Becky P. and Gregory T. Hildebrand
201 Blaine Lane
Lexington, SC 29072
803 356-3575

August 1, 2012

V. Claire Allen, Deputy Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RECEIVED
AUG 0 6 2012
SC Court of Appeals

Re: Ernest Alvin Timmons, et. Al. v. Neil O. Gifford, et. Al
#2010166447

Dear Ms. Allen:

Thank you for your assistance on the telephone regarding the above appeal and advising me that I could submit documentation in this matter directly to your office.

We are one of 27 lot owners in Fort Freemont Estates regarding a case that was heard before Judge Carmen T. Mullen in November 2009 concerning an easement dispute. Judge Mullen ruled against Mr. Timmons as stated in her Final Order Granting Judgment in Favor of the Defendants dated May 27, 2010, Case #2008-CP-07-3656. (Copy attached.)

Mr. Timmons filed an appeal with your office on July 9, 2010. In January 2011, Mr. Timmons attorney, James John Wegmann, received a letter from you stating that he must provide a transcript of the Beaufort County Case within 10 days or his appeal may be dismissed. Numerous extensions have been granted to him since that time. It is my understanding that Court Reporter, Priscilla Nay, was unable to produce the transcript of November 17, 2009 due to a computer failure. Verification of this could be obtained from Judge Mullen's Clerk, Beaufort County, PO Drawer 1128, Beaufort, SC 29902. To recreate the hearing would be impossible in that at least one of the Defendants passed away since that time. I am however submitting my response to the Complaint of the Plaintiffs dated October 20, 2008 which includes copies of all the documents submitted to Judge Mullen during the November 2009 hearing. It includes a copy of my Deed indicating use of a 10 foot easement that runs beside Mr. Timmons property as well as other documents of title and purchase. During the hearing it was also documented that Mr. Timmons Deed reflected a 10 foot pedestrian easement that was purchased by Mr. Wyman Wall on March 31, 1994 from Mr. Marvin Dukes, the original owner of Mr. Timmons property. Possibly this

documentation will assist you in determining the proceedings leading to Mr. Timmons' appeal to deny 27 lot owners access to a 10 foot pedestrian walkway.

Unfortunately, this has been going on now for over four years. It has also cost much time and money from individuals, court costs, attorney costs, etc. I would request that if the transcript of November 17, 2009 cannot be obtained or reproduced that the South Carolina Court of Appeals consider Mr. Timmons' appeal as dismissed and that Judge Mullen's ruling stand as ordered.

I appreciate your time and consideration in this matter. If there are any other documents that I may have which would be useful to your office, I will be happy to provide them. Since all the documents I am enclosing were previously provided to all parties concerned, I will provide copies of this request to all the other parties upon your advice.

Sincerely,

Becky P. Hildebrand

Enclosures: (1) Final Order: Judge Carmen T. Mullen, 5/27/10
(2) Answer to Compliant: Hildebrand, 10/30/08

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
Case Number: 2008-CP-07-3656

2010 MAY 27 PM 2:57
JEROLEAN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Ernest Alvin Timmons as Trustee of the Ernest A. Timmons Revocable Trust,

Plaintiff,

vs.

Neil O. Gifford, Amy E. Gifford, Johnny L. Brewer, Joseph Gray Peeples, Brian M. Hinson, Karen B. Hinson, George R. Dickey, H. Alvin Dobson, Jr., Kimberly A. Dobson, Gene G. Slice, Andrea C. Klucsarits, Becky P. Hildebrand, Gregory T. Hildebrand, Marsha Dean Ford, Harriet H. Ford, Lucas W. Durham, Marianne Durham, John D. Meyer, Meryl V. Truett, Christian W. Kern, Russel V. Schumpert, Carlton Mark Schumpert, Elizabeth O'Neal Schumpert, Russell C. Amick, Pamela S. Burnett, Mary Alice Broderick, Ellen N. Gifford, Robert M. McAlister, Barbara M. Vaughan, Margie J. Crews, Will Mills, Tracy Mills, BDM Investments, LLC, James P. Thomas, Lillian M. Thomas, J. Wyman Wall, III, Karl A. Overcash, Patsy V. Coppage, Steven M. Robison, Charles Schmid, Larry M. Bane, Renee C. Bane, Robert Gallina, Margaret E. Gallina, Bert Kerwin, Richard C. Guarneri, Maria Guarneri, and James P. Thomas; if any of these persons are living, and if not living, then the heirs, devisees or successors in title to them; and all persons unknown having or claiming to have any right, title, interest in, easement upon, or lien upon the real property described in the complaint herein being designated collectively as John Doe and Mary Roe; including all persons who may be deceased, minors, in the Armed Forces of the United States, Non Compos Mentis or under any other disability,

Defendants.

FINAL ORDER GRANTING JUDGMENT IN FAVOR OF THE DEFENDANTS

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SC Court of Appeals

This matter came before the Court for a trial on the merits on November 17, 2009, in Beaufort. The parties and counsel present were as follows:

1. The Plaintiff Ernest Timmons and his counsel, James J. Wegmann;
2. The Defendant George R. Dickey and his counsel, G. Hamlin O'Kelley, III;
3. The Defendant Karl A. Overcash and his counsel M. Anderson Griffith;
4. A.G. Solomons, Jr., counsel for the Defendants Neil O. Gifford, Amy E. Gifford, H. Alvin Dobson, Jr., Kimberly A. Dodson, Ellen N. Gifford, BDM Investments, LLC, Robert McAlister, J. Wyman Wall, III, and Barbara M. Vaughn;
5. Gregory T. Hildebrand and Becky P. Hildebrand, *pro se*;
6. Johnny L. Brewer, *pro se*;
7. Steven Robinson, *pro se;*
8. Russell Amick, *pro se*.

The remaining Defendants did not appear. Notice was provided to the Defendants prior to the hearing.

This case seeks a declaratory judgment pursuant to S.C. Code Ann. §15-53-10, *et seq.*, regarding a ten (10') foot, non-exclusive pedestrian easement providing access to the beach at Lands End on St. Helena Island. For the reasons stated herein, the Court finds that the easement more fully described below is an appurtenant easement; that the easement satisfies the requirements of an appurtenant easement as set forth in *Tupper v. Dorchester County*, 326 S.C., 318, 487 S.E.2d 187 (1997); and that the Defendants have the right to continue to use the easement for access to the beach at Lands End; and this Order shall be in favor of the Defendants.

PROCEDURAL HISTORY

Mr. Timmons filed this action on September 19, 2008, seeking a declaratory judgment to determine the scope of the easement more fully described herein. All of the Defendants were served, either personally or by publication pursuant to Court order. The Court appointed Karl D. Twenge as Guardian ad Litem. The following Defendants filed answers in the case:

1. Neil O. Gifford, Amy E. Gifford, H. Alvin Dobson, Jr., Kimberly A. Dodson, Ellen N. Gifford, BDM Investments, LLC, Robert McAlister, J. Wyman Wall, III, and Barbara M. Vaughn by their counsel A.G. Solomons, Jr.;
2. Karl A. Overcash by his counsel M. Anderson Griffith;
3. George R. Dickey by his counsel G. Hamlin O'Kelley, III;
4. Johnny Brewer, *pro se*;
5. Gregory T. Hildebrand and Becky P. Hildebrand, *pro se*;
6. Steven M. Robinson, *pro se*;
7. Mary Alice Broderick, *pro se*;
8. Russell C. Amick, *pro se*.

The remaining Defendants failed to file any answer. The Guardian ad Litem filed an Answer on behalf of John Doe and Mary Roe. The Honorable J. Earnest Kinard, Jr., Administrative Judge, assigned this case to this Court for a final hearing which occurred on November 17, 2009.

Interestingly, this is not the first case filed by Mr. Timmons regarding this easement. On January 29, 2003, in the case of *Timmons v. Wall*, Case No. 02-CP-07-1298, the Honorable Thomas Kemmerlin ruled that the easement in question in this case was a valid easement and that "obviously the lots could be subdivided so [the Court] could not assume that [Mr. Wall]

bought them only to have eight single family units use the easement." (Order, Jan. 9, 2003). This Order has not been appealed and is part of the law of the case.

FINDINGS OF FACT

This case arises out of a ten (10') foot, non-exclusive pedestrian easement providing access to the beach at Lands End on St. Helena Island. On March 23, 1994, in consideration in the amount of Ten Thousand ($10,000.00) Dollars, Mavin H. Dukes executed and delivered to J. Wyman Wall, III, his heirs and assigns, that certain Grant of Easement as follows:

> A non-exclusive pedestrian easement ten (10) feet in width running along the northern boundary of Lot 15 of the Bessie G. Sanders Subdivision, St. Helena Island, Beaufort Conty, South Carolina. Lot 15 is shown on a Plat prepared by David S. Youmans, Registered Surveyor of Beaufort Surveying, Inc., dated May 13, 1991, and recorded in the RMC Office for Beaufort County, South Carolina, in Plat Book 41 at Page 63.
>
> The purpose of said Easement **is to provide beach access for the Grantee, his heirs and assigns of lots 1 through 8 in Longwood Plantation, St. Helena Island, Beaufort County, South Carolina, as shown on a Plat thereof recorded in the RMC Office for Beaufort County, South Carolina in Plat Book 45 at Page 68.**

(Grant of Easement attached hereto)(emphasis added)(hereinafter the "easement"). Longwood Plantation is part of the Land Ends community on St. Helena Island. Lands End borders the Beaufort River near where it empties into Port Royal Sound.

There are no limitations in the grant of the easement excepting its width and its pedestrian quality. *Id.* The easement references a plat by David Youmans recorded in Plat Book 41 at Page 63 demonstrating the easement running along Lot 15 of the Bessie G. Sanders Subdivision on St. Helena Island. The easement is recorded in the Beaufort County Register of Deeds Office in Book 694 at Page 2338. This easement accompanied the sale of Lots 1 through 8 in Longwood Plantation to J. Wyman Wall, III, by the Dukes Real Estate Company as set forth in a deed

recorded in the Beaufort County Register of Deeds Office in Book 694 at Page 2334. (Warranty Deed). The easement provides access to the beach at Lands End for the lots conveyed to Mr. Wall by the Dukes Real Estate Company. Without this easement, the lots would not have pedestrian access to the beach.

In 1998, Earnest Timmons and Vera K. Timmons purchased Lots 14 and 15 of the Bessie G. Sanders Subdivision from Marvin Dukes by deed recorded in Book 1003 at Page 2407 in the Office of the Register of Deeds for Beaufort County. (Deed from Mr. Dukes to Mr. and Mrs. Timmons) The easement runs along Lot 15 purchased by Mr. Timmons. This is the same Lot 15 referenced in the Plat of David Youmans recorded in Plat Book 41 at Page 63 in the Office of the Register of Deeds for Beaufort County. The easement burdens Lot 15 as described in the Grant of Easement.

Mr. Timmons testified at trial that he took title to Lots 14 and 15 knowing of the existence of the easement at the time of the conveyance of Lots 14 and 15 to him. He further testified that he continued to own Lot 15 subject to the ten foot (10') pedestrian easement.

In 2008, Vera K. Timmons conveyed her interest in Lots 14 and 15 to Mr. Timmons by deed recorded in Book 2726 at Page 369 in the Office of the Register of Deeds for Beaufort County (Deed from Vera Timmons to Earnest Timmons). On June 13, 2008, Mr. Timmons conveyed the property to himself as Trustee of the Earnest A. Timmons Revocable Trust dated March 8, 2006, as demonstrated by that deed recorded in Book 2733 at Page 1042 in the Office of the Register of Deeds for Beaufort County (Deed from Earnest Timmons to Earnest Timmons, Trustee).

After purchasing Lots 1 through 8 at Longwood Plantation, J. Wyman Wall, III, subdivided Lots 1 through 4 into twenty-eight (28) lots as shown on a plate by David Gasque recorded in the Office of the Register of Deeds for Beaufort County in Book 65 at Page 119.

Mr. Wall also subdivided Lot 7 of Longwood Plantation into six lots as shown on a plat by David Gasque recorded in Plat Book 63 at Page 73.

As demonstrated at the trial of this case, there are several facts in this case agreed upon by all parties. There is no dispute that the Defendant J. Wyman Wall, III, subdivided the Lots at Longwood Plantation for sale to some of these Defendants. Further, there is no dispute that some of the original Lots at Longwood Plantation have been sold by J. Wyman Wall, III, to some of these Defendants or their predecessors in title. There is no dispute that the other Defendants are subsequent owners of either the original lots at Longwood Plantation or the owners of the subdivided lots at Longwood Plantation. There is no dispute that the Defendants are the subsequent owners of the original lots or subdivided lots as described in the Grant of Easement. (Plaintiff's Trial Exhibits 9-23(d)). Several of the Defendants can point to a specific reference or reiteration of the easement in the deeds transferring their respective lots to them. There is no dispute that the deeds into the Defendants George Dickey, J. Wyman Wall, III, Karl Overcash, Johnny Brewer and Steven M. Robinson contain an express reference or re-iteration of the easement. (Plaintiff's Trial Exhibits 22(a), 22(b), 17, 23(a), 23(b), 23(c), 12 and 14). Most importantly, all parties stipulated to the validity of the Grant of Easement and that Mr. Timmons took title knowing of the burden of the easement upon Lot 15.

Immediately prior to the Grant of Easement, Mr. Wall took title to Lots 1 through 8 of Longwood Plantation. (Deed, Plaintiffs' Trial Ex. 2). The Deed references a plat recorded in Plat Book 45 at Page 63. (Plat, Book 45, Page 63) This plat shows an access easement running

across the property acquired by Mr. Wall. (*Id.*) This access easement has been dedicated to Beaufort County as a road as demonstrated by that plat recorded in Plat Book 65 at Page 119 and is now known as "Fort Fremont Road". (Plaintiff's Trial Ex. 1). At the time, Mr. Wall received title to Lots 1 through 8 at Longwood Plantation, this access easement terminated on Mr. Wall's property. (Plaintiff's Trial Exhibit 7). This access easement now known as Fort Fremont Road is not the pedestrian easement at issue in this case; however, it becomes of import regarding the easement at issue as will be discussed below more fully. Fort Fremont Road is the current terminus for the easement at issue in this case. *Id.*

Mr. Timmons has asked that this Court determine whether or not the Defendants have an easement to cross Lot 15, whether the easement in question is an easement appurtenant or an easement in gross; whether or not an easement, if in gross, is transferable; and, if transferable, who are the owners; whether or not the easement has been overly burdened, and whether or not Mr. Timmons has a right to lock and gate the entrance to the easement. As set forth below more fully, as the Court has determined this is a valid, appurtenant easement, the Court need not address any of the remaining issues.

CONCLUSIONS OF LAW

This Court has been asked to determine whether or not the easement at issue in this case is valid and, if so, whether the easement is an easement appurtenant or an easement in gross. As the parties to this matter have stipulated as to the validity of the easement, the Court finds that the easement is a valid, enforceable easement. The question then becomes whether or not the easement is appurtenant or in gross.

The Court finds that the easement is an appurtenant easement based upon the language contained in the Grant of Easement, the facts, and the law applied. The grant and nature of an

easement is determined by the nature of the right and the intention of the parties creating the easement. *Smith v. Commissioners of Public Works*, 312 S.C. 460, 441 S.E.2d 331 (Ct. App. 1994). The Grant of Easement must be construed to carry out its intention as gathered from the language of the instrument creating the easement. *Id.* at 466, 411 S.E.2d 335; *Sandy Island Corp. v. Ragsdale*, 246 S.C. 414; 143 S.E.2d (1965); 23 Am.Jur.2d *Easements and Licenses* § 23 (1966). Courts should carry out the parties' intentions in easements unless that contravenes some well-settled rule of law or public policy. *Lighthouse Tennis Club Village Horizontal Property Regime LXVI v. South Island Pub. Serv. Dist*, 355 S.C. 529, 586 S.E.2d 146. (Ct. App. 2003). In this case, the intent of the parties is clearly set forth in the Grant of Easement. J. Wyman Wall, III, paid Marvin Dukes Ten Thousand and No/100 ($10,000.00) Dollars for the "**non-exclusive pedestrian easement ten (10) feet in width running along the northern boundary of Lot 15 ...to provide beach access for [Mr. Wall] his heirs and assigns of Lots 1 through 8 in Longwood Plantation.**" (Grant of Easement, emphasis added). The clear language of the Grant of Easement, stipulated to by the parties, and further acknowledged by the Plaintiff, can easily be used to determine the intent of the parties. The language of the easement conclusively establishes that Mr. Dukes and Mr. Wyman sought to create an open, non-exclusive, pedestrian easement for those persons owning Lots 1 through 8, and any heirs or assigns, to have access to the beach at Lands End. There are no words limiting the scope of the easement contained in the Grant of Easement.

That Lots 1 through 8 of Longwood Plantation have been subdivided is not controlling. Mr. Timmons urged this Court to make a determination that the subsequent subdivision of Lots 1 through 8 of Longwood Plantation creates an unreasonable burden on the easement. This case is almost directly on point with the case of *Smith v. Commissioners of Public Works*, 312 S.C. 460,

441 S.E.2d 331 (Ct. App. 1994). In *Smith*, the Smith family brought a declaratory judgment seeking to confirm their access easement to a canal. *Id.* at 462, 441 S.E.2d 333. The Smiths requested that the court declare they had every right to cross land belonging to the Commissioners of Public Works for the City of Charleston (the "CPW"). *Id.* Much like in this case, the Smiths and the CPW were grantees of a common predecessor in title, Benjamin Kitteredge. Both J. Wyman Wall, III, and Earnest Timmons were grantees of a common grantor, Marvin Dukes.

In *Smith*, the easement provided that "Kitteredge and all future owners of Dean Hall Plantation and Cypress Gardens shall have the right and the same is hereby granted to them, of ingress, egress and regress to the banks of and across the canal...." *Id.* at 463, 441 S.E.2d at 333. Prior to his death, Mr. Kitteredge deeded five hundred acres of his property to his trustees. *Id.* at 463, 441 S.E.2d 334. Of that five hundred acres, a little over seventy-one were deeded to the Smith family. *Id.* The Smiths desired to have their access to the canal confirmed. Much like Mr. Timmons, the CPW argued that the Smiths should have no easement due to the subdivision of the property and that there was alternate access via a boat landing. *Id.* at 464, 441 S.E.2d at 334. The CPW argued that the easement should have terminated. Mr. Timmons' argument is not that the easement should have terminated but that it should be considered to be an easement in gross to Mr. Wyman only.

The Master appointed to the *Smith* case found the easement agreement to be clear and unambiguous, confirming the easement to the Smiths as successor in title to Mr. Kitteredge as a "future owner of Dean Hall Plantation." *Id.* The CPW appealed and lost. The Court of Appeals affirmed the Master, with a few modifications. *Id.*

In its decision, the Court of Appeals confirmed there was an express grant of easement supporting the conclusion that the agreement established an unambiguous appurtenant easement. *Id* at 467, 441 S.E.2d 336. The easement in *Smith* was for all "future owners" and bound the successors to Mr. Kitteredge. It was clear from the language that Mr. Kitteredge intended to have the easement attach to the land and to attribute alienability to the easement. *Id.* The easement in this case has similar language. This easement, too, was to be alienable as Mr. Dukes granted the easement to Mr. Wall, his heirs and assigns. (Plaintiff's Trial Ex. 8). The purpose of the easement in this case is to provide beach access to Mr. Wall, his heirs and assigns of Lots 1 through 8 at Longwood Plantation. *Id.* Much like access to the canal in *Smith*, the easement in this case provides access to the beach for all of the "heirs and assigns" of Mr. Wyman and those who own Lots 1 through 8 in Longwood. The intent of the parties demonstrated by the grant of easement was for an appurtenant easement to provide beach access. As easements in gross are not favored by the courts, an easement will never be presumed personal when it may fairly be construed as appurtenant. *Smith, supra* (*citing* 25 Am.Jur.2d *Easement and License* § 13 (1966)). The clear, unambiguous language of the easement in this case indicates that the parties intended this easement is appurtenant.

At trial, Mr. Timmons argued that some of the parties to this case should be barred from using the easement as there is no express grant of easement in their deeds. This is an argument without merit. In *Smith*, the Court of Appeals went so far as to state that there is "no merit" in the CPW's contention that significance should have been placed on the failure of the Smiths' deed to mention the easement from Mr. Kitteredge's trustees. *Smith, id.* at 467, 441 S.E.2d at 336. The absence of mention of the easement is not relevant. *Id.* As easement runs with the land of the dominant estate even if the conveyance of the dominant estate does not mention it.

Id. at 468; 441 S.E.2d at 336; *Carolina Land Co. v. Bland*, 265 S.C. 98, 217 S.E.2d 16 (1975). In this case, the language of the Defendants' deeds transfers are right, title and interest of the grantors. As the grantor – Mr. Wall – had the right to the easement, such right passed with each subsequent deed. Additionally, a change of ownership or transfer due a subdivision of lots does not void the easement. *Smith*, *id.* at 466, 441 S.E.2d at 335; *Steele v. Williams*, 204 S.C. 124, 28 S.E.2d 644 (1944)(subdivision or change in name of the development does not void easement). The Defendants in this case should be allowed to use the easement accordingly.

The Court must find that this easement is appurtenant. The easement satisfies the test for the determining if an easement is appurtenant or in gross. *Tupper v. Dorchester County*, 326 S.C. 318, 487 S.E2.d 187 (1997). In *Tupper*, the Supreme Court established the following five factors to determine if an easement is appurtenant:

a. The easement inheres in the land;

b. Concerns the premises;

c. Has one terminus on the land of the party claiming it;

d. Is essentially necessary to the enjoyment thereof; and

e. Passes with the dominant estate.

Tupper, *id* (*citing Smith, supra*).

Looking at the easement in question and the facts of the case, the easement satisfies these requirements as follows:

a. The easement inheres across the northern boundary of Lot 15 as stated in the Grant of the Easement and as set forth in Mr. Timmons deed and as acknowledged by Mr. Timmons;

b. The easement concerns the premises, being both Lot 15 and Lots 1 through 8 at Longwood Plantation and which easement was to provide a pedestrian access to the beach;

c. The easement terminated on the land of the party claiming it, that land being Lot 1 at Longwood Plantation owned by J. Wyman Wall, III, as set forth in the Plat recorded in Book 45 at Page 68 in the Office of the Register of Deeds for Beaufort County. This Lot contained the terminus of the easement, which terminated on that certain access easement now called Fort Fremont Road. (Plaintiff's Trail Exhibits 2 and 7). The terminus was clearly on land of the party claiming the easement as shown on the plat.

d. The easement is necessary for the enjoyment of the properties by providing pedestrian access to the beach and which access was paid for with a premium by Mr. Wall and which added to the value of the amounts paid by the Defendants for their lots.

e. The easement passes by conveyance with the dominant estate which is clearly demonstrated by the Grant of Easement in that it states that the easement would be to Mr. Wall, his heirs and assigns. The deeds to George Dickey, J. Wyman Wall, III, Karl A. Overcash, Johnny L. Brewer and Steven L. Robinson all contain specific reference to the easement indicating not only the desire for the easement to pass with the dominant estate but that it actually did pass with the dominant estate. (Plaintiff's Trial Exhibits 22(a), 22(b), 17, 23(a), 23(b), 23(c), 12 and 14).

Based upon the language of the easement, it is clear that the intent of the parties was to create an appurtenant easement that would satisfy these factors. Were it to have been otherwise, then the deeds from Mr. Wall to several of the Defendants would not have contained the language of the easement.

CONCLUSION

Based upon the foregoing, the Court finds and orders as follows:

1. The Grant of Easement is a valid, enforceable easement and the ten (10') foot pedestrian access easement in favor of the Defendants is confirmed as set forth in the Grant of Easement recorded in the Office of the Register of Deeds for Beaufort County in Book 694 at Page 2338 being that certain ten (10') foot pedestrian access easement running along the northern boundary of Lot 15 of the Bessie G. Sanders Subdivision, St. Helena Island, South Carolina, as shown on that Plat prepared by David S. Youmans dated May 13, 1991, and recorded in Plat Book 41 at Page 63 in the Office of the Register Deeds for Beaufort County.
2. There are no words restricting the scope or use of the ten (10') foot pedestrian access easement providing access to the beach at Lands End.
3. The Grant of Easement is an easement appurtenant for the use of the heirs and assigns of J. Wyman Wall, III, those being any and all persons who have purchased Lots 1 through 8 at Longwood Plantation, as may have been subsequently subdivided, as shown on that Plat recorded in the Register of Deeds Office for Beaufort County in Plat Book 45 at Page 68.
4. As this is an appurtenant easement without any limitations restricting the scope or use in the Grant of Easement, the Court need not determine the remaining issues that Mr. Timmons seeks to have this Court rule upon as set forth in his Complaint.
5. The Defendants, their heirs, successors, and assigns, have the right to use the non-exclusive pedestrian easement ten (10) feet in width running along the northern boundary

of Lot 15 as owned by Mr. Timmons and as shown on the Plant of David S. Youmans dated May 13, 1991, and recorded in the Register of Deeds Office for Beaufort County in Plat Book 41 at Page 63.

6. This appurtenant easement cannot be gated nor can access to the easement be restricted by Mr. Timmons, his heirs, successors or assigns, and

AND IT IS SO ORDERED!

Beaufort, South Carolina
5-27, 2010

The Honorable Carmen T. Mullen
Presiding Judge

COPY 10/30/

Becky P. and Gregory T. Hildebrand
201 Blaine Lane
Lexington SC 29072
803/356-3575

Elizabeth M. Smith
Clerk of Court
Beaufort County
102 Ribaut Road
PO Drawer 1128
Beaufort, SC 29902

RE: Timmons Estate v. Gifford, Brewer, Hildebrand, et al
Regarding 27th Ownership in Fort Freemont Estates
Case No. 08-CP-07-03656 Filed 9/19/08

Dear Ms. Smith:

In response to the Complaint of the Plaintiffs, we, Becky P. and Gregory T. Hildebrand, wish to answer jointly, being joint owners of Lot 9, Fort Freemont Estates, a/k/a Fort Freemont Subdivision, PB 65 PGS1653119 as of July 22, 1998.

If I have inadvertently left out any information required by the court, please let me know.

Regards,

Becky P. Hildebrand

Home # 803/356-3575
Cell # 803/606-1926
Work # 803/996-3765

TOWN OF Lexington BUILDING PARTNERSHIPS SC

Becky P. Hildebrand
Municipal Clerk

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bhildebrand@lexsc.com

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	Case #08 – CP-07-03656
COUNTY OF BEAUFORT	)	
	)	
ERNEST ALVIN TIMMONS AS TRUSTEE OF THE ERNEST A TIMMONS REVOCABLE TRUST	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	ANSWER
	)	(Declaratory Judgment)
NEIL O GIFFORD, AMY E GIFFORD, JOHNNY L BREWER, JOSEPH GRAY PEEPLES, BRIAN M HINSON, KAREN B HINSON, GEORGE R DICKEY, H ALVIN DOBSON JR, KIMPERLY A DOBSON, GENE G SLICE, ANDREA C KLUCSARITS, BECKY P HILDEBRAND GREGORY T HILDEBRAND, MARSHA DEAN FORD, HARRIET H FORD, LUCAS W DURHAM, MARIANNE DURHAM, JOHN D MEYER, MERYL V TRUETT, CHRISTIAN W KERN, RUSSELL V SCHUMPERT, CARLTON MARK SCHUMPERT, ELIZABETH O'NEAL SCHUMPERT, RUSSELL C AMICK, PAMELA S BURNETT, MARY ALICE BRODERICK, ELLEN N GIFFORD, ROBERT M MCALISTER, BARBARA M VAUGHAN, MARGIE J CREWS, WILL MILLS, TRACY MILLS BDM INVESTMENTS LLC, JAMES P THOMAS, LILLIAN M THOMAS, J WYMAN WALL III, KARL A OVERCASH, PATSY V COPPAGE, STEVEN M ROBISON, CHARLES SCHMID, LARRY M BANE, RENEE C BANE, ROBERT GALLINA, MARGARET E GALLINA, BERT KERWIN, RICHARD C GUARNERI, MARIA GUARNERI, AND JAMES P THOMAS; IF ANY OF THESE PERSONS ARE LIVING, AND IF NOT LIVING, THEN THE HEIRS, DEVISEES OR SUCESSORS IN TITLE TO THEM; AND ALL PERSONS UNKNOWN	)	(Non-jury)

HAVING OR CLAIMING TO HAVE ANY)
RIGHT, TITLE, INTEREST IN,)
EASEMETN UPON, OR LIEN UPON THE)
REAL PROPERTY DESCRIBED IN THE)
COMPLAINT HEREIN BEING)
DESIGNATED COLLECTIVELY AS)
JOHN DOE AND MARY ROE;)
INCLUDING ALL PERSONS WHO MAY)
BE DECEASED, MINORS, IN THE)
ARMED FORCES OF THE UNITED)
STATES, NON COMPOS MENTIS OR)
UNDER ANY OTHER DISABILITY,)
)
Defendants)
)

The Defendants, Becky P. Hildebrand and Gregory T. Hildebrand, as joint owners of Lot 9 Fort Freemont Estates, wish to jointly provide Answer to the Plaintiffs Complaint as follows:

#1. - #25: List all individual lot owners of Fort Freemont and Longwood Plantation. We have no response. The public land records speak for themselves.

#26 - #32: List owners of parcels A-1 through B-3 of Longwood Plantation of which we have no knowledge, unless it was previously named such prior to being named Fort Freemont at the time of the subdivision into 27 lots. Respondents are without sufficient information to answer these claims and therefore would deny same.

#33: No response required.

#34: No response. Denied.

#35: No knowledge of Longwood Plantation, therefore denied.

#36: The 10 foot easement was represented by Morrison Forestry and Real Estate Company, currently owned by Beverly Morrison of Estill, SC, the acting sales agent for J. Wyman Wall, III, as an access for all 27 lot owners in Fort Freemont as demonstrated in the flyer/brochure presented to each prospective buyer (See Exhibit A) along with access to a second easement and lot commonly referred to as the community dock lot (Shown in Exhibit A), and, a copy of

the Restrictive Covenants for the neighborhood. (See Exhibit B).

#37: No response.

#38: Your Exhibit B as presented does not show either the community dock lot or the 10 foot easement as described by Morrison Real Estate. Paragraph denied.

#39: No knowledge of Longwood Plantation. Paragraph denied.

#40: Denied. We can only attest to 27 lots as described by Morrison Real Estate that makes up Fort Freemont Estate.

#41: Grantor for our transaction on Lot 9 was J. Wyman Wall, III as described in Exhibit C (1998) and Exhibit D (1999), our recorded Title to Real Estate and Exhibit D, Contract of Sale. Defendant is without sufficient information to answer this paragraph and would therefore deny same.

#42: Denied. The plain language of the sales flyer/brochure presented to us by Beverly Morrison of Morrison Real Estate and the corrected deed from J. Wyman Wall, III, shows documented intent to convey 1/27th interest and ownership in the community dock lot and a 10 foot easement in order for the 27 residents to have access to the beach area at the Beaufort River from each end of the subdivision. We have personally used the pedestrian easement for the ten years we have owned Lot 9 as a walk path to the common beach area.

#43: Denied. As referenced in #42, the 27 lots n/k/a Fort Freemont Estates, were sold and represented through documentation with a 1/27th ownership and right to use both common accesses including the 10 foot easement referenced, but not owned by the Plaintiffs.

#44: As referenced in #42, we can only speak to our personal use of the 10 foot easement which runs next to the Plaintiff's house. We have used the access on several occasions and on several of those occasions we had conversations with the Plaintiffs having knowledge of them from our permanent residences in the Lexington, SC area. We do not own a golf cart or 4-

wheeler and take offense as being named with Defendants that may have violated the intent of the easement access as a pedestrian walkway. We also took offense to arriving one weekend to find a gated fence constructed across the entrance of the walkway. We did not enter the easement on that occasion until we could determine why such a fence was constructed on our 1/27th interest without our knowledge. We further take offense to the proceedings that intend to block our deeded access when the Plaintiff takes privilege to use the community dock lot at the opposite end of the subdivision to which they have no deeded interest in that their property is not part of Fort Freemont Estates.

#45 - #46: No response regarding ownership of Fort Fremont Road or Lands End Road.

#47 -#48: Lots 1 – 7 are also separated from the community dock lot by Fort Freemont Road.

#49 - #50: Defendant is without sufficient information to make the legal conclusion stated in this paragraph and would therefore deny same.

#51: Denied. As the belief presented to us at closing of our Lot 9, 27 lots do not create an overburden on a 10 foot walkway easement which could be compared to many public easements along the South Carolina coast. Therefore, it is what "the parties" originally contemplated as it relates to 27 lot owners. Fort Freemont currently has approximately seven homes built. The remaining lots, including our Lot 9, do not have structures yet and owners only occasionally visit their properties based upon our information and belief.

#52: Defendant is without sufficient information to make the legal conclusion stated in this paragraph and would therefore deny same.

#53: Unless heretofore admitted, each and every claim made in paragraphs 1 – 50 is denied.

#54: Denied. (a) As the joint owners of Lot 9, we have an easement right to cross the 10 foot easement as previously documented, not to cross the Plaintiffs residential lot or any other

Defendants property.

(b) Denied.

(c) Denied.

(d) Denied.

(e) Denied. The intent of the easement was represented to use as such that 27 lot owners in Fort Freemont Estates would have a walkway access at the 10 foot easement which in our belief does not represent an overburden beyond the intention as described to us in 1998.

(f) Denied. As 1/27th owners we do not agree that the Plaintiffs have the right to lock the easement access. The Plaintiffs constructed a fence gate that was not in keeping with the intent of access, but as 1/27th owners we have no objection to the white fence gate remaining without a lock. In comparison, the community dock lot did require a lock and gate due to damage being caused to the dock which is owned by the 27 lot owners in Fort Freemont. Repairs on several occasions have been paid for by the 27 lot owners.

PRAYER

WHEREFORE, we, representing only ourselves as the joint owners of Lot 9, respectfully pray that the Court will grant the following:

1. If the original intent to allow access to the 27 lot owners in Fort Freemont cannot be established, we request that we, as owners of Lot 9 only, be allowed the pedestrian access to the 10 foot easement that runs along the side of the Plaintiff's property, not on their residential lot, as promised to us at the time of the sale, which we in good faith believed to be the intent without causing overburden to any property owner in the area.

2. To not allow the easement to be extinguished and allow it to be transferable to the owners of Lot 9 and remain transferable with any future sale of Lot 9.

3. To allow the continuation of Mr. Wall's easement to nine (9) lots, specifically Lots 1 – 9 if it cannot be otherwise determined to allow the original access as promised to 27 lot owners and their heirs.
4. To deny an injunction against any Defendants of the 27 Fort Freemont lot owners.
5. To deny an injunction against any Defendants of the 27 Fort Freemont lot owners as long as the pedestrian walkway is accessible and maintained by the lot owners as originally agreed and access is allowed via pedestrian traffic on foot only.
6. To allow the Plaintiffs to leave the fence gate in place as constructed to match the fence in the front of their home, but deny the Plaintiffs the right to lock the gate thereby denying access, which is in violation of their non-ownership.
7. For consideration of the Court to uphold the intent which was represented to us as joint owners of Lot 9 and allow access to the 10 foot easement located beside the Plaintiffs property.
8. For an injunction against the Plaintiffs to cease and desist representation that they own the 10 foot easement located next to their property.

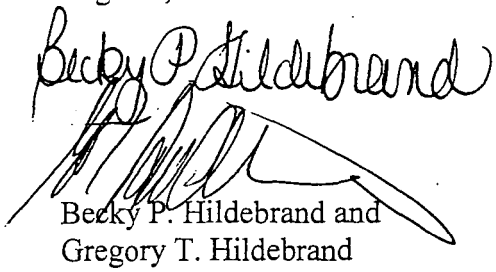
It has always been our intent to be good neighbors and we look forward to building a home on Lot 9 in the future. As with many South Carolina coastal areas, everyone cannot afford the luxury of building a home on the waterfront and community accesses allow many to enjoy the amenities of the pubic oceans and rivers that they might not otherwise have close access.

As we have stated, we can only speak for ourselves and not for the other 26 lot owners. We in good faith hired an attorney to represent us in the sale and closing of Lot 9, we had a very agreeable sale with Ms. Morrison; and we have talked to Mr. Wall on several occasions by telephone. In the past ten years since we purchased Lot 9, we have maintained a good

relationship with other lot owners and we are continuing to work together to preserve the value of our lot purchase and have what we all hope to enjoy, a home near the Beaufort River with access to a beach and a dock.

Your consideration in this matter is greatly appreciated. We can only attempt to answer what we know, what we were told and what we have documentation of from our lot purchase.

Regards,



Becky P. Hildebrand and
Gregory T. Hildebrand

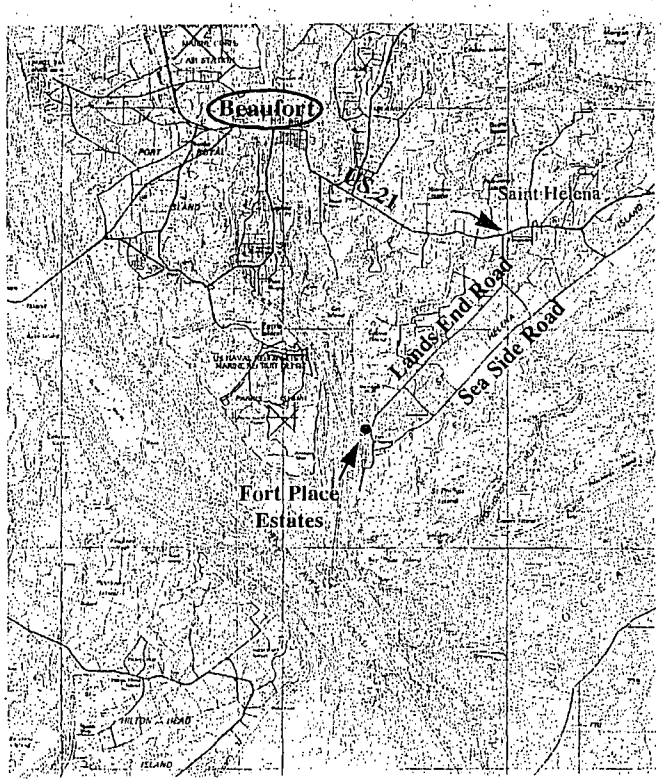
Dated this 30th day of October, 2008.

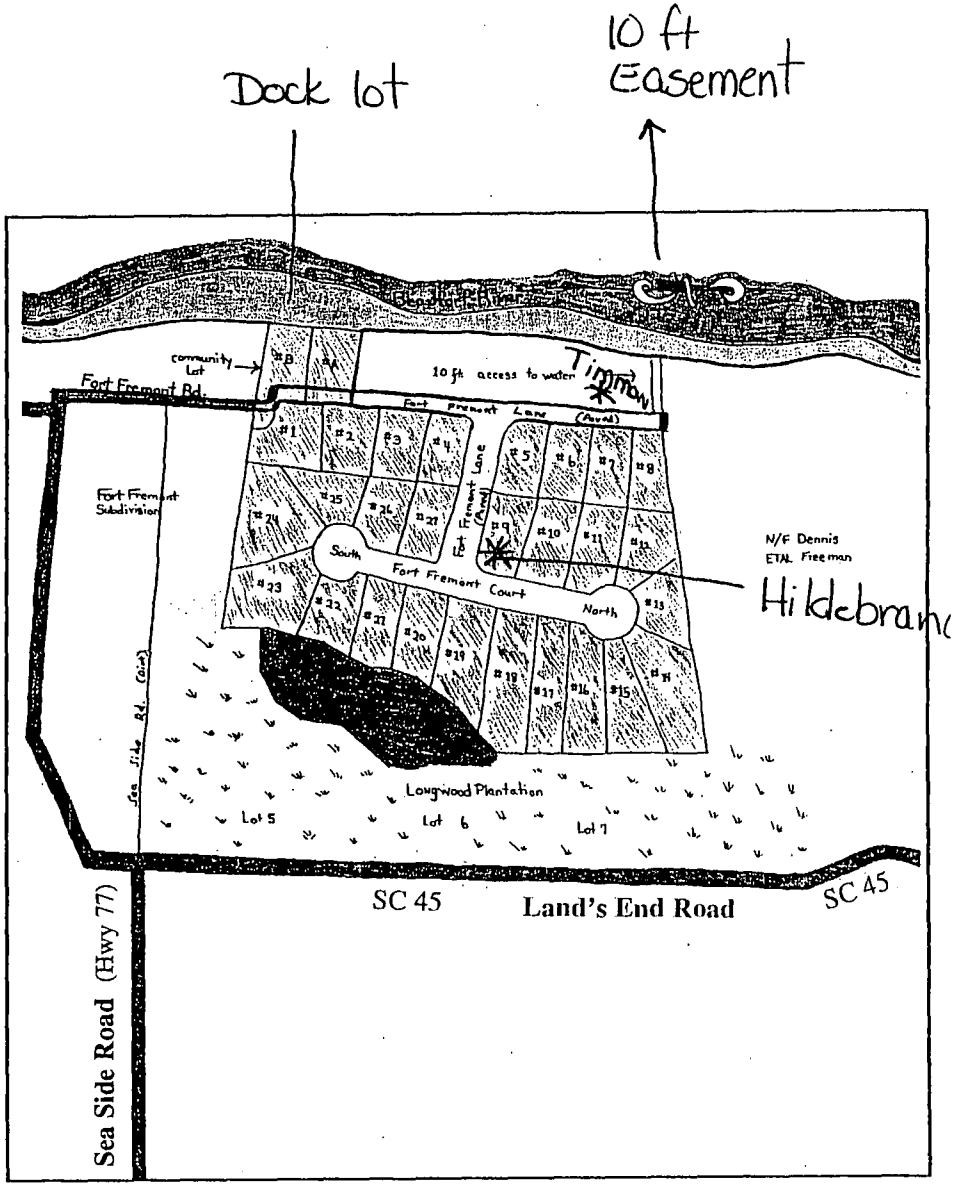
Cc: Mr. James J. Wegmann, Weider and Wegmann Lawyers, LLC
Ms. Beverly Morrision, Morrison Real Estate
Mr. J. Wyman Wall, III

EXHIBIT A

FORT PLACE ESTATES

- On the Intracoastal Waterway
- Easy Water Access and Private Community Water Front Lot and nice sand beach
- Convenient to Historic Downtown Beaufort
- Outstanding Panoramic View
- Affordable Lots (Starting at $25,000)
- Gazebo Overlooking River
- Property Overlooking Hilton Head island and Port Royal Sound
- Paved Roads





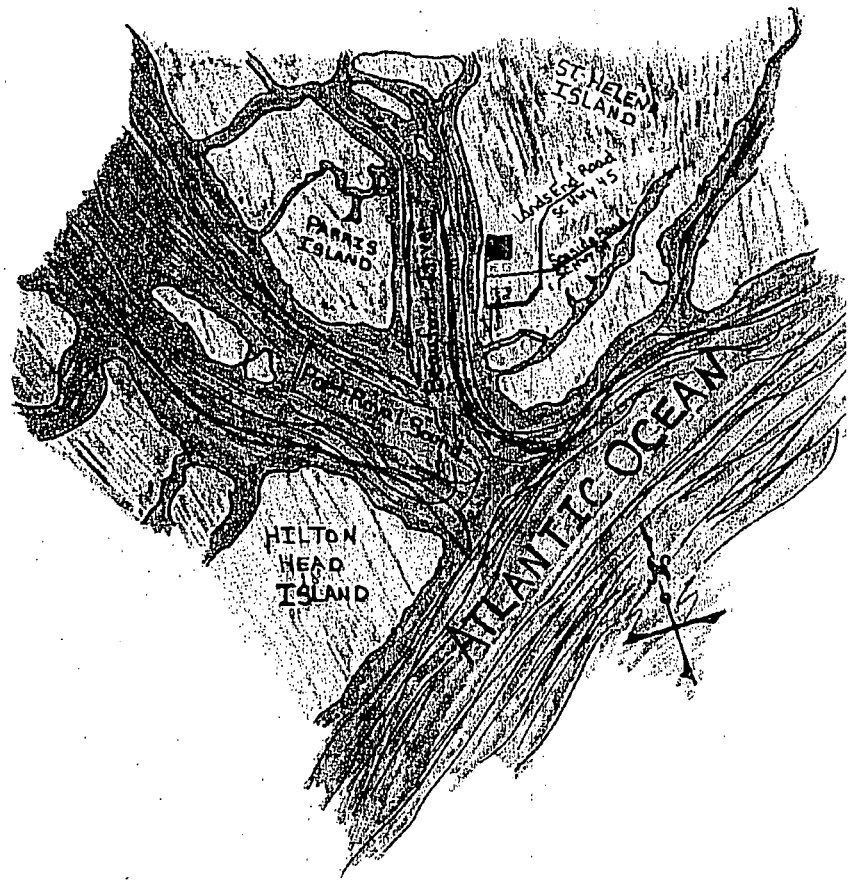
Offered By:

MORRISON FORESTRY AND REAL ESTATE COMPANY

Phone: (803) 625-2757
Fax: (803) 625-3911
Estill, South Carolina

Timber & Land
Sales, Management & Appraisal

FORT PLACE ESTATES
LOTS FOR SALE



STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

RESTRICTIVE COVENANTS

J. J. Wyman Wall, III, being the owner in fee simple of the property shown and designated on a Plat thereof prepared by David E. Gasque, R.L.S., dated May 15, 1996, entitled "Plat Showing Fort Place Estates prepared for Wyman Walls Fort Fremont", St. Helena Island, Beaufort County, South Carolina, containing 27 lots, which said Plat is incorporated by reference herein and made a part hereof; being desirous of spreading upon the public records certain restrictive covenants in connection therewith, in consideration of the premises and of the benefits to be desired by me therefrom, **HEREBY COVENANTS AND AGREES**, as follows:

These covenants are to run with the land and shall be binding on all parties and all persons claiming under them until midnight of September 22, 2005, at which time said covenants shall be automatically extended for successive periods of ten (10) years unless by vote of a majority of the then owner or owners of each lot agree to change said covenants in whole or in part. The owner or owners of each lot or parcel therein at the time of said vote shall have one (1) vote per lot. The owner or owners of fourteen (14) lots shall constitute a majority.

If the parties hereto, or any of them or their heirs or assigns, shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person or persons owning any real property situate in said development or subdivision to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant and either to prevent him or them from so doing or to recover damages for such violation.

Invalidation of any one of these covenants by judgment or Court Order shall in no wise affect any of the other provisions which shall remain in full force and effect.

The following are the covenants and conditions referred to hereinabove and to which the tract of land hereinabove described is subject, to-wit:

(a) All lots in the subdivision shall be known and described as residential lots and shall be used for residential purposes only. No structures shall be erected, altered, placed or permitted to remain on any lot other than

B

one detached single family dwelling not to exceed two and one-half (2 ½) stories in height with a private garage and storage and out-buildings incidental to residential use.

(b) No slab on grade houses shall be placed on any lot.

(c) Each lot shall be subject to the setback lines as shown and designated on the Plat hereinabove referenced.

(d) The ground flow area of this main structure, exclusive of open porches and attached garages shall be not less than One Thousand One Hundred (1,100) square feet.

(e) No chain link fences shall be placed on any lot.

(f) No Mobile homes shall be erected, altered, placed or permitted on any lot.

(g) No pre-built homes shall be erected, altered, placed or permitted on any lot except pre-built homes that are approved in writing by J. Wyman Wall, III.

(h) No noxious or offensive trade or activity shall be carried on upon any lot nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood.

(i) No cows, swine, livestock or poultry shall be permitted to be kept upon said property.

(j) Pets shall be allowed on said property provided the same are not allowed to become a nuisance.

(k) No trailer, tent, shack, garage, barn or other outbuilding erected on a lot shall be at any time be used as a residence temporarily or permanently, nor shall any structure of a temporary character be used as a residence.

(l) No lot shall be used or maintained as a dumping ground for rubbish, garbage, trash or other waste, and all waste and garbage shall be kept in sanitary containers. No junked or inoperative vehicle shall be placed or kept on any lot.

(m) No sign of any kind shall be displayed to public view on any lot except professionally made signs advertising the property for sale or rent, or

B

(n) J. Wyman Wall, III reserves the right to grant easements for water, sewer, gas, electricity, telephone, and any other utility easements that may be necessary for the orderly and efficient development of the property.

(o) The covenants and conditions created and established herein may be waived, charged, cancelled, modified and/or terminated as to the whole of the subdivision or any portion thereof with the written consent of the owner of a majority of the owner or owners of the lots in the subdivision. The owner or owners of fourteen (14) lots shall constitute a majority and the owner or owners of each lot therein at the time of said vote shall have one (1) vote per lot.

I, the said J. Wyman Wall, III, hereby bind my Heirs, Personal Representative and Assigns, firmly by these presents.

IN WITNESS WHEREOF, I, J. Wyman Wall, III, have hereunto set my Hand and Seal this 22nd day of September, 1997.

SIGNED, SEALED AND EXECUTED
IN THE PRESENCE OF:

Shirley W. Robinson

Joanni A. Long

J. Wyman Wall

J. Wyman Wall, III

STATE OF SOUTH CAROLINA)
)
COUNTY OF ALLENDALE)

AFFIDAVIT OR PROBATE

PERSONALLY APPEARED before me Shirley W. Robinson and made oath that (s)he saw the within named J. WYMAN WALL, III, sign, seal and as HIS Act and Deed, deliver the within written RESTRICTIVE COVENANTS and that (s)he with Joanni A. Long witnessed the execution thereof.

SWORN to before me this 22nd day of September, 1997.

Joanni A. Long
Notary Public for South Carolina
My Commission Expires: 10-28-01

Shirley W. Robinson

EXHIBIT C

1998

36929

BEAUFORT COUNTY, S.C.
RECORDING FEES COLLECTED
TRANSFER FEES $ 0
COUNTY $ 330 STATE $ 780

Rec'd BP
6 02
1882

STATE OF SOUTH CAROLINA)
) TITLE TO REAL ESTATE
COUNTY OF BEAUFORT)

KNOW ALL MEN BY THESE PRESENTS, That I, J. WYMAN WALL, III in the State aforesaid for and in consideration of the sum of Thirty Thousand and no/100 ($30,000.00) Dollar paid by BECKY P. HILDEBRAND and GREGORY T. HILDEBRAND, in the State aforesaid, County of Beaufort the receipt whereof is hereby acknowledged, have granted, bargain, sold and released, by these presents do grant, bargain, sell and release unto the said BECKY P. HILDEBRAND and GREGORY T. HILDEBRAND, during their joint lives and upon the death of either of them, then to the survivor of them, his or her heirs and assigns forever, in fee simple, together with every contingent, remainder and right of reversion, their heirs and assigns, the following described property, to-wit:

Lot #9, Fort Place Estates, St. Helena Island, Beaufort County, South Carolina, more particularly described in Exhibit "A" attached.

TM #300-035-0128, 0129, 0130 and 0131

GRANTEE'S ADDRESS: Becky P. Hildebrand & Gregory T. Hildebrand
201 Blane Lane
Lexington, SC 29072

Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

To Have and to Hold all and singular the premises before mentioned unto the said BECKY P. HILDEBRAND and GREGORY T. HILDEBRAND, during their

* R300-35-186-0

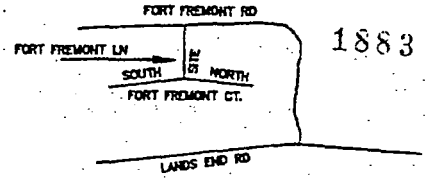
7/98

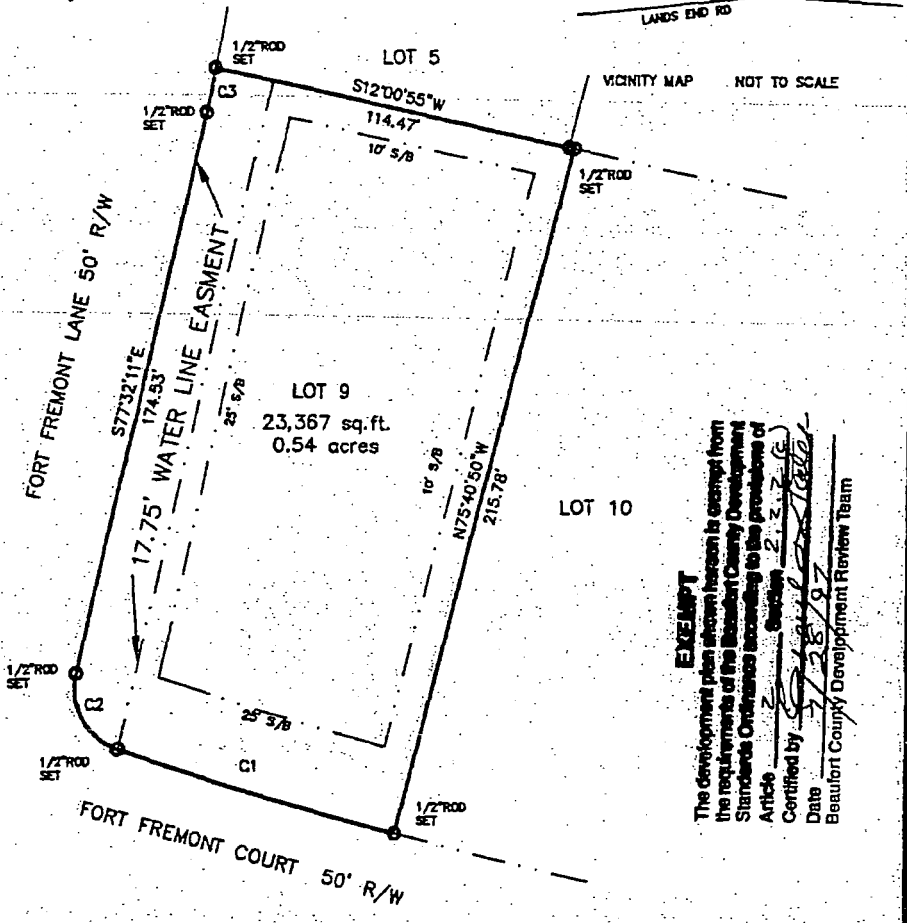
C

1883

GASQUE & ASSOCIATES INC.
LAND SURVEYORS & PLANNERS

703 BLADEN STREET, BEAUFORT, S.C.
P.O. BOX 1383, BEAUFORT, S.C.
PHONE (803) 522-1788





EXEMPT
The development plan shown hereon is exempt from the requirements of the Beaufort County Development Standards Ordinance according to the provisions of Article 2, Section 2.2.7.C
Certified by _____
Date 4/28/97
Beaufort County Development Review Team

CURVE	RADIUS	LENGTH	TANGENT	CHORD	BEARING	DELTA
C1	975.00'	89.56'	44.81'	89.52'	N16°35'28"E	05°15'46"
C2	20.00'	29.17'	17.87'	26.65'	S60°41'12"W	83°33'24"
C3	225.00'	13.93'	6.97'	13.93'	S78°18'39"E	03°32'52"

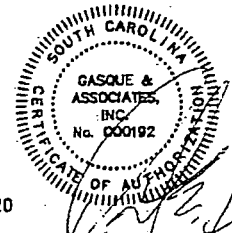
BOUNDARY SURVEY PREPARED FOR

GREGORY HILDEBRAND

BEING LOT 9 FORT PLASE EASTATES AS SHOWN ON A PLAT BY DAVID E. GASQUE DATED 08/14/96 REVISED 06/05/98 RECORDED IN PLAT BOOK 65 PAGE 53 BEAUFORT COUNTY R.M.C. OFFICE
LOCATED ON ST. HELENA ISLAND, BEAUFORT COUNTY S.C.
ST. HELENA TAX MAP 300-035-0128 (PORTION)
THIS PROPERTY LIES IN FLOOD ZONE "C" AS DETERMINED BY F.E.M.A. FIRM COMM-PANEL NUMBER 450025 0125 D. DATED 09/29/86 (INDEX DATE 11/04/92)

THE UNDERSIGNED DOES NOT CERTIFY THAT THE PROPERTY SHOWN HEREON COMPLIES WITH THE BEAUFORT COUNTY DEVELOPMENT STANDARDS ORDINANCE

I, DAVID E. GASQUE, HEREBY CERTIFY TO GREGORY HILDEBRAND THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MINIMUM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS A SURVEY AS SPECIFIED THEREIN. ALSO THERE ARE NO ENCROACHMENTS OR PROJECTIONS OTHER THAN SHOWN. THIS SURVEY IS NOT VALID UNLESS IT BEARS THE ORIGINAL SIGNATURE AND HAS AN EMBOSSED SEAL. AREA DETERMINED BY COORDINATE METHOD.



40 20 0 40 80 120

SCALE 1"=40' SCALE IN FEET DATE 06/18/98

DAVID E. GASQUE, R.L.S. S.C. REGISTRATION NUMBER 10606

JOB# 11750F DES# 3

C

joint lives and upon the death of either of them, then to the survivor of them, his or her heirs and assigns forever, in fee simple, together with every contingent, remainder and right of reversion, their heirs and assigns, forever.

And I do hereby bind myself and my heirs, executors, and administrators, to warrant and forever defend all and singular the said premises unto the said BECKY P. HILDEBRAND and GREGORY T. HILDEBRAND, during their joint lives and upon the death of either of them, then to the survivor of them, his or her heirs and assigns forever, in fee simple, together with every contingent, remainder and right of reversion, their heirs and assigns, against me and my heirs and against every person whomsoever lawfully claiming, or to claim the same or any part thereof.

WITNESS my hand and seal this 22nd day of July, in the year of our Lord one thousand nine hundred and ninety-eight and in the two hundred and twenty-third year of Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered
In the Presence of:

Karen Cowin

Marie W. Crews

J. Wyman Wall (L.S.)
J. WYMAN WALL, III

C

1885

STATE OF SOUTH CAROLINA)
)
COUNTY OF HAMPTON)

PERSONALLY appeared before me the undersigned and made oath that he/she saw the within named J. WYMAN WALL, III sign, seal and as his act and deed, deliver the within written Title to Real Estate for the uses and purposes therein mentioned, and that he/she with the other witness subscribed above witnessed the execution thereof.

SWORN to before me
this 22nd day of July, 1998.

Karen Cowen

Marietta W. Crews
Notary Public for South Carolina
My Commission Expires: 5-15-08

THIS DEED PREPARED BY THE LAW OFFICE OF SOLOMONS & LAWTON, P. O. BOX 969, ESTILL, SOUTH CAROLINA 29918.

EXHIBIT A

All that certain piece, parcel or lot of land, situate, lying and being in Fort Place Estates, St. Helena Island, Beaufort County, South Carolina, and being more specifically shown and described as Lot 9, Fort Place Estates, on a plat prepared for Wyman Wall by David E. Gasque, RLS, #10506, dated August 27, 1996, and revised April 10, 1998, and recorded in the office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 65 at Page 16. For a more detailed description as to the courses, metes and bounds of said lot, reference is made to an individual plat prepared by David E. Gasque, RLS, #10506 dated June 18, 1998, a copy of which is attached and recorded herewith.

This is a portion of property conveyed to J. Wyman Wall, III by deed of Dukes Real Estate Company, dated March 23, 1994 and recorded in the office of the Register of Deeds for Beaufort County, South Carolina in Records Book 694, at page 2334.

Portion of TMS 300-035-0128, 0129, 0130, and 0131

THIS CONVEYANCE IS SUBJECT TO RESTRICTIVE COVENANTS RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR BEAUFORT COUNTY, SOUTH CAROLINA IN RECORDS BOOK 1040 AT PAGE 560, AND ANY APPLICABLE AMENDMENTS THERETO.

The within deed was prepared by the Law Offices of Solomons & Lawton, Post Office Box 969, Estill, South Carolina 29918.

C

FILED
JOHN A. SULLIVAN, JR.
R.M.C.
BEAUFORT COUNTY, S. C.
98 JUL 28 AM 11:32
BK 1069 PG 1882
FOLDER #

Dukes
9761
/mll

1887

RECORDED THIS 11th DAY
OF September 1998
IN BOOK AE PAGE 1044
Sharon C. Burnsbop
AUDITOR, BEAUFORT COUNTY, S.C.

C

SCHEDULE A

All that certain piece, parcel, or lot of land, situate, lying and being in Fort Place Estates, St. Helena Island, Beaufort County, South Carolina, and being more specifically shown and described as Lot 9, Fort Place Estates, on a plat prepared for Wyman Wall by David E. Gasque, RLS, #10506, dated August 27, 1996, and revised April 10, 1998, and recorded in the office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 65 at Page 16. For a more detailed description as to the courses, metes and bounds of said lot, reference is made to an individual plat prepared by David E. Gasque, RLS, #10506 dated June 18, 1998, and recorded in the office of the Register of Deeds for Beaufort County, South Carolina, in Records Book 1069 at Page 1883

This is the identical property conveyed to Gregory T. Hildebrand and Becky P. Hildebrand by deed of J. Wyman Wall, III dated July 22 1998, and recorded in the office of the Register of Deeds for Beaufort County, South Carolina, in Records Book 1069 at Page 1882

The within mortgage was prepared in the law offices of Dukes, Williams, Infinger & Meeks, P.A., P. O. Drawer 1027, Beaufort, South Carolina, 29901, by Raymond H. Williams.

Tax Map Reference: Portion of 300 35 128

7/98

EXHIBIT D

1999

1856

4/0
10 PM

15497

STATE OF SOUTH CAROLINA)
) TITLE TO REAL ESTATE
COUNTY OF BEAUFORT)

WHEREAS, J. WYMAN WALL, III previously conveyed to BECKY P. HILDEBRAND and GREGORY T. HILDEBRAND, Lot #9, Fort Place Estates, St. Helena Island, Beaufort County, South Carolina by deed dated July 22, 1998 recorded in Deed Book ____ at page ____ in the office of the Register of Mesne Conveyances for Beaufort County; and

WHEREAS, that conveyance should have included a 1/27th interest in and to a lot containing .66 acres, more or less, designated as Parcel A and a portion of Fort Freemont Subdivision; and

WHEREAS, J. WYMAN WALL, III is now desirous of conveying the 1/27th interest to BECKY P. HILDEBRAND and GREGORY T. HILDEBRAND by this deed; and

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, That I, J. WYMAN WALL, III in the State aforesaid for and in consideration of the sum of Five and no/100 ($5.00) Dollars and no other consideration paid by BECKY P. HILDEBRAND and GREGORY T. HILDEBRAND, in the State aforesaid, County of Beaufort the receipt whereof is hereby acknowledged, have granted, bargain, sold and released, by these presents do grant, bargain, sell and release unto the said BECKY P. HILDEBRAND and GREGORY T. HILDEBRAND, during their joint lives and upon the death of either of them, then to the survivor of them, his or her heirs and assigns forever, in fee simple, together with every contingent, remainder and right of reversion, their heirs and assigns, the following described property, to-wit:

An undivided 1/27th interest in a lot containing .66 acres, more or less, designated as Parcel A and a portion of Fort Freemont Subdivision, on a plat dated February 13, 1998,

R300-35-103-9

D

1857

revised April 30, 1998, prepared by David L. Gasque, R.L.S., and recorded in the office of the Register of Mesne Conveyance in Beaufort County in Plat Book 65 at page 17, generally bounded as follows, to-wit: On the North by Lot 1 which is being conveyed to James M. Davis and Susan F. Davis; on the East by the right-of-way of Fort Freemont Road; on the South by Fort Freemont Subdivision; and on the West by the high water mark of the run of the Beaufort River; and having such shape, form, courses, distances, buttings and boundaries as are more fully shown on the plat above described; reference is hereby craved to said plat and the same is incorporated herein.

DERIVATION: This being a portion of the property conveyed to Grantor herein by deed recorded in the office of the Register of Mesne Conveyance for Beaufort County in Deed Book 944 at page 237.

TMS 300-35-103

IT IS THE INTENT OF THE GRANTOR BY CONVEYING THE UNDIVIDED INTEREST IN THIS LOT THAT THE GRANTEE HAVE USE OF THE LOT FOR THE PURPOSE OF ACCESS TO THE BEAUFORT RIVER.

GRANTEE'S ADDRESS: Becky P. Hildebrand
Gregory T. Hildebrand
201 Blane Lane
Lexington, SC 29072

Together with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

To Have and to Hold all and singular the premises before mentioned unto the said BECKY P. HILDEBRAND and GREGORY T. HILDEBRAND, during their joint lives and upon the death of either of them, then to the survivor of them, his or her heirs and assigns forever, in fee simple, together with every contingent, remainder and right of reversion, their heirs and assigns, forever.

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And I do hereby bind myself and my heirs, executors, and administrators, to warrant and forever defend all and singular the said premises unto the said BECKY P. HILDEBRAND and GREGORY T. HILDEBRAND, during their joint lives and upon the death of either of them, then to the survivor of them, his or her heirs and assigns forever, in fee simple, together with every contingent, remainder and right of reversion, their heirs and assigns, against me and my heirs and against every person whomsoever lawfully claiming, or to claim the same or any part thereof.

WITNESS my hand and seal this 1st day of ~~October~~ March, in the year of our Lord one thousand nine hundred and ninety-~~eight~~ nine and in the two hundred and twenty-~~third~~ second year of Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered
In the Presence of:

Karen Cousins
Mary H. Crews

J. Wyman Wall (L.S.)
J. WYMAN WALL, III

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STATE OF SOUTH CAROLINA)
)
COUNTY OF HAMPTON)

PERSONALLY appeared before me the undersigned and made oath that he/she saw the within named J. WYMAN WALL, III sign, seal and as his act and deed, deliver the within written Title to Real Estate for the uses and purposes therein mentioned, and that he/she with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this
1st day of March, 1999

Karen Common

Notary Public for South Carolina
My Commission Expires: 05-15-08

THIS DEED PREPARED BY THE LAW OFFICE OF SOLOMONS & LAWTON, P. O. BOX 969, ESTILL, SOUTH CAROLINA 29918.

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Solomon +
Lawton
9489

FILED
JOHN A. SULLIVAN - RMC
BEAUFORT COUNTY, S.C.
99 MAR 26 AM 9:31

BK 1151 PG 1856
FOLDER#

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RECORDED THIS ____ DAY
OF ____ 19__
IN BOOK ____ PAGE ____

Sharon P. Burris
AUDITOR, BEAUFORT COUNTY, S.C.

EXHIBIT E

CONTRACT OF SALE

STATE OF SOUTH CAROLINA

AGREEMENT made the 7th day of April, 19 98, between J. Wyman Wall, III, Purchaser and Becky P. Hildebrand & Gregory T. Hildebrand, Seller

Purchaser agrees to buy and seller agrees to sell, all that lot or parcel of land with the buildings and improvements theron, if any, situated in Beaufort, County, State of South Carolina, and being described as follows: Lot No. 9 in Fort Place Estates facing Fort Freemont Lane - Sketch attached.. Restrictive Covenant attached.

Subject to all covenants of record(provided they do not make the title un marketable) and to all governmental statutes, ordinances, rules and regulations.

The purchase price is Thirty Thousand Dollars ($ 30,000.00) to be paid as follows: $ 1,500.00 herewith which shall be held in trust by Morrison For, & Real Est. Agent, and $ 28,500.00 upon delivery of a deed as hereinafter provided, and the balance as follows: N. A.

Taxes, interest, water rents, lights and rents(as and when collected) shall be adjusted as of the date of the delivery of the deed. Insurance premiums shall be prorated or the insurance shall be cancellled, at purchasers option.

Seller agrees to convey by marketable title and deliver a proper statutory warranty deed free of encumbrances except as herein stated, with all stamps affixed thereto. The deed shall be delivered at the office of A. G. Solomons, Jr, and transaction closed on or before, May 22nd, , 19 98.

Possession of said premised will be given purchaser on or before May 22nd, 19 98.

In case the property herein referred to is destroyed wholly or partially by fire or other casualty, purchaser shall have th option for ten days therafter of proceeding hereunder, with an agreed adjustment in the purchase price, or of terminating this agreement and being repaid all amounts paid hereunder.

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The sale is conditioned upon Final Plat Provided, House to face Fort Freemont Lane, deposit is refundable, agreement of dwelling consisting of 2½ stories above stilts. If lot does not perk, money will be refunded, for a single dwelling consisting of 2500 square feet.

It is expressly agreed that upon the event of any default or failure on the part of the purchaser to comply with the terms and conditions of this contract, that one-half of said deposit is to be paid to said broker and not to exceed the commission due and the remaining portion of said escrow shall, at the option of the seller, be paid to the seller as liquidated damages. Upon default by the seller, if the purchaser elects to rescind this agreement, he shall be repaid all sums paid hereunder and in addition shall be reimbursed by the seller for his reasonable expenses of title examination.

cont. next pa

This sale includes all personal property attached to the premises, fixtures and equipments therein, except:

N. A.

Seller agrees to pay Morrison Forestry & Real Estate Co., Inc a commission of 10 % of the sales price stated in this agreement for services rendered.

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators, successors and assigns of the respective.

This argeement shall be freely assignable by the purchaser.

Broker does not guarantee payment of check or checks accepted as earnest money.

WITNESS the parties hereby by their hands and seals the day and year first above written:

In The Presence Of:

Witness As To Purchaser Date	Purchaser Date
Witness As To Seller 4/7/98 Date	J Wyman Wallace 4/7/98 Seller Date
Witness As To Agent 4/7/98 Date	Beverly D. Morrison Agent Date 4/7/98

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If contract exceeds 45 days, buyer has first stipulation of an extension until such time contract is complete.

JWH