/13, and a copy mailed first class or placed in the appropriate attorney's box on 9/20/13, to attorneys of record or to parties (when appearing pro se) as follows:

James Samuel Murray PO Box 1495 Augusta, GA
309031495

Master
Clarke W. McCants III PO Box 2881 Aiken, SC 298022881

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Liz Godard
Liz Godard - Clerk of Court

Court Reporter

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

THREE RUNS PLANTATION
HOMEOWNERS ASSOCIATION, INC.,)

PLAINTIFF,)

VS.)

JAY J. JACOBS AND JUDITH B.
JACOBS,)

DEFENDANTS.)

IN THE COURT OF COMMON PLEAS
Civil Action No. 2011-CP-02- 00548

COMPLAINT

(Non-Jury Trial Requested)

C O P Y
ORIGINAL FILED

MAR 11 2011 am
8:30 am
AIKEN COUNTY
CLERK OF COURT

NOW COMES Three Runs Plantation Homeowners Association, Inc. ("Three Runs"), and files this its Petition and Complaint against Jay J. Jacobs and Judith B. Jacobs (the "Jacobs"), and shows:

1. Three Runs is a corporation organized and existing under the laws of the State of South Carolina, and is made up of homeowners who own property in the Three Runs Plantation located in Aiken County, South Carolina.

2. The Jacobs purchased Lots 10 and 11 in Three Runs Plantation, Phase 2 containing approximately 14 acres in December 2007 by Title to Real Estate recorded in the Office of the RMC for Aiken County, South Carolina, in Record Book 4178, Pages 834-837. The Jacobs reside at and may be served at 6360 Hiwassee Run, Aiken, South Carolina 29803.

3. At the time the Jacobs purchased their property, the property was subject to certain Protective Covenants set out in Protective Covenants of Three Runs Plantation which were recorded in said Clerk's Office in Record Book 4032, Pages 2163-2180. The Protective Covenants in Article III, Paragraph 12 provide that "All lots, including vacant lots, must be

maintained in a clean and first class condition, including mowing all grass, controlling the weeds and keeping the same free from any trash, debris or accumulation of other items on said lot."

4. The Contract for Purchase and Sale entered into by the Jacobs prior to their purchase specifically provided a contingency for the approval of the Protective Covenants. The Jacobs were on actual and constructive notice of the Protective Covenants .

5. The Jacobs have refused to maintain their lots in accordance with the manner in which all other lots are maintained in Three Runs Plantation in that they do not mow the grass or control the weeds as all other homeowners do in Three Runs Plantation.

6. Each owner of property in Three Runs Plantation purchased his property in part based upon the Protective Covenants and the knowledge that Three Runs would ensure that the Protective Covenants would be enforced.

7. The Jacobs have been notified that they are in violation of the Protective Covenants, and they continue in their refusal to maintain their property in a fashion consistent with other homeowners in Three Runs Plantation.

8. The Protective Covenants provide that Three Runs has the right to proceed at law or in equity to compel compliance with the terms thereof. Three Runs has no plain, adequate and complete remedy at law, and Three Runs will be irreparably harmed if the Jacobs are not required to comply with the Protective Covenants.

9. The Protective Covenants further provide that in the event of any litigation the prevailing party shall be entitled to recover attorneys' fees and costs. Three Runs prays that the Court grant equitable relief in ordering the Jacobs to maintain their lots in a clean and first class condition as the other homeowners do in Three Runs Plantation, and that it recover reasonable attorneys' fees and all costs of this action.

WHEREFORE, Three Runs prays:

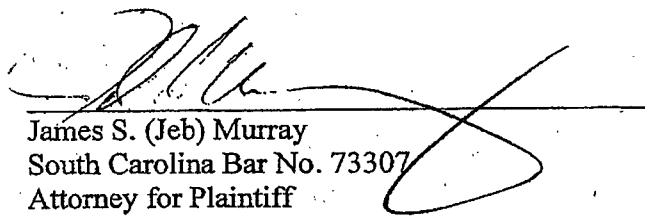
1. The Jacobs be ordered to maintain their property, and to mow the grass and control the weeds in a manner consistent with the way other homeowners of Three Runs Plantation do;

2. The Jacobs pay all reasonable attorneys fees and costs of this action; and

3. That such other and further relief be entered as may be just and equitable.

Augusta, Georgia

March 8, 2011



James S. (Jeb) Murray
South Carolina Bar No. 73307
Attorney for Plaintiff
Warlick, Tritt, Stebbins & Murray, LLP
Post Office Box 1495
209 Seventh Street, Suite 300
Augusta, GA 30903-1495
Telephone: 706-722-7543
Facsimile: 706-722-1822

STATE OF SOUTH CAROLINA)

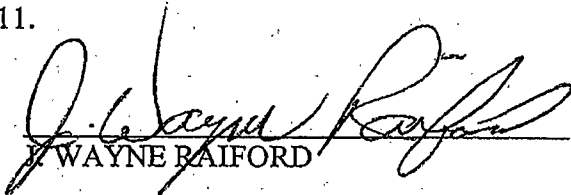
COUNTY OF AIKEN)

2011-CP-02-00548

VERIFICATION

Personally appeared before me, an officer duly authorized to administer oaths in the State of South Carolina, J. WAYNE RAIFORD, who, after being duly sworn, states under oath that he is the President of Three Runs Plantation Homeowners Association, Inc., and that he has reviewed the foregoing Complaint and knows the facts stated to be true of his own knowledge, except as to those matters stated upon information and belief, and as to those matters he believes them to be true.

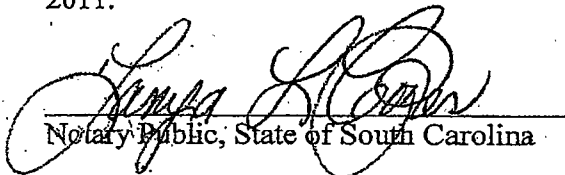
This the 7th day of March, 2011.


J. WAYNE RAIFORD

Sworn to and subscribed before

Me this the 7th day of March,

2011.


Notary Public, State of South Carolina

My Commission Expires:

October 15, 2013

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ORIGINAL FILED

MAR 11 2011am
8:30am
AIKEN COUNTY
CLERK OF COURT

State of South Carolina)

County of Aiken)

Three Runs Plantation Homeowners
Association, Inc.,)

Plaintiff,)

vs.)

Jay J. Jacobs and Judith B. Jacobs,)

Defendants and Third-Party
Plaintiffs,)

vs.)

T.R. Sales Plantation, LLC and J. Wayne
Raiford,)

Third-Party Defendants.)

In the Court of Common Pleas

CA No. 11-CP-02-0548

**ANSWER, COUNTERCLAIMS
AND THIRD-PARTY COMPLAINT**

COME NOW THE DEFENDANTS, answering the Plaintiff's Complaint and presenting their Counterclaims and Third-Party Complaint, and respectfully show unto the Court:

FOR A FIRST DEFENSE

1. The Defendants deny each and every allegations set forth in the Complaint which is not hereinafter specifically admitted or to which a response is not otherwise provided.
2. The Defendants, upon information and belief, admit the allegations set forth in Paragraph 1 of the Complaint.
3. The Defendants admit the allegations set forth in Paragraph 2 of the Complaint.
4. With regard to the allegations set forth in Paragraphs 3 and 4 of the Complaint the Defendants admit that their properties are subject to certain protective covenants and respectfully request that the Court and Jury make reference to such covenants for the exact terms and provisions set forth therein.

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**AIKEN COUNTY
CLERK OF COURT**

5. The Defendants deny the allegations set forth in Paragraph 5 of the Complaint.

6. With regard to the allegations set forth in Paragraph 6 of the Complaint the Defendants admit that their properties are subject to certain protective covenants and respectfully request that the Court and Jury make reference to such covenants for the exact terms and provisions set forth therein.

7. With regard to the allegations set forth in Paragraph 7 of the Complaint the Defendants admit that they have been notified of alleged violations of the protective covenants, but deny the remaining allegations set forth in said Paragraph.

8. With regard to the allegations set forth in Paragraphs 8 and 9 of the Complaint the Defendants admit that the protective covenants set forth certain rights and remedies of the Parties and respectfully request that the Court and Jury make reference to such covenants for the exact terms and provisions set forth therein. The Defendants, however, deny that the Plaintiff is entitled to the relief set forth in its Complaint.

FOR A SECOND DEFENSE

9. The Complaint fails to state facts sufficient to constitute any cause of action against the Defendants.

FOR A THIRD DEFENSE

10. The claims and causes of action set forth in the Complaint are barred by release and / or accord and satisfaction.

FOR A FOURTH DEFENSE

11. The claims and causes of action set forth in the Complaint are barred by the Doctrine of Waiver.

FOR A FIFTH DEFENSE

12. The claims and causes of action set forth in the Complaint are barred by the Doctrine of Estoppel.

FOR A SIXTH DEFENSE

13. The claims and cause of action set forth in the Complaint are barred by the Doctrine of Unclean Hands.

FOR A SEVENTH DEFENSE AND BY WAY OF COUNTERCLAIM

14. The Defendants reallege those matters set forth in Paragraphs 1-13 above.

15. The Plaintiff has failed to abide by, comply with and enforce, evenly and / or otherwise, certain terms and provisions of the protective covenants governing Three Runs Plantation.

16. The Plaintiff has failed to abide by and comply with certain terms and provisions of its bylaws and other rules applicable to its operation.

17. The Defendants are informed and believe that they are entitled to an Order of this Court declaring that the Plaintiff is required to abide by and comply with its bylaws and other rules applicable to its operation, and evenly and fairly abide by, comply with and enforce those protective covenants applicable to the Defendants and other owners of property located in Three Runs Plantation.

FOR AN EIGHTH DEFENSE AND BY WAY OF COUNTERCLAIM

18. The Defendants reallege those matters set forth in Paragraphs 1-17 above.

19. The Defendants have sustained certain actual damages as a result of the Plaintiff's failure to abide by and comply with certain terms and provisions of its bylaws and those other rules applicable to its operation, and the Plaintiff's failure to abide by, comply with and enforce, evenly and / or otherwise, certain terms and provisions of the protective covenants governing Three Runs Plantation.

20. The Defendants are informed and believe that they are entitled to judgment against the Plaintiff for such actual damages.

**FOR A NINTH DEFENSE
AND BY WAY OF COUNTERCLAIM**

21. The Defendants reallege those matters set forth in Paragraphs 1-20 above.

22. The Defendants have been forced to retain legal counsel to represent and protect their interests with regard to the actions of the Plaintiff.

23. The Defendants are informed and believe that they are entitled to recover from the Plaintiff such attorney's fees, costs and expenses.

THIRD-PARTY COMPLAINT

24. The Defendants and Third-Party Plaintiffs reallege those matters set forth in Paragraphs 1-23 above.

25. The Third-Party Defendant T.R. Sales Plantation, LLC is a limited liability corporation organized and existing under the laws of the State of South Carolina and transacts business in Aiken County, South Carolina.

26. The Third-Party Defendant J. Wayne Raiford, upon information and belief, is a citizen and resident of Edgefield County, South Carolina.

27. In conjunction with the marketing and sale of property in Three Runs Plantation to the Third-Party Plaintiffs and others the Third-Party Defendants agreed to construct and provide certain amenities and recreational facilities for the use and benefit of the Third-Party Plaintiffs and other property owners.

28. The Third-Party Plaintiffs relied upon such agreements in purchasing property from the Third-Party Defendants.

29. The Third-Party Defendants have failed and refuse to construct and provide certain amenities and recreational facilities, including horse barns, equestrian facilities, tennis courts and a recreational center.

30. The failure of the Third-Party Defendant to construct and provide such amenities and recreational facilities constitutes a breach of the Parties' agreement.

31. The Third-Party Plaintiffs have sustained certain actual damages as a result of the Third-Party Defendants' breach of the Parties' agreement.

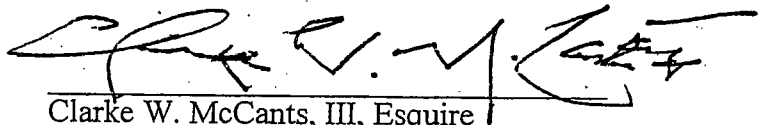
32. The Third-Party Plaintiffs are informed and believe that they are entitled to judgment against the Third-Party Defendants for such actual damages.

JURY TRIAL REQUEST

33. The Defendants request a jury trial as part of this matter.

WHEREFORE, having fully answered the Defendants respectfully request that the Plaintiff's Complaint be dismissed and that the Defendants / Third-Party Plaintiffs be granted the relief set forth in their Counterclaims and Third-Party Complaint.

NANCE, MCCANTS & MASSEY



Clarke W. McCants, III, Esquire
Post Office Box 2881
Aiken, South Carolina 29802
(803) 649-6200 x21

Dated: April 26, 2011

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

Civil Action No. 11-CP-02-0548

THREE RUNS PLANTATION
HOMEOWNERS ASSOCIATION, INC.

Plaintiff,

vs.

JAY J. JACOBS and JUDITH B.
JACOBS

Defendants and Third-Party
Plaintiffs,

vs.

T.R. SALES PLANTATION, LLC and
J. WAYNE RAIFORD,

Third-Party Defendants.

**PLAINTIFF'S ANSWER TO
DEFENDANTS' COUNTERCLAIMS**

NOW COMES Three Runs Plantation Homeowners Asocation, Inc., ("Plaintiff") and hereby responds to the Counterclaims of Jay J. Jacobs and Judith B. Jacobs ("Defendants") in the above-captioned case as follows:

FIRST DEFENSE

Defendants' Counterclaims fail to state a claim upon which relief can be granted.

SECOND DEFENSE

Plaintiff denies all allegations contained in Defendants' Counterclaims not specifically admitted herein and demands strict proof thereof.

THIRD DEFENSE

1. By way of specific answer to Defendants' Counterclaim, Plaintiff realleges the matters set forth in paragraphs numbered 1 through 9 of its Complaint.

2. Plaintiff denies the allegations set forth in paragraphs numbered 10, 11, 12 and 13 of Defendants' Answer. Plaintiff further moves that Defendants be required to file a more definitive statement as to the facts that support their claim that the causes of action set forth in the Plaintiff's Complaint are barred by release and/or accord and satisfaction, Doctrine of Waiver, Doctrine of Estoppel and Doctrine of Unclean Hands.

ANSWER TO DEFENDANTS' SEVENTH DEFENSE AND COUNTERCLAIM

3. Plaintiff incorporates its responses to the allegations of Defendants contained in paragraphs 1 through 13 above as its responses to Defendants' allegations contained in paragraph numbered 14 of Defendants' Counterclaim.

4. Plaintiff denies the allegations contained in paragraphs numbered 15, 16 and 17 of Defendants' Counterclaim and moves the Court to order that Defendants file a more definitive pleading showing what terms and provisions of the Protective Covenants and ByLaws or other rules which have not been enforced evenly or which Plaintiff has failed to abide by.

ANSWER TO DEFENDANTS' EIGHTH DEFENSE AND COUNTERCLAIM

5. Plaintiff incorporates its responses to the allegations of Defendants contained in paragraphs numbered 1 through 17 above as its responses to Defendants' allegations contained in paragraph numbered 18 of Defendants' Counterclaim.

6. Plaintiff denies the allegations contained in paragraphs numbered 19 and 20 of Defendants' Counterclaim and moves the Court to order a more definitive statement setting out

what terms and provisions of the ByLaws and other rules applicable to the subdivision have not been complied with and set forth any damages Defendants have sustained.

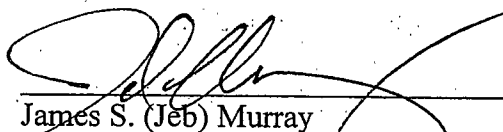
ANSWER TO DEFENDANTS' NINTH DEFENSE AND COUNTERCLAIM

7. Plaintiff incorporates its responses to the allegations of Defendants contained in paragraphs numbered 1 through 20 above as its responses to Defendants' allegations contained in paragraph numbered 21 of Defendants' Counterclaim.

8. Plaintiff denies admits the allegations contained in paragraphs numbered 22 and 23 of Defendants' Counterclaim.

WHEREFORE, having fully answered Defendants' Counterclaim, Plaintiff prays that the relief prayed for in its Complaint be granted and all claims contained in Defendants' Counterclaim be denied.

May 11, 2011.



James S. (Jeb) Murray
South Carolina Bar No 73307
Attorney for Plaintiff
Warlick, Tritt, Stebbins & Murray, LLP
Post Office Box 1495
209 Seventh Street, Suite 300
Augusta, GA 30903-1495
Telephone: 706-722-7543
Facsimile: 706-722-1822

State of South Carolina)

County of Aiken)

Three Runs Plantation Homeowners
Association, Inc.,)

Plaintiff,)

vs.)

Jay J. Jacobs and Judith B. Jacobs,)

Defendants and Third-Party
Plaintiffs,)

vs.)

T.R. Sales Plantation, LLC and J. Wayne
Raiford,)

Third-Party Defendants.)

In the Court of Common Pleas

CA No. 11-CP-02-0548

**NOTICE OF MOTION AND
MOTION TO ALTER OR AMEND**

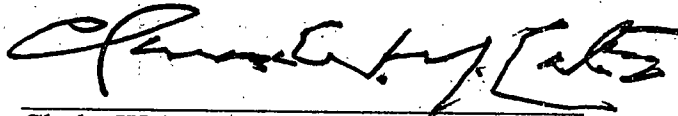
PLEASE TAKE NOTICE THAT THE DEFENDANTS AND THIRD-PARTY PLAINTIFFS will move before the Court at such time and place as is hereafter directed, notice of which will be given to you, for an Order, pursuant to Rules 52 and 59, SCRCP, and other applicable law and regulation, altering and / or amending the judgment filed in this matter on July 1, 2013. The Defendants and Third-Party Plaintiffs respectfully show unto the Court as follows:

1. By way of Counterclaim the Defendants sought a declaration that the Plaintiff has failed to abide by its bylaws and the protective covenants applicable to Three Runs Plantation. The Court did conclude that the Plaintiff has failed to abide the bylaws and / or protective covenants but did not enter judgment in favor in the Defendants. The Defendant respectfully request that the Court amend and / alter its decision to enter judgment in favor of the Defendants against the Plaintiff.
2. The Court found that certain trees on the Defendants' property obstructed an equestrian easement and that the Defendants should remove such trees. The Plaintiff has never requested such relief nor followed proper procedure, prior to filing its civil action, to obtain such relief. The Defendants respectfully request that the Court amend and / or alter its judgment to delete such findings and conclusions.

The Defendants and Third-Party Plaintiffs would respectfully request to have the right to amend and supplement this Motion upon further review of the Court's Order for this matter

and receipt of the responses of opposing Parties in this matter.

NANCE, MCCANTS & MASSEY

A handwritten signature in black ink, appearing to read "Clarke W. McCants, III", written over a horizontal line.

Clarke W. McCants, III, Esquire
Post Office Box 2881
Aiken, South Carolina 29802
(803) 649-6200 x21

Dated: July 15, 2013

1 THE COURT: Have a seat and state your full name for the
2 court reporter, please.

3 MR. JACOBS: Jay J. Jacobs.

4 EXAMINATION OF MR. JACOBS

5 BY MR. WARLICK:

6 Q Mr. Jacobs, my name's Byrd Warlick. I met you back
7 in April on the occasion when taking your
8 deposition, I believe in Mr. McCants' office. Do
9 you recall that occasion?

10 A I do.

11 Q When did you buy in Three Runs Plantation?

12 A I believe we bought in 2007. And then we built our
13 house in 2009 and moved in, in 2000 -- in December
14 of 2009.

15 Q Mr. Jacobs, I hand you what's been marked as
16 Plaintiffs' Exhibit 1 and ask you if you can
17 identify that.

18 A It looks like our agreement of -- to purchase the
19 land. And it's dated October 25th of 2007.

20 Q Okay. If I could -- that's my copy. This is the
21 copy for you.

22 A Okay.

23 Q Mr. Jacobs, I refer you to the contingencies,
24 Paragraph 16 on page 3, and ask you to read over
25 "A" and "B" and tell me what -- what that means to

046

1 you.

2 A "A" tells me that we had five days to change our
3 mind. And -- and "B" says that the covenants will
4 be acceptable if we don't notify -- if, I guess, we
5 don't notify the other party within five days from
6 the final execution of the contract.

7 Q Were you given a copy of the covenants?

8 A I don't recall having a copy, but we may have been.

9 Q Well, the agreement recites that you have a copy;
10 does it not?

11 A My best recollection is that we were given a copy
12 at settlement, and we were not present at
13 settlement, so the real estate agent acted on our
14 behalf and got the copy.

15 Q Well, the way the contract reads, you had five days
16 to object to any of the covenants; is that not
17 correct?

18 A That's correct.

19 Q Okay. And I hand you what's been marked
20 Plaintiffs' Exhibit 2 and ask you if you can
21 identity that document.

22 A It says it's the title to the real estate.

23 Q That's the deed by which you bought?

24 A I'm not familiar with the legal terms, but, yes. I
25 guess.

047

1 Q And -- and what was the date of that?

2 A That was -- you'll have to help me. I don't see a
3 date on here.

4 Q Well, let's -- let's go down to the signature.
5 Maybe it's down there.

6 A Oh. December 14th, 2007.

7 Q Have you ever had occasion to read the covenants at
8 Three Runs Plantation?

9 A I have.

10 Q Is it your testimony that you've read them, but you
11 may not have read them before you purchased? Is
12 that your testimony?

13 A Yes.

14 Q Have you reviewed the amendments to the protective
15 covenants?

16 A I have.

17 Q I hand you what's been marked Plaintiffs' Exhibit 3
18 and ask you if that's a copy of the protective
19 covenants and the amendments thereto.

20 A It appears to be.

21 Q And I ask you to scroll down or to -- to -- to
22 refer back to Article 3, Land Use Restrictions,
23 Paragraph 12.

24 A Could you give me a page number?

048

25 Q I don't know that mine are numbered. I -- I'll

1 count. 1, 2, 3 --

2 A Well, mine has a stamp on the bottom.

3 Q -- 4. Well, then it's page 2171.

4 A Yes.

5 Q And that -- that's the one that's been disputed by
6 you, and that's why we're in this lawsuit; is that
7 not correct?

8 A That's part of why.

9 Q What does Paragraph 12 provide?

10 A It says that lots are supposed to be maintained in
11 first class condition.

12 Q Does it also say "including mowing all grass,
13 controlling weeds and keeping the same free from
14 trash and debris"?

15 A Yes. It does.

16 Q Does it also say "if an owner does not do that,
17 that the association is entitled to do that for
18 him"?

19 A Yes. It does.

20 Q Does it also say that he'll be responsible for
21 paying the costs so incurred by the association if
22 that's done?

23 A Yes.

24 Q But you disagree with that; is that correct?

25 A I disagree with the interpretation of "first

049

1 class."

2 Q Did you ever agree to cut your grass?

3 A We did.

4 Q Who did you agree with?

5 A Are you talking about the -- the so-called
6 agreement between Mr. Raiford's attorney and our
7 attorney?

8 Q No. I'm talking about you. Did you? Did you ever
9 agree with Mr. Raiford or with anyone at Three Runs
10 or on the association? I believe Mr. Raiford came
11 to see you to ask you to cut the grass.

12 A Actually, he came to see us to tell us hello and
13 welcome us. And he said, "By the way, are you
14 cutting your grass?"

15 And we said, "We are cutting our grass." But,
16 at the time he showed up, our tractor was broken.
17 Is that what you're referring to, sir?

18 Q I hand you what's been marked as Plaintiffs'
19 Exhibit 8 and ask you if you've ever seen that
20 document before.

21 A I have.

22 Q What is that document?

23 A This is a letter from your firm -- oh. I'm sorry
24 -- from a previous firm representing Mr. Raiford,
25 saying that our lots were not in compliance with 050

1 the maintenance guidelines.

2 MR. MCCANTS: Just for the record, could we
3 identify that letter more specifically with
4 the date and whatnot?

5 MR. WARLICK: It's -- it's -- yeah. We can.
6 It's Plaintiffs' Exhibit 8. It purports to be
7 a letter from one Mary Guyon, addressed to Jay
8 Jacobs, dated October the 21st, 2010.

9 Q Does she not allege in the third paragraph on the
10 first page that you are the sole resident within
11 Three Runs that has failed to comply with the lot
12 maintenance guidelines? Do you see that?

13 A She alleges that, yes.

14 Q But you disagree with that?

15 A I think other people were also not in compliance,
16 if you're using the interpretation that Mr. Raiford
17 has used on our property.

18 Q I hand you what's been marked as Plaintiffs'
19 Exhibit 7 and ask you if you ever seen this letter,
20 which purports to be a letter from Jeb Murray,
21 dated January the 26th, 2011, to Freeman Belser,
22 and ask you if you've ever seen that letter before.

23 A I think I have, yes.

24 Q What does that letter say?

25 A It says that Mr. Murray received Mr. Belser's 051

1 response to Ms. Guyon's letter --

2 Q Uh-huh.

3 A -- which you did not ask about, and that Mr. Murray
4 has reviewed the covenants and feels that we are in
5 violation of that. It also says that they've
6 advised our client not to enter my property without
7 permission.

8 Q Okay.

9 A Do you want to know the reason why? Because Mr.
10 Raiford threatened to bring out the sheriff and
11 have me arrested if I tried to prevent him from
12 mowing my property against my will.

13 Q Now, you say it's a matter of interpretation: That
14 what Mr. Raiford's interpretation of what the
15 covenants provide is different than yours. Is that
16 -- is it -- is that a fair statement?

17 A I think it's a matter of what does "first-class
18 condition" mean.

19 Q I hand you back, again, Plaintiffs' Exhibit 3,
20 which is the covenants, and again refer you to
21 Paragraph Number 12. It talks about the
22 maintenance of the lots.

23 A Yes, sir.

24 Q Does that not also provide that the association
25 shall determine in its sole discretion what is

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1 acceptable?

2 A It does.

3 Q But you disagree with that?

4 A I disagree with their determination.

5 Q But the covenant which controls Three Runs provides
6 that the association will be the sole and final
7 decision-maker; does it not?

8 A It does.

9 MR. MCCANTS: Objection, Your Honor. If I
10 might. That's asking for a legal conclusion
11 in this matter.

12 MR. WARLICK: Document speaks for itself.

13 THE COURT: I'm going to sustain. Document
14 speaks for itself.

15 MR. MCCANTS: I agree.

16 Q Mr. Jacobs, when your deposition was taken, didn't
17 you say that you had as much right to determine as
18 to how your property be maintained as anybody else
19 did because you owned it?

20 A No.

21 Q What did you say?

22 A I said I bought a piece of property, and I should
23 have the right to maintain it as I choose.

24 Q And you maintain that that's still your position?

25 A It is. As long as I stay within the guidelines,

053

1 which I feel I am doing.

2 Q And you disagree with the interpretation the
3 association made as to the guidelines?

4 A I disagree with the interpretation about what
5 first-class condition is.

6 Q Okay. Is your property maintained consistent with
7 that of your neighbors?

8 A I find that a hard question to answer. I don't
9 know who my neighbors are that you're referring to.

10 Q Anybody who lives in Three Runs Plantation?

11 A I think it's maintained better than some. And
12 other neighbors maintain their properties in a
13 different way.

14 Q Mr. Jacob, I'm going to hand you a series of
15 photographs that are marked "P15" -- excuse me --
16 "P1 through P15," that's labeled "Jacobs' lot,
17 December 28, 2010," and ask you if you can identify
18 those.

19 A I can -- I think, at best, I can identify these as
20 the ones you presented to me at my deposition. And
21 you asked me if I knew what they were, and I said I
22 didn't.

23 Q So, today, you don't know?

24 A I don't know that I ever knew.

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25 Q Well, that's my question. Can you identify them or

1 not?

2 A I cannot. I can identify these as pictures. If
3 you say it's our lot, I guess I'll believe you.

4 Q Well, no. I'm asking you if you can identify them.
5 You cannot?

6 A I cannot.

7 Q Okay. Mr. Jacobs, I hand you another stack of
8 photographs that are marked Plaintiffs' 45 through
9 56 that purport to be photographs of your lot taken
10 on December the 5th, 2011. And I ask you if you
11 can identify any of those.

12 THE COURT: While he's looking at those, can
13 you tell me how those were marked again?

14 MR. WARLICK: These are marked, Your Honor, as
15 Plaintiffs' Photograph List 1 through 86 --

16 THE COURT: Okay.

17 MR. WARLICK: -- with each photograph having a
18 number on the reverse side with a number and
19 being grouped on this list by a date as to
20 when it was taken.

21 MR. MURRAY: The first batch was 1 through 15,
22 and the second batch was 45 through 56.

23 THE COURT: 45 through 56. Okay. Thank you.

24 A I think these are pictures of our property judging
25 by the fact that I can see what looks like our

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1 house in the background and that we put tags on
2 trees so that we would know which one -- what to
3 mow and what not to mow. And I see tags on the
4 trees.

5 Q And the tags on the trees that you -- that you
6 marked so that they would not be cut. Is that --
7 is that your testimony?

8 A We marked them for two reasons. The first reason
9 was that when we mowed, we would know which ones
10 not to cut, and the second reason was we marked
11 them right after Mr. Raiford threatened to mow our
12 lawn against my will and throw me in jail if I
13 tried to stop him. So we wanted to have the trees
14 marked so we could take pictures of it if he did
15 that.

16 Q I hand you what's been marked as Plaintiffs'
17 Exhibit 9 and ask if you've seen that before or one
18 similar.

19 A I've seen similar to this, yes.

20 Q Is that a marketing tool for Three Runs Plantation?

21 A It looks like it, yes.

22 Q Did you see one of those before you purchased?

23 A We did.

24 Q Does that have in it a site plan?

25 A I didn't look. It does.

056

1 Q Where are -- where are your lots that you --

2 A We're lots 10 and 11 in Phase 2.

3 Q In Phase 2?

4 A Yes.

5 Q Is that marked as to what's Phase 2 and what's
6 Phase 1?

7 A Yes.

8 Q And you were given this when you first saw the
9 property or thereabouts?

10 A When we bought the property that's -- I don't know
11 if it was that exact handout, but, yes. We got
12 something similar to that.

13 Q And what were you told about the Three Runs
14 development?

15 A By whom?

16 Q Whoever you talked with.

17 A Okay. We talked with our real estate agent,
18 Courtney Conger, and she told us this was an
19 equestrian development, that the developer -- and
20 at that point, we didn't know his name -- was doing
21 this as an act of love that -- of horses and
22 equestrian areas, that there were a number of
23 amenities that we would have, that -- that there
24 were going to be estate-type homes of a high
25 quality, that the lots were going to be of a fairly

057

1 regular size -- at least five acres -- and that
2 sales and development had already started. And
3 there may be some other things but I think those
4 are probably most of the selling points. Oh. And
5 that we didn't have to worry about the project
6 being completed or the amenities going in because
7 the developer had a lot of money; he didn't have
8 the property mortgaged, and there would be no
9 problems about financing as far as building
10 everything that he said. Because this was the
11 beginning, I think, of some of the problems in the
12 marketplace with real estate developments.

13 MR. WARLICK: I have no further questions of this
14 witness, Your Honor.

15 THE COURT: Thank you, Your Honor -- I mean, Mr.
16 Plaintiff -- Mr. McCants.

17 MR. MCCANTS: Still getting used to the job, Your Honor?

18 THE COURT: That's right.

19 MR. MCCANTS: With the court's permission -- I
20 understand with Mr. Warlick's consent -- I am not
21 going to --

22 MR. WARLICK: That's correct.

23 MR. MCCANTS: -- direct or cross at this point and
24 reserve that for my case.

058

25 THE COURT: That's fine. All right. Next witness for

1 THE COURT: Is that an exhibit?

2 MR. MCCANTS: I'm getting ready to mark it
3 once I --

4 A Yeah. This is.

5 MR. MCCANTS: -- get it from you, Mr. Garner.
6 (To the court reporter) If I might, that'll
7 be my next exhibit. Oh, I'm sorry. I'm
8 sorry. And just for the record, there's two
9 stickers on this, Judge. This is Defendants'
10 Exhibit Number 2 for this trial, and also it
11 was used at the deposition of Mr. Raiford.

12 Q Mr. Garner, would you look at that for a moment
13 please?

14 A Yes.

15 Q All right, sir. We've got to wait on our court
16 reporter a second, okay? Doggone it. I've already
17 messed up.

18 Defendants' Exhibit No. 2, "The Aiken
19 Horse," dated October/November 2009 and
20 Three Runs Plantation overview.

21 Defendants' Exhibit No. 3, "The Aiken
22 Horse," dated April/May 2011 and Three
23 Runs Plantation overview.

24 Q Doggone it. I've already messed up.

059

25 Let's look at Exhibit Number 2 for a second,

1 and that again is -- the first page is the cover
2 sheet of "Aiken Horse". Then what I will tell you
3 is this been copied off one of the -- I guess the
4 back page of -- of one of the -- you know "Aiken
5 Horse" comes in several --

6 A Right.

7 Q -- sheets of page --

8 A -- sections.

9 Q -- sections.

10 A Yes.

11 Q That's the back page. Page 2 is --

12 A -- on the first section.

13 Q -- back page on section -- all right. Look at the
14 second page. The description there for Three Runs
15 says, at the last sentence there, "It's a special
16 place that provides an opportunity for equestrian
17 and nonequestrian families alike to enjoy the peace
18 and tranquility of gracious country living." You
19 see that?

20 A Yes, sir.

21 Q And that was your company's words to describe Three
22 Run?

23 A Yes, sir.

24 Q So it's not just an equestrian community, is it?

25 A Not 100 percent, I guess, no.

060

1 Q All right. Well, if I understood your testimony
2 earlier that it was solely an equestrian community.
3 That's not true, is it?

4 A Not completely. I don't think we turn somebody
5 away that was not equestrian.

6 Q Sure. The people that may want to enjoy a fitness
7 center or tennis courts, they may be the
8 nonequestrian people that we're talking about. Do
9 you agree?

10 A Possible.

11 Q Do you know Ms. Jacobs is an equestrian -- my
12 client?

13 A I believe they are.

14 Q I don't think Mr. Jacobs is. He'll have his chance
15 to talk a little bit more. But Ms. Jacobs, I
16 understand, does ride horses; he does not. He --
17 in other words, we have an equestrian and a
18 nonequestrian in the house; is that fair?

19 A That -- that's usually the way it is.

20 Q That would suit perfectly for your marketing
21 scheme, wouldn't it?

22 A Yes.

23 Q Got --

24 A It would.

25 Q -- a equestrian and a nonequestrian. Okay.

061

1 Q And if you don't, that affects the value of the
2 property; is that correct?

3 A It can.

4 Q Well, it does, doesn't it?

5 A Yeah. I mean --

6 Q You're an expert. It does affect the property?

7 A Some -- it -- yes. To some degree; some things
8 more than others. But, yes. Absolutely.

9 Q Thank you.

10 THE COURT: Anything in response?

11 MR. WARLICK: I'm through with this witness, Your Honor.

12 THE COURT: All right. Ma'am, you can step down.

13 THE WITNESS: Thank you.

14 (Off the record from 12:47 p.m.
15 until 1:05 p.m.)

16 THE COURT: All right. We ready, gentlemen?

17 MR. WARLICK: Lori King.

18 Lori Ann King, being duly sworn and cautioned to
19 speak the truth, the whole truth, and nothing but
20 the truth, testified as follows:

21 THE COURT: Have a seat and state your full name,
22 please.

23 THE WITNESS: My name is Lori Ann King.

24 EXAMINATION OF MS. KING

25 BY MR. WARLICK:

062

1 Q Where do you reside, Lori?

2 A I live at Three Runs Plantation in Aiken, South
3 Carolina.

4 Q How long have you lived there?

5 A For about two years now.

6 Q What was -- where did you move to Aiken from?

7 A We came in from the Bay Area out in California.

8 Q Are you a horse person?

9 A Yes. That's why we focused on Aiken and,
10 specifically, Three Runs. We had seen it
11 advertised, and we were looking for a horse
12 community. We had just retired, and were looking
13 for a horse community. And we couldn't find
14 anything on the west coast that we liked, and a
15 friend said come out to Aiken; there's about 50,
16 horse communities out here. And we came out and
17 looked at all of them and fell in love with Three
18 Runs and made an offer before we went back home.

19 Q And back home was California?

20 A Yes, sir.

21 Q You said you both retired. What did you do?

22 A Both my husband and I had been in law enforcement
23 for 30 years.

24 Q Have you been pleased with Three Runs?

25 A We love it there.

063

1 Q Do you ride on a regular basis?

2 A When our horses are sound, we -- we ride every day,
3 yes. We've got -- I ride competitively dressage,
4 and I've got a big German Holstiener that's
5 imported from Germany that I ride dressage with.
6 And my husband is a show jumper, and then we've got
7 a retired show jumper that we have on our -- and we
8 have our horses on our property. And we use the
9 trails and the arena and the dressage ring and the
10 jump ring on a -- on a regular basis.

11 Q How are the lots laid out so that you can go from
12 your house to the dressage area to the various
13 places with the amenities?

14 A Well, we have our horses out. Some people, you
15 know, use trailers and stuff, but we have our
16 horses. And the lots are laid out so that
17 everything has an easement so that you can pass
18 between the houses to hit the trails there. And
19 we'll -- we'll ride the trails down or ride one of
20 the easements by the road down -- down to the
21 rings. But usually we like to go on the trails to
22 -- to head down there.

23 Q How many trails are there? What -- what -- give me
24 some idea about the volume of the trails as
25 compared with other places that you've ridden? **064**

1 A Oh, my. Well, back in California, you know, you're
2 -- you're landlocked, and so we had a third-mile
3 track. And that was the only trial that you could
4 walk on was this dusty third of a mile. Out here
5 there is, you know -- and it's probably accurate --
6 there's at least over 30 miles of groomed --
7 beautiful trails that we just -- we just love.

8 Q Are you familiar with this dispute with the Jacobs?

9 A You know, I'm not familiar with all of it. I mean,
10 I know that there was a dispute over mowing and
11 then that mowing issue, kind of, morphed into
12 something bigger. And I've never really known the
13 details of what they're unhappy about, because the
14 covenants are pretty clear about how you maintain
15 your property. And -- and I never really
16 understood how that -- how this developed into --
17 into a lawsuit from the homeowners.

18 Q When you said they're pretty clear about how to --
19 how to maintain your yards, what's -- do you
20 maintain your yards on the corners of your -- your
21 area of the ground in accordance with the covenants
22 as you understand them?

23 A Yes. I mean -- and -- because we have horses, you
24 know, our lots are -- are -- you know, we have the
25 trees and stuff, but they're clear. And we worked

065

1 really hard to plant and get them, you know, nice
2 and green and -- and everything else. And, you
3 know, they don't have horses on their property, so
4 theirs, you know, has, I guess, more trees and
5 foliage and -- and other stuff. But it's -- it's a
6 different maintenance level, but there's still -- I
7 mean, the -- the covenants are very clear: You
8 know, you have to maintain your lots in a
9 acceptable manner. And it's pretty much spelled
10 out how you maintain them. And we work really hard
11 to try to maintain our property like that to also
12 make it property that -- that the horses can enjoy
13 and -- and be out on.

14 Q How about the Jacobs' property? Is it maintained
15 to the same standard as yours and your neighbors?

16 A Well, they don't have horses on it, and -- and
17 their -- no. It's not. Their property, from my
18 perspective, is, kind of, a mess. I mean, you
19 can't -- they don't really maintain the easement
20 portion of it, so it's hard to know how -- you
21 know, like when you're trying to ride down on the
22 easement side, the trees -- it's overgrown. For a
23 long time there was weeds that were 4 or 5 feet
24 tall. But it's not -- their -- their lot does not
25 look anything like the majority of the horse

066

1 property lots that are well-maintained and planted
2 and fenced and -- and taken care of.

3 Q And would you expect the homeowners' association to
4 make them maintain their property the same as the
5 other lot -- property owners are?

6 A I think that that's the homeowners' association's
7 job. I mean, we buy into a community knowing that
8 you aren't going to have, you know, a mobile home
9 park next door to you, or you aren't going to have
10 a lot that's full of trash or something else,
11 because we wanted to have those standards so that
12 things could be maintained in -- in a level that
13 you bought into it as.

14 Q And do -- do you think Wayne Raiford and Three Runs
15 development has done that?

16 A I'm -- overall?

17 Q Yes.

18 A Yes, sir. No. I think that they tried real hard.
19 I know that they -- the property that they have to
20 maintain, as far as the easements and the lots they
21 have to mow, get mowed on a regular basis. And --
22 and it's very disappointing to get into this type
23 of dispute with the homeowner who doesn't want to
24 meet those standards that Mr. Raiford had -- had
25 set out. Because, again, we looked at every

067

1 property -- every equestrian property in -- in
2 Aiken County when we came here, and we found
3 ourselves comparing everything back to the quality
4 at Three Runs. And we bought in there because of
5 the quality of the properties that were available
6 at Three Runs.

7 MR. WARLICK: No further questions.

8 THE COURT: Cross-examination?

9 MR. MCCANTS: Thank you.

10 EXAMINATION OF MS. KING

11 BY MR. MCCANTS:

12 Q Good afternoon, Ms. King.

13 A Good afternoon, sir.

14 Q I'm Clarke McCants. I represent the Jacobs.

15 A Mr. McCants, nice to --

16 Q Thank you.

17 A -- meet you.

18 Q Thank you. And thank you for coming today.

19 You did say your property was a mess, did you?

20 Or was that just, kind of, a light comment?

21 A I didn't say it --

22 Q Somebody -- you said somebody's property is a mess.

23 A I thought -- I think that the Jacobs' property
24 looks like it's a mess.

25 Q At the present time?

068

1 A Yes, sir.

2 Q All right. What -- what is your understanding of
3 the standard that -- that's involved here? What
4 are they required to do to make sure that a mess is
5 not created?

6 A That the -- the -- the basic standards that the
7 property is mowed and maintained, you know, and
8 that the fencing -- that the fencing is maintained;
9 that the, you know -- the housing meets certain
10 codes and are approved by the, you know, -- by the
11 board, which is actually Mr. Raiford. But there is
12 just a certain level of standards that apply to --
13 to the properties. Now, I know that, you know,
14 they didn't mow their property for -- you know, for
15 a good number of months and the weeds had grown up.
16 And, you know, sometimes you'll ride by the back
17 part of the trail and there was a big brush pile
18 that had been back up there for several weeks that
19 -- that was, you know, just kind of left there as
20 a, you know, pile and stuff. So that's what I,
21 kind of, call a mess.

22 Q All right. Are you aware that Mr. Raiford is okay
23 with the way they maintain their property?

24 A I haven't talked to Mr. Raiford about how they
25 maintain the property.

1 Q Well, you know, he's head of the property owners'
2 association?

3 A Yes, sir.

4 Q All right. I mean, he's in sole control of it.
5 You okay with that?

6 A That -- I knew that when I bought into it that
7 that's how it was laid out, yes.

8 Q All right. Are you aware he brought this lawsuit?

9 A I don't know the basics. As I've mentioned before,
10 I don't know the basics of how this lawsuit
11 developed.

12 Q All right. I mean, I thought I heard you say you
13 don't know why the homeowners are bringing this
14 lawsuit. Mr. and Mrs. Jacobs didn't bring this
15 lawsuit. You understand that?

16 A If you -- I understand that there is a lawsuit, you
17 know, and I know that the lawsuit is between the
18 homeowners' association and the Jacobs.

19 Q Okay. I just wanted to know if you knew who
20 brought it before?

21 A Well, I believe that Mr. Raiford was forced to --
22 to, kind of, bring a lawsuit because they failed to
23 comply with the standards, and then there's some
24 sort of a countersuit brought in. But I don't
25 understand the whole dynamics of how all that, 070

1 actually, came about at this point.

2 Q Okay. Do you want the tennis courts and the
3 fitness center at Three Runs?

4 A For -- well, for me personally?

5 Q Yeah.

6 A I don't really care about tennis courts --

7 Q Right.

8 A -- but I, you know -- I love the amenities that we
9 have.

10 Q Yes, ma'am.

11 A And it is my understanding that the amenities --
12 that all those are future comings. But, yes. I
13 would love to have a fitness center so I don't have
14 to go down to -- to Gold's Gym.

15 Q That's what I was going to ask you. You know, and
16 Gold's Gym is way down here, and you would love to
17 have a -- a nice facility there that you could
18 use --

19 A And my --

20 Q right?

21 A -- understanding is that that's coming.

22 Q It's your understanding it's coming?

23 A Yes, sir.

24 Q When?

25 A When the developer has the opportunity to build it,

071

1 but -- when we bought in, we were told that there
2 were certain amenities that are being proposed and
3 that as the developer sells more property and
4 develops the equity so that he doesn't go into debt
5 for it, that he'll build these amenities. There
6 was never a time frame that was given for these --
7 you know, these certain amenities to be built. I
8 mean, the -- the project has developed, and the
9 pool got put in, you know, after we bought in.
10 This new cross-country course has been put in.
11 Again, my understanding is that, you know, the
12 fitness center is another one that still, you know,
13 coming down the road. The trails are still
14 maintained. So things that we bought into, you
15 know, have -- have been -- been met, and the stuff
16 that is coming, it is my understanding it's still
17 forth coming.

18 Q Do you know when Three Runs began development?

19 A I believe it was five or six years ago, but --

20 Q How much longer do you think should be allowed for
21 the developer to fulfill a promise to do these
22 amenities? You have any idea?

23 A Well, that's not up to me, so that would be up to
24 him and --

25 Q I'm just asking you. You've got a vested interest

072

1 in this property.

2 A Well, I would love to have it as soon as possible,
3 but it's his discretion, so -- and it's always been
4 his discretion. So it's whenever he has the
5 opportunity to -- to build it. It's his funding.
6 You know, he needs to have the funds available.
7 Because one of the reasons we bought into Three
8 Runs is that there is no mortgage there. I mean,
9 he does not -- you know, there's nothing that's
10 going to happen that's going to force him to go
11 into foreclosure like some of the other properties
12 have gone into.

13 Q Uh-huh.

14 A So he's been able to manage his funding to build
15 the rings, the jumps, the trails, the clubhouse,
16 the pool without going into debt for it, and we
17 bought into it because we didn't want him to go
18 into debt so that we would ever have to risk
19 bankruptcy or foreclosure. So how -- whenever his
20 finances say that's when he's going to build and
21 continue on with the amenities. And I --

22 Q -- the tennis courts and the -- the fitness center.

23 A And I have every belief that he'll continue with --

24 Q Do you know he's --

25 A -- the --

073

1 Q -- testified in this case he's got the money and
2 can do it? Do you know that?

3 A Well -- well, how would I know that, sir? I was --

4 Q I'm telling you.

5 A I've been sequestered outside, so, no. I didn't
6 know that.

7 Q I understand. I'm going to tell you that.

8 A Okay. Thank you.

9 Q That the money's there.

10 A Okay.

11 Q You ready for your tennis courts and your fitness
12 center so you don't you have to drive down to
13 Gold's?

14 A I would -- I would -- I don't care about tennis. I
15 can't -- I can't play tennis. I've got bad knees.
16 So --

17 Q I'll take --

18 A -- take --

19 Q -- the tennis --

20 A -- take --

21 Q -- courts.

22 A -- the tennis courts out. Just talk to me about
23 the fitness center. Because I would love to have
24 the fitness center, but, again, it's his
25 discretion.

074

1 Q Yeah. But he's got the money, and that seemed to
2 be what you -- and -- and I understand the
3 financial part of this. That's important. You
4 don't want to go into debt or anything. But if you
5 knew the money was there, you've been told there's
6 a fitness center, you ready for it?

7 A I -- yes.

8 Q All right.

9 A I would love -- I would love to have a fitness
10 center, but, again -- he's done a pretty darn good
11 job --

12 Q It's a beautiful --

13 A -- of --

14 Q -- place.

15 A -- developing Three Runs, so --

16 Q It is.

17 A -- you know, he's got more experience than I have
18 in development, because I'm not a business person.
19 My -- my life is law enforcement. And, you know,
20 he's done a good job of being -- of -- of having a
21 -- a development that is selling in this economy --

22 Q Uh-huh.

23 A -- and having a development that is a fabulous 075
24 facility. And I trust him to continue to on having
25 the, you know -- developing it in the manner that

1 is going to sustain it to be a premiere equestrian
2 center.

3 Q Nobody's disputing it's a beautiful area. You
4 picked well -- you and your husband.

5 A We -- we -- we love it there, so, yes. We agree.

6 Q Do you want some voting rights in the homeowners'
7 association? Are you worried about that?

8 A No. I'm not worried about that.

9 Q You don't want any say?

10 A No. I'd like to have a little bit, maybe, you
11 know, more communications and meetings with
12 something like to have some input, but, no. I
13 think that trying to have voting rights and having
14 -- having an area like that managed by committee
15 would actually be fraught with -- with a lot of
16 issues. So I'm --

17 Q A lot of --

18 A -- very --

19 Q -- problems?

20 A -- I'm very happy to have Mr. Raiford make all the
21 decisions and control the development of that
22 place. So I think he's doing a fabulous job.

23 Q What if the dues double next year? They're \$1500
24 right now?

25 A Sir, I came from California where \$1500 in a month

076

1 is the -- is common dues, so --

2 Q So that's --

3 A -- \$1500 --

4 Q -- a deal?

5 A -- \$1500 a year is not an issue for me.

6 Q No problem?

7 A No, sir.

8 Q Okay. You do understand how some of us who don't
9 come from California and used to higher expense,
10 might be a little concerned about the amount of the
11 dues involved?

12 A I can understand that, sure.

13 Q That's not unreasonable, is it? For us people --
14 for us --

15 A Money -- money is not an unreasonable factor to be
16 concerned about at any -- or at any issue.

17 Q If the dues went up to \$2000, that's still not
18 going to bother you?

19 A For the amenities that we have there -- I'd much
20 rather pay less, but for the amenities there and,
21 again, coming from what -- from where we were
22 landlocked in California and the dues that -- that
23 the owners paid there, I can't complain about that,
24 no.

077

25 Q How about architectural standards? Do you want a

1 say as to what kind of homes are built?

2 A I have no problem with the various of the homes
3 that are there right now. I think that there is
4 standards that have been adhered to, and I'm more
5 than willing to let his discretion continue in that
6 too, because I don't see any issues. I think we've
7 got a -- a nice variety of houses out there and
8 different styles, and they're all up to nice --
9 nice levels, so I don't feel there's any
10 degradation of -- of property values based upon
11 what's being built there now.

12 Q You built in -- you built in what year?

13 A It's been two years ago.

14 Q Who built your home?

15 A Donnie Shaffer.

16 Q Okay. And -- and he's a very fine builder.

17 But your house that he built is what size in
18 comparison to the Jacobs' house? Do you know
19 square-footage-wise?

20 A I have no idea.

21 Q Is it larger or smaller?

22 A Than -- I have no idea about their house, sir.

23 Q Well, just, from your observing the house, is your
24 house bigger or smaller than the Jacobs? **078**

25 A I -- I -- I'm sorry, sir. I don't -- I don't know

1 the square footage.

2 Q You know the Jacobs home, don't you?

3 A We drive by it. I've never been invited inside.

4 Q I mean, you've seen it from the outside?

5 A Outside -- sorry. Outsides are deceiving. I --
6 tell me what the square footage is, and I'll -- and
7 I can probably tell you --

8 Q I don't --

9 A -- or -- you know --

10 Q I don't know what it is.

11 A I don't either, so . . .

12 Q How much did you invest in the construction of your
13 home?

14 A Geez. I --

15 MR. WARLICK: I'm not sure that's got any
16 relevance, Your Honor.

17 MR. MCCANTS: Well, I think it goes to an
18 experts going to say value of homes is based
19 in part on building cost and amount invested,
20 so --

21 THE COURT: I'll let him ask it, if she knows.

22 Q Do you know?

23 A Well, not that I was -- no. I think that right now
24 we've probably got -- between the house, the barn,
25 the -- the hay shed, the fencing, the -- we

073

1 probably got about 650,000 invested in our
2 property, so . . .

3 Q Does that include the dirt too -- the lot and the
4 buildings?

5 A I don't know if that would be, actually -- I don't
6 know if that -- I -- off the top of my head, I
7 can't tell you if that's the extra 100,000 included
8 in that or not. Because we paid cash for that --

9 Q That's --

10 A -- so --

11 Q -- fair. You want -- you obviously want to
12 maintain the value of your -- your home, though --
13 resale value and protect the integrity of the value
14 of your home, correct?

15 A We'd like to maintain our value. We -- we plan on
16 being taken out of that house drooling and on
17 wheelchair, but, you know . . .

18 Q Well, it's got be sold at some point. We all know
19 that.

20 A Yeah. We -- by that time, we're hoping that we
21 won't care.

22 Q And you want your family, who's going to receive
23 your estate, to have as much out of that house as
24 possible, correct? You're going to be with us a
25 long time, Ms. King. Don't misunderstand me. But,

080

1 at some point, the property --

2 A We want --

3 Q -- has to be transferred.

4 A Yes.

5 Q Do you agree?

6 A We want to maintain our property value.

7 Q Sure you do.

8 A That -- there's no question about --

9 Q Yeah.

10 A -- that --

11 Q I mean --

12 A -- sir.

13 Q -- that's common sense, isn't it?

14 A I don't know about that, but, yes. We want to
15 maintain --

16 Q It's good business sense?

17 A -- our property value.

18 MR. MCCANTS: That's all I got. Thank you Ms. King.

19 THE COURT: Any redirect?

20 MR. WARLICK: That's all I have.

21 THE COURT: Thank you, ma'am.

22 THE WITNESS: Thank you.

23 Kari Schneider, being duly sworn and cautioned
24 to speak the truth, the whole truth, and **081**
25 nothing but the truth, testified as follows:

1 THE COURT: Please have a seat and state your full name.

2 THE WITNESS: Kari D. Schneider.

3 THE COURT: Is that C-a-r-r-i-e?

4 THE WITNESS: K-a-r-i.

5 THE COURT: Thank you.

6 EXAMINATION OF MS. SCHNEIDER

7 BY MR. WARLICK:

8 Q Kari, where do you live?

9 A Three Runs Plantation.

10 Q How long have you lived there?

11 A Two years.

12 Q Are you a horse person?

13 A Yes.

14 Q Do you ride?

15 A Yes.

16 Q Tell me what you liked about Three Runs.

17 A Well, I came from Oregon, and there is nothing like
18 it in Oregon. A planned equestrian community that
19 looks nice as -- has the amenities that it has:
20 the trails, the rings.

21 Q How did you find Three Runs from Portland, Oregon?

22 A The Internet.

23 Q Have you ever lived in the South before?

24 A No.

25 Q Has your husband?

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1 A No.

2 Q Did y'all come to Aiken, specifically, to buy at
3 Three Runs Plantation?

4 A Yes.

5 Q Tell me what it was that -- I know you said the
6 horse trails, but compared with other equestrian
7 centers that you, perhaps, have looked at?

8 A We -- we did look at others for comparison. It was
9 the -- the way the -- the place looked driving in.
10 It was the -- the ability to have the acreages that
11 you wanted. We have lived in other planned
12 communities -- not equestrian -- and we do like
13 having rules. We have lived outside planned
14 communities out in rural areas where there are no
15 rules. So we like the rules. And what appealed to
16 us about Three Runs over other, in Aiken, was the
17 -- the appearance, the trails, and the other
18 amenities.

19 Q When you said "the appearance," you talking about
20 curb appeal? How the grass is --

21 A Yeah.

22 Q -- cut and things like that?

23 A Yeah. Coming in and the -- the way that -- you
24 know, just coming in through the entrance and how
25 it looks.

1 Q Are you familiar with the Jacobs' property?

2 A Yes.

3 Q Do they maintain their property to the same
4 standard as the majority of the other homeowners in
5 Three Runs Plantation?

6 A No.

7 Q What's the difference?

8 A The shrubbery and the -- the grass.

9 Q Describe it for me if you could.

10 A Well, it's -- the properties are -- are mowed and
11 have big trees and there's -- it's pastoral --
12 pastures with some trees in it and mowed. Theirs
13 is more dense-forest look with scrub brush, small
14 trees, grass.

15 Q What do you call "scrub brush"?

16 A The bushy -- small, bushy plants.

17 Q When you said you have lived in places with rules
18 and places without rules and you like rules, what
19 are some of the rules that you are familiar with
20 about Three Runs?

21 A Well, one is you have to maintain your property.
22 We've lived out in the country before and your
23 neighbor could have a dishwasher out in their front
24 yard. So, when you have horses, you need property,
25 and you want to be in an area where you're not next

084

1 door to something like that. So it's those rules:
2 that you maintain your property and -- and can only
3 have certain types of animals in that property.
4 You -- you're not next to a -- a hog farm or
5 something like that.

6 Q And if -- and if you're riding, you know what that
7 means: to mow the grass for riding purposes?

8 A Yes.

9 Q And -- in an equestrian community, I mean, that's
10 -- that's a certain known standard if you know
11 anything about horses; is it not?

12 A Yes. To have a pasture, the horse has to be able
13 to be safely in it and graze and -- yes.

14 MR. WARLICK: No further questions.

15 THE COURT: Cross-examination?

16 MR. MCCANTS: Thank you.

17 EXAMINATION OF MS. SCHNEIDER

18 BY MR. MCCANTS:

19 Q Hi, Ms. Spencer. I'm --

20 A Schneider.

21 Q -- Clarke -- I'm sorry?

22 A Schneider.

23 Q Schneider. Excuse me. I beg your pardon. We've
24 got a lot of people involved. I represent the
25 Jacobs. I'm Clarke McCants.

085

1 What -- what do you understand to be the
2 standard for maintenance of the property in Three
3 Runs?

4 A Well, I've read the covenants, probably, only once
5 or twice when we were first looking at the
6 property, so I -- I couldn't say that I -- I know
7 those by heart. I -- what I do know is, I think,
8 the intent of them, which is to have property that
9 looks, I think, similar to what's around you.
10 Again, I would say, pastoral -- more of a pastoral
11 setting with trees.

12 Q All right. So, in other words -- and I'm not
13 putting words in your mouth -- but your idea of the
14 standard is what most everybody else is doing; is
15 that correct? -- the community standard.

16 A Yes.

17 Q All right. That's fair. Do the words "first-class
18 condition" ring a note with you? You ever heard
19 that term before? Have you ever seen that phrase
20 in the covenants?

21 A No. I don't recall that.

22 Q All right. And when you say "pastoral," I think I
23 know what you're talking about. You're talking
24 about more of a pasture setting: That is low grass
25 where horses are grazing, things of that nature, 086

1 correct?

2 A Correct.

3 Q And, hopefully, there's no washer and dryer sitting
4 in the middle of the pasture. We hadn't run into
5 that problem yet, have we?

6 A No. They moved their refrigerator that was on the
7 trail --

8 Q Good deal.

9 A -- so -- from a long time ago.

10 Q Do you know if the covenants said pastures are
11 required, or we -- we're seeking a pastoral look
12 here?

13 A I -- I -- again, it's been a couple years. I don't
14 recall that. I just recall that it wasn't -- when
15 we read them, it wasn't anything complicated. It
16 was, you know -- again, I think that you could just
17 look at your neighbors and, kind of, see the intent
18 of the property.

19 Q Go by that?

20 A Uh-huh.

21 Q All right. Just look into what everybody else is
22 doing, and that's the guide. Is that fair?

23 A Well, yeah. I would say that because the covenants
24 -- I don't remember -- you know, there's a lot of
25 words, and I don't remember specifics.

087

1 Q Okay. Just a second.

2 Defendants' Exhibit No. 6, Photograph.

3 Defendants' Exhibit No. 7, Photograph.

4 Q I'm going to show you -- I'm going to show you a
5 couple of photographs. Ms. Schneider, take a
6 second and look at Defendants' Exhibit 6 and 7, if
7 you would. Can you identify those properties?

8 A I can't.

9 Q What I will tell you is they are lots in Three
10 Runs, okay?

11 A Uh-huh. Well, yeah. I -- I assume that much --

12 Q All right.

13 A -- but I couldn't tell you what specific lots they
14 were.

15 Q Those don't meet your standards; is that fair?

16 A Well, I would say that some properties can get the
17 grass long or this brush around the trees, but not
18 for long. And it's one thing we like is it's not
19 like you're -- you don't have the -- the grass
20 police coming around. But what I would say is that
21 that's a little long, but some -- but usually it's
22 a -- you know, the mower's coming soon. This here,
23 usually, in most of the pastures, you see that
24 cleared out --

25 Q Right.

088

1 A -- around the trees.

2 Q And you -- just for the benefit of us, read the
3 exhibit number off of that.

4 A That's Exhibit 6.

5 Q And you were talking about the underbrush growing
6 up around the big tree, correct?

7 A Yes.

8 Q So, in sum, those do not meet your definition of
9 the standards?

10 A Well --

11 Q -- as depicted there?

12 A Well, as -- what I was going to say is sometimes
13 you see this on the edge of some where there's like
14 a tree. There's some pastures that have, like, a
15 tree break.

16 Q Yes, ma'am.

17 A So I would say that this in the middle of a
18 pasture, no. But, yes. I've seen it on the edge
19 of some of the -- the properties.

20 Q I'm going to try and ask you one more time.

21 A Okay.

22 Q Does that meet your idea of the standards for the
23 covenants?

24 A I would say, in general, no.

089

25 Q Okay. That's all I want. Okay. All right.

1 And you guys moved here from Oregon; is that
2 correct?

3 A Yes.

4 Q All right. Do you want the tennis courts and the
5 fitness center out there?

6 A Yes.

7 Q All right. When do you want them?

8 A As soon as we can have them.

9 Q What's that mean in South Carolina terms? You know
10 we're slow down here. What does that mean?

11 A Well, you know, I -- I -- I wouldn't put a timeline
12 on it. I trust the development to decide when that
13 can be done.

14 Q Do you know the money's there for them?

15 A I don't know.

16 Q If you knew the money was there, you ready for
17 them?

18 A Yes.

19 Q You a tennis player?

20 A Oh, I have casually -- periodically. Nothing
21 serious.

22 Q Do you have children?

23 A No.

24 Q All right. You want to use the tennis courts,
25 maybe, and the fitness center yourself?

090

1 A Yes.

2 Q Are you a member of a gym? And I'm not -- this --
3 I'm not trying to get too personal.

4 A No. I'm not.

5 Q I'm asking if you're coming to town to go to
6 Gold's --

7 A No.

8 Q -- or whether or not you'd want something --

9 A No.

10 Q -- more local. Okay.

11 How about -- I'm going to pick on you a
12 second, okay? Your fence at the rear of your lot,
13 is it within the setback to the easement? Do you
14 know?

15 A Yes.

16 Q You're in compliance?

17 A As far as I know, yes.

18 Q Okay. That's all I'm going to ask you about that,
19 okay?

20 Do you want voting rights in the homeowners'
21 association?

22 A Not right now.

23 Q When you want it?

24 A Probably when the community's larger.

25 Q Okay. Dues -- you okay with the dues?

091

1 A Yes.

2 Q \$1500?

3 A Yes.

4 Q If it goes up next year, you're okay with that?

5 A Yes.

6 Q It goes up \$500?

7 A Yes.

8 Q Oregon standards different than South Carolina?

9 A Yes. Well, also, we're looking at property on the
10 coast and it's a -- it's a bargain.

11 Q All right. Would you understand how some people
12 might be concerned about the "unbridled" -- to use
13 a horse term -- the unbridled right to increase
14 homeowners' dues?

15 A Yeah. I can understand people's concerns.

16 Q And when would you start asking questions about why
17 the dues are being increase?

18 A Well, in two situations: I felt like I didn't
19 trust the community where I lived, and, two, I saw
20 evidence of unbridled increases.

21 Q Well, that's why you moved to South Carolina so
22 you'd have an opportunity to be involved, right?

23 A Uh-huh.

24 Q Okay. Hold on one second.

092

25 MR. MCCANTS: I think that's all I got. Thank you, Ms.

1 Schneider.

2 MR. WARLICK: Let me just ask one last question.

3 REEXAMINATION OF MS. SCHNEIDER

4 BY MR. WARLICK:

5 Q You said something about one of the photographs he
6 showed you that you thought -- you were asked "was
7 going to be to be cut or had been," you know when
8 the mowing usually takes place?

9 A I don't keep track of the schedule, no. I -- I
10 could just tell. Usually, you can see a -- a place
11 you might go, "Oh. It's -- the mowing's going to
12 be coming." You know, you know it's scheduled to
13 be mowed. It's at that point it might need it.

14 Q Do you know when the common areas were mowed?

15 A No.

16 Q Okay.

17 MR. WARLICK: No further questions.

18 THE COURT: All right. Thank you, ma'am.

19 Kathryn Viele, being duly sworn and cautioned
20 to speak the truth, the whole truth, and
21 nothing but the truth, testified as follows:

22 THE COURT: Have a seat and state your full name for the
23 court reporter, please.

24 THE WITNESS: Kathryn Holder Viele.

25 THE COURT REPORTER: Spell that, please.

093

1 THE WITNESS: K-a-t-h-r-y-n H-o-l-d-e-r, "V," as in
2 Victor, i-e-l-e.

3 EXAMINATION OF MS. VIELE

4 BY MR. WARLICK:

5 Q Kathy, where do you live?

6 A In Three Runs.

7 Q What's the address?

8 A 6140 Hiwassee Run.

9 Q And do you live there because you ride horses?

10 A Yes.

11 Q Where did you move from when you moved to Three
12 Runs?

13 A Kansas.

14 Q Kansas?

15 A Easton, Kansas.

16 Q How did you hear about Three Runs Plantation?

17 A I've -- we wanted to move somewhere away from the
18 winters and thought we would be moving to,
19 probably, Tryon. We have friends there. And I've
20 heard a lot about Aiken and thought we should just
21 check it off our list. And when we came to Aiken,
22 the first place my realtor suggested after talking
23 to me was Three Runs, though, we looked all over on
24 four different trips. And after seeing Aiken, we
25 wanted to be in -- in Aiken and not somewhere else,

094

1 and decided we wanted Three Runs so . . .

2 Q Why did you pick Three Runs over the other
3 equestrian centers that you saw in Aiken County?

4 A A number of reasons. There are full-time residents
5 there, not mostly seasonal. I liked the way Wayne
6 had cleared the lots. There were some trees left
7 in the lots rather than being totally cleared like
8 at Chime Bell Chase. The interior lots had no
9 trees left on any of them. They just had them
10 around the edge and I didn't like that. I didn't
11 like Bridal Creek where it was almost too private
12 and you can't see beyond your lot. We, actually,
13 rented in Bridal Creek for three months, and
14 there're very few full-time residents there, and
15 they don't have as much facilities and community
16 things to use, which you get at Three Runs. We
17 also looked at some of the other ones, and I just
18 thought the best balance of having amenities I
19 didn't have to do any work for and maintain myself
20 and having people around was a good balance.

21 Q What about the size of Three Runs Plantation? When
22 you -- when you first looked at it, what was your
23 understanding as to how big the development would
24 be?

25 A Well, it says 2400 acres, and I figured he was

095

1 going to develop 2400 acres.

2 Q And when did you buy?

3 A July of -- two years ago. So July '10 -- 2010.

4 Q And what about the amenities that were advertised
5 to you -- the swimming pool, tennis courts, fitness
6 center --

7 A Uh-huh.

8 Q -- dressage area and all that -- when did you
9 expect those things would be put in?

10 A Part of why we bought there is because there were
11 the amenities in place. And my husband and I,
12 after seeing a number of communities that promised
13 things that didn't happen, said, "If nothing else
14 is done, are we going to be happy with what is
15 here? Is it going to be enough for us for the
16 amount we're paying?" And we thought it was
17 compared to what other places were going for, but
18 we also had the promises of more. And we thought
19 it was very likely it was going to happen but not
20 any set deadline. And I -- I think the developer,
21 when he builds amenities, he's going to be building
22 more overhead. There's more infrastructure and
23 there has to be a certain number of people who've
24 bought in and put into that fund and who are also
25 paying the annual expenses so that you don't become

1 top heavy and adding too much of amenities than you
2 can pay for. So I'm sure there's some tipping
3 point of how much amenities can be supported by the
4 number of people who are in at one point. And I
5 would not like to see a lot of stuff built up like
6 you see out at the place on 302 -- Buckley Farms --
7 has a track and a big barn and a bunch of stuff and
8 nobody's supporting it, and it hasn't worked. So
9 if you bought -- if you build too many amenities
10 before people have bought in or supporting it, you
11 have a problem with a community that can't sustain
12 itself.

13 Q Right.

14 A So I didn't expect things to happen immediately,
15 but I think as more people build in, I would hope
16 to see more amenities established. And we've seen
17 another arena and a cross-country schooling area
18 that are in development right now, so we see things
19 being put in. And the things are being maintained
20 well that are already there. So to me it's --
21 serves my expectation.

22 Q Okay. Are you familiar with the Jacobs' property?

23 A Yes.

24 Q Is it maintained to the same level as yours?

25 A No.

097

1 Q What's the difference?

2 A There's a lot of scrub trees, and most of the
3 places, kind of, look like horse farms and have
4 pastury-looking [sic] areas. And when you drive
5 by, you have the tall established trees that were
6 there when it was cleared and were left, like all
7 the lots have some left. But you have smaller
8 trees and volunteers and stuff that are up. It
9 even is not just on the lot. It even goes onto the
10 easement. It's not cleared as well. I often ride
11 and pony another horse for exercise, so I'm leading
12 one off with another, and you can usually get down
13 easements between properties because there is
14 supposed to be, sort of, a -- a riding area
15 easement. And it's harder to do that there because
16 it's not cleared as well because there are smaller
17 bushes and scrubs that would be mowed by other
18 homeowners. So it's -- they have a different
19 philosophy.

20 Q Would Three Runs have a better curb appeal if they
21 maintained their property the same way you and the
22 other homeowners do?

23 A I think if -- if -- yeah. There -- there -- a
24 couple other properties as well -- in addition to
25 theirs that are not -- that are built on and are

098

1 not being mowed and kept as plain as the rest of
2 them, and you notice that they stand out.

3 MR. WARLICK: No further questions.

4 THE COURT: Cross-examine?

5 EXAMINATION OF MS. VIELE

6 BY MR. MCCANTS:

7 Q Ms. Viele --

8 A Yes.

9 Q -- I'm Clarke McCants. I represent the Jacobs in
10 this case. I have just a few questions for you.

11 A Uh-huh.

12 Q The -- the Jacobs' property, according to you, is
13 not maintained in the same fashion as your
14 property. I understand that testimony. Is the way
15 that they're maintaining it outside the provisions
16 of the covenants as you understand it?

17 A Yeah.

18 Q In what regard?

19 A Well, I -- I mentioned the easement isn't as easy
20 to pass down and ride the horses through. And, you
21 know, it says very clearly that we're expected to
22 mow our pastures and things are not supposed to get
23 over a certain number of inches tall. And they
24 definitely have things that aren't trees and aren't
25 grass that are in that range.

099

1 Q Okay. Is there anything else you think that they
2 do which violates the covenants?

3 A No. They have a beautiful house and, you
4 know . . .

5 Q Is it your understanding that the terms of the
6 covenants provide that you've got to mow your
7 pastures?

8 A Yes.

9 Q Is the word "pastures" used in that provision of
10 the covenants dealing with the maintenance --

11 A I -- I don't know.

12 Q -- clause?

13 A I haven't looked at it since I bought. I read
14 through very carefully when I bought, but it did
15 say that you need to mow your land or something
16 along those lines. I don't know the --

17 Q Okay.

18 A -- specific words.

19 Q Is it also your understanding that certain
20 vegetation can't exceed 18 inches? Is that your
21 understanding?

22 A Yeah. There was some number and -- yeah. There
23 was a -- you're supposed to mow, and it's not
24 supposed to exceed a certain amount is --

25 Q All right.

1 A -- my recollection.

2 Q You understand that's the current requirements
3 that, as far as the covenants and maintain your
4 property, you can't have certain vegetation exceed
5 a certain number of inches? Is that your
6 understanding?

7 A That I --

8 Q That you cannot have certain vegetation on your
9 property which exceeds a certain number of inches.
10 You understand that's the current --

11 A Yeah. It's not -- something --

12 Q -- requirement?

13 A -- along those lines.

14 Q Fair enough. Does the term "first-class condition"
15 ring a bell with you?

16 A I don't remember that specific --

17 Q You ever heard of that term or associate with the
18 covenants at Three Runs? Anything like that?

19 A Like I said, I haven't read it recently, so I can't
20 speak to that.

21 Q All right. You agree the standard, though, is not
22 what everybody else is doing? The standard that
23 we're going to apply here is what's in the
24 covenant, right?

25 A Correct.

1 Q And --

2 A And that --

3 Q -- that makes sense.

4 A -- that is what everybody bought into is --

5 Q -- what the covenants say?

6 A -- what is in the covenants, yes.

7 Q I mean, if everybody decided as a group we're going
8 to put Ferris wheels in the front of our houses and
9 trailers in the back, that would be outside of the
10 covenant; you agree?

11 A You're not supposed to have trailers that you live
12 in and --

13 Q And -- but if everybody agreed to that, that would
14 be what everybody agreed to. That's not the
15 standard, correct?

16 A We, like -- the covenants specified certain things,
17 and I don't know if Ferris wheels were covered, so
18 you would have to go to Wayne, specifically, on
19 something like that probably.

20 Q All right. Do you want the tennis courts and the
21 fitness center?

22 A I would love to have a fitness center. I don't
23 play tennis, but I think people would use it, and I
24 think it'd be nice to have it sometime.

25 Q You ready for it then?

1 A It'd be great if it happens when it happens.

2 Q What if you knew the money was there for it, would
3 you want it now?

4 A I'd rather have dressage mirrors at the end of the
5 arena.

6 Q Okay. Dressage mirrors?

7 A Yes.

8 Q What does that mean? Help me.

9 A Mirrors along the end of the dressage course so you
10 can see your position and your horse when you're
11 riding. They're an --

12 Q Ah.

13 A -- excellent training aid.

14 Q Well, you understand -- I know it's principally an
15 -- an equestrian community --

16 A Yes.

17 Q -- but you understand it has components of
18 equestrian and nonequestrian?

19 A Absolutely. And --

20 Q And --

21 A -- that's --

22 Q -- that's the way it was marketed?

23 A -- one of the attractive things about the place,
24 yes.

25 Q And it's a place for everybody?

1 A Uh-huh.

2 Q Okay. How about voting rights in the homeowners'
3 association? Is that something you're interested
4 in, or you don't care, or what?

5 A I think right now it's probably better as a
6 benevolent dictatorship than it is having a bunch
7 of people who think they know more than they know
8 about what the next person is doing sometimes. I
9 think it's an easier situation. And so far I've
10 been happy with things, so I haven't come across
11 something that bothered me. If I did, maybe I
12 would feel I needed a vote, but I haven't seen
13 this.

14 Q You okay with the dues as they exist?

15 A I'm -- I am happy as a clam.

16 Q With the dues?

17 A Yep.

18 Q And no amount of increase is going to bother you?

19 A Oh, it could bother me if it got -- it was 1000
20 when we bought and it's 1500. That's still less
21 than some of the communities, and I have more to
22 show for it. And if I think of what it would cost
23 me to do some --

24 Q I want to know what it's going to take to get you
25 interested, is what I'm asking.

1 A Getting interested in what?

2 Q In voting rights. When -- when do you want to have
3 a say in the way your community is operated?

4 A I think I do have a say, because I -- I -- I've
5 talked to Wayne and said, "How about some mirrors?"
6 And --

7 Q And --

8 A -- he said --

9 Q -- what does he say?

10 A He said, "Well, I'll think about it." And then I
11 talked to him about a year later, and he actually
12 looked at some and -- and said, "You know, I've
13 looked at how they are built and this is something
14 I'm considering." So I felt like he heard that
15 there is an interest in it. And that to me was --
16 I don't expect that with every homeowner that every
17 one of us gets to say, "I want this and I want it
18 now." So --

19 Q Have you got your dressage mirrors?

20 A Nope. And I didn't expect to have them
21 immediately, and I -- I may never get them and I
22 know that. Because I didn't buy into a -- a
23 promise of that either.

24 Q Okay. How about architectural standards? Do you
25 want any kind of say with regard to that that is -- 105

1 what is built in your community and what it's built
2 of?

3 A What is "built of"? I didn't --

4 Q Materials.

5 A Do I want a say in that?

6 Q Yeah.

7 A Well, I knew when we bought in it, we made a choice
8 about whether we were going to buy into an HOA and
9 you know you were giving up some independent
10 choices. And I, actually, had a house plan I was
11 interested in, and Wayne said, "No. You can't
12 build that," because I wanted a red metal roof. It
13 was a beautiful house plan with a red metal roof.
14 And he says, "I've seen some of these that fade,
15 and it doesn't look good. And go drive by such and
16 such." And he was absolutely right. I looked at a
17 house that I'd like, and he was right about that.
18 It did say in the covenants that if you have a
19 metal roof, it needs to be green. I hate green
20 roofs, and my husband has always wanted a metal
21 roof. His entire life, he wanted a metal roof.
22 And so we talked to Wayne, and we now have the
23 first metal roof in Three Runs, which is a light
24 gray -- very green, economically. It looks good on
25 the barn, and we have a matching one on the house

1 we're building, and it looks fine. He was willing
2 to consider things beyond the details of the
3 covenants, and he said that, you know, things by --
4 something about he can approve things on an
5 individual basis. And I found him --

6 Q You mean exceptions?

7 A Yes. I have found him reasonable to work with when
8 he heard what we wanted and why and looked at it.
9 So my experience was being said no to about
10 something and being said yes to about something
11 else and that he listened to me.

12 Q In -- in other words, your experience has been
13 fine? You've gotten everything you want except
14 your mirrors, and everything's still --

15 A And I -- you know, if I never get the mirrors, oh
16 well. But --

17 Q All right.

18 A -- it would be nice.

19 Q But you understand how some people, though, would
20 want, with the investment they've made, a little
21 more say in how things are run?

22 A Well, and I don't think --

23 Q Is that unreasonable in your mind?

24 A I think there -- it would be great if there was
25 better communication, but I also know when we

1 bought in that it said 95 percent of that 2400
2 acres needed to be sold.

3 Q Is that what your understanding of it is? 95
4 percent of --

5 A Yeah.

6 Q -- the 2400?

7 A I may have the percentage wrong. That's off the
8 top of my head. That's actually what -- my husband
9 said 95 percent, so he may have looked at it more
10 recently than I. But that the whole development --
11 95 percent needs to be sold before it was going to
12 be turned over unless Wayne decided to do it
13 earlier.

14 Q Uh-huh.

15 A So that's my understanding, and I think that it's
16 probably --

17 Q So you hope, one day, to have a say; you're just
18 okay with the way things are right now?

19 A Yeah. I think, eventually, that it'll be run by a
20 committee, is what I expect. That's what happens.
21 But I -- I truly think we're better off having one
22 person to deal with.

23 Q Okay.

24 A But I -- I haven't had a problem with that one
25 person, so that's my experience.

1 Q All right.

2 A I might feel very differently if I hadn't.

3 MR. MCCANTS: Thank you. That's all the questions I
4 have.

5 THE COURT: Any redirect?

6 REEXAMINATION OF MS. VIELE

7 BY MR. WARLICK:

8 Q Did I ask you when the grass is normally cut?

9 A Normally cut?

10 Q Yeah.

11 A No. You did --

12 Q On the common areas?

13 A You did not. On the common areas?

14 Q Yeah.

15 A Not normally -- they're cut regularly. They're
16 always out working on them.

17 Q Okay.

18 A So I can't say there's a regular time.

19 Q Okay.

20 MR. WARLICK: No further questions for this witness.

21 THE COURT: Thank you, ma'am.

22 MR. WARLICK: George King.

23 George King, being duly sworn and cautioned to
24 speak the truth, the whole truth, and nothing
25 but the truth, testified as follows:

1 THE COURT: Have a seat and state your full name,
2 please.

3 THE WITNESS: George King, K-i-n-g.

4 THE EXAMINATION OF MR. KING

5 BY MR. WARLICK:

6 Q George, are you married to Lori?

7 A Yes, I am.

8 Q And I guess you also moved to Three Runs from
9 California when she did?

10 A Yes. We did.

11 Q And I think she said both of you were in law
12 enforcement; is that correct?

13 A That is correct.

14 Q What did you do?

15 A Worked for the City of Richmond Police Department.
16 Did a little bit of everything.

17 Q And what caused you to move to Three Runs
18 Plantation?

19 A We were getting close to retirement, and for the
20 last ten or 12 years or so, we had had competitive
21 show horses in California. And it was becoming
22 very expensive to maintain, so we were looking for
23 an area that would fulfill those two needs: that
24 we could stay in the competitive horse show arena,
25 so to speak, and have a facility -- or the

1 capability of having on our own property.

2 Q And Three Runs met that expectation?

3 A Yes. It did.

4 Q What all did you review before you made a decision
5 to buy?

6 A We looked at several equine communities in
7 California, Oregon, Arizona, Texas, and Tennessee,
8 and North Carolina.

9 Q And what separated Three Runs from those others?

10 A The main factor was this was one of the few
11 facilities that we reviewed that had the majority
12 of the amenities already in place, specifically, a
13 viable trail section and two or three competitive
14 show rings.

15 Q Is this what's referred to as "dressage"?

16 A No. A show ring would be a -- a dressage court or
17 it could be a show-jumping ring or in three-day
18 eventing, they call it a "stadium ring." It --
19 it's all kind of the same.

20 Q So you were predominantly interested in the -- in
21 the amenities for horses, as opposed to the fitness
22 center or the tennis court and swimming pool, etc.?

23 A Well, it was the whole package deal. The -- the --
24 the part that attracted us the most was it was
25 going to be the entire package. So if your

1 question is: Do -- do we really want the rings and
2 the trail system when we first -- the first day we
3 got here, the answer would've been "yes."

4 Q Okay.

5 A If that makes any sense.

6 Q When is your understanding that you'd get the other
7 amenities that are not currently there?

8 A Three Runs is a work in progress. It's not
9 completed, and as it unfolds -- as more people come
10 in and more people build their houses, those
11 amenities would be added to the equation.

12 Q And how big would Three Runs be when it's finished?

13 A I think it's 2400 acres. And I'd be guessing, but
14 I think I remembered reading there was maybe 400
15 properties at the end.

16 Q And there's been some testimony by others about
17 rights to vote and when -- when property owners are
18 given the right to vote. Do you have any
19 understanding about when that -- when that occurs?

20 A The covenants allude that when the community is
21 about 90-ish/95 percent complete, the homeowners'
22 association would revert to the actual property
23 owners, as opposed to the developer, who's kind of
24 guiding it as it evolves here in the beginning.

25 Q Okay. And it's your understanding that the

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1 developer will stay in charge until maybe 95
2 percent of all the lots have been sold. Is that
3 your understanding?

4 A Yes. It is.

5 Q What about -- were you ever promised any of these
6 amenities, as to when they'd be installed?

7 A No.

8 Q And I believe your testimony was "a work in
9 progress." And as -- as it -- as it moves, it
10 would -- are you familiar with the Jacobs'
11 property?

12 A Yes.

13 Q Do you ride by it on a regular basis?

14 A I do.

15 Q How is it maintained in -- in -- in contrast to the
16 other lot owners in Three Runs Plantation?

17 A It's different.

18 Q What's -- what's -- what are the differences?

19 A Well, they have -- I don't know what you would call
20 it -- undergrowth or a lot of extra trees on their
21 property that, from the home -- from the horse
22 person, don't seem to be -- to have a viable job in
23 life. My property has -- I keep the three horses
24 on my property. I can't have it as filled in as
25 their property is, but they, apparently, don't have

1 their horses on their property, so they have this
2 tree thing going.

3 Q Would you think it'd be better if -- if they
4 maintained their property like you and the other
5 neighbors do?

6 MR. MCCANTS: Objection, Your Honor. What he
7 thinks is not relevant.

8 THE COURT: I'll sustain that.

9 Q Would you like to see the Jacobs' property
10 maintained as your property is maintained?

11 A I would, yes.

12 Q When is the grass normally cut? Do you know?

13 A My grass?

14 Q The -- the -- the common area grass.

15 A I think I just saw Jose out there the other day. I
16 believe it's structured at least two, maybe three,
17 times a year.

18 Q And -- and that's true of non-resident-lot owners
19 also; is that not true?

20 A Yes.

21 Q And does the homeowners' association cut some of
22 those?

23 A Yes.

24 Q Do they normally get cut in -- in September?

25 A That would be the -- a -- a part of it during the

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1 growing season, so, yes.

2 Q And -- and once it's cut, will it make it through
3 the winter looking pretty decent until the next
4 spring?

5 A That's October, November, December. I think so,
6 but, to -- to clean up that question, I -- I'm from
7 California. I'm a city slicker.

8 Q Okay.

9 A This is the country and this is kind of new, and
10 I've only been here two years -- 2 1/2 years. So
11 it would be my educated guess that if you cut the
12 grass towards the end of the growing season --
13 September-ish -- that it should last through
14 October, November, December.

15 Q Okay.

16 MR. WARLICK: No further questions.

17 THE COURT: Cross-examination?

18 EXAMINATION OF MR. KING

19 BY MR. MCCANTS:

20 Q Mr. King, I represent the Jacobs in this case.

21 A And you are?

22 Q Clark McCants.

23 A Okay.

24 Q Nice to see you.

25 Do you think the Jacobs' property is not in

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1 compliance with the covenants at Three Runs?

2 A It would be my opinion they are not.

3 Q And in what respect?

4 A Most of us bought into Three Runs as an equine
5 community.

6 Q Yes, sir.

7 A Their property doesn't fit into that connotation.
8 Their property is difficult to get through or
9 around on horseback.

10 Q All right. Anything else that, in your opinion,
11 shows the Jacobs' property does not comply with the
12 covenants at Three Runs besides the ability to get
13 around their property on the easement? Anything
14 else?

15 A I think it may have something to do with the
16 values. As people come into Three Runs and they
17 look around, that -- the way that appears, that may
18 not catch their attention, or it may not be
19 something that they would want to be -- have their
20 property set up on.

21 Q Well, let me ask the question this way: What is
22 your understanding of the specifics of the
23 covenants, with regard to maintenance of a lot?
24 What is required?

25 A I -- I'm not sure I understand the question.

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1 Q What do the covenants say about how you're supposed
2 to maintain your property?

3 A The -- the covenants allude that the properties
4 were to be maintained in a neat and attractive
5 manner or some words similar to that.

6 Q All right.

7 A Okay?

8 Q Anything else?

9 A And there was a mowing requirement.

10 Q Yeah.

11 A And, as I was telling the other gentleman, I -- I
12 believe it's two or three times a year.

13 Q Okay. Do you believe that's in the -- in the
14 covenants that you've got to mow two or three times
15 a year?

16 A Of the -- the two or three time requirement alludes
17 to the non-owned property, like the -- the strips
18 along the medians and maybe the lots that aren't
19 purchased or owned by anybody. Those have to be
20 tended to. The lawns that are privately owned
21 would have to meet the -- the general requirement
22 being attractive to the community. I don't -- I --
23 I don't remember if there's a -- a time frame that
24 it has to be mowed every, you know, month or three
25 times a year or what have you for the private owned

1 property. But I haven't read the covenants lately.

2 Q What -- what I can tell you is the covenants, at
3 least, as I understand it, Mr. King, when it talks
4 about maintenance of lots, it says, "All lots,
5 including vacant lots, must be maintained in a
6 clean and first-class condition, including mowing
7 all grass, controlling the weeds, and keeping the
8 same free from any trash, debris, or accumulation
9 of other items on said lot." Does that ring a bell
10 with you?

11 A Can I see that?

12 Q Absolutely.

13 A Oop.

14 Q That's all right. I'll put it back together.

15 THE COURT: Is that Plaintiffs' Number 3 he's
16 reviewing?

17 MR. MCCANTS: I believe it is. Yes, sir.

18 THE COURT: Okay.

19 A All right, sir. And your question, based on this,
20 is?

21 Q Does that refresh your memory as to --

22 A Yes. It does.

23 Q -- what covenants say?

24 It doesn't say anything about pastures. Do
25 you agree with that?

1 A I'm sorry?

2 Q Does it say anything about pastures in there?

3 A Well, a lot and a pasture is all the same, isn't
4 it?

5 Q Is that your understanding, that a "lot" equals
6 "pasture"?

7 A Yes.

8 Q Okay. Based on -- Mr. King, after reading that,
9 what are your thoughts with regard to whether or
10 not the Jacobs' property is in compliance with the
11 covenants?

12 A Reading this, and the fact that it says that the --
13 all lots have to be maintained in a clean and
14 first-class condition, including mowing, I would
15 say no.

16 Q All right. And that is at the present time?

17 A Yes.

18 Q All right. Would you agree that these two lots are
19 also, therefore, not in compliance with the
20 covenants? That is Number 6 and 7 -- Exhibits'
21 Number 6 and 7?

22 A And your question on this is what, now?

23 Q Those two lots, as depicted in those photographs,
24 being maintained in compliance with the covenant
25 that you just read?

1 A They're getting close. I mean, I -- this is
2 passable right now: Number --

3 Q Which one?

4 A That'd be Number 7.

5 Q All right.

6 A And Number 6 needs a little trimming and limbing --
7 what they call "limbing" on the trees. But the --
8 the grass isn't overwhelmingly tall.

9 Q So yes to the first one, and no to the second one?
10 And this isn't a test. I'm just asking.

11 A Well, let me say -- if I can, I'll say this: If --
12 if I owned this, this would be unacceptable.

13 Q All right, sir. That's fair.

14 All right. Are you aware that Mr. Raiford has
15 testified that the way the Jacobs are maintaining
16 their lots at the present time is satisfactory and
17 within the terms of the covenant? Are you aware of
18 that?

19 A I haven't heard Mr. Raiford testify at all. You
20 had me out in the hallway.

21 Q I didn't have you. The judge did. But in any
22 event -- all right. That's neither here or there.
23 Are you aware that there's testimony in this case
24 to that effect?

25 A No.

1 Q All right. Well, do you -- are you surprised by
2 that?

3 A And you're saying Mr. Raiford has the opinion as
4 to --

5 Q Well, he's the -- he's the man. He's the
6 developer. He runs the show out there.

7 MR. WARLICK: Your Honor, it's a little bit
8 unfair when there's no background as to when
9 that statement may have been made -- what time
10 of year and what it was in existence at that
11 time. The grass grows and it changes from
12 season to season.

13 THE COURT: Yeah. I think he asked originally
14 about the deposition. So if he wants to
15 rephrase and give some more detail, then I'm
16 -- I'll allow it.

17 MR. WARLICK: That was in -- that was in
18 April, Your Honor. That's -- so --

19 Q March -- March 2012, Mr. Raiford testified he's
20 perfectly satisfied with the way the Jacobs were
21 maintaining their property. And my question to
22 you, I guess, is whether or not you're surprised
23 about that?

24 A I'm -- I'm confused. What -- what deposition are
25 you talking about? I never deposed Mr. Raiford.

1 Q I deposed Mr. Raiford, and that's why I just --

2 A I wasn't there.

3 THE COURT: The question is: There's a
4 deposition from Mr. Raiford, which is sworn
5 testimony, that he's satisfied with the
6 defendants' lot, and I think he asked if you
7 would be surprised by that.

8 A As the lot sits, yes.

9 Q All right. Now, I guess my point is that
10 everybody's got -- seems to have some difference in
11 opinions as to what the covenants mean. They're
12 not crystal clear. One person's interpretation is
13 different than another's. Do you agree with me?

14 A They are not ironclad.

15 Q All right. That's all I've got. Thank you, Mr.
16 King.

17 A All right, sir. Thank you.

18 MR. WARLICK: (To the witness) Before you
19 step down, let me see 6 and 7. I don't know
20 what these are.

21 MR. MCCANTS: (To Mr. Warlick) There lots at
22 Three Runs.

23 MR. WARLICK: When were they taken?

24 MR. MCCANTS: Just recently. Probably within
25 the last couple weeks.

1 MR. WARLICK: I have no further questions.

2 THE COURT: Okay. Thank you, sir. You can step down.

3 THE WITNESS: Thank you, Your Honor.

4 THE COURT: Yes, sir.

5 Arthur Stremm, being duly sworn and cautioned
6 to speak the truth, the whole truth, and
7 nothing but the truth, testified as follows:

8 THE COURT: State your full name for the record.

9 THE WITNESS: Arthur L. Stremm.

10 THE COURT: What's that last name?

11 THE WITNESS: Stremm, S-t-r-e-m-m.

12 EXAMINATION OF MR. STREMM

13 BY MR. WARLICK:

14 Q Where do you reside, Mr. Stremm?

15 A Three Runs Plantation.

16 Q And what's the address?

17 A 6174 Hiwassee Run.

18 Q Is Hiwassee the same street that the Jacobs live
19 on?

20 A Yes.

21 Q How -- where's your lot in relationship to theirs?

22 A Four -- four lots away, I think.

23 Q Where did you -- where did you live before you
24 moved to Three Runs?

25 A California.

1 Q What prompted you to move to Aiken County?

2 A Horses.

3 Q And what prompted you to move to Three Runs
4 Plantation?

5 A Because when we got down here, we took a look
6 around and it was the nicest place -- beautifully
7 done. And I said -- the first time I saw it, I
8 said, "This is it." Very easy.

9 Q Did you look at any of the other equestrian
10 subdivisions in Aiken County?

11 A Five other ones.

12 Q And how does Three Runs compare with them?

13 A There was no comparison.

14 Q When you say "there was no comparison," Three Runs
15 is better?

16 A Oh, absolutely.

17 Q In what respects?

18 A It was beautifully done, nice homes, nice people,
19 nice amenities. It had everything.

20 Q How about the -- the -- the -- the unsold lots?
21 Were they -- were they mowed and maintained?

22 A Most of them.

23 Q When did you buy?

24 A 3 1/2 years ago.

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25 Q Did you review the covenants before you bought?

1 A I did.

2 Q Why did you do that?

3 A Well, they were given to me, and that was -- if
4 you're going to buy, you have to know what the
5 rules and regulations are, so I looked at them.
6 And I have property in other places, and I thought
7 that it was, at best, very easy to do and no -- it
8 was no big deal.

9 Q Yeah.

10 A You know, keep your grass cut; keep your house
11 painted; keep your fences done. And I've seen
12 covenants that were 100 times more restrictive than
13 that.

14 Q Yeah.

15 A And I said, "This is -- this is no big deal. I
16 would do this anyway." So there was no big deal.

17 Q Did you appreciate that there were covenants?

18 A Absolutely.

19 Q Not on your property, but on everybody else's
20 property?

21 A Yes.

22 Q What was your understanding of the size of the
23 Three Runs development?

24 A You mean, how many acres was it?

25 Q Yeah.

1 A 2600 acres, I think.

2 Q And did --

3 A Twenty-seven.

4 Q Did you like that?

5 A Yes.

6 Q What was your understanding as to when the
7 amenities would be put in place?

8 A Sometime in the future.

9 Q Why was that?

10 A They didn't know whether they were going to put
11 them in. They would put them in as it developed,
12 and I think they put in the clubhouse, the barbeque
13 pit. They were going to put in a health thing, but
14 that was down the road, because I asked Wayne about
15 that, he said, "Down the road when we have more
16 people here." And -- like that, so I knew it was
17 in the future, not immediate.

18 Q And would it be put in as lots were sold?

19 A Yes. Uh-huh.

20 Q And that was your understanding?

21 A Right.

22 Q Is the Jacobs' lot maintained in a similar fashion
23 to yours?

24 A No.

25 Q What's the difference?

1 A Mine is maintained by myself. I don't keep -- you
2 know. The house is maintained well. I mean, it's
3 my biggest investment. The house is up to date,
4 the fences are done, the grass is cut. The Jacobs
5 have a beautiful house. No doubt about that. And
6 I'm sure they spent a lot of money on it. The --
7 they have an extra lot on the side that hasn't been
8 maintained at all. And, being that there's a trail
9 that runs behind their house, you know, when you go
10 behind, you can't hardly make out their house.
11 It's like a jungle.

12 Q What does the underbrush consist of?

13 A Scrap trees, I guess.

14 Q Scrap trees?

15 A Yeah.

16 Q Why do you call them that?

17 A I don't think they -- it's not -- like, an oak tree
18 would be a tree that you may want to grow and
19 develop over time.

20 Q Yeah.

21 A But these are -- they're scrap. They're not --
22 they're not anything.

23 Q If the covenants require the lot owners to mow and
24 keep their lots in first-class condition, including
25 mowing, would you say the Jacobs make that test?

1 A No.

2 Q How often do you ride?

3 A Three or four days a week.

4 Q Is Three Runs laid out in a -- in a -- in a -- a
5 fashion that makes riding easier?

6 A Yes.

7 Q How is it laid out?

8 A There -- it used to be 30 miles. I think it's up
9 to maybe 50 miles, lately. But there -- there
10 seems to be more trails being put in. They're well
11 maintained. They're manicured. They have a
12 machine that goes along to make sure there's no
13 holes around. If there's any trees that blow down,
14 you know, you just call the HOA, and they come and
15 remove them. You can probably go out three or four
16 days a week and never hit the same trail twice.
17 That's really nice.

18 Q What about the easements across the -- the
19 individual lots? How -- how's that laid out?

20 A It's a -- I think each house has a 10-foot
21 easement, so between two homes it'd be 20 feet.

22 Q Yeah. So a person on a horse can ride between any
23 two property owners and be within the equestrian
24 easement?

25 A Yes. Uh-huh.

1 MR. WARLICK: No further questions.

2 THE COURT: Cross-examination?

3 EXAMINATION OF MR. STREMM

4 BY MR. MCCANTS:

5 Q Mr. Stremm, I'm Clark McCants. I represent the
6 Jacobs in this case.

7 A How are you?

8 Q Thanks. I'm fine. Thank you for coming over
9 today.

10 Have the Jacobs, in your mind, ever been in
11 compliance with the covenants as long as you've
12 been in Three Runs?

13 A Probably at the very beginning, they were.

14 Q When was that? Rough idea?

15 A I'm guessing 2 1/2 years ago -- two years,
16 something like that.

17 Q Back in early 2010?

18 A When they first moved here. I'm not sure exactly
19 when they moved in.

20 Q Where'd you come from?

21 A California.

22 Q Gotcha. You think in the 2010 period that they
23 were in compliance?

24 A I don't know that date. I'm saying when they first
25 moved in.

1 Q All right. What I can tell you --

2 A Whenever that was.

3 Q What I can tell you is they moved into their house
4 in December 2009.

5 A Okay. In --

6 Q End of 2009.

7 A -- early -- late '09 and early '10 --

8 Q Fair enough.

9 A -- it looked like they were taking care of things.

10 Q All right. So from your standpoint -- your
11 recollection, the late 2009 --

12 A Uh-huh.

13 Q -- early 2010 period, their property did comply
14 with the covenants as you understand them; is that
15 correct?

16 A Uh-huh.

17 Q And I can tell you Mr. Raiford testified that in
18 March of 2012, their property was in compliance
19 with those covenants. Do you disagree with that?

20 Q They did make an attempt in that period of time to
21 do that. And they spent a lot of time out there
22 with their cutting machines and all, because I
23 would drive by on a regular basis.

24 Q I see.

25 A And they did try to do that. And then it's like

1 they stopped, and it just grew up like -- you know
2 -- I mean, stuff grows pretty fast there,
3 especially in the summertime with all the rain.

4 Q All right.

5 A And it got really messy back there, and the lot
6 next to them was pretty messy too.

7 Q The lot not owned by them?

8 A Owned by them.

9 Q You talking the house -- the lot on -- where the
10 house is --

11 A Right.

12 Q -- and the undeveloped lot --

13 A Right.

14 Q -- were both messy in your --

15 A Uh-huh.

16 Q -- opinion?

17 A Yeah.

18 Q All right. And what is it, again, about the
19 condition of their lot that, from your perceptive,
20 is violating the covenants?

21 A There was a lot --

22 Q Specific --

23 A -- of -- what I would call -- "scrap trees."

24 Q All right.

25 A Don't ask me what the brand is on --

1 Q I'm getting ready to.

2 A -- those. I know. I don't know the name, but
3 they're these little scrap trees. They're -- it's
4 not like an oak tree or something like that that --

5 Q Okay.

6 A -- you might want growing on your property.

7 Q All right.

8 A These were like -- like "weed trees," I guess you
9 would call them.

10 Q Uh-huh.

11 A I don't know what they are.

12 Q All right.

13 A But, you know, it's nothing you would want, and I
14 couldn't understand they would want their lot to
15 look like that.

16 Q What if they want the trees, though, Mr. Stremm?

17 A What if they want the trees?

18 Q Yeah.

19 A Well, the covenants don't allow for that.

20 Q Don't allow for what?

21 A Those scrap trees like that.

22 Q Where does it say "no scrap trees"?

23 A Well, I don't have a copy of the covenants in front
24 of me.

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25 Q All right. I'll be happy to show them to you.

1 A I'm sure you will.

2 Q I'm -- and I'll show you the -- the particular
3 portion of the --

4 A While you're looking for this, let me tell you
5 something else. If you want to see what Three Runs
6 is -- you with me?

7 Q Go ahead.

8 A If you want to see what Three Runs is, you drive
9 around. You'll find that all the homes, except for
10 two, are in compliance -- what I would say is
11 compliance -- with this document.

12 Q One being the Jacobs'?

13 A Yes.

14 Q Who's the other one?

15 A Kores.

16 Q Who?

17 A Kores.

18 Q Spell their last name for me?

19 A I think it's K-o-r-e.

20 Q All right.

21 A I think.

22 Q And what are they not doing that's not in --

23 A Well --

24 Q -- compliance?

25 A -- they don't cut their grass either.

1 Q They don't --

2 A Up until recently.

3 Q -- cut their grass?

4 A No. They don't.

5 Q Has Mr. Raiford filed a lawsuit against them? Do
6 you know?

7 A I'm not aware of that.

8 Q Okay.

9 A I don't know. But all I can say is, if there's two
10 homes, which I would view as out of compliance --

11 Q Yes, sir.

12 A -- and all the rest are in compliance --

13 Q Yes, sir.

14 A -- what more do you want? What -- what are you
15 asking?

16 Q Well, let's go back to the covenants for a second,
17 because this is what's in writing --

18 A Uh-huh.

19 Q -- and my clients relied on, like you. You've
20 testified you read them.

21 A Uh-huh.

22 Q You've got significant investment out there. Tell
23 me in there where it says you can't have certain
24 kind of trees on your property.

25 A I don't remember it saying that.

1 Q It's not in there?

2 A No. It would say "keep your house neat." Now,
3 granted, that's a broad statement --

4 Q Yes, sir.

5 A -- but look at what is there.

6 Q All right.

7 A You don't have to drive more than 5/10 minutes and
8 you can cover the whole place. And you'll see most
9 of the homes, except the two, are kept in neat
10 fashion, because that is your major investment. If
11 you wanted to sell your house, and you had a
12 neighbor that has a house that's -- what I would
13 view as -- out of compliance, you're going to have
14 a tough time. People will walk in and say, "Well,
15 you know, you've got Tobacco Road sitting down the
16 block there."

17 Q You think the Jacobs' house looks like "Tobacco
18 Road"?

19 A No.

20 Q Are there any Tobacco Road-type houses at Three
21 Rivers?

22 A No. I'm using that as a term.

23 Q Fair enough. We're not -- I mean, we're not at
24 that level. These are very nice homes. This is a
25 very nice development.

1 A They are very nice, yeah.

2 Q But -- and I guess what I'm trying to -- to
3 understand -- and I don't think you and I are far
4 apart on this -- is that --

5 A Uh-huh.

6 Q -- people will disagree over the meaning of words.
7 People disagree on the interpretation of things.
8 You've mentioned covenants being much more
9 restrictive than these.

10 A You can argue words all you want, all --

11 Q Sure.

12 A -- you have to do is look. See the way most of the
13 people keep their places, and that's the way it
14 should be.

15 Q All right.

16 A That's what I wanted when I moved in. That's what
17 I saw when I moved in. That's what I expected.

18 Q That -- that's fair. Then can I say this?

19 A Sure.

20 Q Your standard would be what the community does --

21 A Exactly.

22 Q -- as a whole?

23 A Exactly.

24 Q But you don't disagree with me, that's not what
25 that covenant says?

1 A It's possible that it doesn't state it in there
2 exactly the way you and I discussed it.

3 Q All right. Well, I don't see it saying there at
4 all. I understand where you're coming from --

5 A I'm not arguing that.

6 Q -- but it doesn't say that, does it?

7 A I'm not going arguing with that.

8 Q All right.

9 A Just look what's there.

10 Q All right. How about -- help me out again, Mr.
11 Stremm, you -- you -- with regard to the amenities
12 -- the tennis courts and the fitness center -- are
13 you interested in those?

14 A No.

15 Q Not at all?

16 A No.

17 Q All right. Were you promised those amenities?

18 A No.

19 Q Okay. So you really don't have a interest in those
20 one way or the other --

21 A No.

22 Q -- and weren't promised those?

23 How about some kind of vote in the homeowners'
24 association? Are you interested in --

25 A Say that again?

1 Q Vote in the homeowners' association, are you
2 interested in that?

3 A I can't even answer that. I mean, do I care about
4 the homeowners' association, yes. Do I want a
5 vote, sure. Is it a major thing with me, no.

6 Q All right. At some point do you want that?

7 A At some point?

8 Q Yes, sir.

9 A Perhaps.

10 Q I mean, do you want to have a say in the way things
11 run at Three Rivers?

12 A I like the way it's run now.

13 Q All right.

14 A So whether I have a say in the future or not, as
15 long as it's maintained the way it is, I'm very
16 happy with that.

17 Q And if it wasn't, you'd want a say?

18 A If it wasn't maintained the way it is?

19 Q Yes, sir.

20 A Oh, yeah. I'd want a say then.

21 Q Sure. And you understand that people can differ in
22 their opinions about how things are --

23 A Absolutely.

24 Q -- run and operated? Okay.

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25 MR. MCCANTS: Thank you Mr. Stremm. I appreciate it.

1 THE WITNESS: Sure.

2 THE COURT: Anything on redirect?

3 MR. WARLICK: Well, he didn't really show him the
4 language.

5 REEXAMINATION OF MR. STREMM

6 BY MR. WARLICK:

7 Q If I understood your testimony -- 12 is the
8 paragraph he forgot to show you about maintenance?
9 Could you take a look at that and tell me what that
10 means to you?

11 A "In a first-class condition." That's pretty self-
12 evident: mowing the grass, controlling weeds, no
13 trash/debris. That's what any homeowner would do.

14 Q And what -- and -- and I believe your testimony
15 was, "If you want to know what that means, look at
16 what everybody else is doing in the neighborhood."

17 A Exactly.

18 Q Is that your testimony?

19 A That's my testimony. That will tell you exactly
20 what people are doing or not doing.

21 Q And you said you read these covenants when you
22 bought?

23 A Uh-huh.

24 Q Do you expect the homeowners' association, or until
25 it is formed, the developer, Wayne Raiford, to

1 enforce those covenants?

2 A Yes.

3 Q That adds value to your property; doesn't it?

4 A Yes.

5 Q To know what you're neighbors are doing on their
6 property?

7 A Uh-huh.

8 Q And you elected to move into a planned community
9 knowing that a certain minimum standard would be
10 maintained? Is -- is that your testimony?

11 A That was a major part of my moving in.

12 MR. WARLICK: No further questions.

13 THE COURT: All right. You can step down, sir. Who's
14 got the time?

15 MR. WARLICK: We've got about 7 minutes, according to my
16 watch.

17 Carl Juvrud, being duly sworn and cautioned to
18 speak the truth, the whole truth, and nothing
19 but the truth, testified as follows:

20 THE COURT: Just have a seat and state your full name.

21 THE WITNESS: My name is Carl Juvrud.

22 THE COURT: Spell that last --

23 EXAMINATION OF MR. JUVRUD

24 BY MR. WARLICK:

25 Q Carl, where do you reside?

1 THE COURT: I'm sorry.

2 MR. WARLICK: Excuse me.

3 THE COURT: Could you spell that last name for
4 the court reporter?

5 THE WITNESS: Yes. It's J-u-v-r-u-d.

6 THE COURT: Thank you.

7 Q Carl, where do you reside?

8 A I live in Three Runs Plantation, at 6680 Hiwassee
9 Run.

10 Q Is that the same street on which the Jacobs live?

11 A Yes, It is.

12 Q Where did you move from when you moved into Three
13 Runs?

14 A I lived previously in the Virgin Islands -- in the
15 U.S. Virgin Islands.

16 Q How did you wind up in Aiken County?

17 A My wife and I chose Aiken County because of the
18 equestrian activities. My wife is a horse
19 enthusiast, and we chose Three Runs Plantation
20 specifically for the equestrian community there.

21 Q Do you ride?

22 A I do not.

23 Q What was it about Three Runs that made you decide
24 about that particular subdivision as opposed to
25 some of the other 30 or 40 equestrian subdivisions

1 in Aiken County?

2 A I would say we chose it because of the openness of
3 the -- the field -- the openness of lot sizes. We
4 knew that there'd be other equestrians in the
5 community, that we could part of an equestrian
6 community. We chose our lot and our house because
7 we wanted to -- obviously, we had horses -- we have
8 horses now, and we wanted to develop the property,
9 put in grass, put in fences, build a barn, and
10 basically have a horse farm.

11 Q Were you shown this literature on -- about Three
12 Runs Plantation that looks similar to this?

13 A Yes.

14 Q What was your understanding as to the size of the
15 overall development?

16 A The size?

17 Q Uh-huh.

18 A The size of the whole development I'm not sure of.
19 I -- I think we were -- the number that sticks in
20 my mind is 3500 acres for the whole thing.

21 Q Okay. Did you read the restrictive covenants
22 before you bought?

23 A I most certainly did.

24 Q Why did you do that?

25 A When we -- when we were in the process of

1 purchasing a house here in South Carolina, we knew
2 that we needed to be in a deed-restricted
3 development that had covenants to protect our
4 rights as property owners, and to make sure that,
5 if I developed my place and it looked really nice,
6 that somebody next door to me would take care of
7 their -- their property in the same manner.

8 Q And that's what you were looking for in the
9 covenants?

10 A Yes. Because if you are searching for property or
11 a house in -- in South Carolina, if you drive down
12 some of the country roads, you will see a beautiful
13 house, maybe with a white picket fence, and then
14 next door you might see a trailer with junk cars
15 parked there. Well, why is the trailer with the
16 junk cars parked there, or why can't they keep up
17 their property? Well, they don't have to, because
18 they're not in a deed-restricted development.

19 So it protects you -- it protects your house
20 -- your -- the value of your property and your home
21 by -- by -- by being in it. And it ensures that
22 there's a mechanism for people to take care of
23 their property properly.

24 Q And who enforces that at the present time?

25 A Three Runs Homeowners' Association.

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1 Q Do you have a vote at the current time in Three
2 Runs Homeowners' Association?

3 A Being a -- a lot owner and a house owner there,
4 yes. I do.

5 Q Okay. If I were to tell you that the -- the
6 restrictive covenants provide that the homeowners
7 do not -- cannot control the homeowners'
8 association until over 95 percent of all lots have
9 been sold, would that shock or surprise you?

10 A No. Because it's in there and that's -- when I
11 read it, I knew that.

12 Q And --

13 A But at some point, when the homeowners' association
14 is turned over from the developer, I will have a
15 voice.

16 Q Okay. But until that time you expect the developer
17 to enforce those covenants?

18 A Yes. I do.

19 Q Are you familiar with the Jacobs' property?

20 A Yes.

21 Q Does it comport with the same standard of care that
22 -- the same standard of maintenance that other
23 homeowners in Three Runs maintain?

24 A No. It does not.

25 Q What is the difference?

1 A Basically, to me, their property looks like a
2 jungle. It's just overgrown with brush. The back
3 of the lot is completely uncut/unkempt, and it
4 really sticks out like a sore thumb in comparison
5 to the other lots and homes in Three Runs
6 Plantation.

7 Q Has it always been that way, or has it changed over
8 time?

9 A To my knowledge, when they first built their house,
10 I think they made an attempt to try to keep their
11 property maintained properly and cut. Since that
12 time, it appears that it's gone downhill to me.

13 MR. WARLICK: No further questions.

14 THE COURT: Cross-examination?

15 MR. MCCANTS: Thank you.

16 EXAMINATION OF MR. JUVRUD

17 BY MR. MCCANTS:

18 Q I will try my best to not mispronounce your name.
19 Juvlud?

20 A Juvrud.

21 Q Juvrud. Excuse me. I'm Clarke -- Clarke McCants.
22 I represent the Jacobs. It's nice to see you
23 today.

24 Take a second; is this an e-mail that you
25 prepared, Mr. Juvrud?

1 A Yes. It is.

2 Defendants' Exhibit No. 8, E-mail in
3 reference to "a few ideas."

4 Q Okay. Did you have a chance to look at it?

5 A Yes.

6 Q Is this an e-mail you sent to Mr. Raiford?

7 A Yes.

8 Q This is dated December 8, 2010. This was right --
9 I will -- I'll tell you, this was right after they
10 moved in, approximately. Does that sound about
11 right?

12 A No. I think it was -- I think it was a few months
13 after they moved in.

14 Q All right. And you -- you felt the remedy was --
15 here was to wait until they had left the property
16 and then go on the property without their notice
17 and --

18 A I'm sorry. Say that again?

19 Q Yeah. Did you believe the remedy here was to wait
20 till the Jacobs were away from home and to come on
21 their property and cut their property?

22 A Yes. Because it's so -- stated so in the
23 covenants.

24 Q Even if they weren't home?

25 A I felt that if the covenants provided for it, and

1 -- and it was perfectly legal to do so, why not.

2 Q All right. What is your understanding of what the
3 covenants provide, with regard to maintenance of
4 properties?

5 A As they stand now, they provide a standard for
6 homeowners to keep their property under -- you
7 know, properly maintained.

8 Q What is that standard?

9 A Well, the standard right now, as -- as I read it in
10 there, is regular mowing, weed control, cut your
11 grass, underbrush and weed no more than 18 inches
12 tall. Basically, it states is that they should
13 maintain their property in first-class condition.

14 Q You remember those words "first-class condition"?

15 A Yes.

16 Q Do you agree with me that that term is subject to
17 debate, subject to difference in interpretation and
18 opinion among people?

19 A Well, it certainly is. But, you know, as an old
20 saying goes in South Carolina, "You can put
21 lipstick on a pig, but it's still a pig."

22 Q Okay. Explain to the Court what you mean by that?

23 A Well, you can -- you can -- you can have a
24 property, and you can say, "Oh, well, I'm going to
25 maintain it," and then leave underbrush and -- and

1 -- and -- and -- and undergrowth and -- you know,
2 not be able to see the whole property, and say,
3 "Yes, I've maintained it in a first-class
4 condition" But, in fact, I don't believe that to
5 be true.

6 Q Do you understand there can't be any vegetation
7 higher than 18 inches on the property?

8 A It's my understanding that -- what -- that is what
9 is in the covenants.

10 Q All right. In the current set of covenants --

11 A Yes.

12 Q -- that is the requirement?

13 A As amended, yes.

14 Q All right. Would you be surprised, Mr. Juvrud, to
15 learn that -- that Mr. Raiford, at least at some
16 point in earlier this year, was satisfied with the
17 way the Jacobs had been maintaining their property?

18 A I don't see how he could. Even in its current
19 state, it -- it -- it just sticks out compared to
20 everybody else.

21 Q It's a jungle?

22 A That's one word for it, yes.

23 Q It's a dressed up pig? Is that fair? I need a
24 verbal response from you.

25 A Yes.

1 Q All right. Do you have a -- an antenna tower on
2 your property?

3 A I do.

4 Q Is that allowed under the covenants?

5 A It is allowed under my exemption from the
6 homeowners' association.

7 Q And who granted that exemption to you?

8 A The homeowners' association did.

9 Q And that's Wayne Raiford?

10 A No. It's the homeowners' association.

11 Q Who comprises your homeowners' association?

12 A Wayne Raiford.

13 Q All right. So Wayne is the one that granted that
14 exemption?

15 A That's correct.

16 Q All right. And -- and describe this tower. I
17 think we've even got a picture of it.

18 A The tower is approximately 41 -- 42 feet tall, with
19 a mast extending another 8 feet, with a amateur
20 radio antenna on the top.

21 Defendants' Exhibit No. 9, Photograph.

22 Q All right. Let me show you Exhibit Number 9. Is
23 that your property with the tower?

24 A The foreground is not my property, the -- the

25 picture was taken through a lot that is next door 149

1 to mine.

2 Q I understand. But does that depict your antenna
3 tower --

4 A Yes. It is.

5 Q -- on your property?

6 A Yes. It is.

7 Q And while I'm looking at, the lot next door to you,
8 do you believe that that's being maintained in
9 first-class condition?

10 A Yes.

11 Q As -- as depicted in this photograph?

12 A No. I don't know when this picture was taken.

13 Q Well, Mr. Jacobs can testify to that.

14 So as depicted in this photograph, the lot
15 that -- to the side of you is not being maintained
16 in first-class condition; is that correct? --
17 according to your standard.

18 A It's hard to tell by this. It looks pretty -- a
19 little bit overgrown to me, but it's hard to tell
20 by a picture.

21 Q And -- and do you know to what extent any of the
22 property owners -- and I'm not -- I want you to
23 understand, I'm not making a judgment one way or
24 the other about your antenna, all right? Ham --

25 A I didn't know my antenna was on trial here.

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1 Q Well, it's -- I'm -- I'm -- what we're going to
2 talk about is exemptions or differences or
3 exceptions for covenants. What you recognize in --

4 A Right.

5 Q -- here --

6 A But I don't think my antenna is the same as
7 exemptions --

8 THE COURT: Sir, you just need to answer his
9 question, please.

10 Q You were granted an exception to the covenants by
11 Mr. Raiford for something you --

12 A Right.

13 Q -- wanted to do, correct?

14 A That's correct.

15 Q All right. And he gave you that favor. He
16 afforded you that right; is that correct?

17 A That's correct.

18 Q Now, I'm not judging your tower, but would you
19 understand how some individuals in a community may
20 not like that antenna in your backyard?

21 A Yes. And I'm sure that Mr. Raiford took that into
22 account when he did what he did.

23 Q Do you know if he asked my clients before he
24 granted that exception, whether or not they would
25 be all right with you having an antenna?

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1 A I don't understand your --

2 Q Do --

3 A -- question.

4 Q -- you know if he asked my clients whether or not
5 they would be all right with you having that
6 antenna in your backyard before he granted that
7 extension --

8 A I don't --

9 Q -- to you?

10 A -- think he had to, because he is the homeowners'
11 association.

12 Q Don't you think that would be a fair thing to do,
13 though?

14 A Not if he's the homeowners' association, no.

15 Q All right. Okay. All right.

16 THE COURT: What's the exhibit number on that
17 picture?

18 MR. MCCANTS: That's 9, Judge.

19 THE COURT: That's what?

20 MR. MCCANTS: Number 9. I'm sorry.

21 Q Do you want the -- the tennis courts and the
22 fitness center? Do you care about that?

23 A I think everybody would care about that if -- if it
24 -- you know, it became possible.

25 Q Were you promised the fitness center and the tennis

1 courts before you bought your property?

2 A No. I wasn't promised anything.

3 Q All right. Would you understand how, if certain
4 people felt like they were promised these things,
5 that they would like to have them?

6 A No. I don't, because that means that means they
7 didn't read the literature properly. I don't
8 understand that.

9 Q Where does it say in the literature --

10 A Right at the bottom it says they're all subject to
11 change and conditions. And if you don't have a
12 copy of it, I do have a copy of it out in the hall,
13 which I would be willing to provide as evidence.

14 Q Let me show you the one that my clients received.
15 And on the back of it, that's the disclaimer I
16 think you're talking about.

17 A Uh-huh.

18 Q Can you find it on that page?

19 A I don't. I see it -- some kind of disclaimer at
20 the bottom here. Yeah. Subject -- something to
21 change without notice, here.

22 Q And do you see that's been cut off?

23 A Uh-huh.

24 Q Okay. But you received a full disclaimer --

25 A I received --

1 Q -- when you bought --

2 A I received that --

3 Q -- your property?

4 A -- I received promotional literature like that with
5 the full disclaimer on the bottom. Plus, when I
6 read the covenants it basically -- in the covenants
7 it, in fact, states that the developer may or may
8 not do any amenities at all.

9 Q Did you read the marketing material, which says
10 they will be included? Do you remember that?

11 A I read the marketing material and noted the
12 disclaimer at the bottom. I -- I wasn't naive
13 enough to think that a developer in the early
14 stages of a development would do anything.

15 Q Okay. And you do, at some point, want a voice in
16 the operation of the homeowners' association. Do I
17 understand --

18 A Of --

19 Q -- that?

20 A -- course. I think most homeowners do --

21 Q And --

22 A -- at some point.

23 Q And do --

24 A But until that point, I know I don't. The
25 homeowners' association is the homeowners'

1 association. And until that power is changed or
2 whatever, then I don't have really much of a voice.

3 Q Did I understand --

4 A But, in part -- in part, I think that's a good
5 thing.

6 Q Did I understand initially you said that you
7 thought you did have a vote?

8 A Well, I guess what I'm trying to say is: I believe
9 that if I went to Wayne Raiford with a reasonable
10 request --

11 Q Like an antenna?

12 A Yes. -- he's a reasonable man and would work with
13 me to, you know, see that I got -- help me get what
14 I wanted.

15 Q And he did?

16 A And he did.

17 Q All right.

18 A So I guess what I'm trying to say is: My hobby is
19 not -- is equestrian, my hobby is amateur radio.
20 And I went to him with specific plans and pictures
21 of what I wanted to do, and he evaluated it. He
22 went and looked at other amateur radio antennas in
23 the county, and he determined that it would not be
24 an eyesore for our community, so he granted it.

25 Q And he determined that?

1 A Yes. He did.

2 Q You understand why some people have hobbies of
3 horticulture and growing trees and things like
4 that? You okay with --

5 A I can't --

6 Q -- those hobbies?

7 A -- see where somebody has the hobby -- hobby of
8 growing weeds or underbrush.

9 Q How about tress -- real trees? You okay with that
10 hobby?

11 A I'm okay with a real tree, yeah. But --

12 Q All right.

13 A -- not with an under -- not with underbrush.

14 Q So if I've got proof that these are real trees on
15 their lot, you're okay with that?

16 A Well, you can -- it's -- it's like I said, you can
17 -- what do you want to call a tree? You want to
18 call -- call a tree something that's scrub brush?

19 Q Well, trees have got to start somewhere.

20 A Well, yeah. And I've put some real hardwoods on my
21 property, but --

22 Q Were they 40 feet --

23 A No.

24 Q -- tall?

25 Where'd --

1 A No.

2 Q -- they --

3 A No.

4 Q -- start off with?

5 A Probably got them when they were 6 feet tall,

6 and --

7 Q About right there?

8 A -- they're hardwoods.

9 Q Okay. How about one -- if you would, these two
10 photographs, do you think those two areas are being
11 maintained in first-class condition, Mr. Juvrud?

12 A I -- I can't pass judgment on this, because I can't
13 see through those trees. First class, yeah. I
14 mean, the -- in this one the -- the grass is cut.
15 I mean, this is obviously an undeveloped lot, so I
16 would say yes.

17 Q You okay with those both -- both of those, 6 and 7?

18 A I'm okay with 7, but not 6.

19 Q All right. Six, no; 7, yes?

20 A Great.

21 MR. MCCANTS: That's all the questions I have. Thank
22 you very much.

23 THE WITNESS: You're welcome.

24 THE COURT: Anything on redirect? Hold on a second.

25 Let me see if he's got any questions for you.

1 REEXAMINATION OF MR. JUVRUD

2 BY MR. WARLICK:

3 Q Carl, I guess it depends on when the grass is cut.
4 If -- if the grass is cut in the early fall, will
5 it carry around to the next growing season?

6 A You mean, can you only cut once a season?

7 Q Twice a season. Can you make it through the winter
8 on one cut?

9 A It -- it -- it's really variable depending upon the
10 amount of rain we get.

11 Q Okay.

12 A I -- I don't -- don't know if I'm -- I could answer
13 that question.

14 Q I -- I guess the point I'm making about photograph
15 6 and 7: Depends on when they were taken and when
16 they going to next be cut.

17 A That's true. Like 7 here looks like -- that they
18 have maintained -- they have cut the grass, and 6
19 you can't really tell because a tree's kind of in
20 the way, but -- you know, I -- I mean, you have to
21 set a standard and you've got to draw the line
22 somewhere. And it -- in my way of thinking, when I
23 first -- when I first drove -- drove into Three
24 Runs, he was -- he was putting in roads. But the
25 thing that impressed me the most about the place

1 was that, when I drove up to the house that I
2 eventually bought, I could see from the street to
3 the back of the lot. I could actually see through
4 the trees and see where my back marker was. I
5 could see that there was, in fact, an easement in
6 the back where there's a horse trail.

7 And I believe that one of the successes of
8 Three Runs Plantation lies in the fact that Wayne
9 has done an excellent job of clearing lots so that
10 when somebody drives up and has got a dream about
11 putting in a horse farm, they can see the whole
12 lot. And I would say the proof of that is that, if
13 you drive down White Pond Road just before you get
14 to Three Runs is a development called "Paddock
15 Club" -- it's on the right -- and if you turn down
16 that street, you will see nothing but brush. You
17 see -- I'm sure the guy's got lots, but you can't
18 see the lot; you can't -- you can't see the back --
19 back-marker line. You can't -- you -- you'd have
20 no idea what you're buying unless you traipse
21 through there and maybe figured it out.

22 So, to me, one of the things that attracted us
23 to Three Runs Plantation was the fact that, if you
24 drive in, you can see it. It's vistas. It's horse
25 farms. It's paddocks. It's horses. It's **159**

1 beautiful. And you don't see that with other
2 equestrian developments. So when somebody says,
3 "Hey, I'm just going to let my -- my -- my scrub
4 brush grow up and -- and -- and, you know, call it
5 "landscaping," which it's not, it's out of step.
6 Nobody does that, and it's not -- it doesn't look
7 good to me.

8 MR. WARLICK: Thank you. No further questions.

9 THE COURT: Thank you, sir.

10
11 (Whereupon, the proceeding in the
12 above-entitled matter was adjourned
13 at 2:58 p.m.)

14 (*This transcript may contain quoted material.
15 Such material is reproduced as read or quoted
16 by the speaker.)

17 (**Certificate accompanies sealed original
18 only.)

1 THE COURT: All right. If we are ready then,
2 you can call your first witness.

3 RHONDA LAVERGHETTA,

4 Having been first duly sworn, was examined
5 and testifies, as follows:

6 THE COURT: I would ask you to give your full
7 name and spell your last name for the court
8 reporter, please.

9 THE WITNESS: My name is Rhonda LaVerghetta.
10 Last name is spelled L-A capital V as in Victor,
11 E-R-G-H-E-T-T-A.

12 DIRECT EXAMINATION

13 BY MR. WARLICK:

14 Q. Rhonda, where do you reside?

15 A. I reside at 6395 Hiwassee Run, Aiken, South
16 Carolina.

17 Q. Is that part of Three Runs Plantation
18 equestrian subdivision?

19 A. Yes, it is.

20 Q. How long have you lived there?

21 A. I moved in on November 1st of 2010.

22 Q. Are you a horse person?

23 A. Yes, I am.

24 Q. Do you ride on a regular basis?

25 A. Yes, I do.

1 Q. Where did you move from when you moved to
2 Aiken County?

3 A. The metro west Boston, Massachusetts area.

4 Q. What brought you to Aiken?

5 A. I was looking for a community where I could
6 feel comfortable and safe with my horses, make friends
7 easily, and was looking especially for something that
8 was established to a certain degree, that I would have
9 a -- having -- this my first time building, I wanted
10 to have a good sense for what the community when it
11 was finished was going to look like.

12 Q. How did you find Aiken, or how did you find
13 Three Runs? How did you make that connection?

14 A. I made the connection to Aiken through lots
15 of my friends from Massachusetts. I'm an active hunt
16 -- fox hunter, and a lot of the members of my hunt
17 club in Massachusetts had already moved to Aiken. Not
18 to Three Runs in particular, but to Aiken, South
19 Carolina.

20 Q. What was it that attracted you to Three Runs
21 Plantation, specifically?

22 A. Three Runs actually -- after searching quite
23 a few properties, what attracted me most was the
24 roadways, wherein, the lots had been extensively
25 cleared, you could see what you were getting. There

1 were some very nice homes already built and
2 established. And I liked the fact that the amenities
3 that were in, the clubhouse, pool -- the pool actually
4 went in after I purchased my lot, but it had -- was on
5 schedule to go in and I -- the riding rings were
6 there, and especially the trail system, which was in
7 wonderful condition.

8 I worked with Courtney Conger, who is a very
9 reliable realtor from Aiken. Did a thorough job
10 showing me around. I'm a realtor myself by
11 profession, so I was very particular when I looked at
12 what I looked at, and I looked at a number of things.
13 Condominiums, houses in horse communities, houses in
14 town, because I wasn't really sure. I wanted to see
15 what the whole scenario of, you know, homes for sale
16 would be. Price points are a lot different here than
17 they are in Massachusetts, so that's what I did.

18 Q. How long were you in the real estate
19 business?

20 A. I've been in real estate for 25 years. I'm
21 currently practicing here in Aiken.

22 Q. You're selling real estate in Aiken?

23 A. Yes, I am.

24 Q. Have you sold any lots in Three Runs?

25 A. No, unfortunately I have not.

1 Q. Are you familiar with Aiken equestrian
2 facilities?

3 A. Very familiar.

4 Q. Of those in Aiken County, how do you rate
5 Three Runs in comparison with the other equestrian
6 communities?

7 A. It is number one all around.

8 Q. What about sales in Three Runs? Are you
9 familiar with those?

10 A. I know that when I moved to Aiken -- and the
11 answer is still the same. The question I would ask of
12 all my realtor associates, what is selling in Aiken.
13 At the time, the economy is tough, was tough then and
14 is a little more -- you know, it's still in a bad
15 situation, but hopefully recovering soon. The answer
16 was --

17 MR. MCCANTS: Your Honor?

18 A. -- anything up to 200 and --

19 THE COURT: One second.

20 A. -- and Three Runs --

21 THE COURT: One second, ma'am.

22 MR. MCCANTS: Speculative, hearsay. Object
23 to her testifying what she was told by other
24 realtors, and also we may be touching on opinion
25 here. I'll go ahead and --

1 THE COURT: Touching on what?

2 MR. MCCANTS: An opinion.

3 THE COURT: I would sustain the hearsay
4 objection, as far as what she -- you asked her
5 what her opinion was, I think.

6 Q. [Mr. Warlick] What is your opinion as to
7 Three Runs Plantation, in comparison with the other
8 equestrian residential communities?

9 A. My opinion, hands down, it is the number one
10 premier equestrian community in Aiken.

11 Q. Are you familiar with the sales at Three Runs
12 and any other equestrian centers?

13 A. Yes, sir.

14 Q. How do they compare?

15 A. Number one. They are the best.

16 Q. In terms of sales, they're selling?

17 A. In terms of sales, yes.

18 Q. Are the lots -- are the acreage in the other
19 equestrian centers selling at this time?

20 A. Some of them have been, but the -- I think
21 more recently in Bridle Creek, I believe, there have
22 been one or two sales and some new construction
23 starting there. And Bridle Creek, which is not far
24 from Three Runs, still has an awful lot of lots for
25 sale. It's also a very nice equestrian subdivision

1 that has not -- it's not very well established yet,
2 like Three Runs is, which is why I bought in Three
3 Runs.

4 Q. I hand you what's been marked Plaintiff's
5 Exhibit 14, which is a compilation that was done by
6 Dan Willis. Are you familiar with Dan Willis?

7 A. No, I'm not.

8 Q. It purports to have recorded sales in Three
9 Runs, as well as the other equestrian residential
10 communities in Aiken County. I think that's toward
11 the end. I think there's a comparison in sales.

12 A. Okay.

13 Q. Are you familiar with those sales?

14 A. I'm familiar with all of these subdivisions.
15 I haven't, you know, personally studied what's been
16 happening to --

17 Q. That shows that there's 18 sales in Three
18 Runs during the first eight months of 2012; does it
19 not?

20 A. Yes, it does.

21 Q. What about the other equestrian --

22 A. Well, we're seeing Bridle Creek, two lots
23 sold, which is actually what I think I just said to
24 you, I had heard that two lots sold recently. Looks
25 like none anywhere else. One lot -- no, that was 2011

1 in Hatchaway Bridge. So, none of the others, other
2 than Bridle Creek has sold two lots.

3 Q. Prior to the time that you moved in, did you
4 review the restrictive covenants that were recorded
5 and applied to the Three Runs Plantation?

6 A. Yes, sir.

7 Q. What do you consider to be the area covered
8 by those restrictive covenants?

9 A. The area I would consider to be the entire
10 amount of acreage that is owned by the developer.

11 Q. Do you know what that is?

12 A. 2,400 acres.

13 Q. 2,400 acres?

14 A. Thereabouts.

15 Q. You expect those covenants to apply to all
16 2,400 acres?

17 A. Yes.

18 Q. Were the covenants something that you
19 considered important in your making the decision to
20 buy into Three Runs?

21 A. Very, very important.

22 Q. Why is that?

23 A. Because as a realtor, over the 25 years I
24 have had a lot of exposure and experience with clients
25 or customers of mine who had, you know, bought new

1 construction in communities, and I have been a realtor
2 for so long I've seen a lot of ups and down in the
3 economy and, you know, builders going belly up, this,
4 that, and the other thing. It's very important -- it
5 was to them, and I gleaned from their experiences, it
6 helped educate me that if you have the covenants in
7 place and they're very detailed and rules spelled out
8 clearly, it gives you a level of comfort of knowing
9 what you're going to be getting.

10 Q. Does it also give you comfort knowing what
11 your neighbors are going to do with their property?

12 A. Yes. Absolutely.

13 Q. It's important to you. Were you willing to
14 give up certain rights that you would otherwise have
15 to your property because of the knowledge of what your
16 neighbors were also giving up when they bought into --

17 A. Yes.

18 Q. -- the planned development?

19 A. Yes.

20 Q. What was your understanding of the planned
21 development in Three Runs Plantation?

22 A. Well, I was -- I bought in phase two. I knew
23 phase one I think was fairly well sold out when I
24 purchased in phase two. I knew there would be other
25 ongoing phases. My thinking was that it could take a

1 number of years for the entire development to be
2 completed, especially with the economy in an upswing,
3 up and down cycles that we're going, so -- I did think
4 it would take a long time, but I felt a level of
5 comfort that phase one and two would be fairly well
6 established and it wouldn't be like living in a ghost
7 town. It was comfortable. There were some nice
8 people there already that I had met, so --

9 Q. Where is your lot in relation to the Jacobs'?

10 A. I live diagonally across the street. A
11 portion of -- they own, I believe, two lots in total,
12 so they have quite a large amount of frontage. Some
13 of their frontage is across from my frontage.

14 Q. Are their lots in phase two, also?

15 A. Yes, they are, as far as I know.

16 Q. Have you had occasion to observe how the
17 Jacobs maintain their property?

18 A. Yes, I have.

19 Q. How would you describe that?

20 A. Different from what the covenants call for.

21 Q. In what respect?

22 A. Well, the covenants call for keeping the lot
23 mowed. My interpretation of that is as it was sold to
24 you, to keep what was mowed when it was sold to you
25 mowed.

1 Q. Was your lot mowed when you bought it?

2 A. Yes. I bought a resale lot, but yes, it had
3 been mowed.

4 Q. Do you know the condition of the Jacobs lot?

5 A. When?

6 Q. When you moved in?

7 A. Well, I would say it was different from what
8 it looks like now.

9 Q. What's it look like now?

10 A. It has a lot of trees -- well, a lot of
11 small, little brushy things growing up, and there are
12 -- some of them are getting tall. Where there was
13 lawn and seedlings fell, the seedlings were allowed to
14 be established.

15 Q. Tell me about the equestrian easements that
16 go across everybody's property.

17 A. Every lot in the subdivision -- this is a
18 nice feature for those who ride or walk dogs -- have
19 an easement around them of a certain number of feet.
20 I believe it's 10 feet on the side setbacks. So, with
21 each lot having 10, that's 20 feet that serves as an
22 easement for riding, walking, enjoyment. Each
23 landowner is to maintain their easements as they were
24 when they were purchased.

25 Q. Do the Jacobs maintain their equestrian

1 easements the same as everybody else's?

2 A. It's different in the fact that they've
3 allowed scrub trees to grow up on them.

4 Q. Does that interfere with a rider?

5 A. It makes it a little difficult. You have to
6 wiggle and wind around. As they get bigger, it's
7 going to make it even more difficult.

8 MR. WARLICK: Witness is with you.

9 **CROSS-EXAMINATION**

10 **BY MR. MCCANTS:**

11 Q. I apologize if I mispronounce your name, too,
12 Ms. LaVerghetta.

13 A. LaVerghetta.

14 Q. Is that close enough?

15 A. It is. Thank you.

16 Q. I'm Clarke McCants. I represent the Jacobs
17 as part of this case.

18 A. Yes.

19 Q. You don't disagree that having nice, clean,
20 clear covenants are important for purposes of a
21 significant investment in a property such as Three
22 Runs, do you?

23 A. I don't disagree.

24 Q. I mean, that's what you testified to. You've
25 been involved in real estate.

1 A. Yes.

2 Q. It's important for you to know what the rules
3 are, what they're going to be, so you can rely on
4 them?

5 A. Yes.

6 Q. Also, you trust that your neighbors are going
7 to rely on them also; is that fair?

8 A. Yes.

9 Q. For what reasons?

10 A. For level of comfort, for knowing what I
11 have. I have invested a lot of money in what I have
12 at Three Runs. And for overall esthetics of the
13 neighborhood. That's primarily it.

14 Q. It sounds like the first thing you said was
15 level of comfort because you've made a significant
16 investment.

17 A. Yes.

18 Q. Are you saying to make sure the value of your
19 property is preserved?

20 A. Yes.

21 Q. Obviously, if you invested money in property
22 and your neighbors are not abiding by the covenants,
23 that could affect the value of your property; is that
24 fair?

25 A. Yes, that's fair.

1 Q. You also want it to look nice?

2 A. Absolutely.

3 Q. Everybody agrees, Three Runs is a beautiful
4 development?

5 A. It is.

6 Q. What is your understanding of what the
7 covenant says, the protective covenants say, with
8 regard to maintenance of lots?

9 A. My understanding is that they were to be kept
10 -- the land itself was to be kept in the condition it
11 was when it was delivered to you at the closing.

12 Q. At the time of closing?

13 A. Right, as close to. I know that the
14 developer -- we're horse people, most of us in Three
15 Runs, the majority do own horses, and he did have --
16 he does have some language in there that says if
17 you're going to cut trees over a certain diameter he
18 wants to be alerted to the fact because he doesn't
19 want to see a lot of clear cutting going on in the
20 development. They did put out a mowing guideline for
21 residents. My interpretation of that is that what was
22 mowed out when you purchased your lot should stay
23 mowed on an ongoing basis.

24 Q. Fair enough. Believe me, if you said lots,
25 I'm going to kind of go back over it. First thing you

1 said was your understanding is that the covenants say
2 you maintain your lots in the condition that they were
3 in at the time of closing. That is, when the property
4 was delivered to you, that's what you keep it in the
5 condition; is that correct?

6 A. That's my understanding.

7 Q. That's your understanding of the protective
8 covenants at Three Runs; is that fair?

9 A. I think that's fair.

10 Q. All right. Let me show you this document, if
11 I can. You mentioned the mowing guidelines?

12 A. I did mention the mowing guidelines.

13 MR. MCCANTS: Let's mark this.

14 MR. WARLICK: Your Honor, while she's marking
15 that, Clarke and I both have objected numerous
16 times, and I think we're in agreement that the
17 covenants say whatever they say. It might make
18 more -- go smoother if this witness was given the
19 covenants so she could be looking at what she's
20 talking about, rather than what she recalls from
21 memory.

22 THE COURT: I think she's got -- well, go
23 ahead, Mr. McCants.

24 MR. MCCANTS: He's happy to bring that up on
25 redirect. I'm satisfied with her answer.

1 THE COURT: In addition, I think she's got to
2 say she needs something to examine. I haven't
3 heard that either, so --

4 THE WITNESS: Well, I would say I have --

5 THE COURT: That's okay. This is Defendants'
6 Number 9?

7 COURT REPORTER: 10.

8 [Defendants' Exhibit Number 10 was marked for
9 identification by the court reporter.]

10 Q. [Mr. McCants] I'm going to show you what
11 I've marked as Defendants' Exhibit Number 10. What
12 I'd ask you to do is look at those. My question to
13 you is going to be, are those the mowing guidelines
14 that you've just referred to? I can help you a little
15 bit. That's a memo, and attached to that, I think,
16 are the actual guidelines.

17 MR. WARLICK: Do you have another copy of
18 those, Clarke?

19 MR. MCCANTS: Yes.

20 A. Yes, I am familiar with them.

21 Q. [Mr. McCants] Do you remember receiving the
22 memo that was attached to the guidelines, or the
23 letter?

24 A. Of course. I'm sure I did; yes, sir. It
25 wouldn't have made sense just to get the guidelines.

1 Q. All right.

2 A. Plus, it was two years ago.

3 Q. Fair enough. Is Exhibit Number 10 the mowing
4 guidelines that you made reference to in your
5 testimony earlier?

6 A. Yes.

7 Q. All right. What you're saying, if I
8 understand correctly, the protective covenants say
9 something, and then there were additional mowing
10 guidelines issued for property owners?

11 A. Yes.

12 Q. Which are reflected in Exhibit Number 10, and
13 told property owners how to maintain their property;
14 is that fair?

15 A. Yes.

16 Q. You believe that the guidelines as set forth
17 in Exhibit Number 10 are in effect and apply to all
18 homeowners --

19 A. Yes, I do.

20 Q. -- at Three Runs?

21 A. [Indicates Affirmatively]

22 Q. You have to say yes, just for her.

23 A. Yes.

24 Q. You nodded your head. She's got to have a
25 verbal response. Let's talk about the amenities just

1 a little bit. Being in real estate, having how many
2 years experience?

3 A. Twenty-five.

4 Q. You have a South Carolina real estate license
5 now?

6 A. Yes, I do.

7 Q. All right. Amenities are built, used in a
8 development for any number of reasons; is that
9 correct?

10 A. Correct.

11 Q. Recreation and whatnot; is that correct?

12 A. Yes.

13 Q. Do you agree also that amenities for purposes
14 of establishing and maintaining the value of property
15 are important?

16 A. Yes.

17 Q. In other words, if you buy in a particular
18 development, you don't plan to stay there forever.
19 Even if you don't use the amenities, that's a point to
20 use for resale by saying for speculative purposes,
21 we've got these nice amenities; is that fair?

22 A. Yes.

23 Q. It's certainly reasonable, and based on your
24 experience, when you're selling a piece of property to
25 say, purchasers, look at these beautiful amenities

1 that we have?

2 A. Yes.

3 Q. That's something you would routinely do; is
4 that correct?

5 A. Yes.

6 Q. Do you want the tennis courts at Three Runs?

7 A. It would be nice because I'm an avid tennis
8 player. I've played tennis for over 25 years. But
9 what's more important to me in my life right now are
10 my horses.

11 Q. Yes, ma'am.

12 A. The fact, I bought in an equestrian community
13 is evidence of that.

14 Q. Do you believe that Three Runs is an
15 exclusive equestrian community?

16 A. Well, I -- it is an equestrian community as
17 it's being marketed. I know there are some families
18 that are not equestriennes who live there.

19 Q. Do you know it's marketed as an equestrian
20 and non-equestrian development?

21 A. I know it is, yes.

22 Q. Specifically?

23 A. I believe it is.

24 Q. I mean, it's in the marketing materials. I
25 don't want to take up your time going through it, but

1 you understand it was marketed as an equestrian and
2 non-equestrian development?

3 A. Yes.

4 Q. How about the fitness center? Are you
5 interested in the fitness center?

6 A. Not necessarily, no.

7 Q. That's not an issue for you?

8 A. Not really.

9 Q. Would you understand how other property
10 owners want those amenities, Ms. LaVerghetta?

11 A. Would I understand?

12 Q. That other property owners --

13 A. Others might want it?

14 Q. Might want those?

15 A. Sure.

16 Q. It's not an unreasonable request?

17 A. No.

18 Q. Certainly, if you had been promised something
19 and it didn't develop over time, it didn't come about,
20 you would feel like you had been damaged or had
21 suffered a loss; would you not? Is that fair?

22 A. I don't think it was promised, because the
23 covenants say that they can be changed at any time.

24 Q. Is that your interpretation of the fitness
25 center?

1 A. That was my interpretation.

2 Q. Have you seen the marketing materials? I
3 mean, I'm going to ask you these questions because
4 you're in --

5 A. More recent marketing material or old
6 marketing material?

7 Q. Well, let me do this. Let me show you what
8 my client was given, if I might. Let me show to you,
9 if I might, what was previously marked as Defendants'
10 Exhibit Number 4. What I will tell you -- and I'm
11 just going to have you look at this front page.

12 A. This is something old.

13 Q. Well, what I will tell you is, my clients --
14 I think the record establishes they were given this
15 package, this actual package that you're holding in
16 your hands, in conjunction with their looking into
17 purchasing property at Three Runs; okay?

18 A. Uh-huh.

19 Q. You with me? Now, the front page, right up
20 here, there's a little introductory paragraph.

21 A. Yes.

22 Q. What I'm going to do, Ms. LaVerghetta, if I
23 could, is I'm going to go to the third paragraph
24 there. It says, amenities will include over 30 miles
25 of riding trails, accessible to only horses,

1 pedestrians, and horse-drawn carriages. A clubhouse
2 and fitness center will overlook three riding arenas,
3 tennis courts, and a swimming pool. Additional
4 equestrian amenities will be added as future
5 development occurs. Does that sound like the focus on
6 tennis courts and fitness centers -- at least that
7 brochure, does it indicate that they will be
8 constructed?

9 A. It does. But is this the complete package?

10 Q. All I can tell you is that's the package that
11 was given to my client.

12 A. All right. So, it also has the covenants in
13 it?

14 Q. It does.

15 A. Yeah.

16 Q. It does.

17 A. Which they do say it could change at any
18 time.

19 Q. Let's look at that for a second; okay? Since
20 you brought it up. What you would be looking at to
21 reach that conclusion, look at article five,
22 subparagraph five.

23 A. Of the covenants?

24 Q. Yes. Keep turning to the bylaws.

25 A. Developer rights with respect to amenities?

1 Q. Yes, ma'am. Let's look at that for a second;
2 okay? I understand your testimony to be, at least you
3 interpret this to provide that the developer has --
4 excuse me for using a horse term -- but unbridled
5 right to make changes; is that your understanding?

6 A. Let me just read it.

7 Q. Sure.

8 A. Do you want me to read it out loud?

9 Q. No, not necessarily. I'm going to read a
10 portion of it in just a second.

11 A. It's clear to me.

12 Q. There are two sentences; okay?

13 A. Yes.

14 Q. The first one says, developer reserves the
15 right, so long as developer owns the common areas and
16 green space at Three Runs to make such changes,
17 additions, or deletions to the amenities within Three
18 Runs as developer deems prudent, in developer's sole
19 discretion. You agree that could be written -- read
20 to mean that the developer has the right to make
21 changes to existing amenities and not those planned?
22 I'm asking, do you believe it can be read in that
23 fashion? I know you disagree with it.

24 A. Let me read it again.

25 Q. It could be read to say that the developer

1 has the right to make additions, changes, --

2 A. To change amenities.

3 Q. -- deletions to amenities within --

4 A. Yes.

5 Q. That is, existing amenities?

6 A. Yes.

7 Q. You agree with that?

8 A. Yes.

9 Q. That could say what's there could be deleted,
10 changed, or modified?

11 A. Yes.

12 Q. But it presupposes, if you might, that the
13 amenity exists; correct?

14 A. What, the statement does?

15 Q. Yeah. I know you disagree with it, but --

16 A. No, I don't -- what do I disagree with? I
17 don't disagree --

18 Q. Do you agree that that first sentence
19 suggests that changes, deletions, and additions are to
20 the existing amenities?

21 A. Yes. You know, that would include
22 improvements and changes along the way. I don't have
23 any problem with that.

24 Q. All right.

25 A. I don't understand.

1 MR. WARLICK: Your Honor, I want to be
2 careful and give counsel full latitude to cross-
3 examine any way he wants to, but we've -- he's
4 objected when I've asked the question, and I've
5 objected sometimes when he's asked the question.
6 It means whatever the Court determines it means.
7 I mean, it's in English. I don't mind allowing
8 this witness to say what it means to her, provided
9 that Your Honor understands that I'm not waiving
10 my argument. As a matter of law, I think I know
11 what it means, and I think the Court will agree to
12 interpret the language as to what the plain
13 meaning is. I don't object to different witnesses
14 being asked their interpretation of it, but in the
15 final analysis, it's whatever the law says that it
16 means.

17 THE COURT: Any response?

18 MR. MCCANTS: If I might. She's expressed
19 she's been in the real estate business. She's
20 expressed that she's had experience with covenants
21 and restrictions. She's expressed that she's read
22 the covenants and restrictions in conjunction with
23 deciding to purchase the property at Three Runs.
24 It's perfectly understandable. Finally, when I
25 brought up the issue of the marketing brochure,

1 she says, well, the covenants say the developer
2 has basically unfettered right to decide what
3 amenities may or may not be done.

4 MR. WARLICK: She never used unfettered
5 rights. That's your language, not hers.

6 MR. MCCANTS: Well, I'm reading in, so I
7 withdraw. May I go ahead and ask a question?
8 I'll withdraw the question and try to redevelop
9 it, if I might.

10 THE COURT: All right. You can withdraw the
11 question. Go ahead.

12 Q. [Mr. McCants] You've heard this exchange.
13 Based upon your understanding of the covenants, did
14 the developer, Mr. Raiford, have absolute right to
15 decide whether or not certain amenities would be
16 constructed in Three Runs?

17 A. Yes.

18 Q. My question to you -- and you said that's
19 based on the covenants; correct?

20 A. Uh-huh.

21 Q. My question is, look at the provision of the
22 covenant. I'm asking if that first sentence could be
23 read to mean that the developer has the right to
24 change amenities which are already in place?

25 A. Yes.

1 Q. Very good. Now, you may say, Mr. McCants,
2 the last sentence is what I rely on. It says, the
3 developer makes no representation of any kind as to
4 the kind or type of amenities to be constructed within
5 Three Runs, nor as to the completion date of such
6 amenities. Okay?

7 A. Right.

8 Q. That read, in plain terms says Mr. Raiford
9 does have the right to decide which amenities?

10 A. Yes.

11 Q. It also says he makes no representations
12 otherwise; correct?

13 A. Yes.

14 Q. Turn back to the first page, if you would,
15 that provision I just read to you. Amenities will
16 include -- will include -- over 30 miles of riding
17 trails accessible to only horses, pedestrians, and
18 horse-drawn carriages. A clubhouse and fitness center
19 will overlook three riding arenas, tennis courts, and
20 swimming pool. Do you not agree that that is a
21 representation that a fitness center and tennis courts
22 will be constructed at Three Runs, and based upon your
23 experience as a realtor?

24 A. I agree it is. I have to take this as a
25 whole, and I always advise my clients to look at all

1 of the documents.

2 Q. At a minimum, they're inconsistent with each
3 other?

4 A. At a minimum I would say they probably are,
5 if they were looked at separately, yes.

6 Q. All right. The homeowners association, you
7 understand you don't have any voting rights in the
8 homeowners association?

9 A. I understand.

10 Q. Do you want voting rights?

11 A. Not necessarily.

12 Q. At any point in time?

13 A. At some point. I personally would rather
14 have it pretty well established before that.

15 Q. When's that going to happen, you think?

16 A. Could be a long time the way the economy's
17 going. Could be 20 years. There's a lot of land
18 there. I understood that from the get-go. It was
19 made clear to me by the person I had review the
20 documents for me.

21 Q. You've made a significant investment in your
22 property?

23 A. Yes.

24 Q. You want to preserve the integrity of your
25 property and the value of your property; is that

1 correct?

2 A. Yes.

3 MR. MCCANTS: Judge, if I may have just a
4 second? That's all the questions I have. Thank
5 you.

6 THE COURT: Redirect?

7 MR. WARLICK: Just a brief follow-up. If I
8 could have those last two exhibits?

9 MR. MCCANTS: They are inside the brochure,
10 Byrd.

11 **REDIRECT EXAMINATION**

12 **BY MR. WARLICK:**

13 Q. The brochure that you referred to, I think
14 Mr. McCants said was prepared by Courtney Conger; was
15 that correct?

16 A. I don't know. Does it say that? She was, I
17 believe, the listing broker when I purchased my home.

18 Q. On the cover it says the Carolina Real Estate
19 Company and Courtney Conger. But contained in here
20 are the restrictive covenants themselves?

21 A. Yes.

22 Q. The restrictive covenants are signed; are
23 they not?

24 A. Yes, they are.

25 Q. Who signed them?

1 A. Mr. Raiford, the developer, and the
2 witnesses, or the notary.

3 Q. In other words, the covenants are covenants
4 which would be between you as a purchaser, and Three
5 Runs Plantation and J. Wayne Raiford as the developer?

6 A. Yes.

7 Q. That's your understanding of what covenants
8 are? It's an agreement between you and the developer?

9 A. Yes, I understand that.

10 Q. The covenants say that the developer can
11 change the amenities at any time?

12 A. Yes.

13 Q. It makes no representation as to when the
14 amenities would be installed?

15 A. Exactly. I will say his broker, Courtney
16 Conger, who is extremely responsible and reliable,
17 also verbalized that to me when I purchased that land.

18 Q. Do you know how developments such as this are
19 done as to when the amenities go in? Up front or
20 during the course of development, or how?

21 A. It's different every place. They all do it
22 in different order. The fact that Three Runs had so
23 many amenities already established was very attractive
24 to me as a purchaser.

25 Q. As an owner in Three Runs, ultimately the

1 responsibility for paying the upkeep on those
2 amenities will be the owners; is that not a correct
3 statement?

4 A. Yes. The homeowners.

5 Q. Prior to that time, who has to pay for the
6 upkeep of the common areas and the amenities?

7 A. Prior to the homeowners association?

8 Q. Yes.

9 A. The developer would have done that.

10 MR. WARLICK: No further questions.

11 MR. MCCANTS: Nothing further.

12 THE COURT: Ma'am, you can step down.

13 THE WITNESS: Your Honor, may I request
14 permission to stay and hear the rest of the
15 hearing?

16 THE COURT: You don't anticipate recalling
17 the witness, do you?

18 MR. WARLICK: I don't anticipate recalling
19 this witness.

20 THE COURT: Any objections? I assume there's
21 no objections to her staying and listening?

22 MR. MCCANTS: None whatsoever.

23 THE COURT: Call your next witness.

24 MR. WARLICK: Michael Schneider.

25 MICHAEL DOUGLAS SCHNEIDER,

1 Having been first duly sworn, was examined
2 and testified as follows:

3 THE COURT: Have a seat and state your full
4 name for the court reporter.

5 THE WITNESS: Michael Douglas Schneider.

6 THE COURT: Spell that last name for her.

7 THE WITNESS: S-C-H-N-E-I-D-E-R.

8 **DIRECT EXAMINATION**

9 **BY MR. WARLICK:**

10 Q. Mr. Schneider, where do you reside?

11 A. Three Runs Plantation.

12 Q. How long have you lived there?

13 A. Two years and two months.

14 THE COURT: Let me stop you for a minute.
15 I've got somebody waving something in the back of
16 the courtroom. Does it have something to do with
17 this witness?

18 UNKNOWN FEMALE: Mr. Schneider's eyeglasses.

19 THE WITNESS: If I need them, I guess.

20 Q. [Mr. Warlick] What's your address at Three
21 Runs?

22 A. 791 Three Runs Plantation Drive.

23 Q. You moved to Three Runs from where?

24 A. Oregon.

25 Q. What attracted you to the Aiken area?

1 A. Horses.

2 Q. How did you wind up being in Aiken?

3 A. Horses and Three Runs Plantation. Actually,
4 we came on our first visit because my wife one night
5 -- on a Sunday night printed out a thing off the
6 internet, and it was Three Runs Plantation Drive, or
7 Three Runs Plantation. It listed all the amenities
8 that were there, we talked about it, we made a trip
9 out to take a look at it. That's what brought us out
10 here on our first trip.

11 Q. Did that come from the website?

12 A. It did.

13 Q. What did you find when you got to Three Runs
14 Plantation? What was it that made it attractive to
15 you and your wife?

16 A. Horse community. It was a planned community,
17 in the sense that there were rules and the way people
18 had to -- you know, their pastures kept and groomed,
19 the way the houses were going to be shown, the trails.
20 I would say basically the arenas that were there. It
21 was mostly just the environment of a horse community.

22 Q. Do you ride?

23 A. Yeah, I do.

24 Q. How often do you and your wife ride?

25 A. Well, my wife rides more than I do, probably

1 three or four times a week. I go one to two,
2 depending on what week it is.

3 Q. What about the equestrian amenities or
4 facilities that you found particularly attractive or
5 to your liking?

6 A. All the -- I mean, to us, it's exceptional.

7 Q. Describe the trails.

8 A. Exceptional. They're groomed, they're
9 wonderful. It's very nice to go down and ride. We
10 ride a lot down along the creek, you know, on that
11 lower boundary and border down there. It's a
12 beautiful ride down there.

13 Q. How long are the trails?

14 A. How long?

15 Q. Uh-huh.

16 A. Thirty or 32 miles. I can't remember
17 exactly.

18 Q. You remember seeing promotional literature
19 about Three Runs -- how big is Three Runs going to be
20 when it's fully developed?

21 A. Honestly, I don't remember. I think it was
22 four phases, if I remember right. I don't remember
23 the acreage or any of that stuff.

24 Q. But the literature said 30 miles of trails?

25 A. Yeah, I think it said 30 or -- some number

1 like that.

2 Q. You think those trails are there?

3 A. I think they're there. We ride them every
4 week.

5 Q. The equestrian easements that go across your
6 property and every other homeowner's property
7 easement, how does that work?

8 A. We have access -- basically, there's an
9 easement between each of the properties that in
10 essence is a trail. It's groomed or maintained and
11 you can ride through it whenever you want. It's kind
12 of nice, because you can go to different parts of the
13 property through the easements to get to other places.
14 So, it's very easy to use.

15 Q. You can leave your house on your horse and go
16 throughout the subdivision on these equestrian
17 easements that are around each homeowners property?

18 A. Yeah, you can pretty much -- wherever there's
19 an easement, you can go through it and get where you
20 need to go.

21 Q. Do the Jacobs maintain their equestrian
22 easement to the same standard as the other property
23 owners?

24 A. Honestly, I don't know that. I have not
25 looked at their easements. I don't know that.

1 Q. Do you ride on their easements?

2 A. No. We've ridden on the back, the back
3 trail, which goes on that whole run back there, the
4 whole length of the property back there. But I have
5 not been along the front or in their easements.

6 Q. Does their property look similar to everybody
7 else's?

8 A. No, it's different than the others.

9 Q. What's the difference?

10 A. It looks like a bunch of stuff planted there
11 and brought over, and it looks kind of like the
12 preliminary phases of the way the property would look
13 if you just let it grow over time.

14 Q. So, they're not maintaining it in the same
15 fashion as the other property owners?

16 MR. MCCANTS: Object to leading.

17 THE COURT: Sustained.

18 Q. [Mr. Warlick] Does the Jacobs' property
19 appear similar to the other homeowners' properties in
20 Three Runs Plantation?

21 A. Not from appearance, no.

22 Q. What about the amenities at Three Runs, are
23 you satisfied with those?

24 A. Yes, I am.

25 Q. Did you look at the restrictive covenants

1 before you bought?

2 A. We did.

3 Q. Do the restrictive covenants require lot
4 owners to maintain their property?

5 A. They do.

6 Q. In what respect? Do you recall what it says?

7 A. I don't remember the exact verbiage. I just
8 know you're supposed to take care of it. My wife and
9 I always figured out that we're taking care of it for
10 somebody. You know, you cut your lawn or do something
11 to take care of it.

12 Q. Do you regularly mow your property?

13 A. We do. Probably four times a year, probably.

14 Q. How much acreage do you have?

15 A. 11.7. We have two lots.

16 Q. Does it concern you that all of the amenities
17 have not been installed that were advertised
18 concerning Three Runs Plantation?

19 A. Not at all.

20 Q. Why is that?

21 A. To me, that's not the way life works. Mr.
22 Raiford started a business, he -- that's the beauty of
23 America. He has to design it and create it with his
24 vision, the way he wants to do it. Things change.
25 The economy changes, things happen. He's got to do

1 what he thinks best to make the property a success
2 over the long haul. He has all the risks. We have a
3 minimal risk, in the sense that we own a property, a
4 piece of land. But he has the risk of the entire
5 project. He's got to make the decisions he has to
6 make to make it a success, which means it's a success
7 for all of us, because none of us want to see this
8 thing fail. We love it, we want it to work. His
9 success is our success, so we want him to do well in
10 this project.

11 MR. WARLICK: No further questions.

12 THE COURT: Cross-examine?

13 MR. MCCANTS: Thank you.

14 **CROSS-EXAMINATION**

15 **BY MR. MCCANTS:**

16 Q. Good morning, Mr. Schneider.

17 A. Good morning.

18 Q. I'm Clarke McCants. I represent Jay and Judy
19 in this matter.

20 A. Okay.

21 Q. I've just got a few questions for you.

22 A. Sure.

23 Q. You testified that your understanding of the
24 covenants is that the property owners should take care
25 of their property; is that fair?

1 A. Yes.

2 Q. Do you believe that Jay and Judy are taking
3 care of their property?

4 A. I wouldn't know if they're doing it within
5 the terms of the agreement or not, because that's kind
6 of let the homeowners decide whether it's within that
7 range or not. I think the word take care, that's a
8 very broad term. I mean, it means anything. I could
9 go out, throw some water on it. I'm taking care of
10 it.

11 Q. That's why I asked. You used the term,
12 property owners are supposed to take care of their
13 property. That's your understanding of the covenants.

14 A. Yes.

15 Q. My question to you is based upon your
16 understanding of the condition of their property, are
17 they taking care of it?

18 A. I would say they're not taking care of it
19 like the way the rest of the owners are around the
20 community.

21 Q. All right. You believe that is the standard
22 in Three Runs? You've got to keep your property just
23 like everybody else's property?

24 A. I do. There's a standard that needs to be --
25 that needs to be kept.

1 Q. You believe that that's in the covenants?

2 A. I believe that the homeowners association
3 gets to determine whether they can -- what the rules
4 or not. Otherwise, you're going to have kind of stuff
5 running all over the place, people doing different
6 things inside of their property.

7 Q. That's why we have protective covenants and
8 restrictions; correct?

9 A. Uh-huh.

10 Q. To give prospective purchasers and homeowners
11 some guidance as to what should and shouldn't be done;
12 is that fair?

13 A. Uh-huh.

14 Q. You're going to have to say yes for Pam.
15 She's got to be able to take your response down. Not
16 a uh-huh and whatnot.

17 A. Yes.

18 Q. If yes is your answer. So, you want these
19 covenants clear; is that fair?

20 A. Yeah.

21 Q. And concise, and give clear guidance to
22 property owners what they are and are not supposed to
23 do?

24 A. As much as you can, because I know -- I mean,
25 nothing's -- you can't define that in exact detail of

1 what a property is. It's more of are we keeping a
2 theme of community or not.

3 Q. Right. But one of the purposes of covenants
4 is to give purchasers, prospective purchasers, and
5 homeowners some guidance as to what to expect; is that
6 fair?

7 A. Okay. I follow that.

8 Q. I mean, do you agree with that?

9 A. Yeah.

10 Q. The only reason I'm asking you that, your
11 testimony was I believe the covenants say you're
12 supposed to take care of your property. When I asked
13 you whether or not the Jacobs were taking care of
14 their property, your comment, if I understood it
15 correctly, was they're not taking care of it like the
16 other property owners are; is that fair?

17 A. Yeah.

18 Q. Otherwise, do you think that they're taking
19 care of their property?

20 A. Within the definition of covenants, I don't
21 know. I'm not a legal guy to know whether that's true
22 or not.

23 Q. Fair enough.

24 A. I'm telling you it doesn't appear to me that
25 they're keeping it to the way that the -- the way we

1 understood the covenants, and the way that we
2 understood the community was going to work, it doesn't
3 appear that to be the case. But I can't -- whether
4 the words are accurate or not, I don't know.

5 Q. I have to ask you this question. What,
6 again, is your understanding of what the covenants say
7 with regard to a property owner's obligation for --

8 A. I seem to recall you're supposed to maintain
9 your property to some level that the homeowners
10 association would -- you know, would be acceptable to
11 them. So, if the association says it's not, they come
12 and say you need to cut your lawn, you'd go, okay, I'm
13 going to cut my lawn.

14 Q. That's what you understand the covenants to
15 say?

16 A. Yeah.

17 Q. Is that basically it's in the sole discretion
18 of the homeowners association; is that correct?

19 A. That's what I recall.

20 Q. Fair enough. You ride on -- you do a lot of
21 horse riding, a lot of equestrian activities, and
22 you've ridden on the easement behind their house?

23 A. Yeah, the trail behind their house.

24 Q. When's the last time you rode on there?

25 A. I don't remember. Probably two months ago.

1 Q. You haven't been there recently?

2 A. No, I have not.

3 Q. Have you seen any manure spread in the
4 easements along the back side of people's property?
5 I'm talking about in the easements.

6 A. I think I saw it down by White Pond. The
7 last time I rode there, there was some on White Pond.
8 There's a trail there that runs on White Pond. Right
9 around the corner, next to the other property, there's
10 a turn there and I seem to recall seeing some there.

11 Q. Horse manure?

12 A. Yeah.

13 Q. I'm not talking about just a little bit
14 spread out there. Manure that's been spread --

15 A. I just saw it there. I couldn't tell you how
16 much was there. I just saw manure there.

17 Q. You know what a manure spreader is?

18 A. Yeah. We have one.

19 Q. You have one?

20 A. Yeah.

21 Q. How does it work?

22 A. You load the spreader out, you drive it and
23 it sprays it out.

24 Q. Diffuse manner, all different directions,
25 designed to get rid of the horse manure?

1 A. Uh-huh.

2 Q. Is that fair?

3 A. Uh-huh.

4 Q. If someone is, in fact, spreading manure in
5 the actual horse equestrian easement that's supposed
6 to be used by everybody in the development, is that a
7 violation of the covenants as you understand them?

8 A. I wouldn't know that. But I would expect the
9 homeowners association, if it is, to go tell the
10 people that they need to stop doing that.

11 Q. Why?

12 A. Because it's not meeting the covenants that
13 they're supposed to comply with.

14 Q. What's the problem with putting manure in the
15 easement, I guess is my question?

16 A. I don't know. It's infringing on other
17 people's that live in the community's, you know,
18 rights, or whatever you want to say.

19 Q. Do you want the tennis courts at Three Runs?

20 A. I don't care if there's tennis courts.

21 Q. One way or the other?

22 A. No.

23 Q. How about the fitness center? You look like
24 you're in pretty good shape.

25 A. That doesn't matter to me.

1 Q. That doesn't bother you one way or the other?

2 A. No, no. I have a fitness room at home that I
3 work out in.

4 Q. Fair enough. Would you understand how other
5 property owners who believed that they were going to
6 be part of the community, would you understand how
7 they would want them?

8 A. Are you saying they made the decision to move
9 here because of the fitness center?

10 Q. Not solely because of the fitness center.
11 But it was part of the package, the package you
12 described. I'm asking would it be unreasonable for a
13 property owner to believe that they were promised
14 amenities, to expect them to be built; is that
15 unreasonable?

16 A. I never took the amenities to be promised,
17 ever. I never read it as promised, and I never took
18 them to be promises, because I understand that
19 developments change as they evolve. For whatever
20 reason, they delay things, they do other things first,
21 second, et cetera.

22 Q. Fair enough.

23 A. The whole point is to have a successful
24 community. His job is to do the things that make it
25 successful.

1 Q. I understand your perspective. Do you
2 believe it's unreasonable for another property owner
3 to believe that they were promised, or expected them
4 to be built, to say where are those?

5 A. Yeah, I do think it's unreasonable if you
6 think you were promised that.

7 Q. All right. So, it's unreasonable, if you
8 were promised something legitimately, it didn't show
9 up, for you just to walk away; is that what you're
10 saying?

11 A. No, but I wasn't promised those things.

12 Q. Assume for the sake of my discussion that a
13 property owner was given assurances, was promised that
14 these amenities were going to be built. My question
15 to you is, do you think it's unreasonable for them to
16 wonder where they are?

17 A. I guess if it was in writing, and it was a
18 part of the covenant, yeah. If they had something
19 that said absolutely, I promise to deliver these
20 things, I would say yeah.

21 Q. Sure it is. There's no hard math about that.
22 If someone promises you something, and something
23 doesn't show up, you've suffered a loss; do you agree
24 with that?

25 A. If there was a promise. I would say if there

1 was a promise, yeah. The question is, is there a
2 promise or not?

3 Q. Sure. I mean, assume that there's a promise
4 of some type. How about the homeowners association?
5 What was your background, business-wise?

6 A. I've run businesses, and now my wife and I
7 own a business.

8 Q. I remember your wife did testify in this case
9 earlier.

10 A. Uh-huh.

11 Q. What business do you own?

12 A. It's a small -- we out-source. We work with
13 companies. They out-source some tasks to us. We take
14 care of them.

15 Q. How about the homeowners association, the
16 operation of it? You understand that at some point
17 under the covenants the property owners are supposed
18 to have a say, and supposed to have voting rights?

19 A. Uh-huh.

20 Q. Do you want those?

21 A. Whenever we're supposed to have them, yeah.

22 Q. Do you want them?

23 A. When we have them, yeah. I don't want them
24 today, if that's what you're asking me.

25 Q. When do you want them?

1 A. Whenever we're supposed to have them.

2 Q. When's that going to happen?

3 A. If I remember right, it's 90 or 95 percent,
4 or some number to that number, effect.

5 Q. Of what?

6 A. I think of total property sold or something.
7 Once it's built out, all four phases, or something to
8 that effect.

9 Q. So, you do want them, you're just not
10 concerned about when; is that fair?

11 A. Actually, the further they're pushed out, the
12 better. I would rather have the person that's at risk
13 for the whole development to continue to take care of
14 those issues and manage the property, than for a bunch
15 of people to get together and have to start to manage
16 that process, and be involved in stuff like this.

17 Q. You don't think you have any risk in the
18 development?

19 A. I have risk, my wife has risk, but it's very
20 small compared to what the developer has in the
21 development. Call it trust, call it whatever you
22 want. We believe that he has a vested interest to
23 succeed in this development, just like we want the
24 development to do.

25 Q. It sounds to me like you're deferring

1 completely to Wayne, and I understand; is that
2 correct?

3 A. Yeah. Well, Three Runs Plantation, the whole
4 development. I mean, there's TRC Sales, there's all
5 that stuff.

6 Q. Who owns that? Who owns TRC Sales?

7 A. What's that?

8 Q. Do you know who owns TRC Sales?

9 A. I assume he does. I'm just saying, the whole
10 entity. I mean, there's different entities. The
11 whole thing, we want the whole thing to succeed,
12 because it's all Three Runs Plantation.

13 Q. I assure you my clients want it to succeed
14 also. Having agreed with me that you have some risk,
15 and I can only assume that you have a significant
16 investment in this property; is that correct?

17 A. Yeah, we do.

18 Q. Don't you want good, strong, clear, concise
19 covenants, which everybody will understand and obey?

20 A. I want covenants that allow the property to
21 succeed, and allow the development company, that knows
22 what's best, to succeed, to handle it until it is.
23 So, I agree with the covenants as they're written
24 today, because then the property has succeeded. Then
25 it turns over to the property owners.

1 Q. All right. Because if you had the opposite
2 of that, covenants that are not clear, not being
3 obeyed, and inconsistently or unevenly being enforced,
4 that could affect your risk in this investment; is
5 that fair?

6 A. It is fair, and I agree that other people
7 have different agendas, and we don't want to get into
8 that right now at the early phases of this property,
9 or the development.

10 MR. MCCANTS: That's all I've got. Thank
11 you, Mr. Schneider.

12 **REDIRECT EXAMINATION**

13 **BY MR. WARLICK:**

14 Q. Just for clarification, Mr. Schneider, you
15 said that you thought the covenants provided that you
16 would maintain it in accordance with what the
17 association determined. I hand you what's been marked
18 -- I think this one is actually Third Plaintiff's
19 Exhibit 1, which is a copy of the protective covenants
20 of Three Runs, and refer you to article three,
21 paragraph 12, that talks about maintenance of lots,
22 and ask you to read the second sentence, which I have
23 highlighted.

24 A. In the event that an owner does not maintain
25 said owner's lots in such first class condition, the

1 association shall be entitled to perform the necessary
2 work to said lot to bring it up to an acceptable
3 condition at association's sole discretion.

4 Q. I believe it was your testimony that the
5 association is the developer until such time as 95
6 percent, I think was your testimony, of the lots in
7 the entire development are sold; is that your
8 understanding?

9 A. Yeah. I mean, I don't remember the exact
10 number, but that's the number that jumps out at me.
11 Yeah.

12 Q. As it stands right now, the sole and
13 uncontrolled discretion would be that of the
14 developer, Wayne Raiford, or Three Runs Plantation?

15 MR. MCCANTS: Objection, leading, legal
16 conclusion.

17 THE COURT: Sustained.

18 Q. [Mr. Warlick] Has the homeowners association
19 been turned over to the homeowners?

20 A. No.

21 Q. Do you know when it will be turned over to
22 the homeowners?

23 A. I think it's 95 percent, when all the lots
24 are sold.

25 Q. Prior to that time, who controls the

1 association?

2 A. I believe it's whatever the name of Wayne
3 Raiford's company or companies are.

4 MR. WARLICK: No further questions.

5 **RECROSS-EXAMINATION**

6 **BY MR. MCCANTS:**

7 Q. Follow with me a second. Let's go back to
8 this exhibit, where it talks about maintenance of
9 lots.

10 A. Okay.

11 Q. I want you to read the entire paragraph, if
12 you would. Just tell me when you've had a chance to
13 do so..

14 A. You want me to read it out loud?

15 Q. No, read only -- I'm sorry, not out loud.

16 THE COURT: Just for my clarification, Mr.
17 McCants, we're still talking about article three,
18 paragraph 12? Is that what he's looking at?

19 MR. MCCANTS: Yes, sir.

20 A. Okay.

21 Q. [Mr. McCants] All right. Mr. Warlick had
22 you read, if I remember correctly, the second part,
23 and perhaps even -- there are two sentences in that
24 subparagraph; do you agree with me?

25 A. Uh-huh.

1 Q. He had you read the second sentence; is that
2 correct?

3 A. Yeah.

4 Q. All right. Do you agree with me that the
5 second sentence provides what happens if someone
6 doesn't comply with the covenants? It suggests that
7 the association is entitled to perform work to bring a
8 property into an acceptable condition?

9 A. Yes.

10 Q. That says in the association's sole
11 discretion; is that correct?

12 A. Yes, it does.

13 Q. I'm going to read the first sentence. All
14 lots, including vacant lots, must be maintained in a
15 clean and first class condition, including mowing all
16 grass, controlling the weeds, and keeping the same
17 free from trash, debris -- debris, excuse me, or
18 accumulation of other items on said lot. With me?

19 A. Uh-huh.

20 Q. That sets the standard, doesn't it?

21 A. Uh-huh.

22 Q. I hate to --

23 A. I'm sorry. Yes.

24 Q. That's just for the court reporter.

25 Paragraph one sets the standard. Paragraph two,

1 sentence one, sets the standard, and sentence two says
2 what happens if you fail that standard; right?

3 A. Correct.

4 Q. All right. In looking at the standard, it
5 says all lots, including vacant lots, must be
6 maintained in a clean and first class condition. This
7 paragraph doesn't say anything about the homeowners
8 association defines what clean and first class
9 condition is; do you agree with me? That is, these
10 two sentences?

11 A. Just the top two is what you're saying?

12 Q. These two sentences in this subparagraph,
13 paragraph 12, where does it say that the homeowners
14 association gets to define what clean and first class
15 condition is?

16 A. I just want to be sure I understood your
17 question; okay?

18 Q. Sure.

19 A. I'm going to take out the part he had me
20 read, and you're just asking if those first three
21 sentences isn't defined; is that what you're asking?

22 Q. Well, sentence number one defines the --

23 A. Yeah.

24 Q. -- you agree with that?

25 A. Yeah.

1 Q. I mean, that's what you had to do?

2 A. Yeah.

3 Q. You've got to maintain your property in clean
4 and first class condition, including mowing all grass,
5 controlling the weeds, and keeping the same free from
6 trash, debris, or accumulation of other items on this
7 lot.

8 A. Okay

9 Q. That's your responsibility?

10 A. Right.

11 Q. If you don't, what that says is the
12 homeowners association can come in and do it, and
13 bring it up to whatever standard they think is
14 correct, as long as it's in conjunction with the first
15 paragraph; do you agree?

16 A. Okay.

17 Q. You agree with that?

18 A. Yeah.

19 Q. I'm looking at clean and first class
20 condition here. It doesn't say mow the lot, it says
21 mow the grass; you agree?

22 A. Yeah, it does say mow the grass.

23 Q. It doesn't say anything about mowing the
24 entire lot, does it? Show me where it says mow the
25 lot in that paragraph.

1 A. Well, it says including vacant lots.

2 Q. It says all lots, including vacant lots, must
3 be maintained in a clean and first class condition,
4 including mowing all grass. Where does it say mow the
5 lot?

6 A. Controlling weeds, it doesn't say it.

7 Q. You agree with me it doesn't say anything
8 about mowing the lot?

9 A. You're saying not mow the entire lot?

10 Q. I'm asking you.

11 A. I don't know. What are you asking me?

12 Q. I'm asking whether or not you think you've
13 got to mow the entire lot as set forth in this
14 paragraph?

15 A. I would actually say yes.

16 Q. Would you help me understand why?

17 A. I think there's a lot of things that grow on
18 the lot, so you need to go mow them down. That's the
19 way I would take that. I would say yeah, that -- you
20 know, because there's weeds, there's several things
21 mentioned in there, and a lot of stuff grow on a lot.

22 Q. Where does it say mow everything, including -
23 -

24 A. You asked me what I thought. I took it as
25 the grass, controlling the weeds, et cetera. There's

1 a lot of things that grow on a lot. I'm taking it to
2 maintain the lot. You may not agree with that, but
3 that's what it means.

4 Q. That's where I'm heading, and I'm not -- it's
5 not clear, is it?

6 A. To me, it is. But to you, it's not.

7 Q. I don't know if you think I'm a reasonable
8 person or not. That's up to you.

9 A. You seem very reasonable.

10 Q. All right. Fair enough. You can see I'm a
11 reasonable person. Can you see how reasonable people
12 could disagree with you?

13 A. It depends, I think, on what we're talking
14 about.

15 Q. I'm not going to let you out of this. You've
16 got to answer that question. That's pretty simple.
17 Reasonable people can disagree on the interpretation
18 of something?

19 A. Well, I think reasonable people can disagree
20 about a lot of things. Yes, I do.

21 Q. All right. That's all I'm looking for. You
22 don't disagree with me, do you, that that's not
23 entirely clear? Come on now.

24 A. To me it is, because there's a standard --
25 when you write the word first class, you are laying

1 out a level of expectation of what the community's
2 going to look like, what the property's going to look
3 like. You went back a while ago, talking about the
4 promises of amenities. One of the things that we
5 wanted when we moved here was a consistency in the way
6 the community looked. We couldn't have different
7 things inside the community looking kind of different
8 and bizarre. It impacted the community. I'm not
9 saying anything about them. I'm not saying they're
10 bizarre, because they're not. I mean, I understand
11 what they're doing.

12 Q. They're nice people.

13 A. Very nice. I'm not saying that. What I'm
14 saying is, we wanted that consistency, and we expected
15 it all the way through the community.

16 Q. I appreciate that. You've been in business.
17 You understand how important it is to be clear when
18 you negotiate contracts and things like that. But one
19 person's interpretation of first class may not be
20 another person's interpretation of first class; is
21 that correct?

22 A. I agree with that. Who's the arbitrator of
23 that?

24 Q. Gentleman on your left, I think.

25 A. I also say the homeowners association to some

1 degree, because it says in there that they get to make
2 some determinations.

3 Q. Tell me where.

4 A. I haven't read the whole document.

5 Q. I'm not going to hold you to that. You know,
6 when you're in business and you write contracts and
7 agreements and things like that, you've got control
8 over that agreement. You're in a better position to
9 make sure things are clear, aren't you?

10 A. Yeah, I agree.

11 Q. If you're in business, you want to make sure
12 it's clear; correct?

13 A. Try to make it as clean as you can,
14 absolutely.

15 Q. Sure. I mean, that's just good old common
16 sense, isn't it?

17 A. Yeah.

18 MR. MCCANTS: Thank you very much.

19 THE WITNESS: Thank you.

20 **REDIRECT EXAMINATION**

21 **BY MR. WARLICK:**

22 Q. You said if there's a dispute, who's going to
23 be the arbitrator. What's your understanding of who
24 is the arbitrator of Three Runs Plantation?

25 A. Again, I haven't looked at that document in

1 quite a few years. I don't really remember what it
2 says, but my understanding is -- basically, the first
3 pass is, the homeowners association, through Wayne,
4 would come through and say that's not right, you need
5 to fix this, or whatever. That would be the first
6 process. Then from there I don't know how it would
7 unfold. I have to go back and read the documents, how
8 arbitration would work.

9 MR. WARLICK: That's all I've got.

10 MR. MCCANTS: I have nothing further, Your
11 Honor.

12 THE COURT: All right, sir. You can step
13 down.

14 MR. WARLICK: Mary Guynn.

15 MARY GUINN,

16 Having been first duly sworn, was examined
17 and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. WARLICK:

20 Q. State your name.

21 A. Mary Guynn.

22 Q. Where do you reside?

23 A. In Aiken County.

24 Q. What is your occupation?

25 A. I'm an attorney.

1 THE COURT: Redirect?

2 MR. MCCANTS: No, sir.

3 THE COURT: Thank you, sir. I assume this
4 witness is excused?

5 MR. MCCANTS: Yes, sir.

6 THE COURT: We're back with the plaintiff's
7 final witness -- I think may be the final witness.

8 MR. WARLICK: Call Wayne Raiford.

9 J. WAYNE RAIFORD,

10 Having been first duly sworn, was examined
11 and testified as follows:

12 THE COURT: Have a seat and state your name
13 for the record.

14 THE WITNESS: J. Wayne Raiford.

15 DIRECT EXAMINATION

16 BY MR. WARLICK:

17 Q. Where do you reside?

18 A. I reside at 804 Sweetwater Road, North
19 Augusta, South Carolina.

20 Q. Is that in Edgefield County?

21 A. It is.

22 Q. Tell us a little bit about your background.
23 Where did you grow up?

24 A. My younger years, we were down in Georgia,
25 middle Georgia and Augusta. Then when I was 12 years

1 old, we moved to a little town called Saluda, South
2 Carolina. So, I finished high school and moved from
3 Saluda back to North Augusta.

4 Q. You've been here the last two days when we
5 were talking about this litigation at Three Runs
6 Plantation?

7 A. Yes, sir.

8 Q. Have you developed real estate other than
9 Three Runs Plantation?

10 A. I think Three Runs is my seventh development.

11 Q. What were the others?

12 A. First one I did was the Woods subdivision in
13 front of North Augusta Country Club in North Augusta.
14 Then I did two more that were in about three or four
15 miles of there called Westwood One, Westwood Two. I
16 did Cheves Creek Woodlands. That was a 600-acre
17 development that I did off of Sweetwater Road. Holly
18 Meadows subdivision, which is in front of Sage Valley
19 Golf Course on Bettis Academy Road. Then I did -- the
20 first horse equestrian I did was Cedar Meadows
21 Equestrian, which is directly across from the entrance
22 of Cedar Creek Country Club.

23 Q. The one that was an equestrian club -- I
24 mean, an equestrian --

25 A. Cedar Meadows, Cedar Meadows Equestrian.

1 Q. Where is that in relationship to Three Runs?

2 A. I'd say from the entrance of Three Runs it's
3 approximately a mile to the entrance.

4 Q. That's the same general area in Aiken County?

5 A. It is.

6 Q. When did you start the development at Three
7 Runs?

8 A. When?

9 Q. Uh-huh.

10 A. I started it in '05. I was not going to do
11 it until a few years later, but I had -- I'd done
12 Cedar Meadows Equestrian. It did so well -- it didn't
13 start out good, but then it did all of a sudden. I
14 put in a riding arena and all and it started doing
15 good. I bought an adjacent piece of property to it
16 and put it -- and developed it, and it sold fast.
17 Then I decided to go ahead and move to Three Runs,
18 which I had bought that property, a portion of it, in
19 1994.

20 Q. Why did you decide to put in an equestrian
21 center at Three Runs, as opposed to a golf course
22 community or something else?

23 A. Well, I had put in Cedar Meadows Equestrian,
24 and when I went with it, with an equestrian area, put
25 horse trails around it, and put in the riding arena,

1 it started selling real well, and I sold it out
2 quickly. Then I ended up with -- I had no competitors
3 when I started. Before it was over with, and after I
4 got Three Runs going, I ended up with 48 competitors
5 in the Aiken area. People came from everywhere
6 putting them in. Equestrian seemed the way to go, and
7 I had -- I have always been a horse lover. I started
8 buying horses and riding horses when I was in my
9 mid-twenties, and I spent many years on horseback.
10 So, I loved horses. I felt like I knew what people
11 liked, as far as a horse -- equestrian area, and Cedar
12 Meadows had already started proving out to be a good
13 way to go.

14 Q. Is it your testimony today that there are 48
15 equestrian residential communities in Aiken County?

16 A. No, most of them have gone bankrupt now. We
17 do still have some competitors, but a lot of the banks
18 have repossessed the properties. We did have 48
19 competitors at one time.

20 Q. What is your definition, or your thought,
21 about what makes a successful real estate development?

22 A. Of course, if you're selling property, that
23 makes it successful. That's the first thing. But the
24 main thing is that you put in something that is
25 pleasing to the clients that are coming in, and that

1 you put it in in a first class condition, and that you
2 find out what the people want, what they want in that
3 subdivision. That's what we've been feeling out as
4 long as we've been in Three Runs, the things that are
5 most important to horse riders, what they want.

6 Now, we do have some non-horse people in
7 Three Runs, and a lot of people who love to own
8 property adjacent to where horses are, and we have
9 such nice trails for walking and all. So, you just
10 continue to see what the residents want, what they
11 like, and that's the way you go. So, that's what I've
12 been doing so far at Three Runs.

13 Q. Did these other real estate developments you
14 have, did they have restrictive covenants?

15 A. Every one of them have restrictive covenants.

16 Q. What's your understanding of what restrictive
17 covenants, how they help you with your sales efforts?

18 A. Well, as you and I know, and most everybody,
19 if you put in a subdivision and you don't have
20 restrictive covenants, then anybody can come in and do
21 anything they want to on that property. Like if you
22 go down Banks Mill Road, or go down Cedar Creek Road
23 past Three Runs, there's all kind of horse places down
24 there. But somebody may come in there next door to
25 them and put a junk yard, or put a house trailer, or

1 put in hogs, whatever. You know, when you put in
2 restrictive covenants, it protects your clients that
3 are in your subdivision. You put them in to keep it
4 in balance, keep it what people want, so that somebody
5 does not come in and just take one lot and screw the
6 whole subdivision up.

7 Q. Has it been your experience that the more
8 restrictive covenants aid in the sales of the
9 properties, as opposed to detracting from the sales of
10 property?

11 A. If you don't have restrictive covenants, so
12 many people would not buy from you. They want to know
13 what they can expect it's going to be like five years
14 down the road, 10 years down the road. They don't
15 want that it could turned around. In fact, I have
16 some clients when they come in, they wanted to make
17 sure that I was not going to come in there and put in
18 a golf course. I had to assure them -- I didn't have
19 it in my paperwork, but I assured them, no, this is
20 not going to be a golf course subdivision. This is
21 for horses and for people that want to be around
22 horses and be out in the country.

23 Q. What is it about the land on which Three Runs
24 is located that makes it amenable to horses and
25 equestrian activities?

1 A. First of all, so much of the property in
2 Aiken County is of sandy type soil and is so good for
3 custom bermuda hay. People can plant their fields in
4 custom, or even common bermuda, and they have
5 somewhere where the horses can graze. The soil is a
6 soft sand. It's not -- where I live, I live in
7 Edgefield County in red clay. It's either hard as a
8 brick, or when it rains it's sticking to you, one or
9 the other. Aiken County soil is so good for that.
10 Three Runs just happens to be -- and Cedar Meadows
11 was, also. We had Cedar Creek running along the line
12 of Cedar Meadows. Well, Cedar Creek comes on around
13 and runs -- starts out running through the front of
14 Three Runs Plantation.

15 I've always loved riding horses. I love to
16 ride horses in wooded areas and around creeks and all.
17 So, that made Three Runs so successful, is because of
18 that creek going in there. Cedar Creek runs into
19 Three Runs Creek, and that's where I come up with the
20 name Three Runs. It just has all kind of --

21 Q. How many miles of trails do you have?

22 A. We advertise in our brochure that we have 30
23 miles of trails. That includes trails in front of the
24 homes, between the homes, and all that. But there's
25 actually 30 miles of trails on the ground that do not

1 go between the lots at all. In fact, I've just had a
2 surveyor go in and do a satellite layout of all the
3 trails, because we're fixing to put out a new trail
4 map. All the clients over there are waiting for me to
5 get that trail mapped out, and I'm fixing to put out a
6 new trail map. So, we had to -- we had a satellite
7 layover of it and it shows over 30 miles -- like 32.
8 I thought there was 35 by my GPS in my hand, in my
9 car. But his satellite showed 32. I really think he
10 missed one of my trails or two that would actually add
11 to it.

12 Q. Who prepares the marketing material that you
13 use at Three Runs?

14 A. It's the Garner Group, which is John and
15 Laurie Garner out of Charlotte.

16 Q. This is a copy of Plaintiff's Exhibit 9. Is
17 this the material we're talking about?

18 A. That's a portion of it. We have more, but
19 this is a big portion of it.

20 Q. Does the marketing material contain a site
21 layout similar to this?

22 A. It does.

23 Q. Does that show the 30 miles of trails, or
24 just a portion of them?

25 A. It shows just a portion of them. In fact,

1 the one you've got there doesn't show horse trails.
2 That's just potential roads that go into horse trails.
3 They've got a horse trail map. There may be one in
4 here, I'm not sure. No, we do have one that shows all
5 horse trails. I thought I saw you with one somewhere.

6 Q. You heard the testimony earlier from Mary
7 Guynn that the initial plat, which showed phase one --
8 this is marked Plaintiff's Exhibit 2. Is that the
9 plat that was initially recorded for the first phase?

10 A. Yes, that is first phase, phase one. Phase
11 one had a second phase to it. It's phase one, phase
12 one section two. Yes, that is -- that is the very
13 first road that I put in, was the circular road.

14 Q. Since then, I believe those restrictive
15 covenants have been amended some six or seven times to
16 add additional properties?

17 A. We did. We added phase one, section two,
18 which was almost within -- within a year of the first
19 section. Then we came in and added another 300 acres
20 on the back, which was called phase two. There were
21 60 -- over 60 lots in phase two.

22 Q. How many lots have you sold in Three Runs to
23 date, approximately?

24 A. 115, 120.

25 Q. Do you meet on a regular basis with the

1. Garners and talk about marketing and sales?

2. A. Yes.

3. Q. Do you also monitor the sales of lots in
4. competing residential communities?

5. A. I do not do a lot of that. The Garners do
6. that for me.

7. Q. You meet with them and y'all talk about that?

8. A. I do. It's hard enough to take care of Three
9. Runs without seeing what everybody else is doing.

10. Q. I believe, and if I'm wrong, I apologize.
11. But I believe that Laurie Garner said that Three Runs
12. accounts for 70 percent of the equestrian sales in
13. Aiken County. Does that sound believable to you?

14. A. It was 71 percent, but that was '09, '10, and
15. '11. But since then, we've had year '12, and as of
16. yesterday, I signed the papers for two more closings,
17. and we closed 25 more -- 25 lots this year, so far.

18. Q. Twenty-five. What size are these lots?

19. A. These lots basically run five acres or above.

20. Q. You've had 25 of those in 2012?

21. A. That's correct.

22. Q. Has the real estate economy come back in
23. Aiken County?

24. A. From all the people that I know, my
25. competitors and people that I talk to, not really. I

1 think we are basically one subdivision that is selling
2 lots, thank the Lord.

3 Q. Do you recall the sale to the Jacobs?

4 A. You know, I really don't recall the sale,
5 because they did not come to the closing. I don't
6 remember their exact closing. You know, I remember
7 when I signed the papers to sell the lot. I don't
8 remember -- if they were at the closing, I don't
9 remember it.

10 Q. Do you recall the standard contract that you
11 use to sell lots in Three runs?

12 A. Basically, yes.

13 Q. What does it provide with respect to the
14 restrictive covenants?

15 A. It gives -- each person, when they sign a
16 contract, it gives them five days to study over the
17 restrictive covenants before the sale is -- contract
18 is consummated.

19 Q. They can back out if they don't like the --

20 A. That's correct.

21 Q. What phase did the Jacobs buy into?

22 A. Phase two.

23 Q. Would that have been in November of 2009?

24 A. From what I've heard, yes.

25 Q. I can show you the deed.

1 A. October, maybe. I can't say for sure.

2 Q. Let's don't guess. Here are Plaintiff's
3 Exhibit 1, which purports to be the contract for
4 purchase and sale with the Jacobs, and it has the
5 Jacobs' signature and your signature. Is that the
6 contract by which the Jacobs purchased?

7 A. Yes.

8 Q. Plaintiff's Exhibit 2 purports to be a deed
9 from T.R. Sales to the Jacobs. What's the date on
10 that?

11 A. 12/17/2007.

12 Q. Did this contract provide the same five days
13 to review the covenants?

14 A. Yes.

15 Q. There's been some talk about representations
16 made by Carolina First. Did you participate in the
17 preparation of Three Runs Plantation material prepared
18 by Carolina First?

19 A. No. Apparently, that was run off of Courtney
20 Conger's copy machine. She took our brochures and --

21 Q. The brochures being?

22 A. Whatever the Garners had put out for us to
23 use.

24 Q. Like this one?

25 A. Something of that, yes. They probably made

1 up their own.

2 Q. In addition to having several inserts, being
3 the site plan and some stuff about Aiken and the
4 community, amenities, has your promotional literature
5 always said that you were talking about a 2,400 acre
6 development?

7 A. Actually, it's a 2,500 acre development. But
8 I donated 142 acres to Aiken Land Trust on the creek
9 so that that property could never be changed in any
10 way, so that the horse trails along the creek would
11 always be protected. So, I deeded that to them, so
12 that ended up leaving me with, like, 2,365 acres.
13 Then I'm in the process right now of doing another 35
14 acres along the border of Savannah River Plant to
15 Aiken Land Trust. We've got the paperwork in there
16 now for that. So, those properties will not be --
17 they'll be part of the development, but it'll be owned
18 -- it'll be where it can't ever be anything built on
19 them, or anything done differently than what's on
20 there now.

21 Q. Do you get a tax benefit when you do that?

22 A. I do.

23 Q. So, you get a tax benefit, but in addition to
24 that, the residents are assured that it will always be
25 a horse trail; is that the way it works?

1 A. It does. And it also gives your clients
2 coming in knowing that these horse trails are always
3 going to be there.

4 Q. What did you do to construct, to build a
5 horse trail? Tell me how you physically go about that
6 on the ground.

7 A. Well, I'm an outside person, and everything
8 that's gone on at Three Runs, I've been out there,
9 walking and working and doing. So, we did the horse
10 trails --

11 THE COURT: Hold on a second. Anybody that's
12 got a cell phone, please turn that off.

13 Q. [Mr. Warlick] Go ahead.

14 A. I'm sorry. We were talking about --

15 Q. We were talking about the horse trails. I
16 asked you physically, what do you do? What creates a
17 horse trail? What do you do to make people who like
18 to ride horses, like to ride the trails at Three Runs?

19 A. Okay. When I bought Three Runs, it had a lot
20 of pulp wood trails and deer hunting trails on it.
21 Some of those I was able to incorporate in the horse
22 trails. Around the creek area, all along the east and
23 southeast part of Three Runs, I actually walked the
24 creek line with flagging in my hand and I flagged.
25 Then I got my bulldozer operators to go in there,

1 follow those flags, and cut those horse trails out and
2 flare them, build in picnic shelters, and put in horse
3 jumps. Along the Savannah River Plant, same thing. I
4 walked every bit of it. All around the property, I --
5 except for where the timber trails, pulp wood trails
6 and deer hunting trails were. We used a lot of them.

7 Q. There's been some testimony about amenities
8 that your marketing materials talked about. Let's go
9 over what amenities that you are aware of that have
10 been put out in these marketing brochures that one day
11 would be, or might be, in Three Runs Plantation.

12 A. Well, when we first started, of course, there
13 was nothing there for the first few lots. Then I
14 started out, I put in the jump arena. Then I put in
15 the dressage arena. I spent time going to Wellington,
16 Florida, going through all their jump and dressage
17 arenas there, how they built them. I cannot remember
18 the guy's name down there that I met with, but his
19 name was Peter something. He had been quite involved
20 over the years doing that. I studied brochures that
21 came out of Canada. Then the guy over here in Aiken
22 that has the horse -- his name is Craig, but I cannot
23 say Craig's last name. I'm sorry about that. I went
24 to him to see how he built his. So, I built quite a
25 bit of time before I started. I put quite a bit of

1 money into those horse riding --

2 Q. What is a dressage arena?

3 A. Dressage arena has got markings along on each
4 side, and it's where people -- the horses do sideways
5 walking.

6 Q. Do they have jumps?

7 A. The jumps are -- there's a separate jump
8 arena. Separate jump arena. Jump arena and the
9 dressage arena are two different things.

10 Q. Okay. I'm ignorant about that. Tell me what
11 all's in the jump arena and what's in the dressage
12 arena.

13 A. The jump arena consists of just a bunch of
14 jumps. You move them different spots. The homeowners
15 come in, they use it to train their horses to jump.
16 They can set them on low jump, high jump. Then we
17 have the dressage arena, where they come in and it's
18 got lettering down each side, and they walk their
19 horses from one side to the other. I am not the best
20 on that, because I was more of a trail rider all my
21 life when I rode horses. But I did do some jumping,
22 but not like these folks do.

23 Then we've also gone in now and we just
24 completed a cross country arena. I had them come in,
25 we built a small pond where the horses could run

1 across and jump up and all that. We also put in
2 another dressage and jump arena in that area. We have
3 not completed the water system on the jump and
4 dressage arena, and we have not put the shrubbery in.
5 We got it finalized, but we're close.

6 Q. Was that something that had been advertised
7 in your marketing --

8 A. No. No, this is just something that horse
9 people love to have. I had gone over and saw some
10 other areas where they had them at, and I thought it
11 was something nice to add. We built the clubhouse --
12 I built a clubhouse in '08, which is the worst year I
13 had selling and it was hard to build it, but I had --
14 I made a commitment to build it and I built it. So, I
15 built that. I built the -- we have a big picnic
16 shelter there in front of -- beside of the clubhouse.
17 I had built it all where you could sit under these and
18 you could look at the jump and dressage arena. Also,
19 we have a third grass arena on the bottom, which one
20 day we will probably do something to it. But if I
21 make a commitment to it now, I'll do it. Then we
22 built -- we built a pool, a swimming pool and cabana,
23 in year '10.

24 Q. How do you determine when to build these
25 amenities and what the cost will be on them?

1 A. Well, I determine it by the comments we get
2 from people coming in, buying. Also from homeowners
3 that are already there. I think it's very important
4 that you do things continually in a subdivision that
5 you have homeowners in, to improve it, to make it more
6 exciting to them. They're going to tell their friends
7 and have them come, too. You know, one main thing
8 you've got to remember, you can't go in and just build
9 everything and turn it over to the homeowners, because
10 the upkeep of these properties is paid for through
11 homeowners association money. So, if you go in and
12 build four or five, 10 things, and all of a sudden the
13 upkeep of them is more than the homeowners' money
14 coming in. You've got to -- it's not worth it if you
15 don't have enough people in there. So, as the
16 population of Three Runs builds, as we get more
17 people, I'll continue to add things.

18 On the new cross country arena that I put in,
19 I went in -- there was six acres in there. I went in
20 and added a seventh acre in there within the last two
21 or three months because the cross country arena took
22 up more room than I thought it was going to take up.
23 We do have some other amenities that I plan in the
24 future to build in there.

25 Q. There's been a lot of testimony about tennis

1 courts?

2 A. Yes.

3 Q. Why haven't you put in tennis courts?

4 A. You know, I don't -- I have several people at
5 Three Runs that say yes, we'd like to have tennis
6 courts. But it has not been a priority to put in a
7 tennis court. I'll tell you this. I can put in
8 tennis courts much cheaper than I could've put in a
9 swimming pool and a whole lot of other things, because
10 tennis courts -- if you put them in right, they're
11 expensive. But you can go in and just put in asphalt
12 and all that. I just have not had -- I have not had
13 people wanting tennis courts. It's been brought up in
14 this court thing so many times because it's in the
15 brochure. But when I originally put it in -- started
16 to do Three Runs, I thought tennis courts, that'll be
17 something everybody wants. It's not what everybody
18 wants. Everybody wants horse-related things. You
19 know, one day we may put in tennis courts. But until
20 we get enough people in there that warrant -- wanting
21 tennis courts, we're not going to put them in.

22 Q. What about the exercise area and the fitness
23 center? Talk about the fitness center.

24 A. I laid out the extra acre next to the cross
25 country arena for the purpose of a fitness center.

1 So, I did just put in a well that would water the
2 little pond I put in and the cross country -- I mean,
3 the jump and dressage arena. But I also put in the
4 well big enough so that it could take care of the
5 fitness center, and we may put a little lap pool --
6 even though we've got a pool, we may put in a little
7 lap pool beside it. I felt like we needed to go ahead
8 and prepare by putting that well in. All these
9 amenities that I put in, I paid for every bit of it.
10 The only time the homeowners pay for anything is once
11 it's in, it's established, then the homeowners
12 association pays the dues. Except for the clubhouse,
13 and the clubhouse, I paid for all -- I pay for all the
14 electrical bill, I pay for the telephone, I pay for
15 all the expenses in the clubhouse, because my sales
16 people also use the clubhouse. I don't think it's
17 fair that the homeowners should have to pay the power
18 bill and all that for that.

19 Q. Have you deeded any of these amenities to the
20 association?

21 A. I have. I have.

22 Q. What did you convey to the association?

23 A. I deeded the clubhouse, the jump and dressage
24 arena, the pool, all that. I have not deeded other --

25 Q. Once you deed it to them, from that point

1 forward they take care of the maintenance on it?

2 A. That's correct.

3 Q. Prior to that time, you do?

4 A. That's correct.

5 Q. Mary Guynn testified that she used as a
6 template the restrictive covenants at another place.
7 Was that development one of yours?

8 A. Yes.

9 Q. What was that?

10 A. Cedar Meadows.

11 Q. You heard her testimony about the various
12 provisions in the restrictive covenants give you the
13 right to amend them and change them, add amenities and
14 delete amenities. What's your understanding of the
15 way that that works?

16 A. Well, you know, when you start a development,
17 you think you know what everybody's going to want.
18 Then the longer it goes along, the more people you get
19 in there, the more you find out, okay, this is what
20 they'd rather have. So, you know, you start out --
21 you know, just like the tennis court. I had a big
22 billboard up there showing the tennis court and all
23 that. But there wasn't enough room. When I got
24 through with the pool and all that, it took all the
25 room, so I had to get more land. But you find out

1 people don't really want, or are really not pushing
2 for tennis courts right now. Down the line, they may
3 push for tennis courts, but right now they're not. I
4 don't just go by clients coming in, because you've got
5 a different client coming in every time. You go by --
6 you've got this many people living in this subdivision
7 and they let you know what their likes and their
8 dislikes are.

9 Q. Is it your testimony that the current
10 tenants, nobody seems to be clamoring for tennis
11 courts?

12 A. Nobody except the ones that have a few
13 problems with it.

14 Q. Now, we talked about the cross country arena
15 that was something you put in that was never in the
16 marketing materials?

17 A. Yes.

18 Q. Is there anything else you put in that was
19 never in the marketing materials?

20 A. You know, when I started out with all these
21 brochures, I never marketed that I was going to have
22 six picnic shelters all along Three Runs and Cedar
23 Creek. You know, I never marketed that I was going to
24 put all that in. I never showed that I was going to
25 put jumps all along the horse trails all along the

1 creek and the Savannah River Plant side. I guess we
2 must have 30 something of them. I'd have to count
3 them all, but we've got -- so, all that stuff has been
4 added. I'd have to sit here and just think of
5 everything that's been done extra.

6 Q. But they're extras that you do to improve
7 sales; is that not correct?

8 A. Sales, yes, and content among homeowners.

9 Q. I guess the worst thing you could have is
10 homeowners that are unhappy with the neighborhood?

11 A. Yes. That's what my thinking is.

12 Q. Tell me a little bit about your efforts with
13 the Jacobs to get them to cut their grass.

14 A. Well, my -- the Jacobs were at our first
15 homeowners meeting and seemed like nice enough folks.
16 It got to a point -- well, first of all, when the
17 Jacobs were building their home, there seemed to be a
18 problem before they got through. So, I went to
19 Courtney about it because there was trucks sitting all
20 over the property, there was grass sitting this high
21 in the front of it and everywhere else. So, I went to
22 Courtney and she said, Wayne, these folks are having a
23 hard time selling their home, wherever it was, and I
24 don't remember. So, I came in -- I had a young man
25 that works for me on my farm. I brought him in, I had

1 him cut the property, cut around the house, do all
2 that, clean it up.

3 Well, I didn't pay a lot of attention to it
4 until, I think it was 2010, and when I'd go by they
5 were not cutting the property. So, I stopped in and
6 talked to them about it and they said our mower, our
7 tractor -- it's one of the small tractors -- has got
8 problems, it's in the shop. We're going to cut it.
9 So, a week or two later, I came by and it was there,
10 and they were out in the yard. I talked to them and I
11 said -- they said, well, we're going to try to get it
12 cut next week. I said okay.

13 So then, I don't remember exact sequence on
14 this, but it was a week or two later, we get a email
15 in our office that says that we have decided that
16 we're going to let our property go natural, and that
17 we're not going to cut these little trees and all.
18 So, three times. First time I went with Jack Roth by
19 their home to talk to them about it. Ms. Jacobs said
20 that Jay was not home at the time. Then I go by a
21 week or so later and I take my other guy, Frank
22 Starcher with me, and Jay's not home. Then one day
23 when I drove by, I saw that the -- I saw that he was
24 home. So, I stopped in and rung the doorbell. It got
25 to be quite a discomfoting thing. I finally just got

1 up, walked around, got in my truck, and left. I came
2 by specifically and asked him, could we go out in the
3 yard and let him show me what these trees that he's
4 talking about, show me which ones he's talking about.
5 Well, we never got that far. He just said we're not -
6 - I'm not cutting it. I did say, hey, I'm going to
7 get the sheriff's department to come in here, and get
8 the homeowners tractor to come in here and cut it.

9 Anyway, it got worse than that. So, I just
10 -- I just left it. Then as we talked earlier to Mr.
11 Belser, we were of the indication that they were going
12 to go ahead and do it, take care of it, and it has
13 never been done. As of yesterday, I drove by their
14 house and they have cut everywhere, all over the
15 place. I mean, they're saying we don't understand
16 what it means, but yet today, or this weekend, they
17 figured out what it means to cut, except they still
18 left these little scrub oaks. Right now, they don't
19 look as bad as they looked before because a lot of the
20 leaves have fell off of them and you can't see them as
21 good. But they're still there.

22 Q. I believe at your deposition you said
23 something to the effect about if their lot looks like
24 it does today, I never would've filed the suit?

25 A. That's correct.

1 Q. Tell us when that deposition was and what you
2 were basing that statement on.

3 A. That deposition was in March 2011. I'm
4 thinking it's the 13th or 26th.

5 Q. I can get it.

6 MR. MCCANTS: March 13, 2012.

7 A. Exactly. It was 2012; excuse me. Well, my
8 -- I had gone by, and I'd never seen anybody cutting
9 anything but Ms. Jacobs. But I had seen where she was
10 cutting all between these little scrub bushes that
11 she's got in -- that they've got in there. At that
12 time, the leaves had fell off the little scrub oaks
13 and all and you could hardly see them. Well, it was
14 not in compliance. It was not what it was supposed to
15 be. But I probably would not have taken out a suit at
16 that time.

17 But when I took out the suit, it was standing
18 yay high, and it looked terrible. I'm getting calls
19 from homeowners, I'm getting emails from homeowners,
20 saying you represent us, do something about it, get
21 this straightened out. So, it wasn't just me alone.
22 I was doing what I needed to do to protect the clients
23 of Three Runs.

24 Q. [Mr. Warlick] Do you know when the suit was
25 filed?

1 A. I'm sorry, I don't remember dates too good.

2 Q. I represent to you it was filed on March the
3 8th, 2011. Does that sound --

4 A. Yes, sir.

5 Q. At that time did you consider -- was there
6 any alternative you had, other than filing the suit?

7 A. The only alternative I had was to go in and
8 take the homeowners' tractor and cut their property.
9 But I had been told by Mr. Jacobs that I'd be
10 trespassing on his property if I come in, and not to
11 come in his property. So, I did not.

12 Q. But do you know if the covenants provide that
13 the homeowners association may do that?

14 A. Yes, they do. Yes, they do.

15 Q. But because he threatened to take out a
16 trespass action with you, you decided not to?

17 A. That's correct.

18 Q. You've heard earlier today the testimony
19 about what's in the restrictive covenants and the
20 language that says that if the property's not
21 maintained in a first class condition, that the
22 association can come in in its own judgment, determine
23 what needs to be done?

24 A. Yes.

25 Q. Is it your understanding that that's you?

1 A. I do understand that.

2 Q. That's similar kind of covenants you had in
3 this other subdivision that you have?

4 A. All of the other six before this one, we had
5 the same thing in there.

6 Q. Do the Jacobs ride?

7 A. I've never seen them ride.

8 Q. Do they have horses?

9 A. They have horses boarded with a neighbor.

10 Q. Who is that?

11 A. It's on the Ackerman's property.

12 Q. Have you made a decision to not include the
13 fitness center or the tennis courts as an amenity in
14 Three Runs?

15 A. I've never made that decision.

16 Q. If Courtney Conger has some of these
17 brochures showing tennis courts and fitness center and
18 others that don't, it's not because of anything you've
19 done, or that you've represented to her?

20 A. Byrd, I didn't quite understand that
21 question.

22 Q. I got the impression from listening to
23 Clarke's cross-examination that some of these
24 promotional literature that was done by Courtney
25 Conger and the Carolina Company included tennis

1 courts, or drawing of a tennis court, and fitness
2 center, and more recent copies do not.

3 A. That's right. In the original ones, we did
4 have the billboard up there with them. The recent
5 ones, we have not, because we haven't decided whether
6 that will be. I have not given up the idea of doing
7 it, because if we get enough clients that want it, we
8 will. The fitness center, I've already had enough
9 clients at Three Runs indicate that they would like to
10 have a fitness center, that I just feel like that is
11 one thing. I have not had people in there indicating
12 anything about tennis courts.

13 Q. How --

14 A. Just one or two, maybe.

15 Q. How long do you think it will take you to
16 sell out the balance of Three Runs Plantation?

17 A. Depends on what happens in our government, I
18 think. It's been -- we have just been very well
19 blessed that during these times that I have been
20 selling properties. But I can tell you that even
21 other beautiful properties, such as Mount Vintage
22 Plantation, which is directly across from my home,
23 have not sold one lot in over four years. So, it
24 depends on what our economy is doing. But, I can tell
25 you this, even in this economy we keep continuing to

1 add these amenities, and continue to strive to make
2 Three Runs the nicest horse property to buy in in
3 Aiken County, that we have continued to sell
4 properties. Nobody else has done that. You know, we
5 sold last year, I think, 21 properties. We've already
6 sold 25 this year.

7 Q. On a per acre basis, is the price that you're
8 selling land in Three Runs today what it was when you
9 sold property to the Jacobs?

10 A. No. When I sold property to the Jacobs --
11 the Jacobs bought in '07, and I think they --

12 Q. It was '09, is what we just looked at.

13 MR. MCCANTS: Sale of the lot in '07. The
14 house closed in 2009.

15 MR. WARLICK: I stand corrected. December of
16 '07; okay.

17 A. I think they built the house in '09.

18 Q. [Mr. Warlick] Well, I guess what I'm trying
19 to get at is, what are you selling -- what's the per
20 acre asking price, or sales price, on these 25 lots
21 that you've sold in 2012?

22 A. They range from 18,500 per acre to \$21,500
23 per acre. We have now quit pricing lots by the acre,
24 but by the lot, the way it lays, the way it looks.
25 So, today, our prices are -- on the lots that we have

1 available now, are basically about the same price, or
2 close to the price, as what we sold to the Jacobs.
3 During 2007 and '08, all of our competitors just
4 dropped their prices completely down to just minimum,
5 just to try to get out. And, with the resale of lots
6 in Three Runs Plantation -- we had a lot of resale
7 lots in there because a lot of people had bought
8 property and then their stocks and bonds had gone down
9 in this recession so bad, that they put them on the
10 market. They were selling those properties for
11 whatever they could get for them. So, it caused me to
12 come to 18,500 per acre, and that's what I sold a good
13 many lots for in '09, '10, and some in '11. But since
14 that time, we've -- with our sales, with our movement
15 forward, we've been able to increase the prices back
16 up.

17 Q. I believe the Jacobs paid right at \$20,000 an
18 acre?

19 A. You know, I don't remember what their
20 contract has got on it. I would think they were close
21 to 22.

22 Q. Here's their contract. I'll let you look at
23 it and see if that'll refresh your memory.

24 A. It doesn't refresh it real good. I know the
25 price they sold -- I think they got 10 acres, or maybe