

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J. Michael Baxley, Circuit Court Judge

Case No. 2009-CP-10-6746

Long Grove at Seaside Farms, LLC; The Beach Company; and Gulfstream Construction Company, Inc., Respondents,

v.

Long Grove Property Owners' Association, Inc.; Vista Realty Partners, LLC; and Long Grove Vista, LLC;

Of Whom Long Grove Property Owners' Association is Appellant.

Long Grove Property Owners' Association, Inc., Third-Party Plaintiffs,

v.

James, Harwick & Partners, Inc., n/k/a JHP Architecture/Urban Design, P.C; Sam Mayo d/b/a SCM Construction, Inc.; Essex Engineering Corporation, Third Party Defendants;

Of Whom James, Harwick & Partners, Inc., n/k/a JHP Architecture/Urban Design, P.C is Respondent.

RECORD ON APPEAL
VOL. 2 of 3

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SC Court of Appeals

George E. Mullen
Mullen Wylie, LLC
P.O. Box 5969
Hilton Head Island, SC 29938

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VOL. 2 of 3

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1 day-to-day negotiations and you were in charge of
2 them and working with them. Is that a fair
3 characterization?

4 A. That's fair.

5 Q. I'm just trying to -- I'm not aware of any
6 conversations you may have had with The Beach Company
7 or L.J. Melody other than that one reference in the
8 e-mail. You don't remember any others; do you?

9 A. I remember one with John Darby, that's all.

10 Q. Okay. Was it that one about the
11 indemnification or --

12 A. Yes.

13 Q. Okay, all right. Mr. Darby testified that
14 his view of that contract that y'all entered into was
15 that Vista assumed the responsibility or the
16 obligation to locate all the defects and repair them.
17 Was that your understanding of, if the
18 indemnification is valid, of that indemnification and
19 release agreement?

20 A. Absolutely not. It would be to the
21 contrary.

22 Q. Okay. What is your understanding of that
23 particular --

24 A. Well, part of John's pitch to me was that
25 the building was constructed extremely well, that

1 they had built it, that they had lived with it for
2 four years, that there were no defects, that the
3 buildings were in tip-top shape, and that all we
4 needed to do was what we commonly refer to in the
5 business as lipstick and rouge, which basically meant
6 replacing carpet with wood floors, replacing kitchen
7 countertops with granite, redoing light fixtures and
8 throwing a coat of paint on the walls. And Beach
9 Company has stellar and has a stellar reputation. I
10 believed them. And my inspection of the property
11 when I walked it validated that. I didn't -- I
12 didn't have any reason to suspect otherwise.

13 And consequently, our inspection report
14 done in conjunction with the acquisition and the
15 condominium regime did not instruct the -- the
16 inspector or the engineering firm to do invasive type
17 of investigations. We didn't tear out -- open up
18 walls and things like that, go into the roof
19 cavities. It was not done.

20 Q. Were you involved in the -- there were two
21 engineers whose names I've seen in the documents,
22 Russell Wallace, who prepared a design for repairs to
23 decks, and Essex Engineering. Was Essex Engineering
24 who was hired to provide an inspection of -- the
25 necessary inspections under the statutes for Long

1 deposed in that lawsuit?

2 A. I think Mr. Blatt was. I don't know if
3 Mr. Hooks was.

4 Q. How about any of the supervisors for Vista
5 Realty Construction?

6 A. I don't know.

7 Q. You don't know. Okay. Was the
8 representation by Mr. Darby material to your decision
9 to purchase the property?

10 A. Yes.

11 Q. Did -- in August and maybe early September,
12 in August of 2004 some tropical storms -- 2004 --
13 tropical storms came through the Charleston area, Gas
14 ton and Charlie. And as a result of that there was
15 some damage done to the Moray Townhomes which are
16 right next door to Long Grove.

17 Were you made aware of problems that were
18 discovered at Moray as a result of those two storms?

19 A. Not before today.

20 Q. Okay. Did Vista ever learn of any issues
21 or problems that occurred as a result of those two
22 storms at Long Grove?

23 A. No.

24 Q. Okay. And I'm not suggesting there are or
25 are not. I just wanted to know if you had any

1 not just the lipstick and rouge aspects of the
2 conversion, but also the repair/construction aspects;
3 correct?

4 A. Yes.

5 Q. Okay. And that's what they wanted to be
6 indemnified for, any issues or problems that arose
7 out of that -- out of those activities, the
8 repair/construction; is that correct?

9 A. Yes.

10 Q. Okay. All right.

11 Now, you have testified to your thoughts,
12 your belief concerning the enforceability of the
13 indemnity/release language. Did you also -- we
14 talked about the indemnity language. Did you also
15 believe that the release language was unenforceable?

16 A. I did. I just didn't -- and my lawyer kind
17 of explained it to me in layman's terms, but I didn't
18 either appreciate or comprehend how I could be
19 releasing the rights that somebody may have down the
20 road in the future, and how I could speak for that
21 individual or group of whoever it was, I just
22 didn't -- I can't get my arms around that concept,
23 how I can act for somebody that I don't even know or
24 speak for or have authority for.

25 So in discussing the merits of this and

1 realizing that that was a quote deal breaker for
2 Mr. Darby, we didn't attribute a lot of value to
3 giving that up; that that was really a throwaway
4 issue that it's something that could be enforced down
5 the road.

6 Q. Something that could not be?

7 A. Something that could not be enforced down
8 the road.

9 Q. Okay. Was there anybody who was -- any
10 lawyer who was representing the interests of the
11 homeowners' association or the future individual
12 purchasers in any of these transactions or
13 discussions concerning the liability -- the
14 assumption of liability and release of claims?

15 A. No, there was no --

16 Q. Those entities --

17 A. Those entities hadn't even been created.

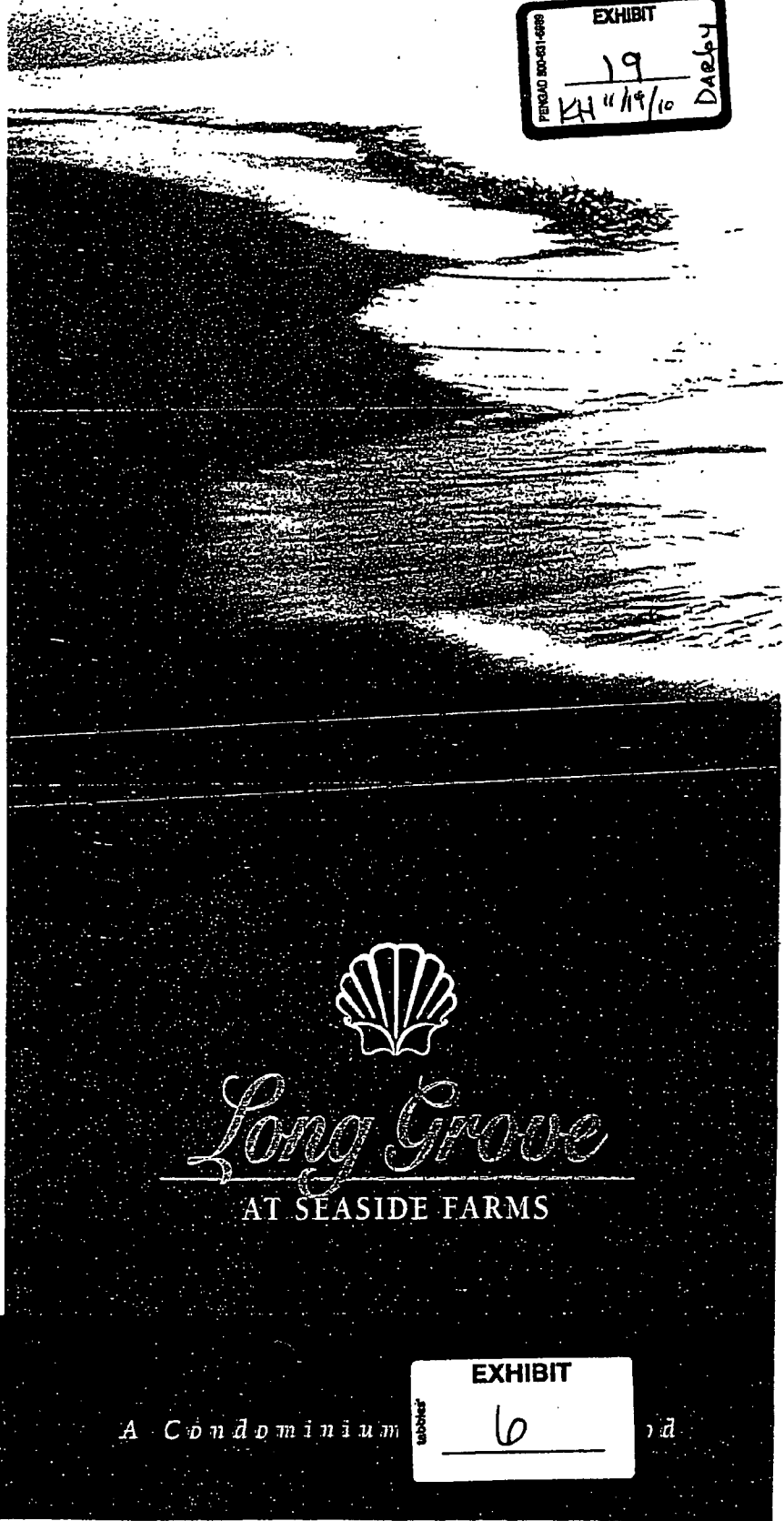
18 Q. Okay. Let me make sure that I understand
19 sort of where we are with this deposition. You
20 have -- you really do not have any personal knowledge
21 concerning the roles of Essex Engineering or SCM, Sam
22 Mayo; do you?

23 A. I do not.

24 Q. Okay. We would have to -- the person who
25 was with Vista, the people with Vista who would have



EXHIBIT
19
KH 11/19/10
Darefy



Long Grove

AT SEASIDE FARMS

A Condominium

EXHIBIT
6

nd



Just 2 Minutes

and you can be swimming in the ocean, strolling along the beach or watching the sun rise over the Atlantic.

It's that easy when you live at Long Grove at Seaside Farms in Mt. Pleasant. Offering only the finest in residential

living, Long Grove is close to everything you need and everything you enjoy. Nestled within the village atmosphere

of Seaside Farms, these exceptional homes mix elegant design, natural beauty, and a warm neighborhood feeling

with Mt. Pleasant's best location. As tranquil as you want it, as convenient as it can be. Desirable features,

superior amenities and an amazing location equal real value. It's here, it's close, it's Long Grove at Seaside Farms.



*Life here puts
you close.*



A Home to Reflect Your Distinctive Personality

For You

F E A T U R E S

- Nine-Foot Ceilings in all Homes
- Oversized Windows
- Six-Foot Elevation on First Floor Homes
- Ceramic Tile in Entry, Kitchens, & Baths
- Fireplaces in Select Homes
- Laundry Rooms with Full-Size Washer & Dryer Connections
- White-on-White GE Appliance Package
- Scenic Views Available
- Private Terrace or Screened Porch in All Homes
- Spacious Walk-in Closets
- Ceiling Fans
- Kitchen Pantries, Coat Closets & Exterior Storage Closets
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- Digital Television Available*
- Upgrade Finish Packages Available*

A Neighborhood with Distinctive Personality

For Everyone

A M E N I T I E S

- Two Minutes from the Isle of Palms Beaches
- Located within the peaceful yet conveniently located village of Seaside Farms
- Shopping & Dining within Seaside Farms
- Half-mile to the Upscale Shops of Towne Centre
- Fully Equipped Fitness Center
- 24-hour Resident Business Center
- Detached, Remote Entry Garages Available**
- Swimming Pool with Spacious Sundeck
- Quiet Parks & Walking Trails
- Car Care Area
- 24-hour Laundry Facility
- Boat Storage Spaces Available**



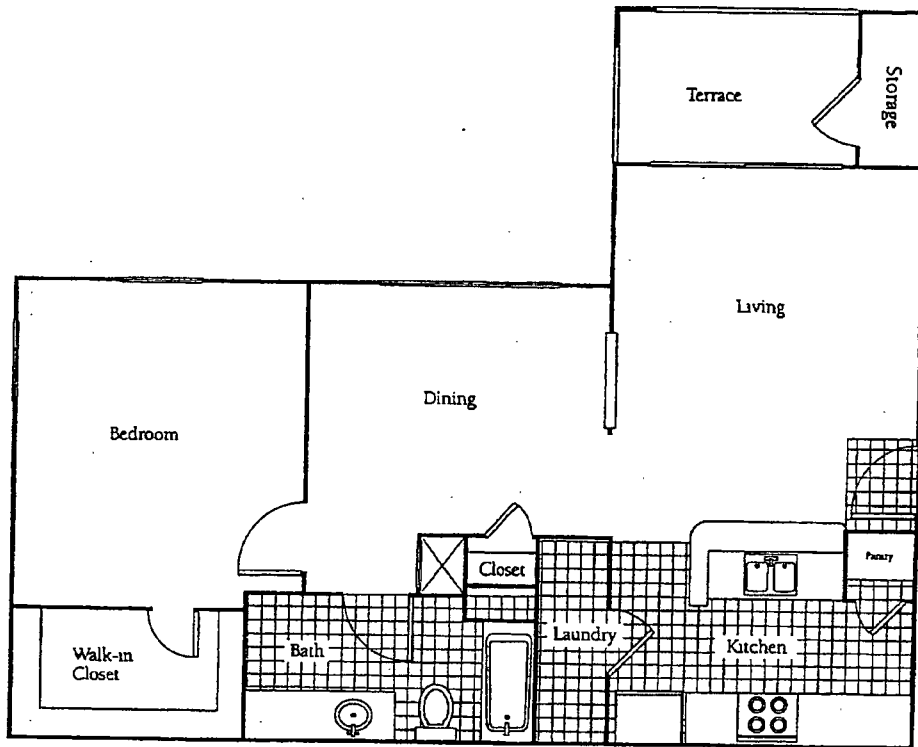
*See agent for details & cost **Garage & boat storage spaces sold separately.



A Home to Reflect Your Distinctive Personality

The Gloria

1 BEDROOM / 1 BATH



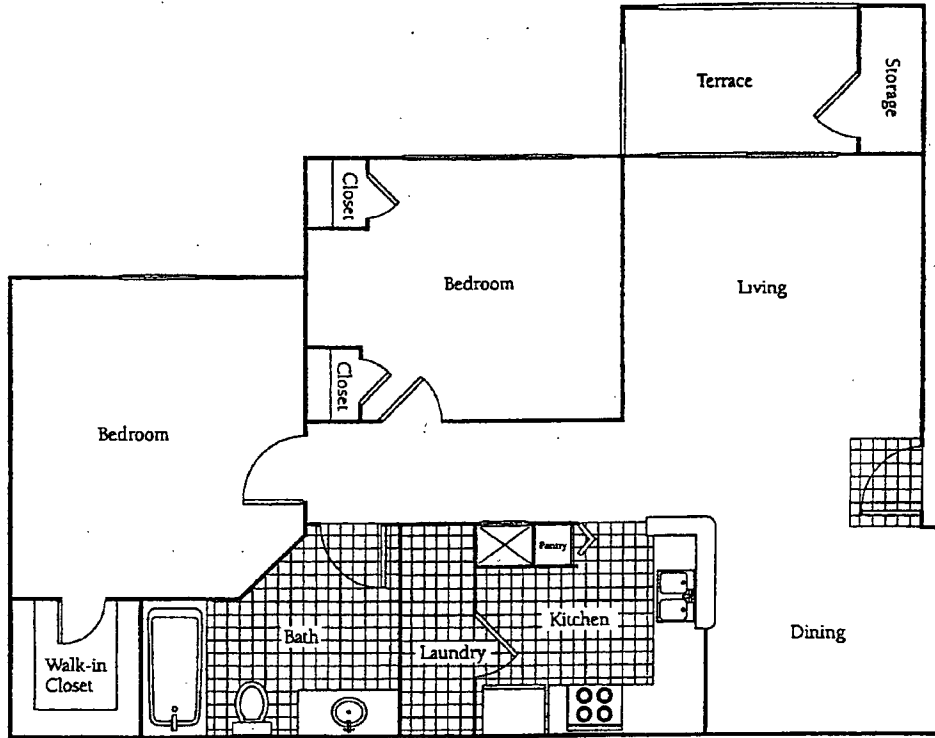
Long Grove

AT SEASIDE FARMS

A Home to Reflect Your Distinctive Personality

The Majestic

2 BEDROOM / 1 BATH

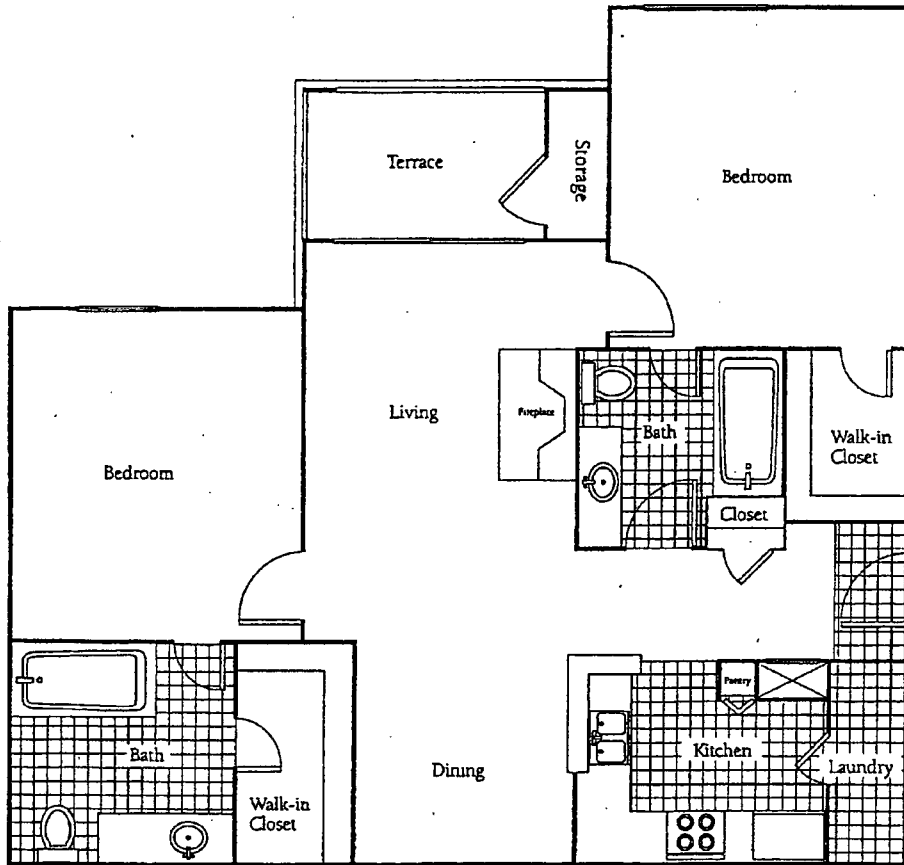


Long Grove
AT SEASIDE FARMS

A Home to Reflect Your Distinctive Personality

The Riviera

2 BEDROOM / 2 BATH

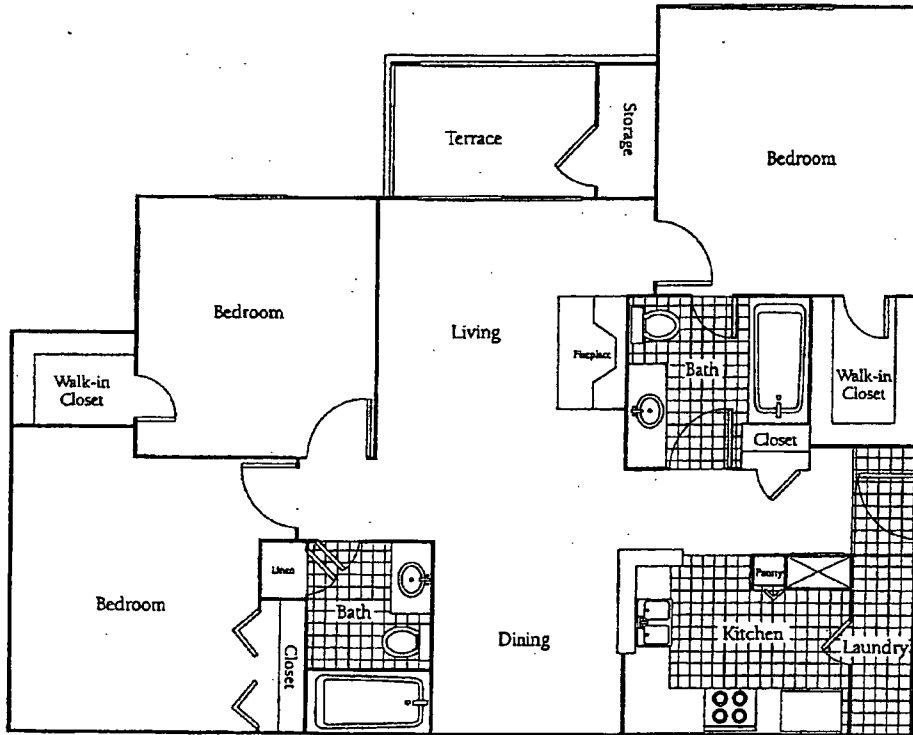


Long Grove
AT SEASIDE FARMS

A Home to Reflect Your Distinctive Personality

The Victoria

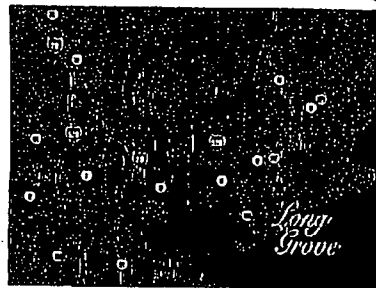
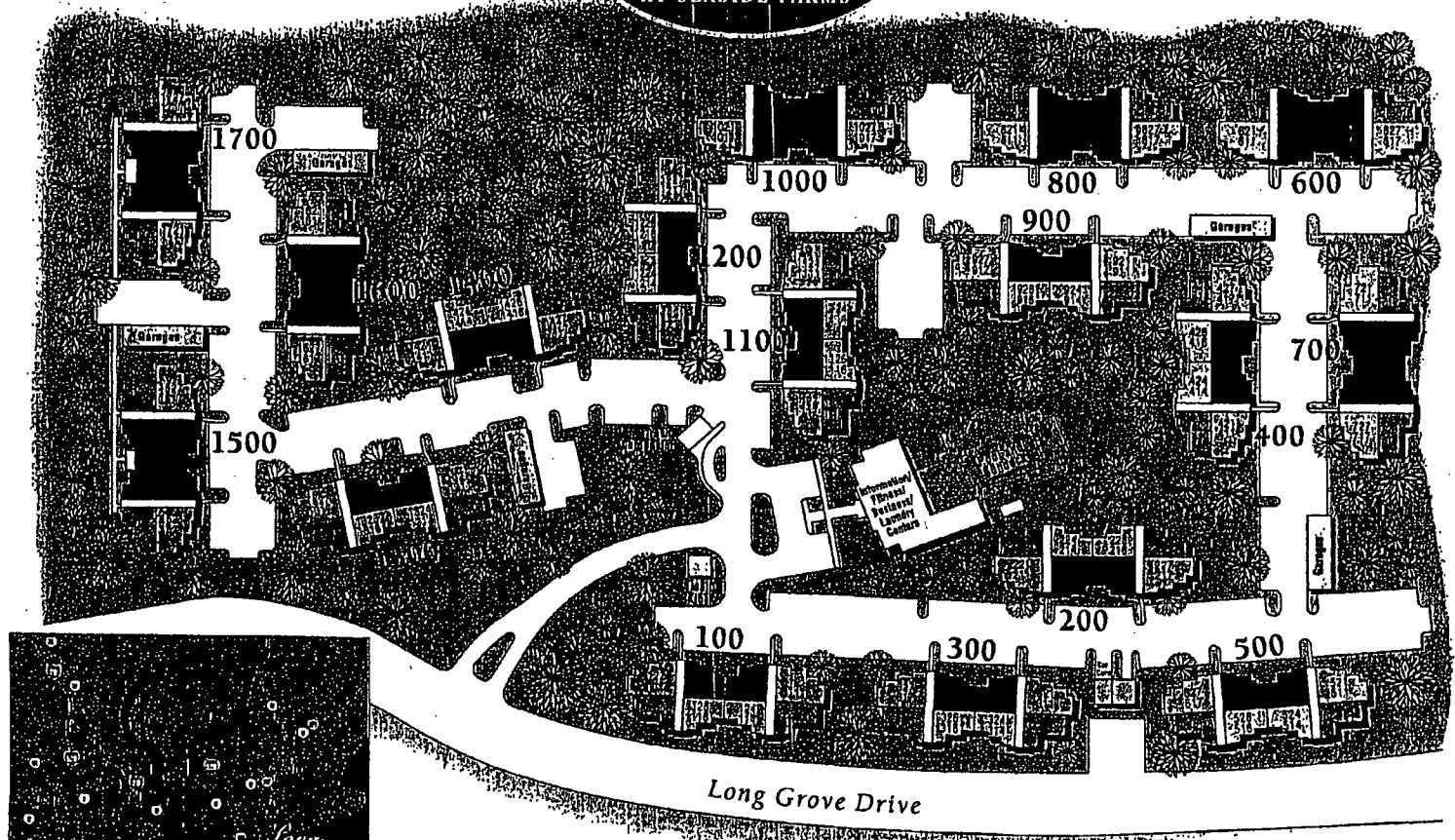
3 BEDROOM / 2 BATH



Long Grove

AT SEASIDE FARMS

Long Grove
AT SEASIDE FARMS



507

The Gloria
1 Bedroom, 1 Bath

The Majestic
2 Bedrooms, 1 Bath

The Riviera
2 Bedrooms, 2 Baths

The Victoria
3 Bedrooms, 2 Baths

Drawing Terms and Conditions
for Long Grove Condominium Lottery (May 7th Drawing)

- Each potential Purchaser shall be allowed to complete one Letter of Intent to Purchase (the "Letter of Intent") for each Drawing. In the event Purchaser intends to purchase two units, Purchaser must reside in one unit and may use the second unit as an investment unit. No Purchaser may purchase more than two units
- The Real Estate Agent for Seller ("Agent") acknowledging the Letter of Intent shall determine in his or her sold discretion whether the Purchaser is purchasing the property for primary residence, second home or for investment purposes. "Primary Residence" shall mean purchasing the property for use as a primary residence of Purchaser and not for use as a secondary residence or rental property. "Second Home" shall mean purchasing the property for use as a secondary residence and not for use as a primary residence or rental property. "Investment Purposes" shall mean purchasing the property for the primary purpose of obtaining income either through rents, sale of the contract or sale of the property. The Agent shall make such determination based upon his or her own due diligence, and Purchaser hereby waives and releases the Agent from any and all claims, loss or damages based on the Agent's determination of Purchaser's purpose for purchasing the property.
- The name of each Purchaser completing a Letter of Intent shall be placed on one (1) card. The cards will then be segregated into three (3) groups: (i) Purchasers purchasing the property for Primary and Secondary Residence with no contingencies; (ii) Purchasers purchasing the property for Primary and Secondary Residence with contingencies, and ; (iii) Purchasers purchasing the property for Investment purposes.
- The cards with the names of Purchasers who are purchasing the property for primary and second home residence use without contingencies will be placed in the drawing basket and shuffled. One (1) card will be drawn at a time.
- Once a Purchaser's card is drawn, Purchaser shall be obligated to enter into a Home Purchase Agreement in the event one of the properties identifies on that Purchaser's Letter of Intent is available. The property to be purchased by the Purchaser will be selected based on the order of priority set forth on the Letter of Intent. For example, if Mr. and Mrs. Jones' card is drawn and their first choice for a property has already been assigned, then Mr. and Mrs. Jones will purchase their second choice of property if it is available. If none of Mr. and Mrs. Jones' properties identified on their Letter of Intent are available, then their card is discarded and Mr. and Mrs. Jones will not be entitled to purchase any property based upon this drawing. In the event Purchaser is not entitled to purchase property based upon this drawing, Purchaser's earnest money deposit attached to Letter of Intent will be fully refunded.
- If all of the cards for Primary and Second Home Residence use without contingencies have been drawn from the basket and additional properties are still available, then the same procedure shall be used for Primary and Second Home Residences with contingencies.
- The same procedure shall be used for all units that have been identified as investment properties. A separate inventory and pricing sheet is available for investment units. Investors will not be able to choose from the Primary and Second Home Residence lists. All units identified as "investor units" are at the sole discretion of the Seller.

- In order to qualify for a particular Drawing, a complete Letter of Intent must be delivered to The Beach Company Residential Division by 12:00 p.m. on Friday, May 6, 2005.
- Should Purchaser choose a condominium unit identified as Spec ("Spec" includes Seller's standard upgrades with no additional upgrades) from any price list, Purchaser understands and agrees that spec units are required to close within thirty (30) days from ratification of contract. All other units shall be prepared for closings to occur between 45 to 60 days of ratification of contract.
- The Purchaser does not need to be present at the Drawing. The Agent shall contact the Purchaser within forty-eight (48) hours of the Drawing if the Purchaser is obligated to enter into a Home Purchase Agreement for a particular property based on the drawing. The five (5) days time frame for executing a Home Purchase Agreement shall begin at the time of the Drawing. The time of the notification from the Agent has no effect on this five (5) day time frame.
- Earnest Money deposits shall be as follows: one bedroom/one bath - \$3,000; two bedroom/one bath - \$4,500; two bedroom/two bath - \$4,500; three bedroom/2 bath - \$6,000. Earnest money deposits must be attached to the Letter of Intent, and in the event a Purchaser is purchasing two units, two earnest money checks for each unit individually should be placed with the Letter of Intent. Once a Purchaser has been successfully selected with a matching unit from Purchaser's preference list, Purchaser's earnest money shall be deposited in an escrow account and becomes immediately non-refundable.
- The Beach Company, the Seller of the property, their respective employees, affiliates and agents, and the Agents (collectively, the "Listed Parties") are not responsible for Letters of Intent which are not received due to lost, failed, delayed, misplaced, or interrupted communications, technical or mechanical error, or human error. The listed parties are not responsible for incorrect information on the Letter of Intent.
- The Beach Company and the Seller of the property reserves the right to cancel any Drawing at any time at its sole discretion.

LETTER OF INTENT TO PURCHASE

This binding Letter of Intent to Purchase (the "Agreement") is effective as of the ____ day of _____, 200__ by and between Long Grove Vista, LLC, a Georgia limited liability company ("Seller") and _____ ("Purchaser") for property located in the Town of Mount Pleasant, Christ Church Parish, Charleston County, South Carolina. For and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

The following list of properties is ranked in order of Purchaser's preference in the potential Long Grove Horizontal Property Regime lottery dated _____, 200__ (the "Lottery"). Purchaser understands these properties are ranked in order of preference and will be based on availability in the Lottery. Purchaser's intention is to purchase only one Unit should Purchaser's name be drawn multiple times.

1.	Unit#	Address	Price
2.	Unit#	Address	Price
3.	Unit#	Address	Price
4.	Unit#	Address	Price
5.	Unit#	Address	Price
6.	Unit#	Address	Price
7.	Unit#	Address	Price
8.	Unit#	Address	Price
9.	Unit#	Address	Price
10.	Unit#	Address	Price

Purchaser intends to purchase one of the above listed Units pursuant to Seller's standard Long Grove Horizontal Property Regime Purchase Agreement subject to the following contingencies (check all that apply):

- Financing Contingency
- No Financing Contingency
- Other (specify: _____)

11523-003
415931-1

Purchaser acknowledges and agrees that any contingencies to purchasing one of the above listed properties shall be considered as a risk to Seller and will be taken into consideration by Seller in order to determine (i) whether Purchaser will participate in the Lottery; (ii) Purchaser's chances in the Lottery; and (iii) whether Purchaser will be awarded the opportunity to purchase a Unit.

The terms and conditions of the Lottery are attached hereto and incorporated herein by reference. Purchaser has no questions in regard to the Lottery and agrees to be subject to such terms and conditions. Purchaser and Seller acknowledge and agree that the intent of the Lottery and this Agreement is to provide Seller with the ability to compare numerous offers from prospective purchasers of the above listed properties.

In connection with and as consideration for entering into this Agreement, Purchaser has deposited with Seller an Earnest Money Deposit in the amount of \$_____ made payable to The Beach Company (the "Earnest Money Deposit"). If Purchaser's name is not drawn in the Lottery, the Earnest Money Deposit shall be refunded to Purchaser, this Agreement shall be terminated, and all further rights, obligations and liabilities created hereunder shall be deemed terminated and of no further force and effect.

Purchaser acknowledges and agrees that should the Purchaser's name be drawn in the Lottery for any of the above listed properties, then the Earnest Money Deposit shall be automatically and immediately become non-refundable. In addition, Purchaser shall be obligated to execute and deliver to the Seller, Seller's standard Long Grove Horizontal Property Regime Purchase Agreement (excluding any contingencies except as checked above) no more than 5 days from the date of the Lottery drawing. Upon full execution of such agreement in accordance with the terms herein, the Earnest Money Deposit acknowledged hereunder shall constitute the Earnest Money referred to in the Long Grove Horizontal Property Regime Purchase Agreement and shall be applied toward the purchase price at the time of the closing pursuant to the terms and conditions of the Long Grove Horizontal Property Regime Purchase Agreement.

In the event Purchaser does not enter into Seller's standard Long Grove Horizontal Property Regime Purchase Agreement within the above-referenced 5 day period, then Seller shall have the right to retain the Earnest Money Deposit. Seller shall have the right to retain the Earnest Money Deposit as part of its liquidated damages and not as a penalty, the parties agreeing that actual damages in such event would be difficult, if not impossible to determine.

In witness hereof, Purchaser and Seller have executed this Agreement as of the date written above.

Purchaser(s):

Print Name:

Date:

Print Name:

Date:

Acknowledged by Agent:

Print Name:

Date:

Seller:

LONG GROVE VISTA, LLC

By: _____

Name: _____

Date: _____

11523-003
415931-1

Additional Purchaser Preferences
(Attach to Letter of Intent)

11.	Unit#	Address	Price
12.	Unit#	Address	Price
13.	Unit#	Address	Price
14.	Unit#	Address	Price
15.	Unit#	Address	Price
16.	Unit#	Address	Price
17.	Unit#	Address	Price
18.	Unit#	Address	Price
19.	Unit#	Address	Price
20.	Unit#	Address	Price
21.	Unit#	Address	Price
22.	Unit#	Address	Price
23.	Unit#	Address	Price
24.	Unit#	Address	Price
25.	Unit#	Address	Price

11523-003
415931-1

THIS AGREEMENT IS SUBJECT TO BINDING ARBITRATION PURSUANT TO SECTION 15-48-10 OF THE CODE OF LAWS OF SOUTH CAROLINA, AS MODIFIED HEREIN

LONG GROVE HORIZONTAL PROPERTY REGIME

PURCHASE AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 200__ by and between Long Grove Vista, LLC, a Georgia limited liability company (hereinafter referred to as the "Seller"), and _____ (hereinafter referred to as the "Purchaser").

WITNESSETH

In consideration of the purchase price specified below, the mutual covenants and benefits provided for herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, the parties hereto do hereby agree as follows:

1. **GENERAL.** Seller agrees to sell, and Purchaser agrees to purchase, in accordance with the terms and conditions of this Agreement, Unit ____ (hereinafter referred to as the "Unit") of Long Grove Horizontal Property Regime (hereinafter referred to as the "Regime"), a Regime development in the Town of Mount Pleasant, Christ Church Parish, Charleston County, South Carolina, with the property description of the Regime attached hereto and incorporated herein as Exhibit "A" and the floor plan for such Unit attached hereto and incorporated herein as Exhibit "B." The Regime was created pursuant to the Master Deed for Long Grove Horizontal Property Regime, recorded in Book _____, Page _____, *et seq.*, in the RMC Office for Charleston County, South Carolina (hereinafter referred to as the "Master Deed"), and shown and delineated on the plat of survey attached as Exhibit "C" to the Master Deed and on the plot plans and floor plans attached as Exhibit "D" to the Master Deed. The Unit, together with its percentage of undivided interest in the common elements of Long Grove Horizontal Property Regime, and its interest in the limited common elements assigned to such Unit, is more particularly described in the Master Deed, and is shown and delineated on the plat of survey for Long Grove Horizontal Property Regime, which survey, plot plans and floor plans, were recorded as Exhibits "C" and "D" to the Master Deed.

2. **PURCHASE PRICE.** The total purchase price of the Unit (hereinafter referred to as the "Total Purchase Price") shall be calculated as follows:

• Base Purchase Price For Unit	\$ _____
• Garage(s)	\$ _____
• Total Upgrade Amount	\$ _____
• Additional Purchase Price for _____	\$ _____
TOTAL PURCHASE PRICE:	\$ _____

and shall be paid as follows:

Purchase Agreement/2
11523-003

(a) \$ _____ (hereinafter referred to as the "Earnest Money"), the receipt of which is hereby acknowledged by The Beach Company (hereinafter referred to as the "Holder"). The Earnest Money, shall be consideration for Seller reserving the Unit for Purchaser and Seller agreeing not to sell the Unit to anyone other than Purchaser prior to the date set for closing in Paragraph 3 hereof. The Earnest Money shall be deposited in an escrow/trust account by Holder (with Holder retaining the interest if the account is interest bearing) within five (5) banking days from Seller's acceptance of this Agreement and shall be applied toward the Total Purchase Price of the Unit at the time of closing. In the event any Earnest Money check is not honored, for any reason, by the bank upon which it is drawn, Holder shall promptly notify Purchaser and Seller, and Seller shall have the right to terminate this Agreement upon written notice to the Purchaser.

Holder shall disburse Earnest Money only as follows: (i) upon the failure of the parties to enter into a binding agreement; (ii) at closing; (iii) upon a written agreement signed by all parties having an interest in the funds; or (iv) upon order of a court or arbitrator having jurisdiction over any dispute involving the Earnest Money; In the event an objection is to disbursement is made, Holder shall consider the objection and shall do any or a combination of the following: (i) hold the Earnest Money for a reasonable period of time to give the parties an opportunity to resolve the dispute; (ii) disburse the Earnest Money and so notify all parties; and/or (iii) interplead the Earnest Money into a court of competent jurisdiction. Holder shall be reimbursed for and may deduct from any funds interpleaded its cost and expenses, including reasonable attorneys' fees. The prevailing party in the interpleader action shall be entitled to collect from the other party the costs and expenses reimbursed to Holder. No party shall seek damages from Holder (nor shall Holder be liable for same) for any matter relating to the performance of Holder's duties under this Earnest Money Paragraph. If Purchaser breaches Purchaser's obligations or warranties herein, Holder may pay the Earnest Money to Seller by check.

(b) The balance of the Total Purchase Price, plus all closing costs which are the responsibility of the Purchaser hereunder, shall be paid by Purchaser in cash or by certified check, at the closing of this purchase and sale.

3. CLOSING. Subject to the provisions of Paragraph 26 hereof which shall automatically extend the closing date until the required pre-sale is met, the closing of the purchase and sale contemplated by this Agreement shall take place on or before _____, 200__, and the closing attorneys for the transaction shall be Buist, Byars, Pearce & Taylor, LLC (the "Closing Attorney"). The closing shall take place at such specific reasonable time, date, and place as shall be designated by Seller at least seven (7) days prior thereto. Notwithstanding anything to the contrary herein, Seller shall have the right from time to time by notice to the other party to extend the closing for up to two (2) periods of thirty (30) days each. Time is of the essence of this Agreement.

4. TITLE AND PERFORMANCE.

(a) Title. Purchaser acknowledges that the Unit he or she is to purchase may not now be a part of the Regime. Prior to consummation of the sale contemplated by this Agreement, Seller shall have submitted the Unit to the Master Deed. Title to the Unit shall be conveyed to Purchaser by special warranty deed, and title to the Unit shall be insurable and free and clear of all encumbrances, except the Unit shall be subject to the Master Deed, taxes not yet due and payable, and all other encumbrances, zoning ordinances, easements and restrictions of record.

(b) RESPA Disclosure. As required by the Real Estate Settlement Procedures Act of 1974, Purchaser acknowledges that Seller has not directly or indirectly required Purchaser, as a condition of sale, to purchase either an owner or mortgagee's title insurance policy from any particular title company. Purchaser may elect to obtain

such insurance from a company of Purchaser's choice and Purchaser shall pay, at closing, the title insurance premium for such policy.

5. CLOSING COSTS AND PRORATIONS.

(a) Seller shall pay closing costs in an amount not to exceed _____ Dollars (\$_____) plus attorneys' fees charged by the Closing Attorney; provided, however, Seller shall only pay such closing costs only if Purchaser obtains financing through a lender preapproved by Seller (hereinafter referred to as the "Preapproved Lenders") and the closing is held at the offices of the Closing Attorney. The Preapproved Lenders are Wachovia Bank and Bank of America. Purchaser shall pay all additional costs and fees incident to the securing of financing and the closing of the purchase and sale contemplated hereunder. "Closing Costs" as defined in this Agreement shall include loan fees charged by Purchaser's lender and included in Section 800 of the HUD-1 Settlement Statement, the lender's title insurance premium, title commitment fee, title and tax examination fees, lender's attorneys' fees, and recording costs, and shall specifically exclude prepaid interest, mortgage insurance premiums, tax and insurance reserves, working capital contribution, the Association insurance reimbursement, and the Association assessment proration, all of such excluded amounts shall be paid by Purchaser.

(b) Contribution to Working Capital Fund of Association. In addition to all other sums due hereunder, Purchaser agrees at closing to make a nonrefundable contribution to the working capital fund of the Association in an amount equal to two (2) months general assessments on the Unit.

(c) Ad Valorem Taxes.

(i) Purchaser acknowledges that, as of the year in which closing takes place, the Unit may not have been a separately described and assessed parcel of real estate and that, in that event, ad valorem taxes for the Unit for the year in which closing takes place will be assessed under a tax bill in the name of Seller which covers additional property. Should the Unit not be a separately described and assessed parcel of real estate, Purchaser agrees to pay Seller at closing that portion of the tax for the year in which closing takes place (based on the prior year if the tax bill for the year in which closing takes place is not yet available) which shall be determined by multiplying the total tax bill by the percentage interest in the common elements assigned to the Unit in the Master Deed and then prorating the product of such multiplication as of the date of closing. Seller agrees to pay the entire tax bill before it becomes delinquent and, upon written request from Purchaser or any first mortgagee of the Unit, to provide Purchaser or such mortgagee proof of payment. If the amount allocated to the parties is based upon an estimate and the actual bill varies from the estimate, the party who paid too much shall have the right to adjust the prorated amount and the party who paid too little shall pay any increased amount based on the actual tax bill to the other party within ten (10) days of receipt of notice.

(ii) If, in the year in which closing takes place, the Unit is a separately described and assessed parcel of real estate, then ad valorem taxes applicable to the Unit shall be prorated between the Seller and Purchaser as of the date of closing. If the amount allocated to Purchaser is based upon an estimate and the actual bill varies from the estimate, the party who paid too much shall have the right to adjust the prorated amount and the party who paid too little shall pay any increased amount based on the actual tax bill to the other party within ten (10) days of receipt of notice.

(d) Common Expense Assessments. Purchaser shall pay his or her pro rata share of the common expense assessment levied against the Unit, as provided in the Master Deed, for the year in which the closing shall take place, which common expense assessment shall be adjusted at the closing according to the number of days remaining in the calendar year. Except for that portion of the assessment installment as shall be payable for the

month in which the closing shall take place, which shall be prorated between Seller and Purchaser as of the day of closing. Such adjusted common expense assessment shall be payable to Long Grove Property Owners Association, Inc. (hereinafter referred to as the "Association"), by Purchaser in equal monthly installments, commencing on the first day of the calendar month immediately following the date of closing, or as otherwise provided by the Board of Directors of the Association.

(e) Insurance Premiums. Purchaser acknowledges that, prior to closing, either: (i) Seller will have pre-paid directly the Unit's pro rata portion of the annual premium on the hazard and liability insurance policies maintained by the Association or Seller; or (ii) the Association will have pre-paid such premium with funds previously contributed by Seller to the Association's account. At closing, Purchaser shall reimburse the appropriate party for the Unit's pro rata portion of said annual premium from the date of closing through the expiration date of the policies. Purchaser further acknowledges that such insurance policies shall be paid one year in advance. At closing, Purchaser shall pay to the Association the difference between the amount of the Unit's share of the current year's full premium, and the amount paid by Purchaser as reimbursement for the Unit's pro rata portion of such annual premium, as set forth above, in order to ensure that the Association's budget has sufficient funds to pay the cost of the next annual premium, when it is due.

6. BROKERAGE AND AGENCY. Seller shall pay a real estate commission to The Beach Company (hereinafter referred to as the "Listing Broker") pursuant to a separate commission agreement. In no event shall Seller have any obligation to pay any real estate commission except in the event of the closing of this transaction in accordance with the terms of this Agreement. Except as may otherwise be provided, the Listing Broker has represented the Seller in this transaction. If Purchaser worked with or was represented by another cooperating broker, a disclosure of such brokerage relationship set forth in Exhibit "D" shall be a part of this Agreement. If no such brokerage relationship exists, there shall be no Exhibit "D" to this Agreement, and Purchaser acknowledges that Purchaser is solely responsible for protecting Purchaser's interests.

Except as set forth in this Paragraph, Purchaser and Seller represent and warrant to the other that each party has not dealt with another broker, agent, or finder in connection with this transaction and Purchaser and Seller covenant and agree, each to the other, to indemnify and hold each other harmless from any and all losses, damages, costs and expenses including, but not limited to, attorneys' fees and court costs that may be incurred or suffered as a result of any claim for any fee, commission, or similar compensation with respect to this transaction made by any person or entity and arising through the actions of the indemnifying party, whether or not such claim for any fee, commission, or similar compensation with respect to this transaction made by any person or entity is meritorious.

7. DISCLAIMER. Purchaser and Seller acknowledge that they have not relied upon any advice, representations or statements of Brokers and waive and shall not assert any claims against Brokers involving the same. The term "Broker" as used herein, shall mean those parties executing this Agreement as the Listing Broker and Selling Broker, if applicable. Purchaser and Seller agree that Brokers shall not be responsible to advise Purchaser and Seller on any matter, including but not limited to the following: any matter which could have been revealed through a survey, title search or inspection of the Unit; the condition of the Unit, any portion thereof, or any item therein; the necessity or cost of any repairs to the Unit; hazardous or toxic materials; the tax or legal consequences of this transaction; the availability and cost of utilities or community amenities; the appraised or future value of the Unit; any condition(s) existing on the Regime that may affect the Regime; the terms, conditions and availability of financing; and the uses and zoning of the Regime whether permitted or proposed. Purchaser and Seller acknowledge that Brokers are not experts with respect to the above matters and that, if any of these matters or any other matters are of concern to them, they shall seek independent expert advice relative thereto.

8. PURCHASER'S REPRESENTATION REGARDING USE AND OCCUPANCY OF UNIT.

Purchaser hereby represents and warrants to Seller that Purchaser is purchasing the Unit for the following purpose (check the appropriate box):

- Primary residence;
- Secondary residence (without rentals);
- Secondary residence (with rentals);
- Lease to third party; or
- Other: _____

9. POSSESSION. Permanent possession of the Unit shall be delivered to Purchaser at the closing.

10. LONG GROVE PROPERTY OWNERS ASSOCIATION, INC.

(a) Governing Documents. Purchaser acknowledges that the Unit being purchased is a portion of the Regime and improvements that have been or will be made subject to the Master Deed referred to in Paragraph 1. The nature and extent of the rights and obligations of the Purchaser in acquiring and owning the Unit will be controlled by and subject to the Master Deed, as well as the Articles of Incorporation, the Bylaws, and the rules and regulations of the Association. Purchaser agrees to comply with all of the terms, conditions and obligations set forth therein.

(b) Membership in Association. Upon conveyance of title to the Unit to Purchaser, Purchaser shall automatically become a member of the Association and shall be subject to the assessment obligations and other provisions set forth in the Master Deed, including the obligation of the Purchaser to pay a contribution to the working capital of the Association referred to in Paragraph 5(b) above.

(c) Disclosure Package. Purchaser hereby acknowledges that he/she has received a copy of the property condition report required under Section §27-31-430 of the South Carolina Horizontal Property Act, a copy of the Master Deed, a copy of the Bylaws of the Association, a copy of the Articles of Incorporation of the Association, a copy of the estimated budget of the Association (the "Disclosure Package").

(d) Insurance. Purchaser shall be obligated to obtain and maintain at all times insurance covering those portions of his or her Unit to the extent not insured by policies maintained by the Association. Upon request by the Board, Purchaser shall furnish a copy of such insurance policy or policies to the Association. In the event that Purchaser fails to obtain insurance as required by this subparagraph and the Master Deed, the Association may purchase such insurance on behalf of the Purchaser and assess the cost thereof to the Purchaser, to be collected in the manner provided for collection of assessments under the Master Deed.

11. NONASSIGNABILITY BY PURCHASER. Purchaser's interest in this Agreement may not be transferred or assigned, in whole or in part, without the prior written consent of Seller.

12. DEFAULT.

(a) In the event Seller fails to comply with or perform any of the conditions to be complied with or any of the covenants, agreements or obligations to be performed by Seller under the terms and conditions of this Agreement, then Purchaser shall be entitled to terminate this Agreement by giving written notice to Seller,

* Notwithstanding anything to the contrary stated herein or represented by Broker or Seller, leasing of a Unit shall be permitted only in accordance with Paragraph 15 of the Master Deed.

whereupon the Earnest Money with interest at the rate of three percent (3%) per annum as fixed and full liquidated damages shall be immediately delivered to Purchaser, it being acknowledged that it is impossible to more precisely estimate the specific damages to be suffered by Purchaser, but that the sum herein stipulated is a reasonable estimate of such damages and the parties hereto expressly acknowledged and intend that this provision shall be a provision for the return of the Earnest Money plus interest as fixed and full liquidated damages and not as a penalty. Thereafter, all further rights, obligations and liabilities created hereunder shall be deemed terminated and of no further force and effect. This shall be Purchaser's exclusive remedy.

(b) In the event Purchaser fails to comply with or perform any of the covenants, agreements or other obligations to be performed by Purchaser under the terms and provisions of this Agreement, Seller shall be entitled to terminate this Agreement upon written notice to Purchaser whereupon Seller shall retain the Earnest Money and any and all portions of the Total Upgrade Deposit (as set forth in Paragraph 14 hereof) as fixed and full liquidated damages, it being acknowledged that it is impossible to more precisely estimate the specific damages to be suffered by Seller, but that the sum herein stipulated is a reasonable estimate of such damages and the parties hereto expressly acknowledged and intend that this provision shall be a provision for the retention of the Earnest Money and the Total Upgrade Deposit as fixed and full liquidated damages and not as a penalty, whereupon all rights, liabilities and obligations created under the terms and provisions of this Agreement shall be deemed null and void of no further force and effect.

13. MANDATORY BINDING ARBITRATION. The parties waive their right to a jury trial and agree that any disputes, claims, or controversies arising from or related to this Agreement, or any breach thereof, shall be resolved via final, binding arbitration conducted in accordance with the South Carolina Uniform Arbitration Act, S.C. Code Ann. § 15-48-10, *et seq.* If a conflict between those rules and the terms of this Agreement arises, then this Agreement shall control. The venue of the arbitration shall be exclusively in Charleston County, South Carolina. The parties agree that they will never attempt to litigate any such matters in any other forum or in any other manner. The parties agree to an expedited arbitration hearing and agree that the arbitration shall be heard and decided as soon as reasonably possible after notice of the demand for arbitration is provided in writing to the party to whom the demand for arbitration is made. Notwithstanding § 15-48-30 (which specifies the use of three arbitrators), the parties will use a single, unbiased arbitrator to decide all matters in dispute. If the parties are unable to agree on an arbitrator, then any party may petition the Charleston County Court of Common Pleas to appoint an arbitrator. In addition to the limited discovery permitted under § 15-48-80 in the discretion of the arbitrator, the parties shall exchange witness lists and exhibits at least ten (10) days prior to the arbitration hearing. In addition to all available legal and equitable remedies, any party is entitled to request and obtain from the arbitrator an award of injunctive relief (i.e., a temporary restraining order and temporary and permanent injunction) as an appropriate remedy to enforce this Agreement or prevent a continued violation of this Agreement, without having to post a bond or other security. The parties agree to (i) join into the arbitration proceeding hereunder or (ii) join any other arbitration proceeding being conducted by persons or entities related to the dispute that may be necessary to completely resolve the dispute, such as a future grantee, or condominium purchaser. Payment of the costs of any such arbitration and attorneys' fees of the parties shall be allocated equitably by the arbitrator to correspond with the arbitrator's evaluation of the relative merits or lack thereof of the respective claims of the parties. The decision and award of the arbitrator shall be binding and conclusive, and judgment in conformity with the decision and award may be entered and enforced in any court of competent jurisdiction. Notwithstanding the above, if Seller provides a warranty to the Purchaser, either directly or through a third party warranty company, the terms, provisions, procedures and requirements of that warranty must first be followed and completely exhausted before Purchaser can pursue any claim for arbitration described herein.

INITIALS OF SELLER _____

INITIALS OF PURCHASER _____

14. UNIT COMPLETION.

(a) Select one of the following paragraphs:

Unit to be Purchased "As Is". Seller and Purchaser hereby agree that no Upgrades will be made to the Unit, and that the Unit is being transferred "As Is" and "Where Is" pursuant to subsection (b) below.

Unit to be Purchased with Builder Standards. Seller and Purchaser hereby agree that the Unit shall be renovated substantially in conformance with the Floor Plan and the standard specifications for Unit renovation attached hereto as Exhibit "E" and incorporated herein by this reference (hereinafter referred to as the "Standard Specifications").

Upgrade Finish Items and Options. The Unit shall be renovated substantially in conformance with the Floor Plan and the standard specifications for Unit renovation attached hereto as Exhibit "E". Upgrades shall be made to the Unit substantially in conformance with the scope of work set forth in Exhibit "F" attached hereto and incorporated herein (hereinafter referred to as the "Upgrades"). Purchaser understands and agrees that materials used in construction and completion may vary somewhat from any samples provided; such variations are inherent in manufacturing and shall not be grounds for any refusal by Purchaser to accept the Unit. Actual as-built conditions may also vary. Purchaser shall finalize any and all requests for Upgrades upon Purchaser's execution of this Agreement, which final requests shall be set forth on Exhibit "F" attached hereto. Simultaneously with Purchaser's execution of Exhibit "F" attached hereto, Purchaser shall pay to Seller fifty percent (50%) of the total costs and expenses of the Upgrades chosen by Purchaser (hereinafter referred to as the "Total Upgrade Deposit"), which Total Upgrade Deposit shall be held by Holder in escrow and disbursed as provided in this Agreement. The balance of the total costs and expense of the Upgrades shall be paid on or before closing. Purchaser's obligation to pay the balance of the total costs and expenses of the Upgrades chosen by Purchaser shall be binding and non-contingent notwithstanding any contingency to which this Agreement is otherwise subject, except where a contingency is exclusively that of Seller or Seller has defaulted hereunder. IF PURCHASER TERMINATES THIS AGREEMENT OR DEFAULTS UNDER THIS AGREEMENT, PURCHASER SHALL NOT BE ENTITLED TO ANY REFUND OF THE TOTAL UPGRADE DEPOSIT AND SHALL BE HELD LIABLE FOR THE PAYMENT OF THE BALANCE OF THE TOTAL COSTS AND EXPENSES OF THE UPGRADES CHOSEN BY PURCHASER. If Purchaser fails to timely complete and execute Exhibit "F" hereto or to make payment of the amounts required in this Paragraph or fails to select an item of choice, Seller may, at its sole discretion, either (i) terminate this Agreement and return the Earnest Money to Purchaser, whereupon all rights, obligations and liabilities under this Agreement shall be deemed terminated and of no further force and effect; or (ii) complete the Unit with the Standard Specifications, and Purchaser shall be obligated to purchase the Unit so finished. Purchaser acknowledges that Exhibit "F" hereto is intended to specify Purchaser's Upgrades and once executed, may not be changed except in Seller's sole discretion. It is Purchaser's sole obligation to ensure the clarity and accuracy of all choices.

(b) "AS IS" and "WHERE IS". Except for the transfer warranties being provided to Purchaser as set forth in Paragraph 4(a) hereof, Seller shall not by the execution and delivery of any document or instrument executed and delivered in connection with the closing, make any warranty, express or implied, of any kind or any nature whatsoever, with respect to the Unit other than warranties of title pursuant to the deed of conveyance in Paragraph 4(a), and all such warranties are hereby disclaimed. Without limiting the generality of the foregoing, SELLER MAKES, AND SHALL MAKE, NO EXPRESS OR IMPLIED WARRANTY OF SUITABILITY OR FITNESS OF THE REGIME FOR ANY PURPOSE, OR AS TO THE MERCHANTABILITY, VALUE, QUALITY, CONDITION OR SALEABILITY OF THE REGIME. Except for the Upgrades, if any, the sale of the Unit by Seller to Purchaser shall be "AS IS" and "WHERE IS". Seller shall transfer to Purchaser any manufacturing warranties pertaining to the Unit, which by their terms are transferable.

15. INSPECTIONS.

(a) Unit Inspection. Prior to closing, Purchaser and Seller shall inspect the Unit and execute a written Walk Through List specifying all items, including any noted in previous inspections, that remain to be completed. No items shall be part of the Walk Through List, unless such items are actually written on the Walk Through List. Purchaser acknowledges that Seller will make its best efforts to complete all of the items specified in the agreed upon Walk Through List on a timely basis as soon as reasonably possible after closing, but the fact that any repairs, touch ups or adjustments are incomplete shall not constitute a valid reason for Purchaser's failure to close. Purchaser further agrees that under no circumstances shall the closing be delayed or postponed due to Purchaser or Seller's inability to inspect the Unit and execute a Walk Through List prior to closing and there shall be no withholding of any or all of Seller's proceeds at closing for any such Walk Through List items, without the written approval of the Seller.

(b) Except for items set forth in the Walk Through List, Purchaser expressly acknowledges acceptance of all conditions or circumstances existing in the Unit and waives and releases Seller, its agents, architects, contractors, employees and subcontractors, and Broker, from any claim, rights of action or suits seeking rescission of this Agreement, damages or other relief based upon, or relating to, any condition or circumstances existing on or in the vicinity of the Unit, except as may be covered by express warranty, if any, given the Purchaser by the Seller. Upon satisfactory disposition of the items set forth in the Walk Through List, this acceptance, waiver and release shall apply to such items as well, except as may be covered by any express warranty.

16. NOTICES. Each notice, except for oral notice of the date and time of closing (as set forth in Paragraph 3) and of the inspection (as set forth in Paragraph 15), required or permitted to be given hereunder must comply with the requirements of this Paragraph. Each such notice shall be in writing and shall be delivered either by personally delivering it by hand or Federal Express or similar courier service to the person to whom notice is directed, or by facsimile transmission, or by depositing it with the United States Postal Service, certified mail, return receipt requested, with adequate postage prepaid, addressed to the appropriate party (and marked to a particular individual's attention). Such notice shall be deemed delivered at the time of personal delivery or, if mailed, when it is deposited as provided above, but the time period in which a response to any such notice must be given or any action taken with respect thereto shall commence to run from the date it is personally delivered or, if mailed, the date of receipt of the notice by the addressee thereof, as evidenced by the return receipt. Notwithstanding the above, notice by facsimile transmission shall be deemed to have been given as of the date and time it is transmitted if the sending facsimile machine produces a written confirmation with a date, time and telephone number to which the notice was sent. Rejection or other refusal by the addressee to accept the notice shall be deemed to be receipt of the notice. In addition, the inability to deliver the notice because of a change of address of the party of which no notice was given to the other party as provided below shall be deemed to be the receipt of the notice sent. The addresses of the parties to which notice is to be sent shall be those set forth below. Such addresses may be changed by either party by designating the change of address to the other party in writing.

17. FLOOR PLANS AND MODELS. Purchaser hereby acknowledges and agrees that any floor plans, renderings, drawings, and the like, furnished by Seller to Purchaser which purport to depict the Unit, or any portion thereof, or the building containing the same, are merely approximations, and do not necessarily reflect the actual as-built conditions of the same. The Purchaser further acknowledges and agrees that the decorations, furniture, furnishings, wallpaper, custom finishes, appliances, fixtures, and the like, contained in any model unit of Long Grove Horizontal Property Regime, are for demonstrative purposes only, and are not included in the property which is the subject of this Agreement.

18. SOUTH CAROLINA LAW. This Agreement concerns the sale of real property located in the State of South Carolina. This Agreement, and all of the relationships between the parties hereto, shall be construed and interpreted in accordance with the laws of the State of South Carolina.

19. TIME OF ESSENCE. Time is of the essence of this Agreement.

20. FORCE MAJEURE. Either party hereto shall be excused for the period of any delay in the performance of any obligations hereunder when such delay is occasioned by cause or causes beyond the control of the party whose performance is so delayed and the time for performance shall be automatically extended for a like period. Such causes shall include, without limitation, all labor disputes, civil commotion, war, warlike operations, invasion, rebellion, hostilities, military or usurped power, sabotage, government regulations or controls, fire or other casualty, inability to obtain any necessary materials or services, or acts of God.

21. SEVERABILITY. The provisions of this Agreement are intended to be independent, and in the event any provision hereof should be declared by a court of competent jurisdiction to be invalid, illegal or unenforceable for any reason whatsoever, such illegality, unenforceability, or invalidity shall not affect the remainder of this Agreement.

22. CONSTRUCTION OF AGREEMENT. The Purchaser and Seller acknowledge that they have read, understand, and have had the opportunity to be advised by legal counsel as to each and every one of the terms, conditions, restrictions, and effect of all of the provisions of this Agreement and every part of the Disclosure Package, all of which are incorporated herein by reference and made a part hereof, and the Purchaser agrees to the enforcement of any and all of these provisions and affixes his hand and seal hereto with full knowledge of same. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same. It is further agreed that words of any gender used in this Agreement shall be held to include any other gender, any words in the singular number shall be held to include the plural wherever applicable, and that captions and paragraphs numbers appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such Paragraph or in any way affect this Agreement.

23. NON-RECORDATION OF AGREEMENT. Neither this Agreement nor any of the terms hereof, nor any other memorandum, affidavit or other document relating to or referring to this Agreement or the transactions contemplated hereby, whether directly or indirectly, shall ever be filed of record by or on behalf of Purchaser. If there occurs a violation of the preceding sentence, Seller may avail itself of any remedies available to it for breach of this Agreement at law or in equity.

24. ENTIRE AGREEMENT. This Agreement contains the entire agreement between the parties hereto. No agent, representative, salesman or officer of the parties hereto has authority to make, or has made, any statements, agreements, or representations, either oral or in writing, in connection herewith, modifying, adding to, or changing the terms and conditions hereof and neither party has relied upon any representation or warranty not set forth in this Agreement. No dealings between the parties or customs shall be permitted to contradict, vary, add to, or modify the terms hereof.

25. SURVIVAL. All terms, conditions, representations, and provisions contained herein shall extinguish upon closing and delivery of the deed, except for Paragraphs 4 (Title), 5(b) (Contribution to Working Capital Fund of Association), 5(c) (Ad Valorem Taxes), 5(d) (Common Expense Assessments), 5(e) (Insurance Premiums), 6 (Brokerage and Agency), 7 (Disclaimer), 8 (Purchaser's Representation Regarding Use and Occupancy of Unit), 10(a) (Governing Documents), 13 (Mandatory Binding Arbitration), 14 (Unit Completion), 15 (Inspection), 17 (Floor Plans and Models), 18 (South Carolina Law), 21 (Severability), 22 (Construction of Agreement), 24 (Entire Agreement), 27 (Disclosures), and 28 (Resale Restrictions) hereof, which Paragraphs shall survive indefinitely.

26. PRE-SALE CONTINGENCY. Seller's obligation to close hereunder is expressly contingent upon Seller's procuring purchase agreements to sell the number of Units required to equal Twelve Million Eight Hundred Twenty-Five Thousand Dollars (\$12,825,000) (inclusive of the Unit described herein) at Long Grove Horizontal Property Regime, and such purchasers under said agreements having been approved for a purchase money real estate loan or in the event of a cash sale, at such time Purchaser's funds for purchase of the Unit are verified, at prices no less than the minimum prices required by Seller's construction lender. In the event the above pre-sale requirement is not met by March 1, 2006, Seller may, at its option, terminate this Agreement not later than sixty (60) days from such date in which event Seller shall refund all Earnest Money paid hereunder to Purchaser and neither party shall have any further rights or obligations hereunder.

27. DISCLOSURES. Purchaser acknowledges the following:

- (a) He or she has received and read the Regime Disclosure Package.
- (b) The Association budget provided to Purchaser is based on estimated expenses only and may increase or decrease significantly when the actual expenses of the Association become known.
- (c) The Regime is located adjacent to thoroughfares that may be affected by traffic and noise from time to time and may be improved and/or widened in the future.
- (d) The views from and natural light available to a Unit may change over time due to, among other circumstances, additional development and the removal or addition of landscaping.
- (e) No representations are made regarding the zoning of adjacent property, or that the category to which adjacent property is zoned may not change in the future.
- (f) No representations are made regarding the schools that currently or may in the future serve the Regime.
- (g) Since in every community there are conditions which different people may find objectionable, Purchaser acknowledges that there may be conditions outside of the Regime that Purchaser may find objectionable and that it shall be the sole responsibility of Purchaser to become acquainted with neighborhood conditions that could affect the Unit.
- (h) Plumbing and concrete, tile and hardwood surfaces within a Unit may transmit noise, and such noise shall not constitute a use of a Unit that interferes with or causes disruption to the use and quiet enjoyment of another Unit by its respective Owner and/or Occupant.
- (i) No representations are made that the Unit is or will be soundproof or that sound may not be transmitted from one Unit to another. Sound transmission between Units is inherent in multi-family construction and is not a warrantable condition.
- (j) The Regime floor plans and the dimensions and square footage calculations shown thereon are only approximations. Any purchaser who is concerned about any representations regarding the floor plans should do his/her own investigation as to the dimensions, measurements and square footage of his/her Unit.
- (k) Seller's agents may be renovating portions of the Regime and engaging in other construction activities related to the construction of common elements. Such renovation and construction activities may, from time to time, produce certain conditions on the Regime, including, without limitation: (i) noise or sound that is objectionable because of its volume, duration, frequency or shrillness; (ii) smoke; (iii) noxious, toxic, or corrosive fumes or gases; (iv) obnoxious odors; (v) dust, dirt or flying ash; (vi) unusual fire or explosion

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hazards; (vii) temporary interruption of utilities; and/or (viii) other conditions that may threaten the security or safety of persons on the Regime. Notwithstanding the foregoing, Purchaser agrees that such conditions on the Regime resulting from construction activities shall not be deemed a nuisance or discomfort to Purchaser and shall not cause Seller and its agents to be deemed in violation of any provision of the Master Deed.

(l) Mold and/or mildew can grow in any portion of the Regime that is exposed to elevated levels of moisture. The Association and each Regime unit owner agree to: (i) regularly inspect the parts of the Regime that they respectively maintain, and which are visible and accessible without having to first conduct invasive testing, for the existence of mold, mildew, and/or water intrusion and/or damage; (ii) upon discovery, immediately repair in a good and workmanlike condition the source of any water intrusion in the parts of the Regime that they respectively maintain; (iii) remediate or replace any building material located in the parts of the Regime that they respectively maintain that has absorbed water or moisture as a result of water intrusion; and (iv) promptly and regularly remediate all mold and/or mildew discovered in the parts of the Regime that they respectively maintain in accordance with current industry-accepted methods. In addition, the Association agrees to notify the Units Owners, and each Regime unit owner agrees to notify the Association of the discovery of mold, mildew, and/or water intrusion and/or damage in the parts of the Regime that they respectively maintain.

(m) Exposed concrete surfaces in portions of the Regime that are not heated and cooled are subject to cracking due to (i) water penetration, (ii) expansion and contraction of the concrete with temperature changes, and (iii) building settlement.

(n) Concrete surfaces in heated and cooled portions of the Regime are subject to cracking due to building settlement. Cracks smaller than one-half inch ($\frac{1}{2}$ ") are not warrantable conditions.

(o) The Unit may trap humidity created by general use and occupation of such space (cooking, bathing, laundering etc.). As a result, condensation may appear on the interior portion of windows and glass surfaces and fogging of windows and glass surfaces may occur due to temperature disparities between the interior and exterior portions of the windows and glass. If left unattended and not properly maintained by Purchaser, the condensation may increase resulting in staining, damage to surrounding seals, caulk, paint, wood work and sheetrock, and potentially mold and/or mildew (see subparagraph 17(e) of the Master Deed).

(p) Balcony rails are made of wood and will need to be repainted and replaced periodically.

(q) Seller shall not be responsible for responding to or taking any affirmative action on behalf of the Association or an individual member of the Association to mitigate, alleviate, remedy or cure any off-site conditions that may directly impact the Regime or any portion thereof, and such inaction by the Seller shall not constitute a breach of fiduciary duty by the directors and officers of the Association that are appointed by the Seller, pursuant to Article III, Part A, Section 2 of the Bylaws of the Association.

(r) While the drainage system for surface water runoff on the Regime is constructed in accordance with applicable governmental standards, the Regime may still be subject to erosion and/or flooding during unusually intense or prolonged periods of rain.

(s) Purchaser hereby grants Seller the right to obtain and use photography of the Regime (including the Unit) for publication and advertising purposes.

(t) Purchaser consents to the Seller changing, in its sole discretion, the Regime name and the street names and addresses in the Regime including the street address of the Unit before or after closing.

(u) Purchaser acknowledges that the performance and methods and practices of operating heating

Purchase Agreement2

and cooling systems can be directly affected by the orientation and location of a room or Unit in relation to the sun. Seller shall, therefore, have no obligation other than to install a heating and cooling system at the Unit which has been sized and designed based on industry standards for the type and size of unit to be constructed and which functions in accordance with industry standards.

(v) The cost of upgrades may not necessarily result in a commensurate increase in the value of the Unit.

(w) No representations are made that the systems in the Unit including, by way of example only, heating and air conditioning and electrical systems will operate or perform at a level or standard greater than the minimum specifications of the manufacturer.

28. **RESALE RESTRICTIONS.** Purchaser and Seller agree, and the special warranty deed to Purchaser shall provide, that for a period of twelve (12) months from the date of closing, neither the Purchaser nor any successor-in-title may transfer or convey any interest in the Unit to any third party. Notwithstanding the foregoing, Purchaser may offer to convey the Unit to Seller for the Total Purchase Price, and Purchaser shall pay all closing costs; provided, however, Seller shall not be obligated to accept such offer (hereinafter referred to as "Seller's Right to Repurchase").

(a) **Notice.** If Purchaser or any authorized successors-in-title to Purchaser desires to transfer title to the Unit under circumstances triggering Seller's Right to Repurchase hereunder, the party proposing to transfer title shall deliver to Seller written notice of such intent. The Unit shall be offered for sale to Seller at the Total Purchase Price. Any such transfer of title to any party other than Seller as required hereunder shall be null and void. Seller shall have ten (10) days after receipt of notice to elect to exercise Seller's Right to Repurchase.

(b) **Exercise.** If Seller elects to exercise Seller's Right to Repurchase, it shall do so by delivering written notice of election to the party proposing the transfer within ten (10) days of receipt of the written notice. Closing shall occur within forty-five (45) days after the date of receipt of Seller's notice of its exercise of Seller's Right to Repurchase (the exact date, time, and location of closing of the repurchase to be selected by Seller). Reconveyance of the Unit to Seller shall be by special warranty deed (subject to the same exceptions to title set forth in the special warranty deed to Purchaser and subject to the standard and customary easements that do not hinder the use or development and/or construction of improvements upon the Unit or any portion thereof). The owner of the Unit shall pay all closing costs incurred in the closing. On or before closing, the owner of the Unit shall be required to pay any and all outstanding assessments or other charges due and owing under the Master Deed and shall cure or cause to be cured all title defects or title exceptions not existing at the time Purchaser acquired the Unit from Seller. If the title proposed to be reconveyed to Seller is subject to any defect not permitted in this Paragraph, Seller, in addition to all other rights and remedies which it may have at law or in equity, may remove such defect and deduct all costs and expenses incurred by Seller (including, but not limited to, reasonable attorney's fees) from the amount of the repurchase price otherwise payable as provided in this Paragraph. Upon reconveyance, Seller shall pay to the owner of the Unit the Total Purchase Price in funds immediately available in the Charleston County, South Carolina area. Ad valorem taxes and assessments shall be prorated as of 12:01 a.m. on the date of such reconveyance.

(c) **Failure to Exercise.** The failure of Seller to exercise Seller's Right to Repurchase provided in this Agreement against Purchaser or any other party shall not constitute a waiver of such Seller's rights granted herein against Purchaser or any other party.

(d) **Termination of Seller's Right to Repurchase.** Seller's Right to Repurchase and the resale restriction granted in the first sentence of Paragraph 28 above shall automatically terminate twelve (12)

months after the date of closing on a Unit, or upon the recordation of a written document terminating such rights signed by Seller. After termination has occurred as provided above and upon submission to Seller of a written request by Purchaser or Purchaser's successor-in-title and a release in form and content satisfactory to Seller, Seller shall provide to Purchaser an executed release of Seller's Right to Repurchase in recordable form. Neither issuance nor recordation of such release shall be necessary to terminate such rights after the twelve (12) month period has elapsed.

(e) Exclusions. Seller's Right to Repurchase shall not apply to a transfer of the Unit by Purchaser to a leasehold tenant, the spouse of Purchaser, a person who is in direct lineal descendant of Purchaser, a trust whose beneficiaries are solely the spouse and direct lineal descendant's of Purchaser, an entity which Purchaser owns, directly or indirectly, not less than fifty-one percent (51%) of such entity, a person acquiring title pursuant to a foreclosure sale, or a person acquiring title by means of sale in lieu of foreclosure. Purchaser shall give Seller at least ten (10) calendar days notice prior to any of the transfers detailed within this subsection together with sufficient documentation to establish that the transfer is one of these exclusions.

(f) Mortgage Subordination. The special warranty deed transferring title of a Unit to Purchaser shall provide that Seller's Right to Repurchase is subordinate to any record mortgage made in good faith for value securing a bona fide mortgage on the Unit.

29. ADVERTISING. Prior to closing, Purchaser is prohibited from listing or advertising the Unit for sale in any real estate listing service and/or publication, on any online electronic medium and on any radio, television or any other medium for advertising.

30. EXHIBITS AND ADDENDA. The following Exhibits and/or Addenda are attached hereto and by reference made a part hereof: Exhibit "A" - Regime Legal Description; Exhibit "B" - Unit Floor Plan; Exhibit "C" - Financing (choose one); Exhibit "D" - Selling Broker (if necessary); Exhibit "E" - Standard Specifications for Unit Completion, Exhibit "F" - Upgrade Finish Items and Options; and Exhibit "G" - Warranty.

31. OFFER. This Agreement, as executed by Purchaser, shall constitute an offer to Seller. Seller may accept the same, if at all, by delivering to Purchaser at least one executed original or copy of this Agreement prior to the time that Purchaser shall notify Seller, in writing, of Purchaser's revocation of this offer. The date of this Agreement is the date of execution by Seller.

32. SPECIAL STIPULATIONS. The following stipulations, if in conflict with any preceding provision, shall control:

(a) Purchaser further understands and acknowledges that pursuant to the Master Deed, Seller shall assign and Purchaser shall accept garage space number(s) _____ as limited common element(s) appurtenant to such Unit.

[SIGNATURES ON NEXT PAGE]

Date: _____

PURCHASER(S):

Print Name: _____

Print Name: _____

Address: _____

Phone: (W) _____; (H) _____

Facsimile: _____

E-mail: _____

Date: _____

SELLER:

LONG GROVE VISTA, LLC,
a Georgia limited liability company

By: _____

Name: _____

Title: _____

Address: _____

Phone: _____

Facsimile: _____

E-mail: _____

LISTING BROKER: THE BEACH COMPANY

By: _____

Broker or Affiliated Licensee

Print or Type Name: _____

Phone: _____

Facsimile: _____

E-mail: _____

Broker Code: _____

SELLING BROKER:

By: _____

Broker or Affiliated Licensee

Print or Type Name: _____

Phone: _____

Facsimile: _____

E-mail: _____

Broker Code: _____

EXHIBIT "A"

REGIME LEGAL DESCRIPTION

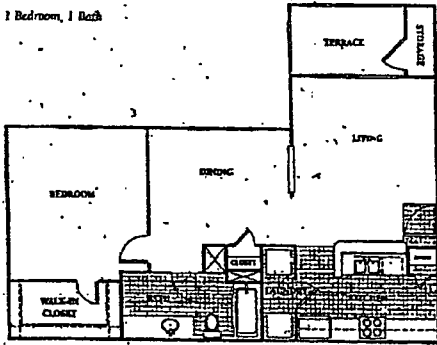
All that piece, parcel or tract of land, with the buildings and improvements thereon, situate, lying and being in the Town of Mt. Pleasant, County of Charleston, State of South Carolina, shown and designated as "PARCEL G" on a plat entitled "PLAT OF PROPERTY LINE ADJUSTMENT BETWEEN PARCEL G ABOUT TO BE CONVEYED TO LONG GROVE AT SEASIDE FARMS, L.L.C. AND TRACT A-1 OWNED BY THE BEACH COMPANY SEASIDE FARMS" prepared by Thomas & Hutton Engineering Co., dated May 8, 2000, and recorded June 1, 2000, in Plat Book EE, Page 49 in the RMC Office for Charleston County, reference to said plat being craved for a more complete description.

Purchase Agreement2
11523-003

EXHIBIT "B"

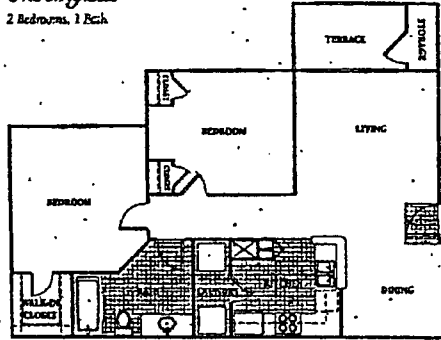
UNIT FLOOR PLAN†

The Gloria
1 Bedroom, 1 Bath



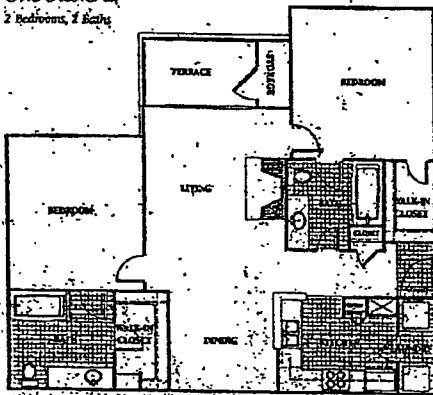
Buyer Acknowledgement: _____
Date: _____

The Majestic
2 Bedrooms, 1 Bath



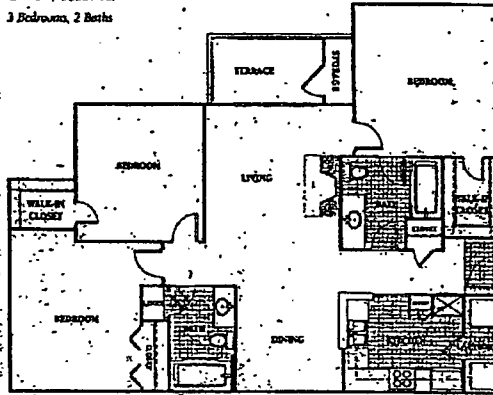
Buyer Acknowledgement: _____
Date: _____

The Riviera
2 Bedrooms, 1 Bath



Buyer Acknowledgement: _____
Date: _____

The Victoria
3 Bedrooms, 2 Baths



Buyer Acknowledgement: _____
Date: _____

† The floor plans and the dimensions and square footage calculations shown hereon are only approximations. Any Purchaser who is concerned about any representations regarding the floor plans should do his/her own investigation as to the layout, appliances, fixtures, dimensions, measurements and square footage of his/her Unit.

Purchase Agreement 2
11523-003

EXHIBIT "C"

NO FINANCING REQUIRED

The following shall control over any inconsistent provision contained in the Purchase Agreement:

Purchaser represents to Seller that no mortgage financing is necessary or desirable for Purchaser to complete this transaction and that Purchaser does not desire for this Agreement to be contingent upon his ability to obtain financing. Purchaser agrees to provide Seller with a letter from a bank or financial institution on or before ten (10) business days from the date of Seller's acceptance of this Agreement verifying that Purchaser has sufficient funds to close the sale of the Unit. In the event Purchaser elects to obtain mortgage financing for the purchase of the Unit, this Agreement shall not be contingent on financing and the financing shall not delay the closing of the sale of the Unit.

PURCHASER(S):

Print Name: _____

Print Name: _____

EXHIBIT "C"

FINANCING CONTINGENCY

The following financing contingency shall control over any inconsistent provision contained in the Purchase Agreement:

This Agreement is made conditioned upon Purchaser's ability to obtain a loan in the principal amount of not less than \$ _____ for a term of not less than _____ () years, with an interest rate of not more than the "Market Rate" on the unpaid balance. As used herein, "Market Rate" shall mean the publicly announced rate by Wachovia Bank, N.A., during the financing contingency period, as set forth below, for purchase money mortgages for a thirty (30) year fixed rate mortgage, for the intended use set forth in Paragraph 8 above, which rate may not be the lowest or best lending rate made available by Wachovia Bank, N.A. Such loan is to be secured by a first lien on the Unit. Purchaser covenants to apply for such loan on or before seven (7) days from the date of Seller's acceptance of this Agreement to notify Seller and/or Seller's agent of such application, and to pursue such application diligently. In the event Purchaser fails to apply for such loan within such period, or does not diligently furnish requested loan information within Purchaser's control within two (2) days of the request therefor, Purchaser shall be in default hereunder and Seller, at its option, may terminate this Agreement and Holder shall disburse to Seller the Earnest Money as fixed and full liquidated damages and not as a penalty. Purchaser agrees to cooperate fully with Seller and the lender in processing the loan application. Seller or its designated agent is authorized to contact such lender from time to time regarding the status of said loan. "Ability to obtain" as used herein means that Purchaser is qualified to receive the loan described herein based upon lender's customary and standard underwriting criteria. If Purchaser has the ability to obtain the loan referenced herein, Purchaser warrants that, at closing, Purchaser will have sufficient cash to complete the purchase of the Unit. Purchaser further warrants that unless otherwise specified herein, Purchaser does not need to sell or lease other real property in order to complete the purchase of the Unit.

Purchaser shall provide Seller with written evidence of approval for a loan for purchase of the Unit under the terms and conditions set forth in this Agreement on or before fourteen (14) days from the date of Seller's acceptance of this Agreement. Upon receipt of evidence of loan approval by Seller, this financing contingency shall no longer apply. In the event the loan is disapproved and evidence of such disapproval is provided to Seller within said fourteen (14) day period, then Purchaser may terminate the Agreement, Holder shall return the Earnest Money, to Purchaser, and Seller shall return the Total Upgrade Deposit, if any, to Purchaser, and all further rights, obligations and liabilities created hereunder shall be deemed terminated and of no further force and effect. Should Purchaser not provide evidence of approval or disapproval of loan within said fourteen (14) day period, this financing contingency shall not apply, this transaction shall be considered an all cash transaction, Seller shall not pay any closing costs, and if the Purchaser is unable to obtain financing by the closing date, the Earnest Money shall be disbursed by Holder to Seller and the Total Upgrade Deposit, if any, shall be retained by Seller. Purchaser agrees that a loan with terms consistent with those set forth herein shall satisfy this financing contingency.

Purchaser may also apply for a loan with terms and conditions that are different from those set forth herein and close the transaction provided that: (a) all other terms and conditions of this Agreement are fulfilled; and (b) the new loan does not increase the costs charged to the Seller. In the event that Purchaser provides Seller with evidence of approval for a loan for the purchase of the Unit that is not consistent with the terms and conditions set forth herein, Purchaser shall be deemed to have waived this financing contingency. Purchaser shall be obligated to close this transaction if Purchaser has the ability to obtain a loan with terms and conditions set forth herein and/or any other loan for which Purchaser has applied and been approved.

In the event Purchaser applies for financing from a lender that is not a lender preapproved by Seller, this financing contingency shall not apply, this transaction shall be considered an all cash transaction, Seller shall not pay any closing costs, and if the Purchaser is unable to obtain financing by the closing date, the Earnest Money shall be disbursed by Holder to Seller and the Total Upgrade Deposit, if any, shall be retained by Seller as provided in Paragraph 12(b) of this Agreement.

PURCHASER(S):

Print Name: _____

Print Name: _____

EXHIBIT "D"
SELLING BROKER RELATIONSHIP
[TO BE ATTACHED BY LISTING BROKER]

Purchase Agreement2
11523-003

EXHIBIT "E"

STANDARD SPECIFICATIONS FOR UNIT COMPLETION

Builder Standard Package:

- Tile to be Installed in Kitchen, all Bathrooms and Foyer Area
- New Carpet in Living Room, Dining Room, Hallway(s) and Bedroom(s) (if applicable)
- Freshly Painted Interior

403749-1

[SAMPLE-SELLER ENCOURAGED TO INCORPORATE CUSTOMIZED EXHIBIT]
EXHIBIT "F"

UPGRADE FINISH ITEMS AND OPTIONS

<u>Description of Upgrade</u>	<u>Cost of Upgrade</u>
1. _____	\$ _____
2. _____	\$ _____
3. _____	\$ _____
4. _____	\$ _____
5. _____	\$ _____
6. _____	\$ _____
7. _____	\$ _____
8. _____	\$ _____
9. _____	\$ _____
10. _____	\$ _____

Seller and Purchaser each intending to be legally bound, do hereby covenant and agree that the Total Purchase Price set forth in Paragraph 2 of this Agreement shall include the Total Upgrade Amount set forth in this Exhibit "F."

TOTAL UPGRADE AMOUNT: \$ _____

TOTAL UPGRADE DEPOSIT: (\$ _____)

BALANCE OWED ON TOTAL UPGRADE AMOUNT BY _____ : \$ _____

Date: _____

Purchaser Signature: _____

Date: _____

Purchaser Signature: _____

Date: _____

Seller Signature: _____

[OPTIONAL: IF UNIT OCCUPIED BY A TENANT]

ADDENDUM TO THE LONG GROVE HORIZONTAL PROPERTY REGIME
PURCHASE AGREEMENT
WHEN UNIT OCCUPIED BY TENANT

This is an Addendum (hereinafter referred to as the "Addendum") to the LONG GROVE HORIZONTAL PROPERTY REGIME PURCHASE AGREEMENT for the purchase and sale of Unit _____ of the Long Grove Horizontal Property Regime (hereinafter referred to as the "Purchase Agreement") by and between LONG GROVE VISTA, LLC, a Georgia limited liability company (hereinafter referred to as the "Seller") and _____ (hereinafter referred to as the "Purchaser/s").

Seller and Purchaser, each intending to be legally bound, do hereby covenant and agree as follows:

1. Terms used in this Addendum shall have the same meaning given to such terms in the Purchase Agreement.
2. This Addendum is an integral part of the Purchase Agreement and shall form a part thereof.
3. In the event of a conflict between the terms and provisions of this Addendum and the terms and conditions of the Purchase Agreement, the terms and provisions of this Addendum shall prevail and survive the closing.
4. The Purchase Agreement is hereby amended to add the following:

Purchaser acknowledges and understands that there is currently a tenant residing in the Unit to be purchased. Under provisions § 27-31-10 *et seq.* of the Code of Laws of South Carolina (hereinafter referred to as the "South Carolina Horizontal Property Act"), the tenant has the right to at least ninety (90) days notice (or at least one hundred twenty (120) days if the tenant is over the age of fifty-nine (59)), if the term of the lease is longer, prior to being required to vacate the Unit. The tenant also has the right to purchase the Unit for a period of sixty (60) days after delivery of an initial offer from Seller. Thereafter, during the fifteen (15) days following such sixty (60) day period (or fifty (50) days if the tenant is over the age of fifty-nine (59)), Seller may not sell the Unit to any other person at a price or on terms more favorable than the price or terms initially offered to the tenant, without first delivering the same offer to the tenant. In that event, the tenant will have ten (10) days to deliver acceptance of any such offer before the Unit is sold to Purchaser. Because of the tenant's rights set forth above, Purchaser acknowledges that this Purchase Agreement will be effective only if the tenant does not exercise tenant's right to purchase the Unit as set forth above. If tenant exercises the right to purchase the Unit, this Purchase Agreement shall be null and void and of no further force and effect, all Earnest Money shall be returned to Purchaser and all parties shall be relieved of their respective obligations. If tenant does not exercise the right to purchase, then this Purchase Agreement shall remain in full force and effect, and Purchaser shall purchase the Unit subject to tenant's rights of occupancy. Purchaser shall assume all of landlord's rights and obligations under tenant's lease and South Carolina statutes. Notwithstanding the foregoing, Purchaser acknowledges that Seller does not guarantee the tenancy of the Unit by tenant for the entire period of tenant's lease. Purchaser hereby acknowledges receipt of a copy of the lease and all documents pertaining to the Unit.

Purchaser agrees to apply for financing prior to the date on which the tenant's right to purchase the Unit expires. In consideration, the Seller agrees to reimburse Purchaser for application fees incurred only if the tenant then exercises its right to purchase the Unit. In the event the Purchase Agreement herein is exercised, Purchaser will then pay all mortgage and closing costs as per the Purchase Agreement.

5. Except as provided above, the Purchase Agreement is not altered or amended hereby and remains in full force and effect according to the terms hereof.

IN WITNESS WHEREOF, the parties have hereunto affixed their respective hands and seals on the day and year set forth under the respective names.

WITNESSES:

PURCHASER

Date: _____

PURCHASER

Date: _____

SELLER

Date: _____

LONG GROVE PROPERTY OWNERS ASSOCIATION, INC.

ESTIMATED ASSESSMENT FOR UNIT TYPES

Fiscal Year 1

<u>Unit Type</u>	<u>Designation</u>	<u>No. of Units</u>	<u>S.F.</u>	<u>Total S.F.</u>	<u>% Ownership</u>	<u>Annual Fee</u>	<u>Monthly Fee</u>
1x1	A	68	780	53,040	0.00290	\$1,871.48	\$155.96
2 x 1	B	40	855	34,200	0.00318	\$2,051.43	\$170.95
2 x 2	C	96	1,040	99,840	0.00387	\$2,495.30	\$207.94
3 x 2	D	68	1,200	81,600	0.00447	\$2,879.19	\$239.93
Total/Average:		272		268,680			
HOA Fees per Sq. Ft. w/ Reserves at 10% of Annual Budget						\$2.40	\$0.20

LONG GROVE PROPERTY OWNERS ASSOCIATION, INC.

ESTIMATED OPERATING BUDGET

Fiscal Year 1

WITH RESERVES AT 10% OF ANNUAL BUDGET

EXPENDITURE

MANAGEMENT FEE	\$4,625.00	\$55,500.00
On-Site Supervision	\$2,080.00	\$24,960.00
LABOR		
Maintenance Staff	\$2,773.33	\$33,280.00
Janitorial Staff	\$1,733.33	\$20,800.00
Receiving	N/A	N/A
Pool Attendant	N/A	N/A
Front Desk	N/A	N/A
Concierge	N/A	N/A
Labor Extras Benefits Etc	\$2,634.75	\$31,617.00
TOTAL MANAGEMENT & LABOR	\$13,846.42	\$166,157.00
ADMINISTRATIVE EXPENSES		
Audit/Tax Preparation	\$250.00	\$3,000.00
Attorney's Fees	\$400.00	\$4,800.00
Bookkeeping	\$0.00	\$0.00
Corporate Filing Fees-Annual Report	\$50.00	\$600.00
Fees Payable to Division	\$90.83	\$1,090.00
Fees/ Permits	\$41.67	\$500.00
Office Expenses/Fax & copier	\$100.00	\$1,200.00
Office Expenses - General Admin	\$250.00	\$3,000.00
Pool Permits	\$41.67	\$500.00
Insurance Appraisal	\$83.33	\$1,000.00
TOTAL ADMINISTRATIVE EXPENSES	\$1,307.50	\$15,690.00
INSURANCE	\$15,833.33	\$190,000.00
CONTRACT SERVICES		
Access System Maintenance	N/A	N/A
Cable TV Service	\$50.00	\$600.00
Carpet Cleaning	N/A	N/A
Driveway/Paver Maintenance	N/A	N/A
Elevator Maintenance	N/A	N/A
Fertilization & Insect Control (Exterior)	\$166.67	\$2,000.00
Floor Contract Maintenance Hard Surface	\$25.00	\$300.00
Fitness Center Maintenance	\$50.00	\$600.00
HVAC System Maintenance	\$100.00	\$1,200.00
Irrigation Maintenance	N/A	N/A
Landscape Maintenance Interior	N/A	N/A

Landscape Maintenance	\$2,750.00	\$33,000.00
Annual Flower Change Out	\$450.00	\$5,400.00
Annual Mulch	\$1,291.67	\$15,500.00
Life Safety Equipment	\$183.33	\$2,200.00
Patrol Service	\$750.00	\$9,000.00
Pest Control Service (Termite Contract)	\$566.67	\$6,800.00
Pressure Washing	\$583.33	\$7,000.00
Pool Chemical Equipment Maint	\$66.67	\$800.00
Pool/Spa Fountain Maint.	\$200.00	\$2,400.00
Parking lot Maintenance	\$100.00	\$1,200.00
Trash Chute Cleaning	N/A	N/A
Trash Collection	\$916.67	\$11,000.00
Window Cleaning	N/A	N/A
TOTAL CONTRACTS	\$8,250.00	\$99,000.00
SUPPLIES & REPAIRS		
Access System Repairs	N/A	N/A
Building Maintenance	\$541.67	\$6,500.00
Recreation Supplies	\$200.00	\$2,400.00
Electrical Supplies & Repairs	\$333.33	\$4,000.00
Janitorial Supplies	\$300.00	\$3,600.00
Miscellaneous Equipment Repair	\$100.00	\$1,200.00
Painting	\$200.00	\$2,400.00
Pool Supplies	\$200.00	\$2,400.00
Plumbing Supplies	\$300.00	\$3,600.00
Signage	N/A	N/A
Site Communications	N/A	N/A
Staff Uniforms	N/A	N/A
Tree Trimming	\$300.00	\$3,600.00
TOTAL SUPPLIES & REPAIR	\$2,475.00	\$29,700.00
UTILITIES		
Electricity	\$3,416.67	\$41,000.00
Natural Gas	N/A	N/A
Telephones	\$333.33	\$4,000.00
Common Area Water/Sewer	\$916.67	\$11,000.00
Storm Water Assess Fee	\$83.33	\$1,000.00
TOTAL UTILITIES	\$4,750.00	\$57,000.00
OTHER EXPENSES		
Contingency	\$1,000.00	\$12,000.00
PUD Fees	\$1,375.00	\$16,500.00
Misc		
TOTAL EXPENSES W/OUT RESERVES	\$48,837.25	\$586,047.00
SET ASIDE FOR RESERVES AT 10% OF BUDGET	\$4,883.73	\$58,604.70
TOTAL EXPENSES WITH RESERVES	\$53,720.98	\$644,651.70

LONG GROVE PROPERTY OWNERS ASSOCIATION, INC
 Capital Expenditures and Deferred Maintenance Reserve Analysis

<u>Building Component</u>	<u>Actual Age</u>	<u>Expected Life</u>	<u>Remaining Useful Life</u>	<u>Estimated Replacement Cost</u>	<u>Annual Reserves</u>
Roofing	5	50	45	\$750,000	\$16,667
Structure	5	40	35	\$1,750,000	\$50,000
Fire Protection	5	30	25	\$250,000	\$10,000
Mechanical HVAC	5	25	20	\$10,000	\$500
Plumbing	5	40	35	\$750,000	\$21,429
Electrical	5	30	25	\$800,000	\$32,000
Pool	5	40	35	\$50,000	\$1,429
Pool Surface & Equipment	5	10	5	\$19,800	\$3,960
Pavement & Parking					
Areas Foundation	5	25	25	\$200,000	\$8,000
Pavement & Parking					
Areas Surface	0	5	5	\$39,600	\$7,920
Drainage	5	40	35	\$150,000	\$4,286
Exterior Paint	0	5	5	\$115,000	\$23,000
Total Reserves				\$4,884,400	\$179,190

Long Grove Condominiums

Address:		Amenities:				Value:	
Number	BR / BA	Sq. Ft.	Fireplace	Screened Patio	Spec Package	Upgrade Package	Total Value
222	1 / 1	780				\$11,000.00	\$179,900.00
322	1 / 1	780		√			\$174,900.00
622	1 / 1	780		√	√		\$169,900.00
628	1 / 1	780		√	√		\$169,900.00
822	1 / 1	780		√			\$169,900.00
1012	1 / 1	780		√			\$169,900.00
1018	1 / 1	780		√			\$169,900.00
1022	1 / 1	780		√	√		\$171,900.00
1312	1 / 1	780		√	√		\$171,900.00
1322	1 / 1	780		√			\$174,900.00
1412	1 / 1	780			√		\$170,900.00
1522	1 / 1	780		√			\$169,900.00
1622	1 / 1	780			√		\$173,900.00
1728	1 / 1	780		√			\$169,900.00
214	2 / 1	855					\$186,900.00
216	2 / 1	855			√		\$186,900.00
226	2 / 1	855					\$188,900.00
324	2 / 1	855		√		\$11,000.00	\$205,900.00
414	2 / 1	855			√		\$186,900.00
416	2 / 1	855					\$186,900.00
516	2 / 1	855		√	√		\$191,900.00
1124	2 / 1	855					\$188,900.00
1126	2 / 1	855			√		\$183,900.00
1314	2 / 1	855		√			\$191,900.00
1324	2 / 1	855		√			\$194,900.00
1416	2 / 1	855					\$190,900.00
1426	2 / 1	855			√		\$193,900.00
225	2 / 2	1040	√			\$12,000.00	\$219,900.00
724	2 / 2	1040		√	√		\$210,900.00
816	2 / 2	1040					\$207,900.00
1015	2 / 2	1040					\$204,900.00
1514	2 / 2	1040		√			\$208,900.00
1516	2 / 2	1040		√	√		\$208,900.00
1715	2 / 2	1040			√		\$204,900.00
1726	2 / 2	1040		√			\$210,900.00

Long Grove Condominiums

<i>Address:</i>			<i>Amenities:</i>			<i>Value:</i>	
Number	BR / BA	Sq. Ft.	Fireplace	Screened Patio	Spec Unit	Upgrade Package	Total Value
121	3 / 2	1200	√				\$242,900.00
217	3 / 2	1200			√		\$234,900.00
321	3 / 2	1200	√				\$237,900.00
411	3 / 2	1200		√			\$235,900.00
417	3 / 2	1200		√			\$235,900.00
517	3 / 2	1200					\$234,900.00
621	3 / 2	1200			√		\$234,900.00
827	3 / 2	1200		√			\$235,900.00
911	3 / 2	1200			√		\$234,900.00
921	3 / 2	1200	√		√		\$237,900.00
927	3 / 2	1200	√				\$237,900.00
1327	3 / 2	1200	√		√		\$237,900.00
1421	3 / 2	1200	√			\$12,000.00	\$249,900.00
1517	3 / 2	1200					\$234,900.00
1521	3 / 2	1200					\$234,900.00
1717	3 / 2	1200			√		\$234,900.00
1727	3 / 2	1200					\$234,900.00

*All prices and availability subject to change without notice

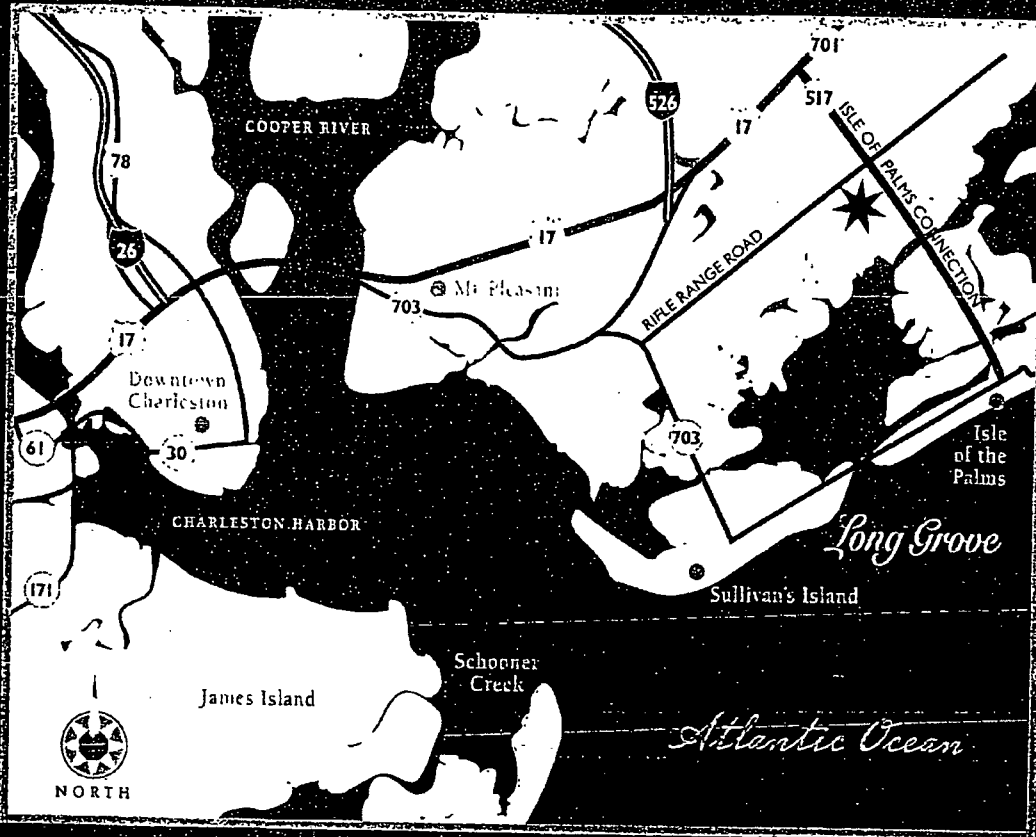
Long Grove Condominiums

<i>Address:</i>		<i>Amenities:</i>			<i>Value:</i>	
Number	BR / BA	Sq. Ft.	Fireplace	Screened Patio	Investor Reduction	Total Value
112	1 / 1	780		√	\$2,000.00	\$169,900.00
422	1 / 1	780			\$2,000.00	\$166,900.00
528	1 / 1	780		√	\$2,000.00	\$172,900.00
1218	1 / 1	780			\$2,000.00	\$168,900.00
1122	1 / 1	780			\$2,000.00	\$166,900.00
314	2 / 1	855		√	\$2,000.00	\$189,900.00
316	2 / 1	855		√	\$2,000.00	\$189,900.00
1226	2 / 1	855			\$2,000.00	\$191,900.00
714	2 / 2	1040		√	\$2,000.00	\$205,900.00
1615	2 / 2	1040			\$2,000.00	\$201,900.00
113	2 / 2	1040			\$2,000.00	\$204,900.00

*All prices and availability subject to change without notice

**All investor units being sold in "as-is" condition

It couldn't be easier!



DIRECTIONS

Long Grove is conveniently located within Seaside Farms of Mt. Pleasant. Take 17 North into Mt. Pleasant. Turn right on the Isle of Palms Connector (517) toward the beach. After passing Rifle Range Road, turn right on Riviera Drive into Seaside Farms. At the stop sign, turn left on Long Grove Drive. The entrance to Long Grove Condominiums will be on your right.



Long Grove
AT SEASIDE FARMS

www.LongGroveCondos.com

(843) 277-1555 - 1600 Long Grove Drive - Mt. Pleasant, SC 29464

A DEVELOPMENT OF
VISTA REALTY PARTNERS

ALL INFORMATION IS BELIEVED TO BE ACCURATE BUT IS NOT WARRANTED. OFFERS SUBJECT TO CHANGE WITHOUT NOTICE.



omanick, Danielle @ Oak Brook

From: Hudson Hooks [HH@Vistarp.com]
Sent: Tuesday, November 09, 2004 8:39 AM
To: Given, Robert @ Miami
Subject: RE: Online Access: Long Grove Apts, Mt. Pleasant, South Carolina

Robert the password given does not work. Thanks

Hudson Hooks
VP Development
Vista Realty Partners
404-995-4446 Ext. 123
404-995-4439 (fax)
404-734-4604 (cell)

-----Original Message-----

From: Given, Robert @ Miami [mailto:Robert.Given@cbre.com]
Sent: Monday, November 08, 2004 5:21 PM
To: Mr. Hudson Hooks
Subject: Online Access: Long Grove Apts, Mt. Pleasant, South Carolina

Dear Hudson:

Thank you for your continued interest in Long Grove Apartments, a 272-unit apartment community located in Mt. Pleasant, South Carolina. To access the all offering materials, please click on the link below:

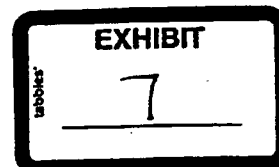
www.cbre.com/lgrove

Please note that the materials are password protected and are only accessible by using the following password:
272lgrove

We believe this asset represents a compelling investment opportunity for the following reasons:

1. The site encompasses 19.44 acres with a density of 14 units per acre. The buildings have pitched roofs with brick and lap siding exteriors. All buildings are three story and elevated six feet off the ground enhancing privacy and views. Units feature 9-foot ceilings, oversized windows, laundry rooms with full-size connections, fireplaces are in select units, the kitchens have white appliance packages on white raised panel cabinets, and all units have cutting edge high speed internet access, cable television and telephone technology.
2. Seaside Farms has a warm village atmosphere only two minutes from some of South Carolina's best white sandy beaches, convenient to the area's abundant fine restaurants and entertainment, one mile from Interstate 526 and only fifteen minutes from Charleston's Historic and Central Business Districts.
3. The unit mix at Long Grove is ideal with 25% one bedrooms, 50% Two bedrooms, and 25% three bedrooms and would work well for a condominium conversion. Long Grove's scenic views and resort-style amenities such as

1



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concierge services, a 24-hour fitness center and an Olympic-size pool in a tropical setting, places Long Grove on par with brand-new condominium communities in Charleston County. With a proven track record, a strong operating performance, superb location in a unique sea-side area and a value-leading position among its condominium competitors, investors of Long Grove should enjoy significant investment returns.

4. The closest active condominium conversion is Daniel's Landing, which reports sales between \$148,000 & \$266,000, or averaging over \$170 per foot. There are examples of newer multi-housing product that have sold over \$180 per foot in the area.

For more information about the property, please contact.

MIAMI OFFICE

Robert E. Given, Jr.
Vice President
305.381.6445
robert.given@ljamelody.com

ATLANTA OFFICE

John J. Farrell
Director
770.730.3668
john.farrell@ljamelody.com

Robert J. LaChapelle
Managing Director
770.730.3670
robert.lachapelle@ljamelody.com

Richard T. Jordan
Director
770.730.3659
richard.jordan@ljamelody.com

THE BEACH COMPANY

William Shanaman
843.722.2615
bshanaman@thebeachcompany.com



December 10, 2004

Robert Given
L.J. Melody
777 Brickell Avenue
Suite 900
Miami, FL 33131

Via fax

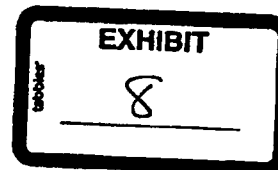
(305) 381-6445
(305) 381-6455 Fax

Re: *Purchase and Sale of "Long Grove Apartments" 272-units, located at 1600 Long Grove Drive, Mt Pleasant, SC (hereinafter collectively referred to as the "Property").*

Dear Mr. Given:

This letter sets forth the basic economic terms and conditions under which *Vista Realty Partners, LLC*, or its affiliate designees (the "Purchaser") would be willing to acquire from your client or its designated affiliates (the "Seller") the Loan as more particularly described herein.

1. **Purchase Price:** The Purchase Price shall be Fifty Million Dollars (\$31,960,000).
2. **Earnest Money:** Purchaser shall deposit the sum of Five Hundred Thousand Dollars (\$200,000) as "Earnest Money" with a title company (the "Escrow Agent"), Ten Thousand Dollars (\$10,000) of which shall be paid within five (5) business days of the execution of a formal contract, and the remainder paid at the expiration of the Inspection Period. The Earnest Money shall be returned to Purchaser in the event that the transaction fails to close as a result of Seller's default or of any condition precedent to Purchaser's obligations under the Purchase Agreement not satisfied or waived by Purchaser. In the event the transaction fails to close due to Purchaser's default, Seller shall retain the deposit as liquidated damages in lieu of any other rights or remedies which Seller may have at law or in equity. Interest earned on the deposit shall be paid to Purchaser in all cases.
3. **Purchaser Inspection:** Purchaser's obligations under the Contract shall be subject to the satisfaction of the following conditions precedent:



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- a. Purchaser shall have approved the condition of title to the Property including zoning, title insurance commitment and indemnity of title insurer, the survey and documents to be finished by Seller;
- b. Purchaser shall be satisfied with the physical condition of the Property and utilities;
- c. Purchaser shall have approved all of the terms and conditions concerning the use, occupancy and financial feasibility of the Property in all respects;
- d. Purchaser shall be satisfied with any environmental investigations, studies, audits or other tests conducted to determine the existence of hazardous material on the Property;

If Purchaser shall notify Seller that any of the foregoing conditions precedent have not been satisfied in Purchaser's sole discretion prior to the end of fifteen (15) days after the execution of the Contract, (the "Inspection Period"), then the Contract shall terminate and neither party shall have any further obligations thereunder except that the earnest money and any interest thereon shall be returned to Purchaser.

Within five (5) business days after execution of this letter by both parties, Seller shall deliver to Purchaser copies of any and all of the following documents and records in its possession related to the operation and ownership of the Property:

- a. Title insurance policies and documents evidencing exceptions set forth in such policies.
- b. Ad valorem tax bills, notices, appraised valuations, protests, renderings, etc. for the past three years.
- c. Access rights, including without limitation, any easements.
- d. Third Party Environmental investigations, studies audits, etc., including without limitation, all written reports, correspondence and laboratory results from any testing of material or soil from the Property or improvements located thereon.
- e. All surveys of the Property.
- f. All licenses, permits and approvals.
- g. All year-end financial statements for the years 2003 and 2004. Monthly statements for 2003 and 2004.
- h. Latest Rent Roll for the Property.

- i. All stamped and approved construction plans and specs.
- j. All Certificates of Occupancy.
- k. Zoning certification letter and zoning compliance letter.

4. **Contract:** Within ten (10) business days after this letter agreement is countersigned by Seller, the parties shall enter into a Purchase Agreement (the "Contract") consistent with this letter. In the event both Purchaser and Seller do not execute the Contract within said time this letter agreement shall become null and void and of no further force and effect and neither party shall have any further rights or obligations to the other party. The Purchaser shall prepare the initial draft of the Contract.

5. **Closing:** The Closing of the sale and purchase of the Property shall take place on or before thirty (30) days after the end of the Inspection Period. At Closing, Seller shall convey to Purchaser good and marketable title to the Property by limited warranty deed and Purchaser shall pay to Seller the Purchase Price.

6. **Expenses:** Seller shall be responsible for all state, county and local transfer taxes, state, county and local deed fees, recording fees, documentary fees and taxes, title insurance premium and other customary Seller's expenses due, payable or incurred in connection with the transaction, if any. Purchaser shall be responsible for all survey expenses and all engineer's, accountants', and other pre-closing investigations, and all escrow fees. Purchaser and Seller shall each pay the fees and expenses of their respective legal counsel incurred in connection with the transaction.

7. **Prorations:** Accrued general real estate taxes, property income and expenses, and fees and the like, if any, will be prorated as of the Closing date. General real estate taxes will be prorated on the basis of the latest tax rate applied to the latest assessed valuation for the Property, subject to reapportionment when the actual amount of prorated taxes is known. All special assessments, if any, as of the Closing date will be paid by Seller, whether or not due prior to or after the Closing date.

Buyer shall have the option to acquire Seller's equity in lieu of a sale of the fee simple interest, in which event Buyer shall be entitled to a credit against the Purchase Price equal to the amount of Documentary stamp taxes that would otherwise have been paid by Seller on the Deed of Conveyance.

8. **Commission:** *LJmelody?* If a sale is consummated, the Commission earned and payable to ~~Appointed Realty Advisors~~ for services rendered shall be paid solely by the Seller and the Commission earned and payable to Purchaser's Broker for services rendered shall be paid solely by Purchaser. Both the Seller and Purchaser recognize that other than ~~Appointed Realty Advisors~~ and Purchaser's Broker, it has had no dealings, negotiations or consultations with any other broker, employee, representative, agent or other intermediary. Seller and Purchaser agree that each will indemnify,

LJmelody

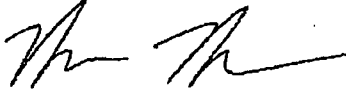
defend and hold the other brokers, their representatives, employees, agents or other intermediary claiming to have represented Seller of Purchaser respectively.

9. **Acceptance:** With the exception of the provisions of Paragraph 10 below, it is understood that this agreement is only meant to outline the basic terms and parameters of the transaction and is not a binding contract between Purchaser and Seller. With the exception of the provisions Paragraph 10, neither party shall be legally bound until such time as a written contract of sale incorporating the foregoing terms (and such other terms as may be agreed upon by the parties) shall have been executed and delivered by the parties hereto.

10. **Exclusivity:** In consideration of the Purchaser's efforts and expense in analyzing the acquisition of the Property, Seller agrees that as long as Purchaser is conducting investigations in accordance with this Letter or proceeding in good faith to negotiate the Agreement, Seller will not make, accept, negotiate or otherwise pursue any offers for the sale of the Property to anyone other than Purchaser. The exclusivity period provided for in this section is material to Purchaser's expenditure of any funds and resources in connection with the proposed acquisition of the Loan and shall be binding on the parties.

This letter constitutes an offer by the Purchaser open for acceptance by the Seller until 5:00 p.m. on the 18th day of December 2004. If a copy of this letter is not executed and returned to the undersigned on or before that date and time, the undersigned Purchaser reserves the right to withdraw this letter.

Sincerely,



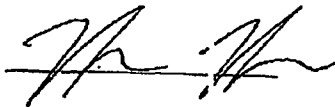
Hudson Hooks
Vice President

AGREED TO AND ATTESTED BY:

SELLER:

Title: _____
Date: _____

PURCHASER:
Vista Realty Partners, LLC
Hudson Hooks, VP



Date: 12/10/04

Romanick, Danielle @ Oak Brook

From: Given, Robert @ Miami
Sent: Tuesday, December 14, 2004 12:27 PM
To: Mr. Hudson Hooks
Cc: Farrell, John @ Atlanta Peachtree
Subject: BEST & FINAL INVITATION: LONG GROVE APTS

Attachments: LO8AA8~0.PDF; LONG_G~1.PDF; LONG_G~2.PDF

  
LO8AA8~0.PDF LONG_G~1.PD LONG_G~2.PD
(73 KB) F (75 KB) F (83 KB)

Dear Hudson:

The sellers of Long Grove Apartments have reviewed the initial round of bids from prospective purchasers. We are pleased to invite you to submit your "Best and Final" offer by 5:00 pm on FRIDAY, DECEMBER 17th, 2004.

Attached please find the Best & Final package of materials including the following:

The package includes:

- a) The Cover Letter
- b) Transaction Term Sheet- the seller is requiring the "Best and Final" offer be submitted utilizing the purchaser's form Letter of Intent.
- c) Buyer Questionnaire - the questionnaire is tailored to provide the seller with an understanding of your company's experience and business plan for the acquisition of this asset.

Please note that the seller is requiring all "Best and Final" offers be submitted by the end of business on December 17th, 2004. The "Best and Final" offers should be sent via fax or email to either Robert Given or Todd Weinstein.

Please see the attached information containing the aforementioned materials. If you have any questions, please do not hesitate to telephone Robert Given at 305-381-6445.

Sincerely,

Robert E. Given, Jr.
Vice President
305.381.6445
305.381.6455 (Fax)
robert.given@ljmelody.com

Todd Weinstein
Associate
305.381.6497
todd.weinstein@cbre.com

John J. Farrell
Director
770.730.3668
john.farrell@ljmelody.com



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Robert J. LaChapelle
Managing Director
770.730.3670
robert.lachapelle@ljmelody.com

Richard T. Jordan
Director
770.730.3659
richard.jordan@ljmelody.com

LONG GROVE at SEASIDE FARMS
TRANSACTION TERM SHEET

This transaction term sheet outlines the business terms offered by Purchaser with respect to the purchase of the Property identified below and, when countersigned by Seller, the business terms that ownership would be willing to recommend for internal approval. Until such time as a formal purchase and sale agreement is executed by Seller and Purchaser, all discussions are non-binding, and Seller has no obligations to negotiate in good faith or to proceed to the completion of such a purchase and sale agreement, except that Seller will not solicit further offers (although Seller may receive and review offers received from others on an unsolicited basis) or otherwise negotiate with others regarding sale of the Property unless Seller and Purchaser fail to execute a purchase and sale agreement on or before the date specified below. Regardless of the fact that Purchaser may elect to spend time, effort and expense based on this term sheet, Purchaser may not rely on this term sheet as creating any legal obligation of any kind of binding on Seller, except as expressly provided above, and Purchaser waives and releases Seller from any such obligation and expressly assumes the risk that the parties will fail to negotiate and execute a binding purchase and sale agreement regarding the Property.

Purchaser

{INSERT Purchaser Name}

Property

Long Grove at Seaside Farms, Mt. Pleasant, SC

Purchase Price

\$ _____
{INSERT Purchase Price}

In determining the purchase price, Purchaser expressly understands that Seller shall retain and reserve from the sale all (1) utility deposits and deposits with governmental and quasi-governmental authorities, (2) non-refundable tenant deposits such as cleaning fees, redecorating fees and pet fees, (3) initial inducement payments made to Seller by providers of telephone and cable service and the like, (4) rights to the name "The Beach Company", "The Beach Co." and The Beach Company trademark, and (5) right, title and interest in any website or domain names maintained by Seller or Seller's property manager with the respect to the Properties. In addition, Purchaser hereby certifies that the purchase price offered herein by Purchaser is based upon the assumption that the apartments located at the Property contain 265,368 air-conditioned square feet in the aggregate, plus the common areas.

Earnest Money Deposit	<p>\$ _____ {INSERT Earnest Money} Fifty percent (50%) of the earnest money must be posted at contract execution and fifty percent (50%) upon expiration of the due diligence period. One hundred percent (100%) of the earnest money will become non-refundable (except in the event of termination of the purchase and sale agreement due to Seller's default) upon expiration of the due diligence period, unless Purchaser has theretofore terminated the purchase and sale agreement.</p> <p>In addition, the Purchaser will post \$ _____ {INSERT Non-refundable Deposit} as a non-refundable deposit within 48 hours of contract execution, refundable only upon Seller's default.</p>
Contract Execution	A purchase and sale agreement covering the Property must be executed by Seller and Purchaser no later than January 7, 2005 . If such agreement has not been executed by the specified date, Seller may terminate and cancel any negotiations with Purchaser regarding the Property or any time thereafter.
Due Diligence Begins	Wednesday, January 7, 2005
Due Diligence Ends	Tuesday, February 1, 2005 No contingencies will remain beyond the expiration of the due diligence period.
Survey and Title Inspection	Seller shall deliver an existing Survey and current Title Commitment to Purchaser. Purchaser shall have until the date that is ten (10) business days prior to the expiration of the due diligence period to submit a survey/title objection letter. Otherwise, all title and survey matters shall be deemed approved.
Financing	This transaction is NOT contingent on Purchaser's ability to obtain financing.
Closing Date	On or before February 28, 2005.
Closing Costs	Seller will pay for any such closing costs as customarily paid by Seller's in Mt. Pleasant, S.C. Purchaser will pay for all other transaction costs, including any title endorsements or survey updates requested by Purchaser,

and all transfer taxes and recording costs. Purchaser and Seller will pay their own respective attorneys' fees.

Agency Representation and Disclosures

Purchaser acknowledges that The Beach Company/LJ Melody & Company represents the Seller only in this transaction and will be compensated by Seller per a separate agreement.

As-Is

The Property will be sold and purchased "as-is, where is, with all faults"; Seller will be released from all liabilities except those specifically arising under the purchase and sale agreement.

Submitted by:

By: _____

Name: _____

Title: _____

Accepted by:

THE BEACH COMPANIES

By: _____

Name: _____

Title: _____

Robert Given
Vice President

Investment Properties - Multi Housing
Group

LJ Melody & Company
117 Brantell Avenue, Suite 900
Miami, FL 33131 2807

305 374 1000 Tel
305 381 6455 Fax

robert.given@limeselody.com

VIA E-MAIL

Tuesday, December 14, 2004

Mr. Hudson Hooks
Vista Realty Partners
1360 Peachtree Street, NE
Atlanta, GA 30309

RE: LONG GROVE AT SEASIDE FARMS

Dear Hudson:

Thank you for the time and effort you have invested in evaluating Long Grove at Seaside Farms, located in Mt. Pleasant, South Carolina for possible acquisition. After carefully considering the initial offers, reputation, and financial capabilities of each prospective purchaser; Current Ownership and The Beach Companies/LJ Melody & Company are pleased to invite you to participate in the "Best and Final" process as outlined below. We request that you present your best and final offer by 5:00 PM ON FRIDAY, DECEMBER 17TH, 2004 via fax or e-mail to Robert Given.

The process of the "Best and Final" offers is the following:

- 1) We request that your final offer be submitted on the attached Long Grove Transaction Term Sheet, which has been approved by Current Ownership. Applicable blank items (excluding those designated to be left blank for completion by seller) should be completed via handwriting (versus typed). If you must make any changes or additions to sellers standard language, those should be made via handwriting in the margins or other open space or as a separate rider. We highly recommend that you use these terms or ones that are more seller-favorable in your offer.
- 2) Additionally, a Buyer's Questionnaire has been attached for your completion. The questionnaire is tailored to provide Current Ownership with an understanding of your company's experience and business plan for the acquisition of this asset. We request that you complete the questionnaire and return to us as soon as possible. We would like the opportunity to review your comments/answers prior to forwarding to Current Ownership.
- 3) We request that all decision makers and/or principals of your organization have had a formal tour of Long Grove, prior to submitting your best and final offer.
- 4) Current Ownership is requesting all "Best and Final" offers be submitted by 5:00 PM ON FRIDAY, DECEMBER 17TH, 2004. The "Best and Final" offers should be sent via fax or email to Robert Given at 305-381-6455 or robert.given@limeselody.com.

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Ms. Hudson Hooks
Long Grove
December 13, 2004
Page 2 of 2

Thank you again for your continuing interest in Long Grove at Seaside Farms. We look forward to discussing your acquisition plan as you take steps to submit your Best and Final Offer. If you have any questions, please do not hesitate to telephone either John Farrell at 770-730-3668 or Todd Weinstein or Robert Given at 305-374-1000.

Sincerely,

LJ MELODY & COMPANY

Robert Given
Vice President

cc: John Farrell
Todd Weinstein
Bill Shanaman

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- 1684-

LONG GROVE at SEASIDE FARMS
BUYER QUESTIONNAIRE

Please answer the following questions in written format pertaining to the deal structure, sources of debt and equity, and underwriting assumptions:

1. Please describe your entity structure as it relates to the acquisition.
2. What is the source of equity funds for the acquisition? Are these discretionary funds? Please be specific as to the amounts or percentages of equity from each source and whether or not it is readily available.
3. Please describe your anticipated source and structure of debt (If applicable) for the acquisition.
4. Who else from your organization will need to visit the Property prior to your committing to purchase?
5. What approval process is required prior to acquisition (Investment Committee, Third Party Marketing Report, etc.)?
6. Please provide at least two recent transactional references, including contact name and phone numbers of any seller(s) or lender(s).
7. What are your underwriting assumptions? (Please provide a copy of your Conversion Proforma.)
8. Please confirm that the Total Air-Conditioned Square Footage used in your analysis is 265,368 SF.
9. Are you projecting any additional capital improvements? If so, please describe with estimated costs.
10. Please list your acquisitions in 2003 and all 2004 year to date. If any of the communities detailed below were subject to a price adjustment after contract execution, please explain. If any of the below acquisitions are debt- financed properties, please so note.

Community Units	Contract Price	Adjustment	Explanation
-----------------	----------------	------------	-------------

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

11. During the past 24 months, have you contracted to purchase any properties that did not result in closing? If yes, please explain.

LONG GROVE at SEASIDE FARMS
BUYER QUESTIONNAIRE

12. What law firm will represent you in the acquisition of the Property? What law firm will represent you in the preparation of the condominium documents?
13. Describe your current multi-family portfolio, # of units currently owned, and indicate other owned South Carolina Properties.
14. Who is the management team, third-party manager, or conversion-marketing firm you will utilize if selected? Have they visited the property and reviewed your proforma? How many units/conversions do they manage?
15. Briefly describe your due diligence process. Aside from due diligence, title and survey, are there any other contingencies you may seek in order to complete this transaction?
16. How many other deals are you currently working on? (Please identify the number of contracts and letters of intent that are under negotiation).

Robert Given
Vice President

Investment Properties - Multi Housing
Group

VIA E-MAIL

Friday, January 28, 2011

Mr. Hudson Hooks
Vista Realty Partners
1360 Peachtree Street, NE
Atlanta, GA 30309

RE: LONG GROVE AT SEASIDE FARMS

Dear Hudson:

Thank you for the time and effort you have invested in evaluating Long Grove at Seaside Farms, located in Mt. Pleasant, South Carolina for possible acquisition. After carefully considering the initial offers, reputation, and financial capabilities of each prospective purchaser; Current Ownership and The Beach Companies/LJ Melody & Company are pleased to invite you to participate in the "Best and Final" process as outlined below. We request that you present your best and final offer by 5:00 PM ON FRIDAY, DECEMBER 17TH, 2004 via fax or e-mail to Robert Given.

The process of the "Best and Final" offers is the following:

- 1) We request that your final offer be submitted on the attached Long Grove Transaction Term Sheet, which has been approved by Current Ownership. Applicable blank items (excluding those designated to be left blank for completion by seller) should be completed via handwriting (versus typed). If you must make any changes or additions to sellers standard language, those should be made via handwriting in the margins or other open space or as a separate rider. We highly recommend that you use these terms or ones that are more seller-favorable in your offer.
- 2) Additionally, a Buyer's Questionnaire has been attached for your completion. The questionnaire is tailored to provide Current Ownership with an understanding of your company's experience and business plan for the acquisition of this asset. We request that you complete the questionnaire and return to us as soon as possible. We would like the opportunity to review your comments/answers prior to forwarding to Current Ownership.
- 3) We request that all decision makers and/or principals of your organization have had a formal tour of Long Grove, prior to submitting your best and final offer.
- 4) Current Ownership is requesting all "Best and Final" offers be submitted by 5:00 PM ON FRIDAY, DECEMBER 17TH, 2004. The "Best and Final" offers should be sent via fax or email to Robert Given at 305-381-6455 or robert.given@l melody.com.

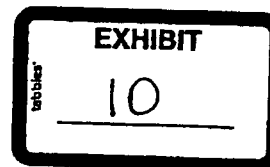
THE BEACH COMPANY

L.J. MELODY
Capital Markets

LJ Melody & Company
777 Brickell Avenue, Suite 900
Miami, FL 33131-2607

305 374 1000 Tel
305 381 6455 Fax

robert.given@l melody.com



CBRE
- 719 -

Ms. Hudson Hooks
Long Grove
December 13, 2004
Page 2 of 2

Thank you again for your continuing interest in Long Grove at Seaside Farms. We look forward to discussing your acquisition plan as you take steps to submit your Best and Final Offer. If you have any questions, please do not hesitate to telephone either John Farrell at 770-730-3668 or Todd Weinstein or Robert Given at 305-374-1000.

Sincerely,

LJ MELODY & COMPANY

Robert Given
Vice President

cc: John Farrell
Todd Weinstein
Bill Shanaman

CBRE
- 720 -

Robert Given
Vice President

Investment Properties - Multi Housing
Group

VIA E-MAIL

Tuesday, December 14, 2004

Mr. Hudson Hooks
Vista Realty Partners
1360 Peachtree Street, NE
Atlanta, GA 30309

RE: LONG GROVE AT SEASIDE FARMS

Dear Hudson:

Thank you for the time and effort you have invested in evaluating Long Grove at Seaside Farms, located in Mt. Pleasant, South Carolina for possible acquisition. After carefully considering the initial offers, reputation, and financial capabilities of each prospective purchaser; Current Ownership and The Beach Companies/LJ Melody & Company are pleased to invite you to participate in the "Best and Final" process as outlined below. We request that you present your best and final offer by 5:00 PM ON FRIDAY, DECEMBER 17TH, 2004 via fax or e-mail to Robert Given.

The process of the "Best and Final" offers is the following:

- 1) We request that your final offer be submitted on the attached Long Grove Transaction Term Sheet, which has been approved by Current Ownership. Applicable blank items (excluding those designated to be left blank for completion by seller) should be completed via handwriting (versus typed). If you must make any changes or additions to sellers standard language, those should be made via handwriting in the margins or other open space or as a separate rider. We highly recommend that you use these terms or ones that are more seller-favorable in your offer.
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- 4) Current Ownership is requesting all "Best and Final" offers be submitted by 5:00 PM ON FRIDAY, DECEMBER 17TH, 2004. The "Best and Final" offers should be sent via fax or email to Robert Given at 305-381-6455 or robert.given@limeselody.com.

THE BEACH COMPANY

L.J. MELODY
Capital Markets

LJ Melody & Company
777 Brickell Avenue, Suite 900
Miami, FL 33131-2807

305 374 1000 Tel
305 381 6455 Fax

robert.given@limeselody.com

CBRE
- 721 -

Ms. Hudson Hooks
Long Grove
December 13, 2004
Page 2 of 2

Thank you again for your continuing interest in Long Grove at Seaside Farms. We look forward to discussing your acquisition plan as you take steps to submit your Best and Final Offer. If you have any questions, please do not hesitate to telephone either John Farrell at 770-730-3668 or Todd Weinstein or Robert Given at 305-374-1000.

Sincerely,

LJ MELODY & COMPANY

Robert Given
Vice President

cc: John Farrell
Todd Weinstein
Bill Shanaman

CBRE
- 722 -

Robert Given
Vice President

Investment Properties - Multi Housing
Group

VIA E-MAIL

Friday, January 28, 2011

Mr. XXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXX

RE: LONG GROVE AT SEASIDE FARMS

Dear XXXXX:

Thank you for the time and effort you have invested in evaluating Long Grove at Seaside Farms, located in Mt. Pleasant, South Carolina for possible acquisition. After carefully considering the initial offers, reputation, and financial capabilities of each prospective purchaser; Current Ownership and The Beach Companies/LJ Melody & Company are pleased to invite you to participate in the "Best and Final" process as outlined below. We request that you present your best and final offer by 5:00 PM ON FRIDAY, DECEMBER 17TH, 2004 via fax or e-mail to Robert Given.

The process of the "Best and Final" offers is the following:

- 1) We request that your final offer be submitted on the attached Long Grove Transaction Term Sheet, which has been approved by Current Ownership. Applicable blank items (excluding those designated to be left blank for completion by seller) should be completed via handwriting (versus typed). If you must make any changes or additions to sellers standard language, those should be made via handwriting in the margins or other open space or as a separate rider. We highly recommend that you use these terms or ones that are more seller-favorable in your offer.
- 2) Additionally, a Buyer's Questionnaire has been attached for your completion. The questionnaire is tailored to provide Current Ownership with an understanding of your company's experience and business plan for the acquisition of this asset. We request that you complete the questionnaire and return to us as soon as possible. We would like the opportunity to review your comments/answers prior to forwarding to Current Ownership.
- 3) We request that all decision makers and/or principals of your organization have had a formal tour of Long Grove, prior to submitting your best and final offer.
- 4) Current Ownership is requesting all "Best and Final" offers be submitted by 5:00 PM ON FRIDAY, DECEMBER 17TH, 2004. The "Best and Final" offers should be sent via fax or email to Robert Given at 305-381-6455 or robert.given@l melody.com.

THE BEACH COMPANY

L.J. MELODY
Capital Markets

LJ Melody & Company
777 Brickell Avenue, Suite 900
Miami, FL 33131-2807

305 374 1000 Tel
305 381 6455 Fax

robert.given@l melody.com

CBRE
- 723 -

Mr. XXXXXXXXX
Long Grove
December 13, 2004
Page 2 of 2

Thank you again for your continuing interest in Long Grove at Seaside Farms. We look forward to discussing your acquisition plan as you take steps to submit your Best and Final Offer. If you have any questions, please do not hesitate to telephone either John Farrell at 770-730-3668 or Todd Weinstein or Robert Given at 305-374-1000.

Sincerely,

LJ MELODY & COMPANY

Robert Given
Vice President

c: John Farrell
Todd Weinstein
Bill Shanaman

CBRE
- 724 -

LONG GROVE at SEASIDE FARMS
BUYER QUESTIONNAIRE

Please answer the following questions in written format pertaining to the deal structure, sources of debt and equity, and underwriting assumptions:

1. Please describe your entity structure as it relates to the acquisition.
2. What is the source of equity funds for the acquisition? Are these discretionary funds? Please be specific as to the amounts or percentages of equity from each source and whether or not it is readily available.
3. Please describe your anticipated source and structure of debt (if applicable) for the acquisition.
4. Who else from your organization will need to visit the Property prior to your committing to purchase?
5. What approval process is required prior to acquisition (Investment Committee, Third Party Marketing Report, etc.)?
6. Please provide at least two recent transactional references, including contact name and phone numbers of any seller(s) or lender(s).
7. What are your underwriting assumptions? (Please provide a copy of your Conversion Proforma.)
8. Please confirm that the Total Air-Conditioned Square Footage used in your analysis is 265,368 SF.
9. Are you projecting any additional capital improvements? If so, please describe with estimated costs.
10. Please list your acquisitions in 2003 and all 2004 year to date. If any of the communities detailed below were subject to a price adjustment after contract execution, please explain. If any of the below acquisitions are debt- financed properties, please so note.

Community Units	Contract Price Adjustment	Explanation
_____	_____	_____
_____	_____	_____
_____	_____	_____

11. During the past 24 months, have you contracted to purchase any properties that did not result in closing? If yes, please explain.

LONG GROVE at SEASIDE FARMS
BUYER QUESTIONNAIRE

12. What law firm will represent you in the acquisition of the Property? What law firm will represent you in the preparation of the condominium documents?
13. Describe your current multi-family portfolio, # of units currently owned, and indicate other owned South Carolina Properties.
14. Who is the management team, third-party manager, or conversion-marketing firm you will utilize if selected? Have they visited the property and reviewed your proforma? How many units/conversions do they manage?
15. Briefly describe your due diligence process. Aside from due diligence, title and survey, are there any other contingencies you may seek in order to complete this transaction?
16. How many other deals are you currently working on? (Please identify the number of contracts and letters of intent that are under negotiation).

LONG GROVE at SEASIDE FARMS
BUYER QUESTIONNAIRE

Please answer the following questions in written format pertaining to the deal structure, sources of debt and equity, and underwriting assumptions:

1. Please describe your entity structure as it relates to the acquisition.
2. What is the source of equity funds for the acquisition? Are these discretionary funds? Please be specific as to the amounts or percentages of equity from each source and whether or not it is readily available.
3. Please describe your anticipated source and structure of debt (If applicable) for the acquisition.
4. Who else from your organization will need to visit the Property prior to your committing to purchase?
5. What approval process is required prior to acquisition (Investment Committee, Third Party Marketing Report, etc.)?
6. Please provide at least two recent transactional references, including contact name and phone numbers of any seller(s) or lender(s).
7. What are your underwriting assumptions? (Please provide a copy of your Conversion Proforma.)
8. Please confirm that the Total Air-Conditioned Square Footage used in your analysis is 265,368 SF.
9. Are you projecting any additional capital improvements? If so, please describe with estimated costs.
10. Please list your acquisitions in 2003 and all 2004 year to date. If any of the communities detailed below were subject to a price adjustment after contract execution, please explain. If any of the below acquisitions are debt-financed properties, please so note.

Community	Units	Contract Price	Adjustment	Explanation
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

11. During the past 24 months, have you contracted to purchase any properties that did not result in closing? If yes, please explain.

LONG GROVE at SEASIDE FARMS
BUYER QUESTIONNAIRE

12. What law firm will represent you in the acquisition of the Property? What law firm will represent you in the preparation of the condominium documents?
13. Describe your current multi-family portfolio, # of units currently owned, and indicate other owned South Carolina Properties.
14. Who is the management team, third-party manager, or conversion-marketing firm you will utilize if selected? Have they visited the property and reviewed your proforma? How many units/conversions do they manage?
15. Briefly describe your due diligence process. Aside from due diligence, title and survey, are there any other contingencies you may seek in order to complete this transaction?
16. How many other deals are you currently working on? (Please identify the number of contracts and letters of intent that are under negotiation).

LONG GROVE at SEASIDE FARMS
TRANSACTION TERM SHEET

This transaction term sheet outlines the business terms offered by Purchaser with respect to the purchase of the Property identified below and, when countersigned by Seller, the business terms that ownership would be willing to recommend for internal approval. Until such time as a formal purchase and sale agreement is executed by Seller and Purchaser, all discussions are non-binding, and Seller has no obligations to negotiate in good faith or to proceed to the completion of such a purchase and sale agreement, except that Seller will not solicit further offers (although Seller may receive and review offers received from others on an unsolicited basis) or otherwise negotiate with others regarding sale of the Property unless Seller and Purchaser fail to execute a purchase and sale agreement on or before the date specified below. Regardless of the fact that Purchaser may elect to spend time, effort and expense based on this term sheet, Purchaser may not rely on this term sheet as creating any legal obligation of any kind of binding on Seller, except as expressly provided above, and Purchaser waives and releases Seller from any such obligation and expressly assumes the risk that the parties will fail to negotiate and execute a binding purchase and sale agreement regarding the Property.

Purchaser

_____ **{INSERT Purchaser Name}**

Property

Long Grove at Seaside Farms, Mt. Pleasant, SC

Purchase Price

\$ _____ **{INSERT Purchase Price}**

In determining the purchase price, Purchaser expressly understands that Seller shall retain and reserve from the sale all (1) utility deposits and deposits with governmental and quasi-governmental authorities, (2) non-refundable tenant deposits such as cleaning fees, redecorating fees and pet fees, (3) initial inducement payments made to Seller by providers of telephone and cable service and the like, (4) rights to the name "The Beach Company", "The Beach Co." and The Beach Company trademark, and (5) right, title and interest in any website or domain names maintained by Seller or Seller's property manager with the respect to the Properties. In addition, Purchaser hereby certifies that the purchase price offered herein by Purchaser is based upon the assumption that the apartments located at the Property contain 265,368 air-conditioned square feet in the aggregate, plus the common areas.

Earnest Money Deposit

\$ _____
{INSERT Earnest Money}
Fifty percent (50%) of the earnest money must be posted at contract execution and fifty percent (50%) upon expiration of the due diligence period. One hundred percent (100%) of the earnest money will become non-refundable (except in the event of termination of the purchase and sale agreement due to Seller's default) upon expiration of the due diligence period, unless Purchaser has theretofore terminated the purchase and sale agreement.

In addition, the Purchaser will post \$ _____
{INSERT Non-refundable Deposit}
as a non-refundable deposit within 48 hours of contract execution, refundable only upon Seller's default.

Contract Execution

A purchase and sale agreement covering the Property must be executed by Seller and Purchaser no later than **January 7, 2005**. If such agreement has not been executed by the specified date, Seller may terminate and cancel any negotiations with Purchaser regarding the Property or any time thereafter.

Due Diligence Begins

Wednesday, January 7, 2005

Due Diligence Ends

Tuesday, February 1, 2005 No contingencies will remain beyond the expiration of the due diligence period.

Survey and Title Inspection

Seller shall deliver an existing Survey and current Title Commitment to Purchaser. Purchaser shall have until the date that is ten (10) business days prior to the expiration of the due diligence period to submit a survey/title objection letter. Otherwise, all title and survey matters shall be deemed approved.

Financing

This transaction is NOT contingent on Purchaser's ability to obtain financing.

Closing Date

On or before February 28, 2005.

Closing Costs

Seller will pay for any such closing costs as customarily paid by Seller's in Mt. Pleasant, S.C. Purchaser will pay for all other transaction costs, including any title endorsements or survey updates requested by Purchaser,

and all transfer taxes and recording costs. Purchaser and Seller will pay their own respective attorneys' fees.

Agency Representation and Disclosures

Purchaser acknowledges that The Beach Company/LJ Melody & Company represents the Seller only in this transaction and will be compensated by Seller per a separate agreement.

As-Is

The Property will be sold and purchased "as-is, where is, with all faults"; Seller will be released from all liabilities except those specifically arising under the purchase and sale agreement.

Submitted by:

By: _____

Name: _____

Title: _____

Accepted by:

THE BEACH COMPANIES

By: _____

Name: _____

Title: _____

LONG GROVE at SEASIDE FARMS
TRANSACTION TERM SHEET

This transaction term sheet outlines the business terms offered by Purchaser with respect to the purchase of the Property identified below and, when countersigned by Seller, the business terms that ownership would be willing to recommend for internal approval. Until such time as a formal purchase and sale agreement is executed by Seller and Purchaser, all discussions are non-binding, and Seller has no obligations to negotiate in good faith or to proceed to the completion of such a purchase and sale agreement, except that Seller will not solicit further offers (although Seller may receive and review offers received from others on an unsolicited basis) or otherwise negotiate with others regarding sale of the Property unless Seller and Purchaser fail to execute a purchase and sale agreement on or before the date specified below. Regardless of the fact that Purchaser may elect to spend time, effort and expense based on this term sheet, Purchaser may not rely on this term sheet as creating any legal obligation of any kind of binding on Seller, except as expressly provided above, and Purchaser waives and releases Seller from any such obligation and expressly assumes the risk that the parties will fail to negotiate and execute a binding purchase and sale agreement regarding the Property.

Purchaser

_____ **{INSERT Purchaser Name}**

Property

Long Grove at Seaside Farms, Mt. Pleasant, SC

Purchase Price

\$ _____ **{INSERT Purchase Price}**

In determining the purchase price, Purchaser expressly understands that Seller shall retain and reserve from the sale all (1) utility deposits and deposits with governmental and quasi-governmental authorities, (2) non-refundable tenant deposits such as cleaning fees, redecorating fees and pet fees, (3) initial inducement payments made to Seller by providers of telephone and cable service and the like, (4) rights to the name "The Beach Company", "The Beach Co." and The Beach Company trademark, and (5) right, title and interest in any website or domain names maintained by Seller or Seller's property manager with the respect to the Properties. In addition, Purchaser hereby certifies that the purchase price offered herein by Purchaser is based upon the assumption that the apartments located at the Property contain 265,368 air-conditioned square feet in the aggregate, plus the common areas.

Earnest Money Deposit	<p>\$ _____ {INSERT Earnest Money} Fifty percent (50%) of the earnest money must be posted at contract execution and fifty percent (50%) upon expiration of the due diligence period. One hundred percent (100%) of the earnest money will become non-refundable (except in the event of termination of the purchase and sale agreement due to Seller's default) upon expiration of the due diligence period, unless Purchaser has theretofore terminated the purchase and sale agreement.</p> <p>In addition, the Purchaser will post \$ _____ {INSERT Non-refundable Deposit} as a non-refundable deposit within 48 hours of contract execution, refundable only upon Seller's default.</p>
Contract Execution	<p>A purchase and sale agreement covering the Property must be executed by Seller and Purchaser no later than January 7, 2005. If such agreement has not been executed by the specified date, Seller may terminate and cancel any negotiations with Purchaser regarding the Property or any time thereafter.</p>
Due Diligence Begins	<p>Wednesday, January 7, 2005</p>
Due Diligence Ends	<p>Tuesday, February 1, 2005 No contingencies will remain beyond the expiration of the due diligence period.</p>
Survey and Title Inspection	<p>Seller shall deliver an existing Survey and current Title Commitment to Purchaser. Purchaser shall have until the date that is ten (10) business days prior to the expiration of the due diligence period to submit a survey/title objection letter. Otherwise, all title and survey matters shall be deemed approved.</p>
Financing	<p>This transaction is NOT contingent on Purchaser's ability to obtain financing.</p>
Closing Date	<p>On or before February 28, 2005.</p>
Closing Costs	<p>Seller will pay for any such closing costs as customarily paid by Seller's in Mt. Pleasant, S.C. Purchaser will pay for all other transaction costs, including any title endorsements or survey updates requested by Purchaser,</p>

and all transfer taxes and recording costs. Purchaser and Seller will pay their own respective attorneys' fees.

Agency Representation and Disclosures

Purchaser acknowledges that The Beach Company/LJ Melody & Company represents the Seller only in this transaction and will be compensated by Seller per a separate agreement.

As-Is

The Property will be sold and purchased "as-is, where is, with all faults"; Seller will be released from all liabilities except those specifically arising under the purchase and sale agreement.

Submitted by:

By: _____

Name: _____

Title: _____

Accepted by:

THE BEACH COMPANIES

By: _____

Name: _____

Title: _____



VISTA REALTY PARTNERS VISTA REALTY CONSTRUCTION

ONE MIDTOWN PLAZA
1360 PEACHTREE STREET NE ~ SUITE 1000
ATLANTA, GEORGIA 30309
PH: 404.995.4446 FAX: 404.995.4431

EXHIBIT
8
6/17/10
Johnson

FACSIMILE TRANSMITTAL SHEET

TO: <i>John Darby</i>	FROM: <i>Hudson Hooks</i>
COMPANY: <i>The Beach Company</i>	DATE: <i>1/3/05</i>
FAX NUMBER: <i>843-722-6449</i>	TOTAL NO. OF PAGES INCLUDING COVER: <i>4</i>
RE: <i>LOI</i>	CC:

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS

CONFIDENTIALITY NOTE

The information contained in this facsimile message is legally privileged and confidential, and is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copy of this message is strictly prohibited. If you have received the facsimile message in error, please notify us immediately by telephone and return the original message to us by mail at the address shown above.

EXHIBIT
11

BeachCo 000306

THE BEACH COMPANY

REAL ESTATE DEVELOPMENT • SALES • LEASING • MANAGEMENT
Serving The Outer Banks Since 1961

December 28, 2004

Mr. Edward deGuardiola
Vista Realty Partners, LLC

Re: Letter of Intent - Vista Realty Partners, LLC Purchase of Long Grove
Apartments, Mount Pleasant, South Carolina

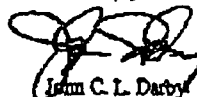
Dear Ed:

We are in receipt of the Letter of Intent in connection with this proposed transaction. Attached hereto is the Letter of Intent executed by Long Grove at Seaside Farms, LLC, the actual owner of the property. In reading the Letter of Intent, we wish to clarify certain issues before we proceed to the definitive contract.

The Letter of Intent contemplates the execution of a Listing Agreement, a Management Agreement, and an Indemnification Agreement. We propose that the original Listing Agreement and Management Agreement be sent to you along with the Sales Contract, and that all three documents would be signed simultaneously. For clarification, the Listing Agreement will allow "dual agency" by The Beach Company. In the Sales Contract, we will include specific language dealing with the indemnification by Vista Partners against claims made by purchasers of condominium units at the property. The indemnification language will include a release of claims related to the development, design, construction, maintenance, alteration, and repair of the property. We propose that the release of claims will not only be in the Sales Contract but also in the deed of conveyance at closing and will survive the closing of this transaction.

Please acknowledge your agreement to these clarifications, and we will proceed to prepare the Sales Contract, Listing Agreement and Management Agreement.

Sincerely yours,


John C. L. Darby
President and CEO

Agreed and acknowledged: Vista Realty Partners, LLC


Eduardo deGuardiola

211 KING STREET • SUITE 200 • CHARLESTON, S.C. 29401 • P.O. BOX 242 • CHARLESTON, S.C. 29402
(843) 722-2615 • FAX (843) 722-6449 • www.thebeachcompany.com

BeachCo 000307

Dec 22 04 04:48p

Richard

847-845-3912

p.2

LONG GROVE at SEASIDE FARMS
TRANSACTION TERM SHEET

This transaction term sheet outlines the business terms offered by Purchaser with respect to the purchase of the Property identified below and, when countersigned by Seller, the business terms that ownership would be willing to recommend for mutual approval. Until such time as a formal purchase and sale agreement is executed by Seller and Purchaser, all discussions are non-binding, and Seller has no obligation to negotiate in good faith or to proceed to the completion of such a purchase and sale agreement, except that Seller will not solicit further offers (although Seller may receive and review offers received from others on an unsolicited basis) or otherwise negotiate with others regarding sale of the Property unless Seller and Purchaser fail to execute a purchase and sale agreement on or before the date specified below. Regardless of the fact that Purchaser may elect to spend time, effort and expense based on this term sheet, Purchaser may not rely on this term sheet as creating any legal obligation of any kind of binding on Seller, except as expressly provided above, and Purchaser waives and releases Seller from any such obligation and expressly assumes the risk that the parties will fail to negotiate and execute a binding purchase and sale agreement regarding the Property.

Purchaser

Vista Realty Partners
{INSERT Purchaser Name}

Property

Long Grove at Seaside Farms, Mt. Pizasa, SC

Purchase Price

\$ 37,250,000.00
{INSERT Purchase Price}

In determining the purchase price, Purchaser expressly understands that Seller shall retain and reserve from the sale all (1) utility deposits and deposits with governmental and quasi-governmental authorities, (2) non-refundable trust deposits such as standing fees, not recording fees and pet fees, (3) initial inducement payments made to Seller by providers of telephone and cable service and the like, (4) rights to the name "The Beach Company", "The Beach Co." and The Beach Company trademarks, and (5) right, title and interest in any website or domain names maintained by Seller or Seller's property manager with the respect to the Property. In addition, Purchaser hereby certifies that the purchase price offered is made by Purchaser is based upon the assumption that the approximate located at the Property contain 265,268 air-conditioned and square feet in the aggregate, plus the common areas.

Doc 22 04 04:48p

Richard

847-941-3918

p.3

Earnest Money Deposit

\$ 500,000⁰²

(UNLESS Earnest Money)

Fifty percent (50%) of the earnest money must be posted at contract execution and fifty percent (50%) upon expiration of the due diligence period. One hundred percent (100%) of the earnest money will become non-refundable (except in the event of termination of the purchase and sale agreement due to Seller's default) upon expiration of the due diligence period, unless Purchaser has theretofore consummated the purchase and sale agreement.

JL *FD6*

of the deposit will become non-refundable 7 business days after contract execution (in order to give Purchaser time to obtain Phase 1 Environmental and Engineering assessments acceptable to Purchaser) or when Seller has delivered a title commitment disclosing the reasonably acceptable to Purchaser's attorney, whichever occurs later. This deposit is refundable in the event of Seller's default.

In addition, the Purchaser will post \$ 250,000⁰²

as a non-refundable deposit within 48 hours of contract execution, refundable only upon Seller's default.

Contract Execution

A purchase and sale agreement covering the Property must be executed by Seller and Purchaser no later than January 7, 2005. If such agreement has not been executed by the specified date, Seller may terminate and cancel any negotiations with Purchaser regarding this Property or any time thereafter.

Due Diligence Begins

Wednesday, January 7, 2005

Due Diligence Ends

Friday, January 14, 2005
Thursday, February 3, 2005 No closing costs will remain beyond the expiration of the due diligence period.

Survey and Title Inspection

Seller shall deliver an existing Survey and current Title Commitment to Purchaser. Purchaser shall have until the date that is ten (10) business days prior to the expiration of the due diligence period to submit a survey/title objection letter. Otherwise, all title and survey matters shall be deemed approved.

Financing

This transaction is NOT contingent on Purchaser's ability to obtain financing.

Closing Date

On or before February 28, 2005.

Closing Costs

Seller will pay for any such closing costs as customarily paid by Seller's in Mt. Pleasant, S.C. Purchaser will pay for all other transaction costs, including any title endorsements or survey updates requested by Purchaser.

Master Contract Ref No. 1001

Page 3 of 3

Romanick, Danielle @ Oak Brook

From: Brewer [ABrewer@CAPREIT.COM]
Sent: Friday, December 17, 2004 2:29 PM
To: Given, Robert @ Miami
Cc: Ernie Heymann
Subject: Attached: Long Grove Completed Term Sheet and Buyer Questionnaire

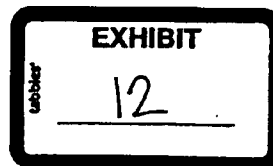
Attachments: Robert Given Letter-Completed Term Sheet and Buyer Questionnaire.pdf



Robert Given
Letter-Completed

Mr. Given,

Please find attached the Completed Term Sheet and Completed Buyer Questionnaire for Long Grove at Seaside Farms, per Ernie Heymann's request. Please do not hesitate to call with any questions.



CBRE
- 1576-

December 17, 2004

Robert Given
Vice President
L.J. Melody & Company
777 Brickell Avenue, Suite 900
Miami, Florida 33131

RE: Long Grove at Seaside Farms
Mt. Pleasant, SC

Dear Robert:

I am attaching both the (a) Completed Term Sheet and (b) Completed Buyer Questionare.

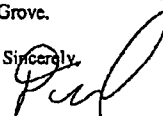
The highlights of our offer include:

1. Total Purchase Price of \$38,000,000 which is payable as follows:
\$36,750,000 at closing, approximately \$1,150,000 (2% listing brokerage commission) with the sale of each condominium unit, and approximately \$100,000 in co-management fees (2% of rental receipts for a period of up to 2 years);
2. Readily available debt and equity partners that have a long and successful track record with the CAPREIT decision makers;
3. Approvals from CAPREIT's decision makers (Both Dick Kadish and Ernie Heymann);
4. Completion of CAPREIT's internal market research on comparable condominium units and the pricing range of Long Grove's units; and
5. A Company history of closing over 125 multi-family acquisitions representing in excess of \$2 billion of real estate in a professional and timely manner. CAPREIT will uphold our existing reputation of keeping our promises without any surprises to the Seller with the acquisition of Long Grove.

We are excited about the potential acquisition of Long Grove. Furthermore, we are eager to explore other ways that we can venture other local opportunities with the Beach Companies.

We welcome any questions you have and look forward to working with you and the Beach Company on the acquisition of Long Grove.

Sincerely,



Richard L. Kadish
CEO and President

11200 Rockville Pike • Suite 100 • Rockville, MD 20852 • 301-231-8700
FACSIMILE: Executive/Acquisitions 301-468-8391 • Management 301-468-8392
Corporate Accounting/Human Resources 301-468-8390 • Property Accounting 301-468-8393

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LONG GROVE at SEASIDE FARMS
TRANSACTION TERM SHEET

This transaction term sheet outlines the business terms offered by Purchaser with respect to the purchase of the Property identified below and, when countersigned by Seller, the business terms that ownership would be willing to recommend for internal approval. Until such time as a formal purchase and sale agreement is executed by Seller and Purchaser, all discussions are non-binding, and Seller has no obligations to negotiate in good faith or to proceed to the completion of such a purchase and sale agreement, except that Seller will not solicit further offers (although Seller may receive and review offers received from others on an unsolicited basis) or otherwise negotiate with others regarding sale of the Property unless Seller and Purchaser fail to execute a purchase and sale agreement on or before the date specified below. Regardless of the fact that Purchaser may elect to spend time, effort and expense based on this term sheet, Purchaser may not rely on this term sheet as creating any legal obligation of any kind of binding on Seller, except as expressly provided above, and Purchaser waives and releases Seller from any such obligation and expressly assumes the risk that the parties will fail to negotiate and execute a binding purchase and sale agreement regarding the Property.

Purchaser

CAPRETT Acquisition Corporation
{INSERT Purchaser Name}

Property

Long Grove at Seaside Farms, Mt. Pleasant, SC

Purchase Price

\$ 38,000,000 *
{INSERT Purchase Price}

** Payable as follows:
\$36,750,000 at closing,
\$1,150,000 in condominium
sales brokerage commissions,
and \$1,000,000 in co-
management fees.*

ELH

In determining the purchase price, Purchaser expressly understands that Seller shall retain and reserve from the sale all (1) utility deposits and deposits with governmental and quasi-governmental authorities, (2) non-refundable tenant deposits such as cleaning fees, redecorating fees and pet fees, (3) initial inducement payments made to Seller by providers of telephone and cable service and the like, (4) rights to the name "The Beach Company", "The Beach Co." and The Beach Company trademark, and (5) right, title and interest in any website or domain names maintained by Seller or Seller's property manager with the respect to the Properties. In addition, Purchaser hereby certifies that the purchase price offered herein by Purchaser is based upon the assumption that the apartments located at the Property contain 265,368 air-conditioned square feet in the aggregate, plus the common areas.

Earnest Money Deposit

\$ 500,000

{INSERT Earnest Money}

Fifty percent (50%) of the earnest money must be posted at contract execution and fifty percent (50%) upon expiration of the due diligence period. One hundred percent (100%) of the earnest money will become non-refundable (except in the event of termination of the purchase and sale agreement due to Seller's default) upon expiration of the due diligence period, unless Purchaser has theretofore terminated the purchase and sale agreement.

*Purchaser will incur
\$75,000 of third party
costs within 7 days of contract
execution.*

In addition, the Purchaser will post
\$ _____

{INSERT Non-refundable Deposit}

as a non-refundable deposit within 48 hours of contract execution, refundable only upon Seller's default.

Contract Execution

A purchase and sale agreement covering the Property must be executed by Seller and Purchaser no later than January 7, 2005. If such agreement has not been executed by the specified date, Seller may terminate and cancel any negotiations with Purchaser regarding the Property or any time thereafter.

Due Diligence Begins

Wednesday, January 7, 2005

Due Diligence Ends

Tuesday, February 1, 2005 No contingencies will remain beyond the expiration of the due diligence period.

Survey and Title
Inspection

Seller shall deliver an existing Survey and current Title Commitment to Purchaser. Purchaser shall have until the date that is ten (10) business days prior to the expiration of the due diligence period to submit a survey/title objection letter. Otherwise, all title and survey matters shall be deemed approved.

Financing

This transaction is NOT contingent on Purchaser's ability to obtain financing.

Closing Date

On or before February 28, 2005.

Closing Costs

Seller will pay for any such closing costs as customarily paid by Seller's in Mt. Pleasant, S.C. Purchaser will pay for all other transaction costs, including any title endorsements or survey updates requested by Purchaser,

Matter: Sumrith Del Ray LOLI

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and all transfer taxes and recording costs. Purchaser and Seller will pay their own respective attorneys' fees.

Agency Representation and Disclosures

Purchaser acknowledges that The Beach Company/LJ Melody & Company represents the Seller only in this transaction and will be compensated by Seller per a separate agreement.

As-Is

The Property will be sold and purchased "as-is, where is, with all faults"; Seller will be released from all liabilities except those specifically arising under the purchase and sale agreement.

Submitted by:

CAREET Acquisition Corporation
By: [Signature]
Name: ERNEST L. HERMAN
Title: SE. VICE PRESIDENT

Accepted by:

THE BEACH COMPANIES

By: _____
Name: _____
Title: _____

**LONG GROVE at SEASIDE FARMS
BUYER QUESTIONARE**

1. CAPREIT Acquisition Corporation will enter into the contract initially until CAPREIT Long Grove LLLP is legally formed. CAPREIT Acquisition Corporation is owned by CAPREIT, Inc. ("CAPREIT"). CAPREIT Long Grove LLLP will take title to the property.

CAPREIT currently owns a multifamily/condominium portfolio that has a value in excess of \$925 Million. Equity for new acquisitions is provided from its own capital and from that provided by Dick Kadish (CAPREIT's founder, CEO and sole stockholder) as well as from two institutions with whom CAPREIT has enjoyed long associations, Apollo Real Estate Advisors ("Apollo") in New York City and MMA Financial, LLC ("MuniMae"), a NYSE publicly-traded company based in Baltimore. Apollo has provided over \$200 million in equity financing for CAPREIT since 1994 while MuniMae has provided over \$150 million of preferred equity and various forms of participating debt on behalf of CAPREIT ventures since 1998. Typically, the capital structure would provide for debt levels in the 75% - 85% level and the balance of the capital structure provided by equity.

2. The equity for the Long Grove transaction will be provided from CAPREIT's own capital and contributions from Kadish, other senior members of CAPREIT management and Apollo. All of the equity funds are readily available. Apollo will fund 90% of all equity required for the transaction. From CAPREIT's beginning in 1993, CAPREIT has enjoyed a strong long-term relationship with the senior team at Apollo (Bill Mack, Lee Neibart and Richard Mack). CAPREIT has been one of Apollo's most consistent and best performing partners. Apollo is aware of and has reviewed the Long Grove transaction and eagerly awaits the designation of CAPREIT as the purchaser of the complex. The Apollo equity funds are discretionary and, during the 11-year history with CAPREIT, Apollo has never denied any CAPREIT request for equity financing.
3. CAPREIT is presently involved in four condominium developments and conversions whose aggregate value exceeds \$150 Million. These communities are located in Alexandria, VA, Cleveland, Ohio, Minneapolis, Minnesota, and Bonita Springs, Florida. The lender in each of the conversion properties has been LaSalle Bank who has provided CAPREIT with nearly \$50 million of first mortgage conversion financing over the past 18 months. LaSalle has been an active lender with CAPREIT and the relationship between our firms is strong. LaSalle is also aware of the Long Grove transaction and has indicated its acute interest in providing first mortgage financing for the acquisition.

4. Dick Kadish, CEO and President, and Ernie Heymann, Sr. Vice President, the two senior officers of the Company, have both toured Long Grove and the competing condo and rental communities. It is our understanding that Dick was one of the first, if not the first, to tour the property in early November. Several other company officials have also toured the property, both from a marketing and construction viewpoint. While CAPREIT will have other of its professionals visit, the top decision makers have already seen Long Grove.
5. CAPREIT's approval process is informal. CAPREIT's ultimate decision lies with Dick Kadish, who has already seen the site, the comps and the market, and he has approved the transaction.
6. CAPREIT is very proud of its reputation in acquisitions. The company is known as a closer who does what it says it will do and who does not retrade.

References for three of our recent transactions are:

- a. Sundance Apartments, Clermont, FL--300 units rental--acquired 7/04.
Seller: Fred Rath-813-636-8860
Lender: Wachovia/Fannie Mae
Tom Demery--202-412-8114
 - b. The Colonnades, Bonita Springs, FL-196 units condo--acquired 6/04
Seller: Roy Cronacher--239-649-8606
Lender: LaSalle Bank
Dale Malloy--216-802-2202
 - c. Hidden Lake Apartments, Stow, OH-258 units--acquired 12/04
Seller: Aetna Life Insurance
Marilyn Stoudt--860-273-2138
Lender: Wachovia/Fannie Mae
Tom Demery--202-412-8114
7. CAPREIT has projected initial opening pricing with ranges in the \$150k's for the one-bedroom units, \$160k's to \$190k's for the two-bedroom unit and \$220k's for the 3 bedroom units. A summary of our conversion proforma is attached.
 8. In its analysis, CAPREIT has utilized and assumed the total air-conditioned approximate square footage to be is 265,368 sq. ft.

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9. CAPREIT believes that the property is in excellent physical condition. Common area improvements that are planned are cosmetic in nature and include such items as signage, lighting, and amenity enhancements. An additional allowance of \$200,000 has been provided for other miscellaneous items. In-unit improvements anticipated are unit turnover-type expenses. In order to appropriately upgrade the units to condo quality, CAPREIT has provided for over \$1,000,000 for unit make ready and upgrading. These improvements include carpet, two-tone paint, ceramic flooring, lighting packages, HVAC servicing as well as other make ready costs. No significant other capital improvements are anticipated although the company has provided a \$500,000 contingency for such items.
10. Please see attached Schedule of Owned Communities. The company has closed on 100% of all communities on which we executed contracts of purchase. We have rarely requested a price discount in our 11-year history. All of our owned properties have debt financing. Our principal lenders include Fannie Mae, Wachovia, Merrill Lynch, GMAC, MMA Financial, and LaSalle Bank.
11. CAPREIT has a well-earned reputation as "deal closers". Our philosophy is to negotiate fairly upfront and do exactly what we say we are going to do - regardless of whether it is in the contract. We have bought many deals from such noted companies as: Sentinel, Trammell Crow, Aetna, RREFF, Archstone, EQR, Archon and others. Each of these sellers has recognized CAPREIT as a company that they prefer to do more business with and we have done multiple transactions with each of these firms. From CAPREIT's beginnings, we have always "only promised" what we could deliver.
12. CAPREIT's in-house counsel will represent the company in the purchase agreement and any negotiations with the Seller. Howard Majev of Winston Strawn will support Bruce and act as outside counsel. CAPREIT will seek local conversion counsel.
13. Over its 11-year history, CAPREIT has owned over 30,000 units. In 1997, CAPREIT sold nearly 12,000 units including about 1,500 units in the Carolinas, including properties in Greenville and Columbia, SC. Today, CAPREIT owns about 12,000 units throughout the Mid-Atlantic, Northern Mid-West and the Southeast. Currently, we own 830 units in Rock Hill and Columbia.

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14. CAPREIT has its own management company and the company typically manages all of its properties. In view of the excellent management skills and practices by The Beach Company, CAPREIT's acquisition proposal provides that it would retain The Beach Company to provide property management services, together with CAPREIT, during the course of the condominium conversion. In our previous condominium conversions, CAPREIT has selected local, experienced third-party sales agent to market the condos as opposed to relying on in-house sales representatives. CAPREIT Residential Management Company currently manages approximately 16,000 units. In addition, the Company is overseeing the conversion of approximately 800 units in three communities.
15. CAPREIT will immediately order engineering and environmental surveys to be performed by REA from Chicago. REA has provided all of our studies for the past 5 years. Simultaneously, LaSalle would engage an appraiser to do an appraisal based on a condominium valuation. CAPREIT will also engage an independent market research company to perform a detailed marketing study with pricing recommendations to confirm CAPREIT's exhaustive analysis that has already been completed. Counsel and our title agent will review and order title and survey.
16. Every month, CAPREIT reviews many transactions, but the company focuses its time, energies and monies on only a few transactions each month. Given the timing of this transaction at the beginning of the New Year, CAPREIT will devote its resources to getting Long Grove through the due diligence period, and more importantly, to a closing within the timeframe identified in the term sheet. While we has recently submitted several other letters of intent, the Company is not currently negotiating any purchase agreement to acquire any new communities. Demonstrated by our extensive track record, CAPREIT will only seek new acquisitions that can be accomplished in a professional, timely manner as promised.

**LONG GROVE AT SEASIDE FARMS
MOUNT PLEASANT, SC
SUMMARY OF CONDOMINIUM CONVERSION PROFORMA**

Gross Sales Proceeds:		
Base Prices	\$53,368,400	
Premiums (Views, Top Floors, Garages, Custom Options)	<u>2,884,000</u>	
Total Revenue		<u>\$56,250,400</u>
LESS:		
Acquisition Price		36,750,000
Conversion Costs:		
Soft Costs	1,375,000	
Capital Improvements	3,408,000	
Sales, Marketing, Resident Discounts	5,192,520	
Closing Costs, Allowances, & Warranty Reserves	2,213,008	
Preference To Equity Partner	<u>3,037,500</u>	
Total Conversion Costs		<u>15,226,028</u>
Estimated Net Conversion Profit		<u>\$4,274,372</u>

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CAPREIT
SUMMARY OF PROPERTY UNIT MIXES

NAME OF COMMUNITY	LOCATION	YEAR BUILT	DATE ACQUIRED	STUDIO	1 BR	2 BR	3 BR	TOTAL UNITS	APPROXIMATE SQUARE FOOTAGE	
									TOTAL	PER UNIT
TERA VENTURE - MUNI MAE:										
<i>Merrill Lynch</i>										
1 Boulder Ridge	West Des Moines, IA	1994	1-Sep-99	0	12	132	0	144	133,908	930
2 Braden Lakes	Bradenton, FL	1986	29-Dec-97	0	56	208	0	264	239,600	908
3 Cambridge Square	Clarksville, IN	1969/75	1-Sep-99	0	68	148	0	216	184,840	856
4 Charleston at Sweetwater	Duluth, GA	1985	1-Sep-99	0	60	168	38	264	316,900	1,200
5 Cornerstone	Orlando, FL	1986	6-Aug-99	32	182	208	0	430	317,550	739
6 Courtyard Square	Clarksville, IN	1969/75	1-Sep-99	0	100	152	40	292	242,856	832
7 Lakes of Mayport	Atlantic Beach, FL	1986	30-Jan-99	0	18	168	32	216	188,840	863
8 Paces River I	Rock Hill, SC	1986	1-Jan-98	0	112	88	40	240	189,424	788
9 Paces River II	Rock Hill, SC	1989	1-Jan-98	0	110	120	0	230	190,748	828
10 Paddock Place	Ocala, FL	1996	30-Jan-98	0	68	102	0	168	122,288	724
11 Summer Trace	New Port Richy, FL	1985	30-Jan-98	0	64	136	0	200	154,824	773
12 Sutton Place	Orlando, FL	1986	6-Aug-99	0	144	144	0	288	228,216	792
TOTAL - TERA VENTURE				32	890	1,770	150	2,942	2,508,888	852
SM VENTURE - MUNI MAE:										
<i>Merrill Lynch</i>										
13 Aclum	Burrville, MN	1997	24-Aug-98	0	280	68	0	348	263,692	757
14 Greenway Chase	Florissant, MO	1988	28-Feb-01	0	84	248	0	312	279,312	895
15 Island Club I	Orlando, FL	1989	17-Aug-99	0	184	184	24	312	239,444	767
16 Isles of Gateway	St. Petersburg, FL	1987	1-Oct-01	0	124	72	18	212	173,190	817
17 Madison Park	Kansas City, MO	1987	15-Dec-99	0	232	156	0	388	325,488	839
18 Paces Run	Columbia, SC	1987	9-Dec-99	0	132	128	0	260	233,564	908
19 Park at Landmark	Alexandria, VA	1988	26-Feb-99	0	190	210	0	396	331,170	836
20 Sunbrook	St. Charles, MO	1988	28-Feb-99	240	112	124	0	476	223,660	470
21 Towne Place	Middletown, CT	1987	18-Jan-01	0	82	48	26	156	163,094	1,019
22 Waterford Park	Lauderhill, FL	1987	24-Aug-98	0	208	64	0	272	263,520	969
23 Waterford Place	Arlington Heights, IL	1988	24-Aug-98	0	224	56	0	280	218,824	774
				240	1,818	1,288	86	3,422	2,710,776	794
<i>FNMA (Facility I)</i>										
24 Chasewood Gates (Apts)	Minnetonka, MN	1988	10-Oct-02	0	80	88	0	168	144,542	861
25 Club at North Hills	Pittsburgh, PA	1991	12-Jul-01	0	220	150	0	370	298,195	801
26 Kensington at Beverly Hills	Southfield, MI	1991/99	14-Sep-00	4	128	76	0	208	181,400	872
27 LakeFront at MetroWest	Orlando, FL	1989/90	13-Oct-00	0	256	288	0	544	488,264	857
28 Oaks at Gayton	Richmond, VA	1987	14-Sep-00	0	96	124	0	220	178,220	818
29 Points West	West Des Moines, IA	1989	8-Dec-01	0	112	96	16	223	201,612	904
30 Sundance Station	Richmond, VA	1983	8-Aug-01	0	148	154	0	300	232,368	775
31 Waterside at Castleton	Indianapolis, IN	1980/1991	23-Dec-02	0	192	208	0	400	307,400	769
32 Wellington at Windward	Apharosa, GA	1987	14-Sep-00	0	144	182	0	324	285,000	882
				4	1,372	1,330	16	2,721	2,294,301	843
<i>RECC</i>										
34 Dover Farms	North Royalton, OH	1991	18-Dec-02	0	184	136	0	300	297,748	892
<i>LeSalle Bank</i>										
35 Colonades	Bonita Springs, FL	2000	14-Jun-04	0	84	107	24	198	207,252	1,053
36 Villas at Chasewood	Minnetonka, MN	1988	10-Oct-02	0	72	152	0	224	229,152	883
				0	143	260	24	427	435,510	1,020
TOTAL SM VENTURE				244	3,637	3,148	141	7,170	6,032,311	841

* Prior to condominium sales.

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CAPREIT
SUMMARY OF PROPERTY UNIT MIXES

NAME OF COMMUNITY	LOCATION	YEAR BUILT	DATE ACQUIRED	STUDIO	1 BR	2 BR	3 BR	TOTAL UNITS	APPROXIMATE SQUARE FOOTAGE		
									TOTAL	PER UNIT	
CAPREIT V - NEWMAN:											
<i>FNMA (Facility 2)</i>											
37 Ashley Mill	Marietta, GA	1989/96	21-Jan-98	0	189	222	58	469	444,918	951	
38 Oakaper Farms	Richmond, VA	1989	21-Jan-98	0	138	92	0	230	187,676	736	
39 Island Club II	Orlando, FL	1989	17-Aug-99	0	78	80	8	166	148,000	925	
40 Madison Ridge	Centerville, VA	1988	1-Oct-99	0	88	148	0	236	182,684	932	
41 Magnolia at Sandy Springs	Atlanta, GA	1981	25-May-00	0	88	157	45	290	332,172	1,239	
42 Royal Oaks	North Rayston, OH	1990	26-Nov-97	0	162	204	0	368	318,198	868	
43 Valle Vista Armas	Greenwood, IN	1980	26-Nov-97	0	214	188	0	402	253,290	711	
				0	906	1,031	111	2,048	1,856,838	907	
<i>LeSalle Bank</i>											
44 Fox Hollow	Mayfield Heights, OH	1989	26-Nov-97	0	83	110	0	193	220,944	1,161	
TOTAL - CAPREIT V				0	956	1,141	111	2,208	2,077,782	928	
<i>FNMA</i>											
45 Hidden Lake	Stow, OH	1989	2-Dec-04	0	129	129	0	258	223,825	868	
TOTAL PORTFOLIO				0	278	5,741	5,188	692	12,610	19,849,847	888

BENEFICIAL INTEREST IN TAX-EXEMPT BONDS (BOND PORTFOLIO):

<i>MetLife Lynch</i>										
46 Fountainshead	Kansas City, MO	1988	26-Feb-98	0	88	18	0	112	78,912	705
47 High Ridge	Albuquerque, NM	1988	26-Feb-98	0	150	96	0	258	205,888	804
48 Washington Ridge	Knoxville, TN	1990	9-Dec-97	0	80	120	48	248	227,192	916
49 Wildcreek	Clarkston, GA	1988	26-Feb-98	0	84	178	0	262	251,880	1,041
TOTAL BOND PORTFOLIO				0	402	412	48	851	763,872	3,322

* Prior to condominium sales.

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Romanick, Danielle @ Oak Brook

From: Brad Scott [mbscott@networkservices.net]
Sent: Friday, December 17, 2004 4:12 PM
To: Given, Robert @ Miami
Cc: Farrell, John @ Atlanta Peachtree; Dodge Hindman (dhindman@thebeachcompany.com); Jim Brennan (j.brennandev@adelphia.net)
Subject: RE: BEST & FINAL INVITATION: LONG GROVE APTS
Attachments: Long Grove Offer 12-17-04.pdf



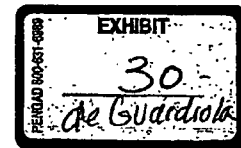
Long Grove
Offer 12-17-04.pdf
Robert:

Please find attached Urban Pointe Development's response to your request for a "Best and Final" offer on Long Grove.

Please confirm that you received this email by reply email.

Thank you,

Brad Scott
525 South Douglas Street
Suite 200
El Segundo, CA 90245
Voice: 310.615.6565
Fax: 310.615.6555
Email: mbscott@networkservices.net



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URBAN POINTE DEVELOPMENT, INC

525 South Douglas Street Suite 200

El Segundo, CA 90245

310-615-6565

December 17, 2004

Mr. Robert Given
Vice President
L.J. Melody
777 Brickell Avenue, Suite 900
Miami, FL 33131

Re: Letter of Intent for the purchase of Long Grove at Seaside Farms

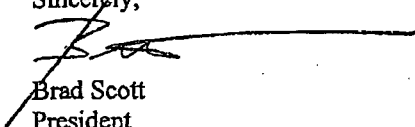
Dear Mr. Given:

Pursuant to your request, Urban Pointe Development, Inc. is pleased to present the attached Letter of Intent, representing our Best and Final Offer for the acquisition of Long Grove at Seaside Farms ("Long Grove"). We have also attached a response to the Buyer Questionnaire as requested.

We welcome the opportunity to further discuss our offer and answer any questions you may have.

Thank you and we look forward to your response.

Sincerely,


Brad Scott
President

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LONG GROVE at SEASIDE FARMS
TRANSACTION TERM SHEET

This transaction term sheet outlines the business terms offered by Purchaser with respect to the purchase of the Property identified below and, when countersigned by Seller, the business terms that ownership would be willing to recommend for internal approval. Until such time as a formal purchase and sale agreement is executed by Seller and Purchaser, all discussions are non-binding, and Seller has no obligations to negotiate in good faith or to proceed to the completion of such a purchase and sale agreement, except that Seller will not solicit further offers (although Seller may receive and review offers received from others on an unsolicited basis) or otherwise negotiate with others regarding sale of the Property unless Seller and Purchaser fail to execute a purchase and sale agreement on or before the date specified below. Regardless of the fact that Purchaser may elect to spend time, effort and expense based on this term sheet, Purchaser may not rely on this term sheet as creating any legal obligation of any kind of binding on Seller, except as expressly provided above, and Purchaser waives and releases Seller from any such obligation and expressly assumes the risk that the parties will fail to negotiate and execute a binding purchase and sale agreement regarding the Property.

Purchaser URBAN POINTE DEVELOPMENT OR ASSIGNEES
{INSERT Purchaser Name}

Property Long Grove at Seaside Farms, Mt. Pleasant, SC

Purchase Price \$ 37,250,000
{INSERT Purchase Price}

In determining the purchase price, Purchaser expressly understands that Seller shall retain and reserve from the sale all (1) utility deposits and deposits with governmental and quasi-governmental authorities, (2) non-refundable tenant deposits such as cleaning fees, redecorating fees and pet fees, (3) initial inducement payments made to Seller by providers of telephone and cable service and the like, (4) rights to the name "The Beach Company", "The Beach Co." and The Beach Company trademark, and (5) right, title and interest in any website or domain names maintained by Seller or Seller's property manager with the respect to the Properties. In addition, Purchaser hereby certifies that the purchase price offered herein by Purchaser is based upon the assumption that the apartments located at the Property contain 265,368 air-conditioned square feet in the aggregate, plus the common areas.

Earnest Money Deposit

\$ 500,000

{INSERT Earnest Money}

Fifty percent (50%) of the earnest money must be posted at contract execution and fifty percent (50%) upon expiration of the due diligence period. One hundred percent (100%) of the earnest money will become non-refundable (except in the event of termination of the purchase and sale agreement due to Seller's default) upon expiration of the due diligence period, unless Purchaser has theretofore terminated the purchase and sale agreement.

In addition, the Purchaser will post \$ 0

{INSERT Non-refundable Deposit}

as a non-refundable deposit within 48 hours of contract execution, refundable only upon Seller's default.

Contract Execution

A purchase and sale agreement covering the Property must be executed by Seller and Purchaser no later than **January 7, 2005**. If such agreement has not been executed by the specified date, Seller may terminate and cancel any negotiations with Purchaser regarding the Property or any time thereafter.

Due Diligence Begins

Wednesday, January 7, 2005

Due Diligence Ends

~~February 1, 2005~~ **February 1, 2005** No contingencies will remain beyond the expiration of the due diligence period.

Survey and Title Inspection

Seller shall deliver an existing Survey and current Title Commitment to Purchaser. Purchaser shall have until the date that is ten (10) business days prior to the expiration of the due diligence period to submit a survey/title objection letter. Otherwise, all title and survey matters shall be deemed approved.

Financing

This transaction is NOT contingent on Purchaser's ability to obtain financing.

Closing Date

~~February 28, 2005~~ **March 31, 2005**

Closing Costs

Seller will pay for any such closing costs as customarily paid by Seller's in Mt. Pleasant, S.C. Purchaser will pay for all other transaction costs, including any title endorsements or survey updates requested by Purchaser,

and all transfer taxes and recording costs. Purchaser and Seller will pay their own respective attorneys' fees.

Agency Representation and Disclosures

Purchaser acknowledges that The Beach Company/LJ Melody & Company represents the Seller only in this transaction and will be compensated by Seller per a separate agreement.

As-Is

The Property will be sold and purchased "as-is, where is, with all faults"; Seller will be released from all liabilities except those specifically arising under the purchase and sale agreement.

Submitted by:

URBAN POINTE DEVELOPMENT, INC.

By: [Signature]
Name: IBRAD SCOTT
Title: PRESIDENT

Accepted by:

THE BEACH COMPANIES

By: _____
Name: _____
Title: _____

**Urban Pointe Development
Response to Buyer Questionnaire
Long Grove at Seaside Farms**

Below are responses from Urban Pointe Development ("UPD") to the questionnaire submitted by the Seller of Long Grove at Seaside Farms (the "Property").

Question 1: Please describe your entity structure as it relates to the acquisition.

Response: Should UPD be the successful bidder for the Property, we intend on creating a single purpose entity for the acquisition. The entity will likely be a Delaware LLC and the manager of the LLC will be UPD. Initial members of the LLC will be Brad Scott and James Brennan. Brad Scott will contribute a minimum of \$300,000 upon the creation of the LLC. Within 30-days of creating the LLC, an additional \$300,000 will be contributed by Brad Scott or an entity controlled by Brad Scott. Within 60-days of creating the LLC, additional cash contributions will be made by the initial members and/or additional members of the LLC. The combined capital contributions of the LLC are expected to be approximately \$1.8 million.

Question 2: What is the source of equity funds for the acquisition? Are these discretionary funds? Please be specific as to the amounts or percentages of equity from each source and whether or not it is readily available.

Response: Equity funds will be provided by a small group of investors and/or LLCs managed by UPD. The funds from these sources are readily available and discretionary. We will use equity funds of approximately \$1.75 million for the acquisition.

Question 3: Please describe your anticipated source and structure of debt (if applicable) for the acquisition.

We anticipate funding the acquisition with a combination of debt and equity as follows:

80% senior debt,
16% mezzanine debt
4% Equity

The percentages noted above include the conversion costs. Therefore, the initial acquisition percentages would be as follows:

CBRE
- 1571-

76% senior debt,
19% mezzanine debt
5% Equity

We are working with Gary Mozer from George Smith Partners to obtain senior and mezzanine financing.

Question 4: Who else from your organization will need to visit the Property prior to your committing to purchase?

Response: In addition to Brad Scott and James Brennan, UPD will engage local consultants to perform property inspections and reports which will be reviewed by UPD lenders and partners.

Question 5: What approval process is required prior to acquisition (Investment Committee, Third Party Marketing Report, etc.)?

Response: UPD will obtain a property inspection report, third party market study, and review of entitlement requirements for conversation during the due diligence process. Prior to the expiration of the diligence period these reports will need to be reviewed and approved by our lenders and UPD principals.

Question 6: Please provide at least two recent transactional references, including contact name and phone numbers of any seller(s) or lender(s).

Gary Mozer (lender broker)	George Smith Partners	(310) 557-8336
Jeff Naftel (lender)	Community Bank	(626) 568-2056

Question 7: What are your underwriting assumptions? (Please provide a copy of your Conversion Proforma.)

Response: UPD will provide full access to our conversion model and pro forma should we be the successful bidder. Below is a summary of our conversion Proforma. Please note, the Gross Profit and Margin shown on the summary is before negative cash flow during conversion process and financing costs are taken into consideration.

Question 8: Please confirm that the Total Air-Conditioned Square Footage used in your analysis is 265,368 SF.

Response: Confirmed

Question 9: Are you projecting any additional capital improvements? If so, please describe with estimated costs.

CBRE
- 1572-

Response: Yes, below is a summary of our improvement budget:

Improvement Budget Summary	Per Ft.	Costs
Carpet	\$ 1.71	\$ 453,779.28
Paint	\$ 3.56	\$ 944,710.08
Counters/Cabinets	\$ 4.75	\$ 1,260,498.00
Appliances	\$ 3.17	\$ 841,216.56
Life/Safety	\$ 1.25	\$ 331,710.00
Common Area	\$ 2.25	\$ 597,078.00

Question 10: Please list your acquisitions in 2003 and all 2004 year to date. If any of the communities detailed below were subject to a price adjustment after contract execution, please explain. If any of the below acquisitions are debt-financed properties, please so note.

Response: UPD primarily develops condominium projects from the ground up. Most often, un-entitled land is purchased and developed. Below is a list of projects started and or completed in 2003 and 2004.

Manhattan Pointe – Development

28 luxury town homes on structural deck.

Project completed in 2003 / No adjustment to purchase price of land.

Equity: \$2 Million

Debt: \$12 Million

Sales: \$19 Million

Redondo Thornburgh, LLC – Development

8 Luxury town homes

Purchased land in 2003 - No adjustment to purchase price of land.

Equity: \$.6 Million

Debt: \$2.4 Million

Sales: \$4.5 Million

Paseo de la Playa Homes, LLC – Development

13 Luxury Town Homes

Purchased land in 2003 - No adjustment to purchase price of land.

Equity: \$2 Million

Debt: \$8.5 Million

Sales: \$15 Million

CBRE
- 1573-

Redondo Pointe Partners, LLC – Development
48 Luxury Condominiums and 6,125 SF Retail
Purchased land in 2004 - No adjustment to purchase price of land.
Equity: \$1.5 Million
Debt: \$12.5 Million
Sales: \$23 Million

Manhattan Pointe Plaza
11,500 SF retail Center
Completed 2003 - No adjustment to purchase price of land.
Equity: \$1 Million
Debt: \$3.85 Million
Sales: \$6 Million

Ocean Pointe West, LLC – Development
36 Luxury Condominiums
Purchased land in 2004 - No adjustment to purchase price of land.
Equity: \$1.5 Million
Debt: \$6 Million
Sales: \$18 Million

Question 11: During the past 24 months, have you contracted to purchase any properties that did not result in closing? If yes, please explain.

Response: No. All properties placed under contract in the last 24 months have closed.

South Carolina Condo Conversion Deal
 Long Grove at Seaside Farms
 Cost Summary 12-17-04

	Total	Per Unit	Per SF
Number of units	272		
Total SF	265,368		
Average Unit SF	976		
Proposed Acquisition Cost	\$ 37,250,000	\$ 136,948.53	\$ 140.37
Total Budgeted Entitlement Costs for Conversion	\$ 408,000	\$ 1,500.00	\$ 1.54
Total Budgeted Capital Improvements	\$ 4,428,992	\$ 16,283.06	\$ 16.69
Total Budgeted Fees and Expenses	\$ 1,683,480	\$ 6,189.26	\$ 6.34
Total Budgeted Purchase and Conversion Costs	\$ 43,770,472	\$ 160,920.85	\$ 164.94
Projected Total Selling Price	\$ 57,476,808	\$ 216.59	\$ 216.59
Projected Selling Cost and Concessions 4.5%	\$ 2,586,456	\$ 9,509.03	\$ 9.75
Total Cost	\$ 46,356,928	\$ 170,429.88	\$ 174.69
Gross Profit	\$ 11,119,880	\$ 40,881.91	\$ 41.90
Gross Margin	19%		

CBRE
 - 1575-

COPY

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
Case No.: 09-CP-10-6746

THE BEACH COMPANY; LONG)
GROVE at SEASIDE FARMS,)
LLC; GULF STREAM)
CONSTRUCTION COMPANY,)
INC.,)

Plaintiffs,)

-vs-)

LONG GROVE PROPERTY)
OWNERS' ASSOCIATION,)
INC., VISTA REALTY)
PARTNERS, LLC; LONG GROVE)
VISTA, LLC,)

Defendants.)

LONG GROVE PROPERTY)
OWNERS' ASSOCIATION,)
INC.,)

Third-Party Plaintiff,)

-vs-)

JAMES, HARWICK &)
PARTNERS, INC., k/n/a JHP)
ARCHITECTURE/URBAN)
DESIGN, P.C.; SAM MAYO)
d/b/a SCM CONSTRUCTION,)
INC.; ESSEX ENGINEERING)
CORPORATION,)

Third-Party Defendants.)

THE 30(b)6 DEPOSITION OF:

Mr. John Charles Long Darby

Date: Friday, November 19, 2010

Time: 9:42 a.m.

Location: Nexsen Pruet, LLC
205 King Street
Suite 400
Charleston, SC 29401

Reporter: Kimberli S. Hogle
Court Reporter &
Notary Public
(843) 849-3007



KIMBERLI S. HOGLE
Independent Court Reporter
Tele: (843) 849-3007 Fax: (843) 849-7127

A P P E A R A N C E S

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For the Plaintiffs : Nexsen Pruet
By: DAVID J. PARRISH, ESQUIRE
205 King Street, Suite 400
Charleston, South Carolina 29401

For the Defendant : Mullen Wylie, LLC
LONG GROVE POA By: FRANK E. GRIMBALL, ESQUIRE
171 Church Street, Suite 370
Charleston, South Carolina 29401

For the Defendant : Thurmon, Kirchner, Timbes
VISTA REALTY & Yelverton, P.A.
LONG GROVE VISTA By: CHRISTOPHER P. DETERS, ESQ.
15 Mid-Atlantic Wharf, Suite 101
Charleston, South Carolina 29401

Haynsworth Sinkler Boyd, P.A.
By: JENNY COSTA HONEYCUTT, ESQUIRE
134 Meeting Street, 3rd Floor
Charleston, South Carolina 29401

For the Defendant : Carlock, Copeland & Stair, LLP
ESSEX ENGINEERING By: JENNIFER B. MCCOY, ESQUIRE
40 Calhoun Street, Suite 400
Charleston, South Carolina 29401

For the Defendant : Elmore & Wall, P.A.
SAM MAYO d/b/a By: NEIL S. HALDRUP, ESQUIRE
SCM CONSTRUCTION 145 King Street, Suite 302
Charleston, South Carolina 29401

For the Defendant : Parker, Poe, Adams & Bernstein, LLP
JAMES, HARWICK & By: ELLIS R. LESEMANN, ESQUIRE
PARTNERS n/k/a 200 Meeting Street, Suite 301
JHP ARCHITECTURE/URBAN Charleston, South Carolina 29401
DESIGN

Also Present : Mr. Kent Johnson

KIMBERLI S. HOGLE
Independent Court Reporter
Tele: (843) 849-3007 Fax: (843) 849-7127

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KIMBERLI S. HOGLE
Independent Court Reporter
Tele: (843) 849-3007 Fax: (843) 849-7127

1 it closed.

2 Q. My recollection is the sales price was
3 \$37,250,000.00?

4 A. That sounds right.

5 Q. That was their final price offer?

6 A. The price, I don't recall the price ever
7 changing after we agreed to sell it to them. We did agree
8 -- or it was negotiated that, I want to say, \$250,000.00 was
9 escrowed.

10 Q. I assume in these negotiations that y'all did
11 not accept their first offer, that there was an offer that
12 was lower than the \$37,250,000.00; is that correct?

13 A. Well, the way it works, Frank, is you may have
14 10 people submit an offer and then they'll raise their
15 offers on the second round, then they'll raise it a little
16 more on the third round, and they drop out usually after two
17 or three and then they submit their best offer.

18 Q. And that's what happened in this case?

19 A. Yes.

20 Q. Was there any specific consideration for the
21 indemnification?

22 A. No.

23 Q. Was there any specific consideration for the
24 release?

25 A. No.

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1 Q. Was there any --

2 A. Nor was it ever discussed. Sorry, didn't mean
3 to interrupt you.

4 Q. That's all right. Was there any consideration
5 paid by any of the other entities that are being
6 indemnified?

7 A. No.

8 Q. Because you've got in there a host of folks.
9 The Beach Company didn't pay anything, did it?

10 A. No. No one did.

11 Q. And the same for the release. None of the
12 entities that were supposedly being released paid any
13 consideration, did they?

14 A. No one did.

15 Q. And the price actually went up during all of the
16 negotiations leading up to the agreement; correct?

17 A. Correct.

18 MR. GRIMBALL: We've been going at it an
19 hour. Let's take five and get more coffee and
20 some water.

21 (The deposition recessed briefly.)

22 BY MR. GRIMBALL:

23 Q. Other than talking with Mr. Parrish, did you do
24 anything to prepare for today's deposition?

25 A. Not really, Frank. I tried to remember a few

KIMBERLI S. HOGLE
Independent Court Reporter
Tele: (843) 849-3007 Fax: (843) 849-7127

STATE OF SOUTH CAROLINA) FIRST AMENDMENT TO MASTER DEED
) FOR LONG GROVE HORIZONTAL
COUNTY OF CHARLESTON) PROPERTY REGIME

WHEREAS, by its Master Deed dated April 13, 2005 and recorded April 18, 2005 in Book H533, Page 15 in the Charleston County RMC Office (the "Master Deed"), Long Grove Vista, LLC, a Georgia limited liability company (the "Declarant") created and established on the property described herein, Long Grove Horizontal Property Regime. In the Master Deed, the Developer reserved the right to amend the Master Deed and does hereby amend the Master Deed in the following particulars:

1. Exhibit "D" attached to the Master Deed, is replaced by Exhibit "D", attached hereto and made a part hereof.
2. All other terms and provisions of the Master Deed not affected by this amendment shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned have set their hands and seals this 26 day of April, 2005.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

DECLARANT:
LONG GROVE VISTA, LLC, a
Georgia limited liability company

[Signature]
[Signature]

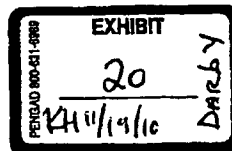
By: [Signature]
Eduard de Guardiola
Sole Member

STATE OF Georgia)
COUNTY OF Fulton) Acknowledgment

The foregoing instrument was acknowledged before me this 26th day of April, 2005, by Long Grove Vista, LLC, a Georgia limited liability company, by Eduard de Guardiola, its Sole Member.

[Signature]
Notary Public for Georgia
My Commission Expires April 12, 2009

Notary Public
My Commission Expires April 12, 2009
Fulton County, Georgia



BeachCo 000595

SOUTH CAROLINA
CHARLESTON COUNTY

BH 533PG016

MASTER DEED FOR LONG GROVE
HORIZONTAL PROPERTY REGIME

THIS MASTER DEED is made on the date set forth below by Long Grove Vista, LLC, a Georgia limited liability company (hereinafter referred to as "Declarant"):

WITNESSETH

WHEREAS, Declarant is the owner of the real property which is located in Charleston County, South Carolina and is described in Exhibit "A" attached hereto and incorporated herein by this reference;

WHEREAS, Declarant desires to subject the real property described in Exhibit "A" hereto, including the improvements thereof, to the provisions of this Master Deed and to the South Carolina Horizontal Property Act; and

NOW, THEREFORE, Declarant hereby declares that the real property described in Exhibit "A" of this Master Deed, including the improvements located thereon, is hereby submitted and made subject to the form of ownership set forth in the South Carolina Horizontal Property Act, and is hereby subjected to the provisions of this Master Deed. By virtue of the recording of this Master Deed, said property shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to provisions of the South Carolina Horizontal Property Act and the covenants, conditions, restrictions, easements, assessments, and liens set forth in this Master Deed, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property subject to this Master Deed, and shall be binding on all Persons having any right, title or interest in all or any portion of the real property subject to this Master Deed, their respective heirs, legal representatives, successors, successors-in-title and assigns, and shall be for the benefit of all owners of the property subject to this Master Deed.

BeachCo 000597

MH 533PG015

Return to:

**MASTER DEED FOR LONG GROVE
HORIZONTAL PROPERTY REGIME**

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All rights reserved. This Master Deed may be used only in connection with the property at Long Grove Horizontal Property Regime and the operation of the Long Grove Property Owners Association, Inc.

BeachCo 000598

SOUTH CAROLINA

BH 533P6016

CHARLESTON COUNTY

MASTER DEED FOR LONG GROVE

HORIZONTAL PROPERTY REGIME

THIS MASTER DEED is made on the date set forth below by Long Grove Vista, LLC, a Georgia limited liability company (hereinafter referred to as "Declarant");

WITNESSETH

WHEREAS, Declarant is the owner of the real property which is located in Charleston County, South Carolina and is described in Exhibit "A" attached hereto and incorporated herein by this reference;

WHEREAS, Declarant desires to subject the real property described in Exhibit "A" hereto, including the improvements thereof, to the provisions of this Master Deed and to the South Carolina Horizontal Property Act; and

NOW, THEREFORE, Declarant hereby declares that the real property described in Exhibit "A" of this Master Deed, including the improvements located thereon, is hereby submitted and made subject to the form of ownership set forth in the South Carolina Horizontal Property Act, and is hereby subjected to the provisions of this Master Deed. By virtue of the recording of this Master Deed, said property shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to provisions of the South Carolina Horizontal Property Act and the covenants, conditions, restrictions, easements, assessments, and liens set forth in this Master Deed, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property subject to this Master Deed, and shall be binding on all Persons having any right, title or interest in all or any portion of the real property subject to this Master Deed, their respective heirs, legal representatives, successors, successors-in-title and assigns, and shall be for the benefit of all owners of the property subject to this Master Deed.

BeachCo 000599

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BKH 533PG018

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SURVEY.....	"C"
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BYLAWS.....	"E"

BeachCo 000601

**MASTER DEED FOR LONG GROVE
HORIZONTAL PROPERTY REGIME**

1. NAME

The name of the horizontal property regime is Long Grove Horizontal Property Regime (hereinafter sometimes called "Long Grove" or the "Regime," as further defined herein), which horizontal property regime is hereby submitted by Declarant to provisions §27-31-10, *et seq.* of the South Carolina Code of Laws, 1976, as amended.

2. DEFINITIONS

Generally, terms used in this Master Deed, the Bylaws, and the Articles of Incorporation shall have their normal, generally accepted meanings given in the Act or the South Carolina Nonprofit Corporation Act of 1994. Unless the context otherwise requires, certain terms used in this Master Deed, the Bylaws and the Articles of Incorporation shall be defined as follows:

(a) Act or South Carolina Horizontal Property Act shall mean provisions §27-31-10, *et seq.* of the South Carolina Code of Laws, 1976, as such Act may be amended from time to time.

(b) Architectural Control Committee or ACC shall mean the committee established to exercise the architectural review powers set forth in Paragraph 13 hereof, which shall be the Board of Directors of the Association unless by resolution the Board appoints a separate Architectural Control Committee.

(c) Area of Common Responsibility shall mean and refer to the Common Elements, together with those areas, if any, which by the terms of this Master Deed or by contract or agreement with any other Person or entity, become the responsibility of the Association.

(d) Articles or Articles of Incorporation shall mean the Articles of Incorporation of Long Grove Property Owners Association, Inc., which have been filed with the Secretary of State of the State of South Carolina.

(e) Association shall mean Long Grove Property Owners Association, Inc., a South Carolina nonprofit corporation, its successors or assigns.

(f) Board or Board of Directors shall mean the board of directors of the Association, which shall be the body responsible for management and operation of the Association.

(g) Bylaws shall mean the Bylaws of Long Grove Property Owners Association, Inc., attached to this Master Deed as Exhibit "E" and incorporated herein by this reference.

(h) Common Elements shall mean and refer to the aggregate of all General Common Elements and all Limited Common Elements which otherwise shall include all portions of the Regime which are not designated as Units or parts of Units.

(i) Common Expenses shall mean the expenses incurred or anticipated to be incurred by the Association for the general benefit of the Regime including, but not limited to, those expenses incurred

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for maintaining, repairing, replacing, and operating the Common Elements, and as required under the Master Declaration.

(j) Declarant shall mean Long Grove Vista, LLC, a Georgia limited liability company, its respective successors and assigns and any other Person, provided that such successors and/or assignee are designated in writing by Declarant as its successor and/or assign of the rights of Declarant set forth herein. The expiration of Declarant's right to appoint the directors and officers of the Association as provided in Article III, Part A, Section 2 of the Bylaws shall not terminate or alter the status of the above-referenced entity and its successor and/or assign, as Declarant hereunder or divest it of other rights specifically reserved to Declarant herein.

(k) Declarant's Easement Area shall mean that certain area, as shown on the Plans, that Declarant has the right to use exclusively for any purpose it deems appropriate as set forth in subparagraph 21(g).

(l) Domestic Partner shall mean any adult who cohabitates with an Owner and who has been designated as the Owner's Domestic Partner in a written statement, signed by the Owner and filed with the Association's Secretary. A Person shall no longer be a Domestic Partner upon the Secretary's receipt of a written termination notice, signed by either the Owner or the Domestic Partner.

(m) Electronic Document shall mean information created, transmitted, received or stored by electronic means and retrievable in human perceivable form including, without limitation, e-mail, web pages, electronic documents, and facsimile transmissions.

(n) Electronic Signature shall mean a signature created, transmitted, received or stored by electronic means and includes, but is not limited to, a Secure Electronic Signature.

(o) Eligible Mortgage Holder shall mean those holders of first Mortgages secured by Units in the Regime who have requested notice of certain items as set forth in this Master Deed.

(p) General Common Elements shall mean those Common Elements set forth in Paragraph 5.

(q) Limited Common Elements shall mean a portion of the Common Elements reserved for the exclusive use of those Persons entitled to occupy one (1) or more, but less than all, Units, as more particularly set forth in this Master Deed.

(r) Majority shall mean fifty-one percent (51%) or more of the basic value of the Regime, in accordance with the percentages set forth on Exhibit "B".

(s) Master Declaration shall mean and refer to that certain Declaration of Covenants, Conditions, and Restrictions for All Properties in Seaside Farms Plantation, dated September 20, 1994, and recorded in Book C-248, Page 229, in the RMC Office for Charleston County, South Carolina, as amended by that certain First Supplemental Declaration of Covenants, Conditions and Restrictions for All Properties in Seaside Farms Plantation, dated April 23, 1998, and recorded in Book M-301, Page 571, aforesaid records, and as may be amended.

(t) Mortgage shall refer to any mortgage, deed to secure debt, deed of trust, or other transfer or conveyance for the purpose of securing the performance of an obligation including, but not limited to, a transfer or conveyance of fee title for such purpose.

(u) Mortgagee or Mortgage Holder shall mean the holder of any Mortgage.

(v) Occupant shall mean any Person staying overnight in a Unit for a total of more than thirty (30) days, either consecutive or nonconsecutive, in any calendar year, regardless of whether such Person is a tenant or the Owner of such Unit.

(w) Owner shall mean the record titleholder of a Unit within the Regime, but shall not include a Person who is only a Mortgage Holder.

(x) Person shall mean any individual, corporation, firm, association, partnership, trust, or other legal entity.

(y) Plans shall mean the plot plan showing the location of the buildings in existence and other improvements on the Regime, and the floor plans showing the dimensions, area, and location of each Unit, the Common Elements that afford access to each Unit, and the other Common Elements for Long Grove Horizontal Property Regime, attached hereto as Exhibit "D".

(z) Regime shall mean all that property described in Exhibit "A" attached hereto and incorporated herein by this reference, submitted to the provisions of the Act by this Master Deed.

(aa) Regime Instruments shall mean this Master Deed and all exhibits to this Master Deed, including the Bylaws of the Association, and the Survey and Plans, all as may be supplemented or amended from time to time.

(bb) Secure Electronic Signature shall mean an electronic or digital method executed or adopted by a Person with the intent to be bound by or to authenticate a record, which is unique to the Person using it, is capable of verification, is under the sole control of the Person using it, and is linked to data in such a manner that if the data is changed, the electronic signature is invalidated.

(cc) Survey shall mean the survey for Long Grove Horizontal Property Regime attached hereto as Exhibit "C", showing the horizontal and vertical location of the buildings in existence and other improvements on the Regime.

(dd) Total Association Vote shall mean all of the eligible votes attributed to members of the Association (including votes attributable to Declarant), and the consent of Declarant for so long as Declarant owns a Unit primarily for the purpose of sale.

(ee) Unit shall mean that portion of the Regime intended for individual ownership and use as more particularly described in this Master Deed and shall include the undivided ownership in the Common Elements assigned to the Unit by this Master Deed.

3. LOCATION, PROPERTY DESCRIPTION, PLATS AND PLANS

The Regime subject to this Master Deed and the Act is located in the Town of Mount Pleasant, Christ Church Parish, Charleston County, South Carolina, being more particularly described in Exhibit "A" attached to this Master Deed, which exhibit is specifically incorporated herein by this reference. The Survey is attached hereto as Exhibit "C" and incorporated herein by this reference, and the Plans are attached hereto as Exhibit "D" and incorporated herein by this reference.

So long as Declarant owns a Unit, Declarant reserves the right, but shall have no obligation, to make improvements and changes to all or part of the Common Elements and the Units owned by Declarant (other than changes to the location of Unit boundaries unless expressly permitted herein), including, without limitation, addition and realignment of parking spaces, addition and reconfiguration of storage spaces, renovation and installation of changes to utility systems and facilities, rearrangement and installation of security and refuse facilities, work relating to building exteriors, and extension of the drives and utility lines and pipes located on the Regime.

4. UNITS AND BOUNDARIES.

The Regime shall consist of seventeen (17) existing two-story buildings containing a total of two hundred seventy-two (272) separate Units, and Common Elements, some of which will be assigned as Limited Common Elements. Each Unit consists of a dwelling and its appurtenant percentage of undivided interest in the Common Elements. Each Unit shall be conveyed as a separately designated and legally described freehold estate subject to the Act and the Regime Instruments. The Units are depicted on the Survey and the Plans. Each Unit includes that part of the structure, which lies within the following boundaries:

(a) Vertical Boundaries. The perimetrical or vertical boundaries of each Unit shall be the vertical planes formed by the outermost surface of the studs in the walls separating the Unit from the wall of the Regime building, the walls separating the Unit from the hallway of the floor on which the Unit is located in the Regime building, and the common walls between the Units. The vertical boundaries include the wallboard or other material comprising the wall of the Unit.

(b) Horizontal Boundaries.

(i) If the Unit is on the top floor of the building, the upper horizontal boundary of such Unit is the uppermost, unfinished, unexposed surface of the wallboard or other material comprising the ceiling of the Unit, with such material constituting part of the Unit. The lower horizontal boundary of such Unit is the lowermost surface of the wood floor truss structure comprising the subflooring of the Unit, with the flooring and subflooring constituting part of the Unit.

(ii) If the Unit is on the bottom floor of the building, the upper horizontal boundary of such Unit is the lowermost surface of the wood floor truss system with lightweight concrete comprising the subflooring of the Unit above, with the subflooring of the Unit above not constituting part of the Unit below. The lower horizontal boundary of such Unit is the lowermost surface of the wood floor truss structure comprising the subflooring of the Unit, with the flooring and subflooring constituting part of the Unit.

(c) Additional Information to Interpret Unit Boundaries. Entry doors and exterior glass surfaces, including, but not limited to, windows and glass doors, serving the Unit shall be included within the boundaries of the Unit. Heating and air conditioning systems serving a single Unit (including any part of any such system located outside the boundaries of the Unit), all duct work for heating and air conditioning systems and appliances and plumbing fixtures within a Unit shall be part of the Unit.

If any chutes, flues, ducts, conduits, wires, pipes or other apparatus lies partially within and partially outside of the designated boundaries of the Unit, any portion thereof which serves only that Unit shall be deemed to be a part of that Unit, while any portions thereof which serve more than one (1) Unit or any portion of the Common Elements shall be deemed a part of the Common Elements, except that any

chimney, fireplace flue, damper and chimney cap shall not be deemed part of a Unit, but shall be considered a *Limited Common Element* assigned to such Unit as set forth below.

In interpreting deeds and Plans, the existing physical boundaries of a Unit as originally constructed or of a Unit reconstructed in substantial accordance with the original Plans thereof shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed in any deed or Floor Plan, regardless of settling or lateral movement of the building in which the Unit was located, and regardless of minor variance between the boundaries shown on the Plans or in a deed and those of the Unit.

The ownership of each Unit shall include, and there shall pass with each Unit, whether or not separately described in the conveyance thereof, that percentage of the right, title and interest in the Common Elements attributable to such Unit, together with membership in the Association and an undivided interest in the funds and assets held by the Association.

5. GENERAL COMMON ELEMENTS.

The General Common Elements consist of all portions of the Regime not located within the boundaries of a Unit and include, without limitation:

- (a) the land whether leased or in fee simple and whether or not submerged on which the Regime buildings stand;
- (b) certain utility infrastructures, fences, entry feature and lighting for same, paving, the foundation, roofs, exterior walls of the buildings, crawl spaces, landscape areas, outside parking area and lighting for same, mail kiosks, stairs, hallways, maintenance shed and car wash;
- (c) the compactor, swimming pool, clubhouse with fitness facility, business center, laundry room, and clubroom, and all other lighting in any Common Element of the Regime buildings, and in general, all devices or installations existing or to be constructed or installed for common use; and
- (d) all other elements of the Regime, in existence or to be constructed or installed, rationally of common use or necessary to its existence, upkeep, and safety.

Ownership of the General Common Elements shall be by the Owners as tenants-in-common. The percentage of undivided interest in and to the General Common Elements attributable to each Unit is set forth in Exhibit "B" attached hereto and incorporated herein by this reference. Such percentages of undivided interest may be altered only by the consent of all Owners and Mortgagees (or such lesser number of Owners and Mortgagees as may hereafter be prescribed by the Act) expressed in a duly recorded amendment to this Master Deed.

The General Common Elements shall remain undivided, and no Owner or any other Person shall bring any action for partition or division of the whole or any part thereof except as provided in the Act. Except as provided for Limited Common Elements or as otherwise provided herein, each Owner and the Association may use the General Common Elements for the purposes for which they are intended, but no such use shall enter or encroach upon the lawful rights of the other Owners.

6. LIMITED COMMON ELEMENTS

(a) The Limited Common Elements located on the Regime and the Unit(s) to which they are assigned are:

(i) breezeways, hallways, corridors, and stairs serving more than one (1) but less than all Units, as shown on the Plans, are assigned as Limited Common Elements to the Units that they serve;

(ii) the portion of the Common Elements on which there is located any portion of the air conditioning or heating system exclusively serving a particular Unit or Units is assigned as a Limited Common Element to the Unit or Units so served;

(iii) any utility meter which serves only one (1) Unit is assigned as a Limited Common Element to the Unit so served;

(iv) a Unit may be assigned one (1) or more garages, shown on the Plans as Limited Common Elements. Garages may be initially assigned or reassigned by amendment to this Master Deed as provided in subparagraphs (b) and (c) below;

(v) a Unit may be assigned one (1) or more boat parking spaces, shown on the Plans as Limited Common Elements. Boat parking spaces may be initially assigned or reassigned by amendment to this Master Deed as provided in subparagraphs (b) and (c) below;

(vi) any balcony attached to and serving only one (1) Unit is assigned as a Limited Common Element to the Unit to which it is attached and which it serves;

(vii) any chimney (including the flue, damper and chimney cap) adjoined and connected to a Unit or Units are assigned as Limited Common Elements to the Unit or Units to which they are adjoined and connected; and

(viii) each Unit is assigned one (1) mailbox or mail slot, to be initially assigned in the sole discretion of Declarant.

(b) The Association's Board of Directors, without need for a membership vote, is hereby authorized to assign and to reassign Limited Common Elements and General Common Elements not previously assigned, provided that any such assignment or reassignment shall be made in accordance with the Act. A General Common Element not previously assigned as a Limited Common Element may be so assigned and a Limited Common Element may be reassigned by the Board, without the need for a vote of the Association, upon written application to the Association by the Owner or Owners for whose exclusive use such General Common Element is requested or whose use of the Limited Common Element previously assigned is directly affected. Upon such application, the Association shall prepare and execute an amendment to the Master Deed assigning the Common Element as a Limited Common Element or reassigning the Limited Common Element, which amendment shall be executed by the Owner or Owners making such application. For so long as Developer owns a Unit primarily for the purpose of sale, an amendment to assign a Common Element, not previously assigned as a Limited Common Element shall be executed by the officers of the Association, if the request is made by Developer. The Board has the right to approve or disapprove any such request made by any Person other than Developer.

(c) For so long as Developer owns any Unit primarily for the purpose of sale, Developer shall have the right to sell to Owners one (1) or more parking spaces and storage spaces to be assigned as Limited Common Elements pursuant to subparagraphs (a) and (b) above. The proceeds of the sale of parking spaces and storage spaces as Limited Common Elements shall belong to Developer.

7. ASSOCIATION MEMBERSHIP AND ALLOCATION OF VOTES.

All Owners, by virtue of their ownership of a fee or undivided fee interest in any Unit in the Regime, excluding Persons holding such interest under a Mortgage, are members of the Long Grove Property Owners Association, Inc., and, except as otherwise provided herein or in the Bylaws, shall be entitled to vote on all matters upon which members of the Association are entitled to vote pursuant to the Master Deed and in accordance with the Bylaws. Subject to the provisions of the Regime Instruments, the Owner or collective Owners shall be entitled to one (1) weighted vote for such Unit, which shall be weighted according to the percentage interests set forth in Exhibit "B." The percentage interests set forth on Exhibit "B" are calculated based on the value of an individual Unit versus the value of the Regime as a whole, which percentage interest may be expressed as a fraction, the numerator of which shall be the value of the individual Unit, and the denominator of which shall be the value of the Regime as a whole.

8. ALLOCATION OF LIABILITY FOR COMMON EXPENSES.

(a) Except as provided below or elsewhere in the Act or Regime Instruments, the amount of all Common Expenses shall be assessed against all the Units in accordance with the percentage of undivided interest in the Common Elements appurtenant to the Unit as set forth in Exhibit "B" attached hereto and incorporated herein by this reference.

(b) The Board of Directors shall have the power to levy special assessments against Units pursuant to this Paragraph as, in its discretion, it shall deem appropriate. Failure of the Board of Directors to exercise its authority under this Paragraph shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Paragraph in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Paragraph.

(i) Any Common Expenses benefiting less than all of the Units or significantly disproportionately benefiting all Units may be specially assessed equitably among all of the Units that are benefited according to the benefit received. Except for expenses for maintenance, repair or replacement of Limited Common Elements, which may be specially assessed, expenses incurred for the maintenance, repair or replacement of the Area of Common Responsibility, shall not be specially assessed.

(ii) Any Common Expenses occasioned by the conduct of less than all of those entitled to occupy all of the Units or by the Occupant(s), licensee or invitee of any such Unit or Units may be specially assessed against such Unit or Units.

(c) In the event the Regime is served by any common utility meter, the Board shall have the authority to install submeters and assess individual Unit utilities usage charges as special assessments as provided in subparagraph (b)(i) above. This shall include the right to add a charge for the cost of overhead for such submetering, against individual Units and/or to install separate utility meters for the Units.

9. ASSOCIATION RIGHTS AND RESTRICTIONS.

In addition to and not in limitation of all other rights it may have, the Association, acting through its Board of Directors, shall have the right and authority:

(a) to enter into Units for maintenance, emergency, security, or life-safety purposes, which right may be exercised by the Board of Directors, officers, agents, employees, managers, and all police officers, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall be only during reasonable hours and after reasonable notice to the Owner or Occupant of the Unit. For the purposes of this Paragraph, an emergency justifying immediate entry into a Unit shall include, but not be limited to, the following situations: a water or other utility leak, fire, strong foul odor, obvious insect infestation or sounds indicating that a Person or animal might be injured or sick and require immediate medical attention. No one exercising the rights granted in this subparagraph shall be liable for trespass, damages, or in any other manner by virtue of exercising such rights. The failure to exercise the rights herein or to exercise said rights in a timely manner shall not create liability to any of the above-referenced parties, it being agreed that no duty to enter a Unit shall exist;

(b) to make and to enforce reasonable rules and regulations governing the use of the Regime, including the Units, Limited Common Elements, and Common Elements;

(c) to enforce use restrictions, other Master Deed and Bylaws provisions, and rules and regulations by the imposition of reasonable monetary fines and suspension of use and voting privileges;

(d) to grant and accept permits, licenses, utility easements, leases, and other easements;

(e) to control, manage, operate, maintain, improve and replace all portions of the Area of Common Responsibility;

(f) to represent and act on behalf of the Owners in the event of damage or destruction as a result of casualty loss in accordance with the provisions of the Act and Paragraph 12 of this Master Deed;

(g) to represent and act on behalf of the Owners in the event of any loss resulting from condemnation or eminent domain in accordance with Paragraph 20 of this Master Deed;

(h) to acquire, hold, and dispose of tangible and intangible personal property and real property;

(i) to collect security deposits in reasonable amounts, as determined by the Board of Directors in its sole discretion, to protect against any damage to the Regime, including, without limitation, damage resulting from moving in or out of a Unit; the transportation and use of construction materials in the Regime; and the alteration, modification, or addition to a Unit and any Limited Common Element appurtenant thereto. Costs for repair of such damage may be deductible from the security deposit and any additional expenses may be specifically assessed against the Unit under subparagraph 8(b)(ii) above;

(j) to approve contractors or subcontractors who have access to the Regime for the purpose of making repairs or improvements to Units based on rules and regulations promulgated and adopted by the Board which may include, without limitation: financial stability of the contractors and/or subcontractors; history of compliance with the Regime Instruments and rules and regulations of the Association; and other factors that may be reflective of quality and ability. The Board may also impose insurance requirements and collect other non-refundable fees for use of the trash receptacle;

(k) at the sole expense of the Association, without need for a membership vote, and without the consent of any affected Owner, to relocate any portion of the air conditioning, heating, plumbing, ventilating, exhaust or electrical system serving a particular Unit, provided that after such relocation, the system serving the Unit functions at least as well and at no greater cost to the Owner as existed prior to the relocation;

(l) to close permanently or temporarily any portion of the Common Elements (excluding the Limited Common Elements, and any Common Elements the use of which is reasonably necessary for access to or from a Unit and any portion of the Common Elements subject to the Master Declaration or any portion of the Common Elements over, on, upon or which Declarant has an easement) with thirty (30) days prior notice to all Owners, except that, in emergency situations requiring a temporary closing, prior notice shall not be required so long as notice is given within three (3) days after the closing explaining the reason for the closing. Notwithstanding the above, the Owners may re-open closed Common Elements by a majority vote of the Total Association Vote, cast at a duly called special or annual meeting; and

(m) to enter into joint agreements and contracts with other homeowners associations for the provision of services, including, without limitation, management, landscaping, porter, concierge, property monitoring services, and trash removal services.

10. ASSESSMENTS.

(a) Purpose of Assessment. The Association shall have the power to levy assessments as provided herein and in the Act. The assessments for Common Expenses provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of Units in the Regime as may be more specifically authorized from time to time by the Board.

(b) Creation of the Lien and Personal Obligation For Assessments. Each Owner of any Unit, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments or charges; (ii) special assessments, such assessments to be established and collected as hereinafter provided; and (iii) specific assessments against any particular Unit which are established pursuant to the terms of this Master Deed, including but not limited to reasonable fines imposed in accordance with the terms of this Master Deed.

All such assessments, together with charges, interest, costs, and reasonable attorneys' fees actually incurred, and if the Board so elects, rents, in the maximum amount permitted under South Carolina law, shall be a charge on the Unit and shall be a continuing lien upon the Unit against which each assessment is made. Such amounts shall also be the personal obligation of the Person who was the Owner of such Unit at the time when the assessment fell due. Each Owner and his or her grantee shall be jointly and severally liable for all assessments and charges due and payable at the time of any conveyance. Pursuant to provision Section 27-31-200 of the Act, upon the conveyance of a Unit, all unpaid assessments against a Unit shall first be paid out of the sales price of such Unit or by the acquirer over any other charges or assessments of whatever nature, except as provided in the Act. Notwithstanding anything contained herein to the contrary, pursuant to the Act, any grantee who obtains title pursuant to judicial or nonjudicial foreclosure of any Mortgage of record shall not be liable for such Unit's share of assessments accruing subsequent to the recording of such Mortgage, but prior to the acquisition of title by such Mortgagee.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors; unless otherwise provided, the annual assessments shall be paid in equal monthly installments

due on the first day of each calendar month. No Owner may exempt him or herself from liability for or otherwise withhold payment of assessments for any reason whatsoever, including, but not limited to, nonuse of the Common Elements, the Association's failure to perform its obligations required hereunder, abandonment of his or her Unit, or a dispute arising from the Association's performance of its duties. The lien provided for herein shall have priority as provided in the Act.

The Board of Directors shall have the right to: (i) not spend the full amount budgeted for any particular line item in the budget; (ii) spend more than what has been budgeted; and (iii) shift revenues within the budget from one line to another.

(c) Delinquent Assessments. All assessments and related charges not paid on or before the due date shall be delinquent, and the Owner shall be in default.

(i) Any monthly installment of annual assessments or any part thereof not paid in full by the tenth (10th) day of the month or any other charge not paid within ten (10) days of the due date shall bear interest from such date at the maximum legal rate allowable under South Carolina law without further notice or warning to the delinquent Owner.

(ii) If part payment of assessments and related charges is made, the amount received may be applied first to costs and reasonable attorneys' fees actually incurred, then to late charges, then to interest, then to delinquent assessments, and then to current assessments.

(iii) If assessments, fines or other charges or any part thereof due from an Owner remain delinquent and unpaid for a period greater than fifteen (15) days from the date due, a notice of delinquency may be given to that Owner stating that if the assessment, fine or charge remains delinquent for more than ten (10) days from the date of the notice of delinquency, the Board of Directors may accelerate and declare immediately due all of that Owner's unpaid installments of the annual assessment and of any special assessment without any further notice being given to the delinquent Owner. Upon acceleration, that Owner shall thereby lose the privilege of paying the annual assessment in monthly installments for that fiscal year.

(iv) If assessments and other charges or any part thereof remain unpaid more than thirty (30) days after they become delinquent, the Association, acting through the Board, may institute suit to collect all amounts due pursuant to the provisions of the Master Deed, the Bylaws, the Act and South Carolina law, including reasonable attorneys' fees actually incurred, and suspend the Owner and/or Occupant's right to use the Common Elements, including the right to bring or park vehicles on the Common Elements or have guests bring or park vehicles on the Common Elements. However, the Board may not limit pedestrian, medical, fire, police or other health, safety, service or emergency vehicle ingress or egress to or from the Unit or deny necessary parking of clearly and properly identified handicapped vehicles used by handicapped owners or occupants protected by the Fair Housing Amendments Act of 1988. Prior to suspending parking privileges, the Association shall provide the delinquent Owner or Occupant written notice of its intention to do so, sent by certified mail not less than ten (10) days prior to the date of such suspension.

(v) If any assessment or other charge is delinquent for thirty (30) days or more, then, in addition to all other rights provided in the Act and herein, the Association shall have the right to suspend water, electricity, gas, heat, air conditioning, cable television, or other utility services to the Unit paid for as a Common Expense by the Association. Any costs incurred by the Association in discontinuing and/or reconnecting any utility service, including reasonable attorneys' fees, shall be an assessment against the Unit. The utility services shall not be required to be restored until the

delinquency is paid in full, at which time the Association shall make arrangements for restoration of the service. An Owner whose utility or service has been suspended hereunder shall not be entitled to use any such utility or service from any source, and any such unauthorized use shall be considered a theft of services under South Carolina law.

(d) Computation of Operating Budget and Assessment. It shall be the duty of the Board at least twenty-one (21) days prior to the Association's annual meeting to prepare and deliver to each member a budget covering the estimated costs of operating the Regime during the coming year and a notice of the assessments to be levied against each Unit for the following year. The budget and the assessment shall become effective unless disapproved at a duly called and constituted annual meeting of the Association by a vote of a majority of the Total Association Vote; provided, however, if a quorum is not obtained at the annual meeting, the budget shall become effective even though a vote to disapprove the budget could not be called at this meeting.

Notwithstanding the foregoing, in the event that the membership disapproves the proposed budget or the Board fails for any reason to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the current year shall continue for the succeeding year. In such case, the Board may propose a new budget at any time during the year at a special meeting of the Association. The proposed budget and assessment shall be delivered to the members at least twenty-one (21) days prior to the proposed effective date thereof and at least ten (10) days prior to the special meeting. The approval procedure set forth above for budgets considered at annual meetings shall also apply to budgets considered at special meetings.

(e) Special Assessments. In addition to the annual assessment provided for in subparagraph (b) above, the Board may, at any time, and in addition to any other rights it may have, levy a special assessment against all Owners, notice of which shall be sent to all Owners.

(f) Capital Reserve Budget and Contribution. The Board of Directors shall annually prepare a capital reserve budget that shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital reserve contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital reserve budget, with respect both to amount and timing by equal annual assessments over the period of the budget. The annual capital reserve contribution required, if any, shall be fixed by the Board and included within the budget and assessment as provided in subparagraph (d) of this Paragraph. A copy of the capital reserve budget shall be distributed to each member in the same manner as the operating budget.

(g) Statement of Account. Any Owner, Mortgagee, or a Person having executed a contract for the purchase of a Unit, or a lender considering a loan to be secured by a Unit, shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments due and unpaid, including any late charges, interest, fines, or other charges against a Unit. The Association shall respond in writing within five (5) business days of receipt of the request for a statement; provided, however, the Association may require the payment of a fee as a prerequisite to the issuance of such a statement. Such written statement shall be binding on the Association as to the amount of assessments due on the Unit as of the date specified therein.

(h) Surplus Funds and Common Profits. Common profits from whatever source shall be applied to the payment of Common Expenses. Any surplus funds remaining after the application of such common profits to the payment of Common Expenses shall, at the option of the Board of Directors, either be distributed to the Owners or credited to the next assessment chargeable to the Owners in proportion to

the liability for Common Expenses attributable to each Unit, or added to the Association's capital reserve account as set forth in (f) above.

If the Board of Directors reasonably determines that during a fiscal year there will likely be a surplus of funds at the end of such fiscal year (excluding amounts designated for reserves), the Board may, but shall not be required to, reduce the amount of the annual assessment to be collected from the Owners for the remainder of that fiscal year. Any Owner who has already paid the entire annual assessment at the time of such reduction shall, in the discretion of the Owner, either receive a refund of the overpayment or a credit of the amount of the overpayment towards the annual assessment of the Association for the following fiscal year. Notwithstanding the above, the Association may first apply the amount of any overpayment toward any other amount the Owner may owe to the Association.

(j) Date of Commencement of Assessments. Assessments shall commence as to a Unit on the first day of the month following the conveyance of the Unit to a Person other than the Declarant. Notwithstanding anything to the contrary stated herein, the Declarant shall not be responsible for the payment of any type of assessment until the expiration of Declarant's right to appoint the directors and officers of the Association as provided in Article III, Part A, Section 2 of the Bylaws. Assessments shall be due and payable in a manner and on a schedule as the Board of Directors may provide. The first annual common assessment shall be adjusted according to the number of months then remaining in that fiscal year.

(j) Budget Deficits During Declarant Control. For so long as the Declarant has the authority to appoint the directors and officers of the Association as provided in Article III, Part A, Section 2 of the Bylaws, Declarant shall pay to the Association the amount sufficient to satisfy the deficit, if any, between the actual operating expenses of the Association (but specifically not including an allocation for capital reserves) and the sum of the annual, special and specific assessments collected by the Association in any fiscal year.

(k) Working Capital Fund. Declarant, on behalf of the Association, shall establish a working capital fund to meet unforeseen expenditures or to purchase any additional equipment or services. A non-refundable contribution to the working capital fund of the Association shall be paid by the purchaser of a Unit at the closing of each sale or resale of a Unit in the amount of two (2) months of the general assessment charged to such Unit. Declarant shall not use the working capital funds to defray any of its expenses, reserve contributions, or construction costs or to make up any budget deficits while it is in control of the Association. Notwithstanding anything to the contrary herein, the contribution to the working capital fund shall not be due from (i) any grantee who is the Domestic Partner, spouse or former spouse of the grantor; (ii) any grantee that is a wholly-owned entity of the grantor; (iii) any grantee to whom a Unit is conveyed by a will or through the law of intestacy; or (iv) any grantee of a Unit who obtains title pursuant to judicial or nonjudicial foreclosure of any first Mortgage of record or secondary purchase money Mortgage of record (provided that neither the grantee nor any successor grantee on the Mortgage is the seller of the Unit).

11. INSURANCE

The Association, acting through its Board of Directors, shall obtain and maintain at all times, as a Common Expense, insurance as required hereina. The Association shall obtain property insurance that shall, at a minimum, afford fire and extended coverage insurance for and in an amount consonant with the full replacement value of the buildings and other structures on the Regime. Such coverage shall include all of the Units and the fixtures initially installed therein by Developer and replacements thereof up to the value of those initially installed by Developer, but shall not include any improvements or additions (including wall

coverings and fixtures) made by or on behalf of any Owner other than those made by Developer and shall exclude furnishings and other personal property within a Unit.

All insurance purchased by the Association pursuant to this Paragraph shall run to the benefit of the Association, the Board of Directors, officers, all agents and employees of the Association, the Owners and their respective Mortgagees, and all other persons entitled to occupy any Unit as their interests may appear. The Association's insurance policy may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance equals at least the replacement cost of the insured property.

The Board of Directors shall make available for review by Owners a copy of the Association's insurance policy to allow Owners to assess their personal insurance needs and each Owner shall have the obligation to obtain any additional coverage at his or her own expense.

All insurance coverage for the Association shall be written in the name of the Association as trustee for itself, each of the Owners, and the Mortgagees of Owners, if any. It shall be the duty of the Board of Directors at least every two (2) years to conduct an insurance review to determine if the policy in force is adequate to meet the needs of the Association and to satisfy the requirements of this Paragraph. Such responsibility may be performed, and shall be deemed reasonably performed, by the Board requesting the Association's insurance agent to verify that insurance policies in existence meet the needs of the Association and satisfy the requirements of this Paragraph.

(a) The Board of Directors shall utilize reasonable efforts to secure a blanket hazard insurance policy providing "special perils" coverage in an amount equal to full replacement cost, before application of deductibles, of all improvements located on the Regime. If "special perils" coverage is not reasonably available at reasonable cost, the Board shall obtain, at a minimum, fire and extended coverage, in like amounts. The Board shall use reasonable efforts to obtain policies that will provide the following:

(i) the insurer waives its rights of subrogation of any claims against directors, officers, the managing agent, the individual Owners, Occupants, and their respective household members;

(ii) any "other insurance" clause contained in the master policy shall expressly exclude individual Owners' policies from its operation;

(iii) until the expiration of ten (10) days after the insurer gives notice in writing to the Mortgagee of any Unit, the Mortgagee's insurance coverage will not be affected or jeopardized by any act or conduct of the Owner of such Unit, the other Owners, the Board of Directors, or any of their agents, employees, or household members, nor be canceled for nonpayment of premiums;

(iv) the master policy may not be canceled, substantially modified, or subjected to nonrenewal without at least ten (10) days prior notice in writing to the Board of Directors and all Mortgagees of Units; and

(v) an agreed value endorsement and an inflation guard endorsement.

(b) All policies of insurance shall be written with a company licensed to do business in the State of South Carolina. The company shall provide insurance certificates to each Owner and each Mortgagee upon request.

(c) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(d) In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Owners or their Mortgagees. Each Owner shall notify the Board of Directors of all structural improvements or significant upgrades made by the Owner to his or her Unit. Any Owner who obtains an individual insurance policy covering any portion of the Regime, other than improvements and betterments made by such Owner at his or her expense and personal property belonging to such Owner, shall file a copy of such individual policy or policies with the Board of Directors within thirty (30) days after the purchase of such insurance. Such Owner shall also promptly notify, in writing, the Board of Directors in the event such policy is cancelled.

(e) In addition to the insurance required hereinabove, the Board shall obtain as a Common Expense:

(i) workers' compensation insurance if and to the extent necessary to meet the requirements of law;

(ii) public liability insurance and officers' and directors' liability insurance in such amounts as the Board may determine. The public liability insurance shall contain a cross liability endorsement;

(iii) fidelity bonds, if reasonably available, covering officers, directors, employees, and other persons who handle or are responsible for handling Association funds. Such bonds, if reasonably available, shall be in an amount consistent with the best business judgment of the Board of Directors, but in no event less than three (3) months assessments plus a reasonable amount to cover all or a reasonable portion of reserve funds in the custody of the Association at any time during the term of the bond; provided, however, fidelity coverage herein required may be reduced based on the implementation of financial controls which take one or more of the following forms: (a) the Association or management company, if any, maintains a separate bank account for the working account and the reserve account, each with appropriate access controls and the bank in which funds are deposited sends copies of the monthly bank statements directly to the Association; (b) the management company, if any, maintains separate records and bank accounts for each association that uses its services and the management company does not have the authority to draw checks on, or to transfer funds from, the Association's reserve account; or (c) two (2) members of the Board of Directors must sign any checks written on the reserve account; and

(iv) such other insurance as the Board of Directors may determine to be necessary or desirable including, for example coverage of the following types of property contained within a Unit, regardless of ownership: (A) fixtures, improvements and alterations that are part of the Building or structure; and (B) appliances, such as those used for refrigerating, ventilating, cooking, dishwashing, laundering, security or housekeeping.

(f) Insurance carried by the Association as a Common Expense shall not be required to include: (i) any part of a Unit that is not depicted on the original Plat; or (ii) any part of a Unit that was not included as part of the collateral for the initial loan made for the initial purchase of the Unit, nor shall the Association include public liability insurance for individual Owners for liability arising within the Unit.

(g) Nothing contained herein gives any Owner or other party a priority over any rights of first Mortgages as to distribution of insurance proceeds. Any insurance proceeds payable to the Owner of a Unit on which there is a Mortgage endorsement shall be disbursed jointly to such Owner and the Mortgagee. This is a covenant for the benefit of any such Mortgagee and may be enforced by any such Mortgagee.

(h) Every Owner shall be obligated to obtain and maintain at all times insurance covering those portions of his or her Unit to the extent not insured by policies maintained by the Association. Upon request by the Board, the Owner shall furnish a copy of such insurance policy or policies to the Association. In the event that any such Owner fails to obtain insurance as required by this subparagraph, the Association may purchase such insurance on behalf of the Owner and assess the cost thereof to the Owner, to be collected in the manner provided for collection of assessments under Paragraph 10 hereof.

(i) Insurance Deductibles. In the event of an insured loss, any required deductible shall be considered a maintenance expense to be paid by the person or persons who would be responsible for such loss in the absence of insurance. If the loss affects more than one (1) Unit or a Unit and the Common Elements, the cost of the deductible may be apportioned equitably by the Board among the parties suffering loss in proportion to each affected owner's portion of the total cost of repair. Notwithstanding this, if the insurance policy provides that the deductible will apply to each Unit separately or to each occurrence, each Owner shall be responsible for paying the deductible pertaining to his or her Unit, if any. If any Owner or Owners fail to pay the deductible when required under this subparagraph, then the Association may pay the deductible and assess the cost to the Owner or Owners pursuant to Paragraph 8 of this Master Deed.

(j) Payment of Claims to Delinquent Owners. Notwithstanding anything to the contrary herein, in the event of an insured loss under the Association's master hazard insurance policy for which the Association receives from the insurer payment for a loss sustained by an Owner who is delinquent in the payment of assessments owed to the Association under Paragraph 10 hereof, then the Association may retain and apply such proceeds to the delinquency. Any surplus remaining after application of the proceeds to any delinquency shall be paid by the Association to the affected Owner.

12. REPAIR AND RECONSTRUCTION.

Pursuant to the Act, in the event of damage to or destruction of any part of the Regime as a result of fire or other casualty which requires the reconstruction of more than two-thirds (2/3) of the Regime, the Association shall not proceed with the reconstruction and repair of the Regime unless one hundred percent (100%) of the Owners agree to proceed with the reconstruction and repair of the Regime. If one hundred percent (100%) of the Owners do not agree to proceed with the reconstruction and repair of the Regime, the insurance proceeds shall be delivered pro rata to the Owners in accordance with the percentage of ownership set forth on Exhibit "B".

Pursuant to the Act, in the event of damage to or destruction of any part of the Regime as a result of fire or other casualty which does not require the reconstruction of more than two-thirds (2/3) of the Regime, the Association shall proceed with the reconstruction and repair of the Regime in accordance with the provisions below.

In the event of substantial damage or destruction, each holder of a first Mortgage shall be entitled to written notice of the damage, and nothing in these documents shall be construed to afford a priority to any Owner with respect to the distribution of proceeds to any such Unit.

(a) Cost Estimates. Immediately after a fire or other casualty causing damage to the Regime, the Board of Directors shall obtain reliable and detailed estimates of the cost of repairing and restoring the structures (including any damaged Unit) to substantially the condition that existed before such casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. Such costs may also include professional fees and premiums for such bonds as the Board of Directors determines to be necessary.

(b) Source and Allocation of Proceeds. If, for any reason, the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair, as determined by the Board, the additional costs shall be assessed against the Owners of the Unit(s) damaged in proportion to the value of their respective Units or against all Owners, in the case of insufficient funds to cover damage to the Common Elements. If an Owner refuses to pay such costs, upon the affirmative vote or written consent of the members of the Association holding a Majority of the Total Association Vote, the Owners may proceed with such reconstruction at the expense of all Owners benefited thereby. This assessment shall not be considered a special assessment as discussed in subparagraph 10(e). If there are surplus funds after repair and reconstruction is completed, such funds shall be common funds of the Association to be used as directed by the Board. The provisions of this subparagraph 11(b) may be amended subsequent to the date on which the fire or other disaster occurs by one hundred percent (100%) of the Owners affected.

(c) Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the Plans and specifications under which the Regime was originally constructed to standard finish so as to exclude any upgrades made to Units, except where changes are necessary to comply with current applicable building codes or where improvements not in accordance with the original Plans and specifications are approved by the Board of Directors. To the extent insurance proceeds are available, the Association may reconstruct or repair Owner improvements damaged as a result of fire or other casualty.

(d) Encroachments. Encroachments upon or in favor of Units that may be created as a result of such reconstruction or repair shall not constitute a claim or basis for any proceeding or action by the Owner upon whose property such encroachment exists, provided that such reconstruction was substantially in accordance with the architectural plans under which the Regime was originally constructed. Such encroachments shall be allowed to continue in existence for so long as the reconstructed building shall stand.

(e) Construction Fund. The net proceeds of the insurance collected on account of a casualty and the funds collected by the Association from assessments against Owners on account of such casualty shall constitute a construction fund, which shall be disbursed in payment of the cost of reconstruction and repair in the manner set forth in this Paragraph to be disbursed by the Association in appropriate progress payments to such contractor(s), supplier(s), and personnel performing the work or supplying materials or services for the repair and reconstruction of the structure as are designated by the Board of Directors.

13. ARCHITECTURAL CONTROLS

(a) During Declarant Control. During the time in which Declarant has the right to appoint directors and officers of the Association under Article III, Part A, Section 2 of the Bylaws, there shall be no Architectural Control Committee and all encroachments onto the Common Elements or Limited Common Elements, exterior change, alteration or construction (including painting and landscaping), and any erection, placement or posting of any object, sign, clothesline, speaker, playground equipment, light, fountain, flag, personalized or customized exterior door mat, or thing on the exterior or roofs of the buildings, in any windows (except window treatments as provided herein), or on any Limited Common

Elements or any Common Elements, must receive the prior written approval of Declarant. However, a mezuzah or comparable religious symbol not larger than three inches (3") in width and nine inches (9") in height may be posted on the doorframe of the Unit. In addition, reasonable seasonal decorative lights may be displayed between Thanksgiving and January 15. Granting or withholding such approval shall be within the sole discretion of Declarant. All references in the Regime Instruments to the Architectural Control Committee or ACC shall refer to Declarant during the period Declarant has the right to appoint the officers and directors of the Association. Notwithstanding anything to the contrary stated herein, the initial improvements constructed on the Regime and all architectural modifications thereto that are made by Declarant shall not be subject to approval pursuant to this Paragraph.

(b) After Declarant Control. After such time as Declarant's rights to appoint officers and directors of the Association as provided in Article III, Part A, Section 2 of the Bylaws has expired, an Architectural Control Committee shall be appointed by the Board of Directors and except for Declarant, so long as Declarant shall own a Unit for sale, no Owner, Occupant, or any other Person may make any encroachment onto the Common Elements or Limited Common Elements, or make any exterior change, addition, alteration, or construction (including painting and landscaping), nor erect, place or post any object, sign, clothesline, speaker, playground equipment, light, fountain, flag, personalized or customized exterior door mat, or thing on the exterior or roofs of the buildings, in any windows (except window treatments as provided herein), on any Limited Common Elements, or on any other Common Elements, without first obtaining the written approval of the ACC. However, a mezuzah or comparable religious symbol not larger than three inches (3") in width and nine inches (9") in height may be posted on the doorframe of the Unit. In addition, reasonable seasonal decorative lights may be displayed between Thanksgiving and January 15. The standard for approval of such improvements shall include, but not be limited to, aesthetic consideration, materials to be used, harmony with the external design of the existing buildings, Units and structures, the location in relation to surrounding structures and topography, and the impact of such approval, if any, on the increase or decrease of sounds and vibrations between the Units and between the Units and the Common Elements. Notwithstanding the above, Declarant shall not be required to obtain any approvals under this Paragraph.

(c) Alteration of Units. Subject to the other provisions of this Master Deed, alterations to the interiors of Units, relocation of the boundaries between adjoining Units, and subdivision of Units are subject to the following restrictions:

(i) Alterations to the Interiors of the Units. Except as provided herein, no Owner or Occupant may make any alteration within a Unit which involves connecting to Common Element pipes, lines, conduits and/or other apparatus for access to common utilities without prior written ACC approval (including, but not limited to, installation of washers and dryers). Except as provided herein, no Owner or Occupant shall make any interior modifications to or place an excessive load on any structural or load bearing portions of a Unit without first obtaining the prior written approval of the ACC. Such approval shall not be granted by the ACC unless the Owner has presented to the ACC a report or drawing prepared by a licensed structural engineer showing that compensating measures will be taken to ensure the structural integrity of the Unit and the Regime. All building code requirements must be complied with and necessary permits and approvals secured for any modifications. Notwithstanding the above, all Owners desiring to make any interior modifications or alterations to a Unit affecting the Common Elements or structure or load bearing portions of a Unit must make application to the ACC as described below in order for the ACC to make the determination of whether the ACC's approval is required.

Notwithstanding the above, if any Owner acquires an adjoining Unit, such Owner shall have the right (subject to the prior written approval of the Mortgagees of the Units involved)

to remove all or any part of any intervening partition or to create doorways or other apertures therein, notwithstanding the fact that such partition may, in whole or part, be part of the Common Elements, so long as no portion of any structural or load bearing portions of the Unit(s) are materially weakened or removed and the ACC has approved the plans described above and no portion of any Common Elements is damaged, destroyed or endangered, other than that partition and any chutes, flues, ducts, conduits, wires or other apparatus contained therein which shall be relocated by such Owner if such facilities serve any other part of the Regime. Notwithstanding the above, Declarant shall not be required to obtain any approvals under this Paragraph. The alterations permitted in this Paragraph shall not be deemed an alteration or relocation of boundaries between adjoining Units.

(ii) Relocation of Boundaries. Boundaries between adjoining Units shall not be relocated; provided, however, Declarant shall have the right to relocate boundaries between Units owned by Declarant without the approval of the Board of Directors, and the Board of Directors shall execute the required amendment to the Master Deed.

(iii) Subdivision of Units. No Unit shall be subdivided into a smaller Unit or Units.

(d) Applications. Applications for approval of any such architectural modification shall be in writing and shall provide such information as the ACC may reasonably require. Once an application and all required information is received by the ACC, the ACC shall stamp the application as being complete and shall then forward to the applicant a written notice of application completion (the "Notice of Application Completion"). The ACC shall be the sole arbiter of such application and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction that is not in conformance with approved plans. The Board or ACC may publish written architectural standards for exterior and Common Element alterations or additions, and any request in substantial compliance therewith shall be approved; provided, however, each such requested change shall be in harmony with the external design of the existing buildings and Units and the location in relation to surrounding structures and topography of the vicinity.

In the event that the ACC fails to approve or to disapprove such application within forty-five (45) days after the date of the Notice of Application Completion, ACC approval will not be required and this Paragraph will be deemed complied with; provided, however, even if the requirements of this Paragraph are satisfied, nothing herein shall authorize anyone to construct or maintain any structure or improvement that is otherwise in violation of the Master Deed, the Bylaws, or the rules and regulations of the Association.

(e) Appeal. In the event that the ACC or its designated representative disapproves any application or part thereof, an Owner shall have the right to appeal the ACC's decision to the Board of Directors. The Board shall rule on the appeal within forty-five (45) days of receiving written notice requesting an appeal from the Owner. In ruling on the appeal, the Board shall consider all relevant materials presented to it by either the Owner or the ACC, the decision of the ACC, and the application of the Owner to the ACC. The Board of Directors shall have the final authority to approve, disapprove, or conditionally approve or disapprove the application of the Owner. If the Board does not receive written notice from the Owner by certified mail requesting an appeal within fourteen (14) days from the date of the ACC's notice to the Owner of its decision, the decision of the ACC shall become final and all rights of appeal shall terminate and thereafter be void.

(f) Encroachments onto Common Elements. The ACC, subject to this Paragraph, may permit Owners to make encroachments onto the Common Elements as it deems acceptable.

(g) Condition of Approval. As a condition of approval for a requested architectural change, modification, addition, or alteration, an Owner, on behalf of him or herself and his or her successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement and insurance of such change, modification, addition, or alteration, unless otherwise agreed to in writing by the ACC. It is the responsibility of every Owner of a Unit to determine for him or herself what architectural modifications have been made to his or her Unit by any predecessor-in-interest. In the discretion of the Board or ACC, an Owner may be made to verify such condition of approval by written instrument in recordable form acknowledged by such Owner on behalf of him or herself and all successors-in-interest.

(h) Limitation of Liability. Review and approval of any application pursuant to this Paragraph is made on the basis of aesthetic considerations only, and neither Declarant, the Board of Directors or the ACC shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, or for ensuring compliance with building codes and other governmental requirements. Neither Declarant, the Association, the Board of Directors, the ACC, or member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction or modifications to any Unit.

(i) No Waiver of Future Approvals. Each Owner acknowledges that the members of the Board of Directors and ACC will change from time to time and that interpretation, application and enforcement of the architectural standards may vary accordingly. Each Owner further acknowledges that the Board of Directors and ACC may adopt different architectural standards for different parts of the Regime, based on street visibility and location of the proposed modification in the building. The approval of either the Board of Directors or the ACC of any proposals, plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Board of Directors, or the ACC shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

(j) Enforcement. Any construction, alteration, or other work done in violation of this Paragraph shall be deemed to be nonconforming. Upon written request from the Board or the ACC, Owners shall, at their own cost and expense, remove such construction, alteration, or other work and shall restore the property to substantially the same condition as existed prior to the construction, alteration, or other work. Should an Owner fail to remove and restore as required hereunder, the Board or its designees shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as existed prior to the construction, alteration or other work. All costs thereof, including reasonable attorneys' fees, may be assessed against the benefited Unit and collected as an assessment pursuant to this Master Deed.

In addition to the foregoing, the Board of Directors shall have the authority and standing, on behalf of the Association, to impose reasonable fines and to pursue all legal and equitable remedies available to enforce the provisions of this Paragraph and its decisions. Furthermore, the Board shall have the authority to record in the Charleston County land records notices of violation of the provisions of this Paragraph.

If any Owner or Occupant makes any exterior change, alteration, or construction (including landscaping) upon the Common Elements or Limited Common Elements in violation of this Paragraph, he or she does so at his or her sole risk and expense. The Board may require that the change, alteration or construction be removed or that it remain on the Common Elements or Limited Common Elements without reimbursement to the Owner or Occupant for any expense he or she may have incurred in making the change, alteration or construction.

(k) Commencement of Construction. All changes, modifications and improvements approved by the ACC hereunder must be commenced within six (6) months from the date of approval. If not commenced within six (6) months from the date of such approval, then such approval shall be deemed revoked by the ACC, unless the ACC gives a written extension for commencing the work. All work approved by the ACC hereunder shall be completed in its entirety within ninety (90) days from the date of commencement, unless otherwise agreed in writing by the ACC. All approved changes, modifications, and improvements must be completed in their entirety. An Owner may not construct only a portion or part of an approved change, modification, or improvement.

(l) Approval Under the Master Declaration. The provisions for architectural control contained in this Declaration shall be in addition to, and not in lieu of the architectural control provisions contained in the Master Declaration. Whenever approval of the Board of Directors or the ACC is required under this Master Deed, the granting of such approval shall not dispense with the need also to comply with the approval procedures set forth in the Master Declaration. All proposed construction, modifications, alterations, and improvements shall be approved pursuant to this Master Deed before being submitted for approval pursuant to the Master Declaration. The Owner shall be responsible for any fees and costs associated with making such application pursuant to the Master Declaration, and any unpaid fees and costs shall constitute a lien against the Owner's Unit, and may be collected as an assessment pursuant to this Master Deed.

14. USE RESTRICTIONS.

Each Owner of a Unit shall be responsible for ensuring that the Owner's family, guests, tenants and Occupants comply with all provisions of the Regime Instruments and the rules and regulations of the Association. Furthermore, each Owner and Occupant shall always endeavor to observe and promote the cooperative purposes for which the Association was established. In addition to any rights the Association may have against the Owner's family, guests, tenants or Occupants, as a result of such Person's violation of the Regime Instruments, the Association may take action under this Master Deed against the Owner as if the Owner committed the violation in conjunction with the Owner's family, guests, tenants or Occupants.

In addition to the following use restrictions, the Board of Directors may adopt rules and regulations in accordance with the terms hereof and as specified in the Bylaws.

(a) Use of Units. Each Unit shall be used for residential purposes only, and no trade or business of any kind may be conducted in or from a Unit or any part of the Regime, except that the Owner or Occupant residing in a Unit may conduct ancillary business activities within the Unit so long as:

(i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside of the Unit;

(ii) the business activity does not involve visitation of the Unit by employees, clients, customers, suppliers or other business invitees in greater volume than would normally be expected for guest visitation to a residential Unit without business activity;

(iii) the business activity is legal and conforms to all zoning requirements for the Regime;

(iv) the business activity does not unreasonably increase traffic in the Regime in excess of what would normally be expected for residential Units in the Regime without business activity

(other than by couriers, express mail carriers, parcel delivery services and other such similar delivery services);

(v) the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the Association's ability to obtain insurance coverage;

(vi) the business activity is consistent with the residential character of the Regime and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Regime, as determined in the Board's discretion; and

(vii) the business activity does not result in a materially greater use of common element facilities or Association services.

The terms "business" and "trade," as used herein, shall have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. Notwithstanding the above, the use of a Unit by an on-site management agent operating on behalf of the Association shall not be considered a trade or business within the meaning of this Paragraph.

(b) Number of Occupants. The maximum number of Occupants in a Unit shall be limited to two (2) people per bedroom in the Unit, (as such bedrooms are depicted on the original Survey and Plans filed in the Office of the Register of Deeds for Charleston County, South Carolina). This occupancy restriction shall not apply to require the removal of any Person lawfully occupying a Unit on the date of the recording of this Master Deed. Upon written application, the Board shall grant variances to this restriction to comply with provisions of the Fair Housing Amendments Act of 1988 or any amendments thereto.

If an Owner of a Unit is a corporation, partnership, trust or other legal entity not being a natural person, the entity shall designate in writing to the Board the name(s) of the Person(s) who will occupy the Unit. The designated Person(s) to occupy the Unit may not be changed more frequently than once every six (6) months without the express written consent of the Board as determined in the Board's sole discretion.

(c) Outbuildings. No structure of a temporary character, trailer, tent, shack, carport, garage, barn or other outbuilding shall be erected by any Owner or Occupant, other than Declarant, on any portion of the Regime, at any time, either temporarily or permanently, without the prior written approval of the Board.

(d) Use of Common Elements Including Amenities. There shall be no obstruction of the Common Elements, nor shall anything be kept on, parked on, stored on or removed from any part of the Common Elements without the prior written consent of the Board, except as specifically provided herein. With prior written Board approval, and subject to any restrictions imposed by the Board, an Owner may reserve portions of the Common Elements for use for a period of time as set by the Board. Any such Owner who reserves a portion of the Common Elements as provided herein shall assume, on behalf of him or herself and his or her guests, Occupants and family, all risks associated with the use of the Common Elements and all liability for any damage or injury to any Person or thing as a result of such use. The Association shall not be liable for any damage or injury resulting from such use unless such damage or injury is caused solely by the willful acts or gross negligence of the Association, its agents or employees.

There shall be no use of the roofs of the Regime buildings by the Owners, their family members, guests, tenants, invitees, agents or contractors. The Association and its agents and contractors shall have access to the roofs for performing its maintenance and repair responsibility. There shall be no gardening or landscaping on the Common Elements by Owners or Occupants without the prior written consent of the Board. This subparagraph shall not apply to Declarant, for so long as Declarant shall own a Unit for sale.

(c) Use of Storage Spaces, Limited Common Elements, and Balconies. Except as otherwise provided herein, the use of the Limited Common Elements assigned to the Units is restricted exclusively to the Owners of the Unit to which such Limited Common Elements are assigned, and said Owner's family members, guests, tenants and invitees. The Limited Common Elements are reserved for exclusive use, but shall not be construed or interpreted to be separate and apart from the Common Elements in general, and the restrictions applicable to the Common Elements shall also apply to the Limited Common Elements.

(i) Storage Spaces. Storage spaces shall be used solely for the purpose of storing any personal property belonging to the Owner or Occupant of the Unit to which such storage space is assigned as a Limited Common Element. No Owner or Occupant shall store any explosives, or any flammable, odorous, noxious, corrosive, hazardous or pollutant materials or any other goods in the space that would cause danger or nuisance to the storage space or the Regime. The storage space shall not be used for any purposes unlawful or contrary to any ordinance, regulation, fire code, or health code. If hazardous substances are stored, used, generated or disposed of on or in the storage space or if the storage space becomes contaminated in any manner for which the Owner or Occupant thereof is legally liable, Owner or Occupant shall indemnify and hold harmless Declarant, Association and Board of Directors from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses and any and all sums paid from settlement of claims, attorneys' fees, consultant and expert fees, arising as a result of that contamination by Owner or Occupant.

(ii) Balconies. No objects other than potted plants and patio furniture shall be placed on a balcony. This prohibition applies to objects such as, but not limited to, umbrellas, bicycles, laundry garments, towels and objects other than potted plants and patio furniture, except as may be authorized by the Board. Objects shall not be permitted to hang over or be attached to any exterior balcony wall or railing or to otherwise protrude outside of the vertical plane formed by the exterior surface of the balcony wall. Penetration of the surfaces of a balcony wall or floor is prohibited. No Owner or Occupant may enclose a balcony without the prior written consent of the ACC, as set forth in Paragraph 13 above. As used herein, "enclosure" shall mean the permanent enclosure of a balcony into the heated and cooled space within the boundaries of a Unit.

(f) Prohibition of Damage, Nuisance and Noise. Without the prior written consent of the Board of Directors, nothing shall be done or kept on the Regime, or any part thereof, which would increase the rate of insurance on the Regime or any Unit or part thereof, which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirements of any governmental body, or which would increase the Common Expenses.

The Units in the Regime are built in close proximity to one another, resulting in the sharing of common walls, floors and ceilings. As a result, noise and vibration may be detectable between Units or between Units and the Common Elements. Therefore, an Owner or Occupant shall not conduct activities within a Unit or use a Unit in a manner that interferes with or causes disruption to the use and quiet enjoyment of another Unit by its respective Owner and Occupant.

Furthermore, noxious, destructive or offensive activity shall not be carried on within any portion of the Regime. No Owner or Occupant of a Unit may use or allow the use of the Unit or any portion of the

Regime at any time, in any way or for any purpose which may endanger the health, unreasonably annoy or disturb or cause embarrassment, or discomfort to other Owners or Occupants, or in such a way as to constitute, in the sole opinion of the Board of Directors, a nuisance. In addition, no Owner or Occupant of a Unit may use or allow the use of a Unit or the Common Elements in any manner which creates disturbing noises, including, without limitation, use of stereo speakers or equipment that will in the sole discretion of the Board of Directors interfere with the rights, comfort or convenience of the other Owners or Occupants. Nothing herein, however, shall be construed to affect the rights of an aggrieved Owner to proceed individually for relief from interference with his or her property or personal rights.

No Owner, Occupant or agent of such Owner or Occupant shall do any work which, in the reasonable opinion of the Board of Directors or its designee, would jeopardize the soundness or safety of the Regime or any structure created thereon, would reduce the value thereof, or would impair any easement or other interest in real property thereto, without in every such case the unanimous, prior written consent of all members of the Association and their Mortgagees.

No damage to or waste of the Common Elements, or any part thereof, shall be permitted by any Owner or member of his or her family or any invitee of any Owner. Each Owner shall indemnify and hold the Association and the other Owners harmless against all loss to the Association or other Owners resulting from any such damage or waste caused by such Owner, members of his or her family, guests, invitees, or Occupants of his or her Unit.

(g) Firearms and Fireworks. The display or discharge of firearms or fireworks on the Common Elements or Limited Common Elements is prohibited; provided, however, the display of lawful firearms on the Common Elements or Limited Common Elements is permitted by law enforcement officers and also is permitted for the limited purpose of transporting the firearms across the Common Elements or Limited Common Elements to or from the Owner's Unit. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size. The term "fireworks" shall include those items as listed in Section 23-35-10 of the of the South Carolina Code of Laws, 1976, as amended.

(h) Animals. No Owner or Occupant may keep any animal on any portion of the Regime except as expressly permitted in this subparagraph. An Owner or Occupant may keep no more than a total of two (2) dogs and/or cats per Unit; provided, however, each such pet shall not weigh more than fifty pounds (50 lbs.). Notwithstanding the foregoing, a reasonable number of other generally recognized household pets, as determined in the Board's sole discretion, weighing less than two (2) pounds each (including by way of illustration, but not limitation, fish, gerbils and small birds) may be kept in Units.

No Owner or Occupant may keep, breed or maintain any pet for any commercial purpose, and no structure for the care, housing, or confinement of any pet shall be constructed or maintained on any part of the Common Elements, including Limited Common Elements, without prior written ACC approval. No pets are allowed on any portion of the Common Elements except for the designated dog walk area, if any; provided, however, an Owner or Occupant may walk a pet across the Common Elements to reach such dog walk area, if any, or to enter or exit the Regime property. Notwithstanding the foregoing, pets must be kept on a leash and be under the physical control of a responsible Person at all times while on the Common Elements, but excluding the Limited Common Elements. Feeces left upon the Common Elements by pets must be immediately removed by the owner of the pet or the Person responsible for the pet.

No potbellied pigs, snakes, pit bulldogs, Rotweillers or Doberman Pinschers may be brought onto or kept on the Regime at any time. In addition, other animals determined in the Board's sole discretion to be dangerous shall not be brought onto or kept on the Regime at any time. The Board may require that any pet that, in the Board's opinion, endangers the health of any Owner or Occupant or creates a nuisance or

unreasonable disturbance, be permanently removed from the Regime upon seven (7) days written notice. If the Owner or Occupant fails to do so, the Board may remove the pet. The Board may remove any pet, which, in the Board's sole discretion, presents an immediate danger to the health, safety or property of any community member, without prior notice to the pet's owner.

Any Owner or Occupant who keeps or maintains any pet upon the Regime shall be deemed to have agreed to indemnify and hold the Association, its directors, officers, and agents free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet within the Regime.

(i) **Parking.** Subject to the restrictions herein, parking shall be available on a first-come, first-serve basis. No Owner or Occupant may keep or bring onto the Regime more than a reasonable number of vehicles per Unit at any time, as determined by the Board; provided, however, the Board may adopt reasonable rules limiting the number of vehicles which may be parked at the Regime. Vehicles only may be parked in designated parking spaces or other areas authorized in writing by the Board.

For so long as Declarant owns a Unit primarily for the purpose of sale, Declarant may sell more parking spaces or garages (which parking spaces or garages shall thereafter be Limited Common Elements appurtenant to the Unit to which they have been sold) to an Owner and may adopt rules regulating the use of unassigned parking spaces.

Disabled and stored vehicles are prohibited from being parked on the Regime, except in garages. For purposes hereof, a vehicle shall be considered "disabled" if it does not have a current license tag or is obviously inoperable. A vehicle shall be considered "stored" if it remains on the Regime without being driven for fourteen (14) consecutive days or longer without prior written Board permission.

Boats, trailers, jet-skis and trailers for same, panel trucks, buses, trucks with a load capacity of one (1) ton or more, vans (excluding vans used by handicapped persons, mini-vans or sport utility vehicles used as passenger vehicles and receiving a "car" or "passenger vehicle" classification by the South Carolina Department of Motor Vehicles), recreational vehicles (RVs and motor homes), vehicles used primarily for commercial purposes, and vehicles with commercial writings on their exteriors other than Sheriffs, Marshals, or police officers' vehicles marked as such, are also prohibited from being parked on the Regime, except areas, if any, that may be designated by the Board as parking areas for particular types of vehicles. Notwithstanding the above, trucks, vans, commercial vehicles and vehicles with commercial writings on their exteriors shall be allowed temporarily on the Common Elements during normal business hours for the purpose of serving any Unit or the Common Elements; provided, however, no such vehicle shall remain on the Common Elements overnight or for any purpose unless prior written consent of the Board is first obtained.

If any vehicle is parked on any portion of the Regime in violation of this Paragraph or in violation of the Association's rules and regulations, the Board or agent of the Association may place a notice on the vehicle specifying the nature of the violation and stating that after twenty-four (24) hours the vehicle may be towed or booted. The notice shall include the name and telephone number of the Person or entity that will do the towing or booting and the name and telephone number of a Person to contact regarding the alleged violation. If twenty-four (24) hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six (6) months of such notice, the Board or agent of the Association may have the vehicle towed or booted in accordance with the notice, without further notice to the Owner or user of the vehicle.

If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's Unit or parking space, is obstructing the flow of traffic, is parked on any grassy area, is parked in a parking space which has been assigned as exclusively serving another Unit, or otherwise creates a hazardous condition, no notice shall be required and the Board or agent of the Association may have the vehicle towed immediately. If a vehicle is towed in accordance with this subparagraph, neither the Association nor any officer or agent of the Association shall be liable to any Person for any claim of damage as a result of the towing activity. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow or boot.

(j) Heating of Units in Colder Months. In order to prevent breakage of water pipes during colder months of the year resulting in damage to any portion of the Regime, increased Common Expenses, and increased insurance premiums or cancellation of insurance policies due to numerous damage claims, the thermostats within the Units shall be maintained with the heat in an "on" position and at a minimum temperature setting of fifty-five degrees (55°) Fahrenheit (except during power failures or periods when heating equipment is broken) whenever the temperature is forecasted to or does reach thirty-two degrees (32°) Fahrenheit or below. Owners and Occupants of Units shall take all steps possible on a timely basis to keep heating equipment, including, but not limited to, the thermostat, in good working order and repair. The Board of Directors may fine any Owner or Occupant and/or may cause the water service to the violator's Unit to be discontinued for violation of this subparagraph, in addition to any other remedies of the Association.

(k) Signs. Except as may be provided for herein or as may be required by legal proceedings, and except for signs which may be erected by Declarant related to the development and sale of Units, no signs, advertising posters, flyers, political placards or billboards of any kind shall be erected, placed, or permitted to remain on the Regime without the prior written consent of the Board or its designee. The Board shall have the right to erect reasonable and appropriate signs on behalf of the Association.

(l) Rubbish, Trash, and Garbage. All rubbish, trash, and garbage shall be regularly removed from the Unit and shall not be allowed to accumulate therein. No garbage or trash shall be placed on the Common Elements or Limited Common Elements outside the Unit, temporarily or otherwise, except in trash compactor. Rubbish, trash, and garbage shall be disposed of in sealed bags and either placed in the trash compactor, or proper receptacles designated by the Board for collection or removed from the Regime.

(m) Unsanitary or Unkempt Conditions. The pursuit of hobbies or other activities, including, but not limited to the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Regime. Clothing, bedding, rugs, mops, appliances, indoor furniture, and other household items shall not be placed or stored outside the Unit.

(n) Garage Sales. Garage sales, yard sales, flea markets, or similar activities are prohibited unless approved in writing by the Board of Directors.

(o) Garages. A Unit may have a garage assigned as a Limited Common Element, exclusively serving a particular Unit. Such assigned garages are designated Limited Common Elements and may only be used by the Owner or Occupants to whom the garages are assigned, and their guests and families. It is prohibited for an Owner or Occupant of a Unit that includes a garage to convert such garage to any other use. Garage doors shall remain closed at all times, except for necessary use, ingress, and egress. All garages shall be maintained in such a manner that parking for the maximum number of motor vehicles for which it was originally designed to hold is allowed and possible.

(p) Window Treatments. All windows in Units must have window treatments. The color of all window treatments visible from outside the Unit must be white or off-white. Bed sheets shall not be used as window treatments.

(q) Antennas and Satellite Dishes. Except as provided below, no satellite dish, antenna or other device for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation shall be erected, used or maintained on any portion of the Regime, including the Unit or Limited Common Elements; provided, however, the Association shall have the right to erect, construct and maintain such devices. The following shall apply to all Owners:

(i) No transmission antenna, of any kind, may be erected anywhere on the Regime, including the Units, without written approval of the Board of Directors or the Architectural Control Committee.

(ii) No direct broadcast satellite (DBS) antenna or multi-channel multi-point distribution service (MMDS) antenna larger than one meter in diameter shall be placed, allowed or maintained upon the Regime, including the Units and the Limited Common Elements.

(iii) DBS and MMDS satellite dishes or antennas one meter or less in diameter and television broadcast service antennas may only be installed in accordance with Federal Communication Commission (FCC) rules and the rules and regulations of the Association, both as may be amended from time to time.

In the event of a transfer of the Unit which includes a satellite dish or antenna, the grantee shall assume all responsibility for the satellite dish or antenna and shall comply with this Master Deed, the Bylaws and the rules and regulations regarding satellite dishes and antennas, including, but not limited to, those requirements relating to maintenance and removal of satellite dish or antenna.

(r) Grilling. The use of outdoor grills on any portion of the Regime buildings, including, without limitation, a balcony shall be governed by applicable state laws and local ordinances having jurisdiction over the Regime.

(s) Abandoned Personal Property. Personal property, other than vehicles as provided for in subparagraph (3) shall not be kept, or allowed to remain for more than twenty-four (24) hours upon any portion of the Common Elements, other than on a Limited Common Element, without prior written permission of the Board of Directors. If the Board determines that a violation exists, then, not less than two (2) days after written notice is placed on the personal property and/or on the front door of the property owner's Unit, if known, the Board may remove and either discard or store the personal property in a location which the Board may determine and shall have no obligation to return, replace or reimburse the owner of the property. The notice shall include the name and telephone number of the Person or entity that will remove the property and the name and telephone number of a Person to contact regarding the alleged violation.

The Board, in its discretion, may determine that an emergency situation exists and may exercise its removal rights hereunder without prior notice to the property owner; provided, however, in such case, the Board shall give the property owner, if known, notice of the removal of the property and the location of the property within three (3) days after the property is removed.

Neither the Association nor any officer or agent thereof shall be liable to any Person for any claim of damage resulting from the removal activity in accordance herewith. The Board may elect to impose fines or use other available remedies, rather than exercise its authority to remove property hereunder.

(t) Replacing Carpet with Tile or Hardwood Floors. Other than Declarant, no Owner, Occupant, or any other Person may replace carpeting with a tile, marble, vinyl, hardwood floor, or other hard surfaced flooring material, on the interior floor of a Unit which is located immediately above another Unit without first obtaining written approval of Declarant or the Architectural Control Committee, as applicable, as set forth in Paragraph 13. Among other factors, Declarant or the Architectural Control Committee, as applicable, may consider whether the change will cause noise to any Unit below which will exceed the average noise level in Units below Units with carpeted floors and that the weight of such proposed flooring is appropriate and will not cause problems to the structure or subflooring.

The Owner applying for such approval shall provide Declarant or the Architectural Control Committee, as applicable, with information regarding these factors, as well as other information requested by Declarant or the Architectural Control Committee regarding the proposed flooring and its effect; provided, however, the noise level requirements shall be considered to be met if the Owner provides a sound transmission test that the proposed flooring will create a noise level less than a standard level set by reasonable regulation of Declarant or the Architectural Control Committee, as applicable. Notwithstanding anything to the contrary stated herein, at least fifty percent (50%) of each room within a Unit located above another Unit (excluding the kitchen and bathrooms) shall have area rugs or carpet unless the flooring is sound proofed so as not to exceed the noise level in Units with carpeted floors.

(u) Sale Period. Notwithstanding any provisions contained in this Master Deed to the contrary, during the period of the sale of the Units it shall be expressly permissible for Declarant, its contractors, agents, employees, assigns and representatives, to maintain and carry on, upon such portion of the Regime as Declarant may deem necessary, such facilities and activities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the completion and sale of the Units, including, but without limitation, business offices, signs, model Units and sales offices. The right to maintain and carry on such facilities and activities shall include specifically the right to use the parking facilities on the Regime for such purposes and to use the Units owned by Declarant as model Units and as offices for the sale of the Units and related activities.

(v) Move In/Move Out. Owner or Occupant shall not move furniture, construction materials, and other over-sized items in or out of the Regime except during such hours and according to requirements to be determined by the Board of Directors.

(w) Life-Safety Systems. Owners and Occupants shall not tamper with or disengage any portion of the life-safety systems that serve the Regime including, without limitation, the sprinkler heads and all branch and feed lines that support such sprinkler heads, and all fire control devices (such as smoke detectors and call boxes), regardless of whether such items are located within the boundaries of a Unit.

15. LEASING.

In order to preserve the character of the Regime as predominantly owner-occupied, and to comply with the eligibility requirements for financing in the secondary mortgage market, the leasing of Units shall be governed by the restrictions imposed by this Paragraph. Except as provided herein, the leasing of Units shall be prohibited. "Leasing," for the purposes of this Master Deed, is defined as regular, exclusive occupancy of a Unit by any Person other than the Owner. For purposes hereof, occupancy by a roommate

of an Owner who occupies the Unit as such Owner's primary residence shall not constitute Leasing hereunder.

(a) General. Owners desiring to lease their Units may do so only if they have applied for and received from the Board of Directors either a "Leasing Permit" or a "Hardship Leasing Permit." Such a permit, upon its issuance, will allow an Owner to lease his or her Unit provided that such Leasing is in strict accordance with the terms of the permit and this Paragraph. The Board of Directors shall have the authority to establish conditions as to the duration and use of such permits consistent with this Paragraph. All Leasing Permits and Hardship Leasing Permits shall be valid only as to a specific Owner and Unit and shall not be transferable between either Units or Owners, but shall be transferable to successors in title to the same Unit.

(b) Leasing Permits. An Owner's request for a Leasing Permit shall be approved if current, outstanding Leasing Permits have not been issued for more than twenty-five percent (25%) of the total number of Units (excluding Units owned by Declarant) in the Regime. A Leasing Permit shall be automatically revoked upon the happening of any of the following events: (i) the failure of an Owner to lease his or her Unit within one hundred eighty (180) days of the Leasing Permit having been issued; (ii) the failure of an Owner to have his or her Unit leased for any consecutive one hundred eighty (180) day period thereafter; or (iii) the occurrence of the date referenced in a written notification by the Owner to the Association that the Owner will, as of said date, no longer need the Leasing Permit. If current Leasing Permits have been issued for more than twenty-five percent (25%) of the total number of Units (excluding Units owned by Declarant), no additional Leasing Permits shall be issued (except for Hardship Leasing Permits) until the number of outstanding current Leasing Permits falls below twenty-five percent (25%) of the total number of Units (excluding Units owned by Declarant) in the Regime. Owners who have been denied a Leasing Permit shall automatically be placed on a waiting list for a Leasing Permit and shall be issued the same if they so desire when the number of current outstanding Leasing Permits issued falls to twenty-five percent (25%) or less of the total number of Units (excluding Units owned by Declarant) in the Regime. The issuance of a Hardship Leasing Permit to an Owner shall not cause the Owner to be removed from the waiting list for a Leasing Permit.

(c) Hardship Leasing Permits. If the failure to lease will result in a hardship, the Owner may seek to lease on a hardship basis by applying to the Board of Directors for a Hardship Leasing Permit. The Board of Directors shall have the authority to issue or deny requests for Hardship Leasing Permits in its discretion after considering the following factors: (i) the nature, degree, and likely duration of the hardship, (ii) the harm, if any, which will result to the Regime if the permit is approved, (iii) the number of Hardship Leasing Permits which have been issued to other Owners, (iv) the Owner's ability to cure the hardship, and (v) whether previous Hardship Leasing Permits have been issued to the Owner. A "hardship" as described herein shall include, but not be limited to the following situations: (A) an Owner must relocate his or her residence outside the greater Charleston metropolitan area and cannot, within six (6) months from the date that the Unit was placed on the market, sell the Unit except at a price below the current appraised market value, after having made reasonable efforts to do so; (B) where the Owner dies and the Unit is being administered by his or her estate; and (C) the Owner takes a leave of absence or temporarily relocates and intends to return to reside in the Unit. Hardship Leasing Permits shall be valid for a term not to exceed one (1) year. Owners may apply for additional Hardship Leasing Permits. Hardship Leasing Permits shall be automatically revoked if during the term of the permit, the Owner is approved for and receives a Leasing Permit.

(d) Leasing Provisions. Leasing which is authorized, pursuant to permit, hereunder shall be governed by the following provisions:

(i) Notice. At least seven (7) days prior to entering into the lease of a Unit, the Owner shall provide the Board with a copy of the proposed lease agreement. The Board shall approve or disapprove the form of said lease. In the event a lease is disapproved, the Board shall notify the Owner of the requisite action to be taken in order to bring the lease in compliance with the Master Deed and any rules and regulations adopted pursuant thereto.

(ii) General. Units may be leased only in their entirety; no fraction or portion may be leased without prior written Board approval. All leases shall be in writing and in a form approved by the Board prior to the effective date of the lease. The Board may maintain and, upon request, provide a form that is deemed acceptable. There shall be no subleasing of Units or assignment of leases without prior written Board approval. All leases must be for an initial term of not less than one (1) year, except with written Board approval, which shall not be unreasonably withheld in cases of undue hardship. Within ten (10) days after executing a lease agreement for the lease of a Unit, the Owner shall provide the Board with a copy of the lease and the name of the lessee and all other people occupying the Unit. The Owner must provide the lessee copies of the Master Deed, Bylaws, and the rules and regulations. Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed lessee; the Board's approval or disapproval shall be limited to the form of the proposed lease.

(iii) Liability for Assessments, Use of Common Elements, and Compliance with Master Deed, Bylaws, and Rules and Regulations. Each Owner covenants and agrees that any lease of a Unit shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant, and the lessee, by occupancy of the Unit, agrees to the applicability of this covenant and incorporation of the following language into the lease:

(A) Compliance with Master Deed, Bylaws, and Rules and Regulations. The lessee shall comply with all provisions of the Master Deed, Bylaws, and rules and regulations adopted pursuant thereto and shall control the conduct of all other Occupants and guests of the leased Unit in order to ensure such compliance. The Owner shall cause all Occupants of his or her Unit to comply with the Master Deed, Bylaws, and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations by such Occupants, notwithstanding the fact that such Occupants of the Unit are fully liable and may be sanctioned for any such violation. If the lessee, or a Person living with the lessee, violates the Master Deed, Bylaws, or a rule or regulation for which a fine is imposed, notice of the violation shall be given to the Owner and the lessee, and such fine may be assessed against the lessee in accordance with Article V of the Bylaws. If the fine is not paid by the lessee within the time period set by the Board, the Owner shall pay the fine upon notice from the Association of the lessee's failure to pay the fine. Unpaid fines shall constitute a lien against the Unit.

Any violation of the Master Deed, Bylaws, or rules and regulations adopted pursuant thereto by the lessee, any Occupant, or any guest of lessee, is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with South Carolina law. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the Master Deed, Bylaws, and the rules and regulations adopted pursuant thereto, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof. If the Association proceeds to evict the lessee,

any costs, including reasonable attorneys' fees actually incurred and court costs associated with the eviction shall be an assessment and lien against the Unit.

(B) Use of Common Elements. The Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Elements, including but not limited to, the use of any and all recreational facilities and other amenities.

(C) Liability for Assessments. When an Owner who is leasing his or her Unit fails to pay any annual or special assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board, lessee shall pay to the Association all unpaid annual and special assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by lessee. However, lessee need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Board's request. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. If lessee fails to comply with the Board's request to pay assessments or other charges, lessee shall pay to the Association all amounts authorized under the Master Deed as if lessee were an Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

(c) Applicability of this Paragraph. Notwithstanding the above, this Paragraph shall not apply to any leasing transaction entered into by Declarant (regardless of whether said lease is entered into prior to or after the expiration of Declarant's right to appoint and remove officers and directors of the Association pursuant to Article III, Part A, Section 2 of the Bylaws), the Association, or the holder of any first Mortgage on a Unit who becomes the Owner of a Unit through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage. Such parties shall be permitted to lease a Unit without first obtaining a permit in accordance with this Paragraph, and such Units shall not be considered as being leased in determining the maximum number of Units that may be leased in accordance with this Paragraph.

16. TRANSFER OR SALE OF UNITS.

An Owner intending to make a transfer or sale of a Unit or any interest in a Unit shall give written notice to the Board of Directors of such intention within seven (7) days after execution of the purchase agreement (in the case of the purchase of a Unit) or transfer or sales documents (in the case of the conveyance of a Unit without a purchase of said Unit). The Owner shall furnish to the Board of Directors as part of the notice (i) the name and address of the intended grantee; and (ii) such other information as the Board of Directors may reasonably require. In addition, the purchase agreement or transfer documents shall attach a copy of the Master Deed and Bylaws. This Paragraph shall not be construed to create a right of first refusal in the Association or in any third party.

In addition, a non-refundable contribution to the working capital fund of the Association shall be paid to the Association by the purchaser of a Unit at the closing of each sale or resale of a Unit in the amount of two (2) months of the general assessment charges to such Unit in accordance with Paragraph 10(f) hereof.

Within seven (7) days after receiving title to a Unit, the new Owner of the Unit shall give written notice to the Board of Directors of his or her ownership of the Unit. Upon failure of an Owner to give the required notice within the seven (7) day time period provided herein, the Board may levy fines against the Unit and the Owner thereof, and assess the Owner for all costs incurred by the Association in determining his or her identity.

17. MAINTENANCE RESPONSIBILITY.

(a) By the Owner. Each Owner shall have the obligation to maintain and keep in good repair all portions of his or her Unit and all improvements made by the Owner to the Limited Common Elements assigned to the Unit except any portion of a Unit which is expressly made the maintenance obligation of the Association as set forth in subparagraph (b) below. This maintenance responsibility shall include, but not be limited to the following: all glass surfaces (excluding exterior cleaning), windows, window frames (except for periodic painting of the exterior window frames), casings and locks (including caulking of windows); all doors, doorways, door frames, and hardware that are part of the entry system of the Unit (except for periodic painting of the exterior surface of entry doors and door frames facing the hallway of the Regime); all portions of the heating and air conditioning system, including the air conditioning compressor and the fan coil serving the Unit; and all pipes, lines, ducts, conduits, or other apparatus which serve only the Unit, whether located within or without a Unit's boundaries (including all electricity, water, sewer, or air conditioning pipes, lines, ducts, conduits, or other apparatus serving only the Unit).

In addition, each Owner shall have the responsibility:

(i) To keep in a neat, clean and sanitary condition any Limited Common Elements serving his or her Unit;

(ii) To perform his or her responsibility in such manner so as not to unreasonably disturb other Persons in other Units;

(iii) To promptly report to the Association or its agent any defect or need for repairs, for which the Association is responsible; and

(iv) To pay for the cost of repairing, replacing or cleaning up any item which is the responsibility of the Owner but which responsibility such Owner fails or refuses to discharge (which the Association shall have the right, but not the obligation, to do), or to pay for the cost of repairing, replacing, or cleaning up any item which, although the responsibility of the Association, is necessitated by reason of the willful or negligent act of the Owner, his or her family, tenants or guests, with the cost thereof to be added to and become part of the Owner's next chargeable assessment.

(b) By the Association. The Association shall maintain and keep in good repair as a Common Expense the "Area of Common Responsibility," which includes the following:

(i) all General Common Elements, including any Limited Common Elements, but excluding all improvements made to such Limited Common Elements; provided, however, the cost of maintenance and repair of Limited Common Elements may be assessed against the Owner to whom the Limited Common Element is assigned under Paragraph 8(b)(i);

(ii) periodic painting of exterior surfaces of the Regime buildings, exterior window frames, and entry doors and door frames facing the hallway of the Regime, on a schedule to be determined by the Board of Directors;

(iii) periodic cleaning of exterior window surfaces on a schedule to be determined by the Board of Directors;

(iv) life safety and building systems; and

(v) all Limited Common Element chimneys and chimney caps the cost of which may be assessed against the Owner of the Unit to which the chimney and fireplace flue are attached, pursuant to Paragraph 8(b)(1).

Additionally, the Association shall have the right, but not the obligation, to conduct a periodic inspection, on a schedule to be determined by the Board of Directors, of all fireplaces and chimney flues and, if, in the Board of Director's sole discretion, a flue needs to be cleaned and/or repaired, the Association shall provide such cleaning and/or repair (even though the flues are considered a portion of the Unit) and the cost of such periodic inspection, cleaning and/or repair may be assessed against the Owner of the Unit served by such flue pursuant to Paragraph 8(b)(1).

Subject to the maintenance responsibilities herein provided, any maintenance or repair performed on or to the Common Elements by an Owner or Occupant which is the responsibility of the Association hereunder (including, but not limited to landscaping of Common Elements) shall be performed at the sole expense of such Owner or Occupant, and the Owner or Occupant shall not be entitled to reimbursement from the Association even if the Association accepts the maintenance or repair.

The Association shall repair incidental damage to any Unit resulting from performance of work that is the responsibility of the Association. As finish levels can have varying degrees, such repairs will be complete only to the extent of being "paint-ready". Such repair and subsequent cleaning shall be performed based on a reasonableness standard. In performing its responsibilities hereunder, the Association shall have the authority to delegate to such Persons, firms or corporations of its choice, such duties as are approved by the Board of Directors.

The Association shall not be liable for injury or damage to Person or property caused by the elements or by the Owner of any Unit, or any other Person, or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Common Elements or from any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder, except for injuries or damages arising after the Owner of a Unit has put the Association on notice of a specific leak or flow from any portion of the Common Elements and the Association has failed to exercise due care to correct the leak or flow within a reasonable time thereafter. The Association shall not be liable to the Owner of any Unit or such Owner's Occupant, guest, or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Elements. The Association shall not be liable to any Owner, or any Owner's Occupant, guest or family for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Paragraph where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Master Deed, or for inconvenience or discomfort arising from the making of repairs or improvements

which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

(c) Failure to Maintain. If the Board of Directors determines that any Owner has failed or refused to discharge properly his or her obligation with regard to the maintenance, repair, or replacement of items of which he or she is responsible hereunder, then, the Association shall give the Owner written notice of the Owner's failure or refusal and of the Association's right to provide necessary maintenance, repair, or replacement at the Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Board of Directors.

Unless the Board of Directors determines that an emergency exists, the Owner shall have ten (10) days within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten (10) days. If the Board determines that: (i) an emergency exists or (ii) that an Owner has not complied with the demand given by the Association as herein provided; then the Association may provide any such maintenance, repair, or replacement at the Owner's sole cost and expense, and such costs shall be added to and become a part of the assessment to which such Owner is subject, shall become and be a lien against the Unit, and shall be collected as provided herein for the collection of assessments.

If the Board determines that the need for maintenance or repair is in the Area of Common Responsibility and is caused through the willful or negligent act of any Owner, or Occupant or their family, guests, lessees, or invitees, then the Association may assess the cost of any such maintenance, repair, or replacement against the Owner or Occupant's Unit, shall become a lien against the Unit, and shall be collected as provided herein for the collection of assessments.

(d) Measures Related to Insurance Coverage.

(i) The Board of Directors, upon resolution, shall have the authority to require all or any Owner(s) to do any act or perform any work involving portions of the Regime which are the maintenance responsibility of the Owner, which will, in the Board's sole discretion, decrease the possibility of fire or other damage in the Regime, reduce the insurance premium paid by the Association for any insurance coverage or otherwise assist the Board in procuring or maintaining such insurance coverage. This authority shall include, but need not be limited to, requiring Owners to install and maintain smoke detectors, requiring Owners to certify that they have checked the batteries for their smoke detectors, requiring Owners to allow the Association to inspect the smoke detectors and replace batteries if needed on a schedule to be determined by the Board of Directors, requiring Owners to make improvements to the Owner's Unit, and such other measures as the Board may reasonably require so long as the cost of such work does not exceed Three Hundred Dollars (\$300) per Unit in any twelve (12) month period.

(ii) In addition to, and not in limitation of, any other rights the Association may have, if any Owner does not comply with any requirement made by the Board of Directors pursuant to subparagraph (d)(i) above, the Association, upon fifteen (15) days' written notice (during which period the Owner may perform the required act or work without further liability), may perform such required act or work at the Owner's sole cost. Such cost shall be an assessment and a lien against the Unit as provided herein. The Association shall have all rights necessary to implement the requirements mandated by the Board pursuant to subparagraph (d)(i) of this Paragraph, including, but not limited to, a right of entry during reasonable hours and after reasonable notice to the Owner or Occupant of the Unit, except that access may be had at any time without notice in an emergency situation.

(c) **Mold and/or Mildew.** Mold and/or mildew can grow in any portion of the Regime that is exposed to elevated levels of moisture. The Association and each Owner agree to: (i) regularly inspect the parts of the Regime that they respectively maintain, and which are visible and accessible without having to first conduct invasive testing, for the existence of mold, mildew, and/or water intrusion (except when the water intrusion is part of the normal functioning of improvements and appliances such as showers, sinks, dishwashers, and other similar appliances and improvements) and/or damage; (ii) upon discovery, immediately repair in a good and workmanlike condition the source of any water intrusion in the parts of the Regime that they respectively maintain; (iii) remediate or replace any building material located in the parts of the Regime that they respectively maintain that has absorbed water or moisture as a result of water intrusion; and (iv) promptly and regularly remediate all mold and/or mildew discovered in the parts of the Regime that they respectively maintain in accordance with current industry-accepted methods. In addition, the Association agrees to notify the Owners, and each Owner agrees to notify the Association of the discovery of mold, mildew, and/or water intrusion and/or damage in the parts of the Regime that they respectively maintain. Each Owner further agrees not to block or cover any of the heating, ventilation or air-conditioning ducts located in the Unit.

Notwithstanding anything to the contrary herein, Declarant shall have no obligation to perform any invasive testing or inspections, maintenance or repairs in accordance with this subparagraph 17(c), and shall not be held liable for any loss or damage caused by the failure of the Association or an Owner to perform their obligations herein.

18. **MORTGAGEE'S RIGHTS.**

(a) Unless at least two-thirds (2/3) of the first Mortgagees and Owners give their consent, the Association or the membership shall not:

- (i) by act or omission seek to abandon or terminate the Regime;
- (ii) change the pro rata interest or obligations of any individual Unit for the purpose of (A) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or (B) determining the pro rata share of ownership of each Unit in the Common Elements;
- (iii) partition or subdivide any Unit in any manner inconsistent with the provisions of this Master Deed;
- (iv) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Elements (the granting of easements or licenses, as authorized herein, shall not be deemed a transfer within the meaning of this clause); or
- (v) use hazard insurance proceeds for losses to any portion of the Regime (whether to Units or to Common Elements) for other than the repair, replacement, or reconstruction of such portion of the Regime.

The provisions of this subparagraph shall not be construed to reduce the percentage vote that must be obtained from Mortgagees or Owners where a larger percentage vote is otherwise required by the Act or the Regime Instruments for any of the actions contained in this Paragraph.

(b) Where the Mortgagee holding a first Mortgage of record, a secondary purchase money Mortgage of record (provided that neither the grantee nor any successor grantee on the secondary purchase money Mortgage is the seller of the Unit) or other purchaser of a Unit obtains title pursuant to judicial or nonjudicial foreclosure of the Mortgage, it shall not be liable, nor shall the Unit be subject to a lien, for the share of the Common Expenses or assessments by the Association chargeable to such Unit which became due prior to such acquisition of title. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from Owners of all the Units, including such acquirer, and its successors and assigns. Additionally, such acquirer shall be responsible for all charges accruing subsequent to the passage of title, including, but not limited to, all charges for the month in which title is passed.

(c) Upon written request to the Association, identifying the name and address of the holder and the Unit number or address, any Eligible Mortgage Holder will be entitled to timely written notice of:

(i) any condemnation loss or any casualty loss which affects a material portion of the Regime or any Unit on which there is a first Mortgage held by such Eligible Mortgage Holder;

(ii) any delinquency in the payment of assessments or charges owed by an Owner of a Unit subject to a first Mortgage held by such Eligible Mortgage Holder which remains unsatisfied for a period of sixty (60) days, and any default in the performance by an individual Owner of any other obligation under the Regime Instruments which is not cured within sixty (60) days;

(iii) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or

(iv) any proposed action that would require the consent of a specified percentage of Eligible Mortgage Holders, as specified herein.

(d) Upon written request to the Association, identifying the name and address of the holder and the Unit number or address, any Eligible Mortgage Holder, or insurer or guarantor of a first mortgage on a Unit, will be entitled to timely written notice of:

(i) any proposed amendment of the Regime Instruments effecting a change in (a) the boundaries of any Unit or the exclusive easement rights appertaining thereto; (b) the interests in the Common Elements or Limited Common Elements appertaining to any Unit or the liability for Common Expenses appertaining thereto; (c) the number of votes in the Association appertaining to any Unit; or (d) the purposes to which any Unit or the Common Elements are restricted;

(ii) any proposed termination of the Regime;

(iii) any condemnation loss or any casualty loss which affects a material portion of the Regime or any Unit on which there is a first Mortgage held by such Eligible Mortgage Holder;

(iv) any delinquency in the payment of assessments or charges owed by an Owner of a Unit subject to a first Mortgage held by such Eligible Mortgage Holder which remains unsatisfied for a period of sixty (60) days, and any default in the performance by an individual Owner of any other obligation under the Regime Instruments which is not cured within sixty (60) days;

(v) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or

(vi) any proposed action that would require the consent of a specified percentage of Eligible Mortgage Holders, as specified herein.

(e) Any holder of a first Mortgage shall be entitled, upon written request, to receive within a reasonable time after request, a copy of the financial statement of the Association for the immediately preceding fiscal year, free of charge to the Mortgagee so requesting.

(f) Notwithstanding anything to the contrary herein contained, the provisions of Paragraphs 15 and 16 governing leasing and sales of units, respectively, shall not apply to impair the right of any first Mortgagee to:

- (i) foreclose or take title to a Unit pursuant to remedies contained in its Mortgage; or
- (ii) take a deed or assignment in lieu of foreclosure; or
- (iii) sell, lease, or otherwise dispose of a Unit acquired by the Mortgagee.

(g) No Priority. No provision of this Master Deed or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Elements.

(h) Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of any mortgagee encumbering such Owner's Unit.

(i) Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

(j) Construction of this Paragraph. Nothing contained in this Paragraph shall be construed to reduce the percentage vote that must otherwise be obtained under the Regime Instruments or South Carolina law for any of the actions set forth in this Paragraph.

19. GENERAL PROVISIONS.

(a) SECURITY. THE ASSOCIATION OR DECLARANT MAY, BUT SHALL NOT BE REQUIRED TO, FROM TIME TO TIME, PROVIDE MEASURES OR TAKE ACTIONS WHICH DIRECTLY OR INDIRECTLY IMPROVE SECURITY ON THE REGIME; HOWEVER, EACH OWNER, FOR HIM OR HERSELF AND HIS OR HER TENANTS, GUESTS, LICENSEES, AND INVITEES, ACKNOWLEDGES AND AGREES THAT NEITHER THE ASSOCIATION NOR DECLARANT IS A PROVIDER OF SECURITY AND NEITHER PARTY SHALL HAVE A DUTY TO PROVIDE SECURITY ON THE REGIME. FURTHERMORE, THE ASSOCIATION DOES NOT GUARANTEE THAT NON-OWNERS AND NON-OCCUPANTS WILL NOT GAIN ACCESS TO THE REGIME AND COMMIT CRIMINAL ACTS ON THE REGIME NOR DOES THE ASSOCIATION GUARANTEE THAT CRIMINAL ACTS ON THE REGIME WILL NOT BE COMMITTED BY OTHER OWNERS OR OCCUPANTS. IT SHALL BE THE RESPONSIBILITY OF EACH OWNER TO PROTECT HIS OR HER PERSON AND PROPERTY AND ALL RESPONSIBILITY TO PROVIDE SUCH SECURITY SHALL LIE SOLELY WITH EACH

OWNER. NEITHER DECLARANT NOR THE ASSOCIATION SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF MEASURES UNDERTAKEN.

(b) Dispute Resolution. Prior to filing a lawsuit against the Association, the Board, or any officer, director, or property manager of the Association, an Owner or Occupant must request and attend a hearing with the Board of Directors. Any such request shall be in writing and shall be personally delivered to any member of the Board of Directors or the property manager, if any, of the Association. The Owner or Occupant shall, in such request and at the hearing, make a good faith effort to explain the grievance to the Board and resolve the dispute in an amicable fashion, and shall give the Board a reasonable opportunity to address the Owner or Occupant's grievance before filing suit. Upon receiving a request for a hearing, the Board shall give notice of the date, time and place of the hearing to the Person requesting the hearing. The Board shall schedule this hearing for a date not less than seven (7) or more than twenty-one (21) days from the date of receipt of the request.

(c) Parking Spaces, Garages, Vehicles and Storage Spaces. Neither Declarant nor the Association shall be held liable for any loss or damage arising from theft, vandalism, malicious mischief, or any loss or damage resulting from water or acid damage, to any property placed or kept in any parking space, garage or storage space in the Regime. Each Owner or Occupant with use of a parking space, garage, or storage space who places or keeps a vehicle and/or any personal property in the vehicle, parking space, garage or storage space does so at his or her own risk.

(d) Unit Keys. At the request of the Association, each Owner, by acceptance of a deed to a Unit, agrees to provide the Association with a key to the Unit (and the security alarm code, if any) to be used by the Association for maintenance, emergency, security or safety purposes as provided in subparagraph 9(a) of this Master Deed (and for pest control, if necessary, as provided in subparagraph 21(e) of this Master Deed). Neither Declarant nor the Association shall be liable for any loss or damage due to its holding such key, or use of such key for the purposes described above and each Owner shall indemnify and hold harmless Declarant, the Association and its officers and directors against any and all expenses, including attorneys' fees, reasonably incurred by or imposed upon Declarant, the Association or its officers or directors in connection with any action, suit, or other proceeding (including settlement of any such action, suit or proceeding) brought by the Owner or the Owner's family, tenants, guests, employees, invitees, or licensees against Declarant, the Association, its officers or directors arising out of or relating to its holding or use of such key for the purposes described above.

(e) Successor Declarant. Any successor to Declarant shall not be responsible or subject to liability by operation of law or through the purchase of Declarant's interest in the Regime or any portion thereof at foreclosure or otherwise for any act, omission, or matter occurring or arising from any act, omission, or matter occurring prior to the time the successor succeeded to the interest of Declarant.

(f) Disclosures. Each Owner and Occupant acknowledge the following:

(i) The Regime is located adjacent to thoroughfares that may be affected by traffic and noise from time to time and may be improved and/or widened in the future.

(ii) The natural light available to and views from an Owner's Unit may change over time due to, among other circumstances, additional development and the removal or addition of landscaping.

(iii) No representations are made regarding the zoning of adjacent property, or that the category to which adjacent property is zoned may not change in the future.

(iv) No representations are made regarding the schools that currently or may in the future serve the Unit.

(v) Since in every community, there are conditions that different people may find objectionable, it is acknowledged that there may be conditions outside of the Regime that an Owner or Occupant may find objectionable and that it shall be the sole responsibility of the Owners and Occupants to become acquainted with community conditions that could affect the Unit.

(vi) The Plans and the dimensions and square footage calculations shown thereon are only approximations. Any Owner who is concerned about any representations regarding the Plans should do his/her own investigation as to the dimensions, measurements and square footage of his/her Unit.

(vii) Declarant may be renovating and constructing portions of the Regime and engaging in other construction activities related to the construction of Common Elements. Such renovation and construction activities may, from time to time, produce certain conditions on the Regime, including, without limitation: (A) noise or sound that is objectionable because of its volume, duration, frequency or shrillness; (B) smoke; (C) noxious, toxic, or corrosive fumes or gases; (D) obnoxious odors; (E) dust, dirt or flying ash; (F) unusual fire or explosion hazards; (G) temporary interruption of utilities; and/or (H) other conditions that may threaten the security or safety of Persons on the Regime. Notwithstanding the foregoing, all Owners and Occupants agree that such conditions on the Regime resulting from renovation and construction activities shall not be deemed a nuisance and shall not cause Declarant and its agents to be deemed in violation of any provision of the Master Deed.

(viii) Exposed concrete surfaces in portions of the Regime which are not heated and cooled are subject to cracking due to (A) water penetration, (B) expansion and contraction of the concrete with temperature changes, and (C) building settlement.

(ix) Concrete surfaces in heated and cooled portions of the Regime are subject to cracking due to building settlement.

(x) Concrete and hardwood surfaces and other uncovered surfaces within a Unit may transmit noise, and such noise shall not constitute a use of the Unit that interferes with or causes disruption to the use and enjoyment of another Unit by its respective Owner and/or Occupant.

(xi) No representations are made that the Unit is or will be soundproof or that sound may not be transmitted from one Unit to another.

(xii) A Unit may trap humidity created by every day living (cooking, bathing, laundering etc.). As a result, condensation may appear on the interior portion of windows and glass surfaces and fogging of windows and glass surfaces may occur due to temperature disparities between the interior and exterior portions of the windows and glass. If left unattended and not properly maintained by Owners and Occupants, the condensation may increase resulting in staining, damage to surrounding seals, caulk, paint, wood work and sheetrock, and potentially, mildew and/or mold (see subparagraph 17(e) hereof).

(xiii) Balcony rails are made of wood and will need to be repainted and replaced periodically.

(xiv) Portions of the Regime will not be landscaped and will be allowed to return to their natural state.

(xv) Declarant shall not be responsible for responding to or taking any affirmative action on behalf of the Association or an individual member of the Association to mitigate, alleviate, remedy or cure any off-site conditions that may directly impact the Regime or any portion thereof, and such inaction by the Declarant shall not constitute a breach of fiduciary duty by the directors and officers of the Association that are appointed by the Declarant, pursuant to Article III, Part A, Section 2 of the Bylaws of the Association.

(xvi) While the drainage system for surface water runoff on the Regime will be constructed in accordance with applicable governmental standards, the Regime may still be subject to erosion and/or flooding during unusually intense or prolonged periods of rain.

(xvii) Light may emit from improvements on adjacent properties.

(g) Services During Declarant Control. Each Owner acknowledges that Declarant and its affiliates may provide services utilized by communities such as this Regime including, but not limited to, management services. Each Owner consents and agrees that the Association may enter into service contracts with Declarant and its affiliates.

(h) Master Declaration. Every Owner, by acceptance of a deed to a Unit, acknowledges that, in addition to being subject to and bound by the Regime Instruments, he or she is subject to the Master Declaration.

(i) Supremacy of Master Declaration. In addition to all of the rights and obligations which have been conferred or imposed upon the Association pursuant to this Master Deed, the Bylaws, or the Articles of Incorporation, the Association shall be entitled to exercise any of the rights conferred upon it and shall be subject to all of the obligations imposed upon it pursuant to the Master Declaration. The Association and all committees of the Association shall also be subject to all superior rights and powers, which have been conferred pursuant to the Master Declaration. The Association shall take no action in derogation of the rights of or contrary to the interest of the Master Declaration. In the event of conflict between the provisions of the Master Declaration and this Master Deed, the Master Declaration shall control.

20. EMINENT DOMAIN.

(a) General. Whenever all or any part of the Regime shall be taken by any authority having the power of condemnation or eminent domain, each Owner shall appoint the Association, as attorney-in-fact for the Owners, to represent such Owners in any related proceedings, negotiations, settlements, or agreements. The award made for such taking shall be payable to the Association, for the benefit of the Owners and Mortgagees, and shall be disbursed by the Association as hereinafter provided in this Paragraph 20.

(b) Common Elements and Limited Common Elements. If any portion of the Common Elements on which improvements, excluding Units, shall have been constructed is taken by eminent domain, and if at least two-thirds (2/3) of the Total Association Vote consent to replace such Common

Elements on the remaining portions of the Regime and according to plans therefore to be approved by the Association, then the Board of Directors shall arrange for such replacement and the Association shall disburse the award in the same manner as they are required to disburse insurance proceeds where damage or destruction to the Regime is to be repaired or reconstructed, in accordance with Paragraph 13 above. If the Association does not consent as provided above, the award shall be allocated by the Association to the Owners in proportion to their respective undivided interest in the Common Elements; provided, however, that the portion of the award attributable to the taking of any permanently assigned Limited Common Element shall be allocated to the Owner to which that Limited Common Element was so assigned at the time of the taking. If any Limited Common Element was permanently assigned to more than one Unit at the time of the taking, the portion of the award attributable to the taking thereof shall be allocated in equal shares to the Owners to which it was so assigned.

(c) Units. If all or any portion of a Unit is taken by eminent domain, the interest of all remaining Owners in the Common Elements shall be reallocated by taking as a basis the value of the individual Units in relation to the Regime as a whole, and such revised interests shall be reflected in an amendment to Exhibit "B" of this Master Deed. The Association shall disburse to the Owners affected by such condemnation, the share of the award attributable to each Unit (in accordance with such Unit's interest in the Common Elements as set forth on Exhibit "B"), as well as each Unit's undivided interest in the Common Elements.

21. EASEMENTS.

(a) Use and Enjoyment. Each Owner and Occupant shall have a right and a non-exclusive easement of use and enjoyment in and to the Common Elements (including the right of access, ingress and egress to and from his or her Unit over those portions of the Regime designated for such purpose), and such non-exclusive easement shall be appurtenant to and shall pass with the title to such Unit, subject to (i) the rights of the Owners to the exclusive use of the Limited Common Elements assigned to their respective Units; (ii) to the right of the Association to control the use and enjoyment of the Common Elements as provided by the terms of this Master Deed including, but not limited to, the right of the Association to suspend voting and use privileges as provided herein; and (iii) the right of the Association to have access to the Units and Limited Common Elements assigned to a Unit to discharge its rights and obligations, under the Regime Instruments, including without limitation, the maintenance responsibility of the Association.

(b) Support. Every portion of a Unit and all Limited Common Elements contributing to the support of an abutting Unit shall be burdened with a non-exclusive easement of support for the benefit of such abutting Unit.

(c) Encroachments. The Units and Common Elements shall be subject to non-exclusive easements of encroachment to the extent that any Unit or Common Element encroaches on any other Unit or Common Element, whether by reason of any deviation from the Survey or Plans in the construction, renovation, restoration, or repair of any improvement or by reason of the settling or shifting of any land or improvement.

(d) Utilities. To the extent that the sprinkler system or any utility line, pipe, wire, or conduit serving any Unit, Units or the Common Elements shall lie wholly or partially within the boundaries of another Unit or the Common Elements, such other Unit, Units, or the Common Elements shall be burdened with a non-exclusive easement for the use, maintenance, repair and replacement of such sprinkler system, utility line, pipe, wire or conduit, such non-exclusive easement to be in favor of the Unit, Units, or Common Elements served by the same and the Association. It shall be the obligation of the benefited Owner to maintain, replace and repair any pipe, line, conduit, duct or wire owned by such Owner, even if such pipe,

line conduit, duct or wire is located within the boundaries of a Unit of another Owner. In such circumstance, the benefited Owner shall repair all incidental damage to any Unit resulting from performance of any such work. All Owners hereby covenant and agree that as finish levels can have varying degrees, such repairs will be complete only to the extent of being "paint-ready". Components that may require repair or replacement, such as tile and trim, will be reinstalled only to the extent of readily available materials or similar materials (trim and such will also be finished to "paint-ready"). Due to the uncontrollability of quality of repair, items such as faux paint treatment, wallpaper, ceiling/wall appliqué, and any other similar types of finishes, will not be the responsibility of the benefited Owner.

(e) Pest Control. The Association may but shall not be obligated to dispense chemicals for the extermination of insects and pests within the Units and Common Elements. In the event the Association chooses to provide such pest control, the Association and its duly authorized contractors, representatives, and agents shall have an easement to enter Units for the purpose of dispensing chemicals for the exterminating of insects and pests within the Units and Common Elements. Owners shall either provide a key to the Unit for purpose of such entry or have someone available at such times as are designated by the Board of Directors to allow entry into the Unit for this purpose. The Association shall not be liable for any illness, damage, or injury caused by the dispensing of these chemicals for this purpose.

(f) Community Bulletin Board. As part of the Common Elements maintained by the Association, Declarant and/or the Board shall have the right, but not the obligation, to erect on the Regime a bulletin board primarily for the use of Owners in advertising their Units for sale. For so long as the Association desires to maintain this bulletin board, each Owner and his licensed real estate broker and agent may use the Regime for access, ingress and egress to and from this bulletin board; provided, however, the use of the bulletin board shall be subject to such reasonable nondiscriminatory rules and regulations as may be adopted or promulgated by the Board regulating the size and duration of such advertisements. Declarant or Board may terminate use of this bulletin board entirely at any time, and no property rights of any kind are created hereby.

(g) Declarant Easements. For so long as Declarant owns any Unit primarily for the purpose of sale, Declarant and its duly authorized contractors, subcontractors, representatives, agents, associates, employees, tenants and successors and assigns shall have: (i) a non-exclusive easement for access and ingress to, egress from and use of the Common Elements for the placement and maintenance of signs, banners, balloons, decorations marketing materials and tables, a sales office, a leasing office, a business office, promotional facilities and model Units on any portion of the Regime, together with such other facilities as in the opinion of Declarant may be reasonably required, convenient or incidental to the completion, renovation, improvement, development, sale or lease of any Unit; (ii) a non-exclusive easement to use the Common Elements for special events and promotional activities; and (iii) a transferable, non-exclusive easement on, over, through, under and across the Common Elements and Limited Common Elements for the purpose of making improvements on the Regime or any portion thereof, for the purpose of constructing, installing, replacing, repairing, restoring and maintaining all utilities, buildings, driveways, landscaping and any other improvements on the Regime property or serving the Regime, and for the purpose of doing all things reasonably necessary and proper in connection therewith.

Additionally, Declarant and its duly authorized contractors, subcontractors, representatives, agents, associates, employees, tenants and successors and assigns, shall have an exclusive easement for any and all purposes it deems appropriate over, on and through Declarant's Easement Area so long as Declarant, or any successor Declarant, owns any Unit for the purpose of sale or lease.

22. AMENDMENTS.

Except where a higher vote is required for action under any other provision of this Master Deed or by the Act, in which case such higher vote shall be necessary to amend such provision, this Master Deed may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the members of the Association holding two-thirds (2/3) of the Total Association Vote. Moreover, no amendment to this Master Deed shall modify, alter, or delete any: (a) provision of this Master Deed that benefits Declarant; (b) rights, privileges, easements, protections, or defenses of Declarant; or (c) rights of the Owners or the Association in relationship to Declarant, without the written consent of Declarant attached to and recorded with such amendment, until the later of the following: (i) the date upon which Declarant no longer owns any Unit; (ii) the date upon which Declarant no longer has the right to appoint the directors and officers of the Association as provided in Article III, Part A, Section 2 of the Bylaws; or (iii) ten (10) years after the date on which this Master Deed is recorded in the Office of the Register of Deeds for Charleston County, South Carolina, whichever period of time is longer.

Notice of any meeting at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. No amendment shall be effective until certified by the president and secretary of the Association and recorded in the Office of the Register of Deeds for Charleston County, South Carolina.

In addition to the above, material amendments to this Master Deed must be approved by Eligible Mortgage Holders who represent at least fifty-one percent (51%) of the votes of Units that are subject to Mortgages held by Eligible Mortgage Holders. Notwithstanding the above, the approval of any proposed amendment by an Eligible Mortgage Holder shall be deemed implied and consented to if the Eligible Mortgage Holder fails to submit a response to any written proposal for an amendment within thirty (30) days after the Eligible Mortgage Holder receives notice of the proposed amendment sent by certified or registered mail, return receipt requested. Material amendments are those that establish, provide for, govern or regulate any of the following:

- (A) Voting;
- (B) Assessments, assessment liens or subordination of such liens;
- (C) Reserves for maintenance, repair and replacement of the Common Elements;
- (D) Insurance or fidelity bonds;
- (E) Rights to use of the Common Elements;
- (F) Responsibility for maintenance and repair of the Regime;
- (G) Expansion or contraction of the Regime or the addition, annexation or withdrawal of property to or from the Regime;
- (H) Boundaries of any Unit;
- (I) The interests in the Common Elements or Limited Common Elements;
- (J) Convertibility of Units into Common Elements or of Common Elements into Units;

- (K) Leasing of Units;
- (L) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his or her Unit in the Regime;
- (M) Establishment of self-management by the Association where professional management has been required by any of the agencies or corporations set forth below;
- (N) Amendment of any provisions that are for the express benefit of Eligible Mortgage holders or insurers or guarantors of first mortgages on Units in the Regime; and
- (O) Restoration or repair of the Regime (after damage or partial condemnation) in a manner other than that specified in the Regime Instruments).

Notwithstanding the foregoing, Declarant or the Board of Directors, without the necessity of a vote from the Owners, may amend this Master Deed to correct any scrivener's errors, comply with any applicable state, city or federal law, and/or to bring the Regime into compliance with applicable rules and regulations of the Federal National Mortgage Association ("Fannie Mae"), the Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA") pursuant to federal law.

Any action to challenge the validity of an amendment adopted under this Paragraph must be brought within one (1) year of the effective date of such amendment. No action to challenge such amendment may be brought after such time.

23. SEVERABILITY.

Invalidation of any one of these covenants or restrictions by judgment or court order or otherwise shall in no way affect the application of such provision to other circumstances or affect any other provision(s), which shall remain in full force and effect.

24. RELEASE.

Declarant purchased the property comprising the Regime from Long Grove at Seaside Farms, LLC ("Long Grove") on March 7, 2005. In the Sales Contract between Long Grove and Declarant, dated January 18, 2005, to convey the property comprising the Regime to Declarant, Declarant agreed to include the following provision regarding release in this Master Deed:

Save and excepting only the limited warranty of title hereinafter set forth and herein contained, the property comprising the Regime was conveyed to Declarant in the sale on March 7, 2005 noted above strictly on an "as is", "where is" and "with all defects" basis, without representation, warranty or covenant, express, implied or statutory, of any kind whatsoever, including, without limitation, representation, warranty or covenant as to condition (structural, environmental, mechanical or otherwise), past or present use, construction, development, lease performance, investment potential, tax ramifications or consequences, income, compliance with law, habitability, tenancies, merchantability or fitness or suitability for any purpose, all of which are hereby expressly disclaimed. Without limiting the generality of the foregoing, the Owners acknowledge that Declarant's predecessor in title, Long Grove and its Affiliates (as herein defined) have made no representations, warranties or covenants as to the compliance of the property comprising the Regime with any federal, state, municipal or local statutes, laws, rules, regulations or

ordinances, including, without limitation, those pertaining to construction, rent control, building and health codes, land use (or permits issued in connection therewith), zoning, lead paint, urea formaldehyde foam insulation, asbestos, hazardous or toxic wastes or substances, pollutants, contaminants or other environmental matters.

The Owners acknowledge that the property comprising the Regime was originally developed and constructed by Long Grove and its Affiliates (as herein defined). Declarant purchased the property comprising the Regime for the purpose of converting such property into condominiums which it is or will be selling to the public. Declarant assumed all responsibility for identifying and correcting all defects or problems, if any, that existed, to ensure that the property comprising the Regime is properly constructed and suitable for use as condominiums in accordance with all applicable building regulations, codes, standards, and other applicable laws and requirements.

Accordingly, as part of the valuable consideration exchanged in the sale transaction on March 7, 2005 noted above, the receipt and sufficiency of which are hereby acknowledged, Declarant on behalf of itself and its heirs, representatives, successors, and assigns (including the Owners and all other successors-in-title to all or a portion of the property comprising the Regime), agreed to never sue and completely released Long Grove, The Beach Co., Gulfstream Construction Company, its affiliates, agents, officers, directors, employees, insurers, representatives, successors, assigns, and all other companies, partnerships, entities, or Persons (collectively, the "Affiliates") involved in the design, development and/or construction of the apartment buildings and apartments therein and all other improvements prior to March 7, 2005, for and from any and all claims of every kind whatsoever arising from or related to the development, design, construction, maintenance, alteration, or repair of the property comprising the Regime, including unknown and unforeseen claims that may now exist or that may arise in the future.

Declarant and the Owners acknowledge and agree that the assumption of liability and release of claims above is intended to be binding on all subsequent grantees of the property comprising the Regime, the grantees of any condominiums or other subdivisions of the property comprising the Regime, and the Owners. In order to give effect to this intention, these provisions are included in this Master Deed, and will also be included in any other conveyances outside the coverage of this Master Deed.

25. DECLARANT RIGHTS.

Notwithstanding anything to the contrary herein, and in addition to Declarant's right to appoint and remove officers and directors under Article III, Part A, Section 2 of the Bylaws and other rights set forth herein, Declarant shall have the right, as long as Declarant owns at least one (1) Unit, to conduct such sales, marketing, leasing, administrative and other activities at the Regime as Declarant deems appropriate for the sale, marketing or leasing of any Unit and Declarant shall have a non-exclusive easement right across the Common Elements to erect signs, banners, balloons and other decorations and to conduct such other sales, marketing and leasing activities as provided herein. The expiration of Declarant's right to appoint and remove officers and directors of the Association pursuant to Article III, Part A, Section 2 of the Bylaws shall not terminate or alter the status of the above-referenced entity and its respective successors and assigns as Declarant hereunder or divest Declarant of other rights specifically reserved to Declarant herein.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Declarant has executed this Master Deed under seal this 13th day of April, 2005.

DECLARANT: LONG GROVE VISTA, LLC,
a Georgia limited liability company

By: LONG GROVE DEVELOPMENT, LLC,
a Georgia limited liability company, its Sole Manager

By: [Signature]
Eduard de Guardiola, sole manager

Signed, sealed, and delivered
this 13 day of April, 2005
in the presence of:

[Signature]
Witness #1

[Signature]
Witness #2

STATE OF Georgia)
COUNTY OF Liberty)

ACKNOWLEDGMENT

I, a Notary Public in and for the County and State aforesaid, certify that Eduard de Guardiola, sole manager of Long Grove Development, LLC, Sole Manager of Long Grove Vista, LLC, personally appeared before me this day and acknowledged the execution of the foregoing Master Deed on behalf of Long Grove Vista, LLC.

WITNESS my hand and official stamp or seal this 13 day of April, 2005.

[Signature]
NOTARY PUBLIC for _____
My commission Expires: _____
Notary Public, Rockdale County, Georgia
My Commission Expires July 21, 2008

SH 533PG064

EXHIBIT "A"

Description of Submitted Property

All that piece, parcel or tract of land, with the buildings and improvements thereon, situate, lying and being in the Town of Mt. Pleasant, County of Charleston, State of South Carolina, shown and designated as "PARCEL G" on a plat entitled "PLAT OF PROPERTY LINE ADJUSTMENT BETWEEN PARCEL G ABOUT TO BE CONVEYED TO LONG GROVE AT SEASIDE FARMS, L.L.C. AND TRACT A-1 OWNED BY THE BEACH COMPANY SEASIDE FARMS" prepared by Thomas & Hutton Engineering Co., dated May 8, 2000, and recorded June 1, 2000, in Plat Book EE, Page 49 in the RMC Office for Charleston County, reference to said plat being craved for a more complete description.

BeachCo 000647

BKH 533PG065

EXHIBIT "B"

**Undivided Percentage Interest in the Common Elements
and Liabilities for Common Expenses**

Unit Number	Number of Bedrooms and Bathrooms	Value of Unit*	Ownership Percentage
111	3 BR/2BA	\$229,900	0.447%
112	1 BR/1BA	\$159,900	0.290%
113	2 BR/2BA	\$199,900	0.387%
114	2 BR/1BA	\$179,900	0.318%
115	2 BR/2BA	\$199,900	0.387%
116	2 BR/1BA	\$179,900	0.318%
117	3 BR/2BA	\$229,900	0.447%
118	1 BR/1BA	\$159,900	0.290%
121	3 BR/2BA	\$229,900	0.447%
122	1 BR/1BA	\$159,900	0.290%
123	2 BR/2BA	\$199,900	0.387%
124	2 BR/1BA	\$179,900	0.318%
125	2 BR/2BA	\$199,900	0.387%
126	2 BR/1BA	\$179,900	0.318%
127	3 BR/2BA	\$229,900	0.447%
128	1 BR/1BA	\$159,900	0.290%
211	3 BR/2BA	\$229,900	0.447%
212	1 BR/1BA	\$159,900	0.290%
213	2 BR/2BA	\$199,900	0.387%
214	2 BR/1BA	\$179,900	0.318%
215	2 BR/2BA	\$199,900	0.387%
216	2 BR/1BA	\$179,900	0.318%
217	3 BR/2BA	\$229,900	0.447%
218	1 BR/1BA	\$159,900	0.290%
221	3 BR/2BA	\$229,900	0.447%
222	1 BR/1BA	\$159,900	0.290%
223	2 BR/2BA	\$199,900	0.387%
224	2 BR/1BA	\$179,900	0.318%
225	2 BR/2BA	\$199,900	0.387%
226	2 BR/1BA	\$179,900	0.318%
227	3 BR/2BA	\$229,900	0.447%
228	1 BR/1BA	\$159,900	0.290%
311	3 BR/2BA	\$229,900	0.447%
312	1 BR/1BA	\$159,900	0.290%
313	2 BR/2BA	\$199,900	0.387%
314	2 BR/1BA	\$179,900	0.318%
315	2 BR/2BA	\$199,900	0.387%
316	2 BR/1BA	\$179,900	0.318%
317	3 BR/2BA	\$229,900	0.447%
318	1 BR/1BA	\$159,900	0.290%
321	3 BR/2BA	\$229,900	0.447%
322	1 BR/1BA	\$159,900	0.290%

BeachCo 000648

MH 533PG066

Unit Number	Number of Bedrooms and Bathrooms	Value of Unit*	Ownership Percentage
323	2 BR/2BA	\$199,900	0.387%
324	2 BR/1BA	\$179,900	0.318%
325	2 BR/2BA	\$199,900	0.387%
326	2 BR/1BA	\$179,900	0.318%
327	3 BR/2BA	\$229,900	0.447%
328	1 BR/1BA	\$159,900	0.290%
411	3 BR/2BA	\$229,900	0.447%
412	1 BR/1BA	\$159,900	0.290%
413	2 BR/2BA	\$199,900	0.387%
414	2 BR/1BA	\$179,900	0.318%
415	2 BR/2BA	\$199,900	0.387%
416	2 BR/1BA	\$179,900	0.318%
417	3 BR/2BA	\$229,900	0.447%
418	1 BR/1BA	\$159,900	0.290%
421	3 BR/2BA	\$229,900	0.447%
422	1 BR/1BA	\$159,900	0.290%
423	2 BR/2BA	\$199,900	0.387%
424	2 BR/1BA	\$179,900	0.318%
425	2 BR/2BA	\$199,900	0.387%
426	2 BR/1BA	\$179,900	0.318%
427	3 BR/2BA	\$229,900	0.447%
428	1 BR/1BA	\$159,900	0.290%
511	3 BR/2BA	\$229,900	0.447%
512	1 BR/1BA	\$159,900	0.290%
513	2 BR/2BA	\$199,900	0.387%
514	2 BR/1BA	\$179,900	0.318%
515	2 BR/2BA	\$199,900	0.387%
516	2 BR/1BA	\$179,900	0.318%
517	3 BR/2BA	\$229,900	0.447%
518	1 BR/1BA	\$159,900	0.290%
521	3 BR/2BA	\$229,900	0.447%
522	1 BR/1BA	\$159,900	0.290%
523	2 BR/2BA	\$199,900	0.387%
524	2 BR/1BA	\$179,900	0.318%
525	2 BR/2BA	\$199,900	0.387%
526	2 BR/1BA	\$179,900	0.318%
527	3 BR/2BA	\$229,900	0.447%
528	1 BR/1BA	\$159,900	0.290%
611	3 BR/2BA	\$229,900	0.447%
612	1 BR/1BA	\$159,900	0.290%
613	2 BR/2BA	\$199,900	0.387%
614	2 BR/2BA	\$199,900	0.387%
615	2 BR/2BA	\$199,900	0.387%
616	2 BR/2BA	\$199,900	0.387%
617	3 BR/2BA	\$229,900	0.447%
618	1 BR/1BA	\$159,900	0.290%
621	3 BR/2BA	\$229,900	0.447%

BeachCo 000649

BH 533P6067

Unit Number	Number of Bedrooms and Bathrooms	Value of Unit*	Ownership Percentage
622	1 BR/1BA	\$159,900	0.290%
623	2 BR/2BA	\$199,900	0.387%
624	2 BR/2BA	\$199,900	0.387%
625	2 BR/2BA	\$199,900	0.387%
626	2 BR/2BA	\$199,900	0.387%
627	3 BR/2BA	\$229,900	0.447%
628	1 BR/1BA	\$159,900	0.290%
711	3 BR/2BA	\$229,900	0.447%
712	1 BR/1BA	\$159,900	0.290%
713	2 BR/2BA	\$199,900	0.387%
714	2 BR/2BA	\$199,900	0.387%
715	2 BR/2BA	\$199,900	0.387%
716	2 BR/2BA	\$199,900	0.387%
717	3 BR/2BA	\$229,900	0.447%
718	1 BR/1BA	\$159,900	0.290%
721	3 BR/2BA	\$229,900	0.447%
722	1 BR/1BA	\$159,900	0.290%
723	2 BR/2BA	\$199,900	0.387%
724	2 BR/2BA	\$199,900	0.387%
725	2 BR/2BA	\$199,900	0.387%
726	2 BR/2BA	\$199,900	0.387%
727	3 BR/2BA	\$229,900	0.447%
728	1 BR/1BA	\$159,900	0.290%
811	3 BR/2BA	\$229,900	0.447%
812	1 BR/1BA	\$159,900	0.290%
813	2 BR/2BA	\$199,900	0.387%
814	2 BR/2BA	\$199,900	0.387%
815	2 BR/2BA	\$199,900	0.387%
816	2 BR/2BA	\$199,900	0.387%
817	3 BR/2BA	\$229,900	0.447%
818	1 BR/1BA	\$159,900	0.290%
821	3 BR/2BA	\$229,900	0.447%
822	1 BR/1BA	\$159,900	0.290%
823	2 BR/2BA	\$199,900	0.387%
824	2 BR/2BA	\$199,900	0.387%
825	2 BR/2BA	\$199,900	0.387%
826	2 BR/2BA	\$199,900	0.387%
827	3 BR/2BA	\$229,900	0.447%
828	1 BR/1BA	\$159,900	0.290%
911	3 BR/2BA	\$229,900	0.447%
912	1 BR/1BA	\$159,900	0.290%
913	2 BR/2BA	\$199,900	0.387%
914	2 BR/1BA	\$179,900	0.318%
915	2 BR/2BA	\$199,900	0.387%
916	2 BR/1BA	\$179,900	0.318%
917	3 BR/2BA	\$229,900	0.447%
918	1 BR/1BA	\$159,900	0.290%

BeachCo 000650

BH 533PG068

Unit Number	Number of Bedrooms and Bathrooms	Value of Unit*	Ownership Percentage
921	3 BR/2BA	\$229,900	0.447%
922	1BR/1BA	\$159,900	0.290%
923	2 BR/2BA	\$199,900	0.387%
924	2 BR/1BA	\$179,900	0.318%
925	2 BR/2BA	\$199,900	0.387%
926	2 BR/1BA	\$179,900	0.318%
927	3 BR/2BA	\$229,900	0.447%
928	1 BR/1BA	\$159,900	0.290%
1011	3 BR/2BA	\$229,900	0.447%
1012	1 BR/1BA	\$159,900	0.290%
1013	2 BR/2BA	\$199,900	0.387%
1014	2 BR/2BA	\$199,900	0.387%
1015	2 BR/2BA	\$199,900	0.387%
1016	2 BR/2BA	\$199,900	0.387%
1017	3 BR/2BA	\$229,900	0.447%
1018	1 BR/1BA	\$159,900	0.290%
1021	3 BR/2BA	\$229,900	0.447%
1022	1 BR/1BA	\$159,900	0.290%
1023	2 BR/2BA	\$199,900	0.387%
1024	2 BR/2BA	\$199,900	0.387%
1025	2 BR/2BA	\$199,900	0.387%
1026	2 BR/2BA	\$199,900	0.387%
1027	3 BR/2BA	\$229,900	0.447%
1028	1 BR/1BA	\$159,900	0.290%
1111	3 BR/2BA	\$229,900	0.447%
1112	1 BR/1BA	\$159,900	0.290%
1113	2 BR/2BA	\$199,900	0.387%
1114	2 BR/1BA	\$179,900	0.318%
1115	2 BR/2BA	\$199,900	0.387%
1116	2 BR/1BA	\$179,900	0.318%
1117	3 BR/2BA	\$229,900	0.447%
1118	1 BR/1BA	\$159,900	0.290%
1121	3 BR/2BA	\$229,900	0.447%
1122	1 BR/1BA	\$159,900	0.290%
1123	2 BR/2BA	\$199,900	0.387%
1124	2 BR/1BA	\$179,900	0.318%
1125	2 BR/2BA	\$199,900	0.387%
1126	2 BR/1BA	\$179,900	0.318%
1127	3 BR/2BA	\$229,900	0.447%
1128	1 BR/1BA	\$159,900	0.290%
1211	3 BR/2BA	\$229,900	0.447%
1212	1 BR/1BA	\$159,900	0.290%
1213	2 BR/2BA	\$199,900	0.387%
1214	2 BR/1BA	\$179,900	0.318%
1215	2 BR/2BA	\$199,900	0.387%
1216	2 BR/1BA	\$179,900	0.318%
1217	3 BR/2BA	\$229,900	0.447%

BeachCo 000651

Unit Number	Number of Bedrooms and Bathrooms	Value of Unit*	Ownership Percentage
1218	1 BR/1BA	\$159,900	0.290%
1221	3 BR/2BA	\$229,900	0.447%
1222	1 BR/1BA	\$159,900	0.290%
1223	2 BR/2BA	\$199,900	0.387%
1224	2 BR/1BA	\$179,900	0.318%
1225	2 BR/2BA	\$199,900	0.387%
1226	2 BR/1BA	\$179,900	0.318%
1227	3 BR/2BA	\$229,900	0.447%
1228	1 BR/1BA	\$159,900	0.290%
1311	3 BR/2BA	\$229,900	0.447%
1312	1 BR/1BA	\$159,900	0.290%
1313	2 BR/2BA	\$199,900	0.387%
1314	2 BR/1BA	\$179,900	0.318%
1315	2 BR/2BA	\$199,900	0.387%
1316	2 BR/1BA	\$179,900	0.318%
1317	3 BR/2BA	\$229,900	0.447%
1318	1 BR/1BA	\$159,900	0.290%
1321	3 BR/2BA	\$229,900	0.447%
1322	1 BR/1BA	\$159,900	0.290%
1323	2 BR/2BA	\$199,900	0.387%
1324	2 BR/1BA	\$179,900	0.318%
1325	2 BR/2BA	\$199,900	0.387%
1326	2 BR/1BA	\$179,900	0.318%
1327	3 BR/2BA	\$229,900	0.447%
1328	1 BR/1BA	\$159,900	0.290%
1411	3 BR/2BA	\$229,900	0.447%
1412	1 BR/1BA	\$159,900	0.290%
1413	2 BR/2BA	\$199,900	0.387%
1414	2 BR/1BA	\$179,900	0.318%
1415	2 BR/2BA	\$199,900	0.387%
1416	2 BR/1BA	\$179,900	0.318%
1417	3 BR/2BA	\$229,900	0.447%
1418	1 BR/1BA	\$159,900	0.290%
1421	3 BR/2BA	\$229,900	0.447%
1422	1 BR/1BA	\$159,900	0.290%
1423	2 BR/2BA	\$199,900	0.387%
1424	2 BR/1BA	\$179,900	0.318%
1425	2 BR/2BA	\$199,900	0.387%
1426	2 BR/1BA	\$179,900	0.318%
1427	3 BR/2BA	\$229,900	0.447%
1428	1 BR/1BA	\$159,900	0.290%
1511	3 BR/2BA	\$229,900	0.448%
1512	1 BR/1BA	\$159,900	0.290%
1513	2 BR/2BA	\$199,900	0.387%
1514	2 BR/2BA	\$199,900	0.387%
1515	2 BR/2BA	\$199,900	0.387%
1516	2 BR/2BA	\$199,900	0.387%

HH 533PG070

Unit Number	Number of Bedrooms and Bathrooms	Value of Unit*	Ownership Percentage
1517	3 BR/2BA	\$229,900	0.448%
1518	1 BR/1BA	\$159,900	0.290%
1521	3 BR/2BA	\$229,900	0.448%
1522	1 BR/1BA	\$159,900	0.290%
1523	2 BR/2BA	\$199,900	0.387%
1524	2 BR/2BA	\$199,900	0.387%
1525	2 BR/2BA	\$199,900	0.387%
1526	2 BR/2BA	\$199,900	0.387%
1527	3 BR/2BA	\$229,900	0.448%
1528	1 BR/1BA	\$159,900	0.290%
1611	3 BR/2BA	\$229,900	0.448%
1612	1 BR/1BA	\$159,900	0.290%
1613	2 BR/2BA	\$199,900	0.387%
1614	2 BR/2BA	\$199,900	0.387%
1615	2 BR/2BA	\$199,900	0.387%
1616	2 BR/2BA	\$199,900	0.387%
1617	3 BR/2BA	\$229,900	0.448%
1618	1 BR/1BA	\$159,900	0.290%
1621	3 BR/2BA	\$229,900	0.448%
1622	1 BR/1BA	\$159,900	0.290%
1623	2 BR/2BA	\$199,900	0.387%
1624	2 BR/2BA	\$199,900	0.387%
1625	2 BR/2BA	\$199,900	0.387%
1626	2 BR/2BA	\$199,900	0.387%
1627	3 BR/2BA	\$229,900	0.448%
1628	1 BR/1BA	\$159,900	0.290%
1711	3 BR/2BA	\$229,900	0.448%
1712	1 BR/1BA	\$159,900	0.290%
1713	2 BR/2BA	\$199,900	0.387%
1714	2 BR/2BA	\$199,900	0.387%
1715	2 BR/2BA	\$199,900	0.387%
1716	2 BR/2BA	\$199,900	0.387%
1717	3 BR/2BA	\$229,900	0.448%
1718	1 BR/1BA	\$159,900	0.290%
1721	3 BR/2BA	\$229,900	0.448%
1722	1 BR/1BA	\$159,900	0.290%
1723	2 BR/2BA	\$199,900	0.387%
1724	2 BR/2BA	\$199,900	0.387%
1725	2 BR/2BA	\$199,900	0.387%
1726	2 BR/2BA	\$199,900	0.387%
1727	3 BR/2BA	\$229,900	0.448%
1728	1 BR/1BA	\$159,900	0.290%
TOTAL			100.000%

*THESE VALUATIONS ARE FOR PURPOSES OF THE SOUTH CAROLINA HORIZONTAL PROPERTY ACT, AND ARE NOT A GUARANTEE OF THE VALUE OF YOUR UNIT NOR ARE THEY INTENDED TO BE A GUARANTEE OF THE PURCHASE PRICE OF THE UNIT.

BeachCo 000653

EXHIBIT "C"

BH 533P6071

Survey

BeachCo 000654

BKH 533PG075

EXHIBIT "D"

Plans

BeachCo 000655

RH 533PG079

EXHIBIT "E"

BYLAWS

OF

LONG GROVE PROPERTY OWNERS ASSOCIATION, INC.

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BeachCo 000656

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BH 533PG082

BYLAWS
OF
LONG GROVE PROPERTY OWNERS ASSOCIATION, INC.

Article I
General

Section 1. Applicability. These Bylaws provide for the self-government of Long Grove Property Owners Association, Inc., in accordance with provisions § 27-31-10, et seq. of the South Carolina Code of Laws, 1976, as may be amended from time to time, the Articles of Incorporation filed with the Secretary of State and the Master Deed for Long Grove Horizontal Property Regime, recorded in the RMC Office for Charleston County, South Carolina ("Master Deed").

Section 2. Name. The name of the corporation is Long Grove Property Owners Association, Inc. ("Association").

Section 3. Definitions. The terms used herein shall have their generally accepted meanings or such meanings as are specified in Paragraph 2 of the Master Deed.

Section 4. Membership. An Owner of a Unit shall automatically become a member of the Association upon taking title to the Unit and shall remain a member for the entire period of ownership. As may be more fully provided below, a member's spouse or Domestic Partner may exercise the powers and privileges of the member. If title to a Unit is held by more than one (1) Person, the membership shall be shared in the same proportion as the title, but there shall be only one (1) membership and one (1) vote per Unit. Membership does not include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. Membership shall be appurtenant to the Unit and shall be transferred automatically by conveyance of that Unit and may be transferred only in connection with the transfer of title.

Section 5. Entity Members. In the event an Owner is a corporation, limited liability company, partnership, trust, or other legal entity not being a natural person or persons, then any natural person who is an officer, director, or other designated agent of such corporation, partner of such partnership, beneficiary or other designated agent of such trust, manager of a limited liability company or representative of such other legal entity shall be eligible to represent such entity or entities in the affairs of the Association, including, without limitation, serving on the Board of Directors of the Association. Such person's relationship with the Association shall terminate automatically upon the termination of such person's relationship with the entity or entities which are the Owner, and termination of the person's relationship with the Association will create a vacancy in any elected or appointed position within the Association in which such person may have been serving and such vacancy will be filled in accordance with these Bylaws.

Section 6. Voting. Each Unit shall be entitled to one (1) weighted vote, which vote shall be weighted according to the percentage interests set forth in Exhibit "B" to the Master Deed, which vote may be cast by the Owner, the Owner's spouse or Domestic Partner, or by a lawful proxy as provided below. When more than one (1) Person owns a Unit, the vote for such Unit shall be exercised as they determine

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BeachCo 000659

between or among themselves, but in no event shall more than one (1) vote be cast with respect to any Unit. If only one (1) co-owner attempts to cast the vote for a Unit, it shall be conclusively presumed that such co-owner is authorized on behalf of all co-owners to cast the vote for such Unit. In the event of disagreement between or among co-owners and an attempt by two (2) or more of them to cast such vote or votes, such Persons shall not be recognized and such vote or votes shall not be counted. No Owner shall be eligible to vote, either in person or by proxy, or to act as a proxy for any other member if that Owner is shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due the Association or if the Owner has had its voting rights suspended for the infraction of any provision of the Master Deed, these Bylaws, or any rule of the Association. If the voting rights of an Owner have been suspended, that Owner shall not be counted as an eligible vote for purposes of establishing a majority or a quorum.

Section 7. Majority. As used in these Bylaws, the term "majority" shall mean those votes, Owners, or other group as the context may indicate totaling more than fifty percent (50%) of the total number of eligible votes, Owners, or other group, respectively. Unless otherwise specifically stated, the words "majority vote" mean more than fifty percent (50%) of those voting in person or by proxy. Except as otherwise specifically provided in the Declaration or these Bylaws, all decisions shall be by majority vote.

Section 8. Purpose. The Association shall have the responsibility of administering the Regime, establishing the means and methods of collecting the contributions to the Common Expenses, arranging for the management of the Regime and performing all of the other acts that may be required to be performed by the Association pursuant to the Act, the South Carolina Nonprofit Corporation Act of 1994 and the Master Deed. Except as to those matters which the Act, the Master Deed or the South Carolina Nonprofit Corporation Act of 1994 specifically require to be performed by the vote of the Association membership, the administration of the foregoing responsibilities shall be performed by the Board of Directors as more particularly set forth below.

Section 9. Electronic Documents and Electronic Signatures.

(a) **Electronic Documents.** Whenever these Bylaws require that a document, record or instrument be "written" or "in writing," the requirement is deemed satisfied by an Electronic Document.

(b) **Electronic Signatures.** Whenever these Bylaws require a signature, an Electronic Signature satisfies that requirement only if: (1) the signature is easily recognizable as a Secure Electronic Signature which is capable of verification, under the sole control of the signatory, and attached to the electronic document in such a way that the document cannot be modified without invalidating the signature; or (2) the Board reasonably believes that the signatory affixed the signature with the intent to sign the Electronic Document, and that the Electronic Document has not been modified since the signature was affixed.

(c) **Verification and Liability for Falsification.** The Board may require reasonable verification of any Electronic Signature or Electronic Document. Pending verification, the Board may refuse to accept any Electronic Signature or Electronic Document that, in the Board's sole discretion, is not clearly authentic. Neither the Board nor the Association shall be liable to any Member or any other Person for accepting or acting in reliance upon an Electronic Signature or Electronic Document that the Board reasonably believes to be authentic. Any Member or Person who negligently, recklessly or intentionally submits any falsified Electronic Document or an unauthorized Electronic Signature shall fully indemnify the Association for actual damages, reasonable attorneys' fees and expenses incurred as a result of such acts.

Article II
Meetings of Members

Section 1. Annual Meetings. The regular annual meeting of the members shall be held during the fourth quarter of each year with the date, hour, and place to be set by the Board of Directors. No annual meeting of the Association shall be set on a legal holiday.

Section 2. Special Meetings. Special meetings of the members may be called for any purpose at any time by the President or Secretary, by request of any two (2) members of the Board of Directors, or upon written petition of Owners holding at least five percent (5%) of the Total Association Vote. Any such written petition by the members must be submitted to the Association's Secretary. The Secretary shall then verify that the required number of members have joined in the petition and shall submit all proper petitions to the Association's President. The President shall then promptly call a special meeting for the purpose stated in the petition setting the date, time and location of the meeting (which is not required to be the date, time or location requested in any petition submitted to the Association), and the Secretary shall send notice of the meeting in accordance with these Bylaws. Any special meeting called pursuant to written petition shall be set within thirty (30) days of the date of the petition. If a special meeting is not called within such thirty (30) day period, the Person signing the written petition may set the time and the place of such special meeting and give notice pursuant to Section 3 below.

Section 3. Notice of Meetings. It shall be the duty of the Secretary to mail or deliver to the record Owner of each Unit or to the Units a notice of each annual or special meeting of the Association at least twenty-one (21) days prior to each annual meeting and at least ten (10) days (or if notice is sent by other than first class mail or registered mail, thirty (30) days) prior to each special meeting. The notice shall state the purpose of any special meeting, as well as the time and place where it is to be held. The notice of an annual meeting shall state the time and place of the meeting and if any of the following items will be considered at such annual meeting, the notice shall also state such purpose: director conflict of interest; indemnification of officers, employees or agents; amendment of the Articles by directors and members; amendment of the Bylaws by directors and members; articles of merger; sale of assets other than in the regular course of activities; dissolution by incorporators, dissolution by directors and members; removal of directors; amendment to the Articles or Bylaws terminating members or redeeming or canceling membership (and if such amendment is to be considered, the notice to members proposing the amendment shall include one statement of up to five hundred (500) words opposing the proposed amendment if the statement is submitted by any five (5) members or members having three percent (3%) or more of the voting power, whichever is less, not later than twenty (20) days after the Board has voted to submit the amendment to the members for their approval. The production and mailing costs must be paid by the Association. If any Owner wishes notice to be given at an address other than his or her Unit, the Owner shall have designated by notice in writing to the Secretary such other address. The mailing or delivering of a notice of meeting in the manner provided in this Section shall be considered proper service of notice.

Section 4. Waiver of Notice. Waiver of notice of meeting of the Owners shall be deemed the equivalent of proper notice. Any Owner may, in a signed writing, waive notice of any meeting of the Owners, either before or after such meeting. Attendance at a meeting by an Owner, whether in person or represented by proxy, shall be deemed waiver by such Owner of notice of the time, date, and place thereof, or particular matter not described in the notice unless such Owner specifically objects to lack of proper notice at the time the meeting is called to order or objects to considering the matter when it is presented. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted at such meeting unless objection to lack of notice is raised before the business, of which proper notice was not given, is put to a vote.

Section 5. Quorum. Except as may be provided elsewhere, the presence of Owners, in person or by proxy, entitled to cast twenty-five percent (25%) of the Total Association Vote shall constitute a quorum. Once a quorum is established for a meeting, it shall conclusively be presumed to exist until the meeting is adjourned and shall not need to be reestablished. Owners whose voting rights have been suspended pursuant to the Master Deed or these Bylaws shall not be counted as eligible votes toward the quorum requirement.

Section 6. Adjournment. Any meeting of the Owners may be adjourned from time to time for periods not exceeding ten (10) days by vote of the Owners holding the majority of the votes represented at such meeting, regardless of whether a quorum is present. Any business that could be transacted properly at the original session of the meeting may be transacted at a reconvened session, and no additional notice of such reconvened session shall be required if the new date, time or place is announced at the meeting prior to adjournment.

Section 7. PROXY. Any member entitled to vote may do so by written proxy duly executed by the member setting forth the meeting at which the proxy is valid. To be valid, a proxy must be signed, dated, and filed with the Secretary prior to the opening of the meeting for which it is to be used. Proxies may be delivered to the Board by personal delivery, U.S. mail or facsimile transmission to any Board member or the property manager and are effective when received by the Secretary. Proxies may be revoked only by written notice signed by the member and delivered to the Secretary, except that: (a) the presence in person by the giver of a proxy at a meeting for which the proxy is given shall automatically invalidate the proxy for that meeting; and (b) a later dated proxy shall automatically be deemed to invalidate any previously give proxy. A proxy holder may not appoint a substitute proxy holder unless expressly authorized to do so in the proxy. Proxies shall be valid for a period of eleven (11) months, unless the proxy expressly provides for another time period; provided that, no proxy is valid for more than three (3) years from the date of its execution. The death or incapacity of the member appointing a proxy does not affect the right of the Association to accept the proxy's authority unless the Secretary receives notice of such death or incapacity prior to the exercise of the authority by the proxy.

Section 8. Members' List For Voting.

(a) After fixing a "Record Date" (as hereinafter defined) for a notice of a meeting, the Association shall prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting. The list must show the address and number of votes each member is entitled to vote at the meeting. The Board shall prepare on a current basis through the time of the membership meeting a list of members, if any, who are entitled to vote at the meeting but not entitled to notice of the meeting. This list must be prepared on the same basis and be part of the list of members. As used herein, "Record Date" shall mean the close of business on the business day preceding the day on which the meeting is held, unless a date is fixed by the Board.

(b) The list of members must be available for inspection by any member for the purpose of communication with other members concerning the meeting, beginning the day after notice is given of the meeting for which the list was prepared and continuing through the meeting, at the Association's principal office or at a reasonable place identified in the meeting notice in the city where the meeting will be held. A member, a member's agent, or member's attorney is entitled on written demand to inspect and, subject to the limitations of Sections 33-31-1602(c) and 33-31-1605 of the South Carolina Nonprofit Corporation Act of 1994, to copy the list, at a reasonable time and at the member's expense, during the period it is available for inspection.

(c) The Association shall make the list of members available at the meeting, and any member, a member's agent, or member's attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(d) If the Association refuses to allow a member, a member's agent, or member's attorney to inspect the list of members before or at the meeting, or copy the list as permitted by subsection 8(b), the court of common pleas of the county in which the Association's principal office is located in South Carolina or, if none in South Carolina, its registered office is located on application of the member, may summarily order the inspection or copying at the Association's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete and may order the Association to pay the member's costs, including reasonable counsel fees, incurred to obtain the order.

(e) Unless a written demand to inspect and copy a membership list has been made under subsection 8(b) before the membership meeting and the Association improperly refuses to comply with the demand, refusal or failure to comply with this Section does not affect the validity of action taken at the meeting.

(f) A member may inspect and copy the membership list only if: (i) his demand is made in good faith and for a proper purpose; (ii) he describes with reasonable particularity his purpose; and (iii) the list is directly connected with his purpose.

Section 9. Action Taken Without a Meeting. In the Board's discretion, any action that may be taken by the Association members at any annual, regular, or special meeting may be taken without a meeting if the Board delivers a written consent form or written ballot to every member entitled to vote on the matter.

(a) **Ballot.** A written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

The Board may deliver ballots and consent forms by personal delivery, U.S. Mail, facsimile transmission, e-mail, or other electronic means. Owners shall deliver their vote by ballot or consent form by whichever means is specified by the Board.

All solicitations for votes by written ballot shall: (i) indicate the number of responses needed to meet the quorum requirements; (ii) state the percentage of approvals necessary to approve each matter other than election of directors; and (iii) specify the time by which a ballot must be received by the Board in order to be counted. A written ballot may not be revoked. The Association shall maintain such ballots in its file for at least three (3) years.

(b) **Written Consent.** Approval by written consent shall be valid only when the number of written consents setting forth the actions taken is received and equals or exceeds the requisite voting power required to pass such action at a meeting held on the date that the last consent is executed; provided however, in no event less than eighty percent (80%) of the Total Association Vote, and if such action is consented to by the Declarant, if required. Executed written consents shall be included in the minutes or filed with the Association's records. If an action of the members is approved by written consent hereunder, the Board shall issue written notice of such approval to all members who did not sign written consents. Membership approval shall be effective ten (10) days after written notice is issued; provided, however, if

the consent is to an amendment to the Master Deed or Bylaws which must be recorded, the effective date shall be no earlier than the date of recording of such amendment.

Section 10. Order of Business. At all meetings of the Association, Roberts Rules of Order (latest edition) shall govern when not in conflict with the Master Deed, these Bylaws or the Articles of Incorporation, unless the Owners present at a particular meeting vote to suspend Robert's Rules at that meeting.

Article III
Board of Directors

A. Composition and Selection

Section 1. Composition and Eligibility. The affairs of the Association shall be governed by a Board of Directors. Except for directors appointed by the Declarant hereunder, the directors shall be Owners or spouses or Domestic Partners of such Owners; provided, however, no Owner and his or her spouse or Domestic Partner may serve on the Board at the same time, and no co-owners may serve on the Board at the same time. No persons shall be eligible to be elected to or continue to serve on the Board of Directors if they are shown on the books and records of the Association to be more than thirty (30) days delinquent in the payment of any assessment or charge by the Association. Directors shall not be eligible to serve more than three (3) consecutive two (2) year terms without first resigning from the Board for a time period which shall be the lesser of: (a) one (1) year; or (b) the period of time from the end of one (1) annual meeting of the Association to the beginning of the next annual meeting of the Association.

Section 2. Directors Appointed by the Declarant. Notwithstanding anything to the contrary herein, Declarant shall have exclusive authority to appoint and remove directors and officers until the earlier of: (1) three (3) years after the recording of the Master Deed, (2) four (4) months after seventy-five percent (75%) of the Units have been conveyed to Owners, or (3) the surrender in writing by Declarant of the authority to appoint and remove officers and directors of the Association.

Section 3. Number of Directors and Term of Office. During the period that the Declarant has the authority to appoint directors, the Board shall consist of three (3) directors. After termination of Declarant's right to appoint directors and officers as described in Section 2 of this Article, the Association shall call a meeting to be held at which Owners shall elect five (5) directors. If such meeting is not the annual meeting, the directors elected shall serve until the next annual meeting. At the first annual meeting after Declarant has surrendered control of the Association, the three (3) directors receiving the highest number of votes shall be elected for terms of two (2) years each and remaining directors shall be elected for terms of one (1) year each. At each annual meeting thereafter, a successor shall be elected to serve for a term of two (2) years. The members of the Board of Directors shall hold office until their respective successors shall have been elected by the Association.

Section 4. Removal of Members of the Board of Directors. During the time in which Declarant has the right to appoint officers and directors of the Association, the Declarant may remove a director without cause by delivering written notice to such director and the presiding officer of the Board or the president or secretary. Such removal is effective when the notice is effective, unless the notice specifies a future date. After expiration of Declarant's right to appoint officers and directors of the Association, at any annual or special meeting called for the purpose of removing a director of the Association duly called, any one (1) or more Board members, except for directors appointed by Declarant hereunder, may be removed with or without cause by the minimum number of votes required for removal under Section 3331-808 of the South Carolina Nonprofit Corporation Act of 1994, to elect said director and a successor may

then and there be elected to fill the vacancy thus created. A director elected by the Board may be removed without cause by the vote of two-thirds (2/3) of the directors then in office; however, a director elected by the Board to fill a vacancy of a director elected by the members may be removed without cause by the members, but not the Board. Further, any director who is more than thirty (30) days past due in the payment of any assessment or charge shall be automatically removed from the Board of Directors, even if the director subsequently pays the amount owed, and the vacancy shall be filled as provided in Section 5 below. Any director who has had three (3) consecutive unexcused absences from regularly scheduled Board meetings may be removed by the vote of a majority of the other directors. Any director whose removal has been proposed shall be given at least ten (10) days notice of the calling of the meeting to consider his or her removal and the purpose thereof and shall be given an opportunity to be heard at the meeting.

Section 5. Vacancies. Except for a vacancy of a director appointed by the Declarant, which may only be filled by the Declarant, vacancies in the Board caused by any reason, except the removal of a director by a majority of the Total Association Vote or by Declarant, shall be filled by a vote of the majority of the remaining directors, even though less than a quorum, at any meeting of the Board of Directors. The successor so selected shall hold office until the next annual meeting. Notwithstanding anything to the contrary herein, any director who is an officer, director or other designated agent of an entity member and whose position becomes vacant for any reason, may be replaced by the entity who is the Owner unless there has been a transfer of ownership of the Unit, in which case, the vacancy shall be filled by the remaining directors, even if less than a quorum at any meeting of the directors.

Section 6. Compensation. Directors shall not be compensated for services as such unless and only to the extent that compensation is authorized by a majority of the Total Association Vote. Directors may be reimbursed for the expenses incurred in carrying out their duties as directors upon approval of such expenses by the Board of Directors. Directors also may be given nominal gifts or tokens of appreciation by the Association for recognition of services performed, not to exceed a value of One Hundred Dollars (\$100) per calendar year. For purposes hereof, reasonable food and beverages purchased for Board meeting shall not be considered compensation.

Section 7. Director Conflicts of Interest.

(a) A conflict of interest transaction is a transaction with the Association in which a director of the Association has a direct or indirect conflict. For purposes of this Section, a director has an indirect interest in a transaction if: (i) another entity in which the director has a material interest or in which the director is a general partner is a party to the transaction; or (ii) another entity of which the director is a director, officer, or trustee is a party to the transaction.

(b) A conflict of interest transaction is not voidable or the basis for imposing liability on the director if the transaction (i) was fair to the Association at the time it was entered into; (ii) the material facts of the transaction and the director's interest were disclosed or known to the Board or a committee of the Board and the Board or committee authorized, approved, or ratified the transaction; or (iii) the material facts of the transaction and the director's interest were disclosed or known to the members and they authorized, approved, or ratified the transaction. Notwithstanding anything herein, the directors, during the period of Declarant control, shall be authorized on behalf of the Association to enter into contracts with the Declarant and its affiliates as set forth in Paragraph 19(g) of the Master Deed.

(c) For purposes of subsection 7(b)(ii), a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the Board or on the committee who have no direct or indirect interest in the transaction, but a transaction may be authorized, approved, or ratified under this Section by a single director. If a majority of the directors on the Board who have no

direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this Section. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsection 7(b)(ii) if the transaction is otherwise approved as provided in subsection 7(b).

(d) For purposes of subsection 7(b)(iii), a conflict of interest transaction is authorized, approved, or ratified by the members if it receives a majority of the votes entitled to be counted under this subsection 7(d). Votes cast by or voted under the control of a director who has a direct or indirect interest in the transaction, and votes cast by or voted under the control of an entity described in subsection 7(a)(i), may not be counted in a vote of members to determine whether to authorize, approve, or ratify a conflict of interest transaction under subsection 7(b)(iii). The vote of these members, however, is counted in determining whether the transaction is approved under other provisions of the South Carolina Nonprofit Corporation Act of 1994. A majority of the voting power, whether or not present, that are entitled to be counted in a vote on the transaction under this subsection 7(d) constitutes a quorum for the purpose of taking action under this Section.

Section 8. Nomination. Nomination for election to the Board shall be made from the floor at the meeting. The Board also may appoint a nominating committee to make nominations prior to the meeting.

Section 9. Elections. All members of the Association eligible to vote shall be entitled to cast their entire vote for each directorship to be filled. There shall be no cumulative voting. The directorships for which elections are held shall be filled by that number of candidates receiving the most votes. Voting for election of Board members shall be by written ballot (unless dispensed by unanimous consent at such meeting at which such voting is conducted).

B. Meetings.

Section 1. Regular Meetings. Regular meetings of the Board may be held on such date and at such time and place as shall be determined from time to time by the Board, but such meetings shall be held at least once every six (6) months. The newly elected Board shall meet within ten (10) days after each annual meeting of the membership. Notwithstanding the foregoing, during the period in which Declarant shall have exclusive authority to appoint and remove directors and officers of the Association, as set forth in Article III, Section 2 hereof, the Board shall not be required to hold regular meetings.

Section 2. Special Meetings. Special meetings of the Board may be called by the President on two (2) days notice to each director given by regular first class or electronic mail, in person, by telephone, or by facsimile transmission, which notice shall state the date, time, and place of the meeting. Special meetings of the Board shall be called by the President, Vice President, Secretary, or Treasurer in like manner and on like notice on the written request of at least two (2) directors.

Section 3. Waiver of Notice. Any director may, at any time, in writing, waive notice of any meeting of the Board, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board shall also constitute a waiver of notice by him or her of the date, time and place of such meeting, unless such director, upon arriving at the meeting or prior to the vote on a matter not noticed in conforming with the South Carolina Nonprofit Corporation Act of 1994, objects to lack of notice and does not thereafter vote for or assent to the objected action. If all directors are present at any Board meeting, no notice shall be required and any business may be transacted at such meeting.

Section 4. Conduct of Meetings. The President shall preside over all meetings of the Board of Directors and the Secretary shall keep a minute book recording therein all resolutions adopted by the Board

of Directors and a record of all transactions and proceedings occurring at such meetings. A majority of directors shall constitute a quorum for the transaction of business. If a quorum is present when a vote is taken, the affirmative vote of a majority of the directors present is the act of the Board, unless otherwise provided by these Bylaws or the South Carolina Nonprofit Corporation Act of 1994. One (1) or more directors who participate in a meeting by means of telephone or electronic communication shall be deemed present and in attendance for all purposes at such meeting, provided all persons participating in the meeting can hear each other.

Section 5. Open Meetings. Board meetings need not be open to all members. However, if the Board permits members to attend Board meetings, then members other than directors may not participate in any discussion or deliberation unless expressly so authorized by the Board. Notwithstanding the above, the Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session. The Board may order the removal of any meeting guest who, in the Board's opinion, either disrupts the conduct of business at the meeting or fails to leave the meeting upon request after an announcement of reconvening in executive session.

Section 6. Action Without a Meeting. Any action by the Board required or permitted to be taken at any meeting may be taken without a meeting if a majority of the directors consent to such action in writing, sent via hand delivery, regular first class or electronic mail or facsimile. Such consents must describe the action taken and be signed by no fewer than a majority of the directors and such consents shall be filed with the minutes of the Board of Directors. An action taken pursuant to this Section shall be effective when the last director signs the consent, unless, the consent specifies a different effective date.

C. Powers and Duties.

Section 1. Powers and Duties. The Board of Directors shall manage the affairs of the Association and shall have all the powers and duties necessary for the administration of the Regime and may do all such acts and things as are not by the Act, the Master Deed, the Articles of Incorporation, or these Bylaws directed to be done and exercised exclusively by the members. In addition to the duties imposed by these Bylaws or by any resolution of the Association that may hereafter be adopted, the Board of Directors shall have the power to and shall be responsible for the following, in the way of explanation, but not limitation:

- (a) preparation and adoption of an annual budget, in which there shall be established the contribution of each Owner to the Common Expenses;
- (b) making assessments to defray the Common Expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the annual assessment;
- (c) providing for the operation, care, upkeep, and maintenance of all of the Area of Common Responsibility as set forth in Paragraph 17 of the Master Deed;
- (d) designating, hiring, and dismissing the personnel necessary for the operation of the Association and the maintenance, repair, and replacement of the Common Elements, Association property, and the Area of Common Responsibility and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;

capacity with the Association, that his conduct was in its best interest; and (ii) in all other cases, that his or her conduct was at least not opposed to its best interests. The foregoing indemnification shall be valid against any and all expenses, including attorneys' fees, reasonably incurred by or imposed upon such officer, director or committee member in connection with any action, suit, or other proceeding (including settlement of any such action, suit, or proceeding, if approved by the then Board of Directors) to which he or she may be made a party by reason of being or having been an officer, director or committee member, whether or not such person is an officer, director or committee member at the time such expenses are incurred subject to the limitations herein. The Board must make a determination of whether the director has met the standard of conduct in the preceding sentence prior to indemnifying such officer, director or committee member. Such determination shall be made by: (i) the Board by majority vote of a quorum consisting of directors not at the time parties to the proceeding; (ii) if a quorum cannot be obtained as outlined above, by majority vote of a committee duly designated by the Board, in which designation directors who are parties may participate, consisting solely of two (2) or more directors not at the time parties to the proceeding; (iii) by special legal counsel pursuant to Section 33-31-855(b)(3) of the South Carolina Nonprofit Corporation Act of 1994; or (iv) by members of the Association. Authorization of indemnification and evaluation as to reasonableness of expenses must be made in the same manner as the preceding sentence, except that if the determination is made by special legal counsel, such authorization and evaluation must be made by those entitled under Section 33-31-855(b)(3) of the South Carolina Nonprofit Corporation Act of 1994 to select counsel. Directors who are partners to the proceedings may not vote on the determination.

If the Association indemnifies or advances expenses to a director pursuant hereto in connection with a proceeding by or in the right of the Association, the Association shall report the indemnification or advance in writing to the members with or before the notice of the next meeting of members. The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, or for injury or damage caused by any such officer, director or committee member in the performance of his or her duties, except for his or her own individual willful misfeasance or malfeasance. The Association, in determining whether to indemnify a director, officer or committee member, shall not impute knowledge to said director, officer or committee member from any source whatsoever; rather, any such determination shall be based on the actual knowledge of the director, officer or committee member. The officers, directors and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers, directors and committee members may also be members of the Association), and the Association shall indemnify and forever hold each such officer, director or committee member free and harmless against any and all liability to others on account of any such contract or commitment. Notwithstanding anything contained herein to the contrary, the Association may not indemnify a director (i) in connection with a proceeding by or in the right of the Association in which the director was adjudged liable to the Association; or (ii) in connection with any other proceeding charging improper personal benefit to the director, whether or not involving action in his or her official capacity, in which the director was adjudged liable on the basis that personal benefit was improperly received by the director. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director or committee member or former officer or director may be entitled. The Association shall maintain, as a Common Expense, adequate general liability and, if obtainable, officers' and directors' liability insurance to fund this obligation, and the insurance shall be written as provided in the Master Deed.

D. Committee

Section 1. Architectural Control Committee. After termination of the Declarant's right to appoint directors and officers of the Association as described in Part A, Section 2 of this Article, the Board shall establish an Architectural Control Committee for the purpose of establishing and maintaining architectural

(e) collecting the assessments, depositing the proceeds thereof in a financial depository or institution which it shall approve, or otherwise investing the proceeds in accordance with any limitations set forth in South Carolina law, and using the proceeds to administer the Association;

(f) making and amending rules and regulations and imposing sanctions for violation thereof, including, without limitation, monetary fines;

(g) opening of bank or other financial accounts on behalf of the Association and designating the signatories required;

(h) making or contracting for the making of repairs, additions, and improvements to, or alterations of the Common Elements in accordance with the other provisions of the Master Deed and these Bylaws, after damage or destruction by fire or other casualty;

(i) enforcing by legal means the provisions of the Master Deed, these Bylaws, and the rules and regulations adopted by it, and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association;

(j) obtaining and carrying insurance against casualties and liabilities, as provided in the Act and the Master Deed, and paying the premium cost thereof;

(k) paying the costs of all services rendered to the Association or its members and not directly chargeable to specific Owners;

(l) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred; and

(m) contracting with any Person for the performance of various duties and functions. The Board shall have the power to enter into common management agreements with trusts, condominium associations, or other associations or corporations. Any and all functions of the Association shall be fully transferable by the Board, in whole or in part, to any other entity.

Section 2. Management Agent. The Association may, but shall not be required to, hire a professional management agent or agents, at a compensation established by the Board, to perform such duties and services as the Board of Directors shall authorize. The Board shall use reasonable efforts in any management contract to provide for termination of such contract by the Association with or without cause and without penalty, upon no more than thirty (30) days written notice. No management contract shall have a term in excess of one (1) year.

Section 3. Borrowing. Except as may be set forth in Paragraph 18 of the Master Deed, the Board of Directors shall have the power to borrow money for the purpose of maintenance, repair, restoration, or improvement of the Common Elements and facilities, and for other purposes, with the approval of a majority of the Total Association Vote.

Section 4. Liability and Indemnification of Officers, Directors and Committee Members. The Association shall indemnify every officer, director, and committee member (including directors, officers, and committee members appointed by Declarant during the period of Declarant control) that conducted himself or herself in good faith, and in the case of a criminal proceeding had no reasonable cause to believe his or her conduct was unlawful, and reasonably believed (i) in the case of conduct in his or her official

standards in the Regime as provided in the Master Deed; provided that such committees shall have two (2) or more members.

Section 2. Other Committees. There shall be such other committees as the Board shall determine with the powers and duties that the Board shall authorize; provided that such committees shall have two (2) or more members.

Section 3. Service on Committees. Unless otherwise provided in these Bylaws or in the resolution authorizing a particular committee, the members of any committee shall be appointed by the President and shall serve at the pleasure of the Board of Directors. Any committee member may be removed with or without cause at any time and with or without a successor being named. A Committee may not (i) authorize distributions; (ii) approve or recommend to members dissolution, merger, or the sale, pledges, or transfer of all or substantially all of the Association's assets; (iii) select, appoint, or remove directors or fill vacancies on the Board or any of its committees; or (iv) adopt, amend, or repeal the Articles of Incorporation or Bylaws.

Article IV
Officers

Section 1. Designation. The principal officers of the Association shall be the President, the Secretary and the Treasurer, all or any of which may be the same person. A Vice President may be elected at the discretion of the Board.

Section 2. Election of Officers. The Association officers shall be elected annually by the Board at the first Board meeting following each annual meeting of the members and shall hold office at the pleasure of the Board and until a successor is elected.

Section 3. Removal of Officers. Upon the affirmative vote of a majority of the members of the Board, any officer may be removed, either with or without cause, and a successor may be elected.

Section 4. Vacancies. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board for the unexpired portion of the term.

Section 5. President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the members and of the Board. The President shall have all the general powers and duties which are incident to the office of the president of a corporation organized under the South Carolina Nonprofit Corporation Act of 1994, including, but not limited to, the power to appoint committees from among the members from time to time as he or she may in his or her discretion decide is appropriate to assist in the conduct of the affairs of the Association.

Section 6. Vice President. The Vice President, if any, shall act in the President's absence and shall have all powers, duties, and responsibilities provided for the President when so acting.

Section 7. Secretary. The Secretary shall keep the minutes of all meetings of the members and of the Board of Directors and authenticate records of the Association and shall have charge of such books and papers as the Board of Directors may direct, and shall, in general, perform all duties incident to the office of the secretary of a corporation organized under South Carolina law.

Section 8. Treasurer. The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate financial records and books of account

showing all receipts and disbursements (such account shall be in chronological order and shall specify the maintenance and repair expenses of the Common Elements and any other expenses incurred), for preparing all required financial statements and tax returns, and for the deposit of all monies and other valuable effects in the name of the Association or the managing agent in such depositories as may from time to time be designated by the Board of Directors. The Treasurer shall be responsible for the preparation of the budget as provided in the Master Deed. The Treasurer may delegate all or a part of the preparation and notification duties associated with the above responsibilities to a management agent.

Section 9. Other Officers. Other offices may be created by the Board, and the Board members that hold such offices shall have such titles and duties as are defined by the Board.

Section 10. Agreements, Contracts, Deeds, Leases, Etc. Except during the period Declarant has the right to appoint the officers and directors of the Association, all agreements, contracts, deeds, leases, checks, promissory notes, and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by resolution of the Board of Directors.

Article V Rule Making and Enforcement

Section 1. Authority and Enforcement. The Regime shall be used only for those uses and purposes set out in the Master Deed. The Board of Directors shall have the authority to make, modify, repeal and enforce reasonable rules and regulations governing the conduct, use, and enjoyment of Units and the Common Elements; provided, copies of all such rules and regulations shall be furnished to all Owners and Occupants. Any rule or regulation may be repealed by the affirmative vote or written consent of a majority of the Total Association Vote and the consent of the Declarant so long as the Declarant has the right to appoint and remove directors, at an annual or special meeting of the membership. Every Owner and Occupant shall comply with the Master Deed, Bylaws and rules and regulations of the Association, and any lack of compliance therewith shall entitle the Association and, in an appropriate case, one (1) or more aggrieved Owners, to take action to enforce the terms of the Master Deed, Bylaws or rules and regulations.

The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the Owner's Unit, and to suspend an Owner's right to vote or to use the Common Elements for violation of any duty imposed under the Master Deed, these Bylaws, or any rules and regulations duly adopted hereunder; provided, however, nothing herein shall authorize the Association or the Board to limit ingress and egress to or from a Unit. In the event that any Occupant of a Unit violates the Master Deed, Bylaws, or a rule or regulation and a fine is imposed, notice of such violation shall be sent to the Owner and Occupant, and the fine shall first be assessed against such Occupant; provided, however, if the fine is not paid by the Occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Association, and the fine shall be an assessment and a lien against the Unit until paid. The failure of the Board to enforce any provision of the Master Deed, Bylaws, or any rule or regulation shall not be deemed a waiver of the right of the Board to do so thereafter.

Section 2. Fines and Suspension Procedure. The Board shall not impose a fine, suspend the right to vote or suspend the right to use the Common Elements (provided, however, if an Owner is shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due the Association, suspension of the right to vote and the right to use the Common Elements shall be automatic; provided further, however, suspension of common utility services shall require compliance with the provisions of Paragraph 10(c)(v) of the Master Deed, where applicable), unless and until the Association has sent or delivered written notice to the violator as provided in subsection (a) below. Any such fine or fines may be effective or commence upon the sending of such notice or such later date as

may be set forth in such notice, notwithstanding the violator's right to request a hearing before the Board to challenge such fine under subsection (b) below.

(a) Notice. If any provision of the Master Deed or Bylaws or any rule or regulation of the Association is violated, the Board shall send the violator written notice identifying the violation and fine(s) and/or suspension being imposed and advising the violator of the right to request a hearing before the Board to contest the violation, fine(s), or suspension or to request reconsideration of the fine(s) or suspension. Fine(s) may be effective or commence upon the sending of such notice or such later date specified in such notice, notwithstanding the violator's right to request a hearing before the Board to challenge the fine. In the event of a continuing violation, each day the violation continues or occurs again constitutes a separate offense, and fines may be imposed on a per diem basis without further notice to the violator. Suspensions shall be effective pursuant to Section 33-31-621 of the South Carolina Nonprofit Corporation Act of 1994.

(b) Hearing. If a written request for hearing is received from the violator within ten (10) days of the date of the violation notice provided above, then the Board shall schedule and hold in executive session a hearing affording the violator a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing. The Board may establish rules of conduct for such hearing, which may include limits on time and on the number of participants who may be present at one time.

Section 3. Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Board may elect to enforce any provision of the Master Deed, the Bylaws, or the rules and regulations by self-help (specifically including, but not limited to, towing of vehicles that are in violation of the parking rules and regulations or performing maintenance on any Unit upon a failure by the Owner to so do) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity for compliance with the procedure set forth in Section 2 of this Article. In any such action, to the maximum extent permissible, the Owner or Occupant responsible for the violation for which abatement is sought shall pay all costs, including reasonable attorneys' fees actually incurred.

The Association or its duly authorized agent shall have the power to enter a Unit or upon any portion of the Common Elements to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates the Master Deed, the Bylaws, or the rules and regulations; provided, however, written notice shall be given to the Owner of the Unit at least two (2) days prior to the time that any items of construction are altered or demolished. All costs of self-help, including reasonable attorneys' fees, shall be assessed against the violating Owner and shall be collected as provided herein for the collection of assessments.

Article VI
Miscellaneous

Section 1. Notices.

(a) Method of Giving Notice. Unless otherwise prohibited in these Bylaws, all notices, demands, bills, statements, or other communications shall be in writing and shall be given via:

- (i) Personal delivery to the addressee; or
- (ii) United States mail, first class, postage prepaid; or
- (iii) Electronic mail; or

(iv) Facsimile; or

(v) A secure web site, provided that notice shall be deemed given via web site only upon proof that the addressee has retrieved the message.

(b) Addressee. Notice sent by one of the methods described in subparagraph (a) above shall be deemed to have been duly given:

(i) If to an Owner, at the address, electronic mail address or facsimile number which the Owner has designated in writing and filed with the Secretary, or if no such address has been designated, at the address of the Unit of such Owner;

(ii) If to an Occupant, at the address, electronic mail address or facsimile number which the Occupant has designated in writing with the Secretary or, if no such address has been designated, at the address of the Unit occupied; or

(iii) If to the Association, the Board or the managing agent, at the postal address, facsimile or electronic mail address of the principal office of the Association or the managing agent, if any, or at such other address as shall be designated in writing and filed with the Secretary. The Secretary shall promptly provide notice to all Owners of any such change in address.

Section 2. Severability. The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these Bylaws or the Master Deed.

Section 3. Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of these Bylaws or the intent of any provision thereof.

Section 4. Gender and Grammar. The use of the masculine gender in these Bylaws shall be deemed to include the feminine gender, and the use of the singular shall be deemed to include the plural whenever the context so requires.

Section 5. Fiscal Year. The fiscal year of the Association may be set by Board resolution, and, in the absence thereof, shall be the calendar year.

Section 6. Financial Audit. The accounts of the Association shall be audited as a Common Expense by an independent accountant after the close of each fiscal year. Such audited statement shall include a balance sheet as of the end of the fiscal year and a statement of operations for that year, and shall be made available to the member, the Attorney General, or the holder, insurer, or guarantor of any first mortgage on a Unit upon submission of a written request and must be available within one hundred twenty (120) days of the Association's fiscal year end.

If annual financial statements are reported upon by a public accountant, the accountant's report must accompany them. If not, the statements must be accompanied by the statement of the president or Person responsible for the Association's financial accounting records stating that Person's belief as to whether the statements were prepared on the basis of generally accepted accounting principles, and if not, describing the basis of preparation, and describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

Section 7. Conflicts. The duties and powers of the Association shall be those set forth in the Act, the South Carolina Nonprofit Corporation Act of 1994, the Master Deed, these Bylaws, and the Articles of Incorporation, together with those reasonably implied to affect the purposes of the Association; provided, however, that if there are conflicts or inconsistencies between the Act, the South Carolina Nonprofit Corporation Act of 1994, the Master Deed, these Bylaws, or the Articles of Incorporation, then the provisions of the Act, the South Carolina Nonprofit Corporation Act of 1994, as may be applicable, the Master Deed, the Articles of Incorporation and these Bylaws, in that order, shall prevail, and each Owner of a Unit, by acceptance of a deed or other conveyance therefor, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies.

Section 8. Amendment. Except where a higher vote is required for action under a particular provision of the Master Deed or Bylaws, in which case such higher vote shall be necessary to amend, these Bylaws may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the members holding two-thirds (2/3) of the Total Association Vote. Any amendment to add, change, or delete a greater quorum for members must be adopted under the quorum then in effect or proposed to be adopted, whichever is greater. Any amendment to add, change, or delete a voting requirement must be adopted by the same vote and classes of members required to take action under the voting requirements then in effect or proposed to be adopted, whichever is greater. Any amendment that fixes a greater quorum or voting requirements for the Board may be amended or repealed only by the members, if the members originally adopted such quorum or voting requirements. Notwithstanding the foregoing, any amendment to the Bylaws shall require the written consent of Declarant until the later of the following: (a) the date upon which the Declarant no longer owns any Unit at Long Grove Horizontal Property Regime; (b) the date upon which the Declarant no longer has the right to appoint the directors and officers of the Association as provided in Article III, Part A, Section 2 of the Bylaws; or (C) ten (10) years after the date on which the Master Deed is recorded in the RMC Office for Charleston County, South Carolina, whichever period of time is longer. Moreover, no amendment shall become effective until it is certified by the President and Secretary of the Association and recorded in the RMC Office for Charleston County, South Carolina. Any amendment duly certified and recorded shall be conclusively presumed to have been duly adopted in accordance with the Master Deed and Bylaws. Owners whose voting rights have been suspended pursuant to the Master Deed or these Bylaws shall not be counted as eligible votes toward the amendment requirement.

Any action to challenge the validity of an amendment adopted under this Section must be brought within one (1) year of the amendment's effective date. No action to challenge any such amendment may be brought after such time.

Notwithstanding the foregoing, Declarant or the Board of Directors, without the necessity of a vote from the Owners, may amend these Bylaws to correct any scrivener errors, comply with any applicable state, city or federal law, and/or to bring the Regime into compliance with applicable rules and regulations of the Federal National Mortgage Association ("Fannie Mae"), the Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA") pursuant to federal law.

Section 9. Books and Records.

(a) The Association shall:

(i) keep as permanent records minutes of all meetings of its members and Board, a record of all actions taken by the members or directors without a meeting, and a record of all

actions taken by committees of the Board as authorized by Section 33-31-825(d) of the South Carolina Nonprofit Corporation Act of 1994;

- (ii) maintain appropriate accounting records;
 - (iii) maintain a record of its members in a form that permits preparation of a list of the name and address of all members, in alphabetical order, showing the number of votes each member is entitled to cast;
 - (iv) maintain its records in written form or in another form capable of conversion into written form within a reasonable time; and
 - (v) keep a copy of the following records at its principal office:
 - (A) its Articles or restated Articles of Incorporation and all amendments to them currently in effect;
 - (B) its Bylaws or restated Bylaws and all amendments to them currently in effect;
 - (C) resolutions adopted by the Board relating to the characteristics, qualifications, rights, limitations, and obligations of members;
 - (D) the minutes of all meetings of members and records of all actions approved by the members for the past three years;
 - (E) all written communications to members generally within the past three years, including the financial statements furnished for the past three years under Section 33-31-1620 of the South Carolina Nonprofit Corporation Act of 1994;
 - (F) a list of the names and business or home address of its current directors and officers; and
 - (G) its most recent report of each type required to be filed by it with the Secretary of State of South Carolina under the South Carolina Nonprofit Corporation Act of 1994.
- (b) All members of the Association and any holder of a first Mortgage shall be entitled to inspect the following records at a reasonable time and location specified by the Association, upon written request at least five (5) business days before the date on which the member or mortgagee wishes to inspect and copy:
- (vi) its Articles or restated Articles of Incorporation and all amendments to them currently in effect;
 - (vii) its Bylaws or restated Bylaws and all amendments to them currently in effect;
 - (viii) resolutions adopted by either its members or Board of Directors increasing or decreasing the number of directors or the classification of directors, or relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;

(ix) resolutions adopted by either its members or Board of Directors relating to the characteristics, qualification, rights, limitations, and obligations of members or any class or category of members;

(x) the minutes of all meetings of members and records of all actions approved by the members for the past three (3) years;

(xi) all written communications to members generally within the past three (3) years, including the financial statements furnished for the past three (3) years;

(xii) a list of the names and business or home addresses of its current directors and officers; and

(xiii) its most recent annual report delivered to the Secretary of State.

(c) A member may inspect and copy the following records upon written notice at least five (5) business days before the date on which the member wishes to inspect and copy only if the member's demand is made in good faith and for a proper purpose that is reasonably relevant to the member's legitimate interest as a member; the member describes with reasonable particularity the purpose and the records the member desires to inspect; the records are directly connected with this purpose:

(i) excerpts from minutes of any Board meeting, records of any action of a committee of the Board while acting in place of the Board on behalf of the Association, minutes of any meeting of the members, and records of action taken by the members or the Board without a meeting, to the extent not subject to inspection under subsection 9(a);

(ii) accounting records of the Association; and

(iii) the membership list only if for a purpose related to the member's interest as a member. Without the consent of the Board, a membership list or any part thereof may not be used to solicit money or property unless such money or property will be used solely to solicit the votes of the members in an election to be held by the Association; used for any commercial purpose; or sold to or purchased by any person.

The Association may impose a reasonable charge, covering the cost of labor and material, for copies of any documents provided to the Member.

Notwithstanding anything to the contrary, the Board may limit or preclude member inspection of confidential or privileged documents, including attorney/client privileged communications, executive session meeting minutes, and financial records or accounts of other members. Minutes for any Board or Association meetings do not become effective and an official Association record until approved by the Board or Association membership, as applicable, at a subsequent meeting.

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RECORDER'S PAGE

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Krawcheck &
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CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

Recording

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State

Fee _____

County

Fee _____

Postage _____

Total 91.00

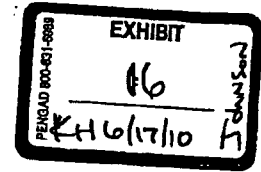
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PID VERIFIED
BY ASSESSOR
REP TRR
DATE 5/4/05

RECEIVED FROM RMC
MAY 4 2005
PEGGY A. MOSELEY
CHARLESTON COUNTY AUDITOR

(843) 958-4800 2 COURTHOUSE SQUARE CHARLESTON, SOUTH CAROLINA 29402-0726

BeachCo 000677



THIS AGREEMENT IS SUBJECT TO BINDING ARBITRATION PURSUANT TO SECTION 15-48-10 OF THE CODE OF LAWS OF SOUTH CAROLINA, AS MODIFIED HEREIN

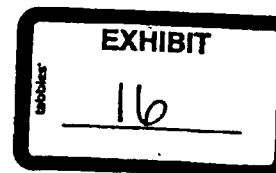
**LONG GROVE APARTMENT COMMUNITY
SEASIDE FARMS PLANTATION
Mount Pleasant, South Carolina**

SALES CONTRACT

**SELLER: LONG GROVE AT SEASIDE FARMS, LLC
PURCHASER: VISTA REALTY PARTNERS, L.L.C.**

JANUARY 18, 2005

NPCHAR1:267445.1-CS-(M/J) 016019-00210



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SALES CONTRACT

1. **Purchase and Sale.** LONG GROVE AT SEASIDE FARMS, LLC, a Delaware limited liability company ("Seller") agrees to sell and VISTA REALTY PARTNERS, L.L.C., a Georgia limited liability company ("Purchaser") agrees to purchase the following described property (the "Property" as defined below) pursuant to the terms of this Sales Contract (the "Sales Contract") for a total of THIRTY-SEVEN MILLION TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$37,250,000.00) (the "Purchase Price"). In determining the Purchase Price, Purchaser expressly understands that Seller shall retain and reserve from the sale all (a) utility deposits and deposits with governmental and quasi-governmental authorities, (2) non-refundable tenant deposits such as cleaning fees, redecorating fees and pet fees, (3) initial inducement payments made to Seller by providers of telephone and cable service and other similar payments, (4) rights to the name "The Beach Company", "The Beach Co." and The Beach Company trademark and (5) right, title and interest in any website or domain names maintained by Seller or Seller's property manager with respect to the Property. Also, Purchaser hereby acknowledges that the Purchase Price is based upon the assumption that the apartments located on the Property contain approximately 265,368 air-conditioned square feet in the aggregate, plus the common areas.

Subject to the terms and conditions of this Sales Contract, Seller shall sell, assign and convey and Purchaser shall purchase, take assignment of and accept conveyance of the following described property (all of which is hereinafter collectively referred to as the "Property"):

a) that certain tract of real estate on which is situated a 272-unit apartment project commonly known as the "Long Grove Apartment Community" located in Seaside Farms Plantation, in the Town of Mount Pleasant, South Carolina which real estate is legally described in the attached Exhibit A, together with all and singular easements, covenants, agreements, rights, privileges, tenements, hereditaments and appurtenances now or hereafter belonging or appertaining thereto (collectively, the "Land"); and

b) all of the buildings, structures, fixtures, facilities, installations and other improvements of every kind and description now or hereafter, in, on, over and under the Land, including, without limitation, any and all plumbing, air conditioning, heating, ventilating, mechanical, electrical, and other utility systems, parking lots and facilities, landscaping, roadways, sidewalks, swimming pool(s), and other recreational facilities, security devices, signs and light fixtures (collectively, the "Improvements") (the Land and Improvements being collectively referred to as the "Premises"); and

c) all furniture, furnishings, fixtures (to the extent same do not constitute real property), equipment, machinery, maintenance vehicles and equipment, recreational equipment, carpeting, window treatments, computer software and disks, and other tangible personal property of every kind and description situated in, on, over and under the Premises and/or otherwise currently used in the operation of the Premises and owned by Seller or in which Seller otherwise has an interest and which is not owned by tenants under the Leases (as such term is hereinafter defined) and not owned by any third party manager or contractor, together with all replacements

and substitutions therefor (together with the intangible personal property hereinafter identified, collectively the "Personal Property"), including without limitation, all items of personalty described on the schedule attached to this Sales Contract as Exhibit B.

d) all right, title and interest of Seller in and to the Leases and Service Contracts (as such terms are hereinafter defined) and, to the extent transferable, any other intangible personal property, together with any associated good will, now or hereafter owned by Seller or in which Seller otherwise has an interest and which is used in connection with or arising from the business now or hereafter conducted on or from the Premises or any part thereof, including, without limitation, claims, choses in action, lease and other contract rights, transferable licenses or rights to use computer software used in the operation of the Premises, any assignable building or building system warranty, if available, any existing tenant databases (to be used in conjunction with transferable licenses or computer software), all right, title and interest of Seller in and to the name "Long Grove Apartment Community" and any and all other trade names, fictitious names, trademarks, patents, telephone and facsimile numbers and e-mail addresses relating to the Premises (collectively, the "Intangible Property").

e) A summary of all current leases affecting the Premises or any part thereof (the "Leases", with such summary being referred to in this Sales Contract as the "Rent Roll"), including each tenant's name, the apartment number, the type of unit leased, the amount of monthly rental, the amount of rent due and/or delinquent, any concessions due each tenant, the amount of any security deposit paid, the term of each Lease (including the Lease Termination Date), and a description of any right to renew or extend, is attached to this Sales Contract as Exhibit C. A list of all employment, purchase, service and maintenance agreements, equipment leases and any other agreements, contracts, licenses and permits affecting or pertaining in any way to the Property or any part thereof (the "Service Contracts") is attached to this Sales Contract as Exhibit D.

2. Earnest Money. Upon the execution of this Sales Contract by both parties, Purchaser shall deposit TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$250,000.00) with Lawyers Title Insurance Corporation ("Escrow Agent"). At the end of the Inspection Period, should Purchaser not terminate this Agreement, it will deposit the additional sum of TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$250,000.00) with the Escrow Agent (the total shall be \$500,000.00 and such funds together with any interest accrued thereon are collectively referred to as the "Earnest Money"). \$250,000.00 of the Earnest Money will become non-refundable seven (7) business days after the Effective Date (in order to give Purchaser time to obtain Phase 1 Environmental and engineering assessments acceptable to Purchaser) or when Seller has delivered a title commitment (the "Title Commitment") to Purchaser, reasonably acceptable to Purchaser's attorney, whichever is later (this \$250,000.00 would still be refundable in the event of termination of the Sales Contract due to Seller's default). The Title Commitment will be delivered to Purchaser simultaneously with this Sales Contract; therefore, should Purchaser's attorney determine that the Title Commitment is not reasonably acceptable, Purchaser shall have the aforesaid seven (7) business days to notify Seller in writing of such fact and Purchaser's election to terminate this Sales Contract (and Escrow Agent will refund the initial \$250,000.00 of the Earnest Money to Purchaser). The additional

\$250,000.00 of the Earnest Money shall be non-refundable after the end of the Inspection Period; however such amount, including any accrued interest thereon, shall be applied to the Purchase Price at Closing (except the Earnest Money shall be refundable to Purchaser in the event of termination of the Sales Contract due to Seller's default).

3. **Closing Date.** The sale shall be closed at a time and place mutually acceptable to both parties on or prior to, but not later than, March 7, 2005 (the "Closing Date" or "Closing"). Possession of the Property shall be delivered to Purchaser at the time of Closing.

4. **Inspection Period.** Purchaser shall have from the Effective Date until 5:00 p.m. (Mount Pleasant, South Carolina time) on February 4, 2005 (the "Inspection Period") to inspect the Property, all reports and documents associated with the ownership, operation and management of the Property and all books and records of Seller including, without limitation, the right to obtain (i) a commitment for the issuance of the Title Policy (defined below) from a title insurer of Purchaser's choice, and (ii) an updated survey of the Premises acceptable to Purchaser. Also, within ten (10) days of execution of this Sales Contract, Seller and Purchaser agree to complete and execute the Disclosure of Information on Lead-Based Paint and/or Lead Based-Paint Hazard, a form of which is attached hereto as Exhibit E, and Purchaser acknowledges such form satisfies Seller's obligations under 40 C.F.R. Part 745. Notwithstanding the foregoing to the contrary, Seller shall deliver an existing survey and an updated title commitment to Purchaser (pursuant to Section 5 below) and Purchaser shall have until January 25, 2005 to submit any survey objections to Seller; otherwise, thereafter all title and survey matters shall be deemed approved. The title commitment may be issued by Seller's attorneys through Colonial Coast Title Agency, Inc., or another title agency acceptable to Purchaser, with a title company reasonably acceptable to Purchaser. The title insurance premium will be paid by Purchaser at Closing.

5. **Seller's Deliveries.** Seller shall promptly furnish to Purchaser by personal or overnight delivery within five (5) days after the Effective Date all items indicated on Exhibit F attached hereto and made a part hereof (collectively, the "Due Diligence Materials").

6. **Warranties and Representations.** Seller warrants and represents to Purchaser that:

a) Seller is a duly organized and validly existing Delaware limited liability company and is authorized to do business in South Carolina;

b) Seller has the full power, right and authority to enter into and perform its obligations under this Sales Contract. The execution, delivery and performance of this Sales Contract by Seller have been duly and properly authorized by proper action in accordance with applicable law and with the Operating Agreement of Seller;

c) There is no litigation pending or, to Seller's actual knowledge, threatened by or against Seller or the Property; and

d) To Seller's actual knowledge, Seller has not entered into any agreement to lease, sell, mortgage or otherwise encumber or dispose of its interest in the Property or any part thereof, except for this Sales Contract and the Leases and except for the mortgage of record, which shall be paid in full at Closing.

e) To its actual knowledge, Seller has not received from any governmental authority written notice of any violation of any zoning, environmental, building, fire or health code, or any other statute, ordinance rule or regulation applicable (or alleged to be applicable) to the Property.

f) To Seller's actual knowledge, the Service Contracts described on Exhibit D attached hereto comprise every contract, agreement, relationship and commitment, oral or written, (other than the Leases), which affects the Property, to which Seller is a party, or by which it is bound, other than those matters of record. To the knowledge of Seller, neither Seller nor any other party is in default under the terms of any Service Contract. Except as otherwise noted on Exhibit D, each Service Contract is cancelable without payment of any premium or penalty upon not more than thirty (30) days notice.

g) The Rent Roll lists all existing Leases. The Rent Roll discloses all security and other deposits made by each of the tenants under the Leases, and no tenant is or was entitled to any rebate or concession which is not disclosed on the Rent Roll. Seller has not received any advance payment of rent (other than for the current month) on account of any of the Leases except as shown on the Rent Roll. There are no written or oral leases or tenancies affecting the Property other than those listed on the Rent Roll. All of the Leases are assignable by Seller as contemplated by this Sales Contract without the consent of any other party.

h) To Seller's actual knowledge, all financial information about the Property heretofore or hereafter furnished by Seller to Purchaser is and shall be materially true, complete and correct as of the date therein specified and shall present fairly the financial condition of the Property.

i) To its actual knowledge, Seller has not received any actual written notice of any civil, criminal or administrative suit, claim, hearing, violation, investigation, proceeding or demand against Seller or the Property relating to the environmental condition of the Property.

j) Seller is not a foreign limited liability company, person or other entity within the meaning of Section 1445(b)(2) of the Internal Revenue Code of 1986, as amended.

Purchaser warrants and represents to Seller that Purchaser is a duly organized and validly existing limited liability company in good standing under the laws of Georgia. Purchaser has the full power, right and authority to enter into and perform its obligations under this Sales Contract. The execution, delivery and performance of this Sales Contract by Purchaser have been duly and properly authorized by proper action in accordance with applicable law and with the Articles of Organization and Operating Agreement of Purchaser.

The representations and warranties set forth in this Section shall be deemed to be remade as of Closing.

7. Closing.

a) Seller shall, as a condition of closing, deliver the following to Purchaser at Closing:

i. A special warranty indenture deed ("Deed"), in the form attached hereto as Exhibit H and made a part hereof, conveying marketable fee simple title to the Property to the Purchaser free of all mortgages, liens, deeds of trust, encumbrances, restrictions, rights-of-way, easements, judgments and other matters affecting title, except the matters (hereafter called the "Permitted Encumbrances") enumerated on Exhibit G attached hereto and made a part hereof;

ii. A bill of sale, without warranty, conveying all personal property, permits and authorizations and intangibles set forth in Section 1, including the assignment of the right to use the name "Long Grove Apartment Community";

iii. With respect to the Property, assignments of all Leases (and associated security deposits) and those Service Contracts Purchaser elects to assume, licenses, permits and warranties except for such items as Purchaser elects to terminate;

iv. A closing statement setting forth the prorations and adjustments set forth herein;

v. Evidence of Seller's power and authority as a nationally recognized title company may reasonably require;

vi. FIRPTA affidavit and any state withholding tax affidavit, as required;

vii. Certificate of Seller confirming its warranties and representations contained herein;

viii. a letter advising tenants under the Leases of the change in ownership and management of the Premises and directing them to pay rent to Purchaser or as Purchaser may direct;

ix. any and all reasonable affidavits, certificates or other documents reasonably required by the Title Insurer in order to cause it to issue an ALTA Form B (1992) Owner's Title Insurance Policy insuring Purchaser's interest in the Premises, as owner, in the amount of the Purchase Price (said title policy is herein referred to as the "Title Policy");

x. an assignment and assumption of all assignable warranties, and, to the extent transferable without cost to Seller, all intangible personal property, if any, which Purchaser elects to take an assignment of,

xi. an updated Rent Roll (including a listing of all delinquent and prepaid rents) certified by Seller as being true, accurate and complete as of Closing;

xii. unless otherwise available at the Property, copies of all of the original Leases, the written Service Contracts, if any, which Purchaser elects to take assignment of, and, to the extent in Seller's possession or direct control, any and all available building plans, surveys, site plans, engineering plans and studies, utility plans, landscaping plans, specifications, drawings, certificates of occupancy, permits and construction drawings; all keys for the Property, with identification of the lock to which each such key relates; and other material documentation concerning all or any part of the Property;

xiii. for Seller, a certified copy of the organizational documents of Seller and a copy of the certificate of good standing or qualification to do business, as the case may be, for Seller in the State of South Carolina and such other evidence of Seller's power and authority as the Title Insurer reasonably request;

xiv. such certificates and other information as may be reasonably required, to the extent not otherwise available, for the "real estate reporting person" as defined in Section 6045(e) of the Internal Revenue Code, to file the required 1099-S information return relating to the sale and purchase of the Property;

xv. Certificate of Seller confirming its warranties and representations contained herein;

xvi. an updated Rent Roll (including a listing of all delinquent and prepaid rents) certified by Seller as being true, accurate and complete in all materials respects as of Closing;

xvii. all other documents reasonably required by Purchaser in order to perfect the conveyance, transfer and assignment of the Property to Purchaser (including, without limitation, evidence of notification to all utilities of the change of ownership).

As of Closing, Seller shall have terminated all Service Contracts which it has a right to terminate (excepting only those Service Contracts which Purchaser has given Seller written notice prior to the end of the Inspection Period that Seller elects to take assignment thereof).

b) Purchaser shall, as a condition of closing, deliver the following to Seller at Closing:

i. Certificate of Purchaser confirming its warranties and representations contained herein;

ii. The balance of the Purchase Price in immediately available federal funds after receiving credits, if any, due under this Sales Contract;

iii. A closing statement setting forth the prorations and adjustments set forth herein;

iv. Assumptions of the various assignments set forth above.

Seller shall pay (i) its attorney fees, (ii) the Title Commitment, and (iii) any reasonable costs required to render title marketable and insurable. Purchaser shall pay (i) its attorney fees, (ii) the costs of its due diligence inspections, (iii) the cost of any survey, any other title commitment and title policy, and (iv) all transfer taxes and recording fees.

8. Closing Prorations and Adjustments.

Seller and Purchaser agree to prorate all rents and expenses (including, without limitation, interest) of the Property as of 11:59 p.m. (Mount Pleasant, South Carolina time) of the day of Closing (the "Transition Date") with the Purchaser entitled to all such rents and expenses and responsible for all such expenses for the day thereafter. Seller shall be responsible for all unpaid obligations and liabilities accrued or incurred up to the Transition Date including sales taxes, all franchise taxes, all utility and service contract charges. The parties agree to adjust all such prorations (other than the real estate taxes) within ninety (90) days after Closing; thereafter, all prorations shall be final.

A statement of prorations and other adjustments shall be prepared by Seller in conformity with the provisions of this Sales Contract and submitted to Purchaser for review and approval prior to the Closing Date, which may be thereafter amended up until the time of closing. For purposes of prorations, Seller shall be deemed the owner of the Property on the Closing Date. In addition to prorations and other adjustments that may otherwise be provided for in this Sales Contract, the following items are to be prorated or adjusted, as the case may require, as of the Closing Date.

- a) real estate and personal property taxes and assessments (initially prorated on the basis of 100% of the most recent ascertainable bill, but subject to re-proration upon issuance of the actual bill therefor to effectuate the actual proration);
- b) the rent payable by tenants under the Leases; provided, however, that rent and all other sums which are due and payable to Seller by any tenant but uncollected as of the Closing shall not be adjusted, but Purchaser shall cause the rent and other sums for the period prior to Closing to be remitted to Seller if, as and when collected. At Closing, Seller shall deliver to Purchaser a schedule of all such past due but uncollected rent and other sums owed by tenants. Purchaser shall promptly remit to Seller any such rent or other sums paid by scheduled tenants, but only if a deficiency in the then current rent is not thereby created. For amounts due Seller not collected within ninety (90) days after Closing, Seller shall have the right to sue to collect same, but in no event may Seller seek to evict or dispossess any tenant or terminate any Lease.
- c) the full amount of security deposits (excluding any non-refundable tenant deposits such as cleaning fees, redecorating fees, pet fees or similar fees paid under the Leases), together with interest thereon if required by law or otherwise;
- d) water, electric, cable, telephone and all other utility and fuel charges due for services provided to the Property other than to tenants under Leases, (to the extent possible, utility prorations will be handled by meter readings on the Closing Date);

e) amounts due and prepayments under the Service Contracts, if any, of which Purchaser elects to take assignment (such list to be provided to Seller prior to the end of the Due Diligence Period);

f) assignable license and permit fees

g) 2005 Seaside Farms Plantation Community Association assessments attributable to the Property; and

h) other expenses of operation.

Except with respect to general real estate and personal property taxes (which shall be reprorated upon the issuance of the actual bills, if necessary), any proration which must be estimated at Closing shall be reprorated and finally adjusted as soon as practicable after the Closing Date; otherwise all prorations shall be final.

9. **Broker.** The parties represent to each other that, other than The Beach Company (an affiliate of Seller) and LJ Melody & Company, they have not engaged any broker in connection with this transaction and agree to indemnify the other in the event of any breach of this representation. Seller shall be responsible for payment of any commission owed to The Beach Company and LJ Melody & Company pursuant to a separate listing agreement between them.

10. **Termination of Service Contracts.** Prior to the end of the expiration of the Inspection Period, Purchaser shall have the right to require Seller to terminate any service contracts or business arrangements that may be terminated without penalty or forfeiture effective as of the Closing, by providing written notification of the same to Seller on or before the expiration of the Inspection Period.

11. **Covenants Pending Closing.**

a) Seller will continue to operate the Property in the same manner as now operated continuing such levels of advertising, promotion, maintenance and insurance now existing;

b) Seller shall complete, in a workmanlike manner, all repairs, if any, currently underway; and

c) Nothing shall be removed from the Property without the prior written approval of Purchaser except in the ordinary course of business and provided such items are replaced.

12. **Damage or Condemnation.**

a) The Property shall be in the same condition at Closing as now, normal wear and tear excepted; and

b) Should the Property suffer \$500,000.00 or more of damage by casualty or condemnation, Purchaser may elect to terminate this Sales Contract and obtain a refund of the Earnest Money, or elect to proceed with Closing and receive all insurance and condemnation proceeds, less any deductible or uninsured loss from the Purchase Price. If such damage by casualty or condemnation is less than \$500,000.00 Purchaser may not elect to terminate this Sales Contract but shall receive all insurance and condemnation proceeds, less any deductible or uninsured loss from the Purchase Price.

13. **Default.**

a) Notwithstanding anything to the contrary contained in this Sales Contract, if Seller fails to perform in accordance with the terms of this Sales Contract, then, Purchaser, at Purchaser's option, may (i) demand and receive a return of the Earnest Money, (ii) upon notice to Seller not more than fifteen (15) days after Purchaser becomes aware of such failure (and upon filing of such action within thirty (30) days after Purchaser becomes aware of such failure), seek specific performance of this Sales Contract, and/or (iii) seek damages as may be available under applicable law. In the event Purchaser selects the option under Section 14(a)(i), the Sales Contract shall be null and void. Notwithstanding the foregoing to the contrary, should Purchaser seek damages because of Seller's default, such damages shall not exceed Two Hundred Thousand and 00/100 Dollars (\$200,000.00).

b) Notwithstanding anything to the contrary contained in this Sales Contract, if Purchaser fails to perform in accordance with the terms of this Sales Contract, then, as Seller's sole and exclusive remedy hereunder Seller may retain the Earnest Money as liquidated damages, in which event this Sales Contract shall be null and void, and neither party shall have any rights or obligations under this Sales Contract except those which expressly survive termination.

14. **Condition of Property.** Except as otherwise provided specifically in this Sales Contract, specifically including but not limited to the representations and warranties contained in Section 6 hereof, Purchaser acknowledges that neither Seller nor anyone acting for or on behalf of Seller has made any representation, statement, warranty, or promise to Purchaser with respect to the Property. Purchaser shall immediately examine the Property, and become familiar with the physical condition thereof. The Property shall be sold and conveyed strictly on an "as is", "where is", "without recourse" and "with all defects" basis, as it exists on the last day of the Inspection Period, without representation, warranty or covenant, express, implied or statutory, of any kind whatsoever, including, without limitation, representation, warranty or covenant as to condition (structural, environmental, mechanical or otherwise), past or present use, construction, development, lease performance, investment potential, tax ramifications or consequences, income, compliance with law, habitability, tenancies, merchantability or fitness or suitability for any purpose, all of which are hereby expressly disclaimed except as contained in this Agreement. Without limiting the generality of the foregoing, Purchaser acknowledges that Seller has made no representations, warranties or covenants (except as otherwise provided specifically in this Sales Contract, specifically including but not limited to the representations and warranties contained in paragraph 6 hereof) as to the compliance of the Property with any

federal, state, municipal or local statutes, laws, rules, regulations or ordinances, including, without limitation, those pertaining to construction, rent control, building and health codes, land use (or permits issued in connection therewith), zoning, lead paint, urea formaldehyde foam insulation, asbestos, hazardous or toxic wastes or substances, pollutants, contaminants or other environmental matters. Purchaser knowingly and fully assumes the entire risk as to all such matters. Purchaser shall confirm the aforesaid acknowledgments in writing as of the Closing Date. The provisions of this Section shall survive the closing and the delivery of the deed or any expiration or termination of this Agreement. Seller shall not be liable or bound in any way for any verbal or written statements, representations, or information pertaining to the Property furnished by any real estate broker or agent thereof or any agent or employee of Seller, or any other person. It is understood and agreed that all prior and contemporaneous representations, statements, understandings and agreements, oral or written, between the parties are merged in this Agreement, which alone fully and completely expresses their agreement, and that the same is entered into after full investigation, neither party relying on any statement or representation or warranty not embodied in this Agreement made by the other.

Purchaser and Seller agree that this sale is exempt from the provisions of the South Carolina Residential Property Disclosure Act, S.C. Code §§ 27-50-10 et seq. To the extent that any provisions of the Act may apply, Purchaser and Seller waive all its rights, obligations, and requirements and excuse compliance.

15. Assumption of Liability and Release of Claims.

a) Purchaser acknowledges that the Property was originally developed and constructed by Seller and its Affiliates (as herein defined). Purchaser represents that it is purchasing the Property for the purpose of converting the Property into condominiums which will be sold to the public. Purchaser assumes all responsibility for identifying and correcting all defects or problems, if any, that may exist, to ensure that the Property is properly constructed and suitable for use as condominiums in accordance with all applicable building regulations, codes, standards, and other applicable laws and requirements.

b) Accordingly, as part of the valuable consideration being exchanged in this sale transaction, the receipt of which is hereby acknowledged, Purchaser on behalf of itself and its heirs, representatives, successors, and assigns, agrees to never sue and completely releases Seller, The Beach Co., Gulfstream Construction Company, Seller's other affiliates, agents, officers, directors, employees, insurers, representatives, successors, assigns, and all other companies, partnerships, entities, or persons involved in the design, development and/or construction of the apartment buildings and apartments therein and all other improvements prior to the Closing Date of this sale transaction (collectively, the "Affiliates"), for and from any and all claims of every kind whatsoever arising from or related to the development, design, construction, maintenance, alteration, or repair of the Property, including unknown and unforeseen claims that may now exist or that may arise in the future. At its sole expense, Purchaser shall also defend, indemnify and hold the Seller and the Affiliates harmless from any cost, liability, damages, claims or the like which may arise as a result of the same including reasonable attorney fees and other costs of defense associated therewith, including, but not

limited to, any claims made by future purchasers of condominium units at the Property. Eduard deGuardiola, a principal in the Purchaser, assumes and guaranties these indemnification obligations if the Purchaser ceases to exist, its assets are depleted or it is otherwise unable, or refuses, to perform the indemnity obligations of the Purchaser in a timely and reasonable manner. Notwithstanding the foregoing in this Section 15, the assumption of liabilities and release of claims shall not apply to liability of Seller for the willful breach of the representations and warranties contained in Section 6 of this Sales Contract. The provisions of this Section shall survive the closing and the delivery of the deed or any expiration or termination of this Agreement to the date that is one (1) year after the expiration of any and all applicable statutes of limitation.

16. Condominium Regime Documents.

Purchaser acknowledges and agrees that the Assumption of Liability and Release of Claims in Section 15 above is intended to be binding on all subsequent purchasers of the Property or any condominiums or other subdivisions of the Property. In order to give effect to this intention, the provision set forth in Exhibit I, attached hereto and incorporated herein, will be included in the Master Deed (as herein defined) establishing any condominium regime, and in any and all deeds or any other conveyances of all or part of the Property (except for conveyances of condominium units by Purchaser), including, but not limited to, a sale of a company (or corporate stock or partnership interest) interest.

Should Purchaser elect to submit the Property or any portion thereof to a master deed (the "Master Deed") establishing a horizontal property regime, Purchaser shall, at Purchaser's expense, prepare the proposed Master Deed and related regime documents (the "Condominium Documents") and submit the Condominium Documents to Seller for Seller's review and approval solely for purposes of determining compliance with the provisions of Section 15 of this Agreement, which approval shall not be unreasonably withheld or delayed. After Seller's approval of the Condominium Documents, no material changes shall be made to the Condominium Documents without the prior written approval of Seller and Purchaser. Seller and Purchaser shall agree upon the form and content of the Condominium Documents prior to their filing of record. The provisions of this Section shall survive the closing and the delivery of the deed or any expiration or termination of this Agreement.

17. Seaside Covenants.

a) The Property is subject to the Declaration Of Covenants, Conditions, And Restrictions For All Properties In Seaside Farms Plantation and Bylaws Of Seaside Farms Plantation Community Association, Inc. dated September 20, 1994 and recorded on September 23, 1994 in Book C-248, at page 229, as amended, in the RMC Office for Charleston County, South Carolina and the ARB (as hereinafter defined) rules and regulations as described therein (collectively the "Seaside Covenants"). Seller and Purchaser acknowledge that a copy of the Seaside Covenants, the ARB Guidelines and Design Guidelines shall be provided to Purchaser as part of the Due Diligence Materials. During the Inspection Period, should Purchaser object to any material terms or provisions of the Seaside Covenants (other than the ARB's absolute

discretion to review and approve or disapprove the design and construction of any improvements or changes to improvements on the Property including without limitation its absolute right to review and approve or disapprove the location, size and overall aesthetics of curb cuts, lighting, drainage, irrigation and other such issues), then Purchaser may terminate this Agreement pursuant to Section 4 of this Sales Contract.

b) Under the Seaside Covenants, the Property is also subject to a continuing lien for the payment of annual assessments imposed by the Association (as herein defined) which said assessments shall be used for, among other things, the maintenance, repair and replacement of (i) recreational amenities, (ii) private roads, if any, walks, trails, harbors, lagoons, ponds, parking lots, landscaped areas and other improvements situated within common areas or open space areas or easements, (iii) such utility lines, pipes, plumbing, wires, conduits and related systems which are a part of Seaside Farms and which are not maintained by a public authority, public service district, public or private utility, or other person, (iv) all lawns, trees, shrubs, hedges, grass, and other landscaping situated within or upon Seaside Farms, and (v) administrative costs and other reasonable costs associated with the Association, all as enumerated in the Seaside Covenants. During the Inspection Period, Seller and Seaside Farms Plantation Community Association, Inc. (the "Association") shall estimate the amount of Purchaser's annual assessments, percentage of its pro rata share of future annual assessments and its voting rights under the Seaside Covenants. Purchaser acknowledges that under the Seaside Covenants, an architectural review board ("ARB") has authority to review and approve or disapprove any and all plans for changes to the existing improvements of the Property, including use. Purchaser agrees to be bound by development guidelines promulgated by the ARB with respect to all improvements or changes to improvements to undertaken in the future by or on behalf of Purchaser on the Property.

c) Purchaser acknowledges that all property owners in Seaside Farms Plantation shall be assessed for the cost of maintenance of the waterfront park area and certain of the ponds, lagoons and lakes within Seaside Farms Plantation. The Association has sole authority to determine the water levels of the ponds, lagoons and lakes and thus the use of water therefrom for irrigation or other purposes will be regulated by the Association in its sole discretion.

The provisions of this Section shall survive the closing and the delivery of the deed or any expiration or termination of this Agreement.

18. Development Agreement. The Property is subject to the "Seaside Farms Development Agreement" among the Town of Mount Pleasant, The Beach Company, The Franke Home, Inc. and Others, dated February 24, 1998 and recorded in the RMC Office for Charleston County, South Carolina in Book X297, at page 165 (the "Development Agreement"). After Closing, Purchaser agrees, at all times, to comply with requirements of the Development Agreement. At Closing, Seller shall convey the Property to Purchaser with an allocation of 272 Dwelling Units pursuant to the procedure enumerated in Section 46(b)(iii) of the Development Agreement. The provisions of this Section shall survive the closing and the delivery of the deed or any expiration or termination of this Agreement.

19. **Arbitration.** The parties waive their right to a jury trial and agree that any disputes, claims, or controversies arising from or related to this Sales Contract, or any breach thereof, shall be resolved via final, binding arbitration conducted in accordance with the South Carolina Uniform Arbitration Act, S.C. Code Ann. § 15-48-10, et seq. If a conflict between those rules and the terms of this Sales Contract arises, then this Sales Contract shall control. The venue of the arbitration shall be exclusively in Charleston County, South Carolina. The parties agree that they will never attempt to litigate any such matters in any other forum or in any other manner. The parties agree to an expedited arbitration hearing and agree that the arbitration shall be heard and decided as soon as reasonably possible after notice of the demand for arbitration is provided in writing to the party to whom the demand for arbitration is made. Notwithstanding §15-48-30 (which specifies the use of three arbitrators), the parties will use a single, unbiased arbitrator to decide all matters in dispute. If the parties are unable to agree on an arbitrator, then any party may petition the Charleston County Court of Common Pleas to appoint an arbitrator. In addition to the limited discovery permitted under § 15-48-80 in the discretion of the arbitrator, the parties shall exchange witness lists and exhibits at least 10 days prior to the arbitration hearing. In addition to all available legal and equitable remedies, any party is entitled to request and obtain from the arbitrator an award of injunctive relief (i.e., a temporary restraining order and temporary and permanent injunction) as an appropriate remedy to enforce this Sales Contract or prevent a continued violation of this Sales Contract, without having to post a bond or other security. The parties agree to (a) join into the arbitration proceeding hereunder or (b) join any other arbitration proceeding being conducted by persons or entities related to the dispute that may be necessary to completely resolve the dispute, such as a future grantee, condominium purchaser, or Purchaser's or subsequent grantees' contractors, subcontractors, or materialmen. Payment of the costs of any such arbitration and attorneys' fees of the parties shall be allocated equitably by the arbitrator to correspond with the arbitrator's evaluation of the relative merits or lack thereof of the respective claims of the parties. The decision and award of the arbitrator shall be binding and conclusive, and judgment in conformity with the decision and award may be entered and enforced in any court of competent jurisdiction.

20. **Listing Agreement.** Within seven (7) business days after the Effective Date, Purchaser shall enter into an exclusive listing agreement (the "Listing Agreement") appointing The Beach Company as sales agent for condominium sales at the Property. The Listing Agreement shall provide, among other things, for a five (5%) percent commission and, if applicable, obligates The Beach Company to pay a three (3%) percent commission to outside agents.

21. **Management Agreement.** Within seven (7) business days after the Effective Date, Purchaser shall enter into an exclusive management agreement (the "Management Agreement") appointing The Beach Company as property manager of the Property for a fixed fee of \$10,000.00 per month. The Management Agreement shall provide, among other things, that the monthly fee will be adjusted or cease when condominium conversions and subsequent sales cause occupancy by renters to fall below 50% of the units at the Property.

22. **Miscellaneous.**

- (a) Time is of the essence in all aspects of this Agreement.
- (b) This Sales Contract shall be governed by the laws of the State of South Carolina.
- (c) This Sales Contract shall be binding on the parties, their successors and assigns.
- (d) All undertakings and agreements (oral or otherwise) heretofore had between Seller and Purchaser with respect to the Property are merged in this Sales Contract, which alone fully and completely expresses the agreement of the parties. This Sales Contract shall not be modified or amended except in a written document signed by Seller and Purchaser.
- (e) For purposes herein, the "Effective Date" of this Sales Contract shall be the date on which both Seller and Purchaser have fully executed original of this Agreement.
- (f) Each party hereto recognizes that the other (or its assigns) reserves the right to structure this transaction as a like-kind exchange intended to qualify under §1031 of the Internal Revenue Code. Accordingly, each party agrees to cooperate with the other to facilitate the qualification of the exchange, provided the other party incurs no additional risk or expense. In addition, each party agrees to enter into a contract, containing the same terms and conditions, for the sale of this Property with a §1031 qualified intermediary or consent to an assignment of this Agreement to the §1031 qualified intermediary; however, such party shall remain liable under this Agreement.
- (g) Purchaser may not assign its rights, duties, and obligations under this Sales Contract without the consent of Seller except to an entity owned or controlled and managed by Eduard deGuardiola and provided the Purchaser shall remain liable hereunder.
- (h) After the expiration of the Inspection Period, leases for apartment units will only be entered into, modified or extended with the prior approval of the Purchaser unless such transactions meet the leasing standards enumerated on Exhibit J attached hereto and made a part hereof

23. Communications. All communications, notices, requests, demands and other communications which are required or permitted to be given pursuant to the terms of this Sales Contract shall be in writing and shall be sufficient in all respects if delivered personally or by an air express delivery company or by facsimile transmission to the telecopier phone number set forth below (with receipt confirmed), when so delivered in each case addressed as follows:

Seller: c/o The Beach Co.
211 King Street, Suite 300
Charleston, South Carolina 29401
Attn: J. Darryl Reyna
Telephone: (843) 722-2615

Telecopy: (843) 722-6419

Copy to: M. Jeffrey Vinzani, Esq.
Nexsen Pruet, LLC
205 King Street, Suite 400
Charleston, South Carolina 29401
Telephone: (843) 720-1778
Telecopy: (843) 720-1777

Purchaser: Vista Realty Partners, L.L.C.
1360 Peachtree Street, N.E. - Suite 1000
Atlanta, Georgia 30309
Attention: Eduard deGuardiola
Telephone: (404) 995-4446
Telecopy: (404) 995-4439

Copy to: Linda B. Curry, Esquire
Weissman, Nowack, Curry & Wilco, P.C.
One Alliance Center - 4th Floor
3500 Lenox Road
Atlanta, Georgia 30326
Telephone: (404) 926-4516
Telecopy: (404) 926-4716

24. **Confidentiality.** Purchaser and Seller each agree that prior to Closing neither party shall contact or attempt to contact tenants of the Property regarding the proposed purchase and sale transaction that is the subject of this Agreement or the possible conversion of the Property to the condominium form of ownership.

Seller also agrees as follows: (i) except as otherwise set forth herein including, without limitation, subclause (ii) below, after the Effective Date of this Agreement and prior to Closing, Seller will maintain in strict confidence any and all non-public information regarding the Property, the terms and conditions of this Agreement and the transaction contemplated hereby (the "Confidential Information"); (ii) except with Seller's prior written consent or as required by law, Seller shall not disclose or reveal the Confidential Information, directly or indirectly, to any person or entity except persons who are bound to observe the terms hereof, employees of Seller, and attorneys, accountants, consultants and other professionals retained by Seller; and (iii) Seller will not authorize any media announcement or press release with respect to the Confidential Information. The provisions of this paragraph shall not survive the termination of this Agreement but shall survive the Closing for a thirty (30) day period.

24. **Execution.** This Sales Contract shall be null and void if not executed by both parties prior to 5:00 p.m. (Mount Pleasant, South Carolina time) on January 18, 2005. This Sales Contract may be executed in counterparts and the parties agree to accept facsimile signatures.

SIGNED, SEALED AND DELIVERED as of the date set forth below.

January 18, 2005

Amelia Harris
Crystal B. Mint

SELLER:

LONG GROVE AT SEASTIDE FARMS, LLC, a
Delaware limited liability company
(SEAL)

By: Beach Long Grove I, LLC, its Manager

By: The Beach Co., its Manager

By: *J. Michael Ryan*
Name: *J. Michael Ryan*
Title: *Executive Vice President*

By: *Leonard W. Long*
Name: *Leonard W. Long*
Title: *Beach Long Grove*

PURCHASER:

January 18 2005

[Signature]
[Signature]

VISTA REALTY PARTNERS, L.L.C., a Georgia
limited liability company (SEAL)

By: [Signature]
Name: Ed de Guardiola
Title: MANAGER

By: _____
Name: _____
Title: _____

Eduard deGuardiola joins in the execution of this Sales Contract to confirm his agreement with
the provisions of Section 15 hereof.

[Signature]
[Signature]

[Signature]
Eduard deGuardiola

EXHIBIT A

LEGAL DESCRIPTION

All that piece, parcel or tract of land, with the buildings and improvements thereon, situate, lying and being in the Town of Mt. Pleasant, County of Charleston, State of South Carolina, shown and designated as "PARCEL G" on a plat entitled "PLAT OF PROPERTY LINE ADJUSTMENT BETWEEN PARCEL G ABOUT TO BE CONVEYED TO LONG GROVE AT SEASIDE FARMS, L.L.C. AND TRACT A-1 OWNED BY THE BEACH COMPANY SEASIDE FARMS" prepared by Thomas & Hutton Engineering Co., dated May 8, 2000, and recorded June 1, 2000, in Plat Book EE, Page 49 in the RMC Office for Charleston County, reference to said plat being craved for a more complete description.

EXHIBIT B

LIST OF PERSONAL PROPERTY

12/30/04

LONG GROVE INVENTORY
Office/Clubhouse

Location	Item	Amount	Description	Model/Serial # (if applicable)	Original, or placed in service date	Removed from service date/ disposition.
	picture	1	vase of roses		Original	
	microwave	1	white GE	Profile series	Original	
	wicker baskets	7	assorted sizes		Original	
	picture	1	boat scene		Original	
	cutboard	2	large		Original	
	grey grass board	3	2 large, 1 small		Original	
	filing cabinet	1	10 drawer, cream colored		Original	
	filing cabinet	1	4 drawer, cream colored		Original	
	Power backup for Keytrak computer	1	420 ES	Opti-UPS, PowerES	Original	
	computer	1	not in use	Dell 3072J	Original	
	computer	1	not in use	Dell 3V00X	Original	
	computer	1	not in use	Dell 3X0A4	Original	
	computer	1	Dell	Dell B1CVF41	Original	
	monitor	1	Dell	Dell S322DA55FX 79	Original	
	printer	1	HP Laser Jet 2100	USDX000173	Original	
	printer (Keytrak)	1	Dot matrix	Epson 1F8F860810	Original	
	adding machine	1	Cannon MP2500	219133	Original	
	Keytrak	1	computer	A590809500	Original	
	Keytrak	2	keydrawers			
	Keytrak	1	monitor	Optiquest 6A92701090	Original	
	desk	2	cherry in 2 sections		Original	
	telephone	1	Lucent, black		Original	
	chair	1	task chair with beige cushion		Original	
	computer (Simplex)	1	Dell XPS10451	32A74	Original	
	computer	1	Vidsonics	330696	2001	
	television	1	Orion	53101109455	2001	
	hub	1	5 port - # NH105	106002039	2001	
	hub	1	Sonic wall	401052198	2001	
	bicycles	4	Colex	2-Rio Cruz/ 2-Fan Am	Original	
	telephone	1	Lucent, black		Original	
	air compressor	1	9 gallon		Original	
	fan	1	3 speed		2001	
	vacuum	1	Hoover		2001	
	ironing board	1			Original	
	filing cabinet	1	2 drawer		Original	
	helium tank	1			Original	
	table	1	large, cream colored folding table		2003	
	signs	3	resident parking signs		2004	
	computer	1	Dell Optiplex	G1CVF41	2004	
	monitor	1	M780	S322DA53G8	Original	
	printer	1	HP Laser Jet 2100	USGX017245	Original	
	picture	1	ocean and boat scene		Original	
	shredder	1	GBC Shredmaster	Model: SC80	2003	
	chair	1	yellow upholstered arm chair		Original	2003 (donated to Goodwill)
	chair	1	leather desk chair		2003	
	chair	2	yellow, cream green, upholstered		Original	
	telephone	1	Lucent, black		Original	
	book shelf	1	5 shelves - cherry		Original	
	picture	1	boats with gold frame		Original	
	table	1	large cherry sofa table		Original	
	lamp	1	brass colored desk lamp		Original	
	bowl	1	glass bowl with fabric spheres		Original	

12/30/2004

BeachCo 000331

LONG GROVE INVENTORY
Office/Clubhouse

Location	Item	Amount	Description	Model/Serial # (If applicable)	Original, or placed in service date	Removed from service date/ disposition.
	computer	1	Dell	00019-118-568-047	2004	
	monitor	1	Dell	5322DA55FF79	Original	
	printer	1	HP Laser Jet 2100	USGX015509	Original	
	brooder	1	GDC Shredmaster	Model: SC80	2003	
	telephone	1	Lucent, black			
	adding machine	1	Cannon MP2500	A219154	Original	
	lamp	3	brass colored desk lamp		Original	
	book shelf	1	5 shelves -- cherry		Original	
	picture	2	palm trees		Original	
	desk	1	cherry with 6 drawers		Original	
	chair	1	yellow upholstered arm chair		Original	2003 (donated to Goodwill)
	chair	2	yellow, cream green, upholstered		Original	
	chair	1	leather desk chair		2003	
	desk	1	cherry with 4 drawers		Original	
	cabinet	1	cherry cabinet with hutch		Original	
	telephone	1	Lucent, black		Original	
	television	1	Sony		Original	
	VCR	1	Emerson		Original	
	chair	6	green velvet upholstered		Original	
	table	1	rectangular conference table		Original	
	bowl	1	glass bowl		Original	
	table	1	glass oblong table		Original	
	picture	1	sailboats with gold frame		Original	
	stool	1	cherry		Original	
	bookshelf	2	4 shelves		Original	
	bookshelf	2	Owned by FSI			
	picture	1	egg cups		Original	
	microwave	1	white GE		Original	
	basket	1	wicker basket		Original	
	cases	3	wooden cases		Original	
	caustic	4	green		Original	
	serving dish	1	pcwter turle		Original	
	picture	1	watermelon		Original	
	picture	1	tulips		Original	
	desk	2	cherry work desk		Original	
	fax machine	1	Canon	UEF 11510	Original	
	computer	1	Dell	3ZA6Z	Original	
	computer	1	Dell	CPZ50	Original	
	monitor	1	Dell	5322DE3VEF79	Original	
	monitor	1	Dell	87098C37A7C7	Original	
	printer	1	HP Laser Jet 2100	USFX010582	Original	
	chair	3	yellow, cream, grey, upholstered task		Original	
	picture	1	sailboats and trees		Original	
	picture	1	iris garden scene		Original	
	picture	1	iris garden scene		Original	
	picture	1	fish with silver frame		Original	
	bench	1	wrought iron with yellow cushion		Original	
	mirror	1	large wooden framed		Original	
	chair	1	wrought iron		Original	
	picture	1	fish with silver frame		Original	
	bench	1	wrought iron with yellow cushion		Original	
	chair	1	wrought iron		Original	
	mirror	1	large wooden framed		Original	

12/30/2004

BeachCo 000332

LONG GROVE INVENTORY
Office/Clubhouse

Location	Item	Amount	Description	Model/Serial # (if applicable)	Original, or placed in service date	Removed from service date/ disposition.
	lamp	2	brass desk lamp		Original	
	chair	4	green velvet upholstered		Original	
	chair	2	arm chairs at leaning desks		Original	
	telephone	2	Lucent, black		Original	
	draperies	1	flower motif		Original	
	servers	2	cherry server with 4 drawers		Original	
	vase	4	large green		Original	
	bowl	2	wooden with pears/apples		Original	
	picture	2	5' gilded frame with flower motif		Original	
	chair	2	yellow upholstered arm chair		Original	
	table	1	round Queen Anne		Original	
	flower vase	1	vase with arrangement/orange and white roses		Original	
	sofa	2	cream/white striped		Original	
	lamp	4	brass colored table lamp		Original	
	table	2	cherry sofa table		Original	
	table	1	cherry coffee table		Original	
	bowl	1	green silver glass bowl		Original	
	fireplace screen	1	black metal		Original	
	fireplace					
	accessory kit	1	shovel, poker, tongs, sweeper		Original	
	candle holders	2	large, white		Original	
	rug	4	eggplant colored area rug		Original	
	vase	2	Asian vase on pedestal		Original	
	bowl	1	yellow, glass		Original	
	chair	2	leather, taupe		Original	
	vase	1	iron and glass floor vase		Original	
	table	1	glass, iron coffee table		Original	
	bookcase	1	large, cherry		Original	
	sofa	1	leather, taupe		Original	
	table	1	glass, sofa table		Original	
	book case	4	cast iron		Original	
	wall sconces	4	wrought iron light fixtures behind desks		Original	
	picture	1	large painting of birds/turtles above fireplace (Sneddon commissioned painting)			
	urns	2	bronzed urns on sofa tables		Original	
	pot	1	large pot on top of bookshelf		Original	
	bench	3	teak benches		Original	
	stationary bike	2	Tectrix BikeMax 1000		Original	
	spinning bike	2	Schwinn spinning bike		Original	
	shelf	1	wicker shelf with 2 drawers		Original	
	laundry basket	1	wrought iron/linen		2001	
	physician's scale	1	Deteco		2004	
	elliptical					
	crosstrainer	1	Procor EFX546		Original	
	treadmill	2	Procor CP44		Original	
	stairclimber	1	Tectrix ClimbMax 1000		Original	
	bench	2	Madison adjustable bench		2000	
	weight rack	1	Madison		2000	
	weights	30	various free weights		2000	
	television	1	Sony		Original	
	clock	1	Seiko wall clock		2002	
	painting	2	chiff/ocean scene		Original	
	painting	1	garden scene		Original	
	folding table	1	stainless steel/wood		Original	
	trash can	1	brown plastic with cover		Original	
	rocking chairs	4	green, wood		original	
	side tables	2	green, wood		original	

12/30/2004

BeachCo 000333

EXHIBIT C

RENT ROLL

Report Period: 12/04
Unit Lease
Id Id Name Status Security Balance Charge Code Recurring Rents Beginning Balance Charges Amount Date Payments Amount Date Ending Balance

Building: GR - All Garages

A1	5	ACRS, 411	Cur			GAR Garage Rent	105.00		105.00	12/01/04	105.00	CR 12/01/04	
		Occupy:		9/24/2004	Term: 3	GAR Garage Rent					105.00	CR 12/01/04	-105.00
		Last Pymt:		12/31/2004									
		Expires:		12/31/2004									
Resident Totals							0.00		105.00	0.00	105.00	210.00	-105.00
A2	4	Haas, Cina	Cur			GAR Garage Rent	105.00		105.00	12/01/04	105.00	CR 12/01/04	
		Occupy:		8/1/2003	Term: 12	GAR Garage Rent					105.00	CR 12/01/04	-105.00
		Last Pymt:		12/31/2004									
		Expires:		5/31/2005									
Resident Totals							0.00		105.00	0.00	105.00	210.00	-105.00
A3	5	Southern, David	Cur			GAR Garage Rent			105.00	12/01/04	105.00	CR 11/20/04	
		Occupy:		12/18/2002	Term: 12	GAR Garage Rent					105.00	CR 12/16/04	-105.00
		Last Pymt:		11/30/2004		PPR Prepaid Rent		-105.00			-105.00	PR 11/20/04	
		Expires:		9/30/2005									
Resident Totals							0.00		0.00	-105.00	105.00	105.00	-105.00
A4	4	Brinson, Keith	Cur			GAR Garage Rent	105.00		105.00	12/01/04	105.00	CR 12/02/04	
		Occupy:		9/27/2004	Term: 4	PPR Prepaid Rent					105.00	CR 12/16/04	-105.00
		Last Pymt:		12/24/2004									
		Expires:		1/31/2005									
Resident Totals							0.00		105.00	0.00	105.00	210.00	-105.00
A5	6	Couick, Thomas	Cur			GAR Garage Rent	105.00		105.00	12/01/04	105.00	CR 12/02/04	
		Occupy:		10/1/2004	Term: 11								
		Last Pymt:		12/2/2004									
		Expires:		8/31/2005									
Resident Totals							0.00		105.00	0.00	105.00	105.00	0.00
A6	2	Hammerbacher, Glenn	Cur			GAR Garage Rent	105.00		105.00	12/01/04	105.00	CR 12/02/04	
		Occupy:		8/13/2004	Term: 8								
		Last Pymt:		12/2/2004									
		Expires:		4/30/2005									
Resident Totals							0.00		105.00	0.00	105.00	105.00	0.00
B1	2	Wallerius, Lyanna	Cur			GAR Garage Rent	105.00		105.00	12/01/04	105.00	CR 12/01/04	
		Occupy:		6/9/2004	Term: 9	PPR Prepaid Rent					105.00	CR 12/01/04	-105.00
		Last Pymt:		12/28/2004									
		Expires:		3/31/2005									
Resident Totals							0.00		105.00	0.00	105.00	210.00	-105.00
B2	2	Long Grove, Maintenanc	Cur			EMP Employee rent	105.00		105.00	12/01/04			
		Occupy:		1/1/2003	Term: 12								
		Expires:		12/31/2003									
Resident Totals							0.00		105.00	0.00	105.00	0.00	0.00
B3	4	Cilna, Robert	Cur			GAR Garage Rent	105.00		105.00	12/01/04	105.00	CR 12/02/04	
		Occupy:		2/1/2004	Term: 8								
		Last Pymt:		12/2/2004									
		Expires:		9/30/2005									
Resident Totals							0.00		105.00	0.00	105.00	105.00	0.00
B4		Vacancy Adjustment				V Vacancy			105.00				
Resident Totals							0.00		105.00		105.00		0.00
B5	1	Shimp, David	Cur			GAR Garage Rent	105.00		105.00	12/01/04	105.00	CR 12/01/04	
		Occupy:		7/13/2001	Term: 12	PPR Prepaid Rent					105.00	CR 12/24/04	-105.00
		Last Pymt:		12/24/2004									
		Expires:		5/31/2005									
Resident Totals							0.00		105.00	0.00	105.00	210.00	-105.00

Unit	Lease	Report Period:	12/04
Id	Id	Name	Status

Id	Id	Name	Status	Security Balance	Charge Code	Recurring Rents	Beginning Balance	Charges Amount Date	Payments Amount Date	Ending Balance
Building: GR - All Garages										
B6	4	Masnick, Gregory	Old		GAR Garage Rent	105.00		105.00 12/01/04	105.00Cr 12/02/04	
		Occupy:	9/4/2003	Term:	6					
		Last Pymt:	12/2/2004							
		Expires:	12/31/2004							
		Notice:	12/2/2004							
		Vacate:	12/31/2004	Why:	BH					
Resident Totals				0.00		105.00	0.00	105.00	105.00	0.00
B6	Vacancy Adjustment				V Vacancy			0.00		
C1	6	Ellis, Haley	Cur		GAR Garage Rent	105.00		105.00 12/01/04	105.00Cr 12/02/04	
		Occupy:	8/1/2004	Term:	16					
		Last Pymt:	12/31/2004							
		Expires:	11/30/2005							
Resident Totals				0.00		105.00	0.00	105.00	210.00	-105.00
C2	4	McGill, Carol	Cur		GAR Garage Rent	105.00		105.00 12/01/04	105.00Cr 12/02/04	
		Occupy:	2/21/2004	Term:	12					
		Last Pymt:	12/31/2004							
		Expires:	2/28/2005		PPR Prepaid Rent				105.00Cr 12/01/04	-105.00
Resident Totals				0.00		105.00	0.00	105.00	210.00	-105.00
C3	3	Mooradian, Harry	Cur		GAR Garage Rent	105.00		105.00 12/01/04	105.00Cr 12/02/04	
		Occupy:	6/26/2004	Term:	11					
		Last Pymt:	12/31/2004							
		Expires:	5/31/2005							
Resident Totals				0.00		105.00	0.00	105.00	210.00	-105.00
C4	2	McLean, Niel	Cur		GAR Garage Rent	105.00		105.00 12/01/04	105.00Cr 12/02/04	
		Occupy:	7/1/2004	Term:	12					
		Last Pymt:	12/31/2004							
		Expires:	7/31/2005							
Resident Totals				0.00		105.00	0.00	105.00	210.00	-105.00
C5	2	Bryan, Marty	Old		GAR Garage Rent		146.45			146.45
		Occupy:	1/11/2002	Term:	12					
		Expires:	11/30/2004							
		Notice:	6/27/2004				21.00			21.00
		Vacate:	7/27/2004	Why:	@@					
Resident Totals				0.00		0.00	167.45	0.00	0.00	167.45
C5	3	Kerr, Michael	Cur		GAR Garage Rent	105.00		105.00 12/01/04	105.00Cr 12/02/04	
		Occupy:	9/3/2004	Term:	17					
		Last Pymt:	12/12/2004							
		Expires:	1/31/2006							
Resident Totals				0.00		105.00	0.00	115.50	115.50	0.00
C6	4	Mickelson, Toby	Cur		GAR Garage Rent	105.00		105.00 12/01/04	105.00Cr 12/02/04	
		Occupy:	7/2/2003	Term:	12					
		Last Pymt:	12/31/2004							
		Expires:	6/30/2005							
Resident Totals				0.00		105.00	0.00	105.00	210.00	-105.00
D1	4	Crawford, James	Cur		GAR Garage Rent	105.00		105.00 12/01/04	105.00Cr 12/02/04	
		Occupy:	1/1/2004	Term:	MTM					
		Last Pymt:	12/12/2004							
Resident Totals				0.00		105.00	0.00	105.00	105.00	0.00
D2	8	Hollings, Geoffrey	Cur		GAR Garage Rent	105.00		105.00 12/01/04	105.00Cr 11/02/04	
		Occupy:	10/12/2004	Term:	12					
		Last Pymt:	11/30/2004							
		Expires:	10/31/2005							
Resident Totals				0.00		105.00	-315.00	105.00	0.00	-210.00

Id	Lease Id	Name	Status	Security Balance	Charge Code	Recurring Rents	Beginning Balance	Charges Amount Date	Payments Amount Date	Ending Balance
Building: GR - All Garages										
D3	5	Owens, Johnny	Cur		GAR Garage Rent	105.00		105.00 12/01/04	105.00CR 12/02/04	
		Occupy: 6/18/2004	Term: 10		GAR Garage Rent				105.00CR 12/01/04	-105.00
		Last Pymt: 12/31/2004								
		Expires: 4/30/2005								
Resident Totals				0.00		105.00	0.00	105.00	210.00	-105.00
D4	Vacancy Adjustment				V Vacancy			105.00		
D5	4	Hayes, Robert	Cur		GAR Garage Rent	105.00		105.00 12/01/04	105.00CR 12/02/04	
		Occupy: 9/8/2004	Term: 8		PPR Prepaid Rent				105.00CR 12/02/04	-105.00
		Last Pymt: 12/20/2004								
		Expires: 5/31/2005								
Resident Totals				0.00		105.00	0.00	105.00	210.00	-105.00
D6	5	Setterlund, Sharilyn	Cur		GAR Garage Rent	105.00		105.00 12/01/04	105.00CR 12/02/04	
		Occupy: 7/1/2004	Term: 12							
		Last Pymt: 12/2/2004								
		Expires: 6/30/2005								
Resident Totals				0.00		105.00	0.00	105.00	105.00	0.00
E1	6	Sottile, Ginger	Cur		GAR Garage Rent	105.00		105.00 12/01/04	105.00CR 12/02/04	
		Occupy: 9/10/2004	Term: 9							
		Last Pymt: 12/6/2004								
		Expires: 6/30/2005								
Resident Totals				0.00		105.00	0.00	105.00	105.00	0.00
E2	3	Hardy, Thomas	Old		DMGDamaged Ch Fr		50.00			50.00
		Occupy: 11/8/2003	Term: 10		GAR Garage Rent	105.00	131.15			131.15
		Expires: 10/12/2004			LAT Late Fee		20.00			20.00
		Notice: 10/12/2004								
		Vacator: 10/12/2004	Why: TE							
Resident Totals				0.00		105.00	201.15	0.00	0.00	201.15
E2	4	Leaper, Samantha	Cur		GAR Garage Rent	105.00		105.00 12/01/04	105.00CR 12/02/04	
		Occupy: 10/20/2004	Term: 18							
		Last Pymt: 12/2/2004								
		Expires: 4/30/2006								
Resident Totals				0.00		105.00	0.00	105.00	105.00	0.00
E3	2	Baldus, Peter	Cur		GAR Garage Rent	95.00		95.00 12/01/04	95.00CR 12/02/04	
		Occupy: 11/1/2003	Term: 17		PPR Prepaid Rent				95.00CR 12/02/04	-95.00
		Last Pymt: 12/20/2004								
		Expires: 3/31/2005								
Resident Totals				0.00		95.00	0.00	95.00	190.00	-95.00
E4	4	Tyler, Dave	Cur		GAR Garage Rent	105.00		105.00 12/01/04	105.00CR 12/02/04	
		Occupy: 7/1/2004	Term: 3		PPR Prepaid Rent				105.00CR 12/02/04	-105.00
		Last Pymt: 12/29/2004								
		Expires: 3/31/2005								
Resident Totals				0.00		105.00	0.00	105.00	210.00	-105.00
E5	5	Haley, Glenn	Cur		GAR Garage Rent	105.00		105.00 12/01/04	105.00CR 12/02/04	
		Occupy: 10/1/2003	Term: 10							
		Last Pymt: 12/6/2004								
		Expires: 7/31/2004								
Resident Totals				0.00		105.00	0.00	105.00	105.00	0.00
E6	1	Rodgers, Frank	Cur		GAR Garage Rent	105.00		105.00 12/01/04	105.00CR 11/30/04	
		Occupy: 6/1/2001	Term: 12		PPR Prepaid Rent		-105.00		-105.00PR 11/30/04	
		Last Pymt: 12/22/2004			PPR Prepaid Rent				315.00CR 12/22/04	-315.00
		Expires: 6/30/2005								
Resident Totals				0.00		105.00	-105.00	105.00	315.00	-315.00
Building: LG - All Apartments										

Id	Name	Status	Security Balance	Charge Code	Recurring Rents	Beginning Balance	Charges Amount Date	Payments Amount Date	Ending Balance
Building: LG - All Apartments									
0111	4 Badoud, John	Cur	PET 200.00	RNT Residential Rent	1,090.00		1,090.00	12/01/04	1,090.00CR 12/02/04
	Occupies:		3/1/2004 Term: 12	SEC 200.00					
	Last Pymt:		12/2/2004						
	Expires:		2/28/2005						
Resident Totals			400.00		1,090.00	0.00	1,090.00		1,090.00
0112	2 Gunther, Christophe	Cur	PET 1,200.00	RNT Residential Rent	845.00		845.00	12/01/04	845.00CR 12/02/04
	Occupies:		11/10/2001 Term: 12	SEC 100.00					
	Last Pymt:		12/6/2004						
	Expires:		11/30/2005						
Resident Totals			1,300.00		845.00	0.00	845.00		845.00
0113	5 Kirby, Gabriella	Cur	PET 200.00	RNT Residential Rent	945.00		945.00	12/01/04	472.50CR 12/02/04
	Occupies:		8/20/2004 Term: 12	SEC 200.00	RNT Residential Rent				472.50CR 12/02/04
	Last Pymt:		12/6/2004						
	Expires:		8/31/2005						
Resident Totals			400.00		945.00	0.00	945.00		945.00
0114	2 Gilbert, Sandra	Cur		COR Corp. Rental Incr	60.00		60.00	12/01/04	60.00CR 12/02/04
	Occupies:		2/22/2002 Term: 12						
	Last Pymt:		12/2/2004	PPR Prepaid Rent					980.00CR 12/02/04
	Expires:		2/28/2005	RNT Residential Rent	920.00		920.00	12/01/04	920.00CR 12/02/04
Resident Totals			0.00		980.00	0.00	980.00		1,960.00
0115	3 Gentry, Christophe	Cur	SEC 200.00	RNT Residential Rent	898.00		898.00	12/01/04	449.00CR 12/02/04
	Occupies:		6/11/2004 Term: 8						449.00CR 12/02/04
	Last Pymt:		12/2/2004						
	Expires:		2/28/2005						
Resident Totals			200.00		898.00	0.00	898.00		898.00
0116	4 Rizzi, Ralmond	Cur	SEC 100.00	PPR Prepaid Rent					920.00CR 12/01/04
	Occupies:		10/10/2003 Term: 6		RNT Residential Rent	920.00	920.00	12/01/04	920.00CR 12/02/04
	Last Pymt:		12/2/2004						
	Expires:		10/31/2005						
Resident Totals			100.00		920.00	0.00	920.00		1,840.00
0117	3 Zampogna, Tony	Old	PET	MTM Month To Month	100.00				
	Occupies:		8/9/2003 Term: 8	SEC	RNT Residential Rent	1,090.00			
	Expires:		5/31/2004						
	Notice:		10/25/2004						
	Vacate:		11/30/2004 Why: BH						
Resident Totals			0.00		1,190.00	0.00	0.00		0.00
0117	4 Kelly, Chere	Cur	PET 200.00	PAS Beach Pass Fee			200.00	12/15/04	200.00CR 12/15/04
	Occupies:		12/30/2004 Term: 10	SEC 200.00	PET Pet Fee		200.00	12/24/04	200.00CR 12/24/04
	Last Pymt:		12/24/2004		RNT Residential Rent	1,095.00	70.65V 12/02/04		70.65
	Expires:		10/31/2005		UAC Unapplied Credit				1,165.65CR 12/02/04
Resident Totals			400.00		1,095.00	0.00	470.65		1,565.65
0117	Vacancy Adjustment			V Vacancy			1,024.35		-1,085.00
0118	4 Wagner, Sarah	Cur	PET 200.00	RNT Residential Rent	808.00		808.00	12/01/04	808.00CR 12/02/04
	Occupies:		6/1/2003 Term: 12	SEC 100.00					
	Last Pymt:		12/6/2004						
	Expires:		5/31/2005						
Resident Totals			300.00		808.00	0.00	808.00		808.00
0121	3 ACRS, 121	Old		RNT Residential Rent	1,095.00	-0.50			-0.50CR 11/23/04
	Occupies:		3/8/2004 Term: 5		UAC Unapplied Credit				-36.50CR 11/23/04
	Last Pymt:		12/6/2004		UAC Unapplied Credit				36.50CR 12/02/04
	Expires:		9/1/2004						
	Notice:		10/12/2004						
	Vacate:		11/22/2004 Why: JT						
Resident Totals			0.00		1,095.00	-0.50	0.00		-0.50

Database: SOLBEACHMRI	RM Rent Roll	Page: 5								
Property: LG	The Beach Company	Date: 1/4/2005								
	Long Grove at Seaside Farms	Time: 01:45 PM								
Report Period: 12/04										
Unit Lease										
Id	Id	Name	Status	Security Balance	Charge Code	Recurring Rents	Beginning Balance	Charges Amount Date	Payments Amount Date	Ending Balance

Building: LG - All Apartments										
0121	4	ACRS, 121	Cur							
Occupy:	11/30/2004	Term: 3			RNT Residential Rent	1,095.00		36.50v 11/20/04	1,058.50cr 12/21/04	
Last Pymt:	12/21/2004				RNT Residential Rent			1,095.00v 12/09/04		
Expires:	2/28/2005				RNT Residential Rent			36.50c 12/09/04		
					RNT Residential Rent			36.50 12/15/04		
					RNT Residential Rent			-73.00 12/21/04		
					RNT Residential Rent				36.50cr 12/21/04	
					RNT Residential Rent				36.50cr 12/31/04	
					RNT Residential Rent				1,095.00cr 12/31/04	-1,095.00
					UAC Unapplied Credit				1,095.00cr 12/03/04	
					UAC Unapplied Credit				-1,095.00cr 12/21/04	
Resident Totals				0.00		1,095.00	0.00	1,131.50	2,226.50	-1,095.00
0121	Vacancy Adjustment				v Vacancy					-1,131.50
0122	4	Coffin, Melissa	Cur	PET	200.00	RNT Residential Rent	865.00	865.00 12/01/04	865.00cr 12/05/04	
Occupy:	6/20/2003	Term: 12	SEC	100.00						
Last Pymt:	12/6/2004									
Expires:	6/30/2005									
Resident Totals				300.00		865.00	0.00	865.00	865.00	0.00
0123	3	Woolhouse, Chris	Cur	SEC	200.00	PPR Prepaid Rent			970.00cr 12/22/04	-970.00
Occupy:	11/6/2004	Term: 12				RNT Residential Rent	970.00	970.00 12/01/04	970.00cr 12/02/04	
Last Pymt:	12/2/2004									
Expires:	11/30/2005									
Resident Totals				200.00		970.00	0.00	970.00	1,940.00	-970.00
0124	2	Polak, Michelle	Cur			RNT Residential Rent	915.00	915.00 12/01/04	585.60cr 12/02/04	
Occupy:	3/1/2002	Term: 12				RNT Residential Rent			329.40cr 12/02/04	
Last Pymt:	12/2/2004									
Expires:	3/31/2005									
Resident Totals				0.00		915.00	0.00	915.00	915.00	0.00
0125	1	Featherston, Patricia	Cur	SEC	100.00	RNT Residential Rent	922.00	922.00 12/01/04	922.00cr 12/05/04	
Occupy:	8/29/2001	Term: 7				RNT Residential Rent			922.00cr 12/31/04	-922.00
Last Pymt:	12/31/2004									
Expires:	8/30/2005									
Resident Totals				100.00		922.00	0.00	922.00	1,844.00	-922.00
0126	5	Elzabidi, Samir	Cur	SEC	200.00	RNT Residential Rent	955.00	955.00 12/01/04	955.00cr 12/05/04	
Occupy:	9/8/2004	Term: 8				RNT Residential Rent			955.00cr 12/31/04	-955.00
Last Pymt:	12/31/2004									
Expires:	5/31/2005									
Resident Totals				200.00		955.00	0.00	955.00	1,910.00	-955.00
0127	3	McLean, Neil	Cur	SEC	100.00	RNT Residential Rent	1,120.00	1,120.00 12/01/04	1,120.00cr 12/05/04	
Occupy:	7/21/2003	Term: 12				RNT Residential Rent			1,120.00cr 12/31/04	-1,120.00
Last Pymt:	12/31/2004									
Expires:	7/31/2005									
Resident Totals				100.00		1,120.00	0.00	1,120.00	2,240.00	-1,120.00
0128	5	Desormes, Guy	Cur	SEC	200.00	LAT Late Fee		87.00 12/05/04	87.00cr 12/05/04	
Occupy:	10/29/2004	Term: 12				RNT Residential Rent	870.00	870.00 12/01/04	866.99cr 12/05/04	
Last Pymt:	12/8/2004								0.01cr 12/05/04	
Expires:	10/31/2005								3.00cr 12/05/04	0.00
									-0.01cr 12/05/04	
									-3.00cr 12/05/04	
Resident Totals				200.00		870.00	-3.01	957.00	953.99	0.00
0211	5	Leaper, Samantha	Cur	PET	200.00	RNT Residential Rent	1,040.00	1,040.00 12/01/04	1,040.00cr 12/02/04	
Occupy:	10/20/2004	Term: 18	SEC	200.00						
Last Pymt:	12/2/2004									
Expires:	4/30/2006									
Resident Totals				400.00		1,040.00	0.00	1,040.00	1,040.00	0.00

BeachCo 000339

Report Period: 12/04
 Unit Lease Security Recurring Beginning Charges Payments Ending
 Id Id Name Status Balance Charge Code Rents Balance Amount Date Amount Date Balance

Building: LG - All Apartments											
0212	1	Model, 1x1	Cur			MOO Model Apartment	840.00		835.00	12/01/04	
Occupy:		2/1/2003	Term:	MTM							
Resident Totals				0.00			840.00	0.00	835.00		0.00
0213	2	Settle, Kelly	Old			DMG Damag& Ch Fe			300.00		300.00 Cr 12/01/04
Occupy:		5/24/2002	Term:	mtm		MTM Month To Month	100.00				
Last Pymt:		12/31/2004				PET Pet Fee			200.00		
Expires:		8/8/2004				RNT Residential Rent	940.00				200.00
Notice:		7/1/2004									
Vacate:		8/8/2004	Why:	@@							
Resident Totals				0.00			1,040.00	500.00	0.00		300.00
Resident Totals											200.00
0213	3	Hennrikus, George	Cur	PET	400.00	PPR Prepaid Rent					945.00 Cr 12/01/04
Occupy:		8/20/2004	Term:	8	SEC	200.00	RNT Residential Rent	945.00	945.00	12/01/04	945.00 Cr 12/01/04
Last Pymt:		12/2/2004									
Expires:		4/30/2005									
Resident Totals				600.00			945.00	0.00	945.00		1,890.00
Resident Totals											-945.00
0214	3	Ellis, Haley	Cur	SEC	200.00	PET Pet Fee			200.00	12/01/04	200.00 Cr 12/01/04
Occupy:		5/27/2004	Term:	18		RNT Residential Rent	855.00		855.00	12/01/04	850.00 Cr 12/01/04
Last Pymt:		12/31/2004				RNT Residential Rent					5.00 Cr 12/01/04
Expires:		11/30/2005				RNT Residential Rent					855.00 Cr 12/01/04
Resident Totals				200.00			855.00	0.00	1,055.00		1,910.00
Resident Totals											-855.00
0215	1	Ainsworth, Carolanne	Cur	PET	300.00	RNT Residential Rent	940.00		940.00	12/01/04	940.00 Cr 12/01/04
Occupy:		1/1/2001	Term:	12	SEC	300.00					
Last Pymt:		12/6/2004									
Expires:		12/31/2005									
Resident Totals				600.00			940.00	0.00	940.00		940.00
Resident Totals											0.00
0216	2	Tiberfo, Daniel	Old			LAT Late Fee			85.50	12/01/04	85.50 Cr 12/01/04
Occupy:		6/30/2002	Term:	12		RNT Residential Rent	855.00		855.00	12/01/04	428.23 Cr 12/01/04
Last Pymt:		12/15/2004				RNT Residential Rent			-441.29	12/01/04	
Expires:		6/30/2005				RNT Residential Rent					-14.52 Cr 12/01/04
Notice:		11/15/2004				TER Termination Fee			1,350.00	12/01/04	1,350.00 Cr 12/01/04
Vacate:		12/15/2004	Why:	@@							
Resident Totals				0.00			855.00	0.00	1,849.21		1,849.21
Resident Totals											0.00
0216		Vacancy Adjustment				V Vacancy			441.29		
0217	3	Drose, Robert	Cur	PET	200.00	LAT Late Fee			109.00	12/01/04	109.00 Cr 12/01/04
Occupy:		2/13/2004	Term:	12	SEC	200.00	PPR Prepaid Rent				1,090.00 Cr 12/01/04
Last Pymt:		12/5/2004				RNT Residential Rent	1,090.00		1,090.00	12/01/04	1,090.00 Cr 12/01/04
Expires:		2/28/2005									
Resident Totals				400.00			1,090.00	0.00	1,199.00		2,180.00
Resident Totals											-981.00
0218	2	Duncan, Michael	Cur	SEC	100.00	RNT Residential Rent	835.00		835.00	12/01/04	835.00 Cr 12/01/04
Occupy:		8/1/2003	Term:	12		RNT Residential Rent					835.00 Cr 12/01/04
Last Pymt:		12/31/2004									
Expires:		7/31/2005									
Resident Totals				100.00			835.00	0.00	835.00		1,670.00
Resident Totals											-835.00
0221	2	Harvey, Anthony	Old			DMG Damag& Ch Fe			475.00		475.00
Occupy:		8/15/2002	Term:	9		RNT Residential Rent	1,110.00				
Expires:		5/31/2004									
Notice:		4/23/2004									
Vacate:		5/31/2004	Why:	@@							
Resident Totals				0.00			1,110.00	475.00	0.00		0.00
Resident Totals											475.00
0221	3	Brinson, Harvey	Cur	PET	200.00	PPR Prepaid Rent					1,115.00 Cr 12/01/04
Occupy:		6/10/2004	Term:	7	SEC	200.00	RNT Residential Rent	1,115.00	1,115.00	12/01/04	1,115.00 Cr 12/01/04
Last Pymt:		12/2/2004									
Expires:		1/31/2005									
Resident Totals				400.00			1,115.00	0.00	1,115.00		2,230.00
Resident Totals											-1,115.00

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Property: LG	The Beach Company	Date: 1/4/2005
Report Period: 12/04	Long Grove at Seaside Farms	Time: 01:45 PM
Unit Lease	Security	Recurring
Id Id Name	Status Balance	Charge Code
		Rents
		Beginning
		Charges
		Payments
		Ending
		Balance

Building: LG - All Apartments										
Unit Id	Lease Id	Name	Status	Security Balance	Charge Code	Recurring Rents	Beginning Balance	Charges Amount Date	Payments Amount Date	Ending Balance
0222	1	Kujawski, Robert	Cur SEC	100.00	RNT Residential Rent	850.00		850.00 12/01/04	850.00CR 12/01/04	
Occupies:		10/1/2001	Term: 12							
Last Pymt:		12/3/2004								
Expires:		3/31/2005								
Resident Totals				100.00		850.00	0.00	850.00	850.00	0.00
0223	1	Model, 2x2	Cur		MOO Model Apartment	985.00		970.00 12/01/04		
Occupies:		2/1/2003	Term: MTM							
Resident Totals				0.00		985.00	0.00	970.00	0.00	0.00
0224	2	Southern, David	Cur		PPR Prepaid Rent		-920.00		-920.00PR 11/20/04	
Occupies:		12/18/2002	Term: 12							
Last Pymt:		12/31/2004								
Expires:		9/30/2005								
Resident Totals				0.00		935.00	-920.00	920.00 12/01/04	920.00CR 11/20/04	-935.00
								935.00CR 12/01/04		-90.00
								90.00CR 12/01/04		-90.00
Resident Totals				200.00		917.00	-920.00	920.00	1,025.00	-1,025.00
0225	4	Kennedy, Jason	Cur SEC	200.00	RNT Residential Rent	917.00		917.00 12/01/04	458.50CR 12/01/04	
Occupies:		4/1/2004	Term: 12							
Last Pymt:		12/6/2004								
Expires:		3/31/2005								
Resident Totals				200.00		917.00	0.00	917.00	917.00	0.00
0226	3	Googe, Jerry	Cur SEC	200.00	RNT Residential Rent	930.00		930.00 12/01/04	930.00CR 12/02/04	
Occupies:		3/18/2004	Term: 12							
Last Pymt:		12/2/2004								
Expires:		3/31/2005								
Resident Totals				200.00		930.00	0.00	930.00	930.00	0.00
0227	5	Pescatore, Rachel	Cur SEC	200.00	RNT Residential Rent	1,120.00		1,120.00 12/01/04	365.00CR 12/01/04	
Occupies:		10/8/2004	Term: 12							
Last Pymt:		12/6/2004								
Expires:		10/31/2005								
Resident Totals				200.00		1,120.00	0.00	1,120.00	1,120.00	0.00
								365.00CR 12/01/04		
								365.00CR 12/01/04		
								390.00CR 12/01/04		
0228	2	Zimmerman, Renee	Cur		RNT Residential Rent	808.00		808.00 12/01/04	808.00CR 12/01/04	
Occupies:		7/26/2002	Term: 12							
Last Pymt:		12/6/2004								
Expires:		5/31/2005								
Resident Totals				0.00		808.00	0.00	808.00	810.00	-2.00
								2.00CR 12/01/04		
0311	5	Owens, Johnny	Cur SEC	200.00	RNT Residential Rent	1,095.00		1,095.00 12/01/04	1,095.00CR 12/01/04	
Occupies:		7/1/2004	Term: 10							
Last Pymt:		12/31/2004								
Expires:		4/30/2005								
Resident Totals				200.00		1,095.00	0.00	1,095.00	2,190.00	-1,095.00
0312	5	Robinson, Courtney	Cur SEC	200.00	RNT Residential Rent	812.00		812.00 12/01/04	812.00CR 12/01/04	
Occupies:		10/4/2004	Term: 12							
Last Pymt:		12/31/2004								
Expires:		10/31/2005								
Resident Totals				200.00		812.00	0.00	812.00	1,624.00	-812.00
								812.00CR 12/01/04		-812.00
0313	3	Ockerman, Judith	Cur SEC	100.00	PPR Prepaid Rent				940.00CR 12/01/04	-940.00
Occupies:		3/22/2003	Term: 12							
Last Pymt:		12/2/2004								
Expires:		3/31/2005								
Resident Totals				100.00		940.00	0.00	940.00	1,880.00	-940.00
0314	4	Kerr, Michael	Cur PET	200.00	LAT Late Fee			92.50 12/01/04	92.50CR 12/12/04	
Occupies:		8/11/2003	Term: 17							
Last Pymt:		12/12/2004								
Expires:		2/28/2008								
Resident Totals				300.00		925.00	0.00	1,017.50	1,030.00	-12.50
								925.00CR 12/12/04		-12.50
								12.50CR 12/12/04		-12.50

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Property: LG		The Beach Company				Date: 1/4/2005					
Report Period: 12/04		Long Grove at Seaside Farms				Time: 01:45 PM					
Unit Id	Lease Id	Name	Status	Security Balance	Charge Code	Recurring Rents	Beginning Balance	Charges Amount Date	Payments Amount Date	Ending Balance	
Building: LG - All Apartments											
0315	4	Cuite, Michael	Cur		COR Corp. Rental Inc	20.00		20.00	12/01/04	20.00Cr 12/01/04	
		Occupy: 5/1/2004	Term: MTM		EMP Employee Rent	188.00		188.00	12/01/04		
		Last Pymt: 12/6/2004			RNT Residential Rent	752.00		752.00	12/01/04	376.00Cr 12/01/04	
					RNT Residential Rent					376.00Cr 12/01/04	
Resident Totals				0.00		960.00	0.00	960.00		772.00	0.00
0316	1	Yuhasz, Betty	Cur SEC	100.00	PPR Prepaid Rent			925.00Cr	12/01/04	925.00Cr 12/01/04	-925.00
		Occupy: 8/7/2001	Term: 12		RNT Residential Rent	925.00		925.00	12/01/04	925.00Cr 12/01/04	
		Last Pymt: 12/2/2004									
		Expires: 3/1/2006									
Resident Totals				100.00		925.00	0.00	925.00		1,850.00	-925.00
0317	6	Zambrano, Fabiola	Cur SEC	1,295.00	RNT Residential Rent	1,095.00		1,095.00	12/01/04	1,095.00Cr 12/01/04	
		Occupy: 11/9/2004	Term: 12		RNT Residential Rent					1,095.00Cr 12/01/04	-1,095.00
		Last Pymt: 12/31/2004									
		Expires: 11/30/2005									
Resident Totals				1,295.00		1,095.00	0.00	1,095.00		2,190.00	-1,095.00
0318	2	Yost, Cynthia	Cur SEC	200.00	RNT Residential Rent	855.00		855.00	12/01/04	845.00Cr 12/01/04	
		Occupy: 1/5/2004	Term: 10		RNT Residential Rent					10.00Cr 12/01/04	
		Last Pymt: 12/8/2004			UAC Unapplied Credit		-10.00			-10.00Pr 12/01/04	
		Expires: 11/30/2005									
Resident Totals				200.00		855.00	-10.00	855.00		845.00	0.00
0321	3	Broussard, Lawrence	Old SEC		RNT Residential Rent	1,120.00		1,120.00	12/01/04		
		Occupy: 8/10/2004	Term: 12		RNT Residential Rent			-1,083.87v	12/01/04		
		Last Pymt: 12/2/2004			RNT Residential Rent			-36.13s	12/01/04		0.00
		Expires: 8/31/2005			TER Termination Fee			1,680.00	12/01/04	1,630.00Cr 12/01/04	
		Notice: 11/2/2004			TER Termination Fee			-50.00s	12/01/04		
		Vacate: 12/1/2004	Why: @@								
Resident Totals				0.00		1,120.00	0.00	1,630.00		1,630.00	0.00
0321	Vacancy Adjustment				V Vacancy			1,083.87			
0322	3	Sunderson, Jason	Cur SEC	200.00	PPR Prepaid Rent			1,108.57Cr	12/29/04	1,108.57	-1,108.57
		Occupy: 12/23/2003	Term: 12		RNT Residential Rent	812.00		812.00	12/01/04	812.00Cr 12/01/04	
		Last Pymt: 12/6/2004									
Resident Totals				200.00		812.00	0.00	812.00		1,920.57	-1,108.57
0323	2	Henko, Amy	Cur PET	300.00	RNT Residential Rent	922.00		922.00	12/01/04	922.00Cr 12/01/04	
		Occupy: 11/1/2001	Term: 12	SEC 100.00							
		Last Pymt: 12/6/2004									
		Expires: 11/30/2005									
Resident Totals				400.00		922.00	0.00	822.00		922.00	0.00
0324	3	Barreira, Jeanne	Old SEC		DMGDamaged Ch Fe			25.00	12/01/04		
		Occupy: 5/9/2003	Term: 9		DMGDamaged Ch Fe			25.00	12/01/04		50.00
		Last Pymt: 12/2/2004			RNT Residential Rent	803.00					
		Expires: 2/28/2005			TER Termination Fee			1,425.00	12/01/04	1,425.00Cr 12/01/04	
		Notice: 11/1/2004			TER Termination Fee			903.00	12/01/04		
		Vacate: 11/30/2004	Why: @@		TER Termination Fee			-100.00s	12/01/04		803.00
Resident Totals				0.00		803.00	0.00	2,278.00		1,425.00	853.00
0324	Vacancy Adjustment				V Vacancy			955.00			
0325	Vacancy Adjustment				V Vacancy			870.00			
0328	3	Jones, Karen	Cur SEC	200.00	PPR Prepaid Rent			950.00Cr	12/01/04	950.00	-950.00
		Occupy: 2/1/2004	Term: 12		RNT Residential Rent	950.00		950.00	12/01/04	950.00Cr 12/01/04	
		Last Pymt: 12/5/2004									
		Expires: 1/31/2005									
		Notice: 11/29/2004									
		Vacate: 1/31/2005	Why: JT								
Resident Totals				200.00		950.00	0.00	950.00		1,900.00	-950.00

Database: SQLBEACHMFI
 Property: LG

RM Rent Roll
 The Beach Company
 Long Grove at Seaside Farms

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Report Period: 12/04
 Unit Lease

Id	Id	Name	Status	Security Balance	Charge Code	Recurring Rents	Beginning Balance	Charges Amount Date	Payments Amount Date	Ending Balance
Building: LG - All Apartments										
0327	3	Hollings, Geoffrey	Cur	SEC	200.00	PPR Prepaid Rent	-3,360.00		-1,120.00CR	11/20/04 -2,240.00
		Occupy:				Term: 12				
		Last Pymt:						1,120.00	1,120.00CR	11/30/2004
		Expires:								10/31/2005
				Resident Totals	200.00		1,120.00	-3,360.00	1,120.00	0.00
0328	5	Sharpless, Christophe	Cur	PET	400.00	RNT Residential Rent	870.00		870.00	12/01/04 870.00CR 12/01/04
		Occupy:				Term: --5				
		Last Pymt:				SEC	200.00			12/31/2004
		Expires:								5/31/2005
				Resident Totals	600.00		870.00	0.00	870.00	1,740.00
0411	4	ACRS, 411	Cur			RNT Residential Rent	1,095.00		1,095.00	12/01/04 1,095.00CR 12/01/04
		Occupy:				Term: 3				
		Last Pymt:								12/31/2004
		Expires:								11/30/2004
				Resident Totals	0.00		1,095.00	0.00	1,095.00	2,190.00
0412	3	Burns, Chadwick	Cur	SEC	200.00	RNT Residential Rent	830.00		830.00	12/01/04 830.00CR 12/01/04
		Occupy:				Term: 12				
		Last Pymt:								12/2/2004
		Expires:								8/31/2005
				Resident Totals	200.00		830.00	0.00	830.00	830.00
0413	2	Frost, Stephanie	Cur	SEC	100.00	RNT Residential Rent	912.00		912.00	12/01/04 912.00CR 12/01/04
		Occupy:				Term: 12				
		Last Pymt:								12/3/2004
		Expires:								2/28/2005
				Resident Totals	100.00		912.00	0.00	912.00	912.00
0414	4	A Plus,	Cur			RNT Residential Rent	895.00		895.00	12/01/04 895.00CR 12/01/04
		Occupy:				Term: 3				
		Last Pymt:								12/6/2004
		Expires:								12/12/2004
				Resident Totals	0.00		895.00	0.00	895.00	895.00
0415	2	Williams, Trace	Cur	SEC	100.00	DCR Corp. Rental Inc.	800.00		800.00	12/01/04 800.00CR 12/01/04
		Occupy:				Term: 12				
		Last Pymt:				PPR Prepaid Rent				12/2/2004
		Expires:				RNT Residential Rent	912.00		912.00	12/25/04 -1,712.00
									912.00CR	12/01/04
				Resident Totals	100.00		1,712.00	0.00	1,712.00	3,424.00
0416	5	ACRS,	Cur			RNT Residential Rent	895.00		895.00	12/01/04 895.00CR 12/01/04
		Occupy:				Term: 12				
		Last Pymt:								12/31/2004
				Resident Totals	0.00		895.00	0.00	895.00	606.29
0417	4	Long, Shirley	Cur	SEC	200.00	LAT Late Fee	111.00		111.00	12/05/04 111.00CR 12/05/04
		Occupy:				Term: 12				
		Last Pymt:								12/28/2004
		Expires:								2/28/2005
						LAT Late Fee				111.00CR 12/28/04
						LEG Legal Fees	40.00	40.00		40.00CR 12/01/04
						LEG Legal Fees				40.00CR 12/28/04
						RNT Residential Rent	1,110.00	1,110.00	1,110.00	1,110.00CR 12/01/04
						RNT Residential Rent				500.00CR 12/28/04
						RNT Residential Rent				610.00CR 12/28/04
				Resident Totals	200.00		1,110.00	1,261.00	1,261.00	2,522.00
0418	4	Reeves, Kristin	Cur			RNT Residential Rent	664.00		664.00	12/01/04 664.00CR 12/01/04
		Occupy:				Term: mth				
		Last Pymt:								12/6/2004
				Resident Totals	0.00		664.00	0.00	664.00	664.00

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Unit Id	Lease Id	Name	Status	Security Balance	Charge Code	Recurring Rents	Beginning Balance	Charges Amount Date	Payments Amount Date	Ending Balance
Building: LG - All Apartments										
0421	2	Hammerbacher, Glenn	Cur	PET 400.00	RNT Residential Rent	1,140.00		1,140.00 12/01/04	1,140.00CR 12/02/04	
Occupy: 8/13/2004 Term: 8 SEC 200.00 Last Pymt: 12/2/2004 Expires: 4/30/2005										
Resident Totals				600.00		1,140.00	0.00	1,140.00	1,140.00	0.00
0422	4	Jackson, Caroline	Cur	PET 200.00	RNT Residential Rent	845.00		845.00 12/01/04	845.00CR 12/02/04	
Occupy: 10/26/2004 Term: 12 SEC 200.00 Last Pymt: 12/6/2004 Expires: 10/31/2005										
Resident Totals				400.00		845.00	0.00	845.00	845.00	0.00
0423	2	Phoenix Framing, 423	Cur	SEC 200.00	MTM Month To Month	100.00		100.00 12/01/04	100.00CR 12/02/04	
Occupy: 2/27/2004 Term: 6 Last Pymt: 12/31/2004 Expires: 12/31/2004										
Resident Totals				200.00		1,090.00	0.00	1,090.00	2,180.00	-1,090.00
0424	4	Wolf, Leonard	Cur	SEC 200.00	PPR Prepaid Rent	884.00		884.00 12/01/04	884.00CR 12/02/04	
Occupy: 10/29/2004 Term: 12 Last Pymt: 12/2/2004 Expires: 10/31/2005										
Resident Totals				200.00		884.00	0.00	884.00	1,768.00	-884.00
0425	5	Ertel Construction, 425	Cur	SEC 200.00	PPR Prepaid Rent				-990.00CR 11/02/04	
Occupy: 9/20/2004 Term: 09 Last Pymt: 11/30/2004 Expires: 6/30/2005										
Resident Totals				200.00		990.00	-990.00	990.00	990.00	-990.00
0426	3	Nuss, Michael	Cur	SEC 200.00	RNT Residential Rent	925.00		925.00 12/01/04	925.00CR 12/02/04	
Occupy: 4/7/2004 Term: 8 Last Pymt: 12/2/2004										
Resident Totals				200.00		925.00	0.00	925.00	925.00	0.00
0427	4	Joseph, Karen	Cur	SEC 200.00	EMP Employee rent	228.00		228.00 12/01/04		
Occupy: 7/15/2004 Term: 12 Last Pymt: 12/6/2004 Expires: 7/31/2005										
Resident Totals				200.00		1,140.00	0.00	1,140.00	912.00	0.00
0428	1	Glenn, Joe	Old		LAT Late Fee		80.70			80.70
Occupy: 3/1/2001 Term: 12 Expires: 2/28/2005 Notice: 6/24/2004 Vacate: 7/24/2004 Why: @@										
Resident Totals				0.00		807.00	2,422.97	0.00	0.00	2,422.97
0428	2	Couick, Thomas	Cur	SEC 1,045.00	RNT Residential Rent	845.00		845.00 12/01/04	845.00CR 12/02/04	
Occupy: 8/10/2004 Term: 12 Last Pymt: 12/2/2004 Expires: 8/31/2005										
Resident Totals				1,045.00		845.00	0.00	845.00	845.00	0.00
0511	2	Rogers, Ana	Cur	SEC 200.00	RNT Residential Rent	1,090.00		1,090.00 12/01/04	1,090.00CR 12/02/04	
Occupy: 6/15/2004 Term: 12 Last Pymt: 12/31/2004 Expires: 6/30/2005										
Resident Totals				200.00		1,090.00	0.00	1,090.00	2,180.00	-1,090.00

Building: LG - All Apartments

Unit Id	Name	Status	Security Balance	Charge Code	Recurring Rents	Beginning Balance	Charges Amount Date	Payments Amount Date	Ending Balance
0512	2 Andres, Kelly	Cur	PET 200.00	RNT Residential Rent	813.00		813.00 12/01/04	813.00CR 12/02/04	
	Occupancy: 8/15/2003	Term: 11	SEC 100.00						
	Last Pymt: 12/2/2004								
	Expires: 6/30/2005								
Resident Totals				300.00	813.00	0.00	813.00	813.00	0.00
0513	5 Merrigan, Kevin	Cur	SEC 200.00	RNT Residential Rent	945.00		945.00 12/01/04	945.00CR 12/02/04	
	Occupancy: 10/20/2004	Term: 9		RNT Residential Rent				945.00CR 12/01/04	-945.00
	Last Pymt: 12/31/2004								
	Expires: 7/31/2005								
Resident Totals				200.00	945.00	0.00	945.00	1,890.00	-945.00
0514	1 Harrelson, Kylee	Cur	SEC 100.00	RNT Residential Rent	920.00		920.00 12/01/04	920.00CR 12/02/04	
	Occupancy: 5/14/2003	Term: 9							
	Last Pymt: 12/6/2004								
	Expires: 2/28/2005								
Resident Totals				100.00	920.00	0.00	920.00	920.00	0.00
0515	3 Welch, Jason	Cur	SEC 200.00	CORP Rental Incr	608.00		608.00 12/01/04	608.00CR 12/02/04	
	Occupancy: 9/15/2004	Term: 6		PPR Prepaid Rent				1,506.00CR 12/01/04	-1,506.00
	Last Pymt: 12/2/2004			RNT Residential Rent	898.00		898.00 12/01/04	898.00CR 12/02/04	
	Expires: 3/31/2005								
Resident Totals				200.00	1,506.00	0.00	1,506.00	3,012.00	-1,506.00
0516	2 Sanders, Angela	Old		RNT Residential Rent	930.00				
	Occupancy: 6/10/2003	Term: 12		TER Termination Fee			97.00		97.00
	Expires: 6/30/2004								
	Notice: 3/1/2004								
	Vacate: 3/31/2004	Why: @@							
Resident Totals				0.00	930.00	97.00	0.00	0.00	97.00
0516	3 Court, Wayne	Old	SEC 200.00	PPR Prepaid Rent			-920.00		-920.00CR 11/30/04
	Occupancy: 4/20/2004	Term: 8		RNT Residential Rent	920.00		920.00 12/01/04	920.00CR 11/30/04	
	Last Pymt: 11/30/2004								
	Expires: 12/31/2004								
	Notice: 10/28/2004								
	Vacate: 12/31/2004	Why: @@@							
Resident Totals				200.00	920.00	-920.00	920.00	0.00	0.00
0516	Vacancy Adjustment			V Vacancy			0.00		0.00
0517	4 Legare, Fred	Cur	SEC 200.00	RNT Residential Rent	1,090.00		1,090.00 12/01/04	1,090.00CR 12/02/04	
	Occupancy: 5/7/2004	Term: 12							
	Last Pymt: 12/2/2004								
	Expires: 5/31/2005								
Resident Totals				200.00	1,090.00	0.00	1,090.00	1,090.00	0.00
0518	5 Everman, David	Cur	SEC 200.00	PPR Prepaid Rent				855.00CR 12/01/04	-855.00
	Occupancy: 8/6/2004	Term: 12		RNT Residential Rent	855.00		855.00 12/01/04	855.00CR 12/02/04	
	Last Pymt: 12/2/2004								
	Expires: 8/31/2005								
Resident Totals				200.00	855.00	0.00	855.00	1,710.00	-855.00
0521	4 Gombach, Jaqueline	Cur	SEC 200.00	PPR Prepaid Rent				1,140.00CR 12/01/04	-1,140.00
	Occupancy: 10/30/2004	Term: 12		RNT Residential Rent	1,140.00		1,140.00 12/01/04	1,140.00CR 12/02/04	
	Last Pymt: 12/2/2004								
	Expires: 10/31/2005								
Resident Totals				200.00	1,140.00	0.00	1,140.00	2,280.00	-1,140.00
0522	1 Ernst, Bill	Cur	SEC 300.00	RNT Residential Rent	755.00		755.00 12/01/04	755.00CR 12/02/04	
	Occupancy: 1/1/2001	Term: 17							
	Last Pymt: 12/6/2004								
	Expires: 9/30/2005								
Resident Totals				300.00	755.00	0.00	755.00	755.00	0.00

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Unit Lease										
Id	Id	Name	Status	Security Balance	Charge Code	Recurring Rents	Beginning Balance	Charges Amount Date	Payments Amount Date	Ending Balance

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0523	2	Marx, Marcelle	Cur							
		Occupy: 5/11/2002 Term:			PPR Prepaid Rent				970.00CR 12/2004	-970.00
		Last Pymt: 12/2/2004			RNT Residential Rent	970.00		970.00 12/01/04	970.00CR 12/02/04	
		Expires: 6/30/2005								
Resident Totals				0.00		970.00	0.00	970.00	1,940.00	-970.00
0524	5	Gehring, Edward	Cur SEC	200.00						
		Occupy: 7/1/2004 Term: 10			RNT Residential Rent	955.00		955.00 12/01/04	955.00CR 12/02/04	
		Last Pymt: 12/31/2004			RNT Residential Rent				955.00CR 12/31/04	-955.00
		Expires: 4/30/2005								
Resident Totals				200.00		955.00	0.00	955.00	1,910.00	-955.00
0525	3	Sprayberry, Mary	Cur SEC	1,170.00						
		Occupy: 10/8/2004 Term: 12			RNT Residential Rent	970.00		970.00 12/01/04	469.35CR 12/02/04	
		Last Pymt: 12/8/2004			RNT Residential Rent				469.35CR 12/02/04	
		Expires: 10/31/2005			LIAC Unapplied Credit		-31.30		-31.30PR 12/02/04	0.00
Resident Totals				1,170.00		970.00	-31.30	970.00	938.70	0.00
0526	4	O'Hare, Barry	Cur SEC	1,155.00						
		Occupy: 8/3/2004 Term: 9			RNT Residential Rent	955.00		955.00 12/01/04	955.00CR 12/02/04	
		Last Pymt: 12/8/2004								
		Expires: 5/31/2005								
Resident Totals				1,155.00		955.00	0.00	955.00	955.00	0.00
0527	1	Broughton, Debby	Cur PET	600.00						
		Occupy: 11/29/2002 Term: 12			RNT Residential Rent	1,120.00		1,120.00 12/01/04	1,100.00CR 12/02/04	
		Last Pymt: 12/8/2004			RNT Residential Rent				10.00CR 12/02/04	10.00
		Expires: 7/31/2005			LIAC Unapplied Credit		-10.00		-10.00PR 12/02/04	
Resident Totals				600.00		1,120.00	-10.00	1,120.00	1,100.00	10.00
0528	5	Gonzales, Jeffrey	Cur SEC	200.00						
		Occupy: 9/15/2004 Term: 12			RNT Residential Rent	870.00		870.00 12/01/04	870.00CR 12/02/04	
		Last Pymt: 12/6/2004								
		Expires: 9/30/2005								
Resident Totals				200.00		870.00	0.00	870.00	870.00	0.00
0611	4	Wallenius, Lyane	Cur PET	200.00						
		Occupy: 3/15/2004 Term: 12			PPR Prepaid Rent				1,090.00CR 12/02/04	-1,090.00
		Last Pymt: 12/2/2004			RNT Residential Rent	1,090.00		1,090.00 12/01/04	1,090.00CR 12/02/04	
		Expires: 3/31/2005								
Resident Totals				400.00		1,090.00	0.00	1,090.00	2,180.00	-1,090.00
0612	6	McKinney, Richard	Cur PET	200.00						
		Occupy: 6/15/2004 Term: 7			LAT Late Fee			84.50 12/02/04	84.50CR 12/02/04	
		Last Pymt: 12/5/2004			RNT Residential Rent	845.00		845.00 12/01/04	845.00CR 12/02/04	
		Expires: 1/31/2005								
Resident Totals				400.00		845.00	0.00	929.50	929.50	0.00
0613	4	Auger, Carri	Cur PET	400.00						
		Occupy: 5/4/2004 Term: 12			PPR Prepaid Rent				940.00CR 12/01/04	-940.00
		Last Pymt: 12/2/2004			RNT Residential Rent	940.00		940.00 12/01/04	940.00CR 12/02/04	
		Expires: 5/31/2005								
Resident Totals				600.00		940.00	0.00	940.00	1,880.00	-940.00
0614	3	Cline, Robert	Cur SEC	100.00						
		Occupy: 8/13/2003 Term: 12			RNT Residential Rent	925.00		925.00 12/01/04	921.00CR 12/02/04	
		Last Pymt: 12/8/2004			RNT Residential Rent				5.00CR 12/02/04	
		Expires: 9/30/2005			LIAC Unapplied Credit		-5.00		-5.00PR 12/02/04	
Resident Totals				100.00		925.00	-5.00	925.00	921.00	0.00
0615	4	Sweeney, Matthew	Cur							
		Occupy: 8/22/2004 Term: 10			RNT Residential Rent	945.00		945.00 12/01/04	945.00CR 12/02/04	
		Last Pymt: 12/2/2004								
		Expires: 6/30/2005								
Resident Totals				0.00		945.00	0.00	945.00	945.00	0.00

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Unit Lease										
Id	Id	Name	Status	Security Balance	Charge Code	Recurring Rents	Beginning Balance	Charges Amount Date	Payments Amount Date	Ending Balance

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0616	3	Worthington, Polly	Cur	SEC	100.00	RNT Residential Rent	970.00	970.00	12/01/04	970.00	CR 12/02/04	-3.00
		Occupies:	5/28/2003 Term: 8			UAC Unapplied Credit		-3.00				
		Last Pymt:	12/2/2004									
		Expires:	1/31/2005									
Resident Totals					100.00		970.00	-3.00	970.00		970.00	-3.00
0617	3	Bushnell, Jonathan	Cur	SEC	200.00	PPR Prepaid Rent				1,090.00	CR 12/31/04	-1,090.00
		Occupies:	8/10/2004 Term: -7			RNT Residential Rent	1,090.00	1,090.00	12/01/04	-1,090.00	CR 12/05/04	
		Last Pymt:	12/6/2004									
		Expires:	1/31/2005									
Resident Totals					200.00		1,090.00	0.00	1,090.00		2,180.00	-1,090.00
0618	5	A Plus,	Cur			RNT Residential Rent	810.00	810.00	12/01/04	810.00	CR 12/05/04	-6.10
		Occupies:	8/25/2004 Term:			UAC Unapplied Credit		-6.10				
		Last Pymt:	12/6/2004									
		Expires:	11/23/2004									
Resident Totals					0.00		810.00	-6.10	810.00		810.00	-6.10
0621	5	Anglin, Laurence	Cur			EMP Employee Rent	1,135.00	1,110.00	12/01/04			0.00
		Occupies:	10/10/2003 Term: MTM									
Resident Totals					0.00		1,135.00	0.00	1,110.00		0.00	0.00
0622	6	Creauto, David	Cur	PET	200.00	MTM Month To Month	100.00	100.00	12/01/04	100.00	CR 12/05/04	
		Occupies:	9/10/2003 Term: m/m		SEC	100.00	RNT Residential Rent	885.00	20.00	865.00	12/01/04	10.00
		Last Pymt:	12/6/2004								5.00	CR 12/05/04
											5.00	CR 12/05/04
											865.00	CR 12/05/04
Resident Totals					300.00		965.00	20.00	965.00		985.00	0.00
0623	2	Ault, Kelly	Cur			RNT Residential Rent	960.00	960.00	12/01/04	960.00	CR 12/05/04	
		Occupies:	7/27/2002 Term: 12									
		Last Pymt:	12/6/2004									
		Expires:	4/30/2005									
Resident Totals					0.00		960.00	0.00	960.00		960.00	0.00
0624	2	Edwards, Henry	Cur	PET	400.00	RNT Residential Rent	941.00	941.00	12/01/04	941.00	CR 12/05/04	
		Occupies:	6/1/2003 Term: 12		SEC	100.00						
		Last Pymt:	12/6/2004									
		Expires:	1/31/2005									
Resident Totals					500.00		941.00	0.00	941.00		941.00	0.00
0625	3	Smith, Daniel	Cur	SEC	200.00	COR Corp. Rental Inc	60.00	60.00	12/01/04	60.00	CR 12/02/04	
		Occupies:	10/26/2004 Term: 12			RNT Residential Rent	960.00	960.00	12/01/04	960.00	CR 12/05/04	
		Last Pymt:	12/2/2004									
		Expires:	10/31/2005									
Resident Totals					200.00		1,020.00	0.00	1,020.00		1,020.00	0.00
0626	1	LeonCavallo, Reid	Cur	SEC	100.00	RNT Residential Rent	995.00	995.00	12/01/04	985.00	CR 12/05/04	10.00
		Occupies:	4/24/2001 Term: 12									
		Last Pymt:	12/6/2004									
		Expires:	4/30/2005									
Resident Totals					100.00		995.00	0.00	995.00		985.00	10.00
0627	2	Pate, David	Cur			EMP Employee Rent	1,135.00	1,110.00	12/01/04			
		Occupies:	4/1/2003 Term: MTM									
Resident Totals					0.00		1,135.00	0.00	1,110.00		0.00	0.00
0628	5	Merritt, Turner	Old			DMG Damage/ Ch Fr	300.00					300.00
		Occupies:	9/23/2003 Term: 8			RNT Residential Rent	860.00					
		Expires:	12/31/2004									
		Notice:	10/5/2004									
		Vacate:	11/8/2004 Why: @@@									
Resident Totals					0.00		860.00	300.00	0.00	0.00		300.00
0628		Vacancy Adjustment				V Vacancy		865.00				

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Unit	Lease	Status	Security	Recurring	Beginning	Charges	Payments	Ending
Id	Id	Name	Balance	Charge Code	Rents	Amount Date	Amount Date	Balance
Building: LG - All Apartments								
0711	4	Tolley, Hank	Cur PET	200.00	RNT Residential Rent	1,095.00	1,095.00	12/01/04 1,095.00CR 12/01/04
Occupies:		8/15/2004	Term: 12	SEC	1,295.00	RNT Residential Rent		1,095.00CR 12/01/04 -1,095.00
Last Pymt:		12/31/2004						
Expires:		8/31/2005						
Resident Totals			1,495.00		1,095.00	0.00	1,095.00	2,190.00 -1,095.00
0712	2	Percic, Victoria	Cur		PPR Prepaid Rent			808.00CR 12/01/04 -808.00
Occupies:		11/29/2002	Term: 12		RNT Residential Rent	808.00	808.00	12/01/04 808.00CR 12/01/04
Last Pymt:		12/6/2004						
Expires:		9/30/2005						
Resident Totals			0.00		808.00	0.00	808.00	1,616.00 -808.00
0713	3	Campbell, Matt	Cur SEC	200.00	RNT Residential Rent	917.00	917.00	12/01/04 917.00CR 12/01/04
Occupies:		10/6/2004	Term: 12					
Last Pymt:		12/2/2004						
Expires:		10/31/2005						
Resident Totals			200.00		917.00	0.00	917.00	917.00 0.00
0714	5	McIntyre, Fred	Old SEC					
Occupies:		1/14/2004	Term: 10					
Expires:		11/30/2004						
Notice:		10/18/2004						
Vacates:		11/30/2004	Why: @@					
Resident Totals			0.00		0.00	0.00	0.00	0.00 0.00
0714	6	Bunn, Ralph	Cur SEC	200.00	PAS Beach Pass Fee		200.00	12/08/04 200.00CR 12/08/04
Occupies:		12/22/2004	Term: 12		RNT Residential Rent	975.00	314.52V 12/22/04	314.52CR 12/22/04
Last Pymt:		12/8/2004			UAC Unapplied Credit	-200.00		-200.00CR 12/22/04
Expires:		12/31/2005						
Resident Totals			200.00		975.00	-200.00	514.52	314.52 0.00
0714	Vacancy Adjustment				V Vacancy		660.48	
0715	2	Bowen, Martin	Old SEC	0.00	MTM Month To Month	100.00		
Occupies:		2/21/2004	Term: 8		RNT Residential Rent	960.00	0.45	-0.45V 11/22/04
Expires:		10/31/2004			RNT Residential Rent	965.00		
Notice:		10/5/2004						
Vacates:		11/11/2004	Why: BH					
Resident Totals			0.00		2,025.00	0.45	-0.45	0.00 0.00
0715	Vacancy Adjustment				V Vacancy		965.00	
0716	2	Zawleski, Mary	Cur PET	400.00	MTM Month To Month	100.00	100.00	12/01/04 100.00CR 12/01/04
Occupies:		11/17/2003	Term: 12	SEC	200.00	MTM Month To Month		100.00CR 12/01/04 -100.00
Last Pymt:		12/31/2004			RNT Residential Rent	975.00	975.00	12/01/04 975.00CR 12/01/04
Resident Totals			600.00		1,075.00	0.00	1,075.00	2,150.00 -1,075.00
0717	4	Livemore, David	Cur SEC	200.00	CDR Corp. Rental Incc	60.00	60.00	12/01/04 60.00CR 12/01/04
Occupies:		10/14/2004	Term: 12		RNT Residential Rent	1,040.00	1,040.00	12/01/04 1,040.00CR 12/01/04
Last Pymt:		12/2/2004						
Expires:		10/31/2005						
Resident Totals			200.00		1,100.00	0.00	1,100.00	1,100.00 0.00
0718	2	Shine, Daniel	Cur SEC	200.00	RNT Residential Rent	845.00	845.00	12/01/04 845.00CR 12/01/04
Occupies:		5/7/2004	Term: 12		RNT Residential Rent			845.00CR 12/01/04 -845.00
Last Pymt:		12/31/2004						
Expires:		5/31/2005						
Resident Totals			200.00		845.00	0.00	845.00	1,690.00 -845.00

BeachCo 000348

Database: SQLBEACHMRI	RM Rent Roll	Page: 15								
Property: LG	The Beach Company	Date: 1/4/2005								
Report Period: 12/04	Long Grove at Seaside Farms	Time: 01:45 PM								
Unit Lease										
Id	Id	Name	Status	Security Balance	Charge Code	Recurring Rents	Beginning Balance	Charges Amount Date	Payments Amount Date	Ending Balance

Building: LG - All Apartments

0721	5	Sizelove, Kathleen	Cur	PET	200.00	RNT Residential Rent	1,090.00	1,090.00	12/01/04	1,090.00	12/02/04	
		Occupy: 6/26/2004	Term: 12	SEC	200.00							
		Last Pymt: 12/2/2004										
		Expires: 6/30/2005										
Resident Totals					400.00		1,090.00	0.00	1,090.00	1,090.00	0.00	
0722	3	Gilbert, Tom	Cur	SEC	200.00	RNT Residential Rent	822.00	822.00	12/01/04	822.00	12/02/04	
		Occupy: 3/31/2004	Term: 6									
		Last Pymt: 12/6/2004										
		Expires: 6/30/2005										
Resident Totals					200.00		822.00	0.00	822.00	822.00	0.00	
0723	3	Blackwell, Meredith	Cur	SEC	100.00	RNT Residential Rent	975.00	975.00	12/01/04	975.00	12/02/04	
		Occupy: 4/23/2003	Term: 12									
		Last Pymt: 12/2/2004										
		Expires: 1/31/2005										
Resident Totals					100.00		975.00	0.00	975.00	975.00	0.00	
0724	4	Asselta, Brooke	Cur	SEC	200.00	PPR Prepaid Rent				995.00	12/25/04	-995.00
		Occupy: 2/6/2004	Term: 12			RNT Residential Rent	995.00	995.00	12/01/04	995.00	12/02/04	
		Last Pymt: 12/2/2004										
		Expires: 2/28/2005										
Resident Totals					200.00		995.00	0.00	995.00	1,990.00	-995.00	
0725	3	Suarez, Hector	Cur	PET	200.00	RNT Residential Rent	931.00	931.00	12/01/04	931.00	12/02/04	
		Occupy: 8/13/2004	Term: 12	SEC	200.00	RNT Residential Rent				931.00	12/01/04	-931.00
		Last Pymt: 12/31/2004								931.00	12/01/04	
		Expires: 8/31/2005										
Resident Totals					400.00		931.00	0.00	931.00	1,862.00	-931.00	
0726	2	Eppert, Karen	Cur	PET	300.00	RNT Residential Rent	945.00	945.00	12/01/04	945.00	12/02/04	
		Occupy: 3/31/2003	Term: 12	SEC	100.00	RNT Residential Rent				945.00	12/01/04	-945.00
		Last Pymt: 12/31/2004								945.00	12/01/04	
		Expires: 3/31/2005										
Resident Totals					400.00		945.00	0.00	945.00	1,890.00	-945.00	
0727	4	Haas, Cina	Cur	SEC	300.00	RNT Residential Rent	1,105.00	1,105.00	12/01/04	1,105.00	12/02/04	
		Occupy: 5/31/2003	Term: 12			RNT Residential Rent				1,105.00	12/01/04	-1,105.00
		Last Pymt: 12/31/2004								1,105.00	12/01/04	
		Expires: 5/31/2005										
Resident Totals					300.00		1,105.00	0.00	1,105.00	2,210.00	-1,105.00	
0728	4	Gehrmann, Jane	Cur	SEC	200.00	PPR Prepaid Rent				855.00	12/02/04	-855.00
		Occupy: 12/17/2003	Term: 12			RNT Residential Rent	855.00	855.00	12/01/04	855.00	12/02/04	
		Last Pymt: 12/2/2004								855.00	12/02/04	
		Expires: 6/30/2005										
Resident Totals					200.00		855.00	0.00	855.00	1,710.00	-855.00	
0811	3	Pelot, Ben	New			PAS Beach Pass Fee		200.00	12/15/04	200.00	12/15/04	
		Occupy: 1/5/2005	Term: 18									
		Last Pymt: 12/15/2004										
		Expires: 7/31/2006										
Resident Totals					0.00		0.00	200.00		200.00	0.00	
0811	2	Ford, Karen	Old			MTM Month To Month	100.00	100.00	12/01/04	100.00	12/02/04	
		Occupy: 2/28/2002	Term: mtm			MTM Month To Month		-51.61	12/15/04			
		Last Pymt: 12/5/2004				MTM Month To Month		51.61	12/15/04			
		Expires: 12/8/2004				RNT Residential Rent	1,095.00	1,095.00	12/01/04	478.23	12/02/04	
		Notice: 11/8/2004				RNT Residential Rent		-565.16	12/15/04			
		Vacate: 12/15/2004	Why: @@			RNT Residential Rent		-51.61	12/15/04			
Resident Totals					0.00		1,185.00	0.00	578.23	578.23	0.00	
0811		Vacancy Adjustment				V Vacancy		565.16				

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Report Period: 12/04
 Unit Lease
 Id Id Name Status Security Balance Charge Code Recurring Rents Beginning Balance Charges Amount Date Payments Amount Date Ending Balance

Building: LG - All Apartments

0812	5	McCarragher, Tacy	Cur	PET	200.00	RNT Residential Rent	850.00		850.00	12/01/04	850.00	CR	12/02/04		
		Occupy:			9/22/2004	Term:	9	SEC	200.00						
		Last Pymt:			12/2/2004										
		Expires:			6/30/2005										
Resident Totals					400.00		850.00	0.00	850.00		850.00		0.00		
0813	6	Bauer, Dells	Cur	SEC	400.00	PPR Prepaid Rent					965.00	CR	12/15/04		-965.00
		Occupy:			9/10/2004	Term:	9				965.00				
		Last Pymt:			12/2/2004						965.00	CR	12/02/04		
		Expires:			6/30/2005						-0.01				-0.01
Resident Totals					400.00		965.00	-0.01	965.00		1,930.00				-965.01
0814	4	Engelbert, Troy	Cur	SEC	200.00	RNT Residential Rent	970.00		970.00	12/01/04	970.00	CR	12/02/04		
		Occupy:			3/1/2004	Term:	18								
		Last Pymt:			12/2/2004										
		Expires:			8/31/2005										
Resident Totals					200.00		970.00	0.00	970.00		970.00				0.00
0815	4	Greene, Karen	Cur	SEC	200.00	PPR Prepaid Rent					960.00	CR	12/15/04		-960.00
		Occupy:			4/26/2004	Term:	12				960.00	CR	12/02/04		
		Last Pymt:			12/2/2004										
		Expires:			4/30/2005										
Resident Totals					200.00		960.00	0.00	960.00		1,920.00				-960.00
0816	4	Senn, Joseph	Old	PET	200.00	RNT Residential Rent	922.00		922.00	12/01/04	922.00	CR	12/02/04		
		Occupy:			6/15/2004	Term:	12	SEC	200.00						
		Last Pymt:			12/20/2004						-29.74	V	12/02/04		
		Expires:			6/30/2005						1,455.00	CR	12/02/04		-29.74
		Notice:			11/30/2004										
		Vacate:			12/30/2004	Why:	BH								
Resident Totals					400.00		922.00	0.00	2,347.26		2,377.00				-29.74
0816	5	Wardell, Patrick	New			PAS Beach Pass Fee			200.00	12/15/04	200.00	CR	12/15/04		
		Occupy:			1/10/2005	Term:	12				200.00	CR	12/15/04		
		Last Pymt:			12/15/2004						200.00	CR	12/15/04		
		Expires:			1/31/2006						-200.00	PR	12/15/04		
Resident Totals					0.00		0.00	0.00	200.00		200.00				0.00
0816	Vacancy Adjustment					V	Vacancy		29.74						
0817	1	Devino, Alexa	Old	SEC	100.00	CCR Corp. Rental Incc	50.00								
		Occupy:			11/6/2001	Term:	12								
		Expires:			11/30/2002										
		Notice:			1/31/2002										
		Vacate:			2/28/2002	Why:	RF								
Resident Totals					100.00		1,140.00	0.00	0.00		0.00				0.00
0817	4	Punch, Bradley	Cur	SEC	200.00	RNT Residential Rent	1,040.00		1,040.00	12/01/04	1,040.00	CR	12/02/04		
		Occupy:			11/14/2003	Term:	12								
		Last Pymt:			12/6/2004										
		Expires:			11/30/2005										
Resident Totals					200.00		1,040.00	0.00	1,040.00		1,040.00				0.00
0818	3	Murrell, Kyle	New			APP Application Fee	50.00		50.00	12/02/04	50.00	CR	12/02/04		
		Occupy:			1/3/2005	Term:	9				200.00	CR	12/02/04		
		Last Pymt:			12/31/2004						200.00	CR	12/02/04		
		Expires:			10/31/2005						200.00	CR	12/02/04		
											795.16	CR	12/01/04		-795.16
Resident Totals					0.00		0.00	0.00	450.00		1,245.16				-795.16
0818	Vacancy Adjustment					V	Vacancy		850.00						

RM Rent Roll
 The Beach Company
 Long Grove at Seaside Farms

Building: LG - All Apartments

0821	3	Correll, Erin	Cur	SEC	100.00	RNT Residential Rent	1,050.00		1,050.00	12/01/04	1,050.00	CR	12/02/04	
		Occupy:												
		Last Pymt:												
		Expires:												
		Resident Totals												
					100.00		1,050.00	0.00	1,050.00		2,100.00		-1,050.00	
0822	4	A Plus, 822	Old			RNT Residential Rent	805.00		805.00	12/01/04	268.40	CR	12/02/04	
		Occupy:												
		Last Pymt:												
		Expires:												
		Notice:												
		Vacate:												
		Resident Totals												
					0.00		805.00	0.00	259.68		259.68		0.00	
0822		Vacancy Adjustment				V Vacancy			545.32					
0823	1	Ackerman, George	Cur	SEC	300.00	RNT Residential Rent	980.00		980.00	12/01/04	980.00	CR	12/02/04	
		Occupy:												
		Last Pymt:												
		Expires:												
		Resident Totals												
					300.00		980.00	0.00	980.00		980.00		0.00	
0824	3	McManus, Allison	Cur	SEC	100.00	RNT Residential Rent	1,000.00		1,000.00	12/01/04	500.00	CR	12/02/04	
		Occupy:												
		Last Pymt:												
		Expires:												
		Resident Totals												
					100.00		1,000.00	0.00	1,000.00		1,000.00		0.00	
0825	5	Zavari, Apurva	Old	SEC	300.00	RNT Residential Rent	922.00		922.00	12/01/04	922.00	CR	12/02/04	
		Occupy:												
		Last Pymt:												
		Expires:												
		Notice:												
		Vacate:												
		Resident Totals												
					300.00		922.00	0.00	922.00		922.00		0.00	
0825		Vacancy Adjustment				V Vacancy			0.00					
0826	4	Blasser, Jane	Cur	SEC	200.00	RNT Residential Rent	945.00		945.00	12/01/04	945.00	CR	12/02/04	
		Occupy:												
		Last Pymt:												
		Expires:												
		Resident Totals												
					200.00		945.00	0.00	945.00		1,890.00		-945.00	
0827	3	Turner, Matthew	Cur	SEC	100.00	RNT Residential Rent	1,055.00		1,055.00	12/01/04	351.67	CR	12/02/04	
		Occupy:												
		Last Pymt:												
		Expires:												
		Resident Totals												
					100.00		1,055.00	0.00	1,055.00		1,758.34		-703.34	
0828	1	Baker, Michael	Old			DMG Damage/Ch Fr			63.26		63.26	CR	12/02/04	
		Occupy:				MTM Month To Month	100.00							
		Last Pymt:				RNT Residential Rent	865.00							
		Expires:												
		Notice:												
		Vacate:												
		Resident Totals												
					0.00		965.00	63.26	0.00		63.26		0.00	

Database: SQLBEACHMRI		RM Rent Roll		Page: 18								
Property: LG		The Beach Company		Date: 1/4/2005								
		Long Grove at Seaside Farms		Time: 01:45 PM								
Report Period: 12/04												
Unit	Lease	Security	Recurring	Beginning	Charges	Payments	Ending					
Id	Id	Name	Status	Balance	Charge Code	Rents	Balance	Amount	Date	Amount	Date	Balance

Building: LG - All Apartments

0828	2	Cross Country, 828	New									
Occupancy:		1/7/2005		Term:		3						
Expires:		4/12/2005										
Resident Totals				0.00		0.00	0.00	0.00	0.00	0.00	0.00	0.00
0828	Vacancy Adjustment			V	Vacancy			865.00				
0911	3	A+ Accommodations,			RNT Residential Rent	4,090.00		1,090.00	12/01/04	1,090.00	CR	12/08/04
Occupancy:		4/30/2003		Term:		3						
Last Pymt:		12/6/2004										
Expires:		1/31/2004										
Resident Totals				0.00		1,090.00	0.00	1,090.00	1,090.00	1,090.00		0.00
0912	1	Pochabet, Lucille		Cur	SEC	300.00	PPR Prepaid Rent			817.00	CR	12/21/04
Occupancy:		11/19/2000		Term:		18						
Last Pymt:		12/2/2004										
Expires:		5/31/2005										
Resident Totals				300.00		817.00	0.00	817.00	1,634.00		-817.00	
0913	3	Gliardino, Muriel		Cur			PPR Prepaid Rent			960.00	CR	12/01/04
Occupancy:		11/1/2002		Term:		18						
Last Pymt:		12/2/2004										
Expires:		4/30/2005										
Resident Totals				0.00		960.00	0.00	960.00	1,920.00		-960.00	
0914	4	Lewin, Sanford		Cur	SEC	200.00	PPR Prepaid Rent			905.00	CR	12/22/04
Occupancy:		6/26/2004		Term:		12						
Last Pymt:		12/2/2004										
Expires:		6/30/2005										
Resident Totals				200.00		905.00	0.00	905.00	1,810.00		-905.00	
0915	7	Chestwood, Chad		Old	SEC		RNT Residential Rent	917.00	122.35	-122.35		11/22/04
Occupancy:		9/20/2004		Term:		10						
Expires:		7/31/2005										
Notice:		10/15/2004										
Vacate:		11/14/2004		Why:		MT						
Resident Totals				0.00		917.00	122.35	-122.35	0.00	0.00		0.00
0915	8	Miller, Michael		Cur	SEC	200.00	RNT Residential Rent	917.00		61.14	V	11/30/04
Occupancy:		11/29/2004		Term:		12						
Last Pymt:		12/2/2004										
Expires:		11/30/2005										
Resident Totals				200.00		917.00	0.00	878.14	978.14		0.00	
0915	Vacancy Adjustment			V	Vacancy			-61.14				
0916	4	Frank, Robert		Cur	SEC	200.00	RNT Residential Rent	905.00		905.00	CR	12/01/04
Occupancy:		7/16/2004		Term:		12						
Last Pymt:		12/6/2004										
Expires:		7/31/2005										
Resident Totals				200.00		905.00	0.00	905.00	905.00		0.00	
0917	4	Senayadln, Suzan		Cur	PET	200.00	PPR Prepaid Rent			1,095.00	CR	12/01/04
Occupancy:		10/8/2004		Term:		16						
Last Pymt:		12/2/2004										
Expires:		2/28/2008										
Resident Totals				1,495.00		1,085.00	0.00	1,095.00	2,190.00		-1,095.00	
0918	3	Clement, Charles		Cur			RNT Residential Rent	830.00		830.00	CR	12/08/04
Occupancy:		9/16/2002		Term:		10						
Last Pymt:		12/31/2004										
Expires:		4/30/2005										
Resident Totals				0.00		830.00	0.00	830.00	1,660.00		-830.00	

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Database: SOLBEACHMRI RM Rent Roll Page: 19
 Property: LG The Beach Company Date: 1/4/2005
 Long Grove at Seaside Farms Time: 01:45 PM

Report Period: 12/04
 Unit Lease

Id	Id	Name	Status	Security Balance	Charge Code	Recurring Rents	Beginning Balance	Charges Amount Date	Payments Amount Date	Ending Balance			
Building: LG - All Apartments													
0921	4	ACRS, 821	Old	PET									
		Occupy: 7/16/2004	Term: 3		DMG Damaged Ch Fe			45.00	12/14/04				
		Last Pymt: 11/30/2004			DMG Damaged Ch Fe			-45.00	12/14/04				
		Expires: 10/12/2004			PPR Prepaid Rent		-91.84			-91.84			
		Notice: 11/3/2004			RNT Residential Rent	1,095.00		1,095.00	12/01/04	91.84			
		Vacate: 12/3/2004	Why: @@		RNT Residential Rent			-989.03	12/03/04				
					RNT Residential Rent			-14.13	12/14/04				
					UTL Utility Reimburse			40.12	12/09/04				
					UTL Utility Reimburse			-40.12	12/14/04				
										0.00			
					Resident Totals	0.00	1,095.00	-91.84	91.84	0.00	0.00		
0921		Vacancy Adjustment			V Vacancy			989.03					
0922	4	Floyd, Ruth	Cur	SEC		200.00		RNT Residential Rent	845.00	845.00	12/01/04	845.00	12/02/04
		Occupy: 4/10/2004	Term: 12										
		Last Pymt: 12/2/2004											
		Expires: 4/30/2005											
					Resident Totals	200.00		845.00	0.00	845.00		845.00	0.00
0923	1	Boach Company, Property	Old	SEC		100.00		COR Corp. Rental Inc.	638.00				
		Occupy: 11/12/2001	Term: 6					RNT Residential Rent	940.00				
		Expires: 5/31/2002											
		Notice: 1/9/2002											
		Vacate: 1/13/2002	Why: BH										
					Resident Totals	100.00		1,578.00	0.00	0.00		0.00	0.00
0923	4	Walter Waukesha,	Cur	SEC		100.00		PPR Prepaid Rent				936.00	12/29/04
		Occupy: 10/17/2003	Term: 6					RNT Residential Rent	936.00	936.00	12/01/04	936.00	12/02/04
		Last Pymt: 12/2/2004											
		Expires: 7/31/2005											
					Resident Totals	100.00		936.00	0.00	836.00		1,872.00	-936.00
0924	3	Bragg, Thomas	Cur	SEC		200.00		PPR Prepaid Rent				940.00	12/20/04
		Occupy: 6/27/2004	Term: 10					RNT Residential Rent	940.00	940.00	12/01/04	940.00	12/02/04
		Last Pymt: 12/2/2004											
		Expires: 4/30/2005											
					Resident Totals	200.00		940.00	0.00	940.00		1,880.00	-940.00
0925	2	George, Susan	Cur	SEC		200.00		RNT Residential Rent	985.00	985.00	12/01/04	492.50	12/05/04
		Occupy: 5/15/2004	Term: 9					RNT Residential Rent				492.50	12/02/04
		Last Pymt: 12/31/2004						RNT Residential Rent				492.50	12/01/04
		Expires: 2/28/2005						RNT Residential Rent				492.50	12/15/04
					Resident Totals	200.00		985.00	0.00	985.00		1,970.00	-985.00
0926	2	Peebles, Nathan	Cur	SEC		100.00		RNT Residential Rent	930.00	930.00	12/01/04	930.00	12/02/04
		Occupy: 5/19/2003	Term: 9										
		Last Pymt: 12/2/2004											
		Expires: 2/28/2005											
					Resident Totals	100.00		930.00	0.00	930.00		930.00	0.00
0927	2	Shorridge, Fays	Cur	PET		200.00		RNT Residential Rent	1,115.00	1,115.00	12/01/04	1,115.00	12/02/04
		Occupy: 6/1/2004	Term: 7	SEC	200.00								
		Last Pymt: 12/6/2004											
		Expires: 12/31/2004											
		Notice: 11/16/2004											
		Vacate: 1/5/2005	Why: @@										
					Resident Totals	400.00		1,115.00	0.00	1,115.00		1,115.00	0.00
0928	2	Anchor, David	Cur					PPR Prepaid Rent				850.00	12/12/04
		Occupy: 10/8/2002	Term: 12					RNT Residential Rent	850.00	850.00	12/01/04	850.00	12/02/04
		Last Pymt: 12/2/2004											
		Expires: 7/31/2005											
					Resident Totals	0.00		850.00	0.00	850.00		1,700.00	-850.00

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Report Period: 12/04
 Unit Lease Security Recurring Beginning Charges Payments Ending
 id id Name Status Balance Charge Code Refs Balance Amount Date Amount Date Balance

Building: LG - All Apartments													
1011	2	Wisneski, Stanley	Cur	SEC	100.00	RNT Residential Rent	1,095.00		1,095.00	12/01/04	1,095.00Cr	12/05/04	
		Occupy:			3/1/2003	Term:	12						
		Last Pymt:			12/31/2004							1,095.00Cr	12/31/04
		Expires:			11/30/2005							-1,095.00	
Resident Totals					100.00		1,095.00	0.00	1,095.00		2,190.00	-1,095.00	
1012	3	Greene, Lauren	Old	PET	300.00	RNT Residential Rent	845.00		845.00	12/31/04	845.00Cr	12/05/04	
		Occupy:			1/1/2003	Term:	12						
		Last Pymt:			12/20/2004							-27.26v	12/05/04
		Expires:			1/31/2005							-27.26	
		Notice:			9/2/2004								
		Vacate:			12/30/2004	Why:	@@						
Resident Totals					300.00		845.00	0.00	817.74		845.00	-27.26	
1012	4	Lynch, William	Cur			APP Application Fee			50.00	12/05/04	50.00Cr	12/05/04	
		Occupy:			12/31/2004	Term:	12						
		Last Pymt:			12/8/2004	PAS Beach Pass Fee			200.00	12/05/04	200.00Cr	12/05/04	
		Expires:			12/31/2005	RNT Residential Rent	850.00		27.42v	12/01/04		27.42	
						UAC Unapplied Credit					200.00Cr	12/05/04	
						UAC Unapplied Credit					-200.00Pr	12/05/04	
Resident Totals					0.00		850.00	0.00	277.42		250.00	27.42	
1012	Vacancy Adjustment					V Vacancy			-0.16				
1013	2	Masnack, Gregory	Old	SEC	100.00	RNT Residential Rent	940.00		940.00	12/01/04	940.00Cr	12/05/04	
		Occupy:			8/9/2003	Term:	7						
		Last Pymt:			12/2/2004								
		Expires:			12/31/2004								
		Notice:			12/2/2004								
		Vacate:			12/31/2004	Why:	BH						
Resident Totals					100.00		940.00	0.00	940.00		940.00	0.00	
1013	Vacancy Adjustment					V Vacancy			0.00				
1014	2	Mackintosh, Ashley	Old			DMG Damaged Ch Fe			260.00			260.00	
		Occupy:			6/10/2003	Term:							
		Expires:			7/31/2004	MTM Month To Month	100.00						
		Notice:			6/30/2004	NSF NSF			30.00			30.00	
		Vacate:			7/31/2004	Why:	PF						
Resident Totals					0.00		1,070.00	290.00	0.00		0.00	290.00	
1014	3	Mooneyhan, Steven	Cur	SEC	200.00	LAT Late Fee			97.50	12/05/04		97.50	
		Occupy:			8/23/2004	Term:	10						
		Last Pymt:			12/5/2004	LEG Legal Fees			40.00	12/21/04		40.00	
		Expires:			6/30/2005	RNT Residential Rent	975.00		975.00	12/01/04	487.50Cr	12/05/04	
											487.50		
Resident Totals					200.00		975.00	0.00	1,112.50		487.50	625.00	
1015	1	Shimp, David	Cur	SEC	100.00	PPR Prepaid Rent					945.00Cr	12/05/04	
		Occupy:			7/13/2001	Term:	12						
		Last Pymt:			12/2/2004	RNT Residential Rent	945.00		945.00	12/01/04	945.00Cr	12/05/04	
		Expires:			5/31/2005							-945.00	
Resident Totals					100.00		945.00	0.00	945.00		1,890.00	-945.00	
1016	3	Simmons, Julian	Cur	SEC	200.00	RNT Residential Rent	975.00		975.00	12/01/04	487.50Cr	12/05/04	
		Occupy:			7/16/2004	Term:	12						
		Last Pymt:			12/6/2004	RNT Residential Rent					487.50Cr	12/05/04	
		Expires:			7/31/2005								
Resident Totals					200.00		975.00	0.00	975.00		975.00	0.00	
1017	1	Alley, Gary	Cur	SEC	100.00	RNT Residential Rent	1,095.00		1,095.00	12/01/04	1,095.00Cr	12/05/04	
		Occupy:			4/7/2001	Term:	10						
		Last Pymt:			12/31/2004	RNT Residential Rent					1,095.00Cr	12/31/04	
		Expires:			4/30/2005							-1,095.00	
Resident Totals					100.00		1,095.00	0.00	1,095.00		2,190.00	-1,095.00	

Database: SQLBEACH-MRI
 Property: LG
 Report Period: 12/04
 Unit Lease
 Id Id Name Status Security Balance Charge Code Recurring Rents Beginning Balance Charges Amount Date Payments Amount Date Ending Balance

RM Rent Roll
 The Beach Company
 Long Grove at Seaside Farms

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Building: LG - All Apartments

1018	1	Coates, Elizabeth	Old																	
		Occupies:		3/30/2001	Term:	12														
		Expires:		4/30/2003																
		Notice:		1/23/2003																
		Vacate:		2/23/2003	Why:	PF														
		Resident Totals					0.00		819.00	819.00	0.00		0.00							819.00
1018	4	A Plus,	Cur																	
		Occupies:		12/14/2004	Term:															
		Last Pymt:		12/29/2004																
		Expires:		3/13/2005																
		Resident Totals					0.00		810.00	0.00	470.32		470.32							0.00
1018		Vacancy Adjustment	V																	
																				379.68
1021	4	Gehring, Edward	Cur sec				200.00													
		Occupies:		7/1/2004	Term:	10														
		Last Pymt:		12/31/2004																
		Expires:		4/30/2005																
		Resident Totals					200.00		1,110.00	0.00	1,110.00		2,220.00							-1,110.00
1022		Vacancy Adjustment	V																	
																				865.00
1023	2	Mahaffey, Tristan	Cur																	
		Occupies:		7/27/2002	Term:	12														
		Last Pymt:		12/6/2004																
		Expires:		4/30/2005																
		Resident Totals					0.00		912.00	0.00	912.00		912.00							0.00
1024	3	Mickelson, Toby	Cur sec				100.00													
		Occupies:		6/7/2003	Term:	12														
		Last Pymt:		12/31/2004																
		Expires:		6/30/2005																
		Resident Totals					100.00		945.00	0.00	945.00		1,890.00							-945.00
1025	6	Cason, Elayne	Cur SEC				1,160.00													
		Occupies:		10/30/2004	Term:	12														
		Last Pymt:		12/6/2004																
		Expires:		10/31/2005																
		Resident Totals					1,160.00		960.00	0.00	960.00		960.00							0.00
1026	1	Bryan, Marty	Old																	
		Occupies:		11/23/2001	Term:	12														
		Expires:		11/30/2004																
		Notice:		6/27/2004																
		Vacate:		7/27/2004	Why:	@@														
		Resident Totals					0.00		0.00	1,980.26	0.00	0.00								1,980.26
1026	2	Caruso, Karen	Cur PET				200.00													
		Occupies:		10/8/2004	Term:	18														
		Last Pymt:		12/2/2004																
		Expires:		4/30/2006																
		Resident Totals					400.00		1,000.00	0.00	1,000.00		2,000.00							-1,000.00
1027	4	Krall, Nicole	Cur PET				200.00													
		Occupies:		2/1/2004	Term:	6														
		Last Pymt:		12/6/2004																
		Expires:		4/30/2005																
		Resident Totals					400.00		1,110.00	0.00	1,110.00		1,110.00							0.00

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Database: SQLBEACHMRJ		RM Rent Roll				Page: 22					
Property: LG		The Beach Company				Date: 1/4/2005					
Report Period: 12/04		Long Grove at Seaside Farms				Time: 01:45 PM					
Unit Id	Lease Id	Name	Status	Security Balance	Charge Code	Recurring Rents	Beginning Balance	Charges Amount Date	Payments Amount Date	Ending Balance	
Building: LG - All Apartments											
1028	7	Kulchuck, Tisha	Cur	PET	200.00	RNT Residential Rent	822.00	822.00	12/01/04	822.00	12/02/04
Occupy:		7/23/2004	Term:	12	SEC	200.00	RNT Residential Rent			822.00	12/01/04
Last Pymt:		12/31/2004									
Expires:		7/31/2005									
Resident Totals				400.00		822.00	0.00	822.00		1,644.00	-822.00
1111	3	Moorachlan, Mary	Cur	SEC	200.00	RNT Residential Rent	1,090.00	1,090.00	12/01/04	1,090.00	12/02/04
Occupy:		5/17/2004	Term:	12						1,090.00	12/01/04
Last Pymt:		12/31/2004									
Expires:		5/31/2005									
Resident Totals				200.00		1,090.00	0.00	1,090.00		2,180.00	-1,090.00
1112	1	Breland, Patricia	Cur	SEC	300.00	RNT Residential Rent	789.00	789.00	12/01/04	789.00	12/02/04
Occupy:		4/1/2001	Term:	12							
Last Pymt:		12/6/2004									
Expires:		6/30/2005									
Resident Totals				300.00		789.00	0.00	789.00		789.00	0.00
1113	1	Thornton, Blakeley	Cur	SEC	300.00	MTM Month To Month	100.00	100.00	12/01/04	100.00	12/01/04
Occupy:		5/18/2001	Term:	MTM						945.00	12/02/04
Last Pymt:		12/6/2004									
Resident Totals				300.00		1,045.00	0.00	1,045.00		1,045.00	0.00
1114	3	Johnson, Scott	Cur			EMP Employee rent	455.00	455.00	12/01/04		
Occupy:		8/1/2003	Term:	MTM						455.00	12/02/04
Last Pymt:		12/6/2004									
Resident Totals				0.00		910.00	0.00	910.00		455.00	0.00
1115	3	Ware on Earth,	Cur			COR Corp. Rental Incc	60.00	60.00	12/01/04	60.00	12/02/04
Occupy:		11/16/2002	Term:	12						945.00	12/02/04
Last Pymt:		12/2/2004									
Expires:		6/31/2005									
Resident Totals				0.00		1,005.00	-5.50	1,005.00		1,005.00	-5.50
1116	2	Gulffre, William	Old			RNT Residential Rent	855.00				
Occupy:		4/30/2002	Term:	12						855.00	
Expires:		5/31/2005									
Notice:		10/1/2004									
Vacate:		10/31/2004	Why: @@								
Resident Totals				0.00		855.00	855.00	0.00		0.00	855.00
1118		Vacancy Adjustment				V Vacancy		905.00			
Resident Totals				0.00		855.00	855.00	0.00		0.00	855.00
1117	2	Harrington, William	Cur	SEC	200.00	PPR Prepaid Rent				1,090.00	12/15/04
Occupy:		5/10/2004	Term:	8						1,090.00	12/02/04
Last Pymt:		12/2/2004									
Expires:		1/31/2005									
Resident Totals				200.00		1,090.00	0.00	1,090.00		2,180.00	-1,090.00
1118	2	Crean, Amanda	Cur	PET	200.00	RNT Residential Rent	789.00	789.00	12/01/04	789.00	12/02/04
Occupy:		4/23/2004	Term:	12	SEC	200.00					
Last Pymt:		12/6/2004									
Expires:		4/30/2005									
Resident Totals				400.00		789.00	0.00	789.00		789.00	0.00
1121	2	Kim, Young Yo	Cur	SEC	100.00	RNT Residential Rent	1,115.00	1,115.00	12/01/04	1,115.00	12/02/04
Occupy:		6/15/2003	Term:	12							
Last Pymt:		12/6/2004									
Expires:		6/30/2005									
Resident Totals				100.00		1,115.00	0.00	1,115.00		1,115.00	0.00

RM Rent Roll
 The Beach Company
 Long Grove at Seaside Farms

Building: LG - All Apartments

Id	Id	Name	Status	Security Balance	Charge Code	Recurring Rents	Beginning Balance	Charges Amount Date	Payments Amount Date	Ending Balance
1122	8	Prough, Mark	Cur SEC	200.00						
Occupancy: 12/28/2004 Term: 9										
Last Pymt: 12/29/2004										
Expires: 9/30/2005										
					APP Application Fee			50.00 12/12/04	50.00CR 12/12/04	
					PAS Beach Pass Fee			200.00 12/15/04	200.00CR 12/15/04	
					PPR Prepaid Rent				812.26CR 12/28/04	-812.26
					RNT Residential Rent	808.00		104.26V 12/28/04		104.26
Resident Totals				200.00		808.00	0.00	354.26	1,162.26	-808.00
1122		Vacancy Adjustment	V		V Vacancy			745.74		
1123	2	Estep, Jeffrey	Cur SEC	100.00						
Occupancy: 8/1/2003 Term: 12										
Last Pymt: 12/31/2004										
Expires: 7/31/2005										
					RNT Residential Rent	970.00		970.00 12/01/04	970.00CR 12/01/04	
					RNT Residential Rent				970.00CR 12/15/04	-970.00
Resident Totals				100.00		970.00	0.00	970.00	1,940.00	-970.00
1124	2	Deft, John	Cur SEC	200.00						
Occupancy: 2/28/2004 Term: 12										
Last Pymt: 12/2/2004										
Expires: 2/28/2005										
					RNT Residential Rent	884.00		884.00 12/01/04	884.00CR 12/02/04	
Resident Totals				200.00		884.00	0.00	884.00	884.00	0.00
1125	3	Moltzen, Elizabeth	Cur PET SEC	200.00 100.00						
Occupancy: 6/14/2003 Term: 12										
Last Pymt: 12/2/2004										
Expires: 6/30/2005										
					RNT Residential Rent	965.00		965.00 12/01/04	482.50CR 12/02/04	
					RNT Residential Rent				482.50CR 12/02/04	
Resident Totals				300.00		965.00	0.00	965.00	965.00	0.00
1126	3	A+ Accommodations,	Cur							
Occupancy: 5/16/2003 Term: 3										
Last Pymt: 12/6/2004										
Expires: 1/31/2004										
					RNT Residential Rent	890.00		890.00 12/01/04	890.00CR 12/05/04	
Resident Totals				0.00		890.00	0.00	890.00	890.00	0.00
1127	5	Smith, David	Cur PET SEC	400.00 100.00						
Occupancy: 8/27/2003 Term: 9										
Last Pymt: 12/31/2004										
Expires: 1/31/2005										
					RNT Residential Rent	1,059.00		1,059.00 12/01/04	1,059.00CR 12/03/04	
					RNT Residential Rent				1,059.00CR 12/01/04	-1,059.00
Resident Totals				500.00		1,059.00	0.00	1,059.00	2,118.00	-1,059.00
1128	4	Wiesa, Nelta	Old SEC							
Occupancy: 2/6/2004 Term: 6										
Expires: 11/12/2004										
Notice: 10/13/2004										
Vacate: 11/13/2004 Why: PF										
					LAT Late Fee			96.00		96.00
					MTM Month To Month	100.00		43.33		43.33
					RNT Residential Rent	850.00		373.33 -200.00 11/28/04		173.33
Resident Totals				0.00		950.00	512.66	-200.00	0.00	312.66
1128	5	Gowder, Tammy	Cur							
Occupancy: 12/28/2004 Term: 12										
Last Pymt: 12/31/2004										
Expires: 12/31/2005										
					APP Application Fee			50.00 12/15/04	50.00CR 12/15/04	
					PAS Beach Pass Fee			200.00 12/15/04	200.00CR 12/15/04	
					PPR Prepaid Rent				959.68CR 12/31/04	-959.68
					RNT Residential Rent	850.00		109.68V 12/28/04		109.68
Resident Totals				0.00		850.00	0.00	359.68	1,209.68	-850.00
1128		Vacancy Adjustment	V		V Vacancy			740.32		
1211	2	Wheeler, Evan	Cur PET SEC	200.00 100.00						
Occupancy: 8/20/2003 Term: 12										
Last Pymt: 12/31/2004										
Expires: 8/31/2005										
					RNT Residential Rent	1,040.00		1,040.00 12/01/04	1,040.00CR 12/02/04	
					RNT Residential Rent				1,040.00CR 12/01/04	-1,040.00
Resident Totals				300.00		1,040.00	0.00	1,040.00	2,080.00	-1,040.00
1212	4	Grubbs, Larry	Cur SEC	200.00						
Occupancy: 8/9/2004 Term: 9										
Last Pymt: 12/6/2004										
Expires: 5/31/2005										
Notice: 12/8/2004										
Vacate: 1/7/2005 Why: @@										
					RNT Residential Rent	810.00		810.00 12/01/04	810.00CR 12/05/04	
					TER Termination Fee			1,215.00 12/15/04		1,215.00
Resident Totals				200.00		810.00	0.00	2,025.00	810.00	1,215.00

Report Period: 12/04
 Unit Lessa
 Id Id Name Status Security Balance Charge Code Recurring Rents Beginning Balance Charges Amount Date Payments Amount Date Ending Balance

Building: LG - All Apartments

1213	4	Pollock, Ben	Cur	PET	200.00	RNT Residential Rent	945.00		945.00	12/01/04	945.00	CR	12/03/04	
		Occupies:			11/12/2004	Term:	8	SEC	200.00					
		Last Pymt:			12/3/2004									
		Expires:			7/31/2005									
Resident Totals					400.00		945.00	0.00	945.00		945.00		0.00	
1214	1	Cadden, Pamela	Cur	SEC	300.00	RNT Residential Rent	900.00		900.00	12/01/04	900.00	CR	12/08/04	
		Occupies:			6/1/2001	Term:	12							
		Last Pymt:			12/6/2004									
		Expires:			5/31/2005									
Resident Totals					300.00		900.00	0.00	900.00		900.00		0.00	
1215	2	Murray, Gretchen	Cur	PET	200.00	RNT Residential Rent	940.00		940.00	12/01/04	940.00	CR	12/02/04	
		Occupies:			3/28/2003	Term:	12	SEC	100.00					
		Last Pymt:			12/3/2004									
		Expires:			3/31/2005									
Resident Totals					300.00		940.00	0.00	940.00		940.00		0.00	
1216	3	Cashman, James	Cur	SEC	400.00	RNT Residential Rent	860.00		860.00	12/01/04	860.00	CR	12/02/04	
		Occupies:			7/26/2004	Term:	9							
		Last Pymt:			12/31/2004									
		Expires:			4/30/2005									
Resident Totals					400.00		860.00	0.00	860.00		1,720.00		-860.00	
1217	3	Braunbeck, Paul	Cur	SEC	200.00	MTM Month To Month	100.00		100.00	12/01/04	100.00	CR	12/02/04	
		Occupies:			3/15/2004	Term:	mtm							
		Last Pymt:			12/2/2004									
Resident Totals					200.00		1,195.00	0.00	1,095.00	12/01/04	1,095.00	CR	12/02/04	-1,195.00
1218	5	Gutgesell, Susan	Cur	SEC	200.00	PPR Prepaid Rent					830.00	CR	12/01/04	-830.00
		Occupies:			10/15/2004	Term:	12							
		Last Pymt:			12/2/2004									
		Expires:			10/31/2005									
Resident Totals					200.00		830.00	0.00	830.00		1,660.00		-830.00	
1221	4	Baldus, Peter	Cur	SEC	100.00	PPR Prepaid Rent					1,110.00	CR	12/02/04	-1,110.00
		Occupies:			11/1/2003	Term:	17							
		Last Pymt:			12/6/2004									
		Expires:			3/31/2005									
Resident Totals					100.00		1,110.00	0.00	1,110.00		2,220.00		-1,110.00	
1222	4	Barr, Katie	Cur	PET	200.00	RNT Residential Rent	820.00		820.00	12/01/04	820.00	CR	12/02/04	
		Occupies:			6/3/2004	Term:	12	SEC	200.00					
		Last Pymt:			12/2/2004									
		Expires:			6/30/2005									
Resident Totals					400.00		820.00	0.00	820.00		820.00		0.00	
1223	2	Marshall, Ashley	Cur	SEC	200.00	RNT Residential Rent	922.00		922.00	12/01/04	460.00	CR	12/08/04	
		Occupies:			6/27/2004	Term:	8							
		Last Pymt:			12/8/2004									
		Expires:			7/31/2005									
Resident Totals					200.00		922.00	-4.00	922.00		920.00		-2.00	
1224	2	Bowker, John	Cur			RNT Residential Rent	884.00		884.00	12/01/04	883.00	CR	12/02/04	
		Occupies:			10/31/2002	Term:	12							
		Last Pymt:			12/8/2004									
		Expires:			10/31/2005									
Resident Totals					0.00		884.00	-1.00	884.00		883.00		0.00	
1225	2	Pfander, James	Cur	PET	200.00	RNT Residential Rent	970.00		970.00	12/01/04	970.00	CR	12/02/04	
		Occupies:			10/8/2004	Term:	11	SEC	200.00					
		Last Pymt:			12/2/2004									
		Expires:			9/30/2005									
Resident Totals					400.00		970.00	0.00	970.00		970.00		0.00	

RM Rent Roll
 The Beach Company
 Long Grove at Seaside Farms

Building: LG - All Apartments

Id	Id	Name	Status	Security Balance	Charge Code	Recurring Rents	Beginning Balance	Charges Amount Date	Payments Amount Date	Ending Balance
1226	3	Cross Country, 1226	Cur PET	200.00						
Occupancy: 6/25/2004 Term: 3 Last Pymt: 12/2/2004 Expires: 9/30/2004										
					PPR Prepaid Rent				895.00Cr 12/04	-895.00
					RNT Residential Rent	895.00		895.00 12/04	895.00Cr 12/04	
					UAC Unapplied Credit		-0.33			-0.33
Resident Totals				200.00		895.00	-0.33	895.00	1,790.00	-895.33
1227	3	Reames, Lauren	Cur SEC	200.00						
Occupancy: 7/14/2004 Term: 12 Last Pymt: 12/31/2004 Expires: 7/31/2005										
					RNT Residential Rent	1,120.00		1,120.00 12/04	1,120.00Cr 12/04	
					RNT Residential Rent				1,120.00Cr 12/04	-1,120.00
Resident Totals				200.00		1,120.00	0.00	1,120.00	2,240.00	-1,120.00
1228	2	Johnson, Brian	Old		DMGDamaged Ch Fe		63.39			63.39
Occupancy: 6/1/2002 Term: 12 Expires: 5/25/2004 Notice: 4/30/2004 Vacate: 5/24/2005 Why: @@@										
Resident Totals				0.00		0.00	63.39	0.00	0.00	63.39
1228	3	Tarpley, Robin	Cur SEC	200.00						
Occupancy: 5/26/2004 Term: 8 Last Pymt: 12/2/2004 Expires: 1/31/2005										
					PPR Prepaid Rent				798.00Cr 12/04	-798.00
					RNT Residential Rent	798.00		798.00 12/04	798.00Cr 12/04	
Resident Totals				200.00		798.00	0.00	798.00	1,596.00	-798.00
1311	3	Hardy, Thomas	Old		DMGDamaged Ch Fe		820.00			820.00
Occupancy: 9/19/2003 Term: m/m Expires: 10/12/2004 Notice: 10/12/2004 Vacate: 10/12/2004 Why: TE										
					LAT Late Fee		223.10			223.10
					LEG Legal Fees		50.00			50.00
					MTM Month To Month	100.00	38.71			38.71
					RNT Residential Rent	1,095.00	1,159.86			1,159.86
Resident Totals				0.00		1,195.00	2,291.67	0.00	0.00	2,291.67
1311	4	Bendler, Erik	Cur SEC	200.00						
Occupancy: 11/24/2004 Term: 12 Last Pymt: 12/6/2004 Expires: 11/30/2005										
					RNT Residential Rent	1,095.00	255.50	1,095.00 12/04	255.50Cr 12/04	
					RNT Residential Rent				1,095.00Cr 12/04	
Resident Totals				200.00		1,095.00	255.50	1,095.00	1,350.50	0.00
1312	3	Vista International, 1312	Cur SEC	200.00						
Occupancy: 1/17/2004 Term: 12 Last Pymt: 12/31/2004 Expires: 1/31/2005										
					RNT Residential Rent	808.00		808.00 12/04	808.00Cr 12/04	
					RNT Residential Rent				808.00Cr 12/04	-808.00
Resident Totals				200.00		808.00	0.00	808.00	1,616.00	-808.00
1313	2	Bresnahan, Eric	Cur SEC	100.00						
Occupancy: 7/8/2003 Term: 9 Last Pymt: 12/3/2004 Expires: 4/30/2005										
					COR Corp. Rental Incr	791.00		791.00 12/04	791.00Cr 12/04	
					PPR Prepaid Rent				1,684.00Cr 12/04	-1,684.00
					RNT Residential Rent	893.00		893.00 12/04	893.00Cr 12/04	
Resident Totals				100.00		1,684.00	0.00	1,684.00	3,368.00	-1,684.00
1314	4	ACRS, 1314	Cur PET	200.00						
Occupancy: 4/24/2004 Term: 3 Last Pymt: 12/6/2004 Expires: 7/31/2004										
					RNT Residential Rent	895.00	149.17	895.00 12/04	149.17Cr 12/04	
					RNT Residential Rent				895.00Cr 12/04	
					RNT Residential Rent				865.18Cr 12/04	-865.18
					UAC Unapplied Credit				29.82Cr 12/04	-29.82
Resident Totals				200.00		895.00	149.17	895.00	1,939.17	-895.00
1315	2	Edison Foard, Inc.	Cur SEC	100.00						
Occupancy: 12/10/2001 Term: MTM Last Pymt: 12/6/2004										
					MTM Month To Month	100.00		100.00 12/04	100.00Cr 12/04	
					RNT Residential Rent	945.00		945.00 12/04	945.00Cr 12/04	
Resident Totals				100.00		1,045.00	0.00	1,045.00	1,045.00	0.00

Database: SQLBEACHMRI		RM Rent Roll				Page: 26			
Property: LG		The Beach Company				Date: 1/4/2005			
Report Period: 12/04		Long Grove at Seaside Farms				Time: 01:45 PM			
Unit	Lease	Status	Security	Recurring	Beginning	Charges	Payments	Ending	
Id	Id	Name	Balance	Charge Code	Rents	Balance	Amount	Date	
Building: LG - All Apartments									
1316	5 A Plus, 1316	Cur		RNT Residential Rent	895.00		519.68	12/14/04	
	Occupancy:	12/14/2004	Term:				477.44	CR 12/20/04	
	Last Pymt:	12/20/2004							
	Expires:	3/13/2005						42.24	
Resident Totals			0.00		895.00	0.00	519.68	477.44	42.24
1316	Vacancy Adjustment			V Vacancy			405.32		
1317	1 Crawford, James	Cur SEC	100.00	EMP Employee rent	218.00		218.00	12/01/04	
	Occupancy:	3/25/2001	Term:	MTM	RNT Residential Rent	872.00	872.00	12/01/04	
	Last Pymt:	12/12/2004					672.00	CR 12/12/04	
Resident Totals			100.00		1,090.00	0.00	1,090.00	872.00	0.00
1318	6 Weathers, Sandra	Old PET	200.00	RNT Residential Rent	845.00		845.00	12/01/04	
	Occupancy:	12/3/2003	Term:	12 SEC	200.00				
	Last Pymt:	12/2/2004					845.00	CR 12/02/04	
	Expires:	12/31/2004							
	Notice:	11/29/2004							
	Vacate:	12/31/2004	Why:	BH					
Resident Totals			400.00		845.00	0.00	845.00	845.00	0.00
1318	Vacancy Adjustment			V Vacancy			0.00		
1321	3 Gomez, Michael	Cur SEC	100.00	RNT Residential Rent	1,064.00		1,064.00	12/01/04	
	Occupancy:	8/8/2003	Term:	12	RNT Residential Rent				
	Last Pymt:	12/31/2004					1,064.00	CR 12/03/04	
	Expires:	8/31/2005						-1,064.00	
Resident Totals			100.00		1,064.00	0.00	1,064.00	2,128.00	-1,064.00
1322	4 Williams, Marlon	Cur SEC	200.00	PPR Prepaid Rent					
	Occupancy:	5/27/2004	Term:	8	RNT Residential Rent	822.00	822.00	12/01/04	
	Last Pymt:	12/2/2004					822.00	CR 12/02/04	
	Expires:	1/31/2005							
	Notice:	11/18/2004							
	Vacate:	1/31/2005	Why:	@@					
Resident Totals			200.00		822.00	0.00	822.00	1,644.00	-822.00
1323	2 Sottile, Amy	Cur SEC	200.00	RNT Residential Rent	945.00		945.00	12/01/04	
	Occupancy:	9/23/2004	Term:	12					
	Last Pymt:	12/2/2004					945.00	CR 12/02/04	
	Expires:	9/30/2005							
Resident Totals			200.00		945.00	0.00	945.00	945.00	0.00
1324	4 Midden, Pamela	Old SEC	200.00	MTM Month To Month	100.00		100.00	12/01/04	
	Occupancy:	3/28/2004	Term:	6	RNT Residential Rent	955.00	955.00	12/01/04	
	Last Pymt:	12/6/2004					955.00	CR 12/06/04	
	Expires:	12/31/2004							
	Notice:	11/29/2004							
	Vacate:	12/31/2004	Why:	BH					
Resident Totals			200.00		1,055.00	0.00	1,055.00	1,055.00	0.00
1324	Vacancy Adjustment			V Vacancy			0.00		
1325	4 Moran, Heather	Cur		EMP Employee rent	194.00		194.00	12/01/04	
	Occupancy:	2/14/2003	Term:	min	LAT Late Fee	27.20			
	Last Pymt:	12/6/2004			RNT Residential Rent	776.00	776.00	12/01/04	
							769.80	CR 12/06/04	
								6.20	
Resident Totals			0.00		970.00	27.20	970.00	797.00	6.20
1326	4 Blau, Thomas	Cur SEC	100.00	PPR Prepaid Rent					
	Occupancy:	8/15/2003	Term:	9	PPR Prepaid Rent				
	Last Pymt:	11/30/2004			RNT Residential Rent	950.00	950.00	12/01/04	
	Expires:	5/31/2005					950.00	CR 12/01/04	
								-950.00	
Resident Totals			100.00		950.00	-950.00	950.00	950.00	-950.00

Unit Id	Lease Id	Name	Status	Security Balance	Charge Code	Recurring Rents	Beginning Balance	Charges Amount Date	Payments Amount Date	Ending Balance
Building: LG - All Apartments										
1327	5	ACRS, 1327	Cur			1,095.00		1,095.00	12/01/04	1,095.00CR 12/03/04
		Occupies:								1,085.00CR 12/01/04 -1,095.00
		Last Pymt:								
		Expires:								
Resident Totals				0.00		1,095.00	0.00	1,095.00		2,190.00
1328	2	McKay, Shawn	Cur PET	200.00	RNT Residential Rent	850.00		850.00	12/01/04	850.00CR 12/02/04
		Occupies:								
		Last Pymt:								
		Expires:								
Resident Totals				400.00		850.00	0.00	850.00		850.00
1411	3	Sottile, Ginger	Cur		RNT Residential Rent	1,095.00		1,095.00	12/01/04	1,095.00CR 12/02/04
		Occupies:								
		Last Pymt:								
		Expires:								
Resident Totals				0.00		1,095.00	0.00	1,095.00		1,095.00
1412	3	Sandoz, Karen	Cur PET	300.00	RNT Residential Rent	825.00		825.00	12/01/04	825.00CR 12/02/04
		Occupies:								
		Last Pymt:								
		Expires:								
Resident Totals				300.00		825.00	0.00	825.00		825.00
1413	4	Blau, Chris	Cur SEC	200.00	RNT Residential Rent	945.00		945.00	12/01/04	945.00CR 12/02/04
		Occupies:								
		Last Pymt:								
		Expires:								
Resident Totals				200.00		945.00	0.00	945.00		945.00
1414	4	DeLett, Kristen	Cur SEC	400.00	RNT Residential Rent	905.00		905.00	12/01/04	905.00CR 12/02/04
		Occupies:								
		Last Pymt:								
		Expires:								
Resident Totals				400.00		905.00	0.00	905.00		905.00
1415	2	Purcell, Amy	Cur SEC	200.00	RNT Residential Rent	898.00		898.00	12/01/04	416.00CR 12/02/04
		Occupies:								482.00CR 12/02/04
		Last Pymt:								
		Expires:								
Resident Totals				200.00		898.00	0.00	898.00		898.00
1416	3	Longnecker, Burton	Cur SEC	200.00	PPR Prepaid Rent					900.00CR 12/01/04 -900.00
		Occupies:								
		Last Pymt:								
		Expires:								
Resident Totals				200.00		900.00	0.00	900.00		1,800.00
1417	2	Snyder, Andrew	Cur PET	400.00	RNT Residential Rent	1,059.00		1,059.00	12/01/04	1,059.00CR 12/02/04
		Occupies:								
		Last Pymt:								
		Expires:								
Resident Totals				600.00		1,059.00	0.00	1,059.00		1,059.00
1418	3	Wood, Bobby	Cur PET	300.00	RNT Residential Rent	830.00		830.00	12/01/04	825.00CR 12/02/04
		Occupies:								5.00CR 12/02/04
		Last Pymt:								-5.00PR 12/02/04
		Expires:								
Resident Totals				300.00		830.00	-5.00	830.00		825.00
1421	6	Brown, Roderick	Old SEC		DMGDamaged Ch Fe					25.00 12/15/04
					DMGDamaged Ch Fe					15.00 12/15/04
					DMGDamaged Ch Fe					-25.00s 12/15/04
					DMGDamaged Ch Fe					-15.00s 12/15/04
					RNT Residential Rent	1,120.00		1,120.00	12/01/04	433.55CR 12/02/04
					RNT Residential Rent					80.00CR 12/02/04
					RNT Residential Rent					-586.45v 12/15/04
					RNT Residential Rent					-80.00PR 12/15/04

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Property: LG	The Beach Company	Date: 1/1/2005
	Long Grove at Seaside Farms	Time: 01:45 PM
Report Period: 12/04		
Unit Lease	Security	
Id	Id	Name
	Status	Balance
	Charge Code	Recurring Rents
	Beginning Balance	Charges Amount Date
	Payments Amount Date	Ending Balance

Building: LG - All Apartments

						TER Termination Fee	1,680.00	12/20/04	1,680.00	CR	12/20/04
						UAC Unapplied Credit	-80.00		-80.00	CR	12/20/04
Occupancy:	9/4/2004	Term: 9									
Last Pymt:	12/8/2004										
Expires:	6/30/2005										
Notice:	11/12/2004										
Vacate:	12/12/2004	Why: @@									
Resident Totals			0.00		1,120.00	-80.00	2,113.55		2,033.55		0.00
1421	5	Gulf Stream Consl.	Old		RNT Residential Rent	1,120.00	469.68				469.68
Occupancy:	1/23/2004	Term: 6									
Expires:	1/31/2005										
Notice:	7/13/2004										
Vacate:	8/13/2004	Why: @@									
Resident Totals			0.00		1,120.00	469.68	0.00		0.00		469.68
1421		Vacancy Adjustment	V	Vacancy			686.45				
1422	4	Rains, Brian	Cur	SEC	200.00	PPR Prepaid Rent			840.00	CR	12/20/04
Occupancy:	5/25/2004	Term: 8				RNT Residential Rent	840.00		840.00	CR	12/20/04
Last Pymt:	12/6/2004										
Expires:	1/31/2005										
Resident Totals			200.00			840.00	0.00	840.00	1,680.00		-840.00
1423	6	McKee, Derek	Cur	SEC	200.00	PPR Prepaid Rent			481.00	CR	12/20/04
Occupancy:	10/5/2004	Term: 12				RNT Residential Rent	922.00		922.00	CR	12/20/04
Last Pymt:	12/2/2004					RNT Residential Rent		12/21/04	536.47	CR	12/20/04
Expires:	10/31/2005					RNT Residential Rent			75.47	CR	12/20/04
						RNT Residential Rent			310.06	CR	12/20/04
						RNT Residential Rent			446.99	CR	12/21/04
						UAC Unapplied Credit	-14.01		0.01	CR	12/22/04
Resident Totals			200.00			922.00	-14.01	922.00	1,830.00		-922.01
1424	4	Hughes, Mark	Cur	SEC	200.00	PPR Prepaid Rent			884.00	CR	12/20/04
Occupancy:	11/23/2004	Term: 12				RNT Residential Rent	884.00		884.00	CR	12/20/04
Last Pymt:	12/2/2004										
Expires:	11/30/2005										
Resident Totals			200.00			884.00	0.00	884.00	1,768.00		-884.00
1425	5	Manning, Christophe	Cur	PET	200.00	MTM Month To Month	100.00		100.00		12/21/04
Occupancy:	6/29/2003	Term:		SEC	100.00	MTM Month To Month			-100.00		12/20/04
Last Pymt:	12/31/2004					RNT Residential Rent	970.00		970.00	CR	12/21/04
Expires:	7/31/2005					RNT Residential Rent			970.00	CR	12/21/04
Resident Totals			300.00			1,070.00	0.00	970.00	1,940.00		-970.00
1426	3	James, Will	Cur	PET	200.00	LAT Late Fee	92.50	12/20/04	92.50	CR	12/15/04
Occupancy:	6/1/2004	Term: 12		SEC	1,125.00	LEG Legal Fees	40.00	12/15/04	35.00	CR	12/15/04
Last Pymt:	12/15/2004					RNT Residential Rent	925.00		925.00	CR	12/15/04
Expires:	5/31/2005										
Resident Totals			1,325.00			925.00	0.00	1,057.50	1,052.50		5.00
1427	2	Cannon, Josephine	Old			DMGDamaged Ch Fe	95.00				95.00
Occupancy:	8/16/2003	Term: 9				RNT Residential Rent	1,110.00				
Expires:	5/31/2004										
Notice:	4/10/2004										
Vacate:	5/31/2004	Why: @@									
Resident Totals			0.00			1,110.00	95.00	0.00	0.00		95.00
1427	3	Cox, Greta	Cur	PET	200.00	LAT Late Fee	105.90		105.90	CR	12/20/04
Occupancy:	6/7/2004	Term: 12		SEC	1,315.00	LEG Legal Fees	40.00		40.00	CR	12/20/04
Last Pymt:	12/3/2004					RNT Residential Rent	1,059.00	1,059.00	1,059.00	CR	12/20/04
Expires:	6/30/2005					RNT Residential Rent			1,059.00	CR	12/20/04
Resident Totals			1,515.00			1,059.00	1,204.90	1,059.00	2,263.90		0.00

BeachCo 000362

Report Period: 12/04
 Unit Lease
 Id Id Name Status Security Balance Charge Code Recurring Rents Beginning Balance Charges Amount Date Payments Amount Date Ending Balance

Building: LG - All Apartments

1428	3	Hollington, Jennifer	Cur	PET	200.00	CRD Access Card Res				20.00	12/20/04	20.00	CR	12/20/04	
		Occupy: 7/9/2003	Term:	mtm	SEC	100.00	LAT Late Fee			94.50	12/05/04	10.00	CR	12/12/04	
		Last Pymt: 12/20/2004					LAT Late Fee					84.50	CR	12/20/04	
							MTM Month To Month	100.00	100.00	100.00	12/01/04	100.00	CR	12/08/04	
							MTM Month To Month					100.00	CR	12/12/04	
							RNT Residential Rent	845.00		845.00	12/01/04	5.00	CR	12/08/04	
							RNT Residential Rent			27.10	12/08/04				
							RNT Residential Rent					10.00	CR	12/08/04	
							RNT Residential Rent					22.10	CR	12/09/04	
							RNT Residential Rent					835.00	CR	12/12/04	
							UAC Unapplied Credit		-137.10			-5.00	PR	12/08/04	
							UAC Unapplied Credit					-32.10	PR	12/08/04	
							UAC Unapplied Credit					-100.00	PR	12/08/04	
							UAC Unapplied Credit					1.00	CR	12/20/04	-1.00
Resident Totals					300.00			945.00	-37.10	1,086.80		1,050.50			-1.00
1511	1	Rodgers, Frank	Cur	SEC	300.00	PPR Prepaid Rent			-1,090.00			-1,090.00	PR	11/20/04	
		Occupy: 6/1/2001	Term:	12		PPR Prepaid Rent						3,270.00	CR	12/22/04	-3,270.00
		Last Pymt: 11/30/2004				RNT Residential Rent	1,090.00		1,090.00	12/01/04	1,090.00	CR	11/20/04		
		Expires: 6/30/2005													
Resident Totals					300.00			1,090.00	-1,090.00	1,090.00		3,270.00			-3,270.00
1512	4	Russell, Cytheras	Cur	SEC	200.00	RNT Residential Rent	825.00			825.00	12/01/04	825.00	CR	12/08/04	
		Occupy: 12/29/2003	Term:	12											
		Last Pymt: 12/6/2004													
		Expires: 12/31/2005													
Resident Totals					200.00			825.00	0.00	825.00		825.00			0.00
1513	3	A Plus, 1513	Cur			PPR Prepaid Rent						128.00	CR	12/20/04	-128.00
		Occupy: 12/27/2004	Term:			RNT Residential Rent	945.00		152.42	12/27/04					152.42
		Last Pymt: 12/20/2004													
		Expires: 3/26/2005													
Resident Totals					0.00			945.00	0.00	152.42		128.00			28.42
1513		Vacancy Adjustment				V Vacancy				792.58					
1514	4	Henderson, Carolyn	Cur	PET	400.00	PPR Prepaid Rent			-965.00			-965.00	PR	11/20/04	
		Occupy: 9/1/2004	Term:	82	SEC	200.00	PPR Prepaid Rent					482.48	CR	12/24/04	-482.48
		Last Pymt: 12/24/2004				RNT Residential Rent	965.00		965.00	12/01/04	965.00	CR	11/20/04		
		Expires: 4/30/2005				TER Termination Fee			1,447.50	12/04/04	1,447.50	CR	12/04/04		
		Notice: 12/2/2004													
		Vacate: 1/15/2005	Why:	BH											
Resident Totals					600.00			965.00	-965.00	2,412.50		1,929.89			-482.48
1515	4	Halay, Glenn	Cur	SEC	100.00	MTM Month To Month	100.00			100.00	12/01/04	100.00	CR	12/08/04	
		Occupy: 7/27/2003	Term:			RNT Residential Rent	945.00		945.00	12/01/04	945.00	CR	12/08/04		
		Last Pymt: 12/6/2004										475.00	CR	12/08/04	
												470.00	CR	12/08/04	
Resident Totals					100.00			1,045.00	0.00	1,045.00		1,045.00			0.00
1516	3	ACRS,	Cur			RNT Residential Rent	945.00		945.00	12/01/04	945.00	CR	12/08/04		
		Occupy: 11/7/2003	Term:	3		RNT Residential Rent						189.00	CR	12/08/04	
		Last Pymt: 12/20/2004				RNT Residential Rent						756.00	CR	12/08/04	
		Expires: 2/29/2004				RNT Residential Rent						119.90	CR	12/10/04	-119.90
		Notice: 12/3/2004				UAC Unapplied Credit						63.00	CR	12/09/04	-63.00
		Vacate: 1/6/2005	Why:	@@											
Resident Totals					0.00			945.00	0.00	945.00		1,127.90			-182.80
1517	4	Valdes, Marcus	Cur	SEC	200.00	PPR Prepaid Rent						1,095.00	CR	12/20/04	-1,095.00
		Occupy: 10/28/2004	Term:	3		RNT Residential Rent	1,095.00		1,095.00	12/01/04	1,095.00	CR	12/20/04		
		Last Pymt: 12/2/2004													
		Expires: 1/31/2005													
Resident Totals					200.00			1,095.00	0.00	1,095.00		2,190.00			-1,095.00

Id	Id	Name	Status	Security Balance	Charge Code	Recurring Rents	Beginning Balance	Charges Amount Date	Payments Amount Date	Ending Balance
Building: LG - All Apartments										
1518	2	Young, Ralph	Cur		PPR Prepaid Rent				789.00CR 12/2/04	-789.00
		Occupy:		10/23/2002	Term: 10	RNT Residential Rent	789.00	789.00	12/2/04	789.00CR 12/2/04
		Last Pymt:		12/2/2004						
		Expires:		5/31/2005						
Resident Totals				0.00		789.00	0.00	789.00	1,578.00	-789.00
1521	2	McGill, Carol	Cur PET	300.00	PPR Prepaid Rent				1,105.00CR 12/2/04	-1,105.00
		Occupy:		2/25/2003	Term: 42	RNT Residential Rent	1,105.00	1,105.00	12/2/04	1,105.00CR 12/2/04
		Last Pymt:		12/2/2004						
		Expires:		2/28/2005						
Resident Totals				400.00		1,105.00	0.00	1,105.00	2,210.00	-1,105.00
1522	3	ACRS, 1522	Cur		RNT Residential Rent	810.00		810.00	12/2/04	810.00CR 12/2/04
		Occupy:		7/19/2004	Term: 5	RNT Residential Rent				809.10CR 12/2/04
		Last Pymt:		12/31/2004		UAC Unapplied Credit	-0.90			
		Expires:		12/31/2004						
Resident Totals				0.00		810.00	-0.90	810.00	1,619.10	-810.00
1523	3	McMaster, Alison	Old SEC		MTM Month To Month	100.00		100.00	12/2/04	
		Occupy:		11/10/2003	Term: 12	MTM Month To Month		-87.10	12/2/04	12.90
		Expires:		12/4/2004		RNT Residential Rent	960.00	960.00	12/2/04	
		Notice:		11/1/2004		RNT Residential Rent		-838.13v	12/2/04	
		Vacate:		12/4/2004	Why: @@	RNT Residential Rent		-100.00s	12/2/04	23.87
Resident Totals				0.00		1,060.00	0.00	36.77	0.00	38.77
1523	Vacancy Adjustment				V Vacancy			836.13		
1524	4	Gimenez, Rory	Cur SEC	200.00	PPR Prepaid Rent				490.00CR 12/2/04	-980.00
		Occupy:		7/30/2004	Term: 12	PPR Prepaid Rent			490.00CR 12/2/04	
		Last Pymt:		12/2/2004		RNT Residential Rent	980.00	980.00	12/2/04	490.00CR 12/2/04
		Expires:		7/31/2005		RNT Residential Rent				490.00CR 12/2/04
Resident Totals				200.00		980.00	0.00	980.00	1,960.00	-980.00
1525	2	Davine, Alexa	Cur		RNT Residential Rent	907.00		907.00	12/2/04	907.00CR 12/2/04
		Occupy:		7/1/2002	Term: 12	RNT Residential Rent				907.00CR 12/2/04
		Last Pymt:		12/31/2004						
		Expires:		1/31/2006						
Resident Totals				0.00		907.00	0.00	907.00	1,814.00	-907.00
1528	3	A+ Accommodations, 1526	Old		RNT Residential Rent	945.00	157.50	-157.50v	1/2/04	0.00
		Occupy:		7/29/2004	Term: 3					
		Expires:		10/31/2004						
		Notice:		9/25/2004						
		Vacate:		11/25/2004	Why: @@					
Resident Totals				0.00		945.00	157.50	-157.50	0.00	0.00
1526	4	Corporate Management,	Cur SEC	200.00	RNT Residential Rent	980.00		695.48v	12/2/04	695.48CR 12/2/04
		Occupy:		12/10/2004	Term: 7					
		Last Pymt:		12/12/2004						
		Expires:		7/31/2005						
Resident Totals				200.00		980.00	0.00	695.48	695.48	0.00
1526	Vacancy Adjustment				V Vacancy			462.02		
1527	3	Paradise, Sandra	Cur SEC	1,310.00	LAT Late Fee		105.50	105.50	12/2/04	105.50CR 12/2/04
		Occupy:		8/9/2004	Term: 12	LAT Late Fee				100.00CR 12/2/04
		Last Pymt:		12/12/2004		LAT Late Fee				5.50CR 12/2/04
		Expires:		8/31/2005		LEG Legal Fees	40.00	40.00	12/2/04	40.00CR 12/2/04
						RNT Residential Rent	1,055.00	1,055.00	12/2/04	1,055.00CR 12/2/04
						RNT Residential Rent				1,055.00CR 12/2/04
Resident Totals				1,310.00		1,055.00	1,200.50	1,160.50	2,361.00	0.00

Building: LG - All Apartments

1528	6	DeBruin, Amanda	Cur	PET	200.00	RNT Residential Rent	798.00	798.00	12/1/04	798.00CR	12/31/04	0.00	
Occupancy:													
Last Pymt:					200.00								
Expires:													
Resident Totals					400.00		798.00	0.00	798.00		798.00	0.00	
1611	4	Wilcox, Karen	Cur	SEC	200.00	LAT Late Fee	109.00				109.00CR	12/31/04	-109.00
Occupancy:													
Last Pymt:						RNT Residential Rent	1,090.00	1,090.00	12/1/04	881.00CR	12/31/04	-109.00	
Expires:													
Resident Totals					200.00		1,090.00	109.00	1,090.00		1,090.00	109.00	
1612	3	Hodson, David	Cur	SEC	200.00	RNT Residential Rent	830.00				830.00CR	12/31/04	0.00
Occupancy:													
Last Pymt:													
Expires:													
Resident Totals					200.00		830.00	0.00	830.00		830.00	0.00	
1613	4	Hospodar, John	Cur	PET	200.00	PPR Prepaid Rent	898.00				898.00CR	12/31/04	-898.00
Occupancy:													
Last Pymt:					200.00	RNT Residential Rent	898.00	898.00	12/1/04	898.00CR	12/31/04	-898.00	
Expires:													
Resident Totals					400.00		898.00	0.00	898.00		1,796.00	-898.00	
1614	3	Gessinger, Chris	Cur	SEC	200.00	RNT Residential Rent	955.00				477.50CR	12/31/04	-477.50
Occupancy:													
Last Pymt:						RNT Residential Rent	955.00	955.00	12/1/04	477.50CR	12/31/04	-477.50	
Expires:													
Resident Totals					200.00		955.00	0.00	955.00		955.00	0.00	
1615	5	Knight, Mark	Cur	SEC	200.00	RNT Residential Rent	945.00				945.00CR	12/31/04	-945.00
Occupancy:													
Last Pymt:						RNT Residential Rent	945.00	945.00	12/1/04	945.00CR	12/31/04	-945.00	
Expires:													
Resident Totals					200.00		945.00	0.00	945.00		1,890.00	-945.00	
1616	3	West, Jenny	Cur	SEC	200.00	RNT Residential Rent	907.00				907.00CR	12/31/04	-907.00
Occupancy:													
Last Pymt:													
Expires:													
Resident Totals					200.00		907.00	0.00	907.00		907.00	0.00	
1617	3	Satterlund, sharilyn	Cur	SEC	200.00	RNT Residential Rent	1,095.00				1,095.00CR	12/31/04	-1,095.00
Occupancy:													
Last Pymt:													
Expires:													
Resident Totals					200.00		1,095.00	0.00	1,095.00		1,095.00	0.00	
1618	2	Bullock, Sarah	Cur	SEC	200.00	RNT Residential Rent	770.00				770.00CR	12/31/04	-770.00
Occupancy:													
Last Pymt:													
Expires:													
Resident Totals					200.00		770.00	0.00	770.00		770.00	0.00	
1621	3	Hewitt, John	Old			MTM Month To Month	100.00						
Occupancy:													
Expires:						RNT Residential Rent	1,110.00	285.51				285.51	
Notice:													
Vacate:													
Resident Totals					0.00		1,210.00	285.51	0.00	0.00		285.51	

Unit Id	Lease Id	Name	Status	Security Balance	Charge Code	Recurring Rents	Beginning Balance	Charges Amount Date	Payments Amount Date	Ending Balance
Building: LG - All Apartments										
1621	4	Curtis, Stacey	Cur SEC	200.00	RNT Residential Rent	1,110.00		1,110.00	1,110.00	0.00
Occupies: 10/28/2004 Term: 12										
Last Pymt: 12/6/2004										
Expires: 10/31/2005										
Resident Totals				200.00		1,110.00	0.00	1,110.00	1,110.00	0.00
1622	4	ACRS, 1622	Old		RNT Residential Rent	810.00		810.00	324.00	-10.45
Occupies: 9/11/2004 Term: 2										
Last Pymt: 12/3/2004										
Expires: 11/30/2004										
Notice: 11/12/2004										
Vacate: 12/12/2004 Why: @@@										
Resident Totals				0.00		810.00	0.00	313.55	324.00	-10.45
1622		Vacancy Adjustment	V Vacancy					496.45		
1623	3	Schulman, Elaine	Cur SEC	100.00	RNT Residential Rent	960.00		960.00	949.00	0.00
Occupies: 8/15/2003 Term: 12										
Last Pymt: 12/8/2004										
Expires: 8/31/2005										
Resident Totals				100.00		960.00	-11.00	960.00	949.00	0.00
1624	2	Von Cannon, Ashley	Cur PET	200.00	RNT Residential Rent	926.00		926.00	483.00	0.00
Occupies: 6/18/2004 Term: 12										
Last Pymt: 12/6/2004										
Expires: 6/30/2005										
Resident Totals				400.00		926.00	0.00	926.00	926.00	0.00
1625	4	Ratika, Lisa	Cur PET	200.00	RNT Residential Rent	955.00		955.00	955.00	0.00
Occupies: 5/15/2004 Term: 12										
Last Pymt: 12/2/2004										
Expires: 5/31/2005										
Resident Totals				400.00		955.00	0.00	955.00	955.00	0.00
1626	3	Gulna, Raymond	Cur SEC	200.00	RNT Residential Rent	980.00		980.00	980.00	0.00
Occupies: 2/12/2004 Term: 8										
Last Pymt: 12/8/2004										
Expires: 5/31/2005										
Resident Totals				200.00		980.00	0.00	980.00	980.00	0.00
1627	2	Nelsen, Jeffrey	Cur PET	400.00	RNT Residential Rent	1,110.00		1,110.00	370.00	0.00
Occupies: 7/24/2004 Term: 9										
Last Pymt: 12/6/2004										
Expires: 4/30/2005										
Resident Totals				600.00		1,110.00	0.00	1,110.00	1,110.00	0.00
1628	2	Clymer, Karen	Cur SEC	100.00	RNT Residential Rent	779.00		779.00	779.00	0.00
Occupies: 3/28/2003 Term: 12										
Last Pymt: 12/6/2004										
Expires: 3/31/2005										
Resident Totals				100.00		779.00	0.00	779.00	779.00	0.00
1711	3	Pax Industries, 1711	Cur SEC	200.00	CDR Corp. Rental Inc	300.00		300.00	300.00	0.00
Occupies: 10/16/2004 Term: 9										
Last Pymt: 12/31/2004										
Expires: 7/31/2005										
Resident Totals				200.00		1,395.00	0.00	1,395.00	2,780.00	-1,395.00
1712	7	Henderson, Carolyn	Cur SEC	200.00	PPR Prepaid Rent		-830.00		-830.00	0.00
Occupies: 8/1/2004 Term: 12										
Last Pymt: 11/30/2004										
Expires: 8/31/2005										
Resident Totals				200.00		830.00	-830.00	830.00	830.00	-830.00

Unit Id	Lease Id	Name	Status	Security Balance	Charge Code	Recurring Rents	Beginning Balance	Charges Amount Date	Payments Amount Date	Ending Balance
Building: LG - All Apartments										
1713	3	Kalivas, Peter	Cur SEC	200.00	RNT Residential Rent	898.00		898.00 12/01/04	898.00CR 12/02/04	
		Occupy:	10/11/2004	Term: 11						
		Last Pymt:	12/31/2004						898.00CR 12/01/04	-898.00
		Expires:	8/30/2005							
Resident Totals				200.00		898.00	0.00	898.00	1,796.00	-898.00
1714	2	Parsons, David	Cur PET	300.00	LAT Late Fee			106.50 12/05/04	106.50CR 12/06/04	
		Occupy:	10/18/2002	Term: MTM	MTM Month To Month	-100.00		100.00 12/01/04	100.00CR 12/02/04	
		Last Pymt:	12/20/2004		RNT Residential Rent	965.00		965.00 12/01/04	965.00CR 12/02/04	
					UAC Unapplied Credit				3.50CR 12/02/04	-3.50
Resident Totals				300.00		1,065.00	0.00	1,171.50	1,175.00	-3.50
1715		Vacancy Adjustment			V Vacancy			945.00		
1716	9	Cloyd, Diane	Cur PET	400.00	RNT Residential Rent	965.00		965.00 12/01/04	965.00CR 12/02/04	
		Occupy:	3/31/2004	Term: 6	SEC	200.00				
		Last Pymt:	12/2/2004							
		Expires:	6/30/2005							
Resident Totals				600.00		965.00	0.00	965.00	965.00	0.00
1717	4	Leflet, Gale	Old PET	200.00	LAT Late Fee			109.00 12/05/04	109.00CR 12/12/04	
		Occupy:	4/16/2004	Term: 8	SEC	200.00		RNT Residential Rent	1,090.00	1,090.00 12/01/04
		Last Pymt:	12/12/2004						1,090.00CR 12/12/04	
		Expires:	12/31/2004							
		Notice:	11/22/2004							
		Vacate:	12/31/2004	Why: @@						
Resident Totals				400.00		1,090.00	0.00	1,199.00	1,199.00	0.00
1717		Vacancy Adjustment			V Vacancy			0.00		
1718		Vacancy Adjustment			V Vacancy			850.00		
1721	2	Lee, Jason	Old		COR Corp. Rental Inc	25.00				
		Occupy:	5/24/2002	Term: MTM	LAT Late Fee		109.00			109.00
		Expires:	5/31/2003		NSF NSF		30.00			30.00
		Notice:	5/1/2003		RNT Residential Rent	1,090.00				
		Vacate:	5/31/2003	Why: JT						
Resident Totals				0.00		1,115.00	139.00	0.00	0.00	139.00
1721	3	Tyler, David	Cur SEC	100.00	COR Corp. Rental Inc	370.00		370.00 12/01/04	370.00CR 12/02/04	
		Occupy:	6/23/2003	Term: 9	PPR Prepaid Rent				1,425.00CR 12/02/04	-1,425.00
		Last Pymt:	12/2/2004		RNT Residential Rent	1,055.00		-1,055.00 12/01/04	1,055.00CR 12/02/04	
		Expires:	3/31/2005							
Resident Totals				100.00		1,425.00	0.00	1,425.00	2,850.00	-1,425.00
1722	4	Fashmann, Andrea	Cur SEC	200.00	RNT Residential Rent	845.00		845.00 12/01/04	845.00CR 12/02/04	
		Occupy:	8/31/2004	Term: 12	RNT Residential Rent				845.00CR 12/01/04	-845.00
		Last Pymt:	12/31/2004							
		Expires:	8/31/2005							
Resident Totals				200.00		845.00	0.00	845.00	1,690.00	-845.00
1723	2	Jespersen, George	Cur SEC	100.00	RNT Residential Rent	955.00		955.00 12/01/04	955.00CR 12/02/04	
		Occupy:	10/24/2003	Term: 7	RNT Residential Rent				955.00CR 12/01/04	-955.00
		Last Pymt:	12/31/2004							
		Expires:	5/31/2005							
Resident Totals				100.00		955.00	0.00	955.00	1,910.00	-955.00
1724	6	Hayes, Robert	Cur SEC	200.00	PPR Prepaid Rent				980.00CR 12/02/04	-980.00
		Occupy:	8/26/2004	Term: 9	RNT Residential Rent	980.00		980.00 12/01/04	980.00CR 12/02/04	
		Last Pymt:	12/2/2004							
		Expires:	5/31/2005							
Resident Totals				200.00		980.00	0.00	980.00	1,960.00	-980.00

Database: SGLBEACHMRI		RM Rent Roll				Page: 34				
Property: LG		The Beach Company				Date: 1/4/2005				
Report Period: 12/04		Long Grove at Seaside Farms				Time: 01:45 PM				
Unit	Lease		Security	Recurring	Beginning	Charges	Payments	Ending		
Id	Id	Name	Status	Balance	Charge Code	Rents	Amount Date	Amount Date	Balance	
Building: LG - All Apartments										
1725	3	Bourassa, Kenneth	Cur SEC	200.00	RNT Residential Rent	907.00	907.00 12/01/04	907.00CR 12/08/04		
Occupy:		2/21/2004	Term: 12							
Last Pymt:		12/6/2004								
Expires:		2/23/2005								
Resident Totals				200.00		907.00	0.00	907.00	907.00	0.00
1726	3	Leroy, Perry	Cur SEC	200.00	PPR Prepaid Rent	-980.00	-980.00PR 11/28/04			
Occupy:		11/11/2003	Term: 8							
Last Pymt:		11/30/2004								
Expires:		4/30/2005								
Resident Totals				200.00		980.00	-980.00	980.00	980.00	-980.00
1727	2	WESLOW, GRACE	Cur		MTM Month To Month	100.00	100.00 12/01/04	100.00CR 12/08/04		
Occupy:		6/28/2002	Term: mtn							
Last Pymt:		12/6/2004								
Expires:		8/28/2004								
Notice:		12/9/2004								
Vacate:		1/8/2005	Why: @/G							
Resident Totals				0.00		1,210.00	0.00	1,210.00	1,210.00	0.00
1728	5	Sherron, Marvin	Old SEC	200.00	COR Corp. Rental Incr	605.00	605.00 12/01/04	605.00CR 12/08/04		
Occupy:		7/21/2004	Term: 11							
Last Pymt:		12/2/2004								
Expires:		6/30/2005								
Notice:		11/29/2004								
Vacate:		12/31/2004	Why: BH							
Resident Totals				200.00		1,408.00	0.00	2,675.50	3,520.00	-844.50
1728	Vacancy Adjustment				V Vacancy	0.00				

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Property Totals	LG	Long Grove at Seaside Farms						
COR Corp. Rental Income	0.00	3,734.00	0.00	3,734.00	0.00	0.00	0.00	1.43%
RNT Residential Rent	8,293.88	233,217.47	-15.11	285,401.52	-1,015.74	-473.06	-43,362.60	89.25%
M EMP Employee rent	0.00	3,608.00	0.00	0.00	0.00	0.00	0.00	1.38%
M MOD Model Apartment	0.00	1,805.00	0.00	0.00	0.00	0.00	0.00	0.69%
M V Vacancy	0.00	18,936.13	0.00	0.00	0.00	0.00	0.00	7.25%
Total Potential	8,293.88	261,300.60	-15.11	289,135.52	-1,015.74	-473.06	-43,362.60	100.00%
Total Lost Rent		24,348.13						9.32%
CRD Access Card Replacement	0.00	20.00	0.00	20.00	0.00	0.00	0.00	
DMG Damage & Cln Fees	2,426.65	135.00	0.00	363.26	0.00	-85.00	2,113.39	
GAR Garage Rent	277.60	2,825.00	0.00	3,665.00	0.00	0.00	-552.40	
LEG Legal Fees	200.00	120.00	0.00	195.00	0.00	0.00	125.00	
MTM Month To Month	182.04	1,212.90	0.00	1,500.00	0.00	0.00	-105.06	
NSF NSF	60.00	0.00	0.00	0.00	0.00	0.00	60.00	
PAS Beach Pass Fee	0.00	1,600.00	0.00	1,600.00	0.00	0.00	0.00	
PET Pet Fee	200.00	600.00	0.00	600.00	0.00	0.00	200.00	
TER Termination Fee	3,788.50	12,423.00	0.00	10,255.00	0.00	-150.00	5,806.50	
UAC Unapplied Credit	-527.26	0.00	0.00	5,138.48	-2,026.91	0.00	-3,638.83	
UTL Utility Reimbursement	0.00	40.12	0.00	0.00	0.00	-40.12	0.00	
APP Application Fee	0.00	200.00	0.00	200.00	0.00	0.00	0.00	
LAT Late Fee	1,208.40	1,185.50	0.00	1,437.60	0.00	0.00	954.30	
PPR Prepaid Rent	-11,621.84	0.00	0.00	64,266.16	-10,159.84	0.00	-65,728.18	
Total Non Potential	-3,807.91	20,351.52	0.00	89,240.50	-12,186.75	-275.12	-60,775.26	
Totals	4,485.97	261,652.12	-15.11	378,376.02	-13,202.49	-748.18	-104,137.86	
PET Pet Deposit	17,600.00	0.00	0.00	200.00	-300.75	-99.25	17,400.00	
SEC Security Deposit	48,365.00	0.00	0.00	1,200.00	-851.07	-648.93	48,065.00	
Security Totals	65,965.00		0.00	1,400.00	-1,151.82	-748.18	65,465.00	

Description	Units / Max. I	Percent	Description	Units Percent	Description	Units Percent	Rent	378,376.02
Occupied	272	90.07%	Leases Pending	4 1.32%	Units Leased	237 78.48%	Security	1,400.00
Special Use	1	0.33%	Total Occ & Pend	276 91.39%	Month To Month	11 3.64%	Rent-NSF/PR	-13,062.25
New Construction	0	0.00%			Units Not Leased	65 21.52%	Security-NSF/PR	0.00
Vacant	29	9.60%	CM Move Outs	17 5.63%	C/M Leases Expiring	4 1.32%	Misc. Income	787.19
Total Units	302	100.00%	Future Move Outs	8 2.65%			Total Deposit	367,500.96

EXHIBIT D

SERVICE CONTRACTS

[To be delivered within 5 days of Contract execution]

LIST OF LONG GROVE SERVICE CONTRACT VENDORS

1. Allpro Pest Management
2. Apartment Finder
3. Bates Answering Service
4. Carolina Waste Services, LLC
5. Charleston Apartment Guide
6. Cintas
7. Comcast Cablevision of Carolina, Inc.
8. KeyTrak, Inc.
9. Lanier (Copy/Fax)
10. Lowcountry Vending (Coke/Vending machine)
11. Lowcountry Vending Management Group (Laundry)
12. Miracle Green
13. RENTNET part of the Homestore Network
14. Schweickart & Associates, Inc
15. Simplex

BeachCo 000371

EXHIBIT E

**FORM OF DISCLOSURE OF INFORMATION ON
LEAD-BASED PAINT AND/OR LEAD-BASED PAINT HAZARDS**
(Long Grove Apartment Community, Mount Pleasant, South Carolina)

Lead Warning Statement

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. Sellers of any interest in residential property may be required to provide the buyers with any information on lead-based paint hazards from risk assessments or inspections in Seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

Seller's Disclosure – NO PART OF THE RESIDENTIAL IMPROVEMENTS WERE BUILT PRIOR TO 1978.

(a) Presence of lead-based paint and/or lead-based paint hazards (check (i) or (ii) below):

(i) _____ Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

(ii) _____ Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b) Records and reports available to Seller (check (i) or (ii) below):

(i) _____ Seller has provided Purchaser with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

(ii) _____ Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

Purchaser's Acknowledgment (initial)

(c) _____ Purchaser has received copies of all information listed above.

(d) _____ Purchaser has received the pamphlet *Protect Your Family from Lead in Your Home*.

(e) _____ Purchaser has (check (i) or (ii) below):

- (i) _____ received a 10-day opportunity (or mutually agreed-upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards; or
- (ii) waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

Agent's Acknowledgment (initial)

(f) _____ Agent has informed Seller of Seller's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

SELLER:

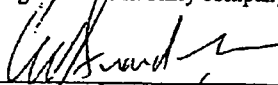
LONG GROVE AT SEASIDE FARMS, LLC, a
 Delaware limited liability company
 (SEAL)
 By: Beach Long Grove I, LLC, its Manager
 By: The Beach Co., its Manager

By: _____
 Name: _____
 Title: _____

By: _____
 Print Name: _____
 Title: _____

PURCHASER:

VISTA REALTY PARTNERS, L.L.C.,
 a Georgia limited liability company (SEAL)

By: 
 Print Name: ED DE CANTOIA
 Title: MANAGER

By: _____
 Print Name: _____
 Title: _____

- (i) _____ received a 10-day opportunity (or mutually agreed-upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards; or
- (ii) X waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

Agent's Acknowledgment (initial)

(i) _____ Agent has informed Seller of Seller's obligations under 42 U.S.C. 4852d and is aware of his/her responsibility to ensure compliance.

Certification of Accuracy

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

SELLER:

LONG GROVE AT SEASIDE FARMS, LLC, a Delaware limited liability company (SEAL)

By: Beach Long Grove I, LLC, its Manager
 By: The Beach Co., its Manager

By: [Signature]
 Name: T. D. [Signature]
 Title: Executive Vice President

By: [Signature]
 Print Name: Leonard D. [Signature]
 Title: Asst Corp Secy

PURCHASER:

VISTA REALTY PARTNERS, L.L.C., a Georgia limited liability company (SEAL)

By: _____
 Print Name: _____
 Title: _____

By: _____
 Print Name: _____
 Title: _____

EXHIBIT F

LIST OF DUE DILIGENCE MATERIALS

1. Phase I Environmental Report
2. Existing Survey
3. Set of Architectural Construction Drawings
4. Contractor/Sub-Contractor List
5. List of Transferable Warranties to Purchaser
6. Schedule of All On-Site Staff, Salaries, Benefits and Tenure
7. Schedule of Security Deposits to be Transferred to Purchaser at Closing
8. Copy of Existing Title Insurance Policy & updated Title commitment
9. Copy of Real Estate Tax Bills for 2003 and 2004
10. Intangible Property List to Convey with Sale
11. Schedule of any Pending Litigation
12. Maintenance Log for 2004
13. Permits and licenses applicable to the Property.

Seller will not provide copies of the existing tenant leases. The Leases are on site in the management office, and shall be reviewed and inventoried by Purchaser.

Purchaser has received and reviewed the inventory of all Due Diligence documents delivered and agrees that by its signature and date below, the time period (Inspection Period) outlined in paragraph four (4) of the Sales Contract commences upon January 7, 2005.

It is further understood that Purchaser is bound by the Confidentiality Agreement signed and dated _____, 2004 and should this contemplated purchase and closing not occur, Purchaser agrees to deliver to Seller the Due Diligence package in the same condition as it was received by Purchaser.

SEEN, AGREED AND ACKNOWLEDGED BY PURCHASER

VISTA REALTY PARTNERS, L.L.C., a Georgia limited liability company

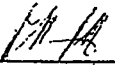
By: 
Name: Robert Holt
Title: _____
Date: 1-18-07

EXHIBIT G

PERMITTED EXCEPTIONS

[To be agreed upon by the parties within 7 business days of the Effective Date]

1. Taxes and assessments for the year 2004, and for all subsequent years.
2. Declaration Of Covenants, Conditions, And Restrictions For All Properties In Seaside Farms Plantation and Bylaws Of Seaside Farms Plantation Community Association, Inc. dated September 20, 1994 and recorded on September 23, 1994 in Book C-248, at page 229, as amended in Book M-301, Page 571 in the RMC Office aforesaid.
3. Easements and assessments as set forth in said restrictive covenants recorded in Book C-248, at page 229, as amended in Book M-301, Page 571.
4. Easement granted to Southern Bell Telephone and Telegraph Company by instrument dated January 12, 1993, and filed for record on July 6, 1994 in Book E-245, at page 611 in the RMC Office aforesaid.
5. 100' Buffer as shown on plat prepared by Thomas & Hutton Engineering Co., Inc., dated May 8, 2000, and recorded in Plat Book EE, Page 49 in the RMC Office for Charleston County.
6. Matters, including the following, as shown on plat entitled "AS-BUILT SURVEY PREPARED FOR GULF STREAM CONSTRUCTION CO., INC. LONG GROVE APARTMENTS PHASE I PARCEL G SEASIDE FARMS TOWN OF MOUNT PLEASANT CHARLESTON COUNTY, SOUTH CAROLINA" prepared by Stantec Consulting Services, Inc., dated May 25, 2000, and having latest revision date of May 22, 2003:
 - a. 10' Southern Bell Easement.
 - b. 100' Buffer.
 - c. 15' Water/Wastewater Easement.
7. Light post, electrical box, transformer, water valve, fire hydrant, water lines, utility lines, terminals, equipment, pumps, pads, gauges, drains, pipes, sewers, grates, irrigation control valve, manholes, drop inlet, cable television service boxes, telephone service box and all other equipment or related improvements shown on plat of survey by Stantec Consulting Services, Inc., dated May 25, 2000, having latest revision date of May 22, 2003, and related utility lines and possible encroachments onto them.

8. Seaside Farms Development Agreement Among The Town of Mount Pleasant, The Beach Co., The Franke Home, Inc., and Others recorded in Book X-297, Page 159 in the RMC Office for Charleston County.
9. Declaration of Restrictive Covenants (Wetlands) by The Beach Co. dated June 24, 1997, and recorded June 25, 1997, in Book C-286, Page 394 in the RMC Office for Charleston County.
10. Reservation of easement as set forth in that certain Deed from The Beach Co. to Beach Long Grove I, LLC, dated December 21, 1998, and recorded December 23, 1998, in Book E-317, Page 125 in the RMC Office for Charleston County.
11. Title to Water and Wastewater Systems and Grants of Easement from Beach Long Grove I, LLC to the Commissioners of Public Works of the Town of Mt. Pleasant recorded on August 5, 1999, in Book Z-331, Page 556 in the RMC Office for Charleston County.
12. Grant of Perpetual Easement from Beach Long Grove I, LLC, to the Commissioners of Public Works of the Town of Mt. Pleasant recorded on August 5, 1999, in Book A-332, Page 501 in the RMC Office for Charleston County.
13. Grant of Perpetual Easement from Beach Long Grove I, LLC, to the Commissioners of Public Works of the Town of Mt. Pleasant recorded on August 5, 1999, in Book A-332, Page 505 in the RMC Office for Charleston County.
14. Title to Water and Wastewater Systems and Grants of Easements from The Beach Co. to the Commissioners of Public Works of the Town of Mt. Pleasant recorded on August 5, 1999, in Book Z-331, Page 544 in the RMC Office for Charleston County.
15. Easement from The Beach Co. to South Carolina Electric & Gas Company dated December 11, 1997, and recorded January 2, 1998, in Book J-295, Page 320 in the RMC Office for Charleston County.
16. Grant of Perpetual Easement from The Beach Company to the Commissioners of Public Works of the Town of Mount Pleasant recorded December 3, 1997, and recorded in Book W-293, Page 154 in the RMC Office for Charleston County.
17. Easement from Beach Long Grove I, LLC, to South Carolina Electric & Gas Company recorded April 9, 1999, in Book E-324, Page 299 in the RMC Office for Charleston County.
18. Rights of tenants under unrecorded leases.
19. Terms and conditions contained in the Indenture Deed between Long Grove at Seaside Farms, LLC and Vista Realty Partners, L.L.C., dated _____, 2005 for the conveyance of the Property.

20. Terms and conditions contained in the Sales Contract between Long Grove at Seaside Farms, LLC and Vista Realty Partners, L.L.C., dated _____, 2005 (as to those provisions that survive closing).

TMS Number: 561-00-00-147

Grantee's Address:

Save and excepting only the limited warranty of title hereinafter set forth and herein contained, the Property is being conveyed strictly on an "as is", "where is" and "with all defects" basis, without representation, warranty or covenant, express, implied or statutory, of any kind whatsoever, including, without limitation, representation, warranty or covenant as to condition (structural, environmental, mechanical or otherwise), past or present use, construction, development, lease performance, investment potential, tax ramifications or consequences, income, compliance with law, habitability, tenancies, merchantability or fitness or suitability for any purpose, all of which are hereby expressly disclaimed. Without limiting the generality of the foregoing, Grantee acknowledges that Grantor and its affiliates (The Beach Co. and Gulfstream Construction Company) have made no representations, warranties or covenants as to the compliance of the Property with any federal, state, municipal or local statutes, laws, rules, regulations or ordinances, including, without limitation, those pertaining to construction, rent control, building and health codes, land use (or permits issued in connection therewith), zoning, lead paint, urea formaldehyde foam insulation, asbestos, hazardous or toxic wastes or substances, pollutants, contaminants or other environmental matters.

TOGETHER with, all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Grantee, its successors and/or assigns forever.

AND the Grantor does hereby bind itself and its successors and assigns to warrant and forever defend, all and singular, the said premises unto the said Grantee, its successors and/or assigns, against itself and its successors and assigns and all persons whomsoever lawfully claiming, or to claim, the same or any part hereof.

ACKNOWLEDGMENT AND RATIFICATION BY GRANTEE: The Grantee by the acceptance and execution of this Special Warranty Indenture Deed acknowledges that the Property is being conveyed in its "as is", "where is" and "with all defects" basis and all subsequent owners of the within described Premises or any part thereof are so hereby notified.

[SIGNATURE PAGES ARE ATTACHED]

IN WITNESS WHEREOF, Grantor has caused this Special Warranty Indenture Deed to be executed this ____ day of _____, 2005.

WITNESS:

LONG GROVE AT SEASIDE FARMS,
LLC

By: Beach Long Grove I, LLC, its Manager
By: The Beach Co., its Manager

By: _____
Its: _____

By: _____
Its: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this __ day of _____, 2005, by Long Grove at Seaside Farms, LLC, by Beach Long Grove I, LLC, its Manager, by The Beach Co., its Manager, by _____, its _____ and by _____, its _____.

_____ (SEAL)

NOTARY PUBLIC for South Carolina
My Commission expires: _____
(AFFIX SEAL)

ACKNOWLEDGMENT BY GRANTEE

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

VISTA REALTY PARTNERS, L.L.C.

By: _____

Its: _____

By: _____

Its: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this ____ day of _____,
2005, by Vista Realty Partners, L.L.C., by _____, its _____ and by _____,
its _____.

_____ (SEAL)

NOTARY PUBLIC for South Carolina
My Commission expires: _____
(AFFIX SEAL)

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

AFFIDAVIT

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

1. I have read the information on this Affidavit and I understand such information.
2. The property being transferred BY Long Grove at Seaside Farms, LLC
TO Vista Realty Partners, L.L.C. on _____, 2005.
3. Check one of the following: *The DEED is*
(a) subject to the deed recording fee as a transfer for consideration paid or to be paid
in money or money's worth.
(b) _____ subject to the deed recording fee as a transfer between a corporation, a
partnership, or other entity and a stockholder, partner, or owner of the entity, or
is a transfer to a trust or as a distribution to a trust beneficiary.
(c) _____ EXEMPT from the deed recording fee because (exemption # _____)
Explanation if required _____
(If exempt, please skip items 4-6, and go to item 7 of this affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
(a) The fee is computed on the consideration paid or to be paid in money or money's
worth in the amount of \$37,250,000.00.
(b) _____ The fee is computed on the fair market value of the realty which is
\$ _____.
(c) _____ The fee is computed on the fair market value of the realty as established for
property tax purposes which is \$ _____.
5. Check YES _____ or NO _____ to the following: A lien or encumbrance existed on the land, tenement, or realty
before the transfer and remained on the land, tenement, or realty after the transfer. If "YES", the amount of
the outstanding balance of this lien or encumbrance is \$ _____.
6. The DEED Recording Fee is computed as follows:
(a) \$37,250,000.00 the amount listed in item 4 above
(b) 0.00 the amount listed in item 5 above (no amount place zero)
(c) \$37,250,000.00 subtract line 6(b) from Line 6(a) and place the result.
7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the
transaction as: _____.
8. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent
affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand
dollars or imprisoned not more than one year, or both.

Sworn to before me this _____
day of _____, 2005.
Notary Public for South Carolina
My Commission Expires: _____

Grantor, Grantee, or Legal Representative
connected with this transaction

Print or Type Name Here

EXHIBIT I

Disclosure Language

Save and excepting only the limited warranty of title hereinafter set forth and herein contained, the Property is being conveyed strictly on an "as is", "where is" and "with all defects" basis, without representation, warranty or covenant, express, implied or statutory, of any kind whatsoever, including, without limitation, representation, warranty or covenant as to condition (structural, environmental, mechanical or otherwise), past or present use, construction, development, lease performance, investment potential, tax ramifications or consequences, income, compliance with law, habitability, tenancies, merchantability or fitness or suitability for any purpose, all of which are hereby expressly disclaimed. Without limiting the generality of the foregoing, Grantee acknowledges that Grantor's predecessor in title, Long Grove at Seaside Farms, LLC ("Long Grove") and its Affiliates (as herein defined) have made no representations, warranties or covenants as to the compliance of the Property with any federal, state, municipal or local statutes, laws, rules, regulations or ordinances, including, without limitation, those pertaining to construction, rent control, building and health codes, land use (or permits issued in connection therewith), zoning, lead paint, urea formaldehyde foam insulation, asbestos, hazardous or toxic wastes or substances, pollutants, contaminants or other environmental matters.

Grantee acknowledges that the Property was originally developed and constructed by Long Grove and its Affiliates (as herein defined). Grantor purchased the Property for the purpose of converting the Property into condominiums which it is selling to the public. Grantor assumed all responsibility for identifying and correcting all defects or problems, if any, that existed, to ensure that the Property is properly constructed and suitable for use as condominiums in accordance with all applicable building regulations, codes, standards, and other applicable laws and requirements.

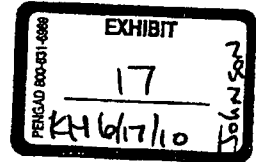
Accordingly, as part of the valuable consideration being exchanged in this sale transaction, the receipt and sufficiency of which are hereby acknowledged, Grantor on behalf of itself and its heirs, representatives, successors, and assigns (including Grantee and all other successors-in-title to all or a portion of the Property), agrees to never sue and completely releases Long Grove at Seaside Farms, LLC, The Beach Co., Gulfstream Construction Company, its affiliates, agents, officers, directors, employees, insurers, representatives, successors, assigns, and all other companies, partnerships, entities, or persons (collectively, the "Affiliates") involved in the design, development and/or construction of the apartment buildings and apartments therein and all other improvements prior to March __, 2005, for and from any and all claims of every kind whatsoever arising from or related to the development, design, construction, maintenance, alteration, or repair of the Property, including unknown and unforeseen claims that may now exist or that may arise in the future.

Grantor and Grantee acknowledge and agree that the assumption of liability and release of claims above is intended to be binding on all subsequent grantees of the Property or any condominiums or other subdivisions of the Property. In order to give effect to this intention, these provisions are included in this Master Deed, and will also be included in any other conveyances outside the coverage of this Master Deed.

EXHIBIT J

Leasing Standards

To be finalized within 7 business days of the Effective Date



AMENDMENT TO SALES CONTRACT

THIS AMENDMENT TO SALES CONTRACT is effective as of the 3rd day of March, 2005, between (as "Seller"), and LONG GROVE AT SEASIDE FARMS, LLC, a Delaware limited liability company (as Seller), and VISTA REALTY PARTNERS, L.L.C., a Georgia limited liability company (as "Purchaser").

WHEREAS, Seller and Purchaser entered a certain Long Grove Apartment Community Sales Contract (hereinafter referred to as the "Sales Contract") dated January 18, 2005, for the sale of real property known as Parcel "G" in Seaside Farms Plantation, in the Town of Mount Pleasant, South Carolina (hereinafter referred to as the "Property"); and

WHEREAS, Seller and Purchaser desire to amend the Sales Contract as set forth herein.

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser hereby reinstate the Sales Contract and agree as follows:

1. The second paragraph of Section 16 of the Sales Contract is amended by deleting that paragraph and substituting the following:

Should Purchaser elect to submit the Property or any portion thereof to a master deed (the "Master Deed") establishing a horizontal property regime, Purchaser shall, at Purchaser's expense, prepare the proposed Master Deed and related regime documents (the Condominium Documents") and submit the Condominium Documents to Seller for Seller's review and approval solely for purposes of determining compliance with the provisions of Section 15 of this Agreement, which determination shall be given in writing to Purchaser on or before five (5) business days from receipt of the Condominium Documents by Seller. In the event that Seller fails to give such determination in writing to Purchaser on or before five (5) business days from receipt of the Condominium Documents by Seller, Seller's approval shall not be required and this section will be deemed to be complied with. After Seller's approval of the Condominium Documents, no material changes shall be made to the Condominium Documents without the prior written approval of Seller and Purchaser. Seller and Purchaser shall agree upon the form and content of the Condominium Documents prior to their filing of record. The provisions of this Section shall survive the closing and the delivery of the deed or any expiration or termination of this Agreement.

2. Except as expressly amended herein, this Contract shall remain unchanged and in full force and effect.

[SIGNATURE PAGE IS ATTACHED]

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IN WITNESS WHEREOF, the parties hereto have caused this Amendment to Sales Contract to be duly executed, sealed and delivered as of the date first above written.

SELLER: LONG GROVE AT SEASIDE FARMS, LLC

By: Beach Long Grove I, LLC, its Manager
By: The Beach Co., its Manager

By:

John S. ...

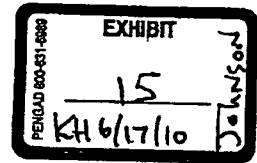
By:

Executive Vice President

PURCHASER: VISTA REALTY PARTNERS, L.L.C.

By:

Eduard de Guardiola, its Manager



THIS AGREEMENT IS SUBJECT TO BINDING ARBITRATION PURSUANT TO SECTION 15-48-10 OF THE CODE OF LAWS OF SOUTH CAROLINA, AS MODIFIED HEREIN

SALES AGENCY AND MARKETING AGREEMENT

THIS AGREEMENT is made and entered into this 4th day of March, 2005, by and between Long Grove Vista, LLC, a Georgia limited liability company, having an office at 1360 Peachtree Street, N.E., Suite 1000, One Midtown Plaza, Atlanta, Georgia 30309 (hereinafter referred to as "Owner"), and The Beach Company, having offices at 211 King Street, Suite 300, Charleston, South Carolina 29401 (hereinafter referred to as "Broker").

WITNESSETH:

WHEREAS, Owner intends to acquire that certain property consisting of 272 apartment units currently known as "Long Grove Apartment Community" and located in Seaside Farms Plantation, in the Town of Mount Pleasant, South Carolina and further described in Exhibit "A" attached hereto and incorporated herein ("Property");

WHEREAS, Owner intends to convert the Property into a horizontal property regime subject to a Master Deed in accordance with the South Carolina Horizontal Property Act;

WHEREAS, Owner intends to sell the two hundred seventy-two (272) individually owned, residential dwelling units ("Units") on the Property; and

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner and Broker hereby agree as follows:

1. Owner's Engagement of Broker.

(a) Owner hereby appoints Broker, and Broker hereby accepts such appointment, as the sole and exclusive marketing and sales agent for the Units, on the terms and conditions hereinafter set forth.

(b) It is expressly understood that Broker shall perform services for Owner as an independent contractor. No employer/employee relationship, partnership or co-tenancy between Owner and Broker is created hereby. Broker shall at all times possess all required licenses prescribed by applicable law and regulation necessary for fulfilling its duties set forth in this Agreement.

(c) Broker understands that all two hundred seventy two (272) Units will be finished and in "move-in" condition.

2. Broker's Marketing and Sales Duties. Broker shall provide the following services for Owner, in each case in a manner consistent with that generally commercially employed by brokers in the vicinity of the Property to promote the expedient sale of condominium units similar to the Units:

(a) With Broker's input, Owner shall prepare, at its cost, all marketing materials (the "Marketing Materials") including but not limited to advertising in all media, the design and preparation of signage, the selection of a project name and logo, the development and preparation of all sales literature and material, the creation of special media events, and the

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BeachCo 001198

design and furnishing of any model units and/or sales center. Owner shall approve in writing all specific proposed expenditures and schedules prior to commitment. Broker shall coordinate, review and supervise all marketing activities approved by Owner.

(b) Recommend initial sales prices for the Units to Owner, for Owner's approval. It is hereby agreed and understood that Owner shall have the sole right to determine the final sale price for each Unit, which may vary from Unit to Unit and from time to time during the term of the Agreement.

(c) Engage, train, supply and supervise such personnel as shall be necessary for the fulfillment of its duties hereunder, including without limitation the on-site sales agent(s) described in the following subparagraph. Broker shall use reasonable care in retaining personnel, and all personnel shall be reasonably skilled and trained in the duties to be performed by them. Wages and other compensation of such personnel shall be paid by Broker and not reimbursed by Owner.

(d) Staff a sales center (which center shall be provided by Owner, at its cost) starting on a date in the future to be designated by Owner, but in no event later than April 15, 2005 (the "Sales Commencement Date") with on-site sales agent(s). The sales center will be opened and staffed weekdays from 10:00 a.m. to 7:00 p.m., from 11:00 a.m. to 6:00 p.m. on Saturday and 12:00 p.m. to 5:00 p.m. on Sunday. Furthermore, Owner may designate one (1) weekday each calendar week in which the sales center shall remain open until 9:00 p.m. The on-site staff shall include a minimum of a sales manager, three (3) sales agents, and a receptionist (if such receptionist is required by Owner). The sales manager shall provide Owner with a weekly written report of the prospect traffic, prospect call-in volume, and any other data reasonably requested by Owner.

(e) Market and advertise the Units for sale pursuant to a marketing plan, to be proposed by Broker and approved and paid for by Owner.

(f) Work with prospective purchasers of Units on behalf of Owner to obtain an executed purchase agreement (a "Purchase Agreement") and related title transfer and other closing documents (all on forms provided by Owner), to satisfy any conditions to purchase specified in the purchase agreements, and to coordinate title transfer and recording and other closing logistics with the title company and any lender financing a purchaser's acquisition of a Unit. If the approved marketing plan permits Broker to take reservations from prospective Unit buyers prior to execution of a Purchase Agreement, any reservation agreement or other documentation shall be on forms provided by, or reviewed and approved by, Owner. Broker shall provide accurate information to potential purchasers and provide all disclosures required by applicable law or specifically requested by Owner.

(g) Broker shall conduct the sales in substantial accordance with the sales guidelines promulgated by Owner, a copy of which is attached hereto as Exhibit "B" and incorporated herein (the "Sales Guidelines"). Owner reserves the right to amend or modify the Sales Guidelines as Owner deems appropriate in Owner's sole discretion at any time.

3. Compensation to Broker.

(a) Owner agrees to pay Broker a sales commission of five percent (5%) of the Purchase Price for each Unit sold ("Commission").

(b) Broker shall share the Commission when any purchaser is represented by a selling broker with a different brokerage firm and shall pay such broker three percent (3%)

of the Commission with the Broker retaining the remaining two percent (2%). For the purposes hereof, the term "selling broker with a different brokerage firm" shall be deemed to include Broker if the real estate agent working with the purchaser(s) of a Unit is a licensed salesperson with Broker and is not one of the listing agents on the Property.

(c) For the purposes of this Agreement, a Unit shall be considered "sold" and sales commission earned by Broker only when and if title to a Unit is transferred to a buyer. Owner shall have no obligation to pay a Commission in the event a sale does not close for any reason.

4. Term of Agreement

(a) This Agreement shall be effective as of the date indicated on the first page hereof and shall remain in effect until the earliest occurrence of any of the following (herein after referred to as "Termination Date"): (i) all Units at the Property have been sold pursuant to this Agreement; (ii) September 4, 2006; or (iii) termination pursuant to paragraph 4(b) or 4(c) below.

(b) This Agreement may be terminated for cause by Owner upon thirty (30) days prior written notice to Broker. Cause for this purpose shall be defined to mean the occurrence of any of the events described below:

(i) The willful misconduct or gross negligence on the part of the Broker in performing or failing to perform a material term of this Agreement;

(ii) A material failure of Broker to comply with its obligations as a licensed real estate broker under applicable local, state or federal laws;

(iii) The failure to obtain the execution of binding Purchase Agreements for sixty-five (65) Units between the Sales Commencement Date and the date being ninety (90) days thereafter ("Initial Sales Period");

(iv) The failure to obtain the execution of binding Purchase Agreements for an average of fifteen (15) Units per month during the period following the Initial Sales Period.

(c) This Agreement may be terminated with or without cause by Broker upon sixty (60) days prior written notice to Owner.

(d) Owner agrees: (i) to reimburse Broker for the cost of any marketing tools obtained by Broker pursuant to paragraph 2(a) hereof; and (ii) that, for any Units as to which Owner has executed a Purchase Agreement prior to the Termination Date, any sums due and owing under paragraph 3 above will remain in effect and will be paid to Broker when and if title to a Unit is conveyed to buyer pursuant to such Purchase Agreement.

(e) The provisions of this paragraph 4 relating to payment of any commissions earned and reimbursable costs incurred prior to the Termination Date shall survive the termination of the Agreement.

(f) Within fifteen (15) days following the Termination Date, Broker shall furnish to Owner a list of prospective buyers to whom the Broker physically showed Units prior to the Termination Date. Should a listed prospect sign a Purchase Agreement for a Unit at the Property within sixty (60) days after the Termination Date, and ultimately purchase and receive title to the Unit under such Purchase Agreement, then a commission of three

percent (3%) shall be paid to Broker when title is transferred to such buyer if, and only if, there is no agent other than Owner's replacement broker and Broker and no other commissions are due in connection with the sale. In the event that there is a third commission due to a participating agent, there shall be no commission due to Broker, unless Broker agrees to pay the participating agent and indemnify Owner from any liability thereof.

(g) Notwithstanding any other provisions of this Agreement, after two hundred (200) Units in the Property have been sold as defined herein, it is understood Broker may decide not to maintain staffing (on-site or otherwise) dedicated to the Property but will provide only such staff as is reasonably agreed upon by Owner and Broker to meet, by appointment, with prospective purchasers for the purpose of sales of remaining Units. Owner will cooperate with Broker as necessary, or as otherwise requested by Broker, in setting such appointments and making the Property premises available for sales tours and other purposes related to sales.

5. Owner's Additional Obligations.

(a) Owner hereby designates Richard Blatt as its sales representative who shall be reasonably accessible to Broker and to Broker's personnel and who shall have authority to render verbal or written decisions promptly and furnish information expeditiously on behalf of Owner. Owner acknowledges Owner's desire to quickly sell the Units and to facilitate the sales of such Units.

(b) Owner shall be solely responsible for preparation of all form documents and fulfillment of any legal requirements which are necessary for the completion of the sale of the Units, but Broker shall be solely responsible for compliance by Broker's personnel with applicable sales and security brokerage and licensure requirements. All such forms shall comply in all respects with South Carolina law.

(c) During the term of this Agreement, Owner shall not:

(i) employ or engage any real estate brokers or realtors other than Broker, with respect to sales of Units; or

(ii) fail for any reason whatsoever to refer all inquiries from prospective purchasers, other brokers, realtors or otherwise to Broker; or

(iii) otherwise remove from the market, without Broker's written consent, any of the Units (or any interest in any of the Units).

(d) Owner shall not knowingly hire any member of Broker's staff who was a member of such staff during any period this Agreement was in effect without obtaining written consent from Broker. This provision shall survive for one (1) year after the termination of this Agreement.

(e) Owner agrees to designate for use by Broker's sales and support personnel in performing this Agreement one or more model units, furnished by Owner, and an area for sales display and storage (which may be located within a model unit). Owner shall pay only for normal utility use. Broker shall be responsible for supplying its own computer, telephones, and other office supplies and equipment to the extent the existing equipment in the leasing office in the Property is not adequate for Broker's use.

6. Owner's Indemnities and Insurance.

(a) Owner shall and hereby does agree to indemnify, defend and hold Broker, its directors, officers, shareholders and employees, harmless from and against all losses, costs, damages, claims, suits, fines, penalties and expenses (including claims of purchasers of Units and reasonable attorneys' fees and expenses) arising out of Broker's performance under this Agreement to the extent resulting from the following:

(i) the intentional wrongful acts or gross negligence on the part of the Owner;

(ii) failure of Owner to materially comply with its obligations under this Agreement under applicable federal, state and local law or regulation, or under any sales contract entered into between Owner and any purchaser of a condominium unit located on the Property;

(iii) Owner providing Broker incomplete or inaccurate information;

(iv) the handling of earnest money by anyone other than Broker;

(v) any injury to persons on the Property and/or loss of or damage to the Property or anything contained therein except such claims that are the direct proximate cause of the actions of Broker or Broker's agents; or

(vi) any claim related to the physical condition of the Property.

(b) Broker shall and hereby does agree to indemnify, defend and hold Owner, its directors, officers, shareholders and employees, harmless from and against all losses, costs, damages, claims, suits, fines, penalties and expenses (including claims of purchasers of Units and reasonable attorneys' fees and expenses) arising out of Owner's performance under this Agreement to the extent resulting from the following:

(i) the intentional wrongful acts or gross negligence on the part of the Broker or its licensees; or

(ii) failure of Broker or its licensees to materially comply with its obligations under this Agreement or under applicable federal, state and local law or regulation.

(c) Broker agrees, to the extent it has knowledge of same, promptly to notify Owner of all such losses, costs, damages, claims, suits, fines, penalties, or expenses, described above, giving copies of all writings and details thereof and shall continue to give Owner prompt written notice of all developments in connection therewith. Owner shall defend any action or proceeding resulting therefrom at its sole cost and expense. Broker shall have the right to participate in the defense of any such action or proceeding with attorneys of its own choosing, but at Broker's sole cost and expense. Broker shall cooperate fully with Owner and its attorneys at all stages of any such action or proceeding.

(d) Owner shall maintain, at its sole expense, a comprehensive general liability insurance policy, with an insurer reasonably satisfactory to Broker which includes, at a minimum, broad form coverage and coverage for personal injury, death or property damage covering the interests of Broker with respect to all operations hereunder, including bodily harm, death or property damage occurring upon, in, or about the Property and sales office. Such policy shall include liability limits of not less than One Million Dollars (\$1,000,000) per

occurrence. Upon written request by Broker, Owner shall obtain for Broker a certificate of such insurance coverage.

(e) Broker shall maintain, at its sole expense, workers' compensation insurance on its own employees (on-site and otherwise) and provide proof of such insurance upon the request of Owner.

(f) Broker shall maintain, at its sole expense, a comprehensive general liability insurance policy, with an insurer reasonably satisfactory to Owner which includes, at a minimum, broad form coverage and coverage for personal injury, death or property damage covering the interests of Owner with respect to all operations hereunder, including bodily harm, death or property damage occurring upon, in, or about the Property and sales office. Such policy shall include liability limits of not less than One Million Dollars (\$1,000,000) per occurrence. Upon written request by Owner, Broker shall obtain for Owner a certificate of such insurance coverage.

7. Agency Disclosures:

(a) Owner acknowledges receiving an explanation of the types of agency relationships that are offered and an Agency Disclosure Brochure at the first practical opportunity at which substantive contact occurred between the agent and Owner.

(b) Owner acknowledges that after entering into this Agreement, Broker might request a modification in order to act as a dual agent or a designated agent in a specific transaction and such request shall not be unreasonably withheld, conditioned or delayed.

8. Miscellaneous.

(a) Owner and Broker each agree all releases and "hold harmless" agreements obtained from Unit purchasers, contractors, subcontractors, suppliers, or other parties in anyway related to the Property shall include a release or other protection for the other party hereto to the same extent that such release or other protection is obtained for the party obtaining the same. Notwithstanding the foregoing to the contrary, this Section 8 (a) shall not apply to Section 15 or 16 of that certain Sales Contract, dated January 18, 2005, entered into by Owner and Broker's affiliate Long Grove at Seaside Farms, LLC.

(b) Neither Broker nor Owner may assign this Agreement or its obligation to perform hereunder without the consent of the other, except (i) Owner shall have the right without Broker's consent, to assign this Agreement and all rights, obligations and liabilities hereunder to any successor owner of the Property if a majority of the interest in such successor are owned by Owner or its affiliates and (ii) Broker shall have the right without Owner's consent, to assign this Agreement and all rights, obligations and liabilities hereunder to an assignee or successor company that shall act as Broker if a majority of the interest in such assignee or successor are owned by Broker or its affiliates.

(c) It is understood it is illegal for Owner, Broker or any employee engaged by them, to refuse to display or sell to any person because of such person's race, color, creed, religion, national origin, sex, marital status or physical disability, and all advertising for the Property shall comply with the provisions of the Fair Housing Act.

(d) This Agreement shall be binding upon the parties hereto and their representatives, successors, and assigns.

(e) No waiver of or consent to any breach of any condition, covenant or agreement contained in this Agreement shall be construed to be a waiver of any subsequent breach thereof or of this Agreement; nor shall the illegality or invalidity of any provision of this Agreement affect the validity of the remaining provisions.

(f) Owner and Broker agree Broker shall be identified on all promotional material as the exclusive marketing and sales agent for the Property until Termination Date.

(g) The parties waive their right to a jury trial and agree that any disputes, claims, or controversies arising from or related to this Agreement, or any breach thereof, shall be resolved via final, binding arbitration conducted in accordance with the South Carolina Uniform Arbitration Act, S.C. Code Ann. § 15-48-10, et seq. If a conflict between those rules and the terms of this Agreement arises, then this Agreement shall control. The venue of the arbitration shall be exclusively in Charleston County, South Carolina. The parties agree that they will never attempt to litigate any such matters in any other forum or in any other manner. The parties agree to an expedited arbitration hearing and agree that the arbitration shall be heard and decided as soon as reasonably possible after notice of the demand for arbitration is provided in writing to the party to whom the demand for arbitration is made. Notwithstanding § 15-48-30 (which specifies the use of three arbitrators), the parties will use a single, unbiased arbitrator to decide all matters in dispute. If the parties are unable to agree on an arbitrator, then any party may petition the Charleston County Court of Common Pleas to appoint an arbitrator. In addition to the limited discovery permitted under § 15-48-80 in the discretion of the arbitrator, the parties shall exchange witness lists and exhibits at least ten (10) days prior to the arbitration hearing. In addition to all available legal and equitable remedies, any party is entitled to request and obtain from the arbitrator an award of injunctive relief (i.e., a temporary restraining order and temporary and permanent injunction) as an appropriate remedy to enforce this Agreement or prevent a continued violation of this Agreement, without having to post a bond or other security. The parties agree to (i) join into the arbitration proceeding hereunder or (ii) join any other arbitration proceeding being conducted by persons or entities related to the dispute that may be necessary to completely resolve the dispute, such as a future grantee, or condominium purchaser. Payment of the costs of any such arbitration and attorneys' fees of the parties shall be allocated equitably by the arbitrator to correspond with the arbitrator's evaluation of the relative merits or lack thereof of the respective claims of the parties. The decision and award of the arbitrator shall be binding and conclusive, and judgment in conformity with the decision and award may be entered and enforced in any court of competent jurisdiction.

(h) All communications, notices, requests, demands and other communications which are required or permitted to be given pursuant to the terms of this Agreement shall be in writing and shall be sufficient in all respects if delivered personally or by an air express delivery company or by facsimile transmission to the telecopier phone number set forth below (with receipt confirmed), when so delivered in each case addressed as follows:

Broker: The Beach Company
211 King Street, Suite 300
Charleston, South Carolina 29401
Attn: David Nelson
Telephone: (843) 722-2615
Telecopy: (843) 722-6419

Copy to: M. Jeffrey Vinzani, Esq.
Nexsen Pruet, LLC
205 King Street, Suite 400
Charleston, South Carolina 29401

Telephone: (843) 720-1778
Telecopy: (843) 720-1777

Purchaser: Long Grove Vista, L.L.C.
1360 Peachtree Street, N.E. - Suite 1000
Atlanta, Georgia 30309
Attention: Eduard deGuardiola
Telephone: (404) 995-4446
Telecopy: (404) 995-4439

Copy to: Linda B. Curry, Esquire
Weissman, Nowack, Curry & Wilco, P.C.
One Alliance Center - 4th Floor
3500 Lenox Road
Atlanta, Georgia 30326
Telephone: (404) 926-4516
Telecopy: (404) 926-4716

(i) This Agreement and the covenants, terms and provisions hereof shall be construed in accordance with and governed by the laws of the State of South Carolina.

(j) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements, understandings, and arrangements, oral or written, between them. This Agreement may not be modified or amended, except by an instrument in writing signed by the party against which enforceability of any such modification or amendment is sought.

[SIGNATURES CONTINUED ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

OWNER: LONG GROVE VISTA, LLC
a Georgia limited liability company.

By: Long Grove Development, LLC, a Georgia limited liability company, its sole manager

By: *Eduard de Guardiola*
Eduard de Guardiola, sole manager

BROKER: THE BEACH COMPANY

By: *J. Daniel Ryan*
Name: *J. Daniel Ryan*
Title: *President*

By: *J. Daniel Ryan*
Name: *J. Daniel Ryan*
Title: *Executive Vice President*

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

All that piece, parcel or tract of land, with the buildings and improvements thereon, situate, lying and being in the Town of Mt. Pleasant, County of Charleston, State of South Carolina, shown and designated as "PARCEL G" on a plat entitled "PLAT OF PROPERTY LINE ADJUSTMENT BETWEEN PARCEL G ABOUT TO BE CONVEYED TO LONG GROVE AT SEASIDE FARMS, L.L.C. AND TRACT A-1 OWNED BY THE BEACH COMPANY SEASIDE FARMS" prepared by Thomas & Hutton Engineering Co., dated May 8, 2000, and recorded June 1, 2000, in Plat Book EE, Page 49 in the RMC Office for Charleston County, reference to said plat being craved for a more complete description.

NPCHAR1268348.3-RD-(MJV) 016016-00210

BeachCo 001207

SALES GUIDELINES

1. No purchaser may acquire more than one (1) Unit, provided, however, a purchaser may acquire a second Unit if the purchaser will reside in the first unit and the second Unit must be located on the second floor. No purchaser may acquire more than (2) Units.
2. If a purchaser does not intend to reside in a Unit and is purchasing the Unit for investment purposes, the purchaser may only purchase a Unit located on the second floor.
3. All purchasers must pay an earnest money deposit in an amount equal to be determined by Owner, which deposit must be paid in full at the time the purchaser executed the Purchase Agreement.
4. All earnest money deposits must be made payable to an escrow agent to be determined by Owner.
5. Broker must check with the designated closing coordinator before scheduling a closing to avoid scheduling too many closings on the same day.
6. Owner will provide Broker with an updated schedule of the Unit sales prices on a regular basis. Broker must inform prospective purchasers that prices are subject to change at any time. Broker shall NEVER provide the price schedule to a potential purchaser.
7. The preferred lenders will be determined by Owner.
8. Owner shall determine the sales prices for the garages and the amount of the additional earnest money deposit. No purchaser may acquire more than one garage.
9. All Units shall be sold "as is" except for vacant Units. Owner will inform Broker if vacant Units will receive new paint and/or new carpet. Units that Owner elects to re-paint will be repainted with the same existing color. Purchaser will have no option to elect paint or carpet color.
10. All parking, except garages, shall be available on a first come-first serve basis.
11. Existing tenants may only purchase their units in "as-is" condition, which shall be reflected in the applicable Purchase Agreement and Owner shall not make any improvements to such Unit.
12. If any existing tenant acquires a Unit other than the tenant's existing Unit, the Purchase Agreement shall include a stipulation providing that the purchaser/tenant agrees to vacate the existing unit within seven (7) calendar days after closing.
13. The Owner shall designate the place the closings shall take place, which shall be specified in the Purchase Agreements.

NPCHAR1268348.3-PD-(MJV) 016019-00210

BeachCo 001208

STATE OF SOUTH CAROLINA)
)
)
COUNTY OF CHARLESTON)
)
)
THE BEACH COMPANY; LONG)
GROVE AT SEASIDE FARMS, LLC;)
GULF STREAM CONSTRUCTION)
COMPANY, INC.;)
Plaintiffs,)

vs.)
)
LONG GROVE PROPERTY OWNERS')
ASSOCIATION, INC.; VISTA REALTY)
PARTNERS, LLC; LONG GROVE)
VISTA, LLC;)
Defendants.)

LONG GROVE PROPERTY OWNERS')
ASSOCIATION, INC.)
)
)
Third-Party Plaintiffs,)

vs.)
)
James, Harwick & Partners, Inc. n/k/a JHP)
Architecture/Urban Design, P.C.; Sam)
Mayo d/b/a SCM Construction, Inc.; Essex)
Engineering Corporation)
)
Third-Party Defendants)

TO: THIRD-PARTY DEFENDANT JAMES, HARWICK & PARTNERS, INC. n/k/a JHP ARCHITECTURE/URBAN DESIGN, P.C. AND ITS COUNSEL OF RECORD ELLIS R. LESEMANN, ESQUIRE:

COMES NOW the above-named Defendant Long Grove Property Owners' Association, Inc., through its undersigned counsel, responding to the Third-Party Defendant James, Harwick & Partners, Inc. n/k/a JHP Architecture/Urban Design, P.C.'s (hereinafter JHP) Motion to Dismiss against Defendant Long Grove Property Owners' Association, Inc. (hereinafter "Long Grove POA"). Pursuant to the South Carolina Rules of Procedure, Defendant Long Grove POA

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
2009-CP-10-6776
6796

DEFENDANT LONG GROVE
PROPERTY OWNERS'
ASSOCIATION'S
MEMORANDUM IN
OPPOSITION TO THIRD-
PARTY DEFENDANT JAMES,
HARWICK & PARTNERS, INC
N/K/A JHP
ARCHITECTURE/URBAN
DESIGN, P.C.'S MOTION TO
DISMISS

FILED
2011 SEP 23 PM 3:08
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

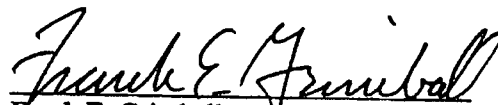
hereby files its Memorandum in Opposition based upon applicable case law, and any affidavits and other exhibits attached hereto.

James, Harwick & Partners, Inc., n/k/a JHP Architecture/Urban Design, P.C., filed a Motion to Dismiss based upon the Motion filed by the Plaintiffs. The Long Grove Property Owners Association adopts herein its response to Plaintiff's Motion.

JHP is an architectural firm that designed Long Grove. There is no evidence that JHP participated in any aspect of the negotiations leading to the its sale of Long Grove and the insertion of the "release" into the Master Deed. There is no evidence that JHP paid any consideration to either the POA or an individual unit owner. There is no evidence that the POA ever intended for JHP to be released.

For all the reasons stated in the Memorandum in Opposition to Plaintiffs' Motion and because there is no fact to support JHP's Motion the Long Grove Property Owners Association respectfully request that it be denied.

Respectfully submitted,



Frank E. Grimball, Esquire
Mullen Wylie, LLC
171 Church Street Suite 370
Charleston, South Carolina, 29401
Tel: 843-853-6200
Fax: 843-853-8994

September 22, 2011
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

THE BEACH COMPANY; LONG)
GROVE AT SEASIDE FARMS, LLC;)
GULF STREAM CONSTRUCTION)
COMPANY, INC,)
Plaintiffs,)

CASE NO.: 2009-CP-10-6746

v.)
LONG GROVE PROPERTY OWNERS')
ASSOCIATION, INC.; VISTA REALTY)
PARTNERS, LLC; LONG GROVE)
VISTA, LLC;)
Defendants.)

**JAMES, HARWICK & PARTNERS, INC. N/K/A
JHP ARCHITECTURE/URBAN DESIGN, P.C.'S
SUPPLEMENTAL MEMORANDUM IN
SUPPORT OF ITS MOTION TO DISMISS THE
THIRD PARTY COMPLAINT AND FOR
JUDGMENT ON THE PLEADINGS**

LONG GROVE PROPERTY OWNERS')
ASSOCIATION, INC.,)
Third Party Plaintiff,)

v.)
JAMES, HARWICK & PARTNERS, INC.)
N/K/A JHP ARCHITECTURE/ URBAN)
DESIGN P.C.; SAM MAYO D/B/A SCM)
CONSTRUCTION, INC.; ESSEX)
ENGINEERING CORPORATION)
Third Party Defendants.)

2011 OCT -3 PM 4:40
JULIE J. ARNSTORFER
CLERK OF COURT
FILED

Third Party Defendant, James, Harwick & Partners, Inc. n/k/a JHP Architecture/Urban Design, P.C. ("James Harwick"), by and through its undersigned counsel, respectfully submits the following Supplemental Memorandum in Support of Its Motion to Dismiss the Third Party Complaint of Long Grove Property Owners' Association, Inc. The basis for this Supplemental Memorandum is that the Third-Party Plaintiff has not stated a proper third-party complaint under SCRCP 14(a) and the allegations fail to state facts sufficient to constitute a proper Third-Party claim under Rules 12 and 14.

STANDARD OF REVIEW

Rule 14, SCRCP, permits a Defendant to assert a Third-Party Complaint only in the situation where the Third-Party Defendant is one "who is or may be liable to [Third-Party Plaintiff] for all
PPAB 1874619v1

or part of the plaintiff's claim against [Third-Party Plaintiff]." *First General Services of Charleston, Inc. v. Miller*, 314 S.C. 439, 442, 445 S.E.2d 446, 447 (1994). The Third-Party Plaintiff must have a substantive claim against the Third-Party Defendant founded upon derivative liability, such as contribution or indemnity. *Id.* The question of whether to grant a motion to strike a third-party claim, whether filed with or without leave of court, is addressed to the sound discretion of the trial court. *Beach v. Hudson*, 298 S.C. 424, 426, 380 S.E.2d 869, 871 (Ct. App. 1989). A prerequisite to the use of a third-party complaint under Rule 14 is the existence and assertion of a legal theory based on indemnification, contribution, express or implied warranty, subrogation, contract, or other derivative liability theory that permits the defendant to shift some or all of his liability to the impleaded party. James F. Flanagan, § A, *South Carolina Civil Procedure* (2d. 1996). Third-Party Plaintiffs' causes of action of (1) negligence and (2) breach of implied and express warranties do not meet the requirements for impleader under Rule 14.

To avoid dismissal, a complaint, or third-party complaint, must provide a valid claim under some legal theory. A complaint that is utterly without merit, or which affirmatively reveals on its face that no cause of action exists, must be dismissed. Under South Carolina law, in connection with a motion to dismiss pursuant to Rule 12(b)(6), the Court must accept as true the well-pleaded facts in the complaint, but the Court need not give any weight to conclusions of law alleged therein. *Jones v. Gilstrap*, 288 S.C. 525, 343 S.E.2d 646 (Ct. App. 1986); *Charleston County School Dist. v. South Carolina State Ports Authority*, 283 S.C. 48, 320 S.E.2d 727 (Ct. App. 1984). It is fundamental that a complaint must allege all facts necessary to satisfy each of the legal elements to support a cause of action or it should be dismissed. The motion to dismiss must be granted if the facts alleged in the complaint, and inferences reasonably deducible therefrom, do not entitle plaintiff to the relief sought. *Chewning v. Ford Motor Co.*, 346 S.C. 28, 32-33, 550 S.E.2d 584, 586 (Ct. App. 2001) (citing *Jarrell v. Petoseed Co.*, 500 S.E.2d 793, 794 (Ct. App. 1998)).

ARGUMENT

Defendants and Third-Party Plaintiff Long Grove Property Owners' Association, Inc. (the "POA") alleges two causes of action against Third-Party Defendant James Harwick: (1) negligence and

(2) breach of express and implied warranties. Neither of these claims is of a derivative nature (such as indemnification) as is required by Rule 14(a). Neither of these claims is based on the proposition that Third-Party Defendant is liable to Third-Party Plaintiff for some or all of their respective liabilities.

A third-party complaint cannot be based upon, or used to maintain, an independent cause of action. See SCRCP 14(a); *First General Services of Charleston v. Miller*, 314 S.C. 439, 442, 445 S.E.2d 446, 447 (1994). In fact, the Third-Party Complaint in this case fails to make any allegation of derivative liability and there is no allegation that the conduct of James Harwick would have obligated it for some or all of the conduct of the POA. Thus, James Harwick is improperly impleaded, and the Third-Party Complaint should be stricken or, in the alternative, dismissed.

Although there is a paucity of South Carolina case law addressing the Rule 14 issues, federal cases are instructive.¹ In *GE Healthcare Financial Services v. EBW Laser*, 225 F.R.D. 176, 180-181 (M.D.N.C. 2004), the court granted the third-party defendant's 12(b)(6) motion to dismiss the third-party complaint against it because the complaint failed to allege that the liability of the third-party defendant was derivative of any liability the third-party plaintiff may have to the plaintiff in the original action. The court stated that the defendant may only bring in a third-party defendant who is liable to the defendant for losses sustained by the defendant as a result of the plaintiff's claim. *Id.* at 180. Liability to the defendant that is unrelated to the plaintiff's claim is not a basis for impleader. *Id.*; 3 *Moore's Federal Practice* § 14.04[2] (Mathew Bender 3d). Even if the complaint involves the same transaction as the plaintiff's claim, it is not a basis for a third-party claim absent derivative liability. *GE Healthcare*, 225 F.R.D. at 180. For this reason, the court in *GE Healthcare* granted the third-party defendant's Rule 12(b)(6) motion to dismiss. *Id.* at 181; see also *Deutsche Bank National Trust v. Tyner* 233 F.R.D. 460, 463-464 (D.S.C. 2006) (granting a third-party defendant's motion to dismiss class claims because class claims were not based on derivative liability).

¹ In *Unisun Insurance v. Hawkins*, 342 S.C. 537, 542, 537 S.E.2d 559, 561-62 (Ct. App. 2000), the court stated that federal cases interpreting the Federal Rules of Civil Procedure are persuasive when, in the absence of prior state case law, the state rule has adopted the language of the federal rule. In this case, the language of SCRCP Rule 14(a) is substantially similar to FRCP Rule 14(a).

It is clear on the face of the Third-Party Complaint that the POA is not asserting any form of derivative liability against James Harwick. Instead, the Third-Party Complaint seeks only recovery under independent theories of liability. Those claims have no possible derivative relationship to the claims asserted by Long Grove at Seaside Farms, LLC, The Beach Company, and Gulfstream Construction, Company, Inc.. Put simply, Third-Party Plaintiff's causes of action of (1) negligence and (2) breach of express and implied warranties do not meet the requirements for impleader under Rule 14. Because of the independent nature of these third-party claims, James Harwick has not been properly impleaded, and the third-party complaint must be stricken, or, in the alternative, dismissed.

CONCLUSION

For the reasons set forth above, and for the reasons enumerated in Plaintiffs' Memorandum in Support of Motion to Dismiss and for Judgment on the Pleadings, the POA's third-party claims against James Harwick are invalid and fail as a matter of law and should be dismissed with prejudice.

Respectfully submitted,



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JAMES, HARWICK & PARTNERS, INC. N/K/A JHP
ARCHITECTURE/URBAN DESIGN, P.C.*

September 27, 2011

Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
)
 COUNTY OF CHARLESTON)
)
)
 THE BEACH COMPANY; LONG)
 GROVE AT SEASIDE FARMS, LLC;)
 GULF STREAM CONSTRUCTION)
 COMPANY, INC.;)
 Plaintiffs,)
)
 vs.)
)
 LONG GROVE PROPERTY OWNERS')
 ASSOCIATION, INC.; VISTA REALTY)
 PARTNERS, LLC; LONG GROVE)
 VISTA, LLC;)
 Defendants.)
)
 LONG GROVE PROPERTY OWNERS')
 ASSOCIATION, INC.)
)
)
 Third-Party Plaintiffs,)
)
 vs.)
)
 James, Harwick & Partners, Inc. n/k/a JHP)
 Architecture/Urban Design, P.C.; Sam)
 Mayo d/b/a SCM Construction, Inc.; Essex)
 Engineering Corporation)
)
 Third-Party Defendants)
)

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT
 2009-CP-10-~~5776~~

6746

DEFENDANT LONG GROVE
 PROPERTY OWNERS' NOTICE
 OF MOTION AND MOTION TO
 RECONSIDER GRANTING OF
 PLAINTIFFS' MOTION FOR
 SUMMARY JUDGMENT

FILED
 2012 AUG -3 PM 12:43
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY _____

YOU WILL PLEASE TAKE NOTICE THAT the Defendant, Long Grove Property Owners Association, Inc., by and through its undersigned attorney, pursuant to S.C.R.C.P. 59 will move on the tenth day after service hereof, or as soon thereafter as counsel may be heard, before the Honorable J. Michael Baxley for an Order of this Court granting its Motion to Reconsider the Court's Order, entered July 25, 2012, Granting Summary Judgment to Plaintiffs

and Third-Party Defendant Harwick in this Declaratory Action and Dismissing Underlying Construction Defects Claim Against Those Parties.

Defendant's Motion is based upon the grounds that the Court's Order was based upon factual errors, as well as errors at law. The errors include, but are not limited to, the following:

1. The Court has failed to recognize that the contract at issue in this case is an exculpatory contract, which is against public policy, and void. See Fisher v. Sterns, 355 S.C. 290, 584 S.E.2d. 149 (SC App 2003). By enforcing the exculpatory contract, to which defendant was not even a party, the Court has allowed professionals licensed by this state to exempt themselves from standards imposed by law.

2. The Court erred in allowing plaintiffs to release by contract non-delegable duties imposed by applicable building codes and regulations. See Nedrow v. Pruitt, 336 S.C. 668, 521 S.E.2d. 755 (SC 1999).

3. The Court erred in finding that S.C. Code § 32-2-10 did not apply to plaintiffs and third-party defendant Harwick. Plaintiffs and third-party defendant Harwick have violated the public policy of South Carolina, as statutorily mandated in S.C. Code § 32-2-10.

4. The Court improperly found that the POA was bound by the plaintiffs' release entered into with Vista, a contract to which the POA was not a party. Additionally, no South Carolina case law supports plaintiffs' position that they can bind current property owners with Vista's release.

5. The Court failed to find that a contractor's obligation to construct a house or dwelling unit in a workmanlike manner is a duty imposed by law, and as such cannot be waived by the owner.

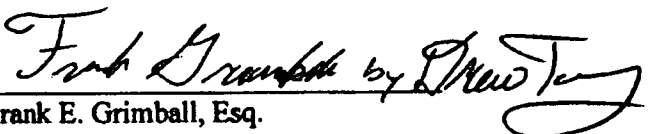
6. Additionally, the Defendant incorporates by reference, and attaches hereto, its arguments contained in Exhibit 1 November 29, 2011 Letter From George E. Mullen to the Honorable J. Michael Baxley, Exhibit 2 February 2, 2012 Letter From George E. Mullen to the Honorable J. Michael Baxley, Exhibit 3 May 31, 2012 Letter from George E. Mullen to the Honorable J. Michael Baxley, and Exhibit 4 July 12, 2012 Defendant's Comments to the Honorable J. Michael Baxley's Proposed Order.

For these reasons, the defendant, Long Grove Property Owners Association, Inc., requests that this Court grant its Motion for Reconsideration of its Order and to deny plaintiffs' and third-party defendant Harwick's Motion for Summary Judgment.

This motion shall be further based upon the statutory and common laws of the State of South Carolina, the South Carolina Rules of Civil Procedure, the pleadings heretofore filed, and any and all affidavits, memorandums and supporting material which may be served on or before the date of service hereon.

Respectfully submitted,

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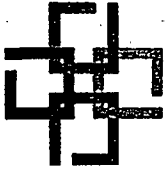
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Counsel for Long Grove Property Owners' Association

August 3, 2012
Charleston, South Carolina

EXHIBIT 1



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November 29, 2011

The Honorable J. Michael Baxley
Fourth Judicial Circuit Court
531 East Carolina Avenue
Hartsville, SC 29550

RE: Long Grove at Seaside Farms, LLC, The Beach Company, and Gulfstream
Construction v. Long Grove POA, Vista Realty Partners, LLC, and Long
Grove Vista, LLC
C. A. No. 2009-CP-10-6746

George E. Mullen

Robert L. Wylie, IV

Francis E. Grimball

James E. Lady

Arthur T. Meeder

Amy W. Wates

Dear Judge Baxley:

After reviewing the proposed order submitted by David Parrish, I offer the following comments for your review:

1. The order fails to address the critical issue that the "release" of LGSF is an exculpatory contract. The order fails to cite any legal authority or provide any legal analysis that the contract is a valid exculpatory contract, considering it is a release of gross negligence; a release of non-delegable duties; and a release in violation of public policy.
2. The order fails to cite any legal authority in support of the argument that a property owners association is bound by a release entered into by its predecessor in title. LGSF and Vista may have been able to negotiate the rights and obligations between themselves. There is no authority cited that they were able to negotiate away the rights of an entity not yet in existence or of subsequent owners of condominium units. This is especially troubling because of the extensive latent defects in the buildings at Long Grove.

The proposed order makes a conclusion of law that a subsequent purchaser is bound by a release executed by his predecessor in the title. Our research indicates that no court has ever ruled this way; further the order cites no legal authority for this position.

3. The order ignores the fact that there is no reference to a release in the sales contract or the deeds and that the release language is buried in the Master Deed. Nothing in the documents provided to a prospective purchaser actually disclosed the truth about the existence of a "release" in the middle of over one hundred (100) pages of technical material. Again, violating the requirements for exculpatory contracts.
4. The order fails to address fully that the release violates public policy. Codes and regulations have been adopted by the Legislature, county councils, and city councils to protect purchasers from defective design and construction. These include the International Building Code; fire codes; electrical codes; plumbing codes; and other state and local codes and regulations. The Department of Labor, Licensing, and Regulation enforces licensing requirements throughout the state. The Legislature has enacted S.C. Code Ann. § 32-2-10 which reinforces the public policy of South Carolina that companies and individuals who design and construct buildings may not avoid their responsibility for defective construction. See, *Loewe v. Seagate Homes, Inc.*, 987 So. 2d 758 (FLA 5th DCA 2008) (".....a party may not contract away its responsibility to comply with a building code when the person with whom the contract is made is one of those where the code is designed to protect.")
5. Section 32-2-10 prohibits an exculpatory contract for contractors and architects. The statute states:

Notwithstanding any other provision of law...[an] agreement in connection with the design...[or] construction of a building,... purporting to indemnify the promisee [or] its independent contractors against liability for damages arising out of...property damage proximately caused by or resulting from the sole negligence of the promisee [or] its independent contractors...is against public policy and unenforceable.

The contracts prohibited by this statute do not have to be construction contracts; rather, the contracts have to be "in connection with the design [or] construction." The "release" in the Master Deed is obviously connected to the design and construction of Long Grove.

The title of the statute is irrelevant to the construction of the statute itself.

6. These codes and regulations create non-delegable duties to the public generally and subsequent purchasers specifically. See, e.g., *Green Springs, Inc. v. Calvaro*, 239 So. 2d 264 (Fla. S. Ct. 1970). Because these are non-delegable duties, the release is unenforceable.
7. The order treats the general contractor Gulfstream Construction and the architect JHP the same as the developer. There is no legal authority or analysis concerning the implied warranty of good and workmanlike services.
8. Rule 56 requires that the facts be viewed in a light most favorable to the non-moving party. In various paragraphs the order does the opposite.

In summary, the public policy of this state prevents the enforcement of the "release". Further, the obligations owed by LGSF, the Beach Company, Gulfstream, and JHP are non-delegable obligations for which these entities remain responsible. In the alternative the "release" must meet the requirements of an exculpatory contract, which it does not.

We request that the Court grant a hearing for the reconsideration prior to signing an order. We believe upon further consideration the Court will change its position. At the least, we believe we can frame issues which will aid the Court in publishing an Order fully addressing the novel legal issues.

If you will grant this pre-emptive argument we will not request further arguments in the event we are unsuccessful.

Thank you for your consideration.

Yours very truly,



George E. Mullen

GEM/pm

cc: All counsel of record (via email)

239 So.2d 264
Supreme Court of Florida.

GREEN SPRINGS, INC., Gerald J. Green and
Herschel V. Green, d/b/a Green Construction
Company, a partnership, Petitioners,
v.

Jacinto CALVERA, as Administrator of the Estate
of Hilda A. Calvera, Deceased, and Jacinto
Calvera, individually and Hilda Calvera, his wife,
Respondents.

No. 38605. Sept. 16, 1970.

Action against home builder and owner-developer of housing project for death of nine-year-old girl as result of injuries sustained when planter on side of resold house fell and struck her. The District Court, Dade County, J. Gwynn Parker, J., entered judgment of dismissal and the District Court of Appeal, 220 So.2d 414, upheld complaint and reversed and remanded and defendants petitioned for certiorari. The Supreme Court, Mann, District Court Judge, held that although one who owns real property which is being developed by construction of homes for resale has nondelegable duty to see that residence is so constructed as to be reasonably free from dangerous latent defects which will cause harm to those who foreseeably will come onto the property after the construction has been completed and the property resold, liability without fault is not to be imposed on owner.

Opinion of District Court quashed in part, otherwise approved.

Carlton and Boyd, JJ., agreed to conclusion.

Order on mandate see 239 So.2d 850.

West Headnotes (4)

- 1 Negligence
◊-Defects in Buildings and Structures in General

Although one who owns real property which is being developed by construction of homes for resale has nondelegable duty to see that residence is so constructed as to be reasonably free from dangerous latent defects which will cause harm to those who foreseeably will come onto the property after the construction has been

completed and the property resold, liability without fault is not to be imposed on owner.

3 Cases that cite this headnote

- 2 Negligence
◊-Developers and Builders
Negligence
◊-Contractors

Doctrine of attractive nuisance was not applicable to action against developer who sold house and contractor who built it for death of child who was killed by falling concrete planter when she was staying on premises.

2 Cases that cite this headnote

- 3 Negligence
◊-Attractive Nuisance Doctrine

Doctrine of "attractive nuisance" involves set of circumstances relating to innocence of danger on child's part, likelihood of trespass and consequent danger and foreseeability of this chain of circumstance on part of one who would not owe as great a duty of care toward an adult trespasser.

6 Cases that cite this headnote

- 4 Negligence
◊-Attractive Nuisance Doctrine

All factors involved in the attractive nuisance doctrine are to be considered in the light of the utility of maintaining the dangerous condition and the cost of eliminating the danger.

Attorneys and Law Firms

*264 Robert L. Bell, of Dixon, Bradford, Williams, McKay & Kintreil, Miami, for petitioners.
Mallory H. Horton, of Horton & Schwartz and Wall, Roth & Sheradsky, Miami, for respondents.

Opinion

MANN, District Court Judge.

The Third District Court of Appeal upheld a complaint charging negligence against the developer who sold a house and the contractor who built it, after a heavy concrete planter fell on a child staying there and killed her. Petitioner alleges that this decision conflicts with *Slavin v. Kay*, Fla. 1959, 108 So.2d 462, and *Mai Kai, Inc. v. Colucci*, Fla. 1967, 205 So.2d 291. This is not so. There was a deficiency of Proof *265 there that the owner was chargeable with knowledge of the dangerous condition. Such a deficiency may develop in this case, but there is no deficiency of Allegation: we are considering the pleadings.

1 The District Court states that 'one who owns real property which is being developed by the construction of homes for resale has a nondelegable duty to see that the residence is so constructed as to be reasonably free from dangerous latent defects which will cause harm to those who foreseeably will come onto the property after the construction has been completed and the property resold.' 220 So.2d at 416. This should not be taken as imposing liability without fault, which is negated by *Slavin* and *Mai Kai*. Rather is it to be taken as a reaffirmation of the doctrine of those cases, extending liability for Negligence to cases in which the property has been sold.

2 One statement in the District Court opinion does, however, create an erroneous impression. The Court states, 220 So.2d at 416, that the 'complaint also stated a cause of action against the appellees on the theory that the planter was an attractive nuisance,' citing *Butler v. Porter-Russell Corporation*, Fla. 1968, 217 So.2d 298. That case involved injury to a trespassing child resulting from the fall of a concrete block at a building site. Much of the argument on this petition centers around the question whether possession of the premises is a necessary element in a case based on attractive nuisance. This seems to us to be a misdirected argument. This court has held that a subcontractor may so negligently conduct itself in the insecure placement of a heavy window frame that its fall upon a trespassing child may give rise to liability. *Carter v. Livesay Window Co.*, Fla. 1954, 73 So.2d 411. There are circumstances in which the foreseeability of trespass and the foreseeability of harm so coincide as to impose upon a reasonable man a duty to take care to prevent that injury.

But all of this misses the point: the child killed in this case was not a trespasser, so there is no need to search for a doctrine separate from the rules of ordinary negligence law to support a duty of care toward her. Her presence at

this home, in which she was invited to stay for several weeks, was as predictable as McPherson's behind the wheel of his Buick. *Slavin* and *Mai Kai* discuss all the doctrine needed to proceed in this case, and one has only to read our Standard Jury Instructions 3.2.d and 3.5.h to perceive how inapposite they would be when the time comes to charge a jury in this case.

3 4 Perhaps the phrase 'attractive nuisance' has become an unattractive nuisance. There never was a time when a nuisance, in the old equity sense, was required in an 'attractive nuisance' case. And the idea of attraction has led sound courts, including this one,¹ into nearly evenly split decisions which may distract lawyers from the fundamentals on which the duty of care toward one's fellow man depends. The difficulty is that judges must formulate doctrine to describe principle; and in doing so are led by the slipperiness of words to coin phrases which seem at the moment to encapsulate the principle beyond question. But lawyers and judges then begin to follow the words, and eventually they may lead us astray from the underlying principle. Obviously we are dealing with such a broadly grounded principle as that expressed in the leading case of *Heaven v. Pender*, 1883, 11 Q.B.D. 503: 'Whenever one person is by circumstances placed in such a position with regard to another that every one of ordinary sense who did think would at once recognize that if he did not use ordinary care and skill in his own conduct with regard to those circumstances, he would cause danger of injury to the person or property of the other, a duty arises to *266 use ordinary care and skill to avoid such danger.'²

Equally obviously, we must instruct juries in somewhat more definite language, related to the specific circumstances of the case, and it is this necessity which compels us to draw lines along a continuum purporting to mark differences in kind where there are in reality only differences in degree. But the jury is a great buffer, and places, to our general satisfaction, the particular case on the appropriate side of the line of doctrinal demarcation. What we are dealing with when we speak of 'attractive nuisance' is merely a set of circumstances relating to the innocence of danger on a child's part, the likelihood of trespass and consequent danger and the foreseeability of this chain of circumstance on the part of one who would not owe as great a duty of care toward an adult trespasser. All of these factors are to be considered in the light of the utility of maintaining the dangerous condition and the cost of eliminating the danger. All of these may combine to impose upon the landowner or possessor or, as in *Carter v. Livesay Window Company*, the person responsible for the dangerous condition of the land, a duty of care. All of this specification of principle is adequately covered by *Restatement, Torts 2d, § 339*, and by a voluminous literature.³ It is best not to consider whether the specifics of all this legal doctrine, which divide courts, are

understood by juries; somehow we boil it down into acceptable instructions and they determine cases acceptably. Judge Jerome Frank quotes Judge Curtis Bok as saying that juries are 'treated like children while the testimony is going on,' but are then 'doused with a kettleful of law, during the charge, that would make a third-year law student blanch.'⁴ We would unjustly compound the difficulties of the jury which may ultimately decide these issues if we did not order the reference to attractive nuisance expunged.

Accordingly, so much of the opinion of the District Court as refers to a cause of action for attractive nuisance is quashed; all else is approved.

ERVIN, C.J., and DREW and ADKINS, JJ., concur.

CARLTON and BOYD, JJ., agree to conclusion.

Footnotes

- 1 Concrete Construction, Inc., of Lake Worth v. Peterson, Fla.1968, 216 So.2d 221.
- 2 This statement is misquoted in Carter v. Livesey Window Co., Fla.1954, 73 So.2d 411. There the phrase is printed: '* * * every one of ordinary sense who did Not think. * * *'
- 3 E.g., James, Tort Liability of Owners of Land: Duties Owed to Trespassers, 63 Yale L.J. 144 (1953); cf. James, Tort Liability of Occupiers of Land: Duties Owed to Licensees and Invitees, 63 Yale L.J. 605 (1954); Prosser, Trespassing Children, 47 Cal.L.Rev. 427 (1959); Note, The Liability of Landowners to Trespassing Children, 1 U.Fla.L.Rev. 271 (1948); Comment, Torts: The Attractive Nuisance Doctrine, 16 U.Fla.L.Rev. 640 (1964); Note, Trespassing Children: A Study in Expanding Liability, 20 Vand.L.Rev. 139 (1966).
- 4 Courts on Trial at 117 (1949).

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987 So.2d 758
District Court of Appeal of Florida,
Fifth District.

Sue A. LOEWE and Warren Loewe, Appellant,
v.
SEAGATE HOMES, INC., Appellee.

No. 5D07-1683 July 11, 2008. Rehearing Denied Aug.
13, 2008.

Synopsis

Background: Homeowner who was injured when bathroom closet door fell off shortly after moving into new residence brought negligence action against contractor that built the residence. The Circuit Court, St. Johns County, J. Michael Traynor, J., dismissed the complaint on the basis of an exculpatory clause in the parties' contract. Homeowner appealed.

Holdings: The District Court of Appeal, Evander, J., hold that:

- 1 exculpatory provision was unenforceable to the extent it attempted to release contractor from liability for intentional tort, and
- 2 exculpatory provision was unenforceable to the extent it attempted to release contractor from liability for negligence.

Reversed and remanded.

West Headnotes (4)

1 Contracts
◊-Exemption from liability

Exculpatory clauses are disfavored in the law because they relieve one party of the obligation to use due care and shift the risk of injury to the party who is probably least equipped to take the necessary precautions to avoid injury and bear the risk of loss; nevertheless, because of the countervailing policy that favors the enforcement of contracts as a general proposition, unambiguous exculpatory provisions are enforceable unless they contravene public policy.

3 Cases that cite this headnote

2 Contracts
◊-Exemption from liability

Exculpatory provision in contract for the construction and purchase of a residence was unenforceable to the extent it attempted to release contractor from liability for intentional tort.

1 Cases that cite this headnote

3 Negligence
◊-Defects in Buildings and Structures in General

A party may not contract away its responsibility to comply with a building code when the person with whom the contract is made is one of those whom the code is designed to protect.

4 Contracts
◊-Exemption from liability

Exculpatory provision in contract for the construction and purchase of a residence was unenforceable to the extent it attempted to release contractor from liability for negligence; state's comprehensive regulation and licensing of building contractors and building construction standards reflected a clear public policy to protect purchasers of residential homes from personal injuries caused by improper construction practices. West's F.S.A. §§ 489.101 et seq., 553.781(1).

2 Cases that cite this headnote

Attorneys and Law Firms

*759 Michael J. Korn and Mary C. Cox of Korn & Zehner, P.A., Jacksonville, and Elizabeth M. Moses of Barnes & Cohen, P.A., Jacksonville, for Appellant.
G. Michael Burnett of Sobutt, Schmidt, Burnett & Noey, Jacksonville, for Appellee.

EVANDER, J.

The Loewes appeal from a final order dismissing their complaint against Seagate Homes, Inc., with prejudice. The trial court found that the Loewes' claim was barred by an exculpatory clause in the parties' purchase contract. Because we find the clause was unenforceable, we reverse.

In June, 2003, the Loewes entered into a purchase agreement with Seagate for the construction and purchase of a new home. The closing took place on October 26, 2004, and the Loewes moved into their new residence on November 1, 2004. The Loewes allege that less than a week thereafter, a bathroom closet door fell off its track and struck Mrs. Loewe in the eye, causing serious and permanent injuries. The Loewes then filed a negligence action against Seagate. Count 1 sought damages for injuries to Mrs. Loewe and Count 2 was a claim for loss of consortium by Mr. Loewe.

The purchase contract included a seller's warranty that the construction would be of good quality and in accordance with generally accepted industry standards. The contract also contained an exculpatory clause which purported to release Seagate from any liability for personal injury caused by Seagate's construction practices regardless of whether the injury resulted from Seagate's negligence, gross negligence, or intentional conduct:

***760 Release.** The Buyer hereby acquits, releases, exonerates, and discharges Seller, its officers, directors, owners, employees, their successors, legal representatives and assigns from any amount of damages, including but not limited to medical expense, lost wages, pain and suffering and disability resulting directly or indirectly from bodily injury, personal injury, or property damage, that may be or is caused, suffered or incurred by the Buyer, the Buyer's guests, employees, agents, suppliers, contractors or subcontractors at any time as the result in part or in whole from the construction process, the constructed dwelling or the lot on which it is constructed, the materials and supplies used in or incorporated into the dwelling or the lot on which it is constructed and the components therein. This Release shall apply and be effective regardless of the cause of the injury or damage, including but not limited to negligence, gross negligence, strict liability or the intentional conduct of any of the foregoing releases.

In granting Seagate's motion to dismiss, the trial court found that the exculpatory provision was unambiguous and enforceable.

On appeal, the Loewes raise several challenges to the validity of the exculpatory clause. We find dispositive the Loewes' contention that the clause was void because it contravenes public policy.

1 Exculpatory clauses are disfavored in the law because they relieve one party of the obligation to use due care and shift the risk of injury to the party who is probably least equipped to take the necessary precautions to avoid injury and bear the risk of loss. Nevertheless, because of the countervailing policy that favors the enforcement of contracts as a general proposition, unambiguous exculpatory provisions are enforceable unless they contravene public policy. *Applegate v. Cable Water Ski, L.C.*, 974 So.2d 1112, 1114 (Fla. 5th DCA 2008).

2 3 Here, the exculpatory clause is obviously unenforceable to the extent that it attempts to release Seagate of liability for an intentional tort. *Kellums v. Freight Sales Centers, Inc.*, 467 So.2d 816 (Fla. 5th DCA 1985); see also *L. Luria & Son, Inc. v. Honeywell, Inc.*, 460 So.2d 521 (Fla. 4th DCA 1984); *Gayings v. Jack and Ruth Eckerd Foundation*, 403 So.2d 1144 (Fla. 2d DCA 1981). Furthermore, a party may not contract away its responsibility to comply with a building code when the person with whom the contract is made is one of those whom the code is designed to protect. *John's Pass Seafood Co. v. Weber*, 369 So.2d 616 (Fla. 2d DCA 1979).

4 In the present case, the Loewes' complaint was dismissed prior to a determination of whether Seagate's alleged negligence also constituted a building code violation. Regardless of whether the Loewes are ultimately able to establish a code violation, we find that the exculpatory clause is unenforceable to the extent it purports to absolve Seagate of liability for personal injuries to Mrs. Loewe caused by Seagate's alleged negligence.

Florida's comprehensive regulation of the licensing of building contractors and building construction standards reflect a clear public policy to protect purchasers of residential homes from personal injuries caused by improper construction practices. Section 489.101 provides that the Legislature "761" deems it necessary in the interest of the public health, safety, and welfare to regulate the construction industry." The Legislature has further found that a contractor's accountability for work performed is essential to the protection of the public. § 553.781(1), Fla. Stat. (2003). To permit builders of residential homes to absolve themselves from liability for personal injury caused by their negligent acts would undermine the Legislature's intent to protect the public from unsafe construction practices.

Seagate cites to our decision in *Hardage Enterprises, Inc.*

33 Fla. L. Weekly D1748

v. Fidelity Corp., N.Y., 570 So.2d 436, 439 (Fla. 5th DCA 1990) for the proposition that exculpatory clauses should be upheld "where the contract is between persons of equal bargaining power and the provisions are clear and unambiguous." However, *Hardage* is readily distinguishable because the challenged provision barred liability for past negligent acts, not future misconduct. Furthermore, we observed that we were not confronted with a situation where public policy mandated a different result. *Id.* at 439. Even assuming, *arguando*, that the parties here were in an equal bargaining position, a builder should not be free to negligently, recklessly, or intentionally construct a residence in a manner that will unreasonably threaten the life, health or safety of its

future occupants.

REVERSED and REMANDED.

PLEUS and COHEN, JJ., concur.

Parallel Citations

33 Fla. L. Weekly D1748

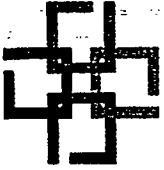
Footnotes

- 1 Ch. 489, Part I, Contracting, Fla. Stat. (2003).
- 2 Ch. 553, Building Construction Standards, Fla. Stat. (2003).

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EXHIBIT 2



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February 10, 2012

Honorable Judge J. Michael Baxley
Fourth Judicial Circuit Court
531 East Carolina Avenue
Hartsville, SC 29550

RE: Long Grove at Seaside Farms, LLC, The Beach Company, and Gulfstream Construction v. Long Grove POA, Vista Realty Partners, LLC, and Long Grove Vista, LLC
C. A. No. 2009-CP-10-6746

Dear Judge Baxley:

It has been nearly five months since you heard arguments on Defendants' Motion for Summary Judgment. In November, Defendants, through David Parrish, presented a proposed order which contains numerous legal errors. We outlined those matters in my letter of November 29, 2011.

Mr. Parrish has now responded to three of the issues through his Memorandum of January 17th, yet Defendants continue to misconstrue and misstate the law as relates to exculpatory contracts and release of warranties and tort claims. Since so much time has elapsed following the original hearing, I respectfully request you grant us a short argument which I feel confident will change your analysis of this case. Please consider the following:

1) Exculpatory Contracts as Against Public Policy

Exculpatory contracts are not favored at law. If the contract contravenes public policy, it is void. Fisher v. Sterns, 584 SE 2d. 149 (SC App 2003). Professionals, such as contractors and architects, are licensed by the state and subject to complying with governmental regulations for their industries. This includes complying with applicable building codes. It would violate public policy to allow the contractor or architect to escape liability for violating obligations

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imposed by law. The purpose of the Standard Building Code is to "protect the public's life, health and welfare in the built environment." Preface, 1997 Standard Building Code.

Courts have refused to enforce exculpatory contracts contrary to the public interests. Professionals licensed by this state cannot exempt themselves from standards imposed by law by the mere execution of exculpatory contracts. As the Tennessee Supreme Court understands:

"A professional person should not be permitted to hide behind the protective shield of an exculpatory contract and insist that he is not answerable for his own negligence. We do not approve the procurement of a license to commit negligence in professional practice." Olson v. Molzen, 558 SW 2d. 429 (Tenn. 1977).

West Virginia jurisprudence agrees. In a case recognized by the South Carolina Court of Appeals, the Supreme Court of Appeals of West Virginia stated:

"A plaintiff's express agreement to assume the risk of defendant's violation of a safety statute enacted for the purpose of protecting the public will not be enforced; *the safety obligation created by the statute for such purpose is an obligation owed to the public at large and is not within the power of any private individual to waive.*" Murphy v. North American River Runners, Inc., 412 SE 2d. 504 at 509 (W VA 1991). (emphasis added).

Florida's Court of Appeals has directly addressed the issue before us, holding an exculpatory clause relieving a contractor from building code violations is void as against public policy. The court stated:

"...a party may not contract away its responsibility to comply with a building code when the person with whom the contract is made is one of those whom the code is designed to protect...Florida's comprehensive regulation of the licensing of building contractors and building construction standards reflect a clear public policy to protect purchasers of residential homes from personal injuries caused by improper construction practices...". Loewe v. Seagate Homes, Inc., 987 So. 2d. 758 (Fla. App. 5 Dist. 2008).

2) Non-Delegable Duties

The Defendants rely upon Vista's assumption of liability and release as a complete bar to their liability for construction defects and violation of applicable building codes. Obligations and duties created by statute are non-delegable.

"The real effect of finding a duty to be non-delegable is to render not the duty, but the liability, non-delegable; the person subject to a non-delegable duty is certainly free to delegate the duty, but will be liable to third parties for any negligence of the delegatee, regardless of any fault on the part of the delegator." Nedrow v. Pruitt, 521 SE 2d. 755 (SC 1999).

The building codes and regulations create non-delegable duties to the public generally and subsequent purchasers specifically. Because these are non-delegable duties, the release and assumption of liabilities is unenforceable. See, Greensprings, Inc. v. Calvaro, 239 So. 2d. 264 (FL 1970).

3) Section 32-2-10-Prohibition of Exculpatory Contracts for Contractors and Architects

Defendants continue to misconstrue the plain language of the statutory prohibition against contractors attempting to skirt their statutorily proposed obligations. This statute is another example of the legislature declaring the public policy that contractors and architects are bound by the rules and regulations and applicable building codes, all of which are designed to protect the public at large. Section 32-2-10 of the Code of Laws of South Carolina prohibits the enforcement of the assumption of liability and release executed by Vista.

4) No Legal Authority Supports Defendants' Position Binding a Current Property Owner With a Prior Owner's Release

Defendants sole basis for summary judgment rests upon the release and assumption of liabilities contained in the purchase agreement with Vista. The Long Grove Property Owners Association never entered into or executed any release with Defendants, nor any other party relating to their buildings. Defendants contend the agreement entered into by Vista binds the subsequent owner of the property, the Plaintiffs. We have searched the national databases and find zero authority for this proposition. There is simply no law to support Defendants position, which is the entire basis of the proposed order submitted to you.

The only case we have found that tangentially addresses this issue is the South Carolina seminal case of Terlinde v. Neely, 271 SE 2d. 768 (SC 1980). In Terlinde, the developer/contractor settled a defects claim with the original owner, obtaining a full release. The owner then sold the home to Terlinde. After the purchase, Terlinde discovered damages caused by the same construction defects and filed suit against the developer/contractor. Our Supreme Court held subsequent purchasers could sue for latent defects. The Court did not specifically address the issue of the prior owners previously releasing the contractor, although they obviously allowed the subsequent purchaser to also prevail. Clearly, the court did not allow the prior release as a bar to Terlinde's claim.

For reasons set forth above, and those included in our letter of November 29th, we believe there are serious legal issues which were not fully addressed in our hearing five months ago, all of which directly impact this Court's analysis of this case. We again request the opportunity to address these issues through arguments before the Court, prior to your execution of the order, rather than by a Motion to Reconsider.

I am confident that our argument will have a significant bearing on the order you ultimately issue. If you will grant us this opportunity for a preemptive argument, I assure you we will not request an additional hearing in the event we are unsuccessful.

Thank you for your consideration.

Yours very truly,

MULLEN WYLIE, LLC

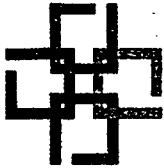


George E. Mullen

GEM/pm

cc: All counsel of record (via email)

EXHIBIT 3



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May 31, 2012

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Via Email Only

Honorable Judge Baxley
Charleston County Court
100 Broad Street, Suite 106
Charleston, SC 29401

RE: Long Grove at Seaside Farms, LLC, the Beach Company, and Gulfstream Construction v. Long Grove POA, Vista Realty Partners, LLC, and Long Grove Vista, LLC
Case No.: 2009-CP-10-6746

Dear Judge Baxley:

Enclosed is a recent decision of the Ohio Supreme Court holding that a contractor's obligation to construct a house in a workmanlike manner is a duty imposed by law, *and as such cannot be waived by the owner*. The Court held:

"We conclude that the duty to construct a house in a workmanlike manner using ordinary care is the baseline standard that Ohio home buyers can expect builders to meet. The duty does not require builders to be perfect, but it does establish a standard of care below which builders may not fall without being subject to liability, even if a contract with the home buyer purports to relieve the builder of that duty. Accordingly, we conclude that a home builder's duty to construct a house in a workmanlike manner using ordinary care is a duty imposed by law, and a home buyer's right to enforce that duty cannot be waived."

I hope this case is helpful in your deliberations. Thank you.

Yours very truly,

MULLEN WYLIE, LLC


George E. Mullen

George E. Mullen

Robert L. Wylie, IV

Francis E. Grimball

James E. Lady

Arthur T. Meeder

Amy W. Wates

Allison B. Thompson

Andrew J. Toney

Enclosure

Jones v. Centrex Homes, 2012 WL 877561 (Ohio)

cc: All counsel of Record

Briefs and Other Related Documents
Judges and Attorneys

Supreme Court of Ohio.

JONES et al., Appellants,
v.
CENTEX HOMES, Appellee.

No. 2010-1826.
Submitted Oct. 4, 2011.
Decided March 14, 2012.

Background: Homeowners, in two separate cases related to the construction of two different homes, brought action against builder-vendor for breach of contract, breach of express and implied warranties, negligence, and failure to construct homes in a workmanlike manner, based on allegations that use of magnetized metal in construction caused interference with television, computer, and cellular service in each home. The cases were consolidated. The Court of Common Pleas, Franklin County, No. 07CVH02-2478, entered summary judgment in favor of builder-vendor. Homeowners appealed. The Court of Appeals, 189 Ohio App.3d 668, 939 N.E.2d 1294, affirmed. Homeowners filed discretionary appeal.

Holding: The Supreme Court, Pfeifer, J., held that homeowners could not waive their right to enforce builder-vendor's duty to construct homes in workmanlike manner.

Reversed.

West Headnotes

[1] KeyCite Citing References for this Headnote

272 Negligence

272XVII Premises Liability

272XVII(G) Liabilities Relating to Construction, Demolition and Repair

272k1205 Liabilities of Particular Persons Other Than Owners

272k1205(2) k. Developers and Builders. Most Cited Cases

A duty to construct houses in a workmanlike manner using ordinary care is imposed by law on all home builders.

[2] KeyCite Citing References for this Headnote

95 Contracts

95II Construction and Operation

95II(C) Subject-Matter

95k197 Buildings and Other Works

95k198 In General

95k198(2) k. Construction or Repair of Buildings. Most Cited Cases

95 Contracts KeyCite Citing References for this Headnote

95II Construction and Operation

95II(C) Subject-Matter

95k205 Warranties

95k205.35 Sale of Dwellings; Habitability

95k205.35(4) k. Exclusion or Limitation by Contract, Express Warranty or Refusal to Warrant. Most Cited Cases

Homeowners could not waive right to enforce home builder's duty to construct homes in workmanlike manner using ordinary care, and thus purchase contracts between homeowners and builder, containing waivers of all implied warranties and instead offering a detailed limited warranty, did not preclude homeowners from bringing claims against builder alleging violation of duty, arising from builder's alleged use of magnetized metal joists in homes that interfered with homeowners' television, computer and telephone use.

[3] KeyCite Citing References for this Headnote

95 Contracts

95II Construction and Operation

95II(C) Subject-Matter

95k205 Warranties

95k205.35 Sale of Dwellings; Habitability

95k205.35(2) k. New Buildings; Sales by Builders and Commercial Activity. Most Cited Cases

272 Negligence KeyCite Citing References for this Headnote

272XVII Premises Liability

272XVII(G) Liabilities Relating to Construction, Demolition and Repair

272k1205 Liabilities of Particular Persons Other Than Owners

272k1205(2) k. Developers and Builders. Most Cited Cases

A home builder's duty to construct a home in a workmanlike manner is not an implied warranty, but instead is a duty imposed by law.

[4] KeyCite Citing References for this Headnote

272 Negligence

272XVII Premises Liability

272XVII(G) Liabilities Relating to Construction, Demolition and Repair

272k1205 Liabilities of Particular Persons Other Than Owners

272k1205(2) k. Developers and Builders. Most Cited Cases

The duty to construct a house in a workmanlike manner using ordinary care is the baseline standard that Ohio home buyers can expect builders to meet; the duty does not require builders to be perfect, but it does establish a standard of care below which builders may not fall without being subject to liability, even if a contract with the home buyer purports to relieve the builder of that duty.

[5] KeyCite Citing References for this Headnote

95 Contracts

95II Construction and Operation

95II(C) Subject-Matter

95k197 Buildings and Other Works

95k198 In General

95k198(2) k. Construction or Repair of Buildings. Most Cited Cases

272 Negligence KeyCite Citing References for this Headnote

272XVII Premises Liability

272XVII(G) Liabilities Relating to Construction, Demolition and Repair

272k1205 Liabilities of Particular Persons Other Than Owners

272k1205(2) k. Developers and Builders. Most Cited Cases

A home builder's duty to construct a house in a workmanlike manner using ordinary care is a duty imposed by law, and a home buyer's right to enforce that duty cannot be waived.

SYLLABUS OF THE COURT

*1 A home builder's duty to construct a house in a workmanlike manner using ordinary care is a duty imposed by law, and a home buyer's right to enforce that duty cannot be waived. (*Velotta v. Leo Petronzio Landscaping, Inc.*, 69 Ohio St.2d 376, 433 N.E.2d 147 (1982), paragraph one of the syllabus, and *Mitchem v. Johnson*, 7 Ohio St.2d 66, 218 N.E.2d 594 (1966), paragraph three of the syllabus, clarified and followed.)

Steve J. Edwards, Grove City, for appellants.

Vorys, Sater, Seymour & Pease, L.L.P., Michael G. Long, and Jonathan P. Corwin, Columbus, for appellee.

Kristen L. Klaus, urging affirmance for amici curiae, National Association of Home Builders and Ohio Home Builders Association.

PFEIFER, J.

PFEIFER, J.

{¶ 1} The sole question before this court is whether a home buyer can waive his right to enforce a home builder's legal duty to construct a house in a workmanlike manner. We hold that he cannot.

Factual and Procedural Background

{¶ 2} Appellants Paul Jones and Latosha Sanders purchased a new house from appellee, Centex Homes, in 2004. After moving into their new home, they discovered that their computers, cordless telephones, and televisions did not operate properly. They alleged that metal joists in the house are magnetized and are causing the problems.

{¶ 3} Apparently, efforts to resolve the problem were unavailing, because they filed suit against Centex Homes, alleging various causes of action, including breach of contract, breach of express and implied warranty, negligence, and failure to perform in a workmanlike manner. On April 30, 2008, that case was consolidated with a nearly identical case filed by Eric and Ginger Estep, who are also appellants in this case. Centex Homes moved for summary judgment, arguing that appellants had waived all warranties, whether express or implied, except the specific limited warranty that Centex Homes provided in the sales agreements. The trial court agreed and granted the motion for summary judgment, finding "as a matter of law that the Limited Home Warranty is not unconscionable."

{¶ 4} On appeal, the court of appeals affirmed the trial court's judgment, stating:

[W]e find no error with the trial court's determination that both the sale agreement and the limited warranty adequately explained in "numerous places that the Limited Home Warranty covers all defects in materials and workmanship and that there are no other warranties either expressed or implied."

*2 Jones v. Centex Homes, 189 Ohio App.3d 668, 2010-Ohio-4268, 939 N.E.2d 1294, ¶ 30.

{¶ 5} We granted appellants' discretionary appeal. Jones v. Centex Homes, 127 Ohio St.3d 1531, 2011-Ohio-376, 940 N.E.2d 985.

Analysis

A. The duty to construct a house in a workmanlike manner

{¶ 6} The duty to construct a house in a workmanlike manner has been imposed by law on all home builders in Ohio since at least 1966. In *Mitchem v. Johnson*, 7 Ohio St.2d 66, 218 N.E.2d 594 (1966), home buyers sought compensation for water damage resulting from their house having been built in a low portion of a lot with surface-water problems and without a foundation drainage system. Notwithstanding the fact that no warranty covered the alleged defect, we concluded that the home buyers were entitled to recover damages if they could establish that the home builder had not constructed the house in a workmanlike manner, stating:

A duty is imposed by law upon a builder-vendor of a real-property structure to construct the same in a workmanlike manner and to employ such care and skill in the choice of materials and work as will be commensurate with the gravity of the risk involved in protecting the structure against faults and hazards, including those inherent in its site. If the violation of that duty proximately causes a defect hidden from revelation by an inspection reasonably available to the vendee, the vendor is answerable to the vendee for the resulting damages.

Id. at paragraph three of the syllabus.

{¶ 7} In determining that a duty to construct a house in a workmanlike manner exists, the court plowed the wide fertile plain between two extreme concepts: caveat emptor and strict liability. Id. at 70-72, 218 N.E.2d 594. Without expressly saying so, the court appears to have determined that it would be unfair for it to apply either of these standards. See id. at 70-73, 218 N.E.2d 594. The court also stated that “[t]he requirement of workmanlike performance is no more than that which the law imposes upon the builder of a structure on land owned by another, unless, of course, a higher duty may be fairly implied from the terms of the contract itself.” Id. at 69, 218 N.E.2d 594, citing 17A Corpus Juris Secundum, Contracts, Section 515, at 851. The court specifically stated that an implied warranty was not being imposed. Id. at paragraph two of the syllabus.

{¶ 8} In *Ins. Co. of N. Am. v. Bonnie Built Homes*, 64 Ohio St.2d 269, 270-271, 416 N.E.2d 623 (1980), we stated that the “duty of the builder-vendor to build a structure in a workmanlike manner is a duty arising out of the contract of sale and not out of a general duty owed to the public at large,” and held that the duty to construct a house in a workmanlike manner did not extend to subsequent buyers of the house. Just three years later, we recanted. In *McMillan v. Brune-Harpenau-Torbeck Builders, Inc.*, 8 Ohio St.3d 3, 4, 455 N.E.2d 1276 (1983), we overruled *Bonnie Built*, stating, “No sound policy reasons exist to prevent the extension of this duty to all subsequent vendees as well.” Our decision was grounded in two policy considerations: “extension of the duty of care in the real property context follows the trend of

strong legal precedent in the area of products liability” and “[i]mproved workmanship and accountability are promoted by an expansion of the scope of the duty * * *.” Id. at 5, 455 N.E.2d 1276.

{¶ 9} Between Bonnie Built and McMillan, we further explored the ramifications of the duty to construct in a workmanlike manner in Velotta v. Leo Petronzio Landscaping, Inc., 69 Ohio St.2d 376, 433 N.E.2d 147 (1982). The court clearly differentiated an implied warranty of suitability, which in effect would hold a builder strictly liable for defects in the structure, from the duty to construct in a workmanlike manner, which essentially holds a builder liable only for negligence. Id. at 377-378, 433 N.E.2d 147. We concluded that although the obligation to construct in a workmanlike manner may arise from a contract, the cause of action is not based on contract but on a duty imposed by law. Id. at 378-379, 433 N.E.2d 147. Thus, we held that the duty applied in Velotta, even though no oral or written warranties had been offered or agreed to. Id. at 377, 433 N.E.2d 147. In fact, the house had been sold “as is.” Id. at 376, 433 N.E.2d 147.

*3 [1] {¶ 10} We conclude that in Ohio a duty to construct houses in a workmanlike manner using ordinary care is imposed by law on all home builders.

B. Can a home buyer waive his right to enforce the home builder's duty to construct the house in a workmanlike manner?

[2] {¶ 11} Appellants and Centex Homes agree that the purchase contracts associated with this case contain provisions that waive all implied warranties. In place of whatever implied warranties might otherwise be in effect, Centex Homes offered a detailed limited warranty. Although we see no legal impediment to such an arrangement, that issue is not squarely before us. We are called upon only to determine whether a home buyer can waive his right to enforce the builder's legal duty to construct the house in a workmanlike manner using ordinary care.

[3] {¶ 12} At oral argument, Centex Homes repeatedly referred to the requirement that a home builder construct a house in a workmanlike manner as an “implied warranty,” while appellants repeatedly referred to it as a “duty.” In Mitchem, we referred to the requirement as a “duty,” but we also said that it was an “implied term of the sale” that the builder would complete the house in a workmanlike manner. Mitchem at paragraph three of the syllabus and 73, 218 N.E.2d 594. It is clear, based on the discussion above, that we conclude that the requirement is not an implied warranty, but instead is a duty imposed by law.

{¶ 13} To determine whether a home buyer can waive his right to enforce this duty, we again turn to Mitchem and Velotta. In Mitchem, we stated that all persons must “measure their conduct by that of the ordinarily prudent person under all the circumstances, which include the risk of harm from the natural and probable consequences of that conduct.” Id. at 72, 218 N.E.2d 594. Having enunciated this general rule, we stated that it applied to home builders. Id. In Velotta, we stated that the duty owed by a builder-vendor “is the duty imposed by law on all persons to exercise ordinary care.” Velotta at 378, 433 N.E.2d 147. And we held that the duty applied even though the house had been sold “as is” and there had been no express or implied warranties. Id.

[4] [5] (§ 14) We conclude that the duty to construct a house in a workmanlike manner using ordinary care is the baseline standard that Ohio home buyers can expect builders to meet. The duty does not require builders to be perfect, but it does establish a standard of care below which builders may not fall without being subject to liability, even if a contract with the home buyer purports to relieve the builder of that duty. Accordingly, we conclude that a home builder's duty to construct a house in a workmanlike manner using ordinary care is a duty imposed by law, and a home buyer's right to enforce that duty cannot be waived.

Conclusion

*4 (§ 15) We reverse the judgment of the court of appeals and remand the cause to the court of common pleas for a trial on appellants' tort claims that Centex Homes breached its duty to construct their homes in a workmanlike manner using ordinary care. The various other issues decided by the trial court and the court of appeals are unaffected by our opinion.

Judgment reversed and cause remanded.

O'CONNOR, C.J., and LUNDBERG STRATTON, O'DONNELL, LANZINGER, and McGEE BROWN, JJ., concur.

CUPP, J., concurs in judgment only.

Ohio,2012.

Jones v. Centex Homes

— N.E.2d —, 2012 WL 877561 (Ohio), 2012 -Ohio- 1001

Briefs and Other Related Documents ([Back to top](#))

- [2011 WL 2628342](#) (Appellate Brief) Reply Brief of Appellants Paul Jones, Latosha Sanders, Eric Estep, and Ginger Estep (Jun. 24, 2011) [Original Image of this Document \(PDF\)](#)
- [2011 WL 2628341](#) (Appellate Brief) Stipulated Extension of Time to File Reply Brief of Appellants Paul Jones, Latosha Sanders, Eric Estep, and Ginger Estep (Jun. 14, 2011) [Original Image of this Document \(PDF\)](#)
- [2011 WL 2249521](#) (Appellate Brief) Merit Brief of Defendant-Appellee Centex Homes (May

25, 2011) [Original Image of this Document \(PDF\)](#)

• [2011 WL 2249522](#) (Appellate Brief) Brief of Amicus Curie National Association of Home Builders, Ohio Home Builders Association, Inc. in Support of Appellee (May 25, 2011) [Original Image of this Document \(PDF\)](#)

[Original Image of this Document \(PDF\)](#)

• [2011 WL 1475963](#) (Appellate Brief) Stipulated Extension of Time to File Merit Brief of Appellee Centex Homes (Apr. 8, 2011) [Original Image of this Document \(PDF\)](#)

• [2011 WL 1475955](#) (Appellate Brief) Merit Brief of Appellants Paul Jones, Latosha Sanders, Eric Estep, and Ginger Estep (Apr. 5, 2011) [Original Image of this Document with Appendix \(PDF\)](#)

• [2010 WL 4492103](#) (Appellate Brief) Memorandum in Support of Jurisdiction of Plaintiffs-Appellants Paul Jones, Latosha Sanders, Eric Estep, and Ginger Estep (Oct. 25, 2010) [Original Image of this Document with Appendix \(PDF\)](#)

[Original Image of this Document with Appendix \(PDF\)](#)

• [2010-1826](#) (Docket) (Oct. 25, 2010)

Judges and Attorneys [\(Back to top\)](#)

[Judges](#) | [Attorneys](#)

Judges

• Brown, Hon. Yvette Mcgee
State of Ohio Supreme Court
Columbus, Ohio 43215

[Litigation History Report](#) | [Judicial Reversal Report](#) | [Profiler](#)

• Cupp, Hon. Robert R.
State of Ohio Supreme Court
Columbus, Ohio 43215

[Litigation History Report](#) | [Judicial Reversal Report](#) | [Judicial Expert Challenge Report](#) | [Profiler](#)

• Lanzinger, Hon. Judith Ann
State of Ohio Supreme Court
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• O'Connor, Hon. Maureen
State of Ohio Supreme Court
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• O'Donnell, Hon. Terrence
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Columbus, Ohio 43215

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• Pfeifer, Hon. Paul E.
State of Ohio Supreme Court
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• Stratton, Hon. Evelyn Lundberg
State of Ohio Supreme Court
Columbus, Ohio 43215
Litigation History Report | Judicial Reversal Report | Judicial Expert Challenge Report | Profiler

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Litigation History Report | Profiler

END OF DOCUMENT

EXHIBIT 4

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

NINTH JUDICIAL CIRCUIT

2009-CP-10-6776

THE BEACH COMPANY; LONG GROVE AT SEASIDE FARMS, LLC; GULF STREAM CONSTRUCTION COMPANY, INC.;

Plaintiffs,)

DEFENDANT LONG GROVE PROPERTY OWNERS' ASSOCIATION'S COMMENTS AS REQUESTED BY THE COURT

vs.)

LONG GROVE PROPERTY OWNERS' ASSOCIATION, INC.; VISTA REALTY PARTNERS, LLC; LONG GROVE VISTA, LLC;

Defendants.)

LONG GROVE PROPERTY OWNERS' ASSOCIATION, INC.)

Third-Party Plaintiffs,)

vs.)

James, Harwick & Partners, Inc. n/k/a JHP Architecture/Urban Design, P.C.; Sam Mayo d/b/a SCM Construction, Inc.; Essex Engineering Corporation)

Third-Party Defendants)

On June 25, 2012, The Honorable J. Michael Baxley issued a Proposed Order Granting Summary Judgment to Plaintiffs and Third-Party Defendant Harwick in the Declaratory Judgment Action and Dismissing the Underlying Construction Defects Claim Against Those Parties. Judge Baxley requested the parties to comment on the Order.

OVERVIEW OF ORDER

Long Grove Condominiums are owned by individuals governed by a Master Deed through the Long Grove Property Owners Association. The POA is responsible for repairs and maintenance. It is funded by the owners. To date the POA and owners have spent hundreds of thousands of dollars in repairs to the Project. They will have to spend up to Ten Million Dollars (\$10,000,000.00) or more to make repairs. Those repairs are necessary to protect the health and safety of the people who live at Long Grove and to restore the property to the condition it should have been in when The Beach Company and Long Grove at Seaside Farms, LLC sold it to Vista who converted it to condominiums and then sold each condominium.

When Long Grove at Seaside Farms, LOLC reached its agreement to sell Long Grove to Vista, the "release" of JHP and Gulf Stream and the "release" paid to Vista in the amount by the POA were not part of the agreement. The price of \$37,500,000.00 was set. There was no reduction in the contract amount. The only money paid for the "release" was Two Hundred Thousand Dollars \$200,000.00, a sum woefully inadequate to repair the massive defects, damages, and deteriorating conditions of the buildings and units.

Although that money was spent on repairs, those repairs were improperly performed and grossly inadequate. The owners and the POA received no benefits for the "release" from Long Grove at Seaside Farms, LLC. They received no benefit from any other party. What they received were buildings and units with significant defects, damages, and life-safety defects. Owners have had to vacate units because of mold and mildew due to improperly installed condensation pans and pipes. The defects have caused rot to structural members and damaged the structural integrity of the buildings. The electrical junction boxes must be replaced because of the danger of an electrical short and fire. Several buildings are riddled with termites.

A. Unconscionability

If upheld, the Sales Contract creates a benefit to a third-party (Gulf Stream and JHP Architecture) and causes detriment to a separate third-party (POA). The Court is allowing Gulf Stream, an alleged third-party beneficiary, to use a Sales Contract (to which it was not a party) as a defense to Gulf Stream's duties and obligations as a general contractor. There are duties and obligations created by the South Carolina Code of Laws and Code of Regulations that apply to the general contractor and architect, but do not apply directly to owners and developers. The Beach Co., and Long Grove at Seaside cannot be treated the same as the General Contractor and Architect. Even though Gulf Stream and JHP have separate and different legal duties and responsibilities arising out of their work as the general contractor and architect, the Court treats third-party Gulf Stream as an owner/developer and party to the Sales Contract and gives Gulf Stream an unprecedented benefit which allows it to avoid its statutory and legal obligations as a general contractor. It then does the same in favor of JHP.

At best, JHP and Gulf Stream could only be third-party beneficiaries to the contract between Vista and Long Grove at Seaside Farms. By upholding that sales contract, the Court allows a General Contractor and Architect to strip the rights of the owners and the POA and ignores decades of South Carolina jurisprudence.

By validating this contract between Vista and Long Grove at Seaside Farms in favor of Gulf Stream and JHP, the Court is turning its back on the protection of consumers in South Carolina. The POA and owners should be the beneficiaries to the contracts and obligations by and between developers, contractors, designers, and subcontracts. Instead of receiving a benefit, the POA receives nothing but harm.

The obligations of the architect, general contractor, and subcontractors (as well as those of the developers) are established by building codes, case law, regulatory laws, statutory laws, licensing regulations, industry standards and their contracts. While there are obligations that are common to all parties to a project, there are separate obligations that are unique to different parties. To treat all of these parties as one is a defect in the analysis. There are three different analyses that should be examined individually: (1) An analysis of the rights of the POA and owners against the third-party beneficiaries (General Contractor and Architect) to the Sales Contract between Vista and Long Grove at Seaside Farms; (2) an analysis of the POA and owners' claims against Long Grove at Seaside Farms and The Beach Company; and (3) an analysis of the POA and owners claims and the third-party beneficiaries' claims against Vista. The Order in its current form does not analyze these relationships and parties separately as it should and ignores some inescapable conclusions concerning the owners and POA.

This analysis is crucial because the third-party beneficiaries (Gulf Stream and JHP) were not parties to any contracts and paid no money, while other third-parties, the POA and owners, received no money or benefit whatsoever and also were not parties to any contracts. In the typical condominium construction defect case, the parties who originally developed, designed and constructed the buildings pay money that is sufficient to repair the buildings. In return, they are released by the owners and the POA. When the parties settle and enter into a release, there has been an opportunity for investigation and the parties can assess the value of the case and fair compensation is paid. That did not occur in this case.

Furthermore, a release is very different from an exculpatory contract which was used in this case. A release results from an investigation, claim, assessment of damages, and payment of fair compensation. An exculpatory contract releases parties before damage has occurred or

manifested and is strongly disfavored at law. Professionals licensed by this state cannot exempt themselves from standards imposed by law by the mere execution of exculpatory contracts.

Olson v. Molzen, 558 S.E.2d 429 (Tenn. 1977); Murphy v. North American River Runners, Inc., 412 S.E.2d 504, 509 (W.Va. 1991); Loewe v. Seagate Homes, Inc., 987 So.2d 758 (Fla.App. 5 Dist. 2008). This contract is exculpatory and unconscionable and allowing this contract to be used as a defense to those duties and responsibilities is unconscionable.

To allow this contract to serve as a defense against the POA and owners is unconscionable. For a Court to rule that a contract is unconscionable is not an unusual or novel situation. For example, in S.C. Code Ann. §36-2-719(3), our legislature has provided a statute specifically to prevent the enforcement of certain contracts that are unconscionable:

SECTION 36-2-719. Contractual modification or limitation of remedy.

(3) Consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable. Limitation of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation of damages where the loss is commercial is not.

In South Carolina, unconscionability is defined as the absence of meaningful choice on the part of one party due to one-sided contract provisions, together with terms that are so oppressive that no reasonable person would make them and no fair and honest person would accept them.

Carolina Care Plan, Inc. v. United HealthCare Servs., Inc., 361 S.C. 544, 554, 606 S.E.2d 752,

757 (2004). If a court as a matter of law finds any clause of a contract to have been

unconscionable at the time it was made, the court may refuse to enforce the unconscionable clause, or so limit its application so as to avoid any unconscionable result. S.C. Code Ann. § 36-2-302(1) (2003). Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 644 S.E.2d 663 (2007);

See also Munoz, 343 S.C. at 539, 542 S.E.2d at 364 (holding that general contract principles of state law apply in a court's evaluation of the enforceability of an arbitration clause).

The POA had no choice about the content of the Master Deed. No reasonable person would purchase a condominium unit for full price knowing that he/she would then owe thousands of dollars more that could not be collected from the responsible parties through the POA. Under the facts of this case, the contractual provisions which strip away the rights of the POA and owners are unconscionable and should not be enforced.

B. Inadequacy of Consideration

It is also not novel or unusual for a Court to refuse to enforce a contract between parties for inadequate consideration. The POA and owners are in an even stronger position in this case. They were not parties to the contract. JHP and Gulf Stream were not parties to a contract. Even though they received the ghost "benefit" of \$200,000.00, the POA and owners actually received no benefit at all and are left with damaged and deteriorating buildings and units. However, JHP, Gulf Stream, and the other purported third party beneficiaries are responsible for millions of dollars in damages and whose actions endanger life, safety and property escape without paying a dime.

C. Notice

The purported "notice" in the Master Deed is ineffective. In Kirkman vs. Parex, the Court set a standard for how to disclaim an implied warranty. The Court required that a disclaimer be (1) conspicuous, (2) known to the buyer, and (3) specifically bargained for. Kirkman v. Parex, 369 S.C. at 485, 632 S.E.2d at 858 (quoting Burbo v. Harley C. Douglass, Inc., 125 Wash. App. 684, 106 P.3d 258, 263 (Wash. Ct. App. 2005)). "This standard is to be applied strictly and will be met only in rare circumstances." *Id.* The disclaimer must be conspicuous and known to the person affected by the disclaimer. This requires actual notice. What the Beach Company and Long Grove at Seaside Farms, LLC tried to do was to bind

innocent third parties by way of constructive notice. Any purported "notice" falls short of those requirements.

COMMENTS TO INTRODUCTORY PARAGRAPHS and FINDINGS OF FACTS

Throughout the Introductory Paragraphs and Findings of Fact, the Court groups The Beach Co., Long Grove at Seaside Farms, LLC, and Gulf Stream Construction together as "LGSF" and applies the same analysis to all three parties. The Beach Co. and Long Grove at Seaside Farms, LLC were the owners and/or developers of the Project and have legal duties and obligations specific to developers. Gulf Stream Construction was not an owner or developer of the Project and did not sell the property to Vista. Gulf Stream was the general contractor and has separate and different legal and statutory duties and obligations as a general contractor. Gulf Stream Construction should not be included in this group or analyzed as a Developer or party to the Sales Contract.

- Gulf Stream is not an owner and had no ownership interest at any time.
- Gulf Stream did not participate in the negotiations or bargaining of the term sheets or sales contract.
- Gulf Stream is not a party to the term sheets or the sales contract.
- Gulf Stream did not fund the escrow and was not a Seller or party to the Sales Contract.
- Gulf Stream did not play any part in the transaction between Long Grove at Seaside Farms, LLC and Vista.
- The deed does not include Gulf Stream as an owner or Seller and Gulf Stream did not have property rights to convey.

Gulf Stream is allegedly a third-party beneficiary to the contract between Vista and Long Grove at Seaside, LLC, but there is no third-party beneficiary analysis.

The Order continues to analyze the case as if the general contractor and architect are the same as the developer. They are not. There is no separate analysis of these corporations.

COMMENTS TO SPECIFIC PARAGRAPHS

Paragraph 16 AND Paragraph 20: The issue of an alleged release of Long Grove at Seaside Farms, LLC by the POA and homeowners of Long Grove at Seaside Farms, and the issue of the alleged release of The Beach Company, Gulf Stream, JHP, and others by the POA and homeowners were not raised until after the purchase price was agreed upon. This is important because the only money paid for repairs was \$200,000.00, which is a sum grossly inadequate for the POA and homeowners to release the parties responsible for defects and damages. This is yet another reason to treat these entities separately.

Paragraph 26: The POA and homeowners, Gulf Stream, JHP and the others never debated or bargained for any release or disclaimer.

Paragraph 55: The defects alleged include numerous other deficiencies. These defects have caused extensive damage and pose severe life, safety, and health problems.

SECTION II. Gulf Stream, JHP, and others clearly extended warranties to the POA and owners and owed duties of care to the POA and homeowners. Additionally estoppel by deed precludes a party to a deed from asserting as against the other any right or title in derogation of the deed, or from denying the truth of any material fact asserted in it. Hipps v. Hipps, 288 S.C. 564, 343 S.E.2d 669 (Ct.App.1986) (emphasis added). In order for a party to assert estoppel by deed, however, that party must have first participated in the execution of the deed. See Evins v. Richland County Historic Preservation Com'n, 341 S.C. 15, 20, 532 S.E.2d 876, 879 (2000)

(emphasis added). In Evins, the Court found that estoppel by deed “is clearly inapplicable here. Evins was not a party to those deeds and certainly she is not asserting any right or title in derogation of these deeds which were recorded many years ago. There is no allegation that Evins participated in any capacity in the execution of the deeds involved in the current litigation.” See Id. Estoppel by deed does not apply in this case.

Paragraph 60: The legal theory of negligence as to Gulf Stream and JHP does not arise from knowingly placing a defectively constructed new home in the stream of commerce similar to the negligence of the developer. Instead, the negligence of Gulf Stream and JHP arises from their poor workmanship which extends to the Long Grove Property Owners’ Association without privity of contract. A general contractor extends an implied warranty for latent defects to the original purchaser and to subsequent purchasers. Terlinde v. Neely, 275 S.C. 395, 271 S.E.2d 768 (1980).

Paragraph 61: Subsequent purchasers of homes are protected by warranties and are protected from the negligence of contractors and architects such as Gulf Stream and JHP. A general contractor extends an implied warranty for latent defects to the original purchaser and to subsequent purchasers. Terlinde v. Neely, 275 S.C. 395, 271 S.E.2d 768 (1980).

Paragraph 63: Long Grove at Seaside Farms and The Beach Company marketed Long Grove to be converted to condominiums. It had actual knowledge that the units were going to be sold as condominiums. By selling Long Grove for that specific purpose it did place the buildings, units and common elements into the stream of commerce.

Paragraph 64: Smith v. Breedlove is factually distinguishable. Long Grove at Seaside Farms did not serve as its own general contractor. That general contractor, Gulf Stream, owed

duties of care and issued its own separate and distinguishable implied warranties. Long Grove at Seaside Farms is liable for the acts of omission and commission of its general contractor.

Paragraph 65: Long Grove at Seaside Farms, LLC did not properly put future owners on notice. A proper step was to file a separate document in the chain of title that was clearly labeled as a release and disclaimer of warranties.

Long Grove at Seaside Farms, LLC could also have required Vista to put the actual release in each deed. It did not. It referred to the Master Deed without mentioning the release.

Long Grove at Seaside Farms, LLC could also put the release and disclaimer in each sales contract. It did not. It only referred to the Master Deed.

Instead, its "notice" is buried on Page 46 of the Master Deed. It is inconspicuous.

Paragraph 66: Gulf Stream and JHP were not part of any discussion by The Beach Company and Long Grove at Seaside Farms, LLC about being released from their liabilities, duties and obligations. The position of Long Grove at Seaside Farms, LLC and The Beach Company referred to at Page CBRE 933 of Exhibit 23 concerns any representations or warranties in the Offering Memorandum, but does not concern the design, and construction of the buildings.

The only statement was that the Seller/Owner, Long Grove at Seaside Farms, would negotiate on an "as is, where is" basis. The issue of a release is not mentioned.

Paragraph 67: The question of releases by the POA and homeowners is not addressed in the Term Sheets. The release of any entity other than Long Grove at Seaside Farms is not addressed in the Term Sheets.

Paragraphs 72, 73, 74, 80 and 84: The purpose of a notice is to provide important information to a party so that the party may make a well informed and reasoned decision. The purpose of a Master Deed is to provide for the governance of a condominium association. No one would

reasonably expect to find a notice of release and a disclaimer in a Master Deed. For the notice to be unambiguous, it had to be placed in a prominent location such as on Page 1 and be in a different type. Long Grove at Seaside Farms, LLC could also have required a separate document be recorded.

Paragraph 81: Long Grove at Seaside Farms, LLC, Gulf Stream and JHP are not parties to the Master Deed and may not assert estoppel by deed. See Eyings. Gulf Stream and JHP are not parties to the Deed between Vista and Long Grove at Seaside Farms, LLC and may not assert estoppel by deed. For a party to assert estoppel by deed, that party must have first participated in the execution of the deed. Hipps v. Hipps, 288 S.C. 564, 343 S.E.2d 669 (Ct.App.1986); See Evins v. Richland County Historic Preservation Com'n, 341 S.C. 15, 20, 532 S.E.2d 876, 879 (2000).

Paragraphs 84 and 85. The placement of language in the Master Deed failed to provide notice to a prospective purchaser so that that purchaser could make an informed decision concerning whether to purchase.

SECTION III. The Order fails to analyze these issues specifically as to Gulf Stream and JHP. The Order seems to re-establish privity of contract as a valid defense.

Paragraph 91: As stated previously, Kirkman stands for the proposition that to disclaim any implied warranty concerning a home, the disclaimer must be:

- (1) Conspicuous;
- (2) Known to the buyer; and
- (3) Specifically bargained for.

Id. It would be illogical not to extend these requirements to disclaimers of the other warranties that arise from the development, design, and construction of a home.

Paragraph 93: While there may have been consideration for the transaction between Vista and Long Grove at Seaside Farms, the POA and owners received no benefit and Gulf Stream and JHP paid no money.

Paragraph 94. This was the only money paid. It was inadequate.

Paragraph 96. The POA was a non-existent entity that could not protect itself from this contract between Long Grove at Seaside Farms, LLC and Vista. Two parties contracted to deprive the rights of a third-party that received no benefit but was obligated by statute, case law, and the Master Deed to maintain and repair a defective property which was placed into the stream of commerce by the two parties to the contract. That is unconscionable.

Paragraph 97. The operative language of Section 32-2-10 that makes this contract unconscionable is "in connection with." This release is in connection with the development, design, and construction of Long Grove. The status applies. The contract as asserted by Plaintiffs and JHP is void.

Paragraph 99. We agree that the only entity that could possibly assert the release as a defense is Long Grove at Seaside Farms, LLC and not The Beach Company, Gulf Stream, JHP, or any other parties.

Paragraph 101: The POA had no ability to protect itself from the effect of the release and disclaimer. Under an analysis similar to that set forth in the case of Myrtle Beach Pipeline Corp. v. Emerson Elec. Co., 1193, 843 F. Supp. 1027 *affirmed* 46 F.3d 112, the release and disclaimer are unconscionable. Factors that may be used in assessing unconscionability include:

- (1) the nature of the injuries suffered by the plaintiff,
- (2) whether plaintiff is a substantial business concern,
- (3) disparity in parties' bargaining powers,

- (4) parties' relative sophistication,
- (5) whether there is an element of surprise in the exclusion,
- (6) and the conspicuousness of the clause.

Myrtle Beach Pipeline Corp. v. Emerson Elec. Co., 1193, 843 F. Supp. 1027 *affirmed* 46 F.3d

112.

- (1) The POA has suffered and will suffer significant damages.
- (2) The POA is an eleemosynary corporation and not a substantial business concern.
- (3) The POA was created AFTER the Master Deed was signed by the Declarant Long Grove Vista. It had no ability to bargain.
- (4) The POA is unsophisticated relative to Mr. de Guardiola and Vista and Mr. Darby and the Beach Company.
- (5) For the POA, because it was formed after the Master Deed was executed, could not help but be surprised.
- (6) The release and disclaimer is not conspicuous.

Paragraph 102. Long Grove at Seaside Farms, LLC and The Beach Company had the ability to dictate the language to be included in the Master Deed and could have directed where it had to be placed.

Estoppel by deed applies only to parties to a deed. *See Hinn and Evins supra*. The only party to the Master Deed was the Declarant Long Grove Vista. The POA is not a party to the Deed, and it did not exist until April 21, 2005 after the deed was signed and filed. The Declarant signed the Master Deed April 13, 2005. The individual unit owners also are not parties to the Master Deed. Estoppel by deed does not apply to them.

Paragraph 104. The POA is a separate corporation created by the filing of the necessary forms with the Secretary of State. This occurred on April 21, 2005.

Paragraph 105. Voiding a contract within a Master Deed does not void the Master Deed itself. **Section C.** This part of the Order analyzes only Long Grove at Seaside Farms, LLC, but not the general contractor, Gulf Stream, or the architect, JHP: Clearly the release provisions as to those entities is unfair and contrary to public policy.

Paragraph 107 and 108: A developer can take any one of several steps to protect itself:

- A. Require indemnity from the purchaser, something that did occur;
- B. Build a project that does not have defects; or
- C. Wait until the status of repose has expired before selling.

SECTION VII. JHP and Gulf Stream are not parties to the contract between Vista and Long Grove at Seaside Farms, LLC. The POA and homeowners are not parties to the contract between Vista and Long Grove at Seaside Farms, LLC. JHP and Gulf Stream are trying to assert that contract as a defense to the action brought by the POA. The Order does not provide any analysis of the contractual relationship or the different obligations and duties each of these entities have.

SECTION VIII. The POA has provided Florida case law that holds that the obligations of various parties in the construction of a home are non-delegable duties. These cases are not addressed in the Order.

Paragraph 114: If the POA cannot argue against the enforceability of the contract because it was not a party to the contract then Gulf Stream and JHP may not enforce the contract against it.

Paragraph 115: The POA is not a party to the contract. It had no freedom to contract as it chose. This exculpatory contract should not be enforced against the POA. Furthermore, an exculpatory contract should not be upheld in favor of Gulf Stream and JHP against the POA and homeowners. None of these entities were parties to the contract or the deed.

Paragraph 117: The builder in this case did not pay any money for a release. The Two Hundred Thousand Dollars paid was only paid by Long Grove at Seaside Farms, LLC. It was inadequate to obtain a release of all of the defects. This is completely different from the settlement of a standard construction defects case, as noted previously.

Respectfully submitted,



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Association*

July 12, 2012
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

Long Grove at Seaside Farms, LLC,)
The Beach Company; and Gulfstream)
Construction Company, Inc.)

Plaintiff)

VERSUS)

Long Grove Property Owners')
Association, Inc. Vista Realty)
Partners, LLC; and Long Grove)
Vista LLC.)

Defendant)

SEPTEMBER 27, 2011

Long Grove Property Owners')
Association, Inc.,)

Defendant)
Third-Party Plaintiffs)

VERSUS)

James Harwick & Partners, Inc.)
n/k/a? JHP Architecture/Urban)
Design P.C.; San Mayo d/b/a)
SCM Construction Inc.: and)
Essex Engineering Corporation.)

Third-Party defendants.)

BEFORE

THE HONORABLE J. MICHAEL BAXLEY

Pamela Ozment-Cartee
Circuit Court Reporter

APPEARANCES

David J. Parrish, Esquire
Attorney for the Plaintiffs

Francis E. Grimball, Esquire
James E. Lady, Esquire
Attorneys for Long Grove Property Owner's association.

Jenny Honeycutt, Esquire
Chris Deters, Esquire
Attorney for Vista Entities
The Vista Reality Partners, LLC, and Long Grove.

Laura Figueroa, Esquire
James Lynn Werner, Esquire
Attorney for James Harwick and Partners

Neil S. Huldup, Esquire
Attorney for Sam Mayo d/b/a SCM Construction

John Patrick Norris, Esquire
Drew Richardson, Esquire
Attorneys for Essex Engineering Corporation

(Whereupon, this proceeding began at 4:05 p.m. on September 27, 2011.)

1 THE COURT: All right. Everyone, you have been most
2 patient with us this afternoon. I regret the lengthy
3 proceeding before me which was not anticipated.

4 Let's begin this, Madame Court Reporter by stating for
5 the record, this is a case that I have under complex
6 jurisdiction which is, Long Grove at Seaside Farms versus
7 Long Grove Property Owners' Association and others. There
8 is also a third-party claim which is, Long Grove Property
9 Owners' Association versus James Harwick, and Partners, and
10 others.

11 Let's begin by having --- I did not say, but this is
12 case 2009-CP-10-6746, it is out of Charleston. One that has
13 come with me from the multi-week trial docket, which this
14 Court was administering in 2010.

15 Let's come across and let everyone introduce
16 themselves. Tell us whom you represent, and if you have
17 others with you, or clients, or associated with a party,
18 please introduce them as well. Let's start with the
19 Plaintiffs.

20 MR. PARRISH: Thank you, Your Honor, I am
21 David Parrish with the Nexsen Pruet Law Firm in Charleston.
22 I am here on behalf of all three Plaintiffs, which is Long
23 Grove Seaside Farms LLC, The Beach Company, and Gulfstream.

1 And for the Court reporter's benefit, they will be referred
2 to collectively as LGSF. That is the term that we use in
3 the Briefs, and I will try to duplicate that here today.
4 And, I have with me here behind the bar, John Darby, who is
5 the president of The Beach Company, and his name is
6 mentioned in some of the briefs that have are flowing back
7 and forth.

8 THE COURT: Yes, it is. Thank you, counsel. And
9 now the other parties.

10 MR. GRIMBALL: Thank you, Judge Baxley. My name is
11 Frank Grimbball, along with Jim Lady, from Mullen Wylie LLC.
12 We represent the Long Grove Property Owner's association.
13 Mr. Mullen was here, and he became sick. And I apologize.
14 He has asked me to apologize. Thank you.

15 THE COURT: Well, I am sorry. I saw that he was
16 here. Do you think he needs some local medical care, or is
17 he okay?

18 MR. GRIMBALL: He should be okay. But, I don't know
19 what happened. He became white as a sheet and had some
20 issues.

21 THE COURT: Okay. Very good, Thank you.

22 MS. HONEYCUTT: Good afternoon, Your Honor. I am
23 Jenny Honeycutt, from Haynesworth Sinkler and Boyd. I
24 represent what has been referred to in the Briefs as the
25 Vista Entities, the Vista Reality Partners, LLC, and Long

1 Grove.

2 THE COURT: Thank you, Ms. Honeycutt.

3 MR. DETERS: Your Honor, good afternoon. I am Chris
4 Deters. I am co-counsel with Ms. Honeycutt for Vista
5 Reality LLC and Long Grove.

6 THE COURT: All right. Thank you.

7 MS. FIGUEROA: Good afternoon, Your Honor, my name is
8 Laura Figueroa, I am here from Parker Poe in Charleston.
9 With me is James Werner, from Parker Poe in Columbia. We
10 are here representing James Harwick and Partners, the
11 original architect.

12 THE COURT: All right, very good. Thank you.

13 MR. HULDUP: Your Honor, Neil Huldup, I am here for
14 Sam Mayo doing business as SCM Construction.

15 THE COURT: All right. Thank you, counsel. Anyone
16 else

17 MR. MORRIS: Yes sir, Your Honor. Patrick Norris, I
18 am here for Essex Engineering Corporation.

19 THE COURT: All right. Thank you, Mr. Norris.

20 MR. RICHARDSON: Good morning, Your Honor --- Good
21 afternoon actually. It feels like morning. My name is Drew
22 Richardson, and I am here on behalf of Essex Engineering
23 Corporation.

24 THE COURT: Thank you, and welcome.

25 MR. RICHARDSON: Thank you.

1 THE COURT: Anyone else. All right. Let me begin
2 by putting a disclosure on the record, if I may. This has
3 to do with counsel for Parker Poe. I was not aware, and of
4 course there are many lawyers in this case. And, in fact
5 some of the lawyers have changed. The firms may not have.
6 But, I want to disclose that I have a social dating
7 relationship with an associate in the Parker Poe, Charleston
8 Office, and that is Ms. Kristina Young. And, I disclose
9 that simply because I learned --- I realized yesterday that
10 Parker Poe is involved in this case, representing one of the
11 parties. I have never discussed this case with Ms. Young.
12 And it will not impact or affect in any way my decision in
13 the case. But, I definitely want to disclose that, and will
14 be glad to step down from the bench so that other parties
15 may, among themselves discuss it, and have an opportunity
16 for free and full discussion outside of my presence. And,
17 will be guided by what your preference is. In fact, let me
18 do this. Just so there will not be any implication by who
19 speaks with whom about what, I am going to step out of the
20 courtroom, and give you all an opportunity when I come back
21 to object, or to make a response, if you wish. I believe
22 that is the best way to proceed. So, let's take just a
23 moment, and I will be back.

24 MR. WERNER: Your Honor, before you leave, let me just
25 say, I just learned of this. But, I can, unequivocally

1 state for Ms. Young, she is not involved in this case at all
2 within our organization.

3 THE COURT: Okay. Thank you.

4 MR. WERNER: Has had no involvement, and will not.

5 THE COURT: All right. Thank you, very much, and I
6 will be back momentarily.

7 (Whereupon, a brief recess was taken from
8 4:05 p.m. until 4:16 p.m.)

9 THE COURT: All right. Does anyone wish to state
10 anything on the record, either party? All right, very
11 good.

12 I should further say, as I mentioned, we have never
13 discussed this case. Really, to my knowledge, with
14 certainty, Ms. Young is not even aware of this hearing
15 today, because we have just not had any discussion
16 whatsoever. But, now there being no objection from anyone,
17 again I reiterate, it will not affect my decision in the
18 case, and we will proceed.

19 Now, I have received a brief from the parties. I have
20 had the opportunity to review these briefs, as well as the
21 attached Memoranda, case law, and exhibits. And I am ready
22 to proceed.

23 Plaintiff, you are the moving party. I will be glad to
24 hear from you, Mr. Parrish.

25 MR. PARRISH: Thank you, Your Honor, may it please

1 the Court?

2 THE COURT: One more thing. Excuse me. Let's do
3 this. We have moved around in the courtroom. We have
4 people spread out all over the courtroom. So, please,
5 kindly introduce yourself again, so our record will be
6 completely clear as to who is saying what when they do.

7 MR. PARRISH: Thank you, Your Honor. Again, I am
8 David Parrish, the Plaintiffs, all three of them in this
9 case today.

10 Your Honor, right before we started I handed to your
11 clerk a copy of a flow chart. It was in one of my
12 supplementals that is up here.

13 THE COURT: Thank you. I have it.

14 MR. PARRISH: And I just want to take about thirty
15 seconds and go through it, because it kind of frames the
16 issues in this case. And the reason I am doing this, and to
17 appeal these arguments and opposition to this motion, they
18 are jumping back and forth. The word Vista is used for
19 awhile. They are wearing their own shoes. They are kind of
20 jumping in the owner's shoes. But I just want to take this
21 flow chart and kind of reminding the Court of what the
22 undisputed facts are. That the LGSF defendants, which is
23 Long Grove, The Beach Company, and Gulfstream, they built
24 this property as apartments, rental apartments, and they
25 operated them at that point in time always as rental

1 apartments. The testimony is that they were built as rental
2 apartments. They were never built as anything else.

3 In 2005 they entered into a contract with The Vista
4 entities to sell the property to Vista. And in that
5 contract sale, which I have quoted the terms at length in
6 the Memorandum I sent up here last week. There are some
7 disclaimers and there are some release requirements, and
8 after that Vista purchased the property. And what is the
9 key issue to where we are going. My clients owned it, and
10 they sold it to Vista, and these disclaimers and releases in
11 here say we are not having anything to do with what you are
12 getting ready to with this property. And we are disavowing
13 everything related to the condition of this property. We
14 are making no representations, no warranties, it is as is,
15 where is, with all defects faces. And to be on the safe
16 side, we are going to make sure that you record the chain of
17 title to the property, that Notice, because you are going to
18 convert this thing and sell it to third-party buyers. When
19 that contract closed, when we sold it to Vista, we on longer
20 owned the property. We had no control over the property.
21 Vista owned it. After Vista bought it, they recorded the
22 Master Deed that put that Notice, disclaimers, and releases
23 out there. Vista converted the units from used apartments
24 to brand-new condos. Vista sold them as condos to
25 individual buyers, and Vista created the POA that is here

1 today. In fact, Vista controlled the Board of Directors of
2 the POA up until the time Vista sold out all of the units.
3 And the reason I say that is, there are a lot references in
4 the Brief about Beach Company, which is the LGSF defendants
5 recording the Master Deed, or airing language in a Master
6 Deed. It is important when you look at this flow chart, we
7 did not own the property after Vista bought it. All of that
8 happened after Vista bought the property. And the Brief
9 that has been submitted to the Court late Friday afternoon,
10 and even today as I was driving up here, talks about Beach
11 Company doing this, and Beach Company doing that. Vista did
12 everything. We did not own the property after Vista bought
13 it. Vista recorded the Deed. Vista sold the units. Vista
14 picked the language the way they put it in the Master Deed.
15 So, it is important to kind of keep in mind how the events
16 actually unfolded here, because the Briefs jump back and
17 forth on those facts. And it is real important to keep this
18 in context. It is kind of weird, it confuses people,
19 because we are the Plaintiffs here, but we are really the
20 ones being sued. What happened is, the POA after Vista
21 turned it over, they got their own Board of Directors and
22 they sent notices of intent to sue. Crystal clear, they are
23 in the Briefs, they are in the Complaint. And when we got
24 the second one, we filed this as a Declaratory Judgment
25 Action, which on the face of on the DJ complaint says, it is

1 assumed there are defects in the building. We are not here
2 to argue about construction defects. We are filing a DJ
3 Action, because you have a disclaimer, and a release, and
4 our sales contract, the notice of which is even put in the
5 Master Deed to the buyer, just to record it. Those have
6 legal effect and ramification, so assuming everything you
7 are saying is full of construction defects, that is what my
8 Complaint says, we are here to talk about what the legal
9 effect of those clear and unambiguous documents are. So,
10 that is why we are here as the Plaintiff, it is a DJ Action.

11 THE COURT: Well, let me just ask, it is not said
12 anywhere in these documents. May I assume that the Vista
13 defendants are ambiguous?

14 MR. PARRISH: Most of the insurance counsel sent in a
15 memo, kind of jumping on the POA that got submitted to me
16 sometime this morning or late last night, they actually have
17 a firm in Greensboro, mandatory all hands, so I was getting
18 facts up here at eight o'clock last night.

19 THE COURT: Very good.

20 MR. PARRISH: They have not filed an answer in this
21 case yet to date. The only appearance they have made other
22 than being served, is the Memo where they kind of piggyback
23 off of the POA's arguments. So, that would not be correct
24 at all.

25 What happens is, these were filed in the early part of

1 2010. But we are just getting to them now. But during the
2 interim they were filed as a DJ Action, and filed Motions to
3 Dismiss, and Judgment on the Pleadings. Here counsel
4 requested and produced discovery on it, and it was conceived
5 and allowed to do so. So, a couple of depositions have been
6 taken, and some documents have been produced. All of which
7 have been by agreement --- focuses only on the transactional
8 aspect of this case. Right now there has been no discovery
9 done as far as the construction defects. Everything we have
10 done is on the issues that are presented here today. So,
11 that is why there are some references that both sides have
12 put into the Briefs as to some deposition testimony. If the
13 Motions had been timely heard back, then we might not even
14 have that. But, they are there and both parties are talking
15 about it, and we have put them in the Briefs.

16 There are only two or three people involved in the
17 transaction aspect, Mr. Darby, Eduard de Guardiole, are the
18 only two that really discuss the issue with each other. And
19 two other people that Mr. Guardiole, the Vista owner has,
20 they have all been deposed. All the transactional documents
21 have been produced. So, this thing is factually right.
22 There is no more discovery to be done on these issues, and
23 the facts and the issues that have been presented to you are
24 legal issues right now. And, again, this is not about
25 construction defects, it is about the releases and

1 disclaimers, and the sell contract, and the Master Deed. We
2 have to assume that the construction defects were out there
3 for purposes of the DJ Action.

4 I sent a long Brief in, in fact, I submitted a copy via
5 email to you and to everybody two weeks. The facts were
6 laid out in great detail, and I am sorry that it is so long.
7 But some of the transactional documents --- the disclaimers
8 in disavowing the condition of the property, they are pages
9 long in these transactional documents, and I have recited
10 them verbatim in here to keep you from having to go look for
11 them, so I am sorry the facts are so long. But, I also in
12 that brief talked about the issues under the South Carolina
13 law, and the developing cases up through the most recent,
14 which are Sapp, Ford Motor Company, Breedlove, about how all
15 those cases in South Carolina law talks about new
16 construction. When you sell new homes, that is, where all
17 the cases come from. And I have discussed at length in
18 there that we did not sell anything to anybody other than
19 Vista, we didn't sell anything to the POA. We didn't sell
20 them a new home. We sold used apartments. And I mainly
21 talked about how the thread flowing through all of those
22 cases is a stream of commerce issue, and I talked in the
23 Brief in great detail about how it is not in the stream of
24 commerce when you have a Master Deed that everybody that
25 bought these units was on record notice that these claims

1 specifically, and in great detail, and disavowed as is,
2 where is. That is in great detail in the Brief, and I am
3 not going to talk about it here today, because this thing
4 seems to have morphed a little bit. The responses I am
5 getting back on behalf of the POA and on the Vista entities,
6 we are now kind of helping the POA. They have kind of
7 changed this thing instead of addressing that issue. It is
8 more like they are trying to attack it on a contract basis.
9 I am hearing stuff about lack of consideration, and no
10 meeting of the minds. So, what I am going to do is take a
11 fairly short period of time and hit the four issues. The
12 contract basis which they seem to be trying to attack or
13 hang their hat on. I am not getting the sense that they are
14 really disagreeing how I stated the law in that brief, but I
15 went to great detail to summarize all of it, and to apply
16 the facts that are directly out of the record, and mostly
17 directly out of the documents, which speak for themselves.

18 So, it is kind of morphed. It is more of a contract
19 issues. How they are trying to defend themselves at this
20 Motion Hearing today.

21 THE COURT: Are not the four issues covered in your
22 reply to their response?

23 MR. PARRISH: Yes, sir. Plus, they sent a
24 supplemental reply that came in this morning, that I could
25 not even --- I didn't have it, so I am going to hit the four

1 that they sent in this morning.

2 THE COURT: I have not seen it, so thank you.

3 MR. PARRISH: The first one is, they say Vista owner,
4 Mr. Guardiole and John Darby are allegedly telling that
5 these are quality units --- quality defense. That there is
6 no meeting of the minds that you bought these units through
7 Vista, and we are relying on the quality issue. So, here
8 Vista --- the POA is trying to step into Vista's shoes, or
9 Mr. Guardiole's shoes, and make arguments on Vista's behalf.
10 Well, that is not disputed that Mr. Guardiole said that. We
11 are not countering that he said that. He can say whatever
12 he wants to. The question for the Court is, what is the
13 legal effect of what Mr. Guardiole is saying? And the
14 problem with them relying on that is, he may claim to have
15 heard that, or receive that information before he signed
16 this contract, but he went ahead, and he is a lawyer, and he
17 is a real estate developer, very experienced, and he signed
18 a contract that has paragraphs 14 and 15, which I have cited
19 verbatim in my Brief. It says in there, and I am not going
20 to read the whole thing, because it is long. It is real
21 long about what it says that we did do. But it says. It is
22 as is, where is, with all defects, all problems. It even
23 has in there it says, purchaser, that is Vista, and it
24 acknowledges that the seller has made no representation,
25 warrantees or covenants as to the condition of the property.

1 So, whatever he claims might have been told to him before
2 the contract was signed, was merged out of existence when he
3 proceeded to sign this contract on behalf of Vista. This is
4 plain contract discussions are irrelevant.

5 Number one. It is a defense that belongs to Vista. It
6 is not about the POA. This is a Vista LGS contract. But it
7 was also a free contract which was merged out of existence.
8 If that was important to him, and he was really relying on
9 it, he should not have signed a contract with this language
10 in it. It would kind of like me saying, you know, I signed
11 a mortgage with you, but I don't really like what I signed,
12 so I am not going to have to pay it, because I don't really
13 think it did what it said it did. He bound his company to
14 the document by signing it with those terms and conditions.
15 He proceeded to close and purchase the property. After he
16 purchased it, he converted it to condos and made money on
17 it. And even recorded that requirement in the Master Deed.
18 So, what at the end of day, he said and was told it was a
19 quality development, knowing the plumbing issues, and all
20 that kind of stuff. It is the contract that he signed after
21 that doesn't say that, and it is merged out of existence, so
22 it does not create an issue of fact that would make it not
23 like the rule on the motions right now. We are not
24 contesting that Mr. Guardiolo said that --- The Brief, so
25 what. It has no legal effect on the terms of the contract

1 of documents that we are here today.

2 The second one, I actually find it a little humorous
3 is, the POA and Mr. Guardiolo, on behalf of Vista, had a
4 secret belief that some of this stuff might not be
5 enforceable. And I still think that Mr. Guardiolo is
6 saying, I had my fingers crossed when I signed this
7 contract. And again, it would be like me signing my
8 mortgage and knowing I really don't think this is
9 enforceable, so I don't have to pay it here today. And,
10 again, it is the same argument in the sense that his belief
11 as to whether this was enforceable or not, does not create
12 an issue of fact. The contract is clear, and it is
13 explicit, and it is unambiguous. In fact, nobody has
14 claimed that this document is unambiguous, because it is
15 crystal clear as to what it is doing, what it says, and what
16 the intent is. It is plain from the document that LGSF was
17 cutting its strings. So, the fact that Mr. Guardiolo had a
18 personal belief that it might not be enforceable, that is
19 not his issue to decide, that is the Court's issue here
20 today. And, what the Court basis it on is, the four corners
21 of the document that are presented. So, once again, it is
22 an argument, it does not create an issue of fact. He said,
23 it; he may have even believe it, but it doesn't bind this
24 Court to that, and it doesn't bind --- it is not the law in
25 the state of South Carolina. They claimed he didn't have a

1 meeting of the mind because he didn't think it was
2 enforceable, well, it was a meeting of the minds when he
3 signed the contract, and said, hey, here it is right here.
4 So, to me it is a nonissue.

5 The next argument, and I am on the third of four, I am
6 trying to move quickly. Is the consideration issue. And
7 they are hitting it from two areas. They are trying number
8 one, to say the contract between LGSF and Vista, it has no
9 specific consideration for this release and disclaimer
10 language. Well, number one, there is no requirement in the
11 state of South Carolina under construction law, contract
12 law, release law, that you have to have specific separate
13 consideration for every single term in the contract. It is
14 impossible to do. But more importantly, both John Darby,
15 his deposition testimony has been presented to the Court,
16 and Mr. Guardiolo, Vista entity, both testified in their
17 deposition to the exact same thing. Mr. Guardiolo ---
18 Excuse me, Mr. Darby said, we would not sell this to them if
19 they didn't agree with this. Mr. Guardiolo said, they would
20 not sell it to us if they wouldn't agree with this. In
21 fact, Mr. Guardiolo characterized that as a deal breaker.
22 It is referred to as the fundamental core deal breaker term
23 that was started off in the very beginning of the
24 negotiations between the parties. The initial marketing
25 material that is referred to that Vista sought, in fact, the

1 DOA never saw that. They were not even around then. They
2 said it is as is where is. The initial term sheet says, you
3 are going to be releasing us, and disclaiming everything, so
4 it is as is, and then it is in the contract they got
5 contingent negotiated for a period of time. So, if from the
6 very beginning of this transaction leading up to the signing
7 of the contract, that was a core fundamental deal breaker
8 term. So, to say there is not consideration, no there
9 wasn't. That clause was the contract. Without that clause
10 in there, there would be no contract here. So, that
11 consideration was the entire contract. It was deeded. This
12 is not like there was some boiler plate type language that I
13 have seen in some residential homebuilder contracts. They
14 have some boiler plate language about doing that. You know,
15 this was a specifically bargained for transaction between
16 two highly sophisticate entities that were both represented
17 by counsel. They didn't get pulled in as an after fact. It
18 was a core term of the contract, and so to say there is no
19 consideration for it, it flies in the face of the document,
20 and also un-controverted, same testimony of Mr. Darby and
21 Mr. Guardiolo.

22 And, as to the POA, they also make the argument that we
23 didn't get any separate consideration for that. Again, they
24 are stepping into Vista shoes, or I don't know where they
25 are stepping on that one.

1 The bottom line is, we didn't sell this to the POA, we
2 sold it to Vista. POA didn't exist back then, because Vista
3 had not even recorded the Master Deed. So, in a legal I
4 guess absurdity, we can't give consideration to an entity
5 that doesn't exist. That is an issue maybe between Vista
6 and the POA, but it is not an issue between a successor in
7 interest or a successor in title to Vista. Vista got the
8 consideration in the contract. It got the benefit of the
9 bargain in the contract, which required the recorded leases
10 and disclaimers. And the purpose of all this is to clearly
11 put them on notice. Vista was clearly on notice when it
12 recorded the Maser Deed. It knew about these disclaimers.
13 Vista was the POA for a period of time. So, the POA is a
14 creature of Vista. Vista got the benefit of the contract.
15 And it is physically impossible for us to give any
16 consideration to a property owners' association that did not
17 exist back then. And, if it did, that would have been a
18 Vista right, not a subsequent board of directors type
19 rights. Without this contract the sale would not have
20 occurred. The apartments would not have been converted to
21 condos. The condos would not exist, and the POA would not
22 exist here today. So, the POA seeking consideration is just
23 fundamentally in contrast to the plain language of the
24 documents, and there is no law in the state of South
25 Carolina that supports this position. We had no privity of

1 contract --- direct contract between the POA and the LGSF
2 defendants that even existed back then. So, to take their
3 logic or argument to the extreme, every time a new owner
4 buys a condo out there, and they have turned over some
5 condos more than once. But that means that every time a new
6 owner came in there, you have to go right and pay them a ---
7 It doesn't work that way. We sold it in an arm's length
8 transaction, and after that, what happens is between Vista
9 and the POA, and it is not between the prior owners of the
10 apartments.

11 And the last main argument they have is number four, is
12 the conspicuous argument. They are claiming that this
13 language in the Master Deed was not conspicuous. But once
14 again, the reason I point out the flow chart is, we didn't
15 record a Master Deed. We sold the property to the Vista
16 people over there, and after that they did what they wanted
17 to with it. The only thing we did is, we said when you buy
18 it, we are disclaiming this property, and you are required
19 to put that notice in the chain of title to the document.
20 The Beach Company did not record that deed. The Beach
21 Company did not prepare it. Vista did. They selected the
22 location of the document, where it went into. And although
23 that document is recited in the brief, and it is on record,
24 and in the chain of title, and has legal effect. It would
25 be like me, when I drove up here today, the party I had to

1 come up here in my car with my driver's license. It gave me
2 the right to drive on this road. And the argument is kind
3 of like, I didn't know that I had to wear contact lenses on
4 my driver's licenses. The POA exists by virtue of that
5 Master Deed. Without the Master Deed it could not be here
6 today. And making the argument that it wasn't conspicuous
7 as to the POA, really what that is, is a term to try to say
8 that the owners that are out here now, not the ones back
9 then, because that was Vista. The owners now claim they
10 don't know about it. Of course there is no Affidavits or
11 testimony in the record. But, the bottom line is, so what.
12 They are on record notice, and they are bound by the terms
13 of this document, and they live and die by that document.
14 The POA is an entity and cannot say I am not aware of a
15 requirement in my document that governs my existence. It
16 governs how I hold meetings. It governs my existence. It
17 governs everything that I do. And if any owner and that we
18 have not received that claim, claims they didn't read it,
19 they should have, because that Master Deed defines what
20 percentage of the property they own. It defines their unit.
21 It defines how they can use their property. It defines if
22 they can have any tenants. It defines whether they have to
23 pay assessments to the POA. The argument they are trying to
24 make is like, if one of the unit owners out there looks at
25 the POA and say, you know, I didn't know I had to pay annual

1 assessments to the POA, because it wasn't conspicuous enough
2 in the document, the POA is responsible. You know, that is
3 in the chain of title to your property. You are on record
4 notice, and you are deemed to know about it. But, once
5 again, that argument is mainly for the owner's benefit. You
6 appellees can't make it. It creates a legal absurdity, or
7 illogical result to do that. And I am winding down.

8 The last thing that came in today, the POA saying it is
9 really unfair. It is not unfair for them to not be able to
10 sue the prior owner of the property who sold that and bent
11 over backward to say we are not involved in this. They bent
12 over backwards to put the POA and the owners on notice that
13 we are not involved in what happened. That is not unfair.
14 And they are not left without a remedy. They still have
15 claims against Vista, and I think they are trying to that
16 Mr. Guardiole is a personal defendant. They have claims
17 against engineers and others. It just says, you know what,
18 you can't sue people that are not responsible for what you
19 are complaining about. It was created by Vista. The
20 condo's were created by Vista. That is the entity that you
21 need to look to. Don't look to the firm that didn't do
22 this. There is an unfairness about it. And to take --- If
23 the Court agrees with their position on this, then what it
24 does is, basically says you cannot sell property in this
25 state to a buyer that is converted. You are strictly liable

1 and contract in tort no matter what you do.

2 I can't think of anything we could have done
3 differently to sell this property, perhaps renting a
4 billboard outside of the apartment complex saying, there are
5 disclaimers and releases. We didn't have privity with the
6 owners. We didn't deed the property to the owners. This
7 was the only way to put people on notice. And there is not
8 a single person who claims they did not have notice of that.
9 That argument has not been made to the Court.

10 And I guess if there is nothing else, the biggest
11 issue, like I said, these facts are fully developed. At the
12 end of the day the issue turns on those two documents,
13 Paragraphs 14 and 15 in the sales contract, and in the
14 Master Deed. The two issues about, you know, the quality
15 issue and the secret belief. They are not factually
16 determining to this issue. This is right for a final
17 determination on this issue. If we had a trial, what would
18 be the issue? Mr. Guardiole gets up there and says, well, I
19 had a secret belief. That would be the only issue left to
20 try in the case, and it is not relevant. We would not
21 challenge a secret belief. It is what it is, a legal
22 effect. So, this isn't like something that needs to go back
23 for more of a factual determination. And I can't think of
24 one genuine material issue of fact that is relevant to the
25 issue that is presented to you, or to a jury in this case.

1 The facts are what they are, and the two principles are
2 basically saying the same thing. We would not sell it
3 without this.

4 THE COURT: Mr. Parrish, let me ask you, and I know
5 you started out by saying for purposes of these arguments
6 the existence of the defects are assumed. What if any
7 impact does that have with your clients setting aside two
8 hundred thousand-dollar escrow as part of closing, assuming
9 some deeper level of responsibility for something they
10 disclaimed. Is this part of the subsequent remodeling, does
11 it have any impact?

12 MR. PARRISH: No, sir. But it is interesting. Vista
13 wouldn't close, they said, hey, we found problems. It is
14 going to cost about two hundred thousand to fix the
15 balconies. Put two hundred thousand in escrow. And then
16 Vista, after they bought the property, Vista made those
17 repairs and took the money. So, they received additional
18 consideration for their repairs. And it is interesting, if
19 you read the POA's briefs, they list about fifteen
20 complaints about what they complain, and about eight are
21 about repairs. I don't want to argue the facts, because I
22 am not sure we have gotten that far into what the claims
23 are. But, yeah, they received additional consideration for
24 the balcony repairs, and the balcony repairs seem to be the
25 trust or what the main issues in the POA complaint. So,

1 again, Vista bought it, Vista sold it, Vista repaired the
2 balconies. We did everything we could to distance ourselves
3 from this. And I can't sit in here right now, there is no
4 unfairness here. They have a solid defendant, they have a
5 solid owner, and they have insurance, and they are trying to
6 go spray the paint a little too far down the line, and this
7 is a contract, and it gives everybody the benefit of the
8 bargain. So, yeah, I agree with you that it is relevant in
9 the sense that it is just another example of, we didn't do
10 what they are complaining about.

11 THE COURT: All right. Thank you, Mr. Parrish.

12 MR. PARRISH: Thank you.

13 THE COURT: Let me ask, is there a similarly
14 situated party that wants to add to Mr. Parrish's argument,
15 I will be glad to hear from you at this time, before we
16 switch to the other side.

17 MS. FIGUEROA: May it, please the Court, Your Honor,
18 Laura Figueroa, for the record. I would like to begin by
19 bringing to the Court's attention an issue that we believe
20 justifies the POA's claims against James Harwick. I
21 apologize for the late nature, but this filing I have here
22 is supplemental memorandum that I will pass around.

23 May I approach, Your Honor?

24 THE COURT: Yes, you may.

25 (PAUSE.)

1 THE COURT: I have had the benefit of reviewing your
2 initial memorandum which was dated September 26th. I have
3 not seen a supplemental.

4 MS. FIGUEROA: Yes, sir. And certainly, I will
5 address in the initial memorandum momentarily, or I will
6 address those as Your Honor prefers. But we will go ahead
7 with the procedural issues then, if that is all right with
8 the Court.

9 James Harwick argued that the POA's third-party
10 complaint against it is not and cannot be a legitimate
11 third-party claim, and should be dismissed under Rules 12
12 and 14.

13 Rule 14 of The South Carolina Rules of Civil Procedure
14 permit a third-party defendant to --- excuse me. Permits
15 the defendant to assert a third-party complaint only in a
16 situation where a third-party defendant is one, who is or
17 may be liable to the third-party Plaintiffs where all of the
18 Plaintiffs' claims against the third plaintiffs. Case law
19 interpreting this rule indicates that the third-party
20 Plaintiffs, in this case the POA, must have a substantive
21 claim against the third part defendant, James Harwick
22 founded on derivative liability such as indemnification or
23 contribution. The theories of derivative liability are
24 prerequisites to the use of a third-party claim, and the
25 third-party complaint is not and cannot be based on an

1 independent cause of action. Cause of action asserted by
2 the POA in this case against James Harwick are based on
3 breach of implied and expressed warranties and negligence.
4 Neither of these claims are of a derivative nature, and are
5 improper foundations for a third-party complaint. The POA
6 made no mention of a conduct by James Harwick that would
7 obligate for all or some part of the POA's liability to The
8 Beach Company entity, because a third-party complaint seeks
9 recovery only under independent theories of negligence and
10 breach of warranty rather than form of derivative liability.
11 James Harwick would argue that it is an illegitimate third-
12 party complaint and must be dismissed.

13 Getting back now to the facts and arguments raised by
14 Mr. Parrish and the LGSF entities. James Harwick would like
15 to state for the record his agreement and adoption of the
16 position advanced by LGSF and all of the Motions, Memoranda,
17 and any hearing before this Court. For all the reasons
18 enumerated by Mr. Parrish, James Harwick believes the POA's
19 third-party complaint against it should be dismissed. The
20 application of the statutory and case law supports this
21 dismissal. In addition, we would admit that James Harwick
22 designation as an affiliate of the LGSF entities the Court's
23 dismissal of the POA's claim against James Harwick based on
24 the force and effect of the sales contract.

25 Your Honor, we would note that the sales contract is in

1 fact a contract between two parties, the LGSF entities as
2 well as the Vista entities. The release and assumption of
3 the claims is part of the contract. And there are basic
4 contract tenants here, offer and acceptance as you heard
5 from Mr. Parrish, these issues were continuous, there was
6 bargaining back and forth between the parties, and there was
7 consideration. Certainly, I won't go through as Mr. Parrish
8 did a great job of explaining to you the issues with the
9 consideration, but not every provision of the contract
10 requires separate consideration such that the release of all
11 claims and the assumption of liability does not require its
12 own consideration, nor is there every party to a contract
13 required to provide separate consideration.

14 In contracting parties here in the LGSF entities as
15 well as Vista have admitted the existence and validity of
16 contract. There is no party that disputes the facts as to
17 the existence of a contract or its terms. And at this time
18 the only issue before the Court is the legal force and the
19 effect of the contract. Despite the facts that it contains
20 a relief, the contract is and should be viewed and
21 interpreted according to traditional contract principles,
22 and defers the intent of the parties based on the document
23 itself. I think it is clear, the intent of the parties is
24 to clear the mistakes of the contract. The parties intended
25 to release LGSF entity as well as James Harwick for

1 liability for any all claims relating to design,
2 development, and construction of the property. The parties
3 intended for Vista to assume liability for identifying and
4 correcting any defect in the property, and for assuring that
5 the property was suitable for use as condominiums. The
6 parties also intended for subsequent purchasers to be bound
7 by the assumption of the liability and release the
8 Plaintiff. This is clear in paragraph 16. In fact, the
9 parties even used the word intended. The provision states
10 Vista acknowledges and agrees that the assumption of
11 liability and release of claims is intended to be binding on
12 all subsequent purchasers of the property, condos, or other
13 subdivisions of the property. This intent was carried out,
14 in fact, by the inclusion of such language in the Master
15 Deed.

16 Lastly, Your Honor, the parties also intended for James
17 Harwick to be considered an affiliate and entitled to the
18 benefit of this contract. And what I mean by that, Your
19 Honor, I think we included in our Memorandum the provision
20 of the sales contract that applies specifically to James
21 Harwick and Partners, and is included in paragraph 15, and
22 the assumption of liabilities and relief of claims. Therein
23 liability is to claim not only for the LGSF entities, but
24 also for any affiliates, which is defined in the contract as
25 an entity involved in the design, development, or

1 construction of the property. In that sense, Your Honor,
2 James Harwick is the original architect. A party involved
3 in the original design, development, and construction, such
4 that they would be entitled to the benefit of the release
5 provision. We also had some testimony from the parties in
6 this action that they intended for James Harwick to be
7 considered an affiliate under the release provision here.

8 As a result, the plain intent of the parties, we
9 believe the agreement is clear, plain, and unambiguous, and
10 the Court should enforce the contract as entered into by the
11 parties. It is not --- The issue is not whether this was a
12 good idea for residents to assume the liability. It is
13 whether in fact they did. And, I think it was clear from
14 the contract itself that they did. Again, I just went
15 through why James Harwick is entitled to the benefit of the
16 release provision as an affiliate. The parties intended him
17 to be such. And as a third-party beneficiary of the
18 contract, James Harwick is entitled to enforce the
19 contractual provisions and retain the benefit of the relief,
20 and therefore, Your Honor, we would ask that you grant the
21 third-party claim against James Harwick.

22 THE COURT: Thank you. Thank you, Ms. Figueroa.
23 Anyone else now similarly situated who wishes to be heard?

24 All right. Then for the defendants.

25 MR. GRIMBALL: Your Honor, when I first started

1 practicing law, I had a hard time saying that I represented
2 the Plaintiffs, but now I have a hard time saying I
3 represent the defendants. I did defense work for seventeen
4 years.

5 Let me address the procedural issues where I see a
6 couple of things that are related. First of all, I have an
7 obligation to file, in my judgment, a compulsory
8 counterclaim against the entities that sued my client. I
9 did that. I also cross claimed against the Vista entities
10 and pursuant to Rule 19, joined certain parties that I
11 believe were at least some of the parties because we've got
12 some others to add, but parties including the original
13 architect, under Rule 19, who would be necessary to receive
14 a complete and full adjudication of all the issues. So,
15 that explains it. The cure for the procedural issues,
16 because in my view, all The Beach Company has done is to
17 have asserted release as a defense instead of as an
18 affirmative defense, they have done it there for a judgment
19 action to preempt the construction defect litigation. I
20 have filed a motion to realign the parties, so that my
21 client is the Plaintiff and all these other parties are
22 defendants, and that cures all of these particularly her
23 procedural issue, which I don't really see as a big problem
24 with my gaining this piece of litigation, because filing a
25 compulsory counterclaim added parties to get a completed

1 adjudication under Rule 19.

2 THE COURT: All right. Mr. Grimball, let me just
3 ask you. You are telling me that you have cross-claimed
4 against the Vista entities?

5 MR. GRIMBALL: Yes, sir.

6 THE COURT: Well now, maybe I am just blind, but
7 this is not in the captions --

8 MR. GRIMBALL: Well, it would not have been. The
9 cross-claim would not show up in the caption, because Long
10 Grove Property Associations, and they are on the same level
11 with me, typically I don't put the fact that there is a
12 cross-claim in the caption. I just don't do it. It will
13 become part of the third-party claim.

14 THE COURT: So, the POA has a claim now completely
15 against Vista third-party?

16 MR. GRIMBALL: Yes, sir. It sure does.

17 THE COURT: Was that initially filed when you came
18 in, or was that later added?

19 MR. GRIMBALL: No, sir. I filed --- When I answered
20 within the appropriate time I answered. I filed the Answer
21 and Counterclaim, and third-party Summons, third-party
22 Complaint, and the cross-claim. I recall this one document.

23 MR. PARRISH: Your Honor, I did not show that on my
24 flow chart, because I don't care if he sues the Vista
25 entities or not. My Motion was just to mine, so I didn't --

1 - I let the --- not intentionally, it just wasn't part of my
2 Motion.

3 THE COURT: All right. Very good. And I am not
4 challenging anyone, I just simply want to make sure that I
5 am familiar with exactly all of the claims that are pending.
6 All right. Go ahead, Mr. Grimball.

7 MR. GRIMBALL: Yes, sir. I had treated this as a
8 typical construction defect case, and moved to amend, to add
9 as additional party's subcontractor, and moved to realign to
10 make my client, the Plaintiff in what is or should be a
11 traditional construction defect case.

12 And with regard to Vista, there are some --- You asked
13 a specific question, and before I get into the full
14 argument, I wanted to respond to that. And the question was
15 about Vista. And, Mr. Guardiolo made it clear in
16 depositions. I don't recall if it was in a transcript or in
17 discussions that he is impecunious. In this economy it has
18 caused him great problems. And, at least one of his
19 entities whom I would intend to add, Vista Construction, is
20 subject to a declaratory judgment action in Georgia. So,
21 there is no certainty that there is insurance. There is
22 absolutely --- There is a huge uncertainty that Mr.
23 Guardiolo, or Long Grove, Vista, or Vista Reality Partners,
24 could not only respond to the judgment. My clients are
25 faced with millions of dollars of damages. Seventeen

1 buildings, two hundred and seventy-two units, and it has got
2 severe problems with how it was constructed and designed. I
3 don't want to leave the design people out of this. It is a
4 problem with the design and the construction. And it is a
5 significant case.

6 Now, The Beach Company would have you believe that the
7 Master Deed, that once they sold it, they walked away from
8 it. Nothing could be further from the truth. Under the
9 sales agreement they maintained control in paragraph 16 over
10 the content of that release language. And if they had
11 wanted to make this thing clear that there was this release
12 that they claimed, and I have put in quotation marks
13 throughout my memos that I believe it is a proper release,
14 they could have put it in the marketing literature, which
15 The Beach Company took care of. They could have put it in
16 the deed. They could have put it in the sales contract, the
17 individual sales contracts. They could have put it in a
18 number of other places. These companies specifically head
19 the existence of this agreement. There are three important
20 facts. The POA did not exist at the time all of this was
21 done. There was no consideration to the POA, or for this
22 agreement. And, they hid it. The language in paragraph
23 sixteen of the single agreement is pretty clear. That they
24 will include in the Master Deed and in any and all deeds, or
25 any other conveyances of all or part of the property

1 parenthesis --- (except for conveyances of condominium units
2 by the purchaser.) They specifically hid that out. And the
3 reason they did that was because they knew that no rational
4 human being when confronted with a document that says we are
5 The Beach Company. We built it. We operate it as
6 apartments. We managed it. We sold it to this crowd at
7 Vista and we have continued to market it for sales, but we
8 have nothing to do with it. When you take The Beach Company
9 out of the equation, nobody is going to buy it. And that is
10 a problem that they hid it as we will get to in this
11 argument.

12 Now, we also, if you look at the Master Deed and the
13 language that they have put in it, it is ambiguous.
14 Ambiguous because it never mentions the Property Owners'
15 Association, it never mentions the Horizontal Property
16 Regime. What it says is that the client and the owners ---
17 that the POA doesn't own anything. The HP owner doesn't own
18 anything. They acknowledge and agree to certain things.
19 So, it is ambiguous this language that they have put into
20 this release.

21 Now, what we essentially have is an attempt by The
22 Beach Company to exculpate itself, and these other parties,
23 the general contractor, which is their wholly owned
24 subsidiary, plus the architects and subcontractors from
25 their responsibilities for implied warranties that issued

1 through construction process, and implied warranties that is
2 issued as soon as the sell the property. The first sell in
3 this case was a sell by The Beach Company to the Vista
4 entities. That put the project with the knowledge of The
5 Beach Company that it was going to be used as condominiums
6 into the stream of commerce. That is when the implied
7 warranty of inhabitability arises. The merger document does
8 not apply to the implied warranty of inhabitability, and
9 as a result the implied warranty of inhabitability applies
10 in this case.

11 Now, there are three sort of overall reasons why the
12 contract is unenforceable.

13 First, there is no contract in which the POA is a
14 party.

15 Second, the contract is against public policy, and
16 violates public interest.

17 And third, this is an illegal and unconscionable, and I
18 feel unjust and inequitable provision or contract in this
19 case.

20 The Beach Company first started to market this property
21 in the fall of 2004 through the L. J. Melody Company, which
22 is a company out of Atlanta. And at all times they marketed
23 the property to be converted to condominiums. But the
24 marketing materials says a unique condominium conversion
25 opportunity. The negotiations that went on, and there was

1 never a discussion about indemnification, there is never a
2 discussion about a release by the POA during this period of
3 time. Indemnification came to light in mid December. The
4 release --- Not by the POA, just the general concept of a
5 release only in the transmission of the final term sheet.
6 The term sheet gets sent December 28th by Mr. Gardiole, he
7 signed it, Mr. Darby sends a letter back, says got a release
8 and indemnification, sign here, and he signed it and sent it
9 back. So, the price had been set at that time. Now there
10 was no change in that price. There was nothing of benefit
11 exchanged from one to the other at that particular time.
12 Now, what Mr. Gardiole said, and this is a factual issue,
13 is that he was told by Mr. Darby that this was a deal
14 breaker. Now, whether that was true or not, I have no idea.
15 That may well have been a block in the negotiations if he
16 were to have sold it. But, they went through with the sale,
17 and they put that language in the sales contract. And it
18 was that sale that puts the project in the stream of
19 commerce.

20 Now, the POA is not a party to that contract. It is
21 not a party listed in the release. It is not an assigned, a
22 successor, it is not a heir, it is a creature of statute.
23 You have the Horizontal Property Act that allows property to
24 be put in a Horizontal Property Regime, and then it allows
25 you to establish the association, and the association is

1 given certain tasks. And we talked about those tasks
2 momentarily, but it is a separate corporate entity that
3 arises out of the --- what is the result of the property
4 being committed to the Horizontal Property Regime under the
5 act. So it is, like I said, a completely entity.

6 Now, March 7th, there was an assignment of a sales
7 contract from Vista Real Estate to Long Grove Vista, the
8 closing occurred then. On April 13, the Master Deed was
9 signed. It was signed only by the declarant. It is not
10 signed by the POA. He is not signing it on behalf of the
11 POA. He is signing that document only as the Declarant. On
12 April the 18th, the Master Deed is filed. Then on April the
13 21st, at the very end of this, the POA is actually
14 incorporated and created. So, thereafter The Beach Company
15 pursuant to an agreement with Vista, they marketed the
16 units. They handled the sales of the units. They continued
17 to operate the units as apartments. They created this
18 impression, which is a legitimate impression on the part of
19 prospective purchasers that this was a Beach Company
20 project. They had every opportunity to explain it to
21 prospective owners. This was not actually a Beach Company
22 project, and they did nothing. And that is part of the
23 problem.

24 Then in 2009 problems occurred. And as a result of
25 those problems, experts were hired, and we sent right to

1 cure letters, which is required by our statute. And as a
2 result of the right to cure letter, this case was
3 preemptively filed. And as I said, I consider what they
4 have done really to be a too early assertion of a Rule 8,
5 required defense, an affirmative defense, which is a defense
6 for release.

7 Now, --

8 THE COURT: Now, counsel let me ask you. When you
9 sent that right to cure letter though, that party has only
10 one or two things they can do basically. What they did was
11 to go in there and inspect and engage in that process; am I
12 correct?

13 MR. GRIMBALL: They can do nothing. They do not
14 have to do anything. They can do nothing, and hope it goes
15 away. The recipient of the right to cure letter does not
16 have to take any action whatsoever, and that is typically
17 what happens.

18 Now, the Horizontal Property Act talks about a Master
19 Deed, and it describes the content of the Master Deed. And
20 what they did was to put something totally unexpected into
21 this Master Deed. And, I think you probably have a couple
22 of copies of the Master Deed as exhibits. The Master
23 Deed itself is forty-five pages long, with the attachments,
24 I would say eighty-something in my Brief. I think it closer
25 to ninety or a hundred. This is all on page forty-two of

1 the Master Deed. It is in exactly the same type of font,
2 type of type as everything else in the Master Deed, except I
3 think, just two or three pages prior to this there is
4 actually something, and I don't remember exactly what it
5 was, but there is some disclaimer or something unrelated to
6 this case. But there is some language, and it is in bold
7 all caps like, so you will draw your attention to it. This
8 really is --- It is buried there where no one would expect
9 it, and no one would see it. The association then
10 undertakes the duty to --- has the duty to maintain this
11 property. As part of that duty, it has an obligation under
12 the Queens Grant Case, as opposed --- it can be sued, but it
13 has the obligation to file a lawsuit. So, you have got
14 within this --- within the document itself, in the act
15 itself, you've got the duty set forth, the Master Deed
16 allows it, the articles of incorporation for the POA makes
17 no mention of it not being able to sue these people. It
18 gives the right to sue without any limitation. And so it's
19 got that obligation to file this lawsuit. And, at the same
20 time, the Declarant owes certain fiduciary obligations to
21 the Homeowners' Association, the POA. It has to leave the
22 property with sufficient funds to be able to --- You have
23 given this charge before, I have heard it. They have to
24 provide the funds to put it in good condition, or else leave
25 it in good condition, which they didn't do. But, what this

1 document does, it releases --- because there are latent
2 defects, and not sufficient funds to fix it. It creates a
3 situation where it imposes upon the POA a breach of its
4 fiduciary duties. It can't properly bring a lawsuit. And
5 it imposes upon the Declarant a breach of its fiduciary
6 duty, because it is not treating the POA as a separate
7 corporate entity properly. And that is a problem with the
8 way these people have arranged this particular scheme. It
9 creates these issues and problems --- a standpoint, a legal
10 standpoint for legal arguments.

11 First of all, there is not a valid contract that
12 effects the POA. The POA is not a party to the contract.
13 It is not mentioned in the contract. It is no way it can be
14 put on notice about the contract. By the time it is in
15 existence, this thing is out there, and it has been created.
16 And they are either subject to it, if you believe Mr.
17 Parrish, or else it is volatile of public policy, and they
18 are not a party to it, and they don't have to comply with
19 it.

20 So, first of all, they are not a party to it. Second,
21 there is no consideration that was paid to the POA. And
22 this is a factual dispute. The way the deposition occurred
23 is, I asked Mr. Darby point blank if there was any
24 consideration for this agreement, and he said the agreement
25 being a specific release, and he said, no; without

1 hesitation. It wasn't until he was asked leading questions
2 by the architect's attorney in cross examination that in ---
3 and the attorney was the one that said, well, it was
4 consideration for this deal to go forward. Well, oh, yeah,
5 yeah, that was the way that went. But he said, no, there
6 was no consideration. Mr. Guardiole, said without
7 hesitation, no, there was no consideration. There has never
8 been any consideration recited in any of these documents at
9 all. They just say for valuable consideration. Well, this
10 is so --- this works such a hardship on the POA, it is such
11 a big deal, there needs to be separate consideration. It
12 really does, and there was not in this particular case.
13 And, let's take step back. This is their release. What is
14 a release all about? The release for it is the Plaintiff,
15 in my shoes, my client makes a claim to releasor is paid or
16 receive something of value typically money. The releasor
17 then says, all right releasee, we are not going to sue you
18 anymore. The releasee pays money that is The Beach Company,
19 they pay money and they then are no longer subject to the
20 lawsuit. Well The Beach Company in this case received all
21 the money. They got thirty-seven million, two hundred and
22 fifty thousand dollars. The POA got nothing. What they
23 have is a detriment. They have the obligation to maintain,
24 and no ability to get --- which means they have got to spend
25 millions of dollars in this particular case, and they don't

1 have the ability to recover money from the people who caused
2 the damage.

3 THE COURT: Well, what about Mr. Parrish's argument
4 there is no privity here of the POA or The Beach Company,
5 they have a complaint against someone else, not The Beach
6 Company.

7 MR. GRIMBALL: No, sir. The sale occurred, the
8 implied warranty arises from the sale. Privity is dead.
9 Justice Toal, I think she was Chief Justice here then. She
10 made it clear in Kennedy versus Columbia Lumber, she said,
11 we want to make sure that there is no doubt in this kind of
12 case, privity is gone. It is a dead issue. The cases are
13 legend, and I cited a number of them that say, these implied
14 warranties, they arise from the sale itself. They survived
15 the transaction. And subsequent purchasers can sue the
16 original creator of the implied warranty of inhabitability.
17 He has totally misread and misrepresented Smith versus
18 Breedlove. That was a case in which an individual who is an
19 unlicensed contractor built his own home using
20 subcontractors. It is factually so totally different from
21 this that it does not change the law in this state. It is
22 completely different from this particular case, and the
23 facts of this case. And like I said, the case law is pretty
24 clear and in numerous say, subsequent purchasers can sue the
25 original seller for a breach of implied warranty.

1 THE COURT: All right. But then taking that
2 argument to I guess an extended conclusion. Is it your
3 position that there is no way of someone who wishes to sell
4 their apartment to someone who is going to convert it to
5 condominiums, and then absolve themselves or disclaim the
6 warranty, however you wish to say it of ongoing
7 responsibility, it just can't be done?

8 MR. GRIMBALL: There may be a way to do that. They
9 totally failed in how they tried to do that in this case.

10 THE COURT: All right. Well, thinking outside the
11 box, how would you do that? How would you go about doing
12 that?

13 MR. GRIMBALL: Well, you know, judge, you really put
14 me in a funny position, because now I am here given the
15 developer is in the courtroom suggestions for this next
16 field. So, I am not sure I want to do that.

17 But, I will tell you what should have been done, and
18 what they could have easily done. If they had taken a
19 substantial sum of money between the two of them, or however
20 they wanted to do it, put it into an escrow account for the
21 use of the POA, and then let the POA come into existence and
22 be represented by a lawyer, and have proper representation
23 so there could be a legitimate deal struck, they could have
24 done it that way. I think they probably could. But, not in
25 the way they did this in this. They hid this, judge.

1 THE COURT: Well, but in a way, aren't you asking
2 The Beach entity to then engage with the person whom they
3 sell it with, or what their future use is when the seller is
4 saying, whoa, we are selling it to you as is, where is, and
5 all that language. We have no comment nor involvement in
6 what you plan to change, or alter, or make it.

7 MR. GRIMBALL: The cases are fairly clearly cited in
8 the Brief, that the use didn't change, the ownership
9 changed. And the Horizontal Property Act uses the word
10 apartment and condominiums interchangeable. These are
11 residential pieces of property. It is the same use and they
12 knew it. They knew exactly what was going on with this
13 sale. And they tried very hard to get --- to free
14 themselves, and they just didn't do it right. I agree with
15 you. I think probably you can do it, not --- And I have
16 some reluctance about exactly the proper way you would have
17 to go about doing it. This is not the proper way.

18 Now, the --- I have discussed in the Brief, mutual
19 mistake, and I will rely on what I have said in the Brief.
20 But, those two particular issues.

21 Now, this is also as between the POA and The Beach
22 Company, it is a contract of adhesions. That is significant
23 of the fact that the POA did not exist when all of this
24 occurred. There is no way the POA could ever have any
25 intent or a meeting of the minds to be a releasor. The

1 other thing is that it becomes a contract of adhesions.
2 They had no choice, and it is unconscionable, there is no
3 board of directors ever that would agree to release the
4 original developer, and general contractor, and architect
5 who was not named in the documentation for zero dollars.
6 That is totally unreasonable. And, it is suppressive or the
7 POA because it eventually is going to have to come up, as I
8 said, millions of dollars to be able to repair all of these
9 defects that exist out there. So, it is oppressive, unfair,
10 and it is just a surprise. But, they don't mention in the
11 sales contract to an individual purchaser. They don't put
12 it in the deed to an individual purchaser. They put it in
13 the Master Deed, and they bury it in the middle of the
14 Master Deed, so it is a surprise and inconspicuous. So,
15 what you have got is contract of adhesion with
16 unconscionable terms, that is unenforceable in this state.

17 Also, this is in essence in some respect a motion for
18 specific performance. In what the cases have said with
19 concerning specific performance is, that if there is
20 inadequate consideration, and there is grossly inadequate
21 consideration in this case, then there are inequitable
22 incidents that surround it, it is not enforceable. In this
23 case, the inequity is where they hid it. And clearly from
24 our view point there is no consideration for the POA.

25 Additionally, you have a line of cases specifically

1 concerning exculpatory contracts. Pride versus Southern
2 Bell Telephone, and Telephone and Company; 245 S.C. 615, at
3 page 619 and 620, is general principle that consideration of
4 public policy prohibit a party from protecting himself by
5 contract against liability for negligence in the performance
6 of a duty to public service, or where a public duty is owed,
7 a public interest is involved, or a public interest requires
8 the performance of a private duty, or if the parties are not
9 on roughly equal bargaining terms. We have that situation
10 here. We have a situation where there is a public interest.
11 The public is being asked to come in and purchase
12 condominium units. There is a public interest that is
13 created by the building code. There is a public interest
14 that is created by the Horizontal Property Act. This is a
15 creature of the statute. So, there are public interest
16 involved in this. And it is a result of this type --- And,
17 it is an inadequate bargaining position, as I stated
18 previously, they had no choice in this. The POA had no
19 choice. They had no ability to be able to bargain. It was
20 all on one side and not on the other. And, so as a result,
21 this is a illegal, improper contract, and should not be
22 enforced within this state. What they are attempting to do
23 by the way the handled it factually in this case, is to turn
24 this state from caveat venditor, let the seller beware, to
25 back to caveat emptor, let the buyer be ware. In our court

1 for forty plus years, has been in the vanguard of protecting
2 homeowners. In this case they are asking you to do exactly
3 the opposite, and that would turn upside down the who notion
4 --- the whole jurisprudence of the last forty some odd years
5 if they are allowed to get away with the scheme they have
6 set in place. The other significance about it is,
7 exculpatory contracts are to be construed very strictly.
8 And, in this case, when you look at the language that is in
9 the Master Deed, and it talks about the Declarant and
10 owners, that is not the POA, and that is not the HPR. I
11 know you are familiar with that type of case, because of the
12 Fisher versus Stevens opinion, which I believe you were the
13 trial judge on, which involved a racetrack and those sort of
14 things, you ruled against the wrecker service trying to
15 enforce this exculpatory contract. And in that particular
16 contract, again the language was their goal, and is quoted
17 in the opinion, it does not hold in this particular
18 instance. So, again, under that line of cases, this is a
19 contract that should not be enforced.

20 Now, there are also a line of cases that are
21 unenforceable as against public policy. In the first case
22 when I did the research over the weekend that struck me
23 Friday, and I thought I've got to do research. The first
24 case that came up on my research was The Beach Company
25 versus Twilman. That was a case in which The Beach Company

1 put into a lease with its commercial entity a requirement
2 that any counterclaim be brought not as a counterclaim, but
3 in a completely separate action. Very analogous to what
4 their argument is with me here today, which is, oh, you can
5 still sue Vista. Well, in that particular case they could
6 still sue The Beach Company, but what the Court said was,
7 that was an illegal contract. And the rationale is because
8 you have a mandatory counterclaim. In my case here, what
9 you've got is a mandatory obligation on the part of the POA
10 to bring a piece a litigation --- a lawsuit. So, you've got
11 again this issue with The Beach Company in 2002, it is three
12 years before this was done. They get put on notice. Don't
13 put a illegal contract --- illegal provisions in your
14 contracts. And, it is very analogous between The Beach
15 Company versus Twilman, and this particular case that we
16 have here.

17 The policies and contracts that are against public
18 policy that are owed in this line of cases, and I do not
19 know of any reason why they should not be enforced. The
20 ones that they are against public policy, there is an anti -
21 -- there is a provision in the code, §32-2-10, that is a
22 statute that says, contracts against public policy. And it
23 talks about contracts that any contract involved in
24 construction. What they are trying to do is absolve all of
25 these construction defendants and themselves from liability

1 for their own negligence in the construction of the Long
2 Grove as construction --- the original development design
3 and construction. And that is prohibited by the code.

4 THE COURT: What do you say to their argument that
5 this is not a construction contract, but a sealed contract?

6 MR. GRIMBALL: The terms of the release themselves
7 refer to construction defects. It is obvious that the
8 purpose of the attempted release is to absolve themselves
9 from the damages that they caused as a result of their poor
10 construction, not as a result of the sale. If you go back
11 to the original construction itself. This is all about
12 construction. It is not about the sale.

13 Mr. Parrish did not mention the economic loss rule.
14 The line of cases is Carolina Winds, to Kennedy, to Sapp.
15 This is residential. There are four reasons why that
16 doesn't apply in this particular case under that line of
17 cases. This is residential construction. The duty arises
18 independently of the contract, or legal duties, or building
19 codes, things like that. There is language in, I believe it
20 is Kennedy, it may be Carolina Winds, where if a party
21 issues implied warranties, which arise out of the sale of
22 this property, not out of the construction itself, then it
23 rises out of the sale itself, then they can be sued in
24 negligence, and we have property damage, not economic loss,
25 but property damage. All of those things take it out of the

1 economic loss rule. This -- Mr. Lady has handed me the
2 statute itself, §32-2-8, which states that what is
3 prohibited is a promise or agreement in connection with.
4 Clearly, that release is any connection with the design,
5 planning, construction, alteration, repair, or maintenance
6 of a building structure. This is exactly what this statute
7 is designed to prohibit.

8 Now, the implied warranty and inhabitability, I believe
9 I have covered that. Gulfstream is different from The Beach
10 Company and Long Grove at Seaside Farms. Gulfstream is a
11 contractor. It is the one that issues the implied warranty
12 of good and workmanlike services. That applies to the
13 original purchaser and subsequent purchasers. Any one of
14 those parties can sue a contractor under that implied
15 warranty. None of these have been properly disclaimed. The
16 Pyrex Kirkland case, Kirkland v Pyrex sets forth a test, it
17 is a three-part test, to be disclaimed for those warranties.
18 They have to be conspicuous. We don't have that here. In
19 fact, the disclaimer of the warranties is in the title ---
20 in the paragraph release, there is no way you are on notice
21 of that. The placement upon all of those things in its
22 inconspicuous --- it must be known to the buyer. If it is
23 not known, it has got to be specifically bargained for.
24 There is no way that either the POA or individual
25 owners/purchasers specifically bargained over this

1 particular deal.

2 And, I am happy --- Let me check with Mr. Lady to make
3 sure I haven't forgotten anything.

4 Let me summarize first. Taken individually, there are
5 numerous reasons to deny this motion. Collectively it is
6 overwhelming that this motion should be denied. This is not
7 a proper contract. It has not been properly worked out to
8 effect the means the ends they have tried to do. And it is
9 --- there is real unconscionability and grossly inadequate
10 consideration when you boil it all down to the effect that
11 granting this motion would have on the POA and the owners at
12 Long Grove.

13 MR. LADY: Your Honor, rather than shorthand this
14 thing. I have one short thing. The only thing I would say
15 is, I'm not convinced in response to the Court's question
16 that a developer and a general contractor can do what they
17 did in this case. Now, if I can set up a way that they can
18 do it better, and clearly in this case they made no attempt
19 to actually tell the ultimate end user of these properties
20 what they had done. They could have put it in the sales
21 contract. They could have told them. They stuck it in the
22 Master Deed. But, I am not convinced if you read the
23 jurisprudence in this state over the last twenty years, and
24 the protection to the ultimate buyer, and it is not new
25 homes. They were just wrong about that. It travels with

1 certainly the workmanlike service travels. So, I am not
2 convinced. I know why they did it, and I applaud the
3 effort. But that does not mean that you can do it in this
4 state. And given the warranties of inhabitability and
5 workmanlike service alone, I am not sure public policy
6 allows for them to do it.

7 THE COURT: Well, Mr. Lady, I am not arguing with
8 you when you speak of public policy. What more is The Beach
9 Company to do? They have sold it. They are out of the
10 deal. They don't know that the subsequent POA is
11 established. They don't know who the members are, who the
12 buyers of the individual units are. They don't know when
13 those transactions occurred. How can they do what basically
14 the burden that has been placed upon them?

15 MR. LADY: Because the Supreme Court has placed
16 certain burdens on developers when they develop a property.
17 And they ultimately developed it to sell it. And they
18 placed certain burdens on general contractors who would have
19 responsibility to travel with the property. It may be that
20 they are stuck with certain liability, and they may not like
21 it. And, you know, as between them and Vista they may be
22 able to sell it and get indemnification for Vista, and take
23 the chance that Vista does not have the resources to
24 indemnify them. But, I think that is a real legal question
25 for the Court. If you read these cases, if you read these

1 cases, the developer and a general contractor just simply do
2 have duties to the ultimate owners that it is what it is.
3 They are the ones that were there when they build it. They
4 developed it. They have a certain pecuniary interest in
5 selling it, obviously thirty-seven million dollars. And, I
6 understand why they did this, but that doesn't mean that you
7 can accomplish what they are trying to accomplish here,
8 which is basically to isolate themselves from the legal
9 liability that the state --- the courts of South Carolina
10 have placed on them.

11 THE COURT: And again, I am not arguing --

12 MR. LADY: -- Yes, sir.

13 THE COURT: -- I am thinking this through. But, you
14 said they did all of this to insulate themselves knowing
15 there was a problem, and attempting to do something they
16 can't do. But just taking that argument from the other side
17 they would say, well, you are upstream. The defendant
18 created an entity that now puts --- proposed to do something
19 that they can't do, because he through contact gave away or
20 sold, traded, however you wish to say it, the ability to do
21 that. So, I am just thinking about standing, trying to put
22 this in my mind, wouldn't the typical way for this to be
23 addressed would be for the POA to sue the developer, then
24 their developer to turn around through if you wish to call
25 it indemnification or whatever you wish to call it, go back

1 against The Beach Company to get compensated for what
2 damages flowed from that transaction, that initial
3 transaction occurred?

4 MR. LADY: Well, Your Honor, except for the fact that
5 the developer has certain liabilities that spring from the
6 idea that they are there at the time it was being
7 constructed. They had a certain responsibility for that,
8 that Vista is not going to have. Vista is going to have
9 certain responsibilities that The Beach Company is not going
10 to have, to inspect it, to notify, there is a whole host of
11 things that Vista could have done that frankly I agree with
12 David on that level, to some extent Vista is in a place to
13 do some things that The Beach Company at that point the
14 sales entity may not be. But the developer of a project,
15 you know, in its purest form, if they had sold this as an
16 apartment building, and then it had been converted and they
17 were not in on the deal of it being converted, they may
18 still have liability that travels. It is just as a
19 developer and as a general contractor in this state, the
20 problem with what they are trying to do is, they are trying
21 rewrite the law, what their responsibilities are, and the
22 warranties of inhabitability and the warranty of workmanlike
23 service simply provides certain liabilities that are
24 inescapable. And, it is sort of a public policy argument at
25 the front end, and I think Frank has already said, the real

1 problem with the way they did it is they just didn't make
2 any attempt to really disclose this in a meaningful way that
3 somebody could say, and it is two hundred thousand dollars
4 per unit, by the way here in conspicuous language, bold
5 type, all caps, The Beach Company, your developer, your
6 general contractor who built it, all subs, and your
7 architect, have specifically been released and you have no
8 recourse against them. Well, the reason they didn't put
9 that in there, and the reason they agreed between themselves
10 to specifically not put in the sales contract is because
11 they knew these things wouldn't be worth what they were
12 trying to sell them for, if people knew that was what they
13 were getting. So, the public policy at the front end --- I
14 don't think they can do what they are trying to do. But on
15 the back end, the way they attempted to do it by hiding it,
16 clearly should not be enforced under these terms.

17 THE COURT: All right.

18 MR. GRIMBALL: One other point, Your Honor. I think
19 it is very important, because Mr. Parrish in his big brief,
20 he lumps together all of these three parties, one of which
21 is the general contractor, then an architect, they are in a
22 different category. They clearly paid no consideration.
23 Didn't know this was going on. Their implied warranties are
24 different from implied warranties of inhabitability. I
25 think it is important, and I tried to do this in my brief,

1 to analyze these different entities and warranties
2 differently, because the case law has addressed them
3 separately. I don't know if they addressed them too much
4 differently, but they have addressed them separately. So,
5 that I think is an important consideration.

6 THE COURT: Thank you. Mr. Parrish do you want to be
7 heard, or is there someone else?

8 MS. HONEYCUTT: Yes, sir, we are. This is Jenny
9 Honeycutt again for the Vista entities, and we do edge out
10 the position of there has just been a dance by Mr. Grimball,
11 and they are more clear in our brief. The brief was filed
12 after the supplemental brief by the Plaintiff, so I
13 apologize for its lateness. The filed copy was circulated
14 this morning with the same thing essentially.

15 In the primary distinction that I want to bring is that
16 this contract which is a release, the terms of this release
17 are not enforceable as to Vista. Because, Vista has valued
18 its purchase and understanding all of its liabilities and
19 exposure, submitted its terms to The Beach Company, and then
20 after that they put a price tag on it, and this release was
21 brought to the table. And clearly there was no
22 consideration as testified to by those parties, so without
23 consideration there is no agreement. That is all I have.

24 THE COURT: All right. Thank you. Is there any
25 reply?

1 MR. PARRISH: I promise I will be brief, I am aware
2 of the time of day.

3 THE COURT: Well, all of you have been gracious to
4 wait all day, so that is alright. Go ahead.

5 MR. PARRISH: Ms. Honeycutt, the initial term sheet
6 had two things. It had the price, and it had releases and
7 disclaimers on it, and that was very up front. So, I am not
8 sure where that argument goes.

9 As to the POA's arguments, two things. That statute
10 32-3-10, is it forth in that supplemental memo that says
11 construction contracts. The Vista and LGS contract is a
12 sales contract. That is the title of the document. It is
13 sold property that had already been completely built. It is
14 just not a construction contract at all.

15 The main point here is the POA is doing what I set up,
16 what partly what we were going to try to do. They kind of
17 keep blending their role, or they are making arguments on
18 behalf of Vista, or they try to bring The Beach Company or
19 the LGS defendants down to Vista's level. This stuff about
20 hiding stuff from the sales contract, about POA should have
21 had its own counsel, and a pot of money. And they referred
22 to LGS as being the Declarant. That was Vista. Again, we
23 sold the property to Vista, and everything they just
24 happened about happened after we no longer had legal title
25 to that property. All their arguments and stuff that Vista

1 did or Vista should have done. Should Vista have set aside
2 a pot of money for the POA? I don't know, that is an issue
3 between the POA and Vista. And the POA is suing Vista over
4 that issue.

5 THE COURT: Mr. Parrish, let me go directly to what
6 I think is the core argument that they are making. They are
7 saying that your clients have set up a means by which they
8 have defeated warranties and other warranties by South
9 Carolina case law. Contrary to public policy in the state.
10 What do you say to that, sir?

11 MR. PARRISH: They mentioned this inhabitability, or
12 implied warranty inhabitability and the curtain of Pyrex.
13 On page 30 of my brief, subsection C, the very first
14 paragraph, this says in there that the implied warranty of
15 the inhabitability springs from the sale. We did not sell
16 anything to the POA. We did not sell anything to the
17 individual owners. The only implied warranty that arises
18 out of the sell was to Vista. So, the POA, they are trying
19 to claim they are not a party to the Vista contract. They
20 are not a beneficiary. But then they are trying to make an
21 implied warranty that would only apply between Vista and
22 LGSF.

23 THE COURT: You are saying there no downstream
24 effect to that warranty?

25 MR. PARRISH: No, sir. That is cited --- Kirkland,

1 Kennedy, Columbia Lumber Company, Able and Shaw, Twilman
2 Lane v Twilman and the Breedlove case, I have given the page
3 number of each case on there. Implied warranty springs from
4 the sale. That is where that warranty comes from. So, an
5 implied warranty of inhabitability could have sprung between
6 the LGS to Vista if it had not been properly disclaimed, but
7 I don't think anybody is trying to complain that that
8 disclaimer was not conspicuous in that time frame. Every
9 argument they are making, they are trying to put Vista and
10 The Beach Company on the same level, and ignore the fact
11 that the title and ownership of the property changed. The
12 one thing that we do agree upon is, nobody in here has
13 argued any disputed facts. There is no separate recited
14 consideration from that release. It was in the initial turn
15 sheet from day one and flowed all the way down. The
16 argument as Mr. Grimbball said, was there should have been
17 separate consideration. There is no law in South Carolina
18 on that, but that is a legal issue. And the other issues
19 they are trying to say that this disclaimer, the notice of
20 which is provided in the Master Deed. In existing law in
21 South Carolina, people are on notice. And once again, they
22 are kind of jumping in the owner's shoes now, creating the
23 impression. POA did not get an impression. POA is governed
24 by that document. It is like Wal-Mart saying I don't know
25 what is in my articles of incorporation. They are kind of

1 making owner arguments, but the owners are not the people
2 suing, it is the entity. So, they are trying to blend back
3 and forth. But there is no argument at the end of the day
4 that this isn't fair, and this should --- the terms in the
5 deed and the chain of title to property should be void as a
6 matter of public policy in the state of South Carolina.
7 That is their argument. It is not a factual issue. It is a
8 legal issue. And I would submit to the Court that the law
9 in this state doesn't reach that result. But, I do agree
10 with one thing, there is a legal issue. And what is going
11 on here behind the scenes is, there is an arbitration clause
12 in these contracts, and also in these sales contracts with
13 the individual owners. There is binding arbitration
14 provisions in there. That is why the owners aren't in here
15 trying to make these claims, the POA is trying to dance
16 stuff on their behalf. But, nobody is arguing the disputed
17 facts. The pure issue of these contracts is the legal
18 effect and interpretation, which is why we filed a DJ
19 action, and it is right for a decision right now. And there
20 is no law in this state that says we cannot do what we did.
21 And the one question you did not get answered is, what more
22 could they have done? And the only answer that I have heard
23 was, The Beach Company, after it sold the property should
24 have hired counsel for the POA that didn't exist back then,
25 and we had no control over when the buyer might have

1 actually formed that POA, and we should have somehow hired
2 counsel to represent them and apply the money after we no
3 longer owned the property. We are getting into some
4 fundamental issues about, yeah, this state is very buyer
5 friendly, owner, homeowner friendly. I have discussed that
6 at issue in my brief. But it doesn't say that you have
7 strict liability in contract in tort whenever you sell a
8 piece of property. And that is the net effect of their
9 argument here. There is a limit at some point in time, and
10 every owner that the POA is trying to inch these owners'
11 arguments. They went to a closing, where they had an
12 attorney, and all of this stuff is showing up in the chain
13 of title, and they had a closing attorney. So, if they
14 didn't know about this. If they didn't bother to read the
15 entire Master Deed, because this language is right next to
16 where it talks about how much assessments they pay a month,
17 it is right next to where it says they can and cannot park.
18 It is right next to where they can have satellite antennas.
19 It is right in the middle of all of this stuff that even
20 defines the parameters of their unit are on that Master
21 Deed, and they are all in the same font. If they didn't
22 bother to read it, they should have. Or they ought to go
23 back to their closing attorney and say, you know, you didn't
24 tell me about this. But, at this point in time, I cannot
25 think of anything else we could have done, besides put a

1 billboard out in front, and I suspect that would have caused
2 a lot of issues for a lot of different reasons. So, unless
3 you have questions, I am done. And the remaining motions
4 here today are for the other architect that they sued, the
5 inspection architect. I am not a party to that motion, so I
6 am going to step aside and let them come in. This is a
7 Vista Essex engineering type issue right now.

8 So, I hope I have addressed every question that you
9 have. If not, I will be happy to do so. Thank you.

10 THE COURT: No, you have. I believe that is
11 sufficient. Thank you.

12 MS. FIGUEROA: Your Honor, if I may. Laura Figueroa,
13 again for James Harwick and Partners.

14 I wanted to make one or two additional points, Your
15 Honor. This is a sales contract. What we are here about is
16 the sale of the property. The POA has admitted, and I think
17 it is an important issue, it is not a party to the contract.
18 It has no standing or right to challenge the contract. Even
19 still, even if it did, the challenge is ineffective. I
20 wanted to make one point, POA cited in the Master Deed as
21 being ambiguous as to who it included, and I would turn your
22 attention to the Master Deed, and I am looking at page 24 of
23 Mr. Parrish's memorandum. The Declarant on behalf of
24 itself and its heirs, successors, and assigns, including the
25 owner and all other successors entitled to all or a portion

1 of the property regime, certainly the POA owns the common
2 element, the common area that owns a portion of the regime,
3 and therefore the Master Deed is not ambiguous. And, the
4 testimony today regarding the marketing, and the involvement
5 of The Beach Company following the execution of the release,
6 and also testimony bout hiding --- It is not included in the
7 four corners of what we are here to do, which is to
8 interpret the intention of parties as expressed in this
9 sales document.

10 THE COURT: Ms. Figueroa, let me ask you this
11 question. I hear the defendants here say that you guys have
12 the benefit of what I call a good luck chip. They just
13 included you in there as a facilitator. Someone involved in
14 the construction design. You were not involved in any
15 negotiation with the sale. You didn't pay anything to be
16 relieved and protected. You just got the benefit of a
17 bargain for which you had nothing to do, and thus you should
18 not receive the benefit of any sort of protection from
19 liability. What do you say to that?

20 MS. FIGUEROA: Yes, Your Honor. We would argue first,
21 as I mentioned before, and you heard me say --- In addition,
22 no one from James Harwick has ever been DEPOSED about the
23 consideration paid for this release. Certainly, if the POA
24 was not entitled to receive anything from the architect.
25 There is no contract between them. There was not privity.

1 They are not entitled to any consideration.

2 In addition, any agreement between the architect and
3 the original developer of the property, The Beach Company,
4 it is not really an issue. But there is no testimony saying
5 that there wasn't any. Any reduction in price, or
6 additional consideration that may have been done. But
7 certainly, that is just not an issue here today.

8 MR. NORRIS: Can I just say since I represent the same
9 defendant. Your Honor is familiar, and I will be glad to
10 cite the cases, but the leases commonly provide --- entitle
11 to numerous parties. And there have been parties where
12 parties who were not one whom themselves paid consideration
13 in a release, were in an attempt to circumvent the release
14 and sue them later. And the courts have consistently said,
15 no, you bargained for all the parties to be released. The
16 fact that we are listed there is sufficient.

17 THE COURT: Thank you, Mr. Norris. Anything further
18 from anyone, before we close our record?

19 MR. GRIMBALL: Yes, sir, a couple of things. One,
20 the POA does not own any common elements. Common elements
21 are owned by the owners as tenants in common. So, the idea
22 that we, the POA, owns anything is incorrect.

23 Number two. There is to be a third-party beneficiary,
24 you have to be intended to be a third-party beneficiary.
25 The POA could not intend or the architect to be a third-

1 party beneficiary or anyone else, because it was not in
2 existence when all of this occurred. There is no intent on
3 the part of the POA, and the POA is really being asked to
4 bear the blunt of this particular document. What the case
5 law say about the inhabitability is that the building gets
6 put into the stream of commerce, meaning it is going to be
7 sold, and go down that stream of commerce, and when it is
8 sold the first time, the initial sale, that is when this
9 implied warrant of Inhabitability arises by that initial
10 sale. The initial sale, because The Beach Company operated
11 this as apartments, was when The Beach Company placed it in
12 the stream commerce. They did not have to do that. And, if
13 they had continued to operate it as apartments, they would
14 be faced with construction defects, and they would be suing
15 the architects. They would not sue their own general
16 contractor, because it is a wholly owned subsidiary. But
17 they would be suing the subcontractors for these defects.
18 So, it is again a sale, it is that initial sale that gives
19 rise to that implied warranty of inhabitability, and we do
20 dispute some of that. We dispute --- We certainly dispute
21 the inferences that arise from these facts, particularly in
22 evaluating the language that is in the Master Deed. What we
23 are saying is the POA is not one of the Releasor. It is
24 stated --- it is stated that it is the Declarant and owners.
25 And I don't think the owners, because there were none then,

1 that is a lie about the owners. It is in the Master Deed.
2 But it is only the Declarant really that can legitimately do
3 that. But it is not the POA. The POA has no ownership
4 interest.

5 THE COURT: All right.

6 MS. HONEYCUTT: And, Your Honor, one point of
7 clarification in response to what Mr. Parrish said, and that
8 is the terms can't contain a release. It did not --- to Mr.
9 Grimball's plea here. It does contain a statement about
10 indemnification, which is a purchasing entity, or identify
11 The Beach Company as made by the purchaser, to Vista
12 entities. And so, while we may or may not argue that even
13 this provision that is incorporated may not be valid, this
14 term sheet does not contain the release language of a later
15 incorporated, and for which there was no consideration.

16 MR. PARRISH: Your Honor, I'm sorry, just for the
17 record. Our exhibit book, tab 7, the cover letter that went
18 with the term sheet is tab 7 in the black binder. The last
19 sentence in the paragraph says. The indemnification
20 language will include a release of all claims related to the
21 design, development, construction, maintenance, alteration,
22 repairs of the property. We propose that the release of
23 claims would not only be in the sales contract, but also in
24 the deed of conveyance at closing, and will survive the
25 closing of this transaction. That is the cover in which The

1 Beach Company said here is my signature on the terms sheet.
2 I just wanted to correct that. The arguments you are now
3 getting ready to hear are not on the flow chart that I gave
4 you.

5 This is claims between Vista and some of its people, or
6 its engineering company. So, the flow chart that I gave you
7 does not fly to what you are getting ready to hear next.

8 THE COURT: All right. Let's see what all remains
9 out there to be done, and see whether or not we are able to
10 go any further today. Tell me what remains to be heard?

11 MR. GRIMBALL: There are some discovery issues. Mr.
12 Parrish has never produced the documents from Gulfstream,
13 which is something that we need. He has indicated he will
14 produce it, and he hasn't produced it. We finally had to
15 file this motion to compel, and production of documents.
16 Regardless of what happens with this motion, I need
17 documents. And, he has got to give them to me. There is no
18 reason not to give them to me, and I really need to get
19 those.

20 THE COURT: Well, let's do this. I am afraid I have
21 exhausted my feeble mental resources for the day. You have
22 come a long way, and sat through an afternoon proceeding
23 that you really did not have any interest in. But, I
24 believe I am going to stop here for today, and we are going
25 to have to reset any further arguments, and let me just take

1 this under advisement and digest what we have.

2 MR. PARRISH: Maybe you can come to Charleston.

3 THE COURT: Well, we may be able to do that. It is
4 easier for one of us to travel than an entire group of
5 people, but we will see what we can work out.

6 MR. PARRISH: The substantive motions remaining is
7 that Vista hired inspection company, Essex on the caption.
8 They have filed a motion that the professional Affidavit
9 wasn't signed by the POA. And, I believe --- I know that
10 motion is out there. I think most of the discovery motions
11 fall out, depending on how the ruling goes on what we have
12 talked about here today, Your Honor, on that issue. And, I
13 think that is the only real substantive motion.

14 MR. GRIMBALL: That is correct, and then I have my
15 procedural motions to amend and to realign the parties and
16 amend.

17 THE COURT: Let me just take the Essex matter either
18 by --- to accommodate counsel, we can do this by telephone
19 later with the Court reporter, or in some other fashion
20 rather than going forward today. I am going to end these
21 proceedings.

22 (Whereupon, this hearing was concluded at
23 5:56 p.m. on Tuesday, September 27, 2011.)

24 -- END OF TRANSCRIPT --

CERTIFICATE OF REPORTER

71

I, the undersigned, Pamela Ozment-Cartee, official Court Reporter for the Fourth Judicial Circuit of South Carolina, do hereby certify, that the foregoing is a true, accurate and complete Transcript of Record in the above captioned case, relative to appeal, in The Court of Common Pleas in Charleston County, South Carolina, on the 27th day of September 2011.

I do further certify that am neither, of kin, counsel, nor interest of any party hereto.

January 25, 2013


Pamela Ozment-Cartee
Circuit Court Reporter

THE STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Long Grove at Seaside Farms, LLC,
The Beach Company; and Gulfstream
Construction Company, Inc.

Plaintiff

VERSUS

Long Grove Property Owners'
Association, Inc. Vista Realty
Partners, LLC; and Long Grove
Vista LLC.

Defendant

Long Grove Property Owners'
Association, Inc.,

Defendant
Third-Party Plaintiffs

VERSUS

James Harwick & Partners, Inc.
n/k/a? JHP Architecture/Urban
Design P.C.; San Mayo d/b/a
SCM Construction Inc.: and
Essex Engineering Corporation.

Third-Party defendants.

APRIL 30, 2012

2009-CP-10-6746

BEFORE

THE HONORABLE J. MICHAEL BAXLEY

Pamela Ozment-Cartee
Circuit Court Reporter

APPEARANCES

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John Patrick Norris, Esquire
Drew Richardson, Esquire
Attorneys for Essex Engineering Corporation

1 THE COURT: All right. This case has had a
2 little bit of; I am going to call it maybe a tortuous
3 history before I got involved with it. But, with regard to
4 where we find ourselves today, I had asked by letter of
5 March 26, 2012 to all the parties, that we re-hear certain
6 matters that were previously heard here in Darlington. And
7 as a result of our previous hearing, issued a letter on
8 October 14, 2011 which gave the preliminary court's decision
9 and asked that Mr. Parrish prepare an order for us. There
10 was multiple communications between Plaintiffs and various
11 defendants' offices and our office. After that decision,
12 Mr. Parrish was kind enough to prepare an order for us after
13 that. We received some specific and somewhat voluminous
14 objections from the Plaintiffs. I was aware that Mr. Mullen
15 fell ill the last time we were here, and was unable to
16 argue. It was his request that he be permitted to argue.
17 The issues in this case are novel for this Court. They are
18 fairly complicated, and they are fairly multiple. And, for
19 that reason, after sifting through and reviewing all of the
20 information that has passed back and forth, we distilled the
21 questions that remained for us down to six, and listed them
22 in the letter of March 26, 2012, and asked that we take
23 argument on these issues. I do not demand to limit the
24 arguments to these, because I realize that some of these
25 issues are interconnected to other matters that may not be

1 listed in the letter. But, it would be my preference to
2 just take these one through six as we hear them, rather than
3 open back up and argue the entire thing because, I have a
4 fairly significant background understanding now, and better
5 knowledge of the facts. So, I do not believe that is
6 required. But I will be glad to hear from any counsel who
7 is here today, if you either number one, object to that
8 procedure, number two, believe that to be an inefficient or
9 inappropriate process for whatever reason, substantive or
10 procedural, or, you just have something you just wish to
11 place on the record before we begin today. Anyone?

12 All right. When we argue these points, tell me,
13 do you have a preference as to who wishes to go first, or go
14 back and forth, does one side want to go first on each one,
15 or do you have a preference, Mr. Mullen?

16 MR. MULLEN: Your Honor, I would prefer not to
17 go back and forth, because the questions that you ask are
18 somewhat related to --- the first question may be somewhat
19 related to the third question. And, my presentation, I had
20 not planned on saying question number one here is my answer.
21 Question number two, although I came to argue limited to
22 these very issues, I think these are pivotal to the case.
23 To try to go back and question number one, Mr. Parrish
24 responds, I will respond to that, I think may end up making
25 it last longer for one thing, and be somewhat disjointed.

1 THE COURT: All right. Mr. Parrish, or Mr.
2 Locklear, does anyone want to be heard on that?

3 MR. PARRISH: Your Honor, on Friday, last Friday,
4 I sent a memo addressing the issues, and I understand that
5 you have received a copy of that, and I served counsel at
6 the same time. So, I have kind of already laid out my
7 argument in somewhat of a nutshell, and if the Court has had
8 a chance to review that, it might make more sense if Mr.
9 Mullins go first, versus me kind of rehashing what I have
10 already kind of put in writing, if the Court has not had a
11 chance to review it. Whatever suits your conveyance, but we
12 talked about this before you came in, and it almost seems
13 like this is their argument, or their objections, and it
14 would seem to make sense for them to make theirs first.
15 But, whatever pleases the Court and makes it easiest for you
16 to take the information.

17 THE COURT: All right. That is fine. And, I
18 accept that as the best way to proceed. And, let me just
19 say one other thing. I noticed that some of you have
20 clients, parties, here with you as well. I know each of you
21 have parties that are not here. And, I realize, I practiced
22 law myself, I haven't quite forgotten what it was like, that
23 when a court tells you one thing, you tell your clients
24 that, then you get this letter that backs up and rereads
25 old ground, it is very disconcerting with the people with

1 whom you work. In my defense, I would like to say that we -
2 -- I just finished a six week trial of non-jury in Columbia,
3 and I am still living, I survived it. But, we just have had
4 the privilege of dealing with some fairly significant and
5 substantive issues in a myriad of cases in multiple
6 circuits. And for that reason, perhaps my ability to
7 comprehend, and absorb, and decide and move forward is
8 beginning to wane as I age. As several of you who were in
9 my class, maybe experiencing the same thing. But, I would
10 just say this to you. I am cognizant of the fact that every
11 one of you folks have carriers, individuals standing behind
12 you that is probably wondering what in the world --- you
13 know why can't we just have an argument, have a decision,
14 and everybody move forward with whatever they have to do?
15 But, I appreciate your understanding of just simply the
16 complexity of it as well as my desire that whatever comes
17 out be as best I am capable to make the right decision and
18 one where everyone has had a full say, and a full
19 opportunity to be heard.

20 So, with that understanding, Mr. Mullen, do you
21 want to go first? Go ahead.

22 MR. MULLEN: Your Honor, I do agree that there
23 are multiple issues that are full of complexity. We have
24 done an immense amount of research on this issue, and I will
25 just tell the Court that there are going to be issues that

1 there are no South Carolina cases addressing this. We have
2 to borrow from other cases from other states. That there
3 are some issues that I think that we can't find any answers
4 to. So, I guess we will have to use analogy. But, it is --
5 -- it has been interesting, I will say that, Your Honor. It
6 has been sort of an academic exercise, and it has been fun.

7 Since I am going to be basically arguing against
8 the motion that is filed, you have already heard the
9 previous arguments there. Just starting off where we are
10 going to a position of assuming what Mr. Parrish has already
11 argued, what your additional thoughts were on the case, or
12 additional rulings which we can now move on. So, I will be
13 arguing with that in respective. And, if we could, Your
14 Honor, with that in mind, I want you to assume a fact
15 situation, which I think will put all of this in
16 perspective. I want you to assume that a couple of months
17 ago I went down and I bought a condo at Long Grove in
18 Charleston, and moved into it with my little four year old
19 boy. Shortly after I moved down there, there was a horrific
20 fire, and this condominium was consumed in twenty-seven
21 minutes. My son received burns on ninety percent of his
22 body. He is a paraplegic. He will spend the rest of his
23 life in a wheelchair, incurring millions of dollars in
24 medical expenses. His whole life has been consumed. And my
25 greatest concern now is who is going to care for him when I

1 am gone. A horrific fire that has now been inspected by the
2 Fire Marshall. And they have determined that this fire was
3 caused by an electrical short circuit that took place
4 between the floors. It turns out that these wires, when
5 this building was built, were not connected together in a
6 junction box as is required by the electrical code, the
7 building codes, all standards that you would expect.
8 Instead, they were just joined together in violation of the
9 codes. And that spark started the fire. Then on top of
10 that the ceiling between my little boy's bedroom and the
11 wiring up above, which by code should be rated as a one hour
12 assembly. When the architect designed this building, he
13 failed. He failed to specify the fire rating between the
14 floors and really made it absolutely unbelievable. It
15 turned out that there was a fire alarm right outside my
16 son's bedroom door. Now, we have had this horrific fire
17 with these tragic, tragic, victims, caused by the negligence
18 of the electrical contractor who failed to follow the codes,
19 putting this wiring in a junction box. Failed by the
20 designer, the architect, who failed to properly design the
21 fire rating assemblies between these buildings. Failed by
22 the general contractor who never so much as installed ---
23 hooked up the installed alarm detectors. Tragic loss
24 personally. Expenses will be enormous. Building which
25 enveloped in twenty-seven minutes. And yet, Mr. Parrish

1 will tell you that representing the developer on behalf of
2 the general contractor --- and then he will expose on behalf
3 of the architect and its electrical contractor --- sorry,
4 not my fault. But wait, it may be my fault but not my
5 liability, because somewhere back in time their guy signed a
6 release. They inspected this building and said don't worry
7 about the building codes. We are not going to be concerned
8 with those. Don't worry about protection of the plans. We
9 are not going to be concerned with those. Instead, the
10 contractor that built this building with numerous code
11 violations, the electrician violating all of the electrical
12 codes, the architect who failed to exercise the standard of
13 care, the design, wouldn't he be responsible for this? Your
14 Honor, that cannot be the law. There is no way in this
15 state or anywhere in this country that that could ever be
16 the law. Now, obviously the fact that I have just told you,
17 I don't have a four year old son. I have never purchased a
18 unit at Long Grove, and in fact, that building is not Long
19 Grove. That is actually River Oaks II. We are all familiar
20 with the Clawson case that went to the Supreme Court last
21 year. This is actually one of the buildings from one of the
22 projects that that case was all about. And this really
23 happened. A building burned in twenty-seven minutes with
24 horrific damages and injuries from it. Absolutely it can.
25 Could it have happened here at Long Grove? It hasn't yet,

1 but I will tell you this. We have had according to our
2 inspections out there and inspections to the electrical
3 system, where it turns out that none of these buildings are
4 grounded as is required by the code. We have actually had
5 reports from our individual owners there who have received
6 shocks on their ovens and stoves when they touched it
7 before. Is something like this possible? Absolutely. And
8 if it did, defense will tell you, sorry it is not my fault.
9 Or at least it is not my responsibility.

10 Your Honor, why are they prohibited from
11 attempting to do what they are arguing here today? Or
12 attempting to do what they put in their sales contract? It
13 is because some things rise above contracts. That is
14 protection of life and property, public policies. The
15 legislature when you were there I believe involved this,
16 passing restrictions, passing codes. Allowing for
17 municipalities -- that public policy is overriding here.

18 Now, the arguments that Mr. Parrish has made in
19 his motions, and that I glean from the letters that you have
20 previously --- the first letter you previously wrote, and I
21 have handed up the arguments, and wasn't present for that,
22 but, the problem that I saw in the way it was presented to
23 you from the developers, contractors, architects and the
24 like was that it seemed to convolute a couple of different
25 things which I think made it more confusing for this Court.

1 The first is, if you follow the writings of Mr. Parrish, he
2 constantly refers to the Long Grove at Seaside Farms, and he
3 uses this abbreviation of LGSF, to encompass everybody. To
4 encompass not only the developer, the architect, the general
5 contractor, and all the subcontractors. Your Honor, I think
6 that for --- I think to make it simpler and easier to
7 explain to this courtroom today, you have to separate out
8 those parties. You can't just refer to that defendant
9 group, developer, contractor, architect, subs, all in one
10 single entity. This is what he is attempting to do. But
11 the reason is very simply this, Your Honor, you have
12 different responsibilities which flow from contractor and
13 then flow from developers. You have different warranties
14 given by contractors than are given by architects. So,
15 let's start on that, and I want to make sure that we
16 distinguish between various defendants that are involved.

17 The next convolution that Mr. Parris does in his
18 writings is he lumps the liabilities together. He fails to
19 distinguish between the negligence aspects of the
20 developer/contractor, and the warranty obligations of these
21 clients. So, I want to start with this --- I want to clear
22 up that we are dealing with a separate entity and not as the
23 defendants as a whole. And then I want to make sure that
24 you view separate liabilities that are involved. The
25 negligent liability, the warranty liability, as opposed to

1 just lumping those all together as a whole. And, then there
2 is a reason --- the reasons for this as we go forward.

3 There is a threshold issue that must be addressed
4 that quite frankly I am afraid that my partners here did not
5 present to you the last time and that is our fault. Nor did
6 Mr. Parrish in any of his filings to the Court, has
7 addressed it. That threshold issue is this, Your Honor. Is
8 a subsequent owner of property bound by the acts of his
9 predecessor of title? Because what Mr. Parrish is sitting
10 here telling you today is we built this project to be real
11 apartments. And when we went to sell to this converter,
12 yes, we knew they were converted condominiums, but we didn't
13 --- we didn't want to give the condominium this, so we said,
14 hey, we want you to give a release right now today of
15 anything for negligence, anything for warranty on behalf of
16 the developer, myself, and at the same time also a release
17 for some other people who are not party to this, so I am
18 going to just go ahead and third-party release also. And we
19 don't know but we want you Vista, not only do we want you to
20 release Vista, but we also want you to go ahead and release
21 it to future owners of this property whoever they may be.
22 Your Honor, there is no law not only in South Carolina, but
23 nowhere that I have been able to find that addresses this
24 issue. And I promise you, I have looked. No law says that
25 a subsequent owner is bound by an agreement that his

1 predecessor filed and made. There is one case that we came
2 across which while it doesn't directly address it as the
3 statute weighs in, it happens to be the South Carolina case
4 of Terlinde v. Neely. Probably there have been similar
5 cases in South Carolina on residential construction this is
6 the case. Now, what happened in Terlinde? Terlinde was a
7 single family home. There were some cracks that appeared in
8 the foundation system. The previous owner filed suit
9 against his contractor Neely. They settled it for six
10 hundred dollars. Thereafter, the owner themselves buys a
11 house in Terlinde. And a couple of years after Terlinde
12 buys it, cracks appeared in the foundation again. Same
13 issues all over again. This time Terlinde goes and gets an
14 estimate of what it is going to cost, and his estimates are
15 anywhere from sixteen thousand to twenty-two thousand
16 dollars. Filed suit, gets a verdict, and they appeal. The
17 law is based on, can a subsequent purchaser claim the
18 benefits of the warranties of workmanship that goes --- flow
19 from the contractor and the sale of his home? And obviously
20 our Supreme Court said, of course. There is no privity here
21 required, the protections that goes from the warranties, the
22 protections that goes from the negligence, all flow through
23 to the subsequent purchaser. And the facts when you read
24 Terlinde are very clear. Neely did settle for these very
25 same issues with his previous --- with the previous owner,

1 the predecessor entitled, and it did not bar Terlinde then
2 from suing again.

3 Now, I wish the Supreme Court had gone and given
4 an explanation of why that was allowed. I wish there was
5 some answer for us if this was even argued. We don't know.
6 But what we do know are just general contract provisions,
7 and releases such as we are talking about here today are
8 contracts.

9 Your Honor, a very basis of contract is you have
10 party "A", party "B." They both have no -- In this case,
11 Mr. Parrish says we have a contract, but says you are
12 releasing all warranties, you are releasing all negligence,
13 and we are bound by it even though we are not a party.
14 Basic contract says we have to be a party to be bound. The
15 only exception that I am aware of is the situation with
16 third party beneficiary. Clearly when Mr. Parrish had sold
17 this property to Vista and they had found these violations,
18 construction defects, let's say Mr. Parrish says I am going
19 to put a million dollars into that condominium reserve
20 account. Let me make that agreement with them. Price is
21 then turned over to the homeowner, and Mr. Parrish's
22 people, the developer never does put the million dollars in.
23 Well, we were third party beneficiary to that and we just
24 have some rights. But when you look at what the law is,
25 have you ever seen a case that talks about a third party
26 burden? There are cases that say that you can make Mr.

1 Parrish, Mr. Best, that they can make a contract to benefit
2 the homeowners here. But there is zero cases that say that
3 The Beach Company and Vista can enter into a contract to
4 burden somebody else, to burden a third party personally.
5 That is in essence what you have here. That is the
6 threshold issue that you must get across first. Is a
7 subsequent owner bound by acts entered into by a
8 predecessor? And I submit to you there is zero law
9 anywhere. Nothing that Mr. Parrish has filed with this
10 Court setting forth that. And Terlinde is the only case
11 that addresses it, and it allows both parties to go forward
12 and sue even though the previous owner had been given a full
13 release to the contractor.

14 I read the memorandum that Mr. Parrish filed with
15 the Court Friday afternoon. I got it at like four o'clock
16 on Friday. And, I was a little surprised at it. What he
17 has said, what his position is, is the language which is in
18 the master deed of our homeowner's association is not a
19 release. I agree with that part. I don't think they would
20 be confirmed to a release. But he has conceded that it is
21 not a release. What he has said is that it is notice. And
22 that is pretty much all he has said as you read through his
23 memorandum. And that language in the master deed is notice.
24 Your Honor, I think the next question has to be, notice of
25 what? Okay. It is notice that there was a sales contract
26 that involved Vista and The Beach Company. So, what as to

1 the Long Grove Property Owners' Association? So it is
2 notice --- notice of what? To me, the primary argument that
3 I made to you in the letters that I wrote following this
4 hearing and the issue that you certainly addressed first in
5 your questions to us were that amount in an exculpatory
6 contracts. And again, Your Honor, I take full blame for
7 this. We were here for your hearing and you had spent hours
8 before us on a post-conviction relief thing that --- I don't
9 know how you do that all day long. And then went into our
10 argument. It is incumbent upon us to tell you what the law
11 is that affects this case, and I think we did a bad job on
12 that. As best as I can tell after talking with Mr.
13 Grimball, if Mr. Lane were here, they did not discuss with
14 you the issues of exculpatory conduct. So that is our
15 responsibility. I appreciate the opportunity to come and do
16 that today.

17 The example that I gave you of this horrific fire
18 that took place; and this was at River Oaks, could very well
19 have been Long Grove. And the fact scenario that I gave to
20 you explains the whole reason that you look at exculpatory
21 contracts in this situation. There are a handful of South
22 Carolina cases that have addressed exculpatory contracts.
23 What we have seen is the typical one where they are
24 typically upheld in South Carolina is where someone goes and
25 voluntarily assumes some risky venture. Bungee jumping at
26 Atlantic Beach, you can't fall shooting at the Myrtle Beach

1 indoor shooting range. Skiing when you are in Colorado.
2 Running the river rapids in West Virginia. What the Courts
3 have said is that exculpatory contract, while they are not
4 favored at law, they are not prohibited. But we are looking
5 at them and looking at them closely.

6 We must make sure A, that someone in the parties
7 understand what they are agreeing to. And in these cases
8 the parties must understand. B, they must be limited in
9 their scope. C, not all cases say this but several of them
10 say you can't be in violation of gross negligence. And D,
11 must violate public policy. What is public policy will be
12 the next discussion.

13 In the construction business, building business,
14 our local counsel have chosen to enact extensive building
15 codes. Standard building code was in effect in 1997 in
16 Charleston and Mount Pleasant. The negligent standard
17 building code --- Numerous other defective structures, all
18 of these have been addressed by the local governing body.
19 Haven been chosen as something that needs to protect the
20 public interest and passed these codes, the standard
21 building code itself. And Mr. Parrish says the purpose of
22 this code is to serve as a comprehensive regulatory
23 document, to guide decisions and at protecting the public
24 life, health, and welfare in the building environment. That
25 is the purpose of these codes, the building codes, the
26 electrical codes, and the county codes are to protect the

1 public. Since this building was built, the following year
2 as a matter of fact, our legislature then realized that the
3 code should be state-wide uniform. And we passed the
4 International Building Codes. While the International
5 Building Code was not applicable at the time this property
6 was built, the '97 Standard Building Code, still it shows
7 you what the intent of the legislature is as far as
8 protecting the public interest. In addition to having our
9 governing body pass the building codes we have statutes
10 here. Our statutes regulate contractors. Contractors must
11 be licensed. Contractors have to pass different tests
12 depending on what grade of a building they want to do. You
13 have a contractor who can be a specialty contractor in
14 electrical, plumbing, in masonry, in framing that has to
15 pass one test. If that same contractor wants to go and
16 build single family residences and houses, he has to get a
17 residential home builder's license. If a contractor wants
18 to go and build a multi-family, more than four units, the
19 buildings that you have at Long Grove, then he has to have a
20 general contractor's license; passing more tests. Our
21 legislature seemed it necessary to protect the public by
22 requiring that you have competent people out building. In
23 addition, the statute that regulates contractors, The
24 Department of Labor Licenses and Regulations, LLR, has tons
25 of regulations on contractors. A contractor who fails to
26 comply with building codes, who has a grievance filed

1 against them with the LLR can potentially have their license
2 suspended or revoked by LLR. Not only have we done this for
3 contractors but for architects and engineers. Our
4 legislature has set minimum educational requirements that
5 architects and engineers must pass. We have then passed
6 statutes on limiting the practice where you must be licensed
7 to practice in this field. We then pass regulations that
8 affect those architects. We have formed an Architectural
9 License Board by our statutes. We have formed a
10 Construction License Board by our statutes. We have filed
11 the building code --- The Building Code Commission has been
12 formed by our statutes. The public has a tremendous
13 interest in governing and regulating the construction
14 industry; what takes place in the development, the design,
15 and the construction of buildings because, quite frankly, it
16 affects life, health, and safety of the people and property.
17 It is not the kind of thing that you can go out on your own
18 and say, hey, forget it. I'll build you a house real cheap,
19 if you don't make me comply with the codes. If I don't have
20 to put my wiring in conduit, if I don't have to use junction
21 boxes where wires come together, I can save you money. The
22 law doesn't allow that type of contract. The law also
23 doesn't allow for you to sell your building, as this company
24 did to this company saying by the way, I don't know what you
25 are getting for this, I don't know what condition that
26 building is, but you are taking it as is. But, not only are

1 you taking it as is, you are waiving any claim that you have
2 for any code violations we may have done ourselves. You are
3 waiving any claim you may have for any implied warranties we
4 are required to give under the law for doing workman like
5 manner, for designing it in a suitable and fit purpose. And
6 not only are Vista going to waive that, but you are going to
7 waive for all four applicators. The law does not allow
8 that, Your Honor.

9 Now, the cases that we have in South Carolina, we
10 have Southern Bell, which talks about where there is a
11 public duty owed, where there is public interest involved,
12 exculpatory contracts cannot be the obligation. Now, that
13 case is not close to being a construction type of case. As
14 a matter of fact, that case was self --- But the principles
15 were set forth by our Supreme Court there. But we do have
16 some cases that we are able to draw that bring it straight
17 into the home, straight into where we have here. And the
18 Florida case of Lowe v. Seagrove(Phonetic), building codes
19 can't be waived. You can't waive your obligations. Your
20 liabilities come from the violation of the building codes.
21 You can't do that. In the case of Greensprings v. Calvera,
22 another Florida case, talks about how the building codes
23 were there to protect the public interest at large. And you
24 couldn't jump in and waive when you sold this building, the
25 obligations to comply to somebody else. Those are direct
26 dysfunction type cases. A couple of other cases that impact

1 on this is the Tennessee case of Molson v. Molson. It talks
2 about licenses professionals. And that court made a very
3 interesting quote in it. They said in this state we do not
4 issue licenses to professionals to know them, that they are
5 conducting themselves in a negligent way. The law just
6 simply does not allow that, that violates the public policy.
7 Or, there is the West Virginia case that talks about in
8 white river rafting, the Murphy v. North American River
9 Runners, that I cited in the letter that I wrote to you. It
10 said that where there are statutory safety requirements in
11 place, very much like you have had with building codes.
12 Statutory safety guards that are in place, you cannot go and
13 execute this exculpatory contract to excuse your violation
14 of those safety codes.

15 Your Honor, as you know, ordinances are given the
16 same weight as the statute. This building code was adopted
17 by the local governing bodies. That is the safety code that
18 the contractor, the architect, the developer failed to
19 comply with. Public policy says, you cannot exculpate
20 yourself from those statutorily imposed obligations. You
21 cannot exculpate yourself permanently. Obligations are to
22 protect the public at large.

23 One of the issues that we addressed, and I
24 mentioned it in the Green Springs case that I just talked
25 about, non-delible duties. And that is exactly what you
26 have in this case here. You have a duty that is imposed

1 upon contractors, it is imposed upon architects, not only by
2 the very nature of a license they hold, and the ordinances
3 that have been passed by municipalities. It says they must
4 comply with certain minimum standards. And remember the
5 building code is a minimum standard. This is the very basic
6 one you must do to build this building and save -- What is
7 this contractor, this developer, this architect to do? It
8 is really not fair to say that the contractor did it,
9 because the developer went and did it on their own. The
10 very specific language of the contract they entered into
11 says, you Vista are going to take this project, and you are
12 going to be responsible for going and doing the inspection
13 and fixing anything that may need to be done so that these
14 are inhabitable units. You are going to be responsible for
15 assuring that we complied with the code when we built it.
16 Building codes, responsibility, obligations are not delible,
17 Your Honor. And yet, that is what he has done with his
18 contract with Vista, and now he is saying, hey guys, while
19 we are --- don't look at us. We designed it. We built it.
20 But no, no, no, those fellows over there, the Atlanta Guys,
21 Vista, they have already said they are going to cover it,
22 they are going to make sure that building has been built in
23 accordance with the codes. They can't do that, Your Honor.

24 South Carolina has a couple of cases dealing with
25 the non-delible duties. The ones that we have seen up
26 there, the Tuomey Hospital case, Simmons v. Tuomey Hospital

1 in Sumter, where you had an independent contractor working
2 in the Emergency Room and what poor set of --- you know ---
3 They may be independent contractors, but they are performing
4 the service that you are expecting when you walk into the
5 Emergency Room to be done by a hospital. And while non-
6 delible duty may not be the exact precise term, you can
7 delegate that duty to the independent contractor if you
8 want, and they can delegate this duty to Vista if they want,
9 but that liability is non-delible. That is what the Tuomey
10 Hospital case said.

11 Another one similar to that is Nedrow v. Pruitt. Nedrow
12 v. Pruitt is a Landlord Tenant Act case. And that case was
13 very specific that you had an obligation, that the Landlord
14 Tenant Act creates these obligations to maintain the
15 dwelling in an inhabitable form. You can't delegate those
16 obligations away to somebody else. Your Honor, I believe
17 you have a number of rental properties in this area, I
18 believe. You don't have the ability to say to Mr. Grimball
19 here, Mr. Grimball, I want you to go out and inspect all of
20 those units, and you make sure they are all habitable and
21 that they are all safe. And if any homeowner there incurs
22 any type of loss because they are not --- you are
23 responsible for working that out and I am off the hook. And
24 it turns out that Mr. Parrish is a tenant in one of your
25 units, and that unit burns down and all of his furniture is
26 burned. He goes to you and says wait a minute, Judge, your

1 house was inhabitable. The wiring was bad. I want you to
2 pay me for my furniture. You would say, I'm sorry, Mr.
3 Parrish, I don't owe you for that, Mr. Grimball owes you,
4 because he and I have an agreement where he says he is going
5 to be responsible for that. Your Honor, the law doesn't
6 allow that. The law doesn't allow that. Yet, that is
7 precisely the argument that Mr. Parrish is making. It is
8 precisely why he is saying he has no obligation here today.

9 Connected to this same argument is something that
10 we have talked a little bit about, and I think Mr. Grimball
11 talked some about it was the anti-indefinite statute,
12 Section 32-2-10 of the code. And, there has been some
13 discussions as to what does that statute mean. While I am
14 going to tell you it means this at a minimum Your Honor,
15 this is one more example of how these building codes
16 affecting construction is part of the public policy that you
17 are responsible for the construction you do. Even if Mr.
18 Parrish is correct, and you hurt somebody with your car and
19 he says it doesn't exactly apply in this situation, even if
20 you were to successfully do that, one thing Section 32-2-10
21 does, it re-emphasizes the public policy dealing with
22 construction safety requirements. Now, Mr. Parrish and I
23 have this agreement here as to what the statute means. The
24 statute says that a promise or agreement in connection with
25 the design, planning, construction, of a building,
26 purporting to indemnify the promisee, its independent

1 contractors, against liability for damages arising out of
2 bodily injury or property damage is against public policy
3 and unenforceable. Now, Mr. Parrish likes to focus in on
4 the title of the act, and the title of the act is it is to
5 provide the promise clause of certain construction contracts
6 should be against public policy. So, he says it must be
7 contained in a construction contracts, and the contract
8 between the Beach Company and this construction contract.
9 Well, Your Honor, you were in the legislature for quite a
10 period of time, and you understood how the bills were
11 written up there. You go to those --- I don't remember what
12 you call the little group you send it off to, and they write
13 the bills for you, and sometimes what you get back from them
14 doesn't look like what you were writing, or what you thought
15 you were writing to begin with. But, one of the cardinal
16 rules in statutory construction is that the title itself
17 cannot limit the bill. The title itself does not limit the
18 bill. So, while the title may say that it is a limitation
19 on all the promises in certain construction contracts, the
20 bill itself doesn't limit it to construction contracts. And
21 what the bill says is that a promissory agreement in
22 connection with the design, planning and construction, an
23 agreement in connection with design, planning or
24 construction, it doesn't require that it be in a
25 construction contract. As a matter of fact, what Mr.
26 Parrish says --- and I am almost done arguing in advance for

1 him, because this is what his documents that he filed said,
2 he says we have to look at the plain language of the statute
3 that says it must be related to. And he said this in his
4 initial brief he filed. He says this in a brief he filed on
5 Friday. He keeps changing the language of the statute to
6 it, must be related to construction or construction related.
7 The statute doesn't say that at all, Your Honor. If we use
8 the clear language of the statute we don't need to change it
9 to relate to --- as Mr. Parrish has written in every one of
10 his briefs. Section 32-2-10 says that a promise in
11 connection with the design, planning, construction,
12 alteration, repair or maintenance of a building purporting
13 to the middle five are knocked out. There is no way you can
14 read the indemnity section, the assumption liability and
15 release of claims of their contract where it says you are
16 accepting the construction as it is. You are going to be
17 responsible for going in and inspecting this property. You
18 are going to be responsible for making this property happen.
19 You are going to be responsible for correcting any code
20 violations. There is no way that you can read that and say
21 that it isn't in connection with design, planning, and
22 construction of a building. The second word that Mr.
23 Parrish told you in the brief that he filed, that he will
24 argue in a moment is, well, this is an anti-indemnity
25 statute, and what we have is a release. It is not indemnity
26 at all. Well, that is not the language that they actually

1 used in their contract. The language they used in their
2 contract is that sole expense, purchases, shall also
3 indemnify the whole seller and still is harmless. On the
4 next page they are referring that Eduard de Guardiole, the
5 principle of the purchaser assumes and guarantees these
6 indemnification obligations. Indemnification expands beyond
7 the release of hold harmless, Your Honor. So, we believe
8 that the provisions that they have violates anti-indemnity
9 statute. Even if the Court would not find that it violates
10 that, it certainly is one more resident of the public policy
11 that this state has to rid the type of agreements these
12 gentlemen have entered into.

13 The issues with exculpatory contracts have all
14 been addressed in the negligence claims. I assume the same
15 arguments can be made on the warranty issues, but the cases
16 we have read are dealing with plaintiff's negligence. How
17 about in warranty? The law would explain what warranty in
18 constructive cases. We have one case in South Carolina,
19 Kirkman v. Parex. And it deals with the warranty of
20 inhabitability. And it requires --- First of all, that case
21 is very specific. It says there is going to be limited,
22 very limited circumstances in where a claim of this warranty
23 will be available. And it requires that the disclaimer be
24 conspicuous, that it be known to the buyer, and that it be
25 specifically bargained for. Well, I will tell you this, as
26 to the disclaimer warranty to the general contractor, the

1 architect, by the developer as to this buyer homeowner at
2 Long Grove, the language is very --- know this language that
3 Mr. Parrish is talking about is buried on page forty-four,
4 and when you all add all of the exhibits, it is over a
5 hundred page document. It is in plain small type. It is
6 hard for me to even understand. As far as it being known,
7 they made a specific agreement among themselves that we are
8 going to stick this notice language in the master deed, but
9 we are not going to stick it in the individual contracts for
10 sale of the units to people, and we are not going to stick
11 in their individual deeds. And, Your Honor, you have to ask
12 yourself, why did they make a specific agreement? We are
13 going to put this notice language of disclaimer warranties
14 in the master deed, but we are not going to put it in your
15 individual contract when you buy this unit?

16 THE COURT: Well, what about the argument that
17 they couldn't control that? They can't control what happens
18 beyond and down the stream when a deed is issued pursuant to
19 a master deed as opposed to --- Anyway, just a downstream
20 purchaser that once they are out the LGSF, as they refer to
21 themselves, is unable to control it? It is the best they
22 could do in other words?

23 MR. MULLEN: They could have --- They didn't
24 have to make a specific --- They specifically said when we
25 sell these units we are not going to put it in your
26 contract. They specifically said that. And, again, maybe I

1 am having to assume why, why, what was their purpose for
2 that? The issue of what they can do downstream, if you are
3 getting into the issues of how it may control the property
4 that is a whole other issue. You are talking about how do
5 you give notice of a disclaimer? That is one of the issues
6 that I have. While Kirkman says you can explain the
7 warranty of inhabitability in certain limited situations,
8 what Kirkman does not address is what effect that has on the
9 subsequent purchaser. No cases address that, Your Honor.
10 There is not a case anywhere out there that addresses how
11 that approaches to a case subsequent to a purchaser.

12 Mr. Grimball wishes to say that The Beach Company
13 was the exclusive sales agent to these units on behalf of
14 Vista.

15 THE COURT: For a time.

16 MR. MULLEN: For a time when the sales were
17 initially taking place. This is probably a more critical
18 question I have on this warranty issue, and disclaimer
19 issues, and I found this to be novel. I have gone out and
20 tried to find law on this one too, and I can find none. And
21 here is the situation. An architect implies their warranty
22 plans are suitable for their intended use, Hill v. Polar
23 Pantries.

24 THE COURT: Tell me the last thing you said.

25 MR. MULLEN: Hill v. Polar Pantries, Beachwalk
26 v. Martin. Both cases say that. The architect impliedly

1 warrants that he has the expertise to design this project.
2 Same two cases cited. There are specific warranties that
3 the architect themselves gives. And it is Terlinde v. Neely
4 as Columbia Lumber says both warranties flow through to
5 subsequent purchasers. This architect has never disclaimed
6 these warranties. The general contractor for Gulfstream
7 gives implied warranties of good and workman type manner,
8 under Terlinde v. Neely --- Kennedy v. Columbia Lumber. The
9 general contractor holds themselves out as being especially
10 qualified to do the work that he performed under the Hill v.
11 Polar Pantries. This general contractor, Gulfstream has
12 never disclaimed these warranties. Instead what you have in
13 this case, you may have The Beach Company attempting to
14 disclaim the warranties for these other people to Vista, and
15 then to the Homeowners that y'all have. That is like me
16 sitting here today and telling Mr. Grimball, a tenant in
17 one of your homes, we are disclaiming any warranties under
18 The Landlord Tenant Act, we are disclaiming that that house
19 you live in is habitable. We are disclaiming any
20 obligations on that rental property that you have from Judge
21 Baxley. So, you are forever barred if anything goes wrong,
22 and Judge, you should feel great comfort now, because I have
23 just cleansed you from any liability. I told my wife I was
24 going to make that argument, and she said, you are crazy.
25 And, I said, exactly. That is absurd. I can no more sit
26 here and explain your warranties to Mr. Grimball than Mr.

1 Parrish can explain the warranties of the architect or the
2 contractor. How could I do that? Could I sit here and
3 disclaim for the world right now that any warranties that
4 you ever gave as a lawyer, by your practicing are disclaimed
5 forevermore. And then you no longer have to worry and
6 anybody could come and ever sue you. You don't pay for that
7 insurance anymore, because I have disclaimed these
8 warranties for you. That is absurd. It sure isn't the law.
9 And yet that is what Mr. Parrish is telling you that he did
10 with Vista. And then he further says, oh, by the way, I am
11 going to pass on down to these guys who now own all of these
12 units.

13 Your Honor, there are a couple of these issues
14 that I think are absolutely crystal clear. General
15 contractor hasn't disclaimed warranties, and can't have some
16 third person do it for him. General contractor cannot
17 delegate his obligations to comply with the building codes.
18 The general contractor, under the theory of public policy
19 cannot protect themselves from liability for shoddy
20 workmanship. I think it is equally clear that an architect
21 cannot have somebody third person come in and explain their
22 implied warranties. An architect, licensed and governed by
23 the state cannot attempt to excavate themselves from their
24 responsibilities. There is an exculpatory clause. I don't
25 think there are any questions on those instances whatsoever
26 that this agreement entered into between Beach Company and

1 Vista violates public policy, violates the rules under
2 exculpatory clauses, and is invalid as far as the
3 disclaimer. Well, how about The Beach Company itself, or
4 the developer in this case who is really Long Grove at
5 Seaside Farms? While I don't agree with his position, I
6 don't agree that they have excavated themselves from
7 liability. I at least can see the argument. There is an
8 argument to be made that they --- that they, Seaside Farms
9 --- Long Grove at Seaside Farms can disclaim this warranty
10 of inhabitability. Kirkman v. Parex says they can do that,
11 if they comply with the conspicuousness, the way I
12 understand it, and consideration given. In this case, I am
13 not going to argue that they haven't complied with those
14 three codes. I think if anything there was certainly
15 extensive negotiations back and forth between them that
16 shows that. So, yes they have disclaimed those warranties
17 of inhabitability. It still leaves a question of, does that
18 disclaimer between The Beach Company to Vista flow through
19 to the subsequent owner? And there is no law that says it
20 does. But there is some law that says that an implied
21 warranty does not flow to the sale of a used property. So,
22 in that instance, I can understand how that can be found.
23 But, the developer, The Beach Company, Long Grove at Seaside
24 Farm has met the obligations. They are responsible for the
25 acts of their agents. They are responsible for their
26 contractor failing to comply with codes. They are

1 responsible for their contractor, with their architect.
2 Very specific, that architect is their agent. And those
3 negligent acts of the architect and the contractor are then
4 infused to them. And for those issues, we don't believe
5 that they have the ability to excavate themselves from those
6 exculpatory clauses.

7 THE COURT: While you are talking about that,
8 let me ask you this question. What is the difference, what
9 are the legal implications if the folks who are suing the
10 POA as an entity created by the party who signed the
11 agreement; created by Vista who agreed to all of these
12 things? What is in your mind the implication or the effect
13 of that?

14 MR. MULLEN: Well, first of all, the POA, the
15 horizontal property regime is a creature of statute. It is
16 a --- as opposed to --- Let's say that Vista just wanted to
17 go out and create a wholly owned subsidiary and then
18 transfer this unit over to that as a way of getting around
19 these previous obligations that they have entered into. And
20 let's assume these obligations don't violate public policy
21 on exculpatory clause. All right? Could they then go to
22 simply another dummy entity to flip this property into
23 getting under some other contract law? No. You have to
24 look at --- the law is going to recognize a shell that is
25 set up, a ruse to violate obligations. Clearly you have
26 that here. Vista had absolutely no interest whatsoever in

1 the homeowners, Long Grove Homeowners' Association, Property
2 Owners' Association. It is set up a property regime, which
3 is by statute totally separate and distinct from what Vista
4 was. As a matter of fact, under our hate law, this property
5 regime has owned obligations. And one of those obligations
6 under the Queen's Grant v. Daniel case is to sue the
7 contractor and the architect and the responsible parties.
8 Queen's Grant v. Daniel says the -- has an obligation to
9 pursue those responsible parties for construction defects in
10 their building. So, no, it is not like it is just another
11 entity that is the alter-ego Vista. That would be a
12 different issue. My wife had another entity that is an
13 amalgamation of this. You have a statutorily created
14 entity, with totally separate rights and obligations
15 different from them. But all of that, even giving latitude,
16 you have to first assume that the releases, the exculpatory
17 contract is valid. It is valid for a builder to come in and
18 disclaim any obligations he has to build in a good and
19 workman like manner in accordance with the applicable
20 building code. And I don't think you can ever get to that
21 part, Your Honor.

22 You know what, when I was reading through the
23 documents and reading the first letter you wrote, and trying
24 to figure where do these guys --

25 THE COURT: Well, you are kind to put it off on
26 them, but I will accept --- I don't accept that argument

1 that they missed something. I mean, these are complicated
2 issues that are difficult.

3 MR. MULLEN: It is, Your Honor. But, maybe
4 what the Judge is, that is one thing that no matter how much
5 you think it shouldn't be the case, you do not have the
6 right to tell you that you are wrong.

7 THE COURT: And, I appreciate the psychology of
8 your argument, but I will just tell you, I accept myself and
9 for my office and staff that the complexity of these issues
10 and the ability and the necessity really sometimes to ---
11 That is the difference between construction and personal
12 lawyers. But, I accept responsibility and do not put it off
13 on the lawyers that they failed to make an argument.
14 Because, my job is to take the arguments, sift through them,
15 apply them to the acts, and have a deeper understanding.
16 But I appreciate your courteousness in beating up the end of
17 the table down there, but I --

18 MR. MULLEN: It is not the first time I have
19 done it to them by the way, on this very case, Your Honor.

20 THE COURT: Okay. Very good.

21 MR. MULLEN: But, I was talking to find out
22 where you were coming from that they missed the point. Let
23 me put it that way. And what Frank told me, he said, what
24 is The Beach Company to do? They have an apartment building
25 here that they don't want to be in the condominium business,
26 so they are not going to convert it to condominiums. They

1 don't want to be held liable down the road for when this
2 thing goes bad, so what were they to do?

3 THE COURT: Actually, I think the exact quote
4 was what more could they do in attempting to absolve
5 themselves of downstream responsibility?

6 MR. MULLEN: And I want to answer that
7 question, Your Honor.

8 Number one. Build a good product. Build a
9 project that didn't violate building codes. Build a project
10 that left now certainly, ten million dollars required to fix
11 the building. Build it right to begin with. Build it in
12 accordance with the building code, in accordance to industry
13 standard. That is number one.

14 Number two. Fortunately for companies such as
15 beach company, there are all sorts of insurance policies out
16 there. They can go and draw themselves a liability for
17 insurance. Insurance specifically addresses these issues.

18 THE COURT: Well, that just actually absolves
19 them of responsibility, not necessarily of liability.
20 Financial responsibility is what you are saying.

21 MR. MULLEN: That's true.

22 THE COURT: Well, that leads me to a question
23 that I asked earlier, and Mr. Parrish gave me an answer
24 that said that Vista was here with its carrier, but I feel
25 like there is an elephant in the room, because you are
26 swimming upstream, and fighting hard to break through beyond

1 Vista, who has taken responsibility? Are they not able to
2 answer the demands here for the damages that are alleged?

3 MR. MULLEN: One of their entities filed
4 bankruptcy. Now, it is not the one that we have in this
5 case, but one of the Vista entities has already filed
6 bankruptcy. Quite frankly, maybe Mr. Best will tell you
7 whether or not he is prepared to pay any amount today.

8 MR. BEST: No.

9 MR. MULLEN: If he is, we can go home, but so
10 far he hasn't said he wants to pay me anything.

11 MADAME COURT REPORTER: Judge, I didn't hear
12 him.

13 THE COURT: Will you please speak up so we will
14 be sure to hear you?

15 MR. BEST: Yes, sir. There are three Vista
16 entities involved --- involved. There is Vista Reality and
17 Partners, sort of a holding company similar to The Beach
18 Company. They would set up a single purpose LLC to handle
19 any particular project. In this case it was Long Grove
20 Vista. Both of those entities --- I think Long Grove Vista
21 may have been dissolved. Vista Realty partners is in
22 shambles, frankly. And, its carrier that is retained to me
23 has filed a coverage action, and BJ action in Georgia. We
24 are expecting an opinion on a Motion for summary judgment
25 any day now at which point I may get the call to post my
26 file. Mr. Bield(phonetic)is personal counsel for the Vista

1 entities. The entity that is in bankruptcy is Vista Realty
2 Construction, now known as AB Construction. In fact, it has
3 been soon --- maybe not in this case but in an unrelated
4 case, if I am not mistaken. The situation there is
5 financial. They are not capable to withstand a ten million
6 dollar, even a one million dollar judgment. And insurance
7 may not even be available.

8 THE COURT: And what is the crux --- again I
9 realize these are not the issues that are forced today, but
10 it just helps me understand. None of this evolves in a
11 vacuum, and I am just trying to understand the allegation
12 and the position of the parties. What is the coverage
13 issues raised in the Georgia case?

14 MR. BEST: I have read the action, Your Honor,
15 but it has been months ago. And, I'm afraid I can't tell
16 you right now. I'm sorry.

17 THE COURT: Well, All right. Let me ask you
18 this way. Is the position such that if there is a defect in
19 the construction they would --- Vista's position would be
20 they are not responsible? There is no coverage for that
21 under the policy?

22 MR. BEST: Against the warranty.

23 THE COURT: Okay. Thank you. Thank you, Mr.
24 Best.

25 MR. BEST: I am sorry to interrupt.

26 THE COURT: Well, I am again --- I was the one

1 that asked for the interruption. But it just helps me
2 appreciate how we find ourselves where we do. But, go
3 ahead.

4 MR. MULLEN: Your Honor, we are talking about
5 what else could they have done. Insurance is a way of
6 absolving themselves of the ultimate financial obligation,
7 which is what they are looking to do.

8 A third alternative, and perhaps this is not
9 applicable to this, is they could just continue to own this
10 property. They made the decision to go and sell it. They
11 made the decision to market it as a conversion project.
12 They made the decision to sell it to Vista, knowing that
13 Vista was going to turn it into a condominium project. They
14 made that decision. So, what could they have done? Built
15 the apartments to begin with. Insure what they may have
16 had. One thing you must remember, Your Honor. They sold
17 this property for 37.25 million dollars. It is not like
18 this is a little group sitting out here. Somebody has put
19 thirty-seven million dollars in their pocket. When you do
20 that, you have some obligation.

21 Now, very quick, just to go through some of the
22 questions you have. I think I have answered most of the
23 questions you raised in your letter to us. I think I have
24 answered question number one fairly extensively. We talked
25 about the warranties in question number two. Does it apply
26 to the sell of commercial reality?

1 Your Honor, again, you may consider your rental
2 home to be commercial rental for you. But the fact is those
3 homes are residential property. No matter what you wish to
4 call them, as far as Darlington County is concerned, or the
5 City of Hartsville is concerned, building residential
6 property --- you know, it may be commercial in nature for
7 you to generate income on. But, more importantly, the guide
8 in what is commercial and what is residential is contained
9 to be standard building codes. Except he has --- they have
10 had to be built by. These condominium units are classified
11 as residential units, RPM by the seller. And, I classify
12 this commercial building, and they classify it as
13 residential.

14 The third question you asked is assuming
15 construction defects exist, did you make a distinction
16 between defects in the original construction and defects
17 that may have come about because of some additional work
18 that Vista undertook? I don't see that issue before us
19 today. At best what they could have is an interviewing
20 negligent argument if they wish to make it, but it does not
21 have a bearing on what your ruling is here today.

22 THE COURT: Well, my understanding was there was
23 some alterations or repairs that were done when there was a
24 conversion, and two hundred thousand dollars was set aside
25 to pay for those repairs.

26 Now, I am not certain from the review of the

1 pleadings, and really unaware of the specifics of some of
2 the allegations, but is an allegation that something was
3 wrong with the repairs, or are these initial things that
4 were a part of the building, and does that make a difference
5 here at what is basically a summary judgment juncture?

6 MR. MULLEN: I think the answer is yes, yes,
7 and no. Yes, there were repairs that were made. Were there
8 problems with the repairs that were being done? Yes, there
9 were problems with the repairs that were done. The repairs
10 did not adequately fit the original construction defect that
11 already existed. And, no it doesn't impact the purpose of
12 summary judgment. As I said, the factual issue on the
13 defense of an intervening negligence if anything.

14 THE COURT: All right.

15 MR. MULLEN: Next question. Can the release and
16 disclaim of itself contract operation gratuitously protect
17 JP Architecture who was not a party to the transaction? Not
18 only was JP Architecture not a party, neither is Gulf
19 Stream. And although Beach Company likes to argue, well
20 Long Grove at Seaside Farms owned by The Beach Company, and
21 Gulf Stream was owned by Beach Company, therefore, I get to
22 stick with them, that is not the case. I mean, they are two
23 holdings, separate distinct corporations which for purposes
24 of the law are two separate entities.

25 When you ask the question can they disclaim or
26 release operate gratuitously protect them, I wasn't quite

1 sure what you meant by the gratuitous part. Did you mean it
2 in a sense that they did not pay any separate consideration
3 themselves, or the way I looked at it, and hopefully the way
4 that you are asking it is, can you go ahead and disclaim
5 warranties for both persons, without the architect disclaims
6 the warranty? The contractor didn't disclaim the warranty.
7 But, instead The Beach Company comes in and disclaims it for
8 them. That is what I don't think you can do. There is
9 certainly no law that says that, Your Honor. That is sort
10 like me disclaiming your warranties on your rental
11 properties in the Landlord Tenant Act with Mr. Grimball. I
12 cannot do it for you. I am not so sure you can do it
13 yourself in that situation. And I am not so sure they can
14 do it in the construction context. But, clearly, a third
15 person cannot come in and disclaim warranties for somebody
16 else.

17 THE COURT: I think you have covered question
18 five, which has to do with the \$32-2-10.

19 MR. MULLEN: Right. And the last one, Your
20 Honor, I will be honest with you. I don't understand what
21 you meant.

22 THE COURT: Well, basically Plaintiffs --- Well
23 you have covered it in your various arguments today. Is
24 there anything further?

25 MR. MULLEN: That is all, Your Honor.

26 THE COURT: Let's do this. We have been at this

1 for a little while. Let's take a break and we will come
2 back and hear the other side of the coin.

3 All right. Court is in recess.

4 (Whereupon, a recess was taken from 10:47
5 a.m. until 11:00 a.m.)

6 THE COURT: All right. Mr. Parrish, we will be
7 glad to hear from you. Thank you for your response. I have
8 had a chance to review your memo from the twenty-seventh. I
9 realize from that, as well as from Mr. Mullen's arguments
10 earlier that my sixth question was really inartfully worded
11 in my letter. What I was really asking was Plaintiffs
12 basically say that the POA is estopped because the fact that
13 Vista has agreed to the --- all of the contractual, I guess
14 what you would call it is the disclaimers or
15 indemnifications, and when I worded that question what I
16 really meant was well, there is really more than one
17 plaintiff here. The longer The Seaside Farms is more than
18 one entity, are all of those entitled to the benefits of
19 estoppel if indeed there is estoppel? And then there is
20 more than one downstream, which was my term group, and does
21 that apply with all of the estoppel to estop them, treating
22 them all as one group? That was really the intent of my
23 question. But, you don't have to answer that immediately.
24 I realize that you have a presentation put together in your
25 mind the way you wished to arrange it. So, go ahead.

26 MR. PARRISH: Thank you, Your Honor. I am

1 actually going to try not to repeat to you what I said to
2 you in writing, which I believe all counsel has a copy. I
3 am going to try to rebut what we said earlier.

4 THE COURT: Thank you.

5 MR. PARRISH: My name came up so much, I feel
6 like I am a party in the case. I do want to clarify that
7 throughout the case we have used the term LGSF to mean Beach
8 Company, Gulf Stream, and the Long Grove at Seaside Farm,
9 LLC. There is a reference to the architect being part of
10 that definition, and that is not the case. The architect
11 has his own counsel here, and I am not going to touch the
12 architect here today.

13 And, if I could, with respect to Mr. Mullins, this
14 is not what this case is about.

15 THE COURT: Well, would you let me ask you an
16 initial question?

17 MR. PARRISH: Yes, sir.

18 THE COURT: Is there a difference between a
19 contractual analysis and a tort analysis in the event of a
20 catastrophic personal injury? Is there a difference in the
21 way the Court should view these issues?

22 MR. PARRISH: I am going to deflect my answer a
23 little bit and say what this case is about from sitting here
24 listening here this morning, and through every argument made
25 here today was the same argument that was advanced the same
26 time that we were up here. The only thing that wasn't made

1 here, there was a final kitchen sink argument that is just
2 not fair. But, prior counsel and current counsel for the
3 POA have very artfully advanced every possible argument they
4 could think of. But what this thing boils down to at the
5 end of the day is the POA's counsel, under their contention
6 and what they are presenting to this Court is an
7 owner/builder can never sell a building without being liable
8 to downstream buyers, under any circumstances. The net
9 analogy is, they are trying to tell this Court this is
10 strict liability, no matter what you do you can never sever
11 that tie. So, under their argument you would be liable
12 forever. You cannot disclaim it, you cannot distance
13 yourself. If I own this courthouse and I sell it to
14 somebody who converts it into condos, I, as the owner, the
15 developer, the contractor, under the POA's theory have
16 unending liability no matter what I do. That is what this
17 case is about at the end of the day, that argument. And
18 what I am going to suggest to you in response to Mr.
19 Mullen, with all due respect, he said there is no law on it.
20 There is a law. We have a statute of repose in this state
21 that was recently amended which is a legislative
22 announcement that we are not going to hold builders forever
23 liable, and owners forever liable. That is a statutory
24 access. We cut the chain at some point in time. So, right
25 there the strict liability never-ending tort that is
26 contrary to the statute. We also have the Kirkman Parex

1 case which says the implied warranty of habitability can be
2 disclaimed. The implied warranty of habitability, I would
3 suggest, is the strongest potential liability you can have
4 in a construction context. You have negligence, you have an
5 implied warranty of workmanlike service, and you have the
6 implied warranty of habitability. It is black letter law
7 that that warranty applies from the sell of a new home. And
8 I say this, the strongest, because that is the warranty
9 there that lies when there is a face-to-face dealing between
10 the seller and the buyer. You are one on one with a builder
11 or a developer to a new home buyer, which is a face-to-face
12 transaction. Any reliance issues and stream of commerce
13 issues that is all right in the forefront in that warranty,
14 and our courts say that can be disclaimed. So, once again
15 this theory of unending liability no matter what you do is
16 directly contrary to that case.

17 Now, Kirkman does not apply here, because the Long
18 Grove entities didn't build and sell a new home to anybody.
19 They had an old apartment complex they sold to Vista. And
20 once again we have to be careful like last time, because
21 last time --- every now and then the POA likes to step into
22 Vista shoes and makes argument as if they are Vista, they
23 are not. The POA didn't exist, and my clients never sold
24 anything to the POA. So, the Kirkman warranty doesn't apply
25 here. But by analogy when Mr. Mullen suggests that you can
26 never disclaim it, the statute of repose in Kirkman --- We

1 also had the Smith v Breedlove, which came out last year,
2 that was Judge Pleicoines, or Justice Pleicones and that is
3 the case where the gentleman built his own home for himself
4 and then he sold it and then got sued, because I think there
5 was artificial stucco on the house, if I remember right.
6 They came back and said you know if someone builds something
7 for their own use and later sells it, you don't have
8 liability for that. So, I will agree that there is not a
9 ton of case law on this, but the case law out there clearly
10 does not say you cannot distance yourself from this under
11 any circumstances as the POA is urging the Court. Their
12 argument at the end of the day is just not fair. That is
13 not what the law says. The existing law and the developing
14 law are contrary to that position. So, if the Court works
15 with what we are faced with legally wise, their argument is
16 contrary to that. In fact, some of their arguments would
17 directly conflict with Kirkman. You know, for example the
18 exculpatory contract, the §32-2-10. If their theory of that
19 that it can apply directly conflicts with what the Supreme
20 Court said in Kirkman, that you can disclaim those types of
21 warranties. So, as to their argument that you can never
22 distance yourself from it, that is just not the case in this
23 state, and there is no suggestion that it ever could be. In
24 fact, our Supreme Court in Sapp & Smith v Ford Motor Company
25 took an automobile wreck case and took the opportunity to go
26 in there and try to pull back a little bit and say, hey,

1 y'all have taken some of the stuff we have said a little bit
2 too far, and we are pulling ourselves back in. They even
3 say this is not going to apply in the commercial context at
4 all. And you can say what you want to, but these were
5 commercial rental units. These were not condos; these were
6 not houses at the time this used product was sold to Vista.

7 THE COURT: So, you disagree then that this
8 would be classified as residential property?

9 MR. PARRISH: Yes, sir. I mean, when you are in
10 a residence and you own a home, you are stuck with the home.
11 If I buy a home and I have water leaks and so forth I can do
12 things about it. But, if I live in an apartment and I don't
13 like it, I just move out, or I don't renew my lease. I have
14 other options and rights to do that. The ownership is
15 completely different. It is a single owner, the master, the
16 landlord versus the tenant that owns nothing. The tenant
17 buys nothing. He simply occupies it for usually a year
18 period of time. And, if he is not happy with what he has he
19 moves out.

20 When Vista bought these units, and this kind of
21 dovetails too, and Mr. Mullen made a lot about the building
22 codes, and I think these units were built in 1999, 2000, if
23 I remember, which, I believe, is when the Southern Building
24 Code was still in effect. And then we have our new
25 Residential International Residential Code in effect. Well,
26 under their theory when we sold these to Vista, did we have

1 an obligation to bring them up to the current code in effect
2 at the time these things were sold in an arms-length
3 transaction to a third-party? There is no law in this state
4 to that effect. When Vista bought this property, an old
5 used project, it converted them into brand new residential
6 homes. When they sold these things out they were not sold
7 as used condos, they were brand new, newly created
8 condominiums. They had to go down to the town of Mt.
9 Pleasant in Charleston and go through all of the permit
10 process. They had to have their inspections, and do all the
11 other things that are required to convert them, and
12 including an obligation to bring them up to the current code
13 when they sold it. That was Vista's obligation. It was not
14 our obligation. So, once again this concept, I can never
15 sell something without being liable for it, this is not the
16 law in this state, and it leaves to an absolutely absurd
17 result. For example, the building code analogy. If I go
18 and sell my home to another home buyer, I don't have an
19 obligation to bring that up to the current codes. They are
20 suggesting to reach a result, they are trying to suggest
21 some analogies or theories that would just turn the real
22 estate market and the real estate industry completely on its
23 head. It leads to an absurd result, and ultimately would
24 make it almost impossible to effectively have a real estate
25 transaction in this state. I think everybody agrees, at
26 least from my limited experience, the facts here are unique.

1 These disclaimers are extensive and they are broad, and I
2 have never been involved in a condo conversion case that had
3 these types of disclaimers in place. And that is my second
4 big issue. Number one, their theory is you can never sell
5 it. And number two, they keep talking about contracts.
6 This is not about a contract, this is about a notice. This
7 is a notice case. There was no contract between the POA and
8 the Long Grove entities. We sold this to Vista. The POA
9 did not exist. And it is all about notice at the end of the
10 day. And at the end of the day it is about notice that hey,
11 we sold something that was used, and we are not involved in
12 the construction. And if you buy it, you are not buying it
13 from us. It says in there, as is, with all defects, and it
14 even says it might not be suitable for use as condominiums.
15 That is in the master deed.

16 Now here, as in the prior hearing, there was a
17 little bit of talk from the POA about this disclaimer is
18 somehow hidden in the back of the document. Once again, we
19 didn't record that. We sold it to somebody else, and all we
20 said is you have got to put this in your master deed. They
21 chose the language, where they put it, we didn't. But the
22 big issue is too, that master deed is what I call a critical
23 document. That master deed, when you go to buy a unit, it
24 tells you what you own. It tells you whether you own from
25 your drywall to your drywall. It tells you whether you own
26 the outside. It tells you whether you own the balconies.

1 It defines the owner's right of ownership in the unit, and
2 actually what they are buying. It also governs and defines
3 what the POA can and cannot do. But for the master deed the
4 POA could not be sitting here today. Without that document
5 nobody could do anything. The units would not exist. And
6 they want to pick and choose which provisions they are okay
7 with, but they don't like this provision so they are trying
8 to attack it. But every single word and every single page
9 of that document is critical to the rights and
10 responsibilities, the rights and liabilities of both the POA
11 and the unit owners. And they are bound by what is in that
12 document.

13 And the third issue, as far as this never ending
14 liability, we talked about the state of repose, which is
15 opposite to that argument. Kirkman, Smith v Breedlove, and
16 we also have a law in this state that talks about estoppel
17 by deed, which I think I put in the draft order, and it says
18 you are bound as to notice of documents that flow in your
19 chain of title. And that is why this was recorded in the
20 chain of title to put people on notice, and to give them an
21 opportunity to read this and find out about what they are
22 buying. Mr. Mullen mentioned the Neely case, it talked
23 about the six hundred dollar settlement. I don't have that
24 with me, but if I recall that case correctly, they settled a
25 really small lawsuit, and then another lawsuit flowed out of
26 it. In that case nobody took that settlement agreement and

1 recorded it in the chain of title to the property and said,
2 by the way we have been sued once, we are not doing here ---
3 we don't have the record notice that was here. We don't
4 have the critical document which is the master deed which we
5 have here. So that case is totally in opposite to that.
6 And I guess another big issue, Mr. Mullen and his
7 colleagues have been very successful throughout the years
8 doing a lot of this type of litigation. But, under their
9 theory is the exculpatory clause and the never ending
10 liability. Every settlement and every lawsuit they have
11 ever done for construction defect cases under their theory,
12 those settlements are void as against public policy, and
13 they are void as exculpatory contracts. Because, they sue
14 people like in this room, ultimately they either get a
15 judgment or a verdict and they get some money and they sign
16 some type of document or release on it. And under the
17 theories made here today, every single settlement, of every
18 single construction default lawsuit that has ever been
19 executed or will be executed in this state is void as
20 against public policy and as an exculpatory contract. And
21 that is just simply not the law in this state. It is
22 contrary to the law in this state, and it should not be
23 under any stretch of the imagination the law in this state.

24 I am only going to talk very briefly about §32-2-
25 10, I briefed that pretty hard. The plain meaning of the
26 statute it says, in a construction contract, and it is about

1 indemnity, and I didn't really hit on --- it is about a
2 release for your sole negligence. Here between the POA and
3 my clients there is no contract. It is simply a notice in
4 the chain of title to their documents that says we didn't
5 build this, we didn't convert it, Vista is the one that did
6 this. That is all that document is. It is not a
7 construction contract. It is not even a sales contract. It
8 is a notice. My big theory here today is they are wrong
9 when they say you can never end liability. And this isn't
10 about contracts; this is about them being on notice. And
11 nobody on that side of the table has really ever told the
12 Court that they weren't on notice. They don't like the
13 notice, but they don't claim that they were not on notice.
14 They have not tried to go so far as to do that.

15 And I do want to take an aside here, because you
16 asked about the insurance issue over there. Number one,
17 every single construction case I have ever been involved
18 with, there is an insurance issue. There is a DJ Action.
19 We have one going to trial May 15th, and there is still a DJ
20 Action, but there is also settlement negotiations. So, it
21 should not be relevant to this issue about what's going on
22 with Vista. But, I understand the Court's concern and I
23 respect that. I also note that they have Essex Engineering
24 as a party in this case. They were supposed to do the
25 inspections and find these problems. They work for Vista,
26 not for us. Essex Engineering, Vista hired to do the

1 inspection. They still are and at least for the time being
2 will remain as a defendant no matter what happens here
3 today. Sam Mayo is an entity that Vista hired to come and
4 do some work out there. They are not involved in this at
5 all. It is simply The Beech Company related individuals and
6 the architects are the ones that are here today. And you
7 actually kind of answered something that I have been
8 thinking for a while. POA has just been dead set of going
9 after Beach Company and Gulfstream. Mr. de Guardiola, from
10 what I understand is a very well-heeled individual. And we
11 have that new LLC case that came out a couple of weeks ago
12 that basically says when you have a single member LLC, the
13 LLC owner has a lot of personal responsibility or exposure.
14 I have never understood why they have not put him in the
15 case. I don't understand that. I mean, if they are really
16 trying to chase money, they could add him if they wanted to.
17 They have just apparently chosen not to. It should not make
18 a difference, but there is still people in this case that
19 will remain even if these people go away here today.

20 You know, Mr. Mullen talked about Kirkman, and
21 the black letter law does not apply. I use that as an
22 analogy, because that is the really strong warranty here.
23 But there is no sell of a new home between my clients and
24 their clients, and it doesn't apply. And if it did, the
25 elements are there that were specifically bargained for. We
26 kind of talked about that at length. They would not sell it

1 to them for any price if they didn't agree to it. It is
2 clearly on notice in the deed to the property, and it was an
3 arms length transaction. It is not boiler plate. It is the
4 critical term in the sales contract between Vista and The
5 Beech Company. It doesn't apply, and if it did the elements
6 are not here.

7 And I guess the last big issue, and I am going to
8 stop at this point and turn it over to my colleagues, is
9 this thing that I frankly didn't understand about Gulfstream
10 never disclaimed, only The Beach Company did. Well a
11 disclaimer is notice. A disclaimer is you are on notice
12 that I am not going to be responsible for something. That
13 is all it is. And the fact that The Beach Company did it
14 and actually Long Grove at Seaside Farms, Beach Company is
15 actually the manager of the manager of an LLC that is
16 involved at Long Grove. But the fact that it is in there,
17 it's a notice. Do you have a separate notice saying by the
18 way, here is an addendum to the contract, and Gulfstream is
19 a part of this too? I mean, practically how would you do
20 that and at the end of the day so what? It is a notice, and
21 nobody claims that the notice in there doesn't specifically
22 list Gulfstream because it does. It says Gulfstream, The
23 Beach Company, and their affiliated entities, or all of
24 these specifically. So, again, at the end of the day my two
25 big points are, it is just contrary to law that you can't
26 ever cut off liability. And number two, it is not about

1 contract, it is about notice, and the POA was clearly on
2 notice. It exists only by virtue of the entity that
3 received those notices and got the benefit of the property.
4 And it leads to an absolutely impalatable result to say that
5 they are not bound by those notices at this point in time.
6 If the Court chooses to say that you can never disclaim this
7 stuff under any circumstances, or no matter what you do you
8 are liable for it, then we have done everything that we can.
9 But I have never heard prior --- the last argument before
10 today what more we could have done? There was a reference
11 about escrowing money to put it on for the POA that did not
12 exist at the time we sold this property. That came up at
13 the last hearing, and I don't think the Court found that
14 very persuasive. And Vista could have set aside some money
15 for it. The insurance issue; that is not the issue in the
16 case here, whether we should have bought an insurance policy
17 to keep from being sued. Everything that was done was fair
18 and reasonable and it gave every possible notice to
19 everybody involved that we did not do this, we did not
20 convert it, we did not take something and change the form of
21 use, and then go out and sell it as brand new residential
22 condominiums. We were not involved in that, and we should
23 not be held liable for that under the circumstances and the
24 law that exists here in the case today.

25 So, to answer your question, there is no
26 difference between Gulfstream and The Beach Company. The

1 Beach Company did not do it gratuitously. Gulfstream and
2 The Beach Company --- And don't quote me on this, but my
3 understanding is, there were some individuals that had some
4 common stock ownership, so they were affiliated companies,
5 even though they are separate and distinct, but they had a
6 close working relationship, family owned businesses. It
7 wasn't gratuitously. They were together on this project and
8 they all went away together. And everybody got notice on
9 it, and there is no reason under the law and the facts that
10 you would treat Gulfstream any different than Long Grove at
11 Seaside Farms. Everybody had the chance to know what was
12 going on, and if they didn't want to buy a project, and they
13 couldn't sue Gulfstream and The Beach Company, then they
14 should not have bought the project.

15 THE COURT: So, your position is, the various
16 entities that make up LGSF, they all rise or fall together?

17 MR. PARRISH: Well, I tried to kind of keep this
18 simple by using that term. The Beach Company is actually
19 separate and distinct from LGSF and Gulfstream. The Beach
20 Company is a manager of a LLC that manages LGSF, and I have
21 put that somewhere in the complaint, in the brief, but for
22 purposes of argument, kind of kept them as a ball because of
23 the releases and the disclaimers. The Beach Company should
24 not be in here regardless of what the notices and the
25 disclaimers say either. LGSF was a pure owner or developer,
26 and Gulfstream was the contractor. But at the end of the

1 day, candidly, you have got different warranties, different
2 negligent claims, but they all come back to, are you putting
3 some in the stream of commerce, or are you telling people
4 and putting them on notice that they were not involved in
5 this construction? So, to answer your question is yes and
6 no. If that helps a little bit.

7 THE COURT: All right. And, just to make sure
8 that --- Let me just think one moment.

9 (PAUSE.)

10 THE COURT: You refer, and I read in this memo,
11 and as you have really consistently referred to throughout
12 your arguments, these disclaimers and releases and
13 indemnification clauses as a notice. But yet it has the
14 operative effect of disclaiming, or actually cutting off
15 responsibility. So, I mean it is more than a notice is it
16 not?

17 MR. PARRISH: Well, the cutoff occurred between
18 LGSF. Once again, I am using that term for the table here,
19 during the LGSF to Vista.

20 THE COURT: Okay.

21 MR. PARRISH: That is where it got cut. If
22 Kirkman says you can do that, if it applied, if this was a
23 sale of a new home to Vista, we could have disclaimed that
24 clearly. But that is where the cutoff occurred. It just
25 let people downstream know that hey, it got cut off between
26 the prior owner and the new condo developer. So, it did not

1 occur at the same point. And once again, the argument was
2 raised about what happens --- I think there was a suggestion
3 in Kirkman, once again it doesn't apply, but I am using it,
4 because it is the strongest of the three claims because of
5 their direct interaction, the question that was raised in
6 Kirkman says you can cut it off in a direct sale, but what
7 happens to downstream buyers? And I respectfully suggest
8 that if the direct buyer can disclaim and cut off liability
9 between direct buyer and seller, then clearly that
10 disclaimer would flow down stream. But it clearly flowed
11 downstream when there was a record notice in the chain of
12 title to the property as occurred here.

13 So, again, to answer your question a little bit
14 yes and no. It got cut off here, and all we did was make
15 sure that the guy who bought it subject to the cutoff let
16 the people downstream know what had happened, and that is
17 exactly what happened here.

18 THE COURT: All right. Thank you.

19 MR. PARRISH: If you have any questions, I will
20 be happy to try to answer them. But, otherwise, I would
21 like to let the architect's counsel have a bite at this too,
22 if that is alright with the Court.

23 THE COURT: All right. Go ahead, Mr. Werner.

24 MR. WERNER: Thank you, Your Honor. I must say
25 to begin with in response to Mr. Mullen, it is tempting to
26 rely on the elegance of the type of character in terms of my

1 response. So, I will take a few more minutes to try to
2 address some, I hope the visible and specific issues.

3 And let me begin by putting it into context, and I
4 know you tried to do that for your overall understanding.
5 As it relates to my client, the architect, they contracted
6 for and bid the design for an apartment complex for a client
7 in 1996. That project in its final pieces, and it happened
8 in stages and I don't know all of the details, but those
9 final substantial, final elements would have been in 2000.
10 It was operated as an apartment complex from 2000 to 2005
11 when it was then advertised for sale and sold. Now, I think
12 it was clearly addressed in the last discussions you were
13 having with Mr. Parrish, there was a commercial transaction
14 between the seller --- What we have called the LGSF and
15 Vista in 2005, a sale of not of individual units, not for
16 the purpose of Vista inhabiting anything. It was the sale
17 of a commercial project. That sale was the subject of
18 substantial negotiation, substantial graffling of the
19 agreement. A contract was formed. Now, there was a
20 tremendous effort to --- but fundamentally Your Honor is
21 presented with straight forward legal complaint. It is a
22 claim at law. And the law on these contract issues is very
23 clear. And let's begin with the most important thing. That
24 is, it is the receiver, the POA, the POA received from Vista
25 whatever rights --- In fact, Vista received from Vista.
26 They can never, whether they are deemed a successor, whether

1 they are assigned, or whether they are the transferor by
2 deed instrument, they can never receive greater rights than
3 the party who transferred to them had. That party in an
4 arms length negotiated commercial transaction executed a
5 full and complete release. In fact, that is probably the
6 end of the discussion. That happened and they cannot under
7 any scenario acquire again the rights that were given up by
8 the person who gave them their very existence. This is not
9 Vista making this claim, it is the POA. But the POA cannot
10 add anything more than Vista had. Now, you heard discussion
11 about what is an exculpatory contract. Well, first of all,
12 a release is not an exculpatory contract. A release is a
13 release. I had to do some reading about this, and Your
14 Honor has probably done it in connection with this case. In
15 fact, an exculpatory contract in the true sense, not in this
16 sense --- the case law is kind of confusing. But truly
17 exculpatory contracts as that phrase first came to be known
18 were contracts where someone in advance tried to absolve
19 themselves of any potential liability. In fact, I have some
20 familiarity in a case that I was involved in in Tennessee,
21 the case he recited, having to do with the medical
22 profession. But, it had to do with the idea of before I
23 even touch you, before I even treat you, you are going to
24 sign away all of your rights. That is not what we have
25 here. This is not in the truest sense in any form an
26 exculpatory arrangement. It is a release. However, the

1 idea that parties have given up something in the abstract in
2 this case is simply wrong. Your Honor has endless
3 materials. The fact that Vista has a part of this
4 investigation going into the transaction engaged not one but
5 multiple professionals to, in fact, in-staff this project.
6 If Your Honor would allow this case to survive under some
7 strange notion, the facts they would hear have to do with is
8 a statue of limitation argument, because they had from the
9 consultants, the experts they hired telling them there were
10 things that needed to be done. Leaving aside that they
11 acknowledged that they were going to convert this to a
12 completely different use, condominiums and resale them and
13 they had the obligation to deal with those things. They had
14 in 2005 and 2006; they had reports telling them about some
15 of the very things that they have sued about in this
16 lawsuit. And, Your Honor is familiar with The Dillon County
17 School, the roof case, where our court talked about the fact
18 that well one thing that is clear is that if you know that
19 you have enough of a problem that you have hired experts and
20 consultants to do investigation about it, the statute has
21 begun to run. So, at the end of the day the argument that
22 you are being asked to go with is, Judge, we want to be able
23 to sue people, and you have just got to let us do it. Well,
24 that doesn't work. That is not the law, and it is not the
25 public policy, thank God, of this state. They don't just
26 get to sue people because they want to.

1. Now, from the architect's perspective the
2 questions that you asked, and the arguments that have been
3 made, would be we have heard phrases about was this a
4 gratuitous release, and is that, somehow, an obstacle to the
5 enforcement of it. Well, I assume that --- I think there
6 are two issues here that I would like to address.

7 One, if gratuitous suggests in the bazaar example
8 that you were given today. someone un-associated just
9 announces they are going to get a release or disclaim
10 something for someone else, maybe that would be gratuitous.
11 Well here, the release of the architect is by no means
12 gracious. The architect in fact --- the argument made to
13 you expressly by Mr. Mullen was well Judge, these
14 developers, the architects is their agent. They would be
15 liable for anything the architect did. That is exactly why
16 it is not gratuitous and exactly why the architect was among
17 the defined such people to be released. Because, the
18 liability of these parties --- the release liability of
19 these parties are enthralled. The developer who wants a
20 release has to be concerned with the fact that, well, it is
21 not doing me any good to get a release. If they are going
22 to sue someone who has indemnification rights against me or
23 contributions rights against me, or against whom or for whom
24 they can claim I have some vicarious liability, so it is
25 certainly not gratuitous.

26 More importantly I think is a legal argument

1 though, and that is it is fundamental in this state, and we
2 will site you the cases that has not already been sited, but
3 a release in a broader contract does not require separate
4 consideration. And it is the Furse v. Timber Acquisition
5 case. The Court said that very clearly. You don't need
6 separate and distinct consideration for the release
7 provision, separate and apart from the consideration of the
8 contract as a whole.

9 Secondly, it is manifest, multiple cases saying
10 that every party release does not have to give separate and
11 distinct consideration. As long as there is consideration
12 given for the release by some party, the fact that the other
13 parties are released is perfectly proper and it is
14 enforceable. And among the cases for that are Southern
15 Glass & Plastics Co. v. Duke, and Shane and Miami v. Graco.
16 (Phonetic) So, the fact that there is a release in a
17 commercial sales agreement from LGSF to the Vista Company
18 they include a release for the architect, for the builder,
19 perfectly legitimate under the clear and unchallenged and
20 existing law of this state. And they are completely
21 enforceable.

22 Now, you heard the argument about --- Well, we ---
23 The anti-indemnity statute says you can't do it. Well,
24 first of all, in a recent case law the anti-indemnity
25 statute can in fact itself be disclaimed as I understand it.
26 But, more importantly it is certainly correct this is not a

1 case where the anti-indemnity statute applies.

2 First of all, the release is separate and apart
3 from the indemnity provision. So, even if you were to
4 conclude that it would somehow be barred by the anti-
5 indemnity statute, it would only bar the indemnity
6 provision, which is the provision that says if I have to
7 spend money you owe me the money back. That is different
8 than the fact that the release is enforceable. And once the
9 release is given it cannot be --- the rights cannot be
10 revived by transferring it to someone else. So, the anti-
11 indemnity statute does not in any way alter the release
12 provision in the sale agreement.

13 Secondly, despite the efforts to go through the
14 language four different times for you, the sentence was
15 clear. In connection with --- And then there was a list of
16 objects to the preposition with, back in my third and fourth
17 grade classes. Thank God, I remembered some of it. The
18 object of the preposition in this case in connection with
19 was not --- was not a design agreement. It was not a
20 construction agreement. It was a sales agreement of an
21 existing commercial property. That statute does not apply
22 for those two reasons.

23 You asked one other question, and I actually must
24 confess earlier put it in a new light. I will agree with
25 Mr. Mullen that you do not have to --- but they have not
26 indicated that discovery is an obstacle for them pursuing

1 their claims or presenting their arguments this morning.
2 And, I agree that you do not have to know whether or not all
3 of their allegations relate to original design or original
4 construction issue as opposed to problems during the
5 conversion of condominiums done by Vista, which my client
6 had no participation or even knowledge of it. You don't
7 need that to decide these issues about the contract
8 provisions of the release. But you are given a very good
9 point. And that is, this is a summary judgment hearing this
10 morning. And if they want to survive to go forward on this
11 safari, this fishing expedition, this wild hunting trip, and
12 yet they stood here before you today and told you that they
13 filed a complaint that includes allegations that clearly
14 would have no effect on anyone on this side of the room,
15 because it was things done during the conversion. And they
16 have given you nothing to tell you what the difference is.
17 And on the summary judgment level, that is significant.
18 They have not carried their burden to survive on those
19 defect findings.

20 Now, I think the case goes away even without that,
21 but that is another problem they have. So, I think the
22 point that you raised in your question is legitimate in that
23 way.

24 The estoppel issue, I believe, I take it Your
25 Honor has sort of dealt with that with what you have heard,
26 and I certainly am not going to belabor that.

1 But I think the last thing that I would like to
2 point out is you have heard all this talk about public
3 policy, which is never really defined here today. Well, the
4 public policy sort of exception that is at the core of these
5 cases talking about the rights of purchasers of residential
6 property is very simply. And that is, our courts have
7 steadfastly said that in relation to that fatal transaction,
8 the issue of *caveat emptor*, we are going to change that, and
9 say that when you purchase a home, starting out in a new
10 home, when you purchase a new home, we are going to afford
11 you certain protections that you may not have been able to
12 afford yourself in your dealings with that seller, because
13 of unequal bargaining factors.

14 Well, here the buyer and the seller were two
15 specific entities when this commercial project was sold.
16 And the issue that they now want is, well, Judge, we are
17 representing an owner's association who then was created by
18 that developer, who had already given away the claims. So,
19 gee, you ought to protect us. Well, I think one important
20 point about this notice versus contract issue is this is not
21 a situation where I want to build a house. I go to you as a
22 builder, you know how to build it, I don't. And the law is
23 going to protect me in my dealings with you as you build and
24 sell me my house. This is a situation where the POA had a
25 board who certainly was legally obligated in the implied
26 status to read the instrument that creates the board, the

1 master deed that gives them their rights. You then have
2 purchasers who --- to understand what they are buying
3 certainly have to consult or have their attorneys consult
4 that master deed. And they went to the trouble of not just
5 getting a release, but insisting to protect those other
6 people who may be down the line that they all have the
7 ability to look in that master deed and to see that this
8 release has occurred, and don't be looking back up to the
9 people who did the original project back in the 1990s,
10 because that is all gone. So, as it relates to this issue
11 about fairness and as it relates to this issue about the
12 public policy, which is a very narrow policy exclusion, that
13 I think is the significance --- extra significance over the
14 release enforceability of the notice of things that are
15 being that has to be. And I think, in fact, when you apply
16 it to the well established legal principle which clearly
17 govern here, it doesn't have to be in a condo conversion
18 case. Contract law is very clear in this. Absolutely
19 applicable. And when you consider these other factors as
20 they relate to these -- there is no justification for this
21 case to proceed. Thank you.

22 THE COURT: All right, thank you. All right.
23 Does someone else wish to be heard today?

24 MR. BEST: YOUR HONOR, Dean Best for Vista
25 entities. I listened to Mr. Mullens, and there were points
26 about non-deliabile and things that I agreed with. I

1 listened to Mr. Parrish. And I agree with him in a sense
2 that yes, I think there are situations where you can up your
3 liability. I just happen to believe, looking at this
4 simply, at least from my point of view, that this case falls
5 somewhere in between. And, first of all, with respect to
6 this downstream release, the first point I make is the ---
7 this distinct entity, the POA, is a creature of statute that
8 my client, Vista, created. Vista created the POA because it
9 had to. That is what the statute says you have to do with a
10 previous conversion. That POA is charged with maintaining
11 the --- maintaining, preserving, protecting the property
12 within that regime, and then the courts have imposed an
13 affirmative duty upon the regime to do that, and the board
14 members have fiduciary duties to the other members to see
15 that that charge is satisfied. I can understand my client
16 giving a release to whoever, and that being *defacto*. My
17 question, and the question that you have to answer is can my
18 client as a declarant release for an entity that is charged
19 with preserving the whole and purpose of the regime is the
20 property, can my client with a release from the POA, all
21 claims that it is charged with enforcing, protecting, and
22 preserving? That is what is rubbing me the wrong way in
23 this analysis. The second thing, I believe kind of chops
24 off this downstream argument by The Beach Company, is it is
25 the language of the master deed itself, and it says the
26 declarant, Vista on behalf of itself, heirs,

1 representatives, successors, and assigns agree never to sue.
2 Well, POA is not an heir. The POA is not a representative.
3 Is it a successor or an assigned? If you flip back about
4 forty pages in the master deed in Paragraph 2-J, it
5 addresses successors and assigns, and the master deed says a
6 successor can --- to qualify as a successor, or an assigned,
7 or declarant, Vista has to acknowledge that in writing. And
8 that has to I assume be made part of the document. That
9 doesn't exist. I think if you look at the --- And we can
10 get you a copy of the master deed, Paragraph 2-J. Even
11 under the terms of the master deed, the POA is not an entity
12 that is released from the claim. The question what more
13 could they do? The Beach Company received thirty-two
14 million from the sale. They also received ten thousand
15 dollars a month, The Beach Company did, as the exclusive
16 property manager. And I think it is keen that they were
17 being the exclusive listing agent for these two or three
18 hundred units. The Beach Company was involved in every
19 single sale. Every single unit went through their hands so
20 to speak. They had an opportunity to review sales
21 agreements that were being delivered to them by prospective
22 purchasers. They could have included a rider that said,
23 hey, you acknowledge that you receive and read and
24 understand the master deed. They could have included
25 provisions that said, hey, you are releasing everybody in
26 the world from The Beach Company, Gulfstream from all of

1 these problems. There could be latent defects. We are not
2 making any warranties. That didn't happen. They as part of
3 the sales agreement with Vista required that this notice be
4 included in the master deed. My client submitted drafts.
5 They reviewed it, and here is what it was, but they didn't
6 do more. And the question is, what more could they have
7 done? At closing or at some point they laid eyes on every
8 single purchaser, and had the opportunity to do more.

9 THE COURT: Let me ask this. The Beach Company
10 was only briefly the sales agent? Wasn't that a finite
11 period, and then it fell apart for some reason?

12 MR. BEST: I think that is the property
13 management that fell apart.

14 THE COURT: I see. Very good.

15 MR. BEST: So, I think that was maybe less than
16 a year.

17 THE COURT: Okay. So, they were the sales agent
18 though selling out of this complex?

19 MR. BEST: I don't want to speak out of turn,
20 but I believe that is absolutely correct.

21 THE COURT: All right.

22 MR. BEST: And, Mr. Grimball is reminding me
23 that it did sell very, very --- I think it was in a matter
24 of four or five months, maybe less than six months, all the
25 units were sold.

26 THE COURT: All right.

1 MR. BEST: Did the indemnity provision ---
2 obviously my client and its principle agreed to indemnify at
3 least in writing. De Guardiole testified that he signed that
4 sales agreement essentially under protest that that
5 provision, the release and the indemnity provision was
6 presented to him at the proverbial eleventh hour, and it was
7 a deal breaker. This is going to be included or the deal is
8 off. He also testified that he signed it on behalf of the
9 Vista entities because --- he is not practicing law, but he
10 has been to law school and has practiced for a few years.
11 He didn't think it was enforceable, because of the anti-
12 indemnity section. That is why he signed it.

13 THE COURT: Hang on and let me think through
14 that for a moment.

15 (PAUSE.)

16 THE COURT: So is it your testimony that that
17 parole evidence could somehow alter or impact the effect of
18 those provisions?

19 MR. BEST: I just submit to Your Honor that it
20 is --- it is evidence that at least someone with a trained
21 legal mind believed this provision was not enforceable.

22 THE COURT: Well, and I have --- Was that in
23 another case, or did he testify in a deposition in this
24 case?

25 MR. BEST: We have had depositions in this
26 case. Not on the construction defect issue, but limited

1 solely to the sale, he did testify in this case.

2 THE COURT: And his testimony was that he signed
3 it I guess under the guides of believing in his own mind
4 that it was not enforceable?

5 MR. BEST: It was presented to him as, you will
6 agree to this or the deal is off. He thought it was not
7 enforceable, so he went ahead with the deed.

8 THE COURT: All right. Let's go back to the
9 plaintiffs' estoppel argument they raise. Isn't --- I
10 notice you are sitting over there with the Plaintiffs.
11 Excuse me, with the Defendants in this case, but don't you
12 have a major estoppel issue to turn around and collaterally
13 attack this entire setup and --- How can you do that
14 legally?

15 MR. BEST: Well, I was going to finish on that
16 point.

17 THE COURT: Please.

18 MR. BEST: And maybe I am looking at it from a
19 different point of view. If, this notice argument that The
20 Beach House is presenting, if the way I understand it is,
21 okay, you prospective purchaser, you POA, unit owners out
22 there, the world, you are on constructive notice that this
23 is a reduced property. There may be latent defects.
24 Everybody on that side of the courtroom is making no
25 representation, no warranties, or whatever. I think that
26 extends to my client. That if the notice provisions within

1 the master deed are enforceable, that every purchaser of the
2 unit is deemed to understand it, then they know --- And here
3 is the key, Your Honor. My client hired an engineer to
4 inspect the property. The report was prepared, and their
5 work leaks at balcony discovery. And my client paid roughly
6 two hundred thousand dollars to have those balconies
7 repaired. And there were other cosmetic repairs. But as
8 far as alleged defects, that was the crux of what my client
9 did.

10 The plaintiff, and Mr. Mullen touched on some of
11 this, they have uncovered latent electrical defects that my
12 client had nothing to do with, did not endeavor to repair,
13 because, I believe, they didn't know about it. They have
14 also uncovered extensive water intrusion, leaks from
15 condensation lines that are enclosed, or chases that run
16 from the first floor up to the third floor. There is water
17 damage steaming off of those. We don't have an expert
18 report yet, so I can't give you more details. But there are
19 or were allegedly latent defects that existed when my client
20 bought the property, and because they were latent when they
21 were discovered. If the notice provision of the master deed
22 is enforceable, I believe, it affects not just the beach
23 company, but it also runs to the benefit of my client, that
24 if the people are buying with knowledge of possible latent
25 defects, it is not buyer beware, but you are buying, hey, we
26 don't know what we've got here. If you would like to buy

1 it, we will sell it to you. And, maybe my client is on the
2 other for the balcony repairs. But if the notice is
3 effective we are not on the electrical, we are not HVAC,
4 chase water leaks. We are not on the hook for any latent
5 defect that stems from original construction. So, either
6 the plaintiff is left with a courtroom full of people if the
7 notice is not effective. But, it is effective --- I don't
8 know if they have claims against anybody except maybe my
9 client with the balcony repairs.

10 THE COURT: All right. Thank you, Mr. Best.
11 Anyone else?

12 MR. PARRISH: Your Honor, if I may just respond
13 briefly, since it was like an additional argument on behalf
14 of the POA. And I believe what is really happening here is
15 Vista insurance carriers are trying to split some -- But the
16 comment was made that that was an eleventh hour notice about
17 the disclaimers. And I just recall that this came up at the
18 last hearing. This wasn't one of the six issues. But it is
19 actually in the proposed order. The original letter of
20 intent between the parties, in part of the complaint says it
21 is as is where is, and that it was negotiated thereafter.
22 So, it wasn't an eleventh hour. That is just not a correct
23 characterization of the record. But more importantly, in
24 the proposed order that I sent you a while back, Paragraph
25 A-3 and A-4, it even addresses this so called secret belief
26 of Mr. de Guardiolo, which came up before. This secret

1 intent in the case cites and it is in the order you have,
2 Davis v. K. B. Homes, and this is a quote from the case.
3 The Court is without authority to consider the parties
4 secret intentions. And therefore, words cannot be read into
5 a contract to in part and intent unexpressed when the
6 contract was executed. So, if Mr. de Guardiole had that
7 secret intent, number one, he doesn't claim he told it to
8 anybody. And it would be no more affect that me thinking
9 when I signed my home mortgage that I had a secret intent
10 that I didn't really have to pay it. But we went over that
11 before. I just wanted to call your attention, because that
12 has been a little bit of a time on that.

13 THE COURT: Thank you. I recall that. But, in
14 my view, the case doesn't turn on that anyway. I see that
15 as parole evidence. It is not inconsistent with the plain
16 meaning in the documents. With all due respect, the Court
17 is not really persuaded by that small facet of the evidence
18 that is before me.

19 Let me ask you this, if I may, ladies and
20 gentlemen. And, I am just thinking about the construction
21 litigation continuum. And let me ask this of you, of
22 course, typically, and I don't know what the answer is going
23 to be here, because I am going to leave here again with this
24 retained under advisement in the not to distant future,
25 but, if summary judgment is granted, well then typically
26 that is appealable, but if it is not granted then generally

1 that is not appealable, I just wonder, do the parties on all
2 sides of this case wish to have an order that would have
3 some specificity even if it is not granted, so that the
4 appellate courts may take it up on cert and in the interim
5 before you spend the money further, which may be extensive
6 to have destructive testing and the discovery process, do
7 you want an answer on these very basic questions from an
8 appellate? What are the preferences of the parties on this?

9 MR. PARRISH: Your Honor, number one is yes, we
10 want a final opinion. This thing gives people --- even
11 myself tend to forget that technically the developer of the
12 entities in the GS are the plaintiff. This was filed as a
13 declaratory action, asking for specific rulings as to these
14 issues, which other than the secret intent of Mr. de
15 Guardiole, which we conceded. He may have had it, we don't
16 know, it was his secret intent. There are no illegal issues
17 here --- I mean no factual issues. These are all issues of
18 law based on these documents, the terms of which speak for
19 themselves. Everybody here, I think, seems to agree these are
20 legal issues. I heard nothing in response to your inquiry
21 about further discovery that would benefit. And like I say,
22 this is postured and before the Court --- It actually came
23 up on a 12(b)(6) based on the documents. What converted to
24 maybe summary judgment is some references to deposition
25 testimony, and a couple of other documents that were
26 introduced by the POA. But this is a DJ action, based on

1 the effect and legal ramifications of the disclaimer notices
2 that arise under undisputed facts. It is right at this time
3 for a ruling. And, I believe either party --- it will go up
4 on appeal. And I think it is time to have it for both this
5 case, and it may be beneficial for some other cases too. To
6 the extent that this issue has not been addressed, it is
7 time. Our Supreme Court has expressed some dissatisfaction,
8 and it keeps coming up in the context of the insurance
9 coverage cases.

10 THE COURT: It is a moving target.

11 MR. PARRISH: And maybe it is time for them to
12 help the bench and the bar understand these issues. But, it
13 is right, and it is appropriate, and we are definitely
14 requesting it, and that is why it got filed in the context.

15 THE COURT: I see. So, you filed as a DJ,
16 obviously now upon reflection so that this would go on up
17 and be resolved.

18 MR. PARRISH: The appeal is on the counterclaim.

19 THE COURT: All right. What do the Plaintiffs
20 say to that?

21 MR. MULLEN: I have a few comments that we
22 want to respond to what the gentleman offered earlier that
23 we were not heard on. As far as certifying it for an
24 immediate appeal type of argument, we have been waiting now
25 for about two and a half years since we have filed this
26 case. The homeowners desperately need to move forward and

1 want to move forward. I feel fairly confident on where I
2 believe the law is in these various issues. I feel very
3 confident on the issue of the exculpatory contract relating
4 to building code violations, relating to the contractor, to
5 the architect. I feel very confident on issues relating to
6 disclaimer warranties of the architect of the contract. I
7 certainly understand the arguments that Mr. Parrish has made
8 on the warranty of a seller, and a disclaimer of that. As a
9 matter of fact, I was sort of surprised that as he was
10 making his argument. I was wondering that maybe I wasn't
11 very articulate in what I was saying, because I thought I
12 expressed some concerns to this Court in candor that under
13 the Kirkman versus Parex case that you can disclaim the
14 warranty of inhabitability, and I certainly from what I read
15 in the transaction between Seaside Farms and Vista, they did
16 that. I thought I was being candid with the Court, and Mr.
17 Parrish indicated to you that I was being just the opposite
18 and didn't understand. I hope that is not the case.
19 Actually, I just wanted to tell you I have auspicated and
20 osculated. I hoped I didn't need one of those. I was
21 trying to be very direct and thorough in the various legal
22 issues that are out there. What I did not hear addressed by
23 either of these gentlemen was the issue of how this is not
24 an exculpatory contract of these issues which clearly show
25 they are to protect the building, protect the ultimate
26 homeowner of the building. One of the things that Mr.

1 Parrish said to you was this case was about a notice. And I
2 had raised a question in my direct argument to you, a notice
3 to what? So, you have a notice that sits out there and what
4 does that do? And what he told you was this was a notice -
5 -- this is a quote --- that we are not involved in the
6 construction. And then he went on to say, well maybe you
7 had to bring these buildings up to the new building code
8 when they were converted. That is not the law in the State.
9 The building code that is in effect is the one that was in
10 place when these buildings were permitted. Not when they
11 were built, not when they were converted, but when they were
12 permitted which was the '97 Standard Building Codes. And we
13 have never argued anything but that. The other thing we
14 have said about the standard building code is it defines
15 what is a commercial building? It defines what are
16 residential buildings? And it defines different classes for
17 residential buildings. Just because they were renting these
18 things out as apartments, and Vista made them into
19 condominiums and then sells them doesn't change the use
20 under these building codes. They are still multi-family
21 residential. Nowhere in this code when you see a
22 distinction on the type of property based on ownership,
23 whether it is wholly owned by rental property of Long Grove
24 at Seaside Farms, whether it was owned by a Vista, or now
25 owned by the individual homeowners, it makes no distinction
26 whatsoever in this code. The code just says they are multi-

1 family residential. For Mr. Parrish, for Long Grove at
2 Seaside Farms, take the position that we gave these
3 associations notice that we were not involved in the
4 construction that may be what they are attempting to do, but
5 it simply isn't true. The one thing and the only thing that
6 they responded to the exculpatory language and the building
7 code is now they said we don't have any obligation. And you
8 did ask a question, well is there a different standard if
9 there is horrific injury as opposed to where it is merely
10 ten million dollars of property damage? They couldn't give
11 you any.

12 Your Honor, the truth is, if what their position
13 is, is correct, what they say is correct, that we can build
14 buildings, and then without any defects being known, it is
15 not like --- And I don't know what would have happened here.
16 What if --- What if these ten million dollars of problems
17 were known when Vista bought it? And they had a list, a
18 thirty page document, or a fifty page document showing all
19 the problems that were out there with the building, and then
20 said, you are buying it as is. What they said real estate
21 is a condominium. We are going to sell you this building,
22 which is an apartment building, and you are then going to
23 convert it to condominiums. And we don't want to be
24 responsible for having built it as a developer. We don't
25 want to be responsible for our other entity Gulf Stream that
26 built it. We don't want to be responsible for what this

1 architect that designed it did. We don't want to be
2 responsible for what we did. Now, we are not telling you
3 that we didn't do anything wrong. Nobody is out here saying
4 that anything is wrong, but we don't want to be responsible
5 just in case. And it is not like we are going to pay you a
6 million dollars, ten million dollars, twenty million dollars
7 to buy some relief from potential exposure. It isn't any of
8 that. Let's just cover our eyes, and let's pretend like we
9 really didn't build it, is what Mr. Parrish just said. We
10 gave them notice that we are not involved in the
11 construction. The problem with this case is that what he
12 wished was the situation. He wished he wasn't involved in
13 the developing of this property. He wished Gulf Stream
14 wasn't involved in building it, and he wished the architect
15 that designed it, got it as is. They did. There are codes
16 that say this is the way you must build it. And they
17 violated it. The obligations that they had by statute, they
18 violated it. The obligations set forth by the industry,
19 they violated it. And the public has an interest to be
20 protected. Just as a hypothetical I gave you could very
21 well happen if Mr. Parrish is correct that they can say
22 after they built the project, oh, by the way now, we don't
23 know if anything is wrong there, but we are disclaiming all
24 liability for negligence. We are disclaiming all liability
25 for implied warranty just as if we really were never
26 involved, and y'all just take it and y'all just go on your

1 way. What happens? A tragedy occurs. What their answer is
2 today, you can go look at these converters and they can tell
3 you. Well, you know what the answer could be if they are
4 asking how can they protect themselves? Why don't they look
5 to reimburse them? That is what they want. Why should an
6 innocent homeowner -- Your Honor, that discussion of would
7 we like something that would be newly built, the answer is
8 no. We have been waiting two and a half years already. The
9 issue can go to the Supreme Court, by the time they get to
10 an opinion, they decide, there is a rehearing on it and
11 issue another hearing you can be another three years down
12 the road. We feel very confident on where our position is
13 from a legal standpoint. We would prefer the Court issue
14 the opinion on this summary judgment so that we can move
15 forward with discovery and get this case tried.

16 THE COURT: All right. Ladies and gentlemen,
17 let me just say in concluding these. One of the good things
18 in this case is I have very capable lawyers, smart, cogent
19 arguments today. I appreciate you distilling and
20 elucidating the various issues from your various
21 perspectives. The Court will retain this matter under
22 advisement, and sometime in the not to distant future we
23 will issue an order.

24 I am grateful for your arguments today. Thank you
25 for traveling. Some of you got up early to be here at the
26 start of the day. And that will conclude this hearing

1 unless there is something further you wish to say, Mr.
2 Parrish.

3 MR. PARRISH: Just in light of that, I think the
4 Court needs to be aware that we are not ready to go to trial
5 now. The POA has filed two brand new lawsuits. They filed
6 against all of the subcontractors. It was just recently
7 served, and they have also amended --- they filed another
8 lawsuit trying to step in as the assignees of the owners.
9 So, we have two brand new lawsuits on top of this one. So,
10 these issues are going to come right back up again. So,
11 once again, I think you need to be aware of that, because it
12 is not ready for trial yet.

13 THE COURT: All right. Very good. Thank you.
14 Then that concludes this hearing.

15 (Whereupon, this hearing was concluded at 12:08
16 p.m. on Monday, April 30, 2012.)

17 -- END OF TRANSCRIPT --

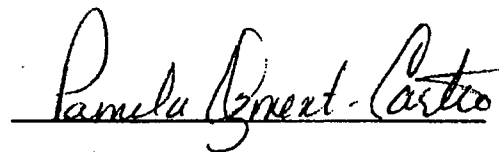
CERTIFICATE OF REPORTER

85

I, the undersigned, Pamela Ozment-Cartee, official Court Reporter for the Fourth Judicial Circuit of South Carolina, do hereby certify, that the foregoing is a true, accurate and complete Transcript of Record in the above captioned case, relative to appeal, in The Court of Common Pleas in Charleston County, South Carolina, on the 30th day of April 2012.

I do further certify that am neither, of kin, counsel, nor interest of any party hereto.

January 30, 2013

A handwritten signature in cursive script that reads "Pamela Ozment-Cartee". The signature is written in dark ink and is positioned above a horizontal line.

Pamela Ozment-Cartee
Circuit Court Reporter